

KADG010015232025



Presented on : 20-05-2025

Registered on : 20-05-2025

Decided on : 04-04-2026

Duration : 0 years, 10 months, 15 days

**IN THE COURT OF
II ADDL DISTRICT AND SESSIONS JUDGE DAVANGERE
AT DAVANGERE, DAVANGERE
(Presided Over by SRI. PRAVEEN KUMAR.R.N)**

CRL.A/125/2025

APPELLANT:-

Rakesh Kumar S/o Vasanth Kumar S
Age: 40 years, UPS Battery Work,
R/o: Vinobha Nagar, Chowdeshwari temple near.
Davanagere City.

//Versus//

RESPONDENT:-

Girish S K S/o Shankarappa Koudi,
Age: 45 years, Occ: Business,
R/o: 1st Main, 7th Cross,
Ashok Nagar, Kondajji Road,
Davanagere city.

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Sri.C.T.H., Advocate appearing for Appellant
Sri.M.S., Advocate appearing for Respondent
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JUDGMENT

The appellant being the accused has preferred this appeal against the judgment and order of sentence passed by the 2nd Addl. Civil Judge and J.M.F.C., Davanagere in CC No.6070/2023 dated 19/04/2025.

2. In order to avoid the confusion I would like to show the rank of the parties same as they stood before the trial court.

3. The factual matrix of the complainant's case runs as under:-

The complainant and the accused were engaged in tourist/taxi business and were well acquainted with each other. It is the case of the complainant that the accused sought financial assistance of Rs.20,00,000/- for business and household necessities. Initially, the complainant declined, but later, on repeated requests, he arranged the said amount through his father and relatives in April 2022. In acknowledgment thereof, the accused executed an agreement in favour of the complainant on 05.05.2022.

4. Subsequently, in the second week of February 2023, the accused again requested a sum of Rs.10,00,000/- to clear his existing bank loan and to avail a fresh loan. Believing the assurance of repayment, the complainant advanced the said

amount. Towards discharge of the said liability, the accused issued a post-dated cheque bearing No.324277 dated 10.08.2023 for Rs.10,00,000/-, drawn on Ujjivan Small Finance Bank, Davanagere Branch.

5. It is further stated that, in respect of the earlier loan of Rs.20,00,000/-, the accused had issued cheques in favour of the complainant's father and relatives, which were dishonoured upon presentation. Consequently, separate proceedings under Section 138 of the Negotiable Instruments Act were initiated by the respective cheque holders.

6. The record would show that, thereafter the trial court recorded the sworn statement of the complainant and on perusal of entire records he took the cognizance of the offence and had issued notice to the accused. The record would show that the accused appeared through his counsel and thereafter took the bail from the court and thereafter the Presiding Judge framed the substance of accusation against the accused and record would show that accused pleaded not guilty and claimed to be tried.

7. Thereafter, the records would show that the complainant himself was examined as P.W-1 and he got marked 12 documents as Exhibits P-1 to P-12. Further Ex.D.1 to D.3 were

got marked. The statement of the accused under Section 313 of the Cr.P.C. was recorded.

8. Thereafter the trial court heard the arguments placed by both the sides and thereafter the case was posted to judgment. Thereafter by considering all the facts and circumstances of the case the trial court come to the conclusion and passed the following order:-

ORDER

Acting under section 255 (2) of Code of Criminal Procedure 1908, the accused is hereby convicted for the offence punishable under section 138 of The Negotiable Instruments Act.

The accused is sentenced to pay a fine of Rs.12,00,000/- (Rupees Twelve Lakhs only). In default to pay the fine, the accused shall undergo simple imprisonment for a period of one year

In exercise of powers conferred upon this court under section 357 of Code of Criminal Procedure, it is hereby ordered that, entire fine amount shall be paid to the complainant.

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

Office is directed to furnish the free copy of this judgment to the accused.

9. On this impugned judgment and order of sentence passed by the trial court the accused has preferred this appeal and urged the following points for consideration:-

- The Trial Court has failed to properly record the statement of the accused under Section 313 of Cr.P.C., and has not afforded an adequate opportunity to the accused to explain the incriminating circumstances appearing against him. As such, the Trial Court has failed to extend the benefit of doubt to the accused.
- The complainant has not specifically stated the exact date on which the alleged loan amount of Rs.10,00,000/- was advanced to the accused, nor has he produced any documentary evidence in support of the same. Despite this material deficiency, the Trial Court has failed to draw an adverse inference and extend the benefit of doubt to the accused.

