KACM500006262024

IN THE COURT OF THE CIVIL JUDGE & JMFC., N.R.PURA (ITINERARY COURT)

Present : Sri. Jeethu R.S., B.A.L.,LL.M.,
Civil Judge & JMFC., N.R. Pura.

Dated : This the 9th day of June 2026.

C.C. No. 477/2024

Complainant : Sri. Mani M., S/o Muniswamy,
Age 38 years, Driver & Welding work,
R/o Kallikoppa, Simse Village,
B.H. Kaimara Post, Narasimharajapura Taluk,
Chikmagalur District.
(Represented by Sri. K.S.Santhosh Kumar, Adv.,)

V/S

Accused : Sri. Prashantha K.Y., S/o Yogisha,
Major in Age, R/o K. Kanaburu Village,
Muttinakoppa Post, Narasimharajapura Taluk,
Chikmagalur District.
(Represented by Sri. S.S. Santhosh Kumar, Adv.,)

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1.	The offence complained of	U/s.138 of N.I.Act
2.	Date of Registration of private complaint	27-06-2024
3.	The private complaint registered as Criminal case	07-08-2024

4.	Sworn Statement/complainant evidence	29-07-2024
5.	Substance of Accusation Recorded	17-02-2026
6.	Statement of the accused under Section 313 of Cr.P.C. recorded	17-02-2026
7.	Final Order	Convicted
8.	Date of final Order	09-06-2026

Sd/-xxx 9/6/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R.Pura.

JUDGMENT

The complainant has filed this complaint under section 200 of Cr.P.C against the accused for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The brief facts of the complainant case is as under:

It is alleged that the complainant and the accused are known to each other. The accused has borrowed a sum of Rs.60,000/- from the complainant as hand loan to meet his urgent needs during the 2nd week of February, 2024. It is further alleged that the accused has assured that the same will be paid within 4 months without fail. But the accused failed to repay the said amount of Rs.60,000/- as agreed by him. After the lapse of 4 months the complainant demanded for repayment of the loan amount. It is further alleged that at that point of time the accused has issued the cheque bearing No.788203, dated 27/5/2024 for a sum of Rs.60,000/- drawn on Canara Bank, Muttinakoppa Branch, towards the discharge of the above said legally recoverable debt. Thereafter, the complainant presented the said cheque in question through Canara Bank, N.R. Pura Branch for encashment. But, the complainant's Bank has returned the above said cheque to the complainant with a memo dated 27/5/2024. Further, in the said memo it is stated that the afore mentioned cheque is dishonoured for the reasons "Drawer's signature incomplete/illegible/differs/required". Thereafter, it is further alleged that the complainant issued legal notice through his Advocate on 31.5.2024 calling upon the accused to repay the cheque amount. But, the said notice was returned on 11.6.2024 with a shara "Door Locked. Hence returned to sender". Thereafter, the accused has failed to repay the cheque amount within the statutory period. Hence, the complainant filed this private complaint.

3. The affidavit filed by the complainant towards the recording of sworn statement of complainant is treated as affidavit in lieu of examination in chief of PW 1 and got marked Ex.P1 to Ex.P6 and further identified the signature of the accused on the cheque in question as Ex.P1(a) along with the bank endorsement and other documents. Thereafter, cognizance was taken for the offence punishable under Section 138 of NI Act. Further, the private complaint has been registered as criminal case, against the accused and summons has been issued to the accused.

4. After the service of summons, the accused has appeared before the court through his counsel. Thereupon his counsel got him enlarged on bail. As per the guidelines of Hon'ble Apex Court in Indian Bank Association case cited in AIR 2014 SC 2528, the plea was recorded and the substance of accusation was read over and explained to the accused and the accused pleaded not guilty and claimed to be tried. Further, the

statement of accused under Section 313 of Cr.PC., is also recorded.

