

KADG010033082025



Presented on : 25-10-2025

Registered on : 25-10-2025

Decided on : 04-04-2026

Duration : 0 years, 5 months, 10 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/213/2025**

**APPELLANT:-**

Hanumanthappa B S/o Goudru Bhorappa

Age: 38 years, Occ: Agriculture

Tq : Jagaluru, Dist: Davanagere.

**//Versus//**

**RESPONDENT:-**

Manjunath Y S/o Bangarappa,

Age: 46 years, Occ: Agriculture,

Tq: Jagaluru, Dist: Davanagere.

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Sri.A.K.P., Advocate appearing for Appellant

Sri.S.M.A., 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 Civil Judge and J.M.F.C., Jagaluru in CC No.1329/2023 dated 01/09/2025.

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 case of the complainant in brief is that he and the accused were well acquainted with each other. The accused, in order to meet his family necessities, approached the complainant and borrowed a hand loan of Rs.2,00,000/- on 20.04.2023. At the time of borrowing, the accused assured that he would repay the said amount within two months. Towards discharge of the said liability, the accused issued a post-dated cheque bearing No.075689 dated 21.06.2023 drawn on State Bank of Mysore (India).

4. It is further contended that the complainant presented the said cheque for encashment through his banker, Canara Bank, Jagaluru Branch. However, the cheque came to be dishonoured and returned with an endorsement "Funds Insufficient" on

22.06.2023. Thereafter, the complainant caused a legal notice dated 10.07.2023 to be issued through his counsel, calling upon the accused to pay the cheque amount. The said notice was duly served on the accused on 12.07.2023.

5. Despite service of notice, the accused neither complied with the demand nor issued any reply. Hence, the complainant has been constrained to file the present complaint seeking appropriate relief.

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 5 documents as Exhibits P-1 to P-5. The statement of the accused under Section 313 of the Cr.P.C. was dispensed with.

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**

The Accused found guilty for the offence punishable under section 138 NI act.

Under power confirmed to this court U/sec. 255(2) of Cr.P.C the accused is convicted for the offence punishable U/Sec 138 of NI act.

The accused is sentenced to pay fine of Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand Only) and in default shall undergo simple imprisonment for 6 (six) months.

In view of direction of Hon'ble High Court of Karnataka in Crl.R.P 64/2017 between Chandrappa V/s N.S.Ajjappa, the entire fine amount recovered shall be paid to the complainant as compensation in view of Section 357 Cr.P.C.

The Bail Bond of accused and surety shall remain in force till recovery of fine amount and thereafter stand canceled.

Office to furnish free copy of this Judgment to Accused forthwith.

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:-

(a) The appellant submits that though the complainant examined himself and marked documents at Ex.P.1 to Ex.P.5, the said documents are self-serving and created for the purpose of the case. The complaint itself is false and has been instituted with an intention to unlawfully gain from the appellant.

(b) The appellant was not afforded a fair and reasonable opportunity to contest the case and establish his defence. The impugned judgment is therefore contrary to the provisions of the Negotiable Instruments Act, 1881 and is liable to be set aside.

(c) The appellant's mother was seriously ill and hospitalized, due to which the appellant was frequently attending the hospital. Despite seeking time to instruct counsel and effectively contest the matter, the trial court failed to grant sufficient opportunity and proceeded to pass an ex parte order in haste, rendering the judgment erroneous.

(d) The trial court failed to appreciate that the initial burden lies on the complainant. Adequate opportunity ought to have been granted to the accused to rebut the presumption under the Negotiable Instruments Act, 1881. The impugned order, passed hastily and ex parte, is thus unsustainable.

(e) The trial court did not afford the appellant an opportunity to explain how the cheque came into the possession of the complainant and the manner in which it was allegedly used. Denial of such opportunity vitiates the proceedings.

(f) The trial court failed to scrutinize the complainant's documents in a proper and

judicious manner and has passed the impugned order in undue haste, without proper appreciation of evidence.

(g) The complainant has not established his financial capacity or the source of funds allegedly advanced to the appellant. No supporting documents regarding income or availability of funds were produced. Despite this, the trial court erroneously proceeded to pass the impugned order.

(h) The cheque in question pertains to State Bank of Mysore, which was merged with State Bank of India in the year 2017. The continued validity and use of such cheque was not properly examined by the trial court, yet the court proceeded to pass the impugned order without due consideration.

