

KADG210009052023



Presented on : 05-10-2023
Registered on : 05-10-2023
Decided on : 13-03-2026
Duration : 2 years, 5 months, 8 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.
AT:CHANNAGIRI**

Present:

**Soubhagya.B.Bhusher,
B.A.,LL.M**

**Senior Civil Judge & J.M.F.C.,
Channagiri**

DATED; THIS THE 13th DAY OF MARCH-2026

C.C.NO.264/2023

Complainant: Shivakumar.V S/o Veerabharadrappa
Age: 30 years, Occ: Horticulture &
Agriculturist, R/o: Sunnigere Village,
Tq:Channagiri, Dist: Davanagere.

(By Sri.H.Somashekarappa.,Adv.,)

V/s

Accused: Deepak.M S/o Late Mahadevappa,
Age:35 years, Occ: Agriculture & Horticulture,
R/o:Lakshmisagara Road, Near Patel
Nagar, Channagiri, Tq:Channagiri,
Dist:Davanagere.

(By Sri.Surendra.V.Naik.,Adv.,)

:JUDGMENT:

This case arises out of the private complaint filed by the complainant against the accused under section 200 of Cr.P.C., for an offence punishable under section 138 of Negotiable Instruments Act.

2. The case of the complainant's in brief is as under:

The complainant and the accused has been well acquainted with each other for several years. During the relevant time, the accused had approached the complainant seeking financial assistance for developmental guardian and household needs. The complainant agreed and on 24.12.2022 has advanced a hand loan of Rs.3,00,000/- to the accused. The accused assured that the said amount would be repaid within two months. Even after the expiry of the agreed period, the accused failed to repay the said loan amount. Thereafter the complainant approached the accused on 24.02.2023 and demanding him for repayment of the said amount, at that time the accused had issued a cheque No.779001 dated: 24.02.2023 drawn on Karnataka Bank Limited, Channagiri Branch. As per the request of the accused the complainant has presented the said cheque for encashment through his banker Canara Bank, Ajjihalli Branch. But the said cheque was dishonoured on 01.03.2023 as "Insufficient Funds". Thereafter, on 13.03.2023 the complainant got issued a legal notice to the accused through his counsel by registered post and speed post calling upon him to repay the said cheque amount and the said notice was served to the accused

on 16.03.2023. In spite of service of the notice, the accused neither replied to the notice nor repaid the cheque amount. As such, the accused has committed an offence punishable under section 138 of N.I.Act. Hence, the present complaint came to be filed before court on 26.04.2023.

3. This PCR No.31/2023 which was already registered as PCR No.22/2022 in the I Addl. Civil Judge and J.M.F.C., Channagiri and as per the order of Hon'ble Prl. Senior Civil Judge & C.J.M., Davanagere this case has been transferred to this court. After receiving the record registered the case in Register No.III.

4. Thereafter, summons was issued to the accused and he has appeared before the court through advocate and secured bail. He was furnished its necessary papers as complied under section 208 of Cr.P.C. Thereafter, the plea of the accused was recorded by the court. He has pleaded not guilty and make a defence.

5. The complainant in support of his case, has examined himself as PW.1 and 07 documents were marked at Ex.P.1 to 7. PW.1 was fully cross examined by the accused counsel.

6. After closer of the evidence, the statement under section 313 of Cr.P.C., was recorded. He has denied the incriminating evidence appearing against him. The accused in support of his defence has examined himself as DW.1 and no documents were marked on his behalf. In spite of sufficient opportunity DW.1 did

not tender himself for cross examination. Hence, the cross of DW.1 taken as nil.

7. Heard the arguments on the complainant side and perused the material placed on record.

8. In spite of sufficient opportunity, the learned counsel for the accused not addressed his argument. Hence, the argument on the defence side taken as nil. In spite of sufficient opportunity the learned counsel for the accused failed to file written argument.

9. Upon hearing the argument and on perusal of the material placed on record, the following points arise for my consideration:

1. Whether the complainant proves the existence of legally enforceable debt/liability.?
2. Whether the complainant further proves that the accused had issued the cheque-Ex.P.1, towards the discharge of the said legally enforceable debt/liability.?
3. Whether the complainant further proves that the cheque-Ex.P.1 was dishonored for the reasons "Funds Insufficient" and thereafter the accused had failed to repay the same within the statutory period, in spite of receipt of legal notice.?
4. Whether the accused have thus committed an offence punishable under section 138 of N.I.Act.?
5. What order?

10. My answers to the above points are as under:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative.

Point No.4: In the Affirmative.

Point No.5: As per final order, for the following;

:REASONS:

11. **POINT NO.1 AND 2:** These two points are inter-related to each other and finding given on any one point will bearing on the another. Hence, in order to avoid repetition of facts and evidence, I have taken these two points together for common discussion. It is the case of the complainant is that himself and the accused are acquaintances with each other for several year, on that account the accused had approached him for hand loan of Rs.3,00,000/- for the purpose of family need and guardian development. Accordingly the complainant has provided the said amount and the accused agreed to repay the said amount within 2 months. After completion of 2 months the accused not repaid the said amount. Thereafter the complainant approached the accused and demanded him to repay the said amount. At that time the accused in order to repayment of the said amount had issued the cheque. As per the request of the accused the complainant had presented the said cheque for encashment through his banker, but the same was dishonored as "Funds Insufficient". Thereafter the complainant got issued a legal notice to the accused through his counsel calling upon him to repay the cheque amount. In spite of service of notice the accused neither

replied to the notice nor repaid the cheque amount. As such, the accused has committed an offence punishable under section 138 Negotiable Instruments Act. Hence, the present complaint came to be filed before the court.

12. In support of the case, the complainant has examined himself as PW.1 and 07 documents were marked at Ex.P.1 to 7. In the chief examination PW.1 has repeated the contents taken by him in the complaint. Ex.P.1 is the cheque issued by the accused in favour of the complainant dated:24.02.2023 for Rs.3,00,000/-. Ex.P.2 is the cheque deposit slip. Ex.P.3 is the bank memo dated:01.03.2023 informing the dishonor of the cheque as "Funds Insufficient". Ex.P.4 is the office copy of the legal notice dated: 13.03.2023. Ex.P.5 are the postal receipts. Ex.P.6 and 7 are the postal acknowledgments.

13. The accused in support of his defence has examined himself as DW.1 and no documents were marked on his behalf. In spite of sufficient opportunity, DW.1 did not tender for cross examination. Hence, the cross of DW.1 taken as nil.

14. The accused in his defence he has stated that there is a financial transaction in between his brother and the complainant. At that time his brother has issued his cheque-Ex.P.1 in favour of the complainant. There is no any financial transaction with the complainant. But the accused in his defence has not disputed the cheque in question and he also does not dispute his signature appearing on the said cheque. Further he never seriously

disputed regarding repayment of the amount as contended by the complainant in his complaint.

15. In order to attract the offence punishable under section 138 of N.I.Act, the complainant is firstly required to prove the existence of legally enforceable debt/liability, for which the cheque came to be issued. The learned counsel for the complainant has argued that from the evidence placed on record it reveals that the accused had availed the hand loan of Rs.3,00,000/- from the complainant for the purpose of his family need and horticulture development. The accused agreed to repay the said amount within 2 months and for the repayment of the said amount. Thereafter the accused failed to repay the said amount. Hence, the complainant has approached the accused and demanded him to repay the said amount. At that time the accused has issued a cheque-Ex.P.1 in favour of the complainant. Further argued that as per the request of the accused the complainant has presented the said cheque for encashment through his banker. But the said cheque have been dishonored for the reasons "Funds Insufficient". Thereafter, the complainant got issued a legal notice to the accused through his counsel calling upon him to repay the said cheque amount. In spite of the service of the notice as per Ex.P.4 the accused neither reply to the notice nor repaid the cheque amount. He further argued that the accused has not denied Ex.P.1 being his cheque drawn on his account and signature appearing on the said cheque. When the signature is not disputed, the presumption under section 139 N.I.Act is to be drawn in favour of

the complainant. Further inspite of sufficient opportunity, the accused failed to file necessary application for cross of PW.1 and failed to elicit anything in the cross examination of PW.1 to disbelieve the said evidence. Further the defence have failed to rebut the presumption under section 139 N.I.Act.

16. The learned counsel for the complainant further argued that the accused has failed to produce any believable evidence that he had not issued the subject cheque in favour of the complainant. Further also the defence how the cheque was got the complainant and why he has not returned back the same is not clear. He further argued that under section 139 of N.I.Act, there is a presumption that the cheque have been issued for discharge of legally enforceable debt/liability. In the present case, the accused has not disputed Ex.P.1 being his cheque drawn on his account. The said presumption is available to the complainant. Further argued that the accused has failed to prove the very fact for issuance of cheque-Ex.P.1. Moreover, under section 118 of N.I.Act, there is a presumption that the Negotiable Instruments is drawn on the date, for the amount and in favour of the person as shown in it. It is for the accused to rebut the said presumption. But, in the case on hand no such evidence forthcoming. Further the complainant has produced all necessary documents before this court and he has proved his case. Hence, he prays to allow the complaint.

17. In the case on hand the complainant and the accused having some transaction has not been seriously disputed by the

accused. Further the accused has not seriously disputed he had availed the hand loan from the complainant. In order to attract the offence under section 138 of N.I.Act, the main ingredients of the existence of the legally enforceable debt/liability, for which the cheque drawn on the account of the accused was given for discharge of the same, are to be proved. The complainant in order to prove his case, has examined himself as PW.1 and 07 documents were marked at Ex.P.1 to 07. In chief examination, he has repeated the averments made by him in the complaint.

18. Under Section 139 of N.I. Act, there is a presumption regarding the existence of legally enforceable debt/liability. Such presumption is rebuttable presumption and it is opinion to the accused to raise defence discharging the existence of a legally enforceable debt/liability. In the case on hand also the accused has not disputed the existence of legally enforceable debt/liability, for which cheque-Ex.P.1 was issued. In order to prove his defense, the accused has not produced oral or documentary evidence on his behalf. Further the accused failed to cross examination of PW.1 to disbelieve the evidence of the complainant.

19. Since, the presumption under section 139 of N.I.Act, is a rebuttable presumption the accused is firstly required to produce some probable evidence to rebut the same. Though in the criminal cases, the standard of the proof required for the accused is not so strict as required for the complainant to prove the case. Further the accused has to produced some probable evidence,

which creates doubt about the existence of legally enforceable debt/liability. In order to prove his defence, the accused has not produced any material before this court. If the accused had not issued any cheque to the complainant, what prevented the accused to file the complaint immediately after the alleged illegal act made by the complainant. Further what prevented the accused to file the complaint against the complainant for misusing of the said cheque in collusion with his own brother. Admittedly the accused is having knowledge of the financial transaction, why he has given the cheque to the his brother or why he has kept signed cheque without anticipating the consequence is not explained by him. Further how the cheque was got the complainant. So also, he has not stated anything as to what steps he took to receive back the cheque. Moreover, immediately after the alleged cheque misused by the complainant he has not lodge complaint before concerned police station. No steps have been taken to receive back the cheque, after he came to know about the same.

20. Once issuance of the cheque and signature are admitted, the statutory presumptions would arise under section 139 and 118 of the N.I.Act that the cheque was issued by the drawer for legally payable debt/liability and for valid consideration. The presumption that the cheque was drawn in discharge of legally recoverable debt is a presumption of law that ought to be raised in every case, though, it is a rebuttable presumption. Of course, the presumption under section 139 and 118 of the N.I.Act are rebuttal presumption. Further it is also held

that mere plausible explanation by the drawer is not sufficient and proof of that explanation is necessary. In the instant case, since the complainant is in possession of cheque-Ex.P.1 the court has to draw the initial presumption that he is the payee of that cheque. Once the initial burden is discharged by the complainant, the onus shifts on the accused to rebut the complainant's case.

21. In the defence there is no ill-will between the complainant and the accused. Hence, misuse of the cheque and filing false case is not possible. The accused admittedly having knowledge of business. It implies, he is conversant with financial transaction. If the complainant misused the said cheque in collusion with the brother of the accused and had not returned the same, inspite of collecting cheque leaves from his brother, as a prudent man, the accused should have inquired with the complainant and his brother and demanded to return that cheque. No ordinary prudent man would keep quite in such circumstances, without taking any steps. The conduct of the accused is very unusual, because he did not take any legal action against the complainant and his brother, even after filing of the complaint based on cheque-Ex.P.1. Further he could have issued notice to his banker to stop payment or legal notice to the complainant or he could have given complaint to the police station immediately. No such steps were taken by the accused.

22. Moreover, the complainant has got issued a legal notice to the accused by registered post through his counsel calling

upon him to make payment of the said cheque amount to the complainant within 15 days from the date of service of the notice. Before a person is held to be guilty of the offence punishable under 138 of N.I.Act, the complainant has to proved the compliance of the requirement under section 138 of N.I.Act. It is not in dispute that Ex.P.1 being his cheque drawn on account of the accused. In view of the above discussions, it is also held to be proved that it was drawn for discharge of legally enforceable debt/liability. From the evidence of PW.1 and also cheque return memo-Ex.P.3 it is established that the cheque was dishonored for the reasons "Funds Insufficient" in the account of the accused. A legal notice being issued as per Ex.P.4 within one month from the date of dishonour of the cheque is also not in dispute. In the case on hand the accused has not disputed the receipt of the legal notice. But the accused has failed to reply to the notice, immediately after service of the demand notice. Thereby, he could have asserted his defence at an earliest available opportunity. In the case on hand the notice is sent to the accused at his address. When the accused has not disputed, the notice sent to the correct address is sufficient compliance of section 138 of N.I.Act. Therefore, there is sufficient proof of due service of the legal notice.

23. It is not the contention of the accused that thereafter he has repaid the cheque amount within stipulated time of 15 days on receiving the notice. Therefore, in the case on hand on perusal of the evidence placed on record, all the essential ingredients of section 138 N.I.Act, have been complied with. As

the accused has not repaid the cheque amount within stipulated period. Hence, the accused has committed an offence punishable under section 138 of Negotiable Instruments Act. The present complaint is filed within the period of one month after the accused failed to repay the cheque amount. Even the accused did not whisper anything about the defence while his plea was recorded under section 251 of Cr.P.C. In the judgment of Hon'ble Supreme Court in Indian Bank Association V/s Union of India and others, (2010 (5) SCC 590), it is clear that while recording the plea under section 251 of Cr.P.C., it becomes the duty of the accused to state whether he has any defence to make or he pleads guilty. Thus, unlike section 240 of Cr.P.C., the accused has no option under Section 251 of Cr.P.C., just to deny the allegations made against him. If he is not willing to plead guilty, he must explain what are the defences he wants to take. As such, it has to be considered, whatever defence raised by the accused during the trial are all after thought, just to get ride of statutory burden cast on him.

24. In addition to this in the case of T.P.Murugan (Dead) through legal representatives V/s Bojan, reported in 2018(8) SCC 469, the Hon'ble Apex Court held that once the cheque has been signed and issued in favour of the holder of the cheque, there is statutory presumption that the cheque is issued in respect of legally enforceable debt or liability: rebuttal of such presumption must be by adducing credible evidence. Mere raising a doubt without cogent evidence with respect to the circumstances, presumption under section 139 of N.I.Act cannot be discharged.

The principle of law laid down in the above decisions are applicable to the facts of this case.

25. The accused has nowhere denied transaction. The accused himself has admitted that he is the holder of alleged cheque. It is sufficient hold that the accused had issued the cheque-Ex.P.1 for repayment of the amount and even after he has not repaid the cheque amount the getting of receipt of notice. However, in any manner as the complainant has complied all the terms of ingredients of the provisions of 138 of N.I.Act. Hence, the accused is liable for dishonor of the cheque. Accordingly, PW.1 has established his case, the accused had issued the cheque-Ex.P.1 in order to repay the legally recoverable amount. Therefore, the accused has failed to rebut the presumption under section 139 of N.I.Act. In the said circumstances, the complainant is not at all required to produce any material as to the financial transaction between the complainant and the accused, since the initial presumption is still available, when there is no rebuttal evidence. It is not in disputed that the complainant and the accused are known to each other, some point of period, no documents could have been existence the evidencing financial transaction. This factor will not affect case of the complainant to disbelieve the financial transaction between the complainant and the accused. The accused has failed to probables his defence. When the accused has failed to rebut the presumption under section 139 of N.I.Act, non furnishing of details of financial transaction no consequences to disbelieve the case of the

complainant. With these reasons, I answered point No.1 and 2 in the Affirmative.

26. POINT NO.3 AND 4: In order to avoid repetition of facts, these two points are taken together for common discussion. Before a person is held to have committed an offence punishable under section 138 of N.I.Act, the complainant has to prove all the requirements of section 138 of N.I.Act. Ex.P.1 being his cheque drawn on the account of the accused is not in dispute. The said cheque having been dishonored, when it was presented by the complainant before the bank for encashment is also not seriously disputed by the accused. Thereafter, the notice-Ex.P.4 being sent by the complainant was duly served to the accused is further admitted. The accused has not taken up any contention that thereafter he had repaid the cheque amount within stipulated time of 15 days, after service of the notice. As such, in the present case from perusal of documents, the essential requirements of section 138 of N.I.Act, have been complied with. When the accused immediately after service of the notice, he has not repaid the cheque amount. Why the accused has not replied the notice and initially why he has not produced any documents. Hence, the present complaint came to be filed before the court on 26.04.2023 within the period of one month from the date cause action. While discussing the point No.1 and 2, this court has already observed that the complainant has proved that the cheque was issued for discharge of legally enforceable liability/debt and in view of the mandatory requirements of section 138 of N.I.Act, being complied with. The accused is found to

have committed an offence punishable under section 138 of N.I.Act. Accordingly, I answered point No.3 and 4 in the Affirmative.

27. POINT NO.5: The accused is held to have committed an offence punishable under section 138 of N.I.Act. The complainant has proved his case. The accused has failed to prove his rebuttal for the reasons mentioned above and in view of the mandatory requirements of section 138 of N.I.Act, being complied with. Hence, the accused is found to have committed an offence punishable under section 138 of N.I.Act. Since, the said offence is an economic crime, the accused is not entitled for the beneficial provisions of Probation Of Offenders Act. In view of the above discussions and the findings on point No.1 to 4, I proceed to pass the following:

:ORDER:

Acting under section 255(2) of Cr.P.C. the accused is convicted for an offence under section 138 of N.I.Act.

The bail bond and surety bond executed by the accused hereby stands canceled.

The accused is sentence to pay fine of Rs.3,50,000/- (Rupees three lakhs fifty thousand) only to the complainant.

It is further ordered that out of the said fine amount an amount of Rs.3,40,000/- (Rupees

Three lakhs forty thousand) only shall be paid to the complainant as compensation as per section 357(1)(b) of Cr.P.C., and remaining amount of Rs.10,000/- (Rupees ten thousand) only shall be remitted to the State.

In default of the payment of fine amount, the accused shall undergo simple imprisonment for a period of six months.

(Dictated to the stenographer directly on computer typed by her, corrected by me and then pronounced in the open court on 13th day of March-2026)

**(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C.,
Channagiri**

ANNEXURE

List of witness examined on behalf of the complainant:

PW.1 : Shivakumar.

List of documents marked on behalf of the complainant:

Ex.P.1 : Cheque.
Ex.P.2 : Cheque deposit Slip.
Ex.P.3 : Bank memo.
Ex.P.4 : Copy of Legal notice.
Ex.P.5 : Postal receipts.
Ex.P.6 & 7 : Postal acknowledgments.

List of witness examined on behalf of the accused:

DW.1 : Deepak.M.

List of documents marked on behalf of the accused:

-Nil-

**(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C.,
Channagiri**