At Trial

5. The accused had filed application under Section 145(2) of N.I. Act and it was allowed. But, the accused has not conducted the cross examination of PW 1 during the course of trial. As such, the cross-examination of PW 1 is taken as nil. Thereupon, the matter was posted for defence evidence. But, the accused has not led any defence evidence during the course of trial.

6. Heard both the counsels on merits.

7. The points that arise for my consideration are as under:-

> 1. Whether the complainant proves that the accused has issued the cheque in question/Ex.P1 towards the discharge of legally enforceable debt and on its presentation, the cheque in question was dishonoured for the reasons “Drawer’s signature incomplete/illegible/differs/ required” and thereupon the accused has failed to repay the cheque amount within the statutory period from the date of service of statutory notice upon him and thereby the

accused has committed an offence punishable under section 138 of NI Act beyond all reasonable doubts?

2. What order?

8. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : As per the final order, for the following;

REASONS

9. **Point No.1** :- To prove the case of complainant, the complainant himself has examined as PW 1. Further filed affidavit in lieu of examination in chief and got marked Ex.P1 to Ex.P6 and further identified the signature of the accused on the cheque in question as Ex.P1(a). Further, identified the bank challen and endorsement issued by the complainant bank as Ex.P2 and P3 respectively. The office copy of the legal statutory notice is produced and got marked as Ex.P4. Postal receipt is marked as Ex.P5. The unclaimed postal cover is marked as Ex.P6 and notice is marked as Ex.P6(a). The PW 1 has reiterated the allegations pleaded in the private complaint.

10. Once the compliance of the conditions under Section 138 of NI Act is made out, a presumption arises in favour of the complainant, that the cheque in question was issued in favour of the complainant by the accused towards the discharge of legally enforceable debt or other liability as per Sections 118 and 139 of NI Act. The presumption contemplated under Section 139 of NI Act is rebuttable in nature. The accused has not come forward to conduct cross-examination of PW 1 during the course of trial. Further, the accused has even not led any defence evidence to rebut the presumption under Section 139 of NI Act. Therefore, the accused has failed to rebut the presumption available to the complainant under Section 139 of N.I.Act.

11. In spite of sufficient opportunity given to the accused to rebut the presumption that stands in favour of the complainant, the accused has not made any efforts to rebut the presumption either by eliciting the truth from the mouth of complainant/PW 1 during the course of cross-examination or by stepping into the witness box.

12. Section 139 of N.I. Act states about the presumption in favour of holder as follows:

> "Sec.139. Presumption in favour of holder. — It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

13. Thus, in view of the presumption laid down under Section 139 of NI Act creates the initial obligation on the complainant that may be discharged with the help of presumptions of law or fact. Unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed facts, no discretion is left with the Court but to draw the statutory conclusion. Thus, in the above case on hand the accused has failed to conduct cross-examination of witness and further has not led any evidence to defend the case of accused. Therefore, the Court is left with no option, except to accept the case of the complainant that the accused has borrowed a sum of Rs.60,000/- from the complainant as hand loan and in this regard the accused has issued the cheque bearing No.788203, dated 27/5/2024 for a sum of Rs.60,000/- drawn on Canara Bank, Muttinakoppa Branch, towards the discharge of the

above said legally recoverable debt. But, on its presentation for encashment it came to be dishonoured for the reasons “Drawer’s signature incomplete/illegible/differs/required” as per Ex.P3. Further PW 1 has also relied upon the statutory notice sent to the accused as per Ex.P4 and unclaimed postal cover as per Ex.P6 and legal notice as per Ex.P6(a). Thus, the said allegations made by the complainant in the complaint and in the evidence of PW 1 remained intact as it was not disputed by the accused during the course of trial.

14. It is relevant to refer the ratio laid down by the Hon’ble Apex Court in Beersing V/S Mukesh Kumar reported in AIR 2019 SC 2446. The relevant portion of the judgment mentioned supra is hereby reproduced.

