KADG320028182020

Presented on : 01-12-2020
Registered on : 01-12-2020
Decided on : 13-07-2026
Duration : 5 years, 7 months, 12 days

IN THE COURT OF THE I ADDL. CIVIL JUDGE & J.M.F.C., AT HARIHAR

:**PRESENT**:

Sri. SHRINIVAS PATIL. B.A. LL.B. LL.M.

I Addl. Civil Judge & JMFC, Harihar.

Dated this the 13th Day of July 2026

CC. No.1565/2020

COMPLAINANT: **Sri Nagaraja D.,**
S/o Devendrappa Anveri,
Aged about 40 years,
R/at Lakkashettihalli Village,
Kamalapura Post,
Harihar, Davanagere District.

(R/by Sri. H.C.S.– Adv)

- V/s -

ACCUSED : **Sri Arun Kumar K.S.,**
S/o Late Kamanahalli Shivanna,
Aged about 38 years,
R/at Kurki Village,
Davanagere Taluk.

(R/by Sri. U.H– Adv.)

Date of filing of the Complaint	27.11.2020
Name of the Complainant	Sri Nagaraja D.,
Offence involved	Section 138 of NI Act
Date of the commencement of recording evidence	18-11-2021
Date of closure of evidence	28-06-2024
Date on which the judgment is pronounced	13-07-2026
Opinion of the Judgment	Convicted
Total duration	Years Months Days
	05 07 16

Sd/-
(SHRINIVAS PATIL)
I Addl.Civil Judge & JMFC.,
Harihara.

:: <u>JUDGMENT</u> ::

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

2) <u>The complainant's case in brief is as follows:</u>

The accused being acquainted to the complainant has approached complainant on 15.06.2020 and obtained a loan of Rs.5,00,000/- for his family legal necessities. For repayment of the said debt, the accused issued a cheque bearing No.700295, dated 14.08.2020 for a sum of Rs.5,00,000/- drawn on State Bank of India, Davanagere University Campus Shivagangotri Tolahunse Branch, Davanagere in favour of the complainant and assured that the cheque would be honored when presented. But when the cheque was presented for realization before the PKGB Bank, Harihara Branch, the same was returned with an endorsement *'Funds Insufficient'* on 15.09.2020. The said fact was brought to the notice of the accused by sending demand notice through RPAD on 23.09.2020. The said notice was served on 25.09.2020. Inspite of that the accused did not came forward to clear the cheque amount. Hence, the complaint.

3) Since it was a private complaint filed under Section 200 of Cr.P.C, the sworn statement of the complainant was recorded, cognizance of the offence was taken and process was issued against the accused. The accused appeared through his counsel and got enlarged on bail. Plea was recorded and the accused pleaded not guilty.

4) Thereafter the complainant got examined himself as **PW-1** and got marked **Exs.P1 to P6**. Thereafter, the evidence recorded against the accused was read over to his as required under Section 313 of Cr.P.C., and his answers were also recorded. On the other hand, the accused has examined himself as **DW-1** and got marked **Exs.D1 and Ex.D.2**.

5) Heard the arguments of both sides. Perused the oral and documentary evidence available on record.

6) The points that arise for my consideration are as follows:

<u>POINTS</u>

1. **Whether the complainant proves beyond all reasonable doubt that the accused has issued a cheque bearing No.700295, dated 14.08.2020 for Rs.5,00,000/-, drawn on State Bank of India, Davanagere University Campus Shivagangotri, Tolahunse Branch, in his favour towards the discharge of legal debt and the same has been returned unpaid for the reason 'Funds Insufficient' and even after service**

of legal notice, accused has not paid the debt covered under the said cheque within the statutory period and thereby committed an offence punishable under Section 138 of N.I. Act?

2. What order?

7) My answer to the above points are as under:-

Point No.1	:	In the **Affirmative,**
Point No.2	:	As per the final order for the following:

<u>R E A S O N S</u>

8) **<u>Point No.1</u>**:- The initial burden is on the complainant to prove that he has followed all the mandatory requirements as contemplated under Section 138 of N.I. Act. In this regard, the complaint averments reveal that the accused towards repayment of the loan taken for his legal necessities, has issued a cheque bearing No.700295, dated 14.08.2020 of State Bank of India, Davanagere University Campus Shivagangotri Tolahunse Branch, for an amount of Rs.5,00,000/-. The same is reiterated in the affidavit filed by the complainant in lieu of his examination-in-chief.

9) In support of the same, the complainant has produced Ex.P.1 cheque. The signature of the accused is marked as Ex.P.1(a). The accused has not disputed his signature on the cheque nor has he disputed that the cheque belongs to his account. Therefore, it shows that the cheque belongs to the accused. Hence, the