- It is further contended that the cheque in question was dishonoured with the endorsement “Kindly contact the drawer/Drawee Bank and please present again.” Such an endorsement does not attract the offence under Section 138 of the Negotiable Instruments Act, as held in several decisions of the Hon’ble High Courts. Though such judgments were cited before the Trial Court, the same have not been considered or discussed in the impugned judgment, thereby causing serious prejudice to the accused.
- The Trial Court, in paragraph 28 of the judgment, has relied upon the statement of the complainant that he met the accused after receipt of the bank endorsement and that the accused assured him to take care of the matter. The Trial Court has erroneously drawn an inference on the ground that the said version was not denied by the defence. However, the defence had specifically questioned whether such facts were stated in the complaint or legal

notice, which has not been properly considered by the Trial Court.

- In paragraph 25 of the judgment, though the defence questioned the financial capacity of the complainant, the Trial Court accepted the production of Ex.P10 and held that the complainant had sufficient financial means. However, it has not been explained as to how the complainant, who allegedly purchased land worth Rs.60,00,000/- in the year 2021, could again advance Rs.10,00,000/- in 2023. No satisfactory explanation or proof of income, such as income tax records, has been produced.

- The Trial Court has failed to consider the defence document marked as Ex.D1, thereby causing prejudice to the case of the accused.

- The Trial Court has failed to notice material contradictions in the evidence of the complainant and has instead placed undue reliance on inconsistent testimony. The findings recorded are contrary to the evidence on record.

- The conviction of the accused, despite lack of reliable and cogent evidence, is unsustainable in law and has resulted in miscarriage of justice.
- Overall, the impugned judgment is illegal, improper, and contrary to the evidence on record, and hence liable to be set aside.

10. In view of the foregoing pleaded to allow this appeal by setting aside the impugned judgment of conviction dated 19.04.2025 passed in C.C.No.6070/2023 by the Trial Court and to allow this appeal in the interest of justice and equity.

11. On admission of the appeal this court has issued notice to the complainant. Complainant appeared through his counsel. This court has received the entire records from the trial court.

12. On perusal of the facts and circumstances of the case, the following points arises for my consideration:-

- 1) Whether the appellant/accused has successfully rebutted the presumption under Section 139 of the Negotiable Instruments Act by proving that the cheque in question was not issued towards any legally enforceable debt or liability?
- 2) Whether it is necessary to interfere the judgment and order of sentence passed by the trial court?
- 3) What order?

13. My answer to the above points is as under:-

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : As per final order for the following;

REASONS

14. **Point No.1 & 2** :- These points are interlinked with each other. In order to avoid repetition of facts, I propose to consider them under a common discussion. Further, the brief facts of the complainant's case have already been stated in the earlier part of this judgment; hence, they are not repeated here.

15. Nevertheless, it is the case of the complainant that the accused had borrowed a sum of ₹20,00,000/- from the complainant's father, the complainant's brother-in-law, as well as a relative of the complainant, on the influence of the complainant. However, the accused failed to repay the said amount to them within the stipulated time.

16. Further, according to the complainant, thereafter, the accused once again approached him stating that he required an additional sum of ₹10,00,000/- for discharging his liabilities and for clearing the dues owed to the complainant's father, brother-in-law, relative, as well as the complainant himself. On such

assurance, the complainant advanced a sum of ₹10,00,000/- to the accused.

17. However, thereafter, the accused failed to honour his promise of repayment. In the meantime, the accused issued a cheque in favour of the complainant, which, when presented for encashment, was dishonoured. Having no other option, the complainant issued a statutory legal notice and subsequently filed a complaint against the accused. The trial Court, upon consideration of the material on record, passed judgment in favour of the complainant.

18. Aggrieved by the said judgment, the accused has preferred the present appeal before this Court, raising several grounds in the appeal memorandum.

19. During the course of arguments, the learned counsel appearing on behalf of the accused contended that the trial Court, without properly assessing the facts and circumstances of the case, has passed the judgment against the accused, which is vitiated by infirmities, illegalities, and perversity. Further, the learned counsel contended that, without properly appreciating the facts and evidence on record, the trial Court hastily arrived at the conclusion that the complainant had discharged his initial burden by producing oral and documentary evidence and further

held that, even after the burden shifted to the accused, he failed to establish any probable defence.

20. The learned counsel further contended that, during the course of cross-examination of the complainant, several inconsistencies were elicited; however, the same have not been considered by the trial Court in their proper perspective. It is further contended that no monetary transaction, as alleged by the complainant, had taken place between the complainant and the accused, which aspect was brought out in the cross-examination of the complainant; however, the same has not been properly appreciated by the trial Court.

21. Further, the learned counsel contended that the accused had specifically taken a defence that the complainant did not possess sufficient source of income to advance a sum of ₹10,00,000/-. Even though the complainant failed to produce any relevant document to establish his financial capacity, the trial Court failed to properly consider the same and erroneously passed the judgment in favour of the complainant, which is perverse. It is also contended that the complainant did not produce his income tax returns to demonstrate that the said amount of ₹10,00,000/- was reflected in his financial records; however, this aspect was not properly considered by the trial Court.

22. Further, the learned counsel contended that, in the present case, the cheque was returned with an endorsement stating “Kindly contact drawer/drawee bank and present again,” and in such circumstances, no cause of action arises for filing a complaint under Section 138 of the Negotiable Instruments Act. However, this aspect was also not considered by the trial Court in its proper perspective.

23. Further, it is contended that the accused had borrowed a hand loan of ₹3,00,000/- from the father of the complainant, and at that time, he had issued four blank cheques. It is further contended that the accused had repaid ₹85,000, and only a sum of ₹50,000 remained outstanding, as reflected in Exhibit D1. However, this aspect was not considered by the trial Court, which has erroneously passed the judgment against the accused. Further, the learned counsel submitted that Exhibit D1 clearly reflects the manner and timeline in which the accused repaid amounts to the father of the complainant; however, the trial Court failed to properly appreciate the same and passed the impugned judgment, which is not in accordance with law.

24. In order to substantiate his contentions, the learned counsel for the accused relied upon certain decisions and prayed to set aside the judgment of the trial Court and to allow the appeal by acquitting the accused of the alleged charges. The

following decisions are relied upon by the counsel for the appellant.

- Criminal Petition No.4350 of 2017 – Hon’ble High Court of Karnataka, -2023 in between Razak P.S. S/o Saiyyed Saheb V/s Ashraf Agalpady S/o Isubu Beary,
- Madras High Court -2025 Crl.O.P.No.9129 of 2025 and Crl.M.P.Nos. 6028 & 6029 of 2025 between Robert Nirmal Singh V/s Ajith S Lallu,
- Madras High Court- 2023- Crl.O.P.No.8664 of 2021 & Crl.M.P.No.5689 of 2021 between M/s Vignesh Builders Rep. By its Proprietor Mr. N.Manvivannan @ Manivannaperumal V/s M/s Sastha Associates Rep. By its Power Agent Mr. S.Sivagurunathan S/o D.Shanmugam
- 2023 Live Law (SC) 46 Hon’ble Supreme Court of India – Criminal Appeal No.1978 of 2013 between Rajaram S/o Sriramulu Naidu (Since deceased) Through L.Rs. V/s Maruthachalam (Since Deceased) Through L.Rs.

25. In contrast, the learned counsel appearing for the complainant contended that there is no illegality or perversity in the judgment and order of sentence passed by the trial Court. It is further contended that the complainant, by producing both oral and documentary evidence, has duly discharged his initial burden.

26. The learned counsel further contended that, though the statutory notice was duly served upon the accused, he failed to reply to the same and avoided repayment of the amount. It is

also contended that the accused has admitted that the cheque belongs to him and that the signature appearing thereon is his; therefore, the trial Court has rightly held that the complainant has discharged his initial burden, being the holder of the cheque issued towards a legally recoverable debt. Hence, no interference is warranted at this stage.