> *“26. In Kumar Exports vs. Sharma Carpets, this Court reiterated that there is a presumption that every negotiable instrument duly executed, is for discharge of a debt or liability, but the presumption is rebuttable by proving the contrary. In the facts and circumstances of the case it was found that the cheque in question was towards advance for purchase of carpets, which were in fact not sold by the payee of the cheque to the drawer, as proved from the deposition of an official of the Sales Tax Department, who stated that the payee had admitted that he had not sold the carpets.*

27. In K.N. Beena vs. Muniyappan and Another, this Court held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118 thereof, the Court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the 8 (2009) 2 SCC 513 9(2001) 8 SCC 458 contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. This Court clearly held that the High Court had erroneously set aside the conviction, by proceeding on the basis that denials/averments in the reply of the accused were sufficient to shift the burden of proof on the complainant to prove that the cheque had been issued for discharge of a debt or a liability. This was an entirely erroneous approach. The accused had to prove in the trial by leading cogent evidence that there was no debt or liability.

28. In R. Vijayan vs. Baby and Another this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as also compensatory and restitutive. It provides a single forum and single proceeding for enforcement of criminal liability by reason of dishonour of cheque and for enforcement of the civil liability for realization of the cheque amount, thereby obviating the need for the creditor to move two different fora for relief. This Court expressed its anguish that some Magistrates *went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided. 10 (2012) 1 SCC 260*

29. In R. Vijayan vs. Baby and another (supra) this Court observed that unless there were special circumstances, in all cases of conviction, the Court should uniformly exercise the power to levy fine up to twice the cheque amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct payment of such amount as compensation. This Court rightly observed that uniformity and consistency in deciding similar cases by different courts not only increases the credibility of the cheque as a Negotiable Instrument but also the credibility of the Courts of Justice.

30. The judgment of this Court in Raj Kumar Khurana vs. State of (NCT of Delhi) & Anr. was rendered in the particular facts of the case where the drawer of the cheque had reported to the police and the bank that two unfilled cheques signed by him had been stolen.

31. The proposition as re-enunciated in John K John vs. Tom Varghese & Anr. cited on behalf of the respondent-accused that if two views are possible, this

Court, in exercise of its jurisdiction under Article 136 of the Constitution would ordinarily not interfere with a judgment of acquittal, is well settled.

32. In the aforesaid case this Court affirmed an acquittal under Section 138 of the Negotiable Instrument Act, in the 11 (2009) 6 SCC 72 12 (2007) 12 SCC 714 peculiar facts and circumstances of the case where several civil suits between the parties were pending.

33. In Krishna Janardhan Bhat vs. Dattatraya G. Hegde cited on behalf of the respondent-accused, this Court reaffirmed that Section 139 of the Act raises a presumption that a cheque duly drawn was towards a debt or liability. However, keeping in view the peculiar facts and circumstances of the case, this Court was of the opinion that the courts below had approached the case from a wholly different angle by wrong application of legal principles.

34. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. It is the ratio decidendi of the case which operates as a binding precedent. As observed by this Court in State of Punjab & Ors. vs. Surinder Kumar & Ors. what is binding on all courts is what the Supreme Court says under Article 141 of the Constitution, which is declaration of the law and not what it does under Article 142 to do complete justice.

35. Furthermore, to quote V. Sudhish Pai from his book "Constitutional Supremacy - A Revisit":-

"Judgments and observations in judgments are not to be read as Euclid's theorems or as provisions of statute. Judicial utterances/pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute it may become necessary for judges to embark upon lengthy discussions, but such discussion is meant to explain not define, Judges interpret statutes, their words are 13 (2008) 4 SCC 54 14 (1992) 1 SCC 489 not to be interpreted as statutes. Thus, precedents are not to be read as statutes."

36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is *immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant- complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

43. In our considered opinion, the High Court patently erred in holding that the burden was on the appellant-complainant to prove that he had advanced the loan and the blank signed cheque was given to him in repayment of the same. The finding of the High Court that the case of the appellant-complainant became highly doubtful or not beyond reasonable doubt is patently erroneous for the reasons discussed above."