(i) The allegation that the appellant borrowed money and issued the cheque promising repayment within two months is false and unsupported by any credible evidence. The trial court failed to appreciate this aspect.

(j) The trial court has not recorded any cogent findings supported by evidence to establish the involvement or liability of the appellant in the alleged transaction. The impugned judgment is therefore perverse and unsustainable.

(k) There is no legally enforceable debt or liability, and the appellant has no connection whatsoever with the alleged transaction. The complaint itself is liable to be dismissed.

10. In view of the foregoing pleaded to allow this appeal by setting aside the impugned judgment of conviction dated 01.09.2025 passed in C.C.No.1329/2023 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. Respondent appeared through his counsel. This court has received the entire records from the trial court.

12. Thereafter this court has heard the arguments placed by complainant. Then the case is posted for judgment and on perusal of entire records and on perusal of the written arguments submitted by the complainant and on perusal of oral arguments substantiated by complainant side, 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. Hence, in order to avoid repetition of facts, I would like to consider them under a common discussion. Further, the brief facts of the complainant's case are already stated in the inception of the judgment. Hence, I do not want to repeat the same here once again. Nevertheless, it is the case of the complainant that the accused was well acquainted with him and, for family necessities, approached him and obtained a hand loan of ₹2,00,000/-. On the very same day, the accused issued a post-dated cheque. However, on presentation, the said cheque was returned with an endorsement "insufficient funds" and thereby

came to be dishonoured. Thereafter, the complainant caused issuance of a legal demand notice to the accused, and even then, the accused neither paid the cheque amount nor replied to the legal notice. Therefore, the complainant was constrained to file the complaint for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act. Further, the record would show that the trial Court, after considering the material placed on record, passed the impugned judgment in favour of the complainant. Being aggrieved by the said judgment, the accused is before this Court by way of this appeal.

15. The record would further show that, even though sufficient opportunities had been given to the accused side to canvass their arguments, they failed to do so. However, on going through the appeal memo, it would show that the accused has taken the contention that the documents submitted by the complainant are created only with an intention to make illegal gain and that a false complaint has been registered against him. Further, it is contended that the complainant did not prove his case in accordance with the ingredients of the Negotiable Instruments Act and that the trial Court, without giving an opportunity to the accused to cross-examine the complainant, passed the judgment, which is against the principles of natural justice. It is further contended that the trial Court, without giving

an opportunity to the accused to rebut the presumption raised against him, passed the judgment, which is improper and perverse. It is also contended that the trial Court did not scrutinize the documents submitted by the complainant and that the complainant did not furnish any document to show how he had accumulated the amount in question, nor did he produce any relevant document to establish his source of income. However, the trial Court passed the judgment in favour of the complainant, which, according to the accused, is against the principles of natural justice. On these grounds, the accused prayed to set aside the judgment passed by the trial Court and to allow the appeal.

16. In contrast, the counsel for the complainant has filed written arguments, wherein it is stated that the trial Court, after considering the facts and circumstances of the case in their proper perspective, passed the judgment, which is not perverse or illegal. Further, it is contended that, even though sufficient opportunity had been given to the accused to rebut the presumption, the accused failed to put forth any probable defence. It is also contended that the accused did not reply to the legal demand notice and thereby impliedly admitted the cheque and the signature found thereon. It is further contended that the grounds urged in the appeal memo are false, vague,

frivolous, and not sustainable in law. It is also contended that the complainant has proved his case by producing both oral and documentary evidence in compliance with Section 138 of the Negotiable Instruments Act. Therefore, according to the complainant, from any angle, the judgment passed by the trial Court is proper and does not call for interference by this Court.

17. It is well established that the appellate Court has the power to re-appreciate the facts as well as the law. However, it is the duty of the appellate Court not to interfere with the judgment of the trial Court when the same is neither perverse nor suffering from any infirmity.