27. Further, it is contended that, during the cross-examination of the complainant, no probable defence has been elicited by the accused, except raising a vague contention regarding the complainant's financial capacity. However, the complainant has demonstrated, by producing relevant documents, that he had sufficient source of income.

28. The learned counsel further contended that, during cross-examination, the accused himself admitted that the complainant had purchased the landed property under Exhibit P.11 for a sum of ₹60,00,000/- at the relevant point of time, which itself establishes the financial capacity of the complainant. Therefore, when the accused himself has admitted the financial capacity of the complainant, it is not necessary for the complainant to produce income tax returns.

29. Further, the learned counsel contended that, in the present case, the cheque issued by the accused was returned

with an endorsement stating “Kindly contact drawer/drawee bank and present again.” The contention of the accused that such an endorsement does not give rise to a cause of action under Section 138 of the Negotiable Instruments Act is untenable. The Hon’ble Supreme Court of India has held in Lafarge Aggregates and Concrete India Pvt. Ltd. V/s Sukarsh Azad and another reported in 2014 (13) SCC 779 - that endorsements such as “refer to drawer,” “exceeds arrangement,” “stop payment,” or similar endorsements would amount to dishonour within the meaning of Section 138 of the Negotiable Instruments Act.

30. It is further contended that, by taking such defences, the accused has failed to rebut the statutory presumption available in favour of the complainant. Further, it is contended that, though Exhibit D.1 may indicate repayment of certain amounts by the accused to the father of the complainant, the said transaction is entirely distinct from the present transaction in question. On these grounds, the learned counsel for the complainant prayed for dismissal of the appeal filed by the accused.

31. Further, the learned counsel for the accused contended that Exhibit D.9 is not relevant in the eye of law, as it contains only the signature of the accused and no other signatories. It is

further contended that the said document pertains to earlier transactions and not to the present transaction. Therefore, the said document lacks authenticity and cannot be relied upon.

32. However, the learned counsel for the complainant contended that, at the time of availing ₹20,00,000 from the complainant's father, brother-in-law, and relative on the influence of the complainant, the accused had executed an agreement on bond paper. Accordingly, the said document has been produced before the Court. It is further contended that the said agreement was given to the complainant, and since the complainant had facilitated the said transaction, the other parties have not signed the said document.

33. On these backgrounds, on going through the judgment passed by the trial Court, it is seen that the trial Court has initially considered the ingredients of Section 139 of the Negotiable Instruments Act and has also evaluated the oral and documentary evidence adduced by the complainant. Upon appreciation of the cross-examination of the complainant, the trial Court has arrived at the conclusion that the complainant has discharged his initial burden.

34. Further, on perusal of the judgment of the trial Court, it is evident that the trial Court has held that the accused has failed

to establish any probable defence by producing relevant evidence so as to create doubt regarding the case of the complainant. The trial Court has also taken into consideration that the total amount involved, i.e., ₹30,00,000/-, is not a meagre amount, and the failure of the accused to initiate any action against the complainant and others raises suspicion regarding the defence set up by the accused.

35. The trial Court has further held that the transaction reflected in Exhibit D.1 is entirely different from the transaction in question. It has also been observed that, by producing relevant documents, the complainant has demonstrated his source of income and has also established ownership of landed properties. The trial Court has also considered the cross-examination of the complainant, wherein the accused, by way of suggestion, admitted that the complainant had purchased the landed property under Exhibit P.11 for ₹60,00,000/-, which itself indicates that the complainant had sufficient financial capacity.

36. Further, the trial Court has held that mere non-production of income tax returns by the complainant is not sufficient to draw an adverse inference against him, as income tax proceedings are independent and have no direct bearing on the present case.

37. The trial Court has also relied upon the judgment of the Hon'ble Apex Court in Criminal Appeal No.1914 of 2013, produced by the learned counsel for the complainant, wherein it has been held that even if a cheque is returned with an endorsement such as "contact drawer/drawee bank and present again," the same would fall within the ambit of dishonour under Section 138 of the Negotiable Instruments Act.

38. On these grounds, the trial Court has concluded that the complainant has proved his case beyond all reasonable doubt, whereas the accused has failed to establish any probable defence.

39. Now, it is to be seen whether there is any illegality or infirmity in the judgment of the trial Court which renders it perverse against the accused. As the first appellate Court, this Court has the power to re-appreciate both the facts and the law. However, it is well settled that if the judgment passed by the trial Court is neither erroneous nor perverse, interference is not warranted.

40. On these backgrounds, on going through the records, it would show that the complainant, in order to prove his case, examined himself as PW1 and filed his affidavit in lieu of examination-in-chief. Further, the complainant initially produced

nine documents, namely: Exhibit P1 – the cheque; Exhibit P2 – the collection slip; Exhibit P3 – the bank endorsement; Exhibit P4 – the copy of the legal notice; Exhibit P5 and Exhibit P6 – the postal receipts; Exhibit P7 and Exhibit P8 – the unserved postal covers; and Exhibit P9 – the certified copy of the agreement.

41. At this stage, it is seen that Exhibit P1 cheque was presented to the bank within the statutory period and was returned with an endorsement stating “Kindly contact drawer/drawee bank and present again.” The learned counsel for the accused has contended that when such an endorsement is issued by the banker, the complainant has no right to file a complaint under Section 138 of the Negotiable Instruments Act. The merit of this contention will be considered at a later stage of this judgment.

42. Further, the record would show that, thereafter, within the prescribed time, a statutory legal notice was issued to the accused. However, the accused refused/rejected the same and did not reply. Subsequently, within the stipulated time, the complainant filed the present complaint against the accused. Therefore, at this stage, it is evident that all the statutory requirements and procedural formalities have been duly complied with by the complainant.

43. It is also pertinent to note that the accused did not reply to the statutory notice. Further, on going through the cross-examination of PW1, it is evident that the accused has admitted that the cheque belongs to him and that the signature appearing thereon is his. Once the accused admits the issuance of the cheque and his signature, it raises a presumption in favour of the complainant that the cheque was issued towards discharge of a legally recoverable debt.

44. Therefore, at this stage, it clearly shows that the trial Court has rightly held that the complainant has discharged his initial burden, which lay upon him, by establishing that he is the holder of the cheque and that the same was issued towards a legally enforceable debt.

45. At this stage, it is apposite to refer to the ratio laid down in the decision of the Hon'ble Supreme Court of India in Basalingappa vs Mudlibasappa, reported in 2019 (5) SCC 418 Their Lordships have held as under:-

23. We having noticed the ratio laid down by this Court in above cases on [Sections 118\(a\)](#) and [139](#), we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted [Section 139](#) of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under [Section 139](#) is a rebuttable presumption and the onus is on the accused to raise the

probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, [Section 139](#) imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.

46. Further in *Tedhi Singh v. Narayan Dass Mahant*, (2022) 6 SCC 735 : (2022) 2 SCC (Cri) 726 : (2022) 3 SCC (Civ) 442 : 2022 SCC Online SC 302, wherein at page 740, the Hon'ble Supreme Court observed as follows:

“The trial court and the first appellate court have noted that in a case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the financial capacity. The proceedings under Section 138 of the NI Act are not in the nature of a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts were right in holding on those lines. However, the accused has the right to demonstrate that the complainant, in a particular case, did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further,

more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to carefully consider and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”

47. On going through the ratio laid down in the above decisions, it is evident that once the complainant has discharged his initial burden, the burden shifts upon the accused. However, such presumption is rebuttable in nature. Further, in *Basalingappa's case*, guidelines have been laid down as to how the accused can raise a probable defence to discharge the burden cast upon him.

48. In the instant case, it is seen that the accused has cross-examined the complainant; however, he has not entered into the witness box to adduce evidence. On going through the cross-examination of the complainant, it reveals that the following probable defences have been taken by the accused. Now, it is to be considered whether, by raising the said probable defences, the accused has succeeded in discharging the burden that has shifted upon him.

- That there was no monetary transaction between the accused and the complainant as alleged in the complaint.

- That the cheque was returned with an endorsement stating “Kindly contact drawer/drawee bank and present again,” and therefore, the complainant had no right to directly initiate proceedings under Section 138 of the Negotiable Instruments Act.
- That the complainant has failed to produce relevant documents to establish his source of income at the relevant point of time to advance a sum of ₹10,00,000/- to the accused.

49. Now, regarding the first probable defence taken by the accused, namely, that no monetary transaction took place between himself and the complainant, it is necessary to examine the same in the light of the evidence on record. On going through the version of the complainant as stated in the complaint, it is seen that the complainant has specifically averred that, initially, the accused requested for a sum of ₹20,00,000/. At that time, the complainant arranged the said amount through his father, brother-in-law, as well as a relative, and advanced the total sum of ₹20,00,000/- to the accused. The accused, at that time, had promised to repay the same within a reasonable period. However, thereafter, the accused once again approached the complainant stating that he required an additional sum of ₹10,00,000/- for clearing his bank liabilities

and for availing fresh loans in order to discharge the dues owed to the complainant, as well as to the complainant's father, brother-in-law, and relative.

50. In this regard, on going through the cross-examination of the complainant, it is evident that a suggestion was put to him that, prior to April 2020, there was a small transaction between himself and the accused, amounting to approximately ₹50,000/-. The record would show that the complainant has admitted the said suggestion. Further, the complainant has also admitted that, in respect of such smaller transactions, he used to advance hand loans on account of friendship. Therefore, at this stage, it is pertinent to note that, by making such suggestions, the accused himself has admitted that there existed prior monetary transactions between the complainant and the accused and that they were acquainted with each other.

51. Further, during the course of cross-examination, the complainant has admitted that, prior to the said transaction, there was no direct transaction between the accused and the father of the complainant. However, as already noted, it is the specific case of the complainant that, on his influence, his father had advanced certain amounts to the accused. Further, the complainant has also admitted the suggestion that the accused was acquainted with the other persons, namely, the father,

brother-in-law, and relative of the complainant. The remaining suggestions put to the complainant pertain to the amount of ₹20,00,000/- and are not directly relevant to the present transaction under consideration.

52. Further, an important suggestion was put to the complainant by the accused as to how, when an amount of ₹20,00,000/- was already due from the accused, the complainant could again advance a further sum of ₹10,00,000/-. To this, the complainant has replied that the accused had assured that he would clear the earlier liabilities by availing a fresh loan and thereafter repay the amounts due. At this stage, it is pertinent to note that such conduct is not uncommon in financial dealings. It is often seen that, in order to clear earlier liabilities, persons avail further loans and, after discharging previous dues, repay the hand loans taken from others. Therefore, no adverse inference can be drawn against the complainant on this aspect, and the explanation offered by the complainant appears to be plausible.

53. Further, the record would show that the accused has raised several questions with regard to Exhibit P.9. On perusal of Exhibit P.9, it is seen that it is an agreement executed between the complainant and the accused in relation to the earlier transaction of ₹20,00,000/-. The principal contention of the

accused is that Exhibit P.9 is not a valid or relevant document, as it contains only the signature of the accused and not of the other parties. In response, the complainant has stated that, since he had facilitated the transaction by influencing his father, brother-in-law, and relative to advance the amount, the accused executed the agreement in his favour alone, and therefore, the other parties have not signed the document.

54. At this stage, it is pertinent to note that the accused has not denied his signature on Exhibit P.9 and has, in fact, admitted that the signature appearing thereon belongs to him. Once the execution of the document is admitted, it is not open to the accused to contend that there was no prior transaction at all. The defence of the accused that his signature was obtained on a blank stamp paper by the complainant and his father does not inspire confidence. As per the own admission of the accused, he is engaged in several business activities and is aware of the consequences of signing documents. Therefore, the plea that he signed a blank stamp paper without understanding its implications appears to be untenable.

55. Further, the accused has taken a defence that he had borrowed a sum of ₹3,00,000/- from the father of the complainant and had issued four blank cheques as security. It is further contended that, though he repaid certain amounts as

reflected in Exhibit D.1, one of the cheques has been misused by the complainant to file the present false case. However, this defence does not appear to be probable. Once the accused admits that the cheque belongs to him and that the signature thereon is his, and further admits issuance of multiple cheques, it is expected that, if such misuse had occurred, he would have taken appropriate legal action against the complainant and others. The absence of any such action raises serious doubt regarding the genuineness of the defence put forth by the accused.

56. Therefore, at this stage, it is evident that the accused has failed to substantiate his contention that no monetary transaction existed between himself and the complainant. The accused has not placed any cogent or probable evidence to rebut the presumption or to establish his defence. Accordingly, the first probable defence taken by the accused fails.

57. Secondly, the accused has taken a technical defence that, when the cheque is returned with an endorsement stating "Kindly contact drawer/drawee bank and present again," the complainant is not entitled to initiate proceedings under Section 138 of the Negotiable Instruments Act.

58. During the course of arguments, in order to substantiate the said contention, the learned counsel for the accused has relied upon the following decisions:

- Criminal Petition No.4350 of 2017 – Hon’ble High Court of Karnataka, -2023 in between Razak P.S. S/o Saiyyed Saheb V/s Ashraf Agalpady S/o Isubu Beary,
- Madras High Court -2025 Crl.O.P.No.9129 of 2025 and Crl.M.P.Nos. 6028 & 6029 of 2025 between Robert Nirmal Singh V/s Ajith S Lallu,
- Madras High Court- 2023- Crl.O.P.No.8664 of 2021 & Crl.M.P.No.5689 of 2021 between M/s Vignesh Builders Rep. By its Proprietor Mr. N.Manvivannan @ Manivannaperumal V/s M/s Sastha Associates Rep. By its Power Agent Mr. S.Sivagurunathan S/o D.Shanmugam

59. On going through the ratio laid down in the above decisions, it is seen that, in certain circumstances, the Hon’ble High Courts have held that where a cheque is returned with an endorsement calling upon the complainant to contact the drawer/drawee bank and present the cheque again, such endorsement may not give rise to a cause of action under Section 138 of the Negotiable Instruments Act.

60. However, at the same time, the learned counsel for the complainant has relied upon the decision of the Hon’ble Supreme Court of India reported in Lafarge Aggregates and Concrete India Pvt. Ltd. V/s Sukarsh Azad and another reported

in 2014 (13) SCC 779 , wherein it has been held that dishonour of a cheque on grounds such as “refer to drawer,” “account closed,” “payment stopped,” “exceeds arrangement,” and other similar endorsements would fall within the ambit of dishonour under Section 138 of the Negotiable Instruments Act.

61. On perusal of the judgment passed by the trial Court, it is evident that the trial Court has relied upon the aforesaid decision of the Hon’ble Apex Court and has arrived at the conclusion that mere return of the cheque with an endorsement such as “Kindly contact drawer/drawee bank and present again” would not, by itself, disentitle the complainant from initiating proceedings under Section 138 of the Negotiable Instruments Act.

62. At this stage, it is pertinent to note that the decisions relied upon by the learned counsel for the accused are of the Hon’ble High Courts, whereas the decision relied upon by the learned counsel for the complainant is of the Hon’ble Supreme Court of India, which is binding on all Courts under Article 141 of the Constitution of India. Therefore, this Court is bound to follow the law laid down by the Hon’ble Apex Court.

63. Accordingly, the contention of the accused that the complainant is not entitled to file the complaint under Section 138 of the Negotiable Instruments Act on account of such

endorsement is devoid of merit and does not warrant acceptance.

64. Finally, the accused has also taken a contention that, during the course of cross-examination, he had raised a defence that the complainant did not possess sufficient source of income, and despite such contention, the complainant failed to produce relevant documents, such as bank statements and income tax returns, to establish his financial capacity. Therefore, it is contended that the complainant has failed to prove his source of income.

65. At this stage, it is seen from the record that, during the course of cross-examination, the complainant has admitted that he is an income tax assessee. It is also evident that he has not produced his income tax returns to show that, at the relevant point of time, he had advanced a sum of ₹10,00,000/- to the accused. However, when such questions were raised by the accused, the complainant produced certain documents, namely, a lease document marked as Exhibit P.10 and the Record of Rights marked as Exhibit P.11.

66. On perusal of Exhibit P.10, it is seen that the complainant had taken a house on lease for a sum of ₹4,00,000/-. Further, as per Exhibit P.11, it is seen that the complainant had purchased approximately 4 acres of land in the year 2021. At this stage, it is

pertinent to note that mere production of the lease document and the Record of Rights, without specific proof of income derived therefrom, may not by itself conclusively establish the source of income of the complainant.

67. At this stage, it is apposite to refer to the ratio laid down in the decision of the Hon'ble Supreme Court of India in *Basalingappa vs Mudlibasappa*, reported in 2019 (5) SCC 418 as stated supra, it is relevant to note that the defence regarding lack of financial capacity is one of the probable defences available to the accused. When the complainant himself admits that he is an income tax assessee but fails to produce income tax returns, an adverse inference may arise against him. However, such inference is not conclusive and must be considered in the light of the entire evidence on record.

70. In this regard, it is necessary to carefully examine the cross-examination of the complainant. During the course of cross-examination, the accused has put a suggestion to the complainant that, for the purpose of purchasing the land under Exhibit P11, he had spent ₹60,00,000/- at the rate of ₹12,00,000/- per acre. The record shows that the complainant has admitted the said suggestion.

71. When the accused himself suggests and admits that the complainant had spent a substantial sum of ₹60,00,000/- for the

purchase of landed property in the year 2021, it directly indicates that the complainant had sufficient financial capacity. The trial Court has rightly considered this aspect in its judgment.

72. Further, when the accused himself admits that there were prior financial transactions with the complainant and also suggests that the complainant had the capacity to invest a substantial amount in immovable property, it amounts to an admission regarding the financial capacity of the complainant. In such circumstances, mere non-production of income tax returns loses its significance.

73. At this stage, it is also pertinent to note that, if the complainant has not disclosed the said transactions in his income tax returns, it is a matter between the complainant and the income tax authorities, and the same does not, by itself, render the transaction in question invalid or improbable.

74. Therefore, merely on the ground that the complainant has not produced income tax returns or bank statements, it cannot be concluded that he lacked the financial capacity to advance the amount in question. In view of the admissions made by the accused and the overall evidence on record, it is evident that the accused has failed to substantiate his defence regarding lack of financial capacity of the complainant. Accordingly, even this contention taken by the accused fails.

75. Therefore, on a cumulative reading of all the above facts, circumstances, and evidence available on record, it is evident that the accused has admitted that the cheque in question belongs to him and that the signature appearing thereon is his. Once such admission is made, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act arises in favour of the complainant. The burden, therefore, shifts upon the accused to rebut the said presumption by raising a probable defence.

76. However, in the present case, though the accused has taken several defences, he has failed to substantiate the same with cogent and convincing evidence. The defences taken by the accused, including denial of transaction, technical objection regarding bank endorsement, and challenge to the financial capacity of the complainant, have all been duly considered and found to be without merit. The accused has neither entered into the witness box nor produced any reliable material to probabalise his defence. Mere suggestions in the cross-examination are not sufficient to rebut the statutory presumption.

77. On the other hand, the complainant has successfully established that the cheque was issued towards discharge of a legally enforceable debt and that all the statutory requirements

under Section 138 of the Negotiable Instruments Act have been duly complied with. The trial Court, upon proper appreciation of both oral and documentary evidence, has rightly concluded that the complainant has proved his case beyond reasonable doubt.

78. This Court, being the first appellate Court, has re-appreciated the entire material on record and finds that the findings recorded by the trial Court are based on proper appreciation of evidence and settled principles of law. There is no illegality, infirmity, or perversity in the judgment passed by the trial Court warranting interference by this Court. Accordingly, the points under consideration are answered in favour of the complainant and against the accused. Consequently, the appeal filed by the accused is liable to be dismissed. Thus, Point Nos. 1 and 2 are answered in the Negative.

79. **Point No.3:-** In view of my findings on Point No.1& 2, I proceed to pass the following;

ORDER

The appeal filed by the appellant/accused U/Sec.415(3) of BNSS of Cr.P.C., is hereby dismissed.

The Judgment and order of sentence passed by the II Addl. Civil Judge and J.M.F.C., Davanagere in CC No.6070/2023 dated 19/04/2025 is confirmed.

Send the copy of this judgment to the trial court alongwith TCR.

(Dictated to the Stenographer directly on the computer, corrected, signed and then pronounced by me in the open court this the 4th day of April, 2026)

Sd/-

(Praveen Kumar R.N.)
II Addl. District & Sessions Judge,
Davanagere.