15. Now, coming back to the case on hand, the accused in the above case has neither conducted cross-examination of PW 1 nor led any defence evidence to rebut the presumption under section 139 of N.I. Act.

16. Further, the Hon'ble Apex Court has specifically laid down the ratio in Rangappa Vs. Mohan Judgment reported in AIR 2010 S.C. 1898 Rangappa Vs. Sri Mohan., that the initial presumption is always in favour of complainant that the cheque is issued in favour of complainant towards the discharge of legally enforceable debt. It is for the accused to disprove the presumption not by mere explanation, but proof of explanation has to be offered. But, in the above case, the accused has failed to offer any evidence to disbelieve the case of complainant. Thus, the evidence of the complainant has remained unchallenged as it

is not subjected to cross-examination by the accused during the course of trial.

17. The complainant has established his case by cogent oral and documentary evidence. Further, on careful perusal of Ex.P6 postal cover, it is returned to the complainant with a shara “Door locked”. This court has also perused the address mentioned on Ex.P6 and also in the cause title of the complaint, which are one and the same. After the issuance of summons the accused appeared before the court. Therefore, this court holds that the service of statutory notice against the accused in the above case as per section 138 of N.I. Act is duly complied by the complainant by issuing the statutory notice to the known address of the accused. The presumption under Section 139 of NI Act is not rebutted by the accused during the course of trial as explained by the Hon’ble Apex Court in Rangappa vs. Mohan case. Hence, I am of the considered opinion that accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act. Accordingly, point No.1 is answered in the Affirmative.

18. ***Point No.2*** : For the aforementioned reasons this Court proceeds to pass the following :

The Judgment and order on sentence is ready. The proposed sentence is fine only. The evidence on record is sufficient to determine the quantum of punishment. The presence of accused is necessary on the date of judgment only to give an opportunity to him to submit his say on the quantum of punishment. In the present case, hearing of the accused on quantum of punishment is not required. Pronouncement of Judgment and order of sentence in the absence of the accused in no-way prejudices the rights of the accused or causes injustice to him. Hence, considering the Provisions of Section 353(6), (7) of Cr.P.C., the Judgment and order of sentence can be pronounced in the absence of the accused.

ORDER

The accused is found guilty for the offence punishable under section 138 of N.I Act.

Acting under section 255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable under section 138 of N.I Act and sentenced to pay fine of Rs.65,000/-.

Out of the said fine amount, Rs.60,000/- shall be payable to the complainant as compensation as per section 357 of Cr.P.C., remaining amount of Rs.5,000/- shall be payable to the State as the fine amount.

As default sentence, the accused shall undergo simple imprisonment for a period of one year.

The bail bond and surety bond of the accused is hereby stands cancelled.

The office is hereby directed to issue the free copy of the judgment to accused.

(Dictation given to the Stenographer directly on system, typed by her, then corrected and then pronounced by me in the open court on this the 9th day of June, 2026)

Sd/-xxx 9/6/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R. Pura.

A N N E X U R E

List of witnesses examined for the complainant:

PW 1 : Sri. Mani M.

List of witnesses examined for the accused:

- NIL -

List of documents marked for the complainant:

Ex.P1 : Original cheque bearing No. 788203
Ex.P1(a) : Signature of accused
Ex.P2 : Challen issued by Canara Bank
Ex.P3 : Endorsement issued by Canara Bank
Ex.P4 : Office copy of the legal notice
Ex.P5 : Postal receipt
Ex.P6 : Unclaimed postal cover
Ex.P6(a) : Legal notice

List of documents marked for the accused:

- NIL -

Sd/-xxx 9/6/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R. Pura.

JEETHU R S

Digitally signed by JEETHU R S
Date: 2026.06.10 10:56:21 +0530