

KADG320020342019



Presented on : 14-10-2019

Registered on : 14-10-2019

Decided on : 06-04-2026

Duration : 6 years, 5 months, 23 days

**IN THE COURT OF
I ADDL. CIVIL JUDGE AND JMFC HARIHAR,
AT HARIHAR**

Presided Over by SMT. JYOTI ASHOK PATTAR
(B.E., LL.B.)

Prl. Civil Judge & JMFC, Harihar.

(C/c of I Addl. Civil Judge & JMFC, Harihar)

CC. No.1429/2019

Dated this 06th day of April, 2026

Complainant

Sree Lakshmi Credit Co-operative
Society Ltd., Harihar,
Represented by its Secretary,
Smt. Vijayalakshmi .R.
D/o. Ranganna,
Aged about 39 years,
R/o: Harihar.

Vs.

Accused:

Sri. Karibasavaraja S/o. Halappa,
Flower merchant,
R/o: Kurubara Beedi, Harihar.

OR

Sri. Karibasavaraja S/o. Halappa,
Flower merchant,
R/o: By the side of Gayathri Hotel,
Main Road, Harihar.

For Complainant : Sri. C.N.M., Advocate
For Accused : Sri. S.K.Y., Advocate

JUDGMENT

This is a complaint filed by the complainant U/Sec. 200 of Cr.P.C for the offence punishable U/Sec.138 R/w Sec.142 of N.I Act against the accused praying to punish the accused for the said offence.

2. The case of the complainant is that, the accused has approached the complainant for the hand loan of Rs.50,000/- for the purpose of his business and the complainant has sanctioned amount of Rs.50,000/- on 03.12.2016 by way of Axis Bank, Harihar cheque No.19698 and the accused has encashed the amount by presenting the said cheque and also agreed to pay interest at Rs.16% p.a. compounded

monthly. In-spite of repeated requests and demands the accused did not repay the loan amount to the complainant and the accused is due of Rs.54,053/- to the complainant. When the complainant has pressurized for repayment of the amount due to the complaint, the accused has given a post dated cheque to the complainant for Rs.54,053/- on 18.06.2019 drawn from Indian Overseas Bank, Harihar bearing cheque No.742309 for Rs.54,053/- with post date 01.07.2019. When the complaint has presented the said cheque for collection through the banker of the complainant namely ICICI Bank Ltd., Harihar on 04.07.2019 and the said post dated cheque given by the accused has been returned without collection with an endorsement "Funds Insufficient". In this regard the complainant has received the memo from the ICICI Bank Ltd., Harihar on 06.07.2019 and knowing full well that the accused has no amount in his account, has issued a post dated cheque to the complainant in order to cheat and defraud the complainant.

3. After return of the cheque with shara "Funds Insufficient", the complainant has issued a legal notice to the accused through his Advocate on 15.07.2019 by R.P.A.D and ordinary post calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the complaint. The notice sent through ordinary post was

served on the accused and RPAD returned as “party not claimed and return to sender”. After service of notices, the accused has neither paid the said cheque amount nor replied. Therefore the accused has committed the offence under section 138 of Negotiable Instrument Act and also under Section 420 of I.P.C.

4. After recording the sworn statement of the complainant and also verifying the documents, cognizance was taken for the offence punishable under Sec. 138 R/w 142 of N.I. Act against the accused. The accused on receiving the summons appeared before the Court through his counsel and was enlarged on bail and his plea was recorded. Accused pleaded not guilty. Hence, the case was posted for the complainant evidence.

5. In order to prove the guilt of the accused the complainant’s representative, has examined herself as PW.1 and got marked documents at Ex.P.1 to Ex.P.16. i.e., Ex.P.1 is the Original cheque dated:01.07.2019, Ex.P.2 is the Counter foil dated: 04.07.2019, Ex.P.3 is the Bank return memo dated: 06.07.2019, Ex.P.4 is the Copy of Legal notice dated: 15.07.2019, Ex.P.5 and Ex.P.6 are the Postal receipts, Ex.P.7 and Ex.P.8 are the Acknowledgments and Ex.P.7(a) and Ex.P.8(a) are the Postal envelopes and its Notices,

Ex.P.9 is the certified copy of Appointment Order, Ex.P.10 is the certified copy of resolution, Ex.P.11 is the Loan application dated 01.12.2016, Ex.P.12 is the certified copy of Resolution book, Ex.P.13 and Ex.P.13(a) is the certified copy of Registered book and signature, Ex.P.14 to Ex.P.16 are the Statement of accounts dated: 01.04.2016 to 01.04.2019.

6. After completion of complainant's evidence, the statement of the accused U/Sec.313 of Cr.P.C. has been recorded. The accused has not lead evidence.

7. Heard the arguments by Ld. Counsel for complainant. Other side not submitted arguments even after sufficient opportunity, hence argument by accused is taken as nil.

8. On the basis of above facts, the points that arise for this Court determination are that:

1. Whether the complainant proves that, the cheque bearing No.742309 dated:01.07.2019, drawn on Indian Overseas Bank, Harihar branch for a sum of Rs.54,053/- issued by the accused has been bounced on the ground of "Funds Insufficient" and even after receiving the intimation regarding the dishonor of cheque accused failed to pay the cheque amount within the stipulated period and thereby accused has committed an offence punishable under Sec.138 of N.I. Act?

2. What order?

9. Findings on the above points are as follows:

Point No.1: In the Affirmative

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

REASONS

10. Point No.1: The complainant filed this complaint U/Sec.200 Cr.P.C, against the accused praying for punishing the accused for the offence punishable under section 138 of The Negotiable Instrument Act, 1881.

11. On the basis of the materials available on record it is required to examine whether the complainant has complied with the provisions of Section 138 of N.I Act to get cause of action to file this complaint i.e., presentation of cheque within the statutory period for encashment, issuance of legal notice within prescribed period to the accused and filing of complaint within limitation period as per section 142 of the Act.

12. In view of the present legal position as held by our Hon'ble High Court of Karnataka as well as Hon'ble Apex Court of India in catena of decisions on relevant provisions of the Act, this Court has to see whether the complainant

has complied all the requirements as contained in Sec.138 of N.I Act so as to prove the guilt of the accused for the alleged offence. If so, whether the accused is able to rebut the legal presumption available to the complainant under Sec.139 of the Act by adducing probable defense or not. It is held by the full bench of Hon'ble Apex Court in the case of Rangappa Vs. Mohan reported in 2010 (1) DCR 706 that;

“the Statutory presumption mandated by sec.139 of the Act, does indeed include the existence of a legally enforceable debt or liability. However, the presumption U/Sec. 139 of the Act is in the nature of a rebuttable presumption and it is open for the accused to raise a defense wherein the existence of a legally enforceable debt or liability can be contested”.

13. The primary burden of course is on the complainant. Then the onus shifts to the accused. Ex.P.1 is a negotiable instrument. The complainant is holder in due course of the same. As such the complainant takes shelter U/Sec.139 and 118 of NI Act, which gives presumption in favour of the holder in due course. Sec.139 and Sec. 118 of NI Act enjoins on the Court to presume that the holder of the cheque received it in discharge of any debt or liability.

14. Therefore, in view of the above decision once the cheque is admitted the statutory presumption would automatically fall in favour of the complainant that, the alleged cheque was issued for the discharge of an existing legally enforceable debt or liability against the accused and the burden will shift on to the accused to rebut the same. The second aspect of the case is whether the accused has successfully rebutted the presumption available in favour of the complainant with probable and convincing evidences? It is a well settled principle of law that once the cheque is admitted there will be a statutory presumption in favour of the holder or holder in due course U/Ss 118 and 139 of the Act. However, as held by Hon'ble Apex Court and the Hon'ble High Court in catena of decisions, that the presumptions under the said sections are in the nature of rebuttable presumptions and hence, the accused can very well rebut the said presumptions by leading reasonable and probable defense. Let us examine the same on the basis of the materials available on record.

15. Per contra, even though the accused has not chosen to lead evidence, in the cross-examination of PW.1 the accused has not strongly disputed the availment of loan and issuance of cheque. Moreover the accused has not raised any contention that the Ex.P.1 cheque is not belongs to him and

also not elicited any facts regarding how the said cheque came in the hand of complainant. In fact the accused has admitted that he had obtained loan of Rs.50,000/- on 03.12.2016 from the complainant and also admitted that he has given cheque on 18.06.2019 to the complainant. But it is specifically contended that the accused has paid Rs.16,250/- to the complainant and he is having Rs.5,000/- share amount in the complainant society and by deducting the said total amount of Rs.21,250/-, the balance amount is only Rs.34,000/-. But the complainant in order to obtain more money from the accused submitted cheque for Rs.54,053/-. Therefore the accused has not liable to pay the cheque amount. But the accused has not lead any cogent evidence to establish his defense. And nothing has been elicited in the cross-examination of PW.1 in support of his defense except the mere suggestions and denials. Thus the accused has failed to establish his specific defense.

16. That the presumption arise U/Sec. 118 and 139 of NI act is a rebuttal presumption and same has to be rebutted by the accused by leading his evidence. However, the accused except cross-examining PW.1 has neither examined any other witness nor got marked any iota of documents to rebut case of complainant. The accused in order to rebut the presumptions relied on the cross examination of PW.1 and

material placed by the PW.1. On perusal of cross examination of PW.1 nothing is elicited from her mouth contrary to her version in the complaint and to disprove the case of the complainant.

17. In view of all the above discussion it can be concluded that the complainant has established through cogent and convincing evidence the fact of issuance of the cheque for discharge of legally enforceable debt, which is dishonored for want of sufficient funds, issuance of legal notice within stipulated time, failure on the part of accused to repay the amount within stipulated period. On the other hand, the accused failed to rebut the presumption available to the complainant through probable evidence that would preponder upon the evidence led by the complainant. Therefore, the Accused is held guilty of an offence punishable under Sec. 138 of N.I. Act. Accordingly point No.1 is answered in the Affirmative.

18. Point No.2: For the reasons discussed above and having regard to the facts and circumstances of the case, amount of the cheque, duration of the trial and the contemporary litigation expenses, it is just and proper to award Rs.25,000/- as compensation to the complainant. Hence, this Court proceed to pass the following:

ORDER

Acting U/Sec. 255(2) of Cr.P.C. the accused is hereby convicted and sentenced to pay fine of Rs.81,053/-, in default of payment of fine, he shall undergo simple imprisonment for a period of six months.

Acting U/Sec. 357(1)(b) of Cr.P.C the accused is hereby directed to pay Rs.79,053/- to the complainant towards the compensation, and the remaining fine amount of Rs.2,000/- shall be paid to the State.

(Dictated to the Stenographer, transcribed by her, corrected, signed and then pronounced by me in open Court this 06th day of April, 2026)

(JYOTI ASHOK PATTAR)
C/c I Addl. Civil Judge & JMFC.,
Harihar.

ANNEXURE

Witnesses examined for the Complainant:

PW.1 : Vijaya Laxmi

Witnesses examined for the Accused:

-NIL-

Documents exhibited by the Complainant:

- Ex.P.1 : Original cheque dated:01.07.2019
Ex.P.2 : Counter foil dated: 04.07.2019
Ex.P.3 : Bank return memo dated: 06.07.2019
Ex.P.4 : Copy of Legal notice
dated: 15.07.2019
Ex.P.5&6 : Postal receipts
Ex.P.7&8 : Acknowledgments
Ex.P.7(a)&
Ex.P.8(a) : Postal envelop and Notice
Ex.P.9 : Certified copy of Appointment Order
Ex.P.10 : Certified copy of resolution
Ex.P.11 : Loan application dated 01.12.2016
Ex.P.12 : Certified copy of Resolution book
Ex.P.13&
13(a) : Certified copy of Registered book
and signature
Ex.P.14-16: Statement of accounts
dated:01.04.2016 to 01.04.2019

Documents exhibited by the Accused:

-NIL-

**C/c I Addl. Civil Judge & JMFC.,
Harihar.**