18. On going through the judgment passed by the trial Court, it would show that, initially, the trial Court had relied upon the ratio laid down by the Hon'ble High Court of Karnataka in Criminal Revision Petition No. 1333/2018 and dispensed with the recording of the statement of the accused under Section 313 of Cr.P.C. Further, the trial Court has taken into consideration the ingredients of Section 138 as well as the presumption available under Section 139 of the Negotiable Instruments Act. The trial Court has also referred to the ratio laid down by the Hon'ble Supreme Court of India reported in AIR 2010 SC 1898 Rangappa Vs Mohan. Further, the trial Court has taken the view that the complainant discharged his initial burden by adducing oral and

documentary evidence. It has also observed that, though sufficient opportunities had been given to the accused to rebut the presumption raised against him, the accused neither chose to cross-examine the complainant nor put forth any probable defence. On that basis, the trial Court passed the judgment in favour of the complainant, holding that the complainant, being the holder in due course of cheque at Exhibit P1, had presented the same towards discharge of a legally recoverable debt. Now, it is to be seen whether the trial Court has correctly passed the said judgment or whether the same requires interference by this Court.

19. On going through the records, it would show that the complainant himself was examined as P.W.1 and got marked Exhibit P.1 - cheque, Exhibit P.2 - bank endorsement, Exhibit P.3 - copy of the legal demand notice, Exhibit P.4 - postal acknowledgment, and Exhibit P.5 - postal receipt. At this stage, on going through Exhibit P.1, the original cheque, it would show that the cheque was presented within the period of its validity as contemplated under proviso (a) to Section 138 of the Negotiable Instruments Act. Further, the material on record would also show that, after receipt of the bank endorsement regarding dishonour of the cheque for the reason "insufficient funds," the complainant caused issuance of the legal demand notice within

the statutory period as required under proviso (b) to Section 138 of the Negotiable Instruments Act. Thereafter, on failure of the accused to make payment of the cheque amount within fifteen days from the date of receipt of the said notice, the complainant filed the complaint within the period prescribed under proviso (c) to Section 138 of the Negotiable Instruments Act.

20. At this stage, it is also relevant to note that the legal demand notice was admittedly served upon the accused. However, the accused did not choose to reply to the same. Further, the records would show that, as per the endorsement issued by the banker, the cheque was not returned on the ground that it did not belong to the accused or that the signature found thereon differed from that of the accused. On the contrary, the cheque came to be dishonoured only for the reason of "insufficient funds." Therefore, at this stage, when the banker has not disputed the account or the signature of the accused and when the accused has also not chosen to reply to the statutory notice, it would clearly indicate that the complainant has discharged the initial burden cast upon him. Once the issuance of cheque and the signature thereon are not specifically disputed in the manner known to law, the statutory presumption under Section 139 of the Negotiable Instruments Act comes into operation in favour of the complainant that the

cheque was issued towards discharge of a legally enforceable debt or liability.

21. 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.

22. 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.”

23. Now, on going through the various judgments of the Hon'ble Supreme Court of India, particularly in **Basalingappa's case**, it is clear that once the complainant discharges his initial burden, the statutory presumption under Section 139 of the Negotiable Instruments Act arises in his favour. It is well settled that such presumption is, no doubt, rebuttable. It is further held that, in order to rebut the presumption raised against him, the

accused need not necessarily enter the witness box in every case, and he may rebut the same either by eliciting material in the cross-examination of the complainant or by relying upon the materials produced by the complainant himself. He may also lead independent defence evidence, if he so chooses. However, the burden lies upon the accused to place before the Court such probable defence as would create doubt regarding the existence of a legally enforceable debt or liability.

24. Here, in the case on hand, the records would show that after the chief-examination of P.W.1, the accused failed to cross-examine him. Further, on going through the order sheet, it would clearly reflect that, even though sufficient opportunities had been given to the accused to cross-examine P.W.1, he did not utilise the same. Hence, the trial Court treated the cross-examination of P.W.1 as nil. At this stage, it is also forthcoming from the record that even thereafter the trial Court granted opportunity to the accused to enter into the witness box and to adduce defence evidence, either by examining himself or any other witness in support of his defence. Even such opportunity was not utilised by the accused. Therefore, at this stage, it clearly emerges that the accused neither replied to the statutory demand notice issued under proviso (b) to Section 138 of the Negotiable Instruments Act, nor cross-examined P.W.1, nor

entered the witness box, nor examined any witness on his behalf. Under such circumstances, it has to be held that the accused failed to raise any probable defence so as to rebut the statutory presumption available in favour of the complainant under Section 139 of the Negotiable Instruments Act. Consequently, the presumption operating in favour of the complainant remained unrebutted and intact.

25. It is relevant to note here that, in a complaint under Section 138 of the Negotiable Instruments Act, once the complainant proves the foundational facts, namely, issuance of cheque, presentation of the cheque within its validity period as contemplated under proviso (a) to Section 138, dishonour of the cheque, issuance of legal notice within the period prescribed under proviso (b), and institution of the complaint after accrual of cause of action under proviso (c), the Court is bound to raise the presumption under Section 139, unless the contrary is shown by the accused. In the present case, the complainant has placed on record Exhibit P.1 - cheque, Exhibit P.2 - bank endorsement showing dishonour for "insufficient funds," Exhibit P.3 - copy of the statutory demand notice, Exhibit P.4 - postal acknowledgment, and Exhibit P.5 - postal receipt. These documents sufficiently establish compliance with the mandatory requirements of Section 138 of the Negotiable Instruments Act.

Therefore, the initial burden cast upon the complainant stood discharged. Thereafter, the burden shifted upon the accused to rebut the presumption. But, as already discussed above, the accused failed to avail the opportunities granted by the trial Court.

26. Further, in the appeal memo, the accused has taken a contention that the trial Court failed to record the statement of the accused under Section 313 of Cr.P.C. At this stage, on going through the order sheet of the trial Court, it is seen that the trial Court relied upon the ratio laid down by the Hon'ble High Court of Karnataka in Criminal Revision Petition No. 1333/2018 and dispensed with the recording of the statement under Section 313 of Cr.P.C. The order sheet would further show that such course was adopted in the facts of the case, particularly when the accused failed to cross-examine P.W.1 despite sufficient opportunities. Under these circumstances, the action taken by the trial Court cannot be said to be illegal, irregular, or prejudicial to the accused. When the accused himself was not diligent in availing the opportunities granted by the trial Court, he cannot now turn around and contend that the judgment is vitiated on the ground that his statement under Section 313 of Cr.P.C. was not recorded. Therefore, the said contention taken in the appeal memo does not merit acceptance.

27. Further, in the appeal memo, the accused has also contended that the trial Court did not provide him sufficient opportunity to cross-examine P.W.1 and did not provide him opportunity to adduce defence evidence so as to rebut the presumption. However, at this stage, on a careful perusal of the order sheet of the trial Court, it clearly reflects that several opportunities had been granted to the accused for cross-examination of P.W.1 and also for leading defence evidence. However, the accused failed to utilise those opportunities. Therefore, when the accused himself did not avail the opportunities granted to him by the trial Court, he cannot be permitted to blame the trial Court and contend before this Court that no opportunity was granted. Such a contention is contrary to the record and hence is not acceptable.

28. At this stage, it is also necessary to observe that the proceedings under Section 138 of the Negotiable Instruments Act are summary in nature and are intended to ensure expeditious disposal of cheque dishonour cases. Therefore, it is the duty of the parties, more particularly the accused, to diligently utilise the opportunities granted by the trial Court. The judicial process cannot be permitted to be delayed by the inaction or negligence of a party and thereafter be made a ground of challenge in appeal. When the accused remained

passive throughout the trial and failed to rebut the presumption in the manner known to law, he cannot seek a remand of the matter merely for providing one more opportunity to cross-examine P.W.1 or to lead defence evidence. Granting such indulgence at the appellate stage, despite repeated opportunities having already been granted by the trial Court, would defeat the very object of the summary procedure contemplated under the Negotiable Instruments Act.

29. Therefore, in view of the above discussion, this Court is of the opinion that there is no illegality, infirmity, or perversity in the judgment passed by the trial Court. On the contrary, the records would clearly establish that the complainant complied with the mandatory requirements of provisos (a), (b), and (c) to Section 138 of the Negotiable Instruments Act and thereby discharged his initial burden. Thereafter, the statutory presumption under Section 139 arose in his favour. Since the accused failed to rebut the said presumption by cross-examining PW.1, by replying to the statutory notice, or by adducing any defence evidence, the trial Court was justified in holding that the cheque at Exhibit P.1 was issued towards discharge of a legally enforceable debt or liability and in convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

30. Hence, this Court finds that the judgment passed by the trial Court is in accordance with law and does not suffer from any perversity or infirmity warranting interference by this appellate Court. In other words, the appeal filed by the accused is devoid of merits. Accordingly, Point Nos. 1 and 2 are answered in the Negative.

31. **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(c) of BNSS is hereby dismissed.

The Judgment and order of sentence passed by the Civil Judge and J.M.F.C., Jagaluru in CC No.1329/2023 dated 01/09/2025 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 4<sup>th</sup> day of April, 2026)

Sd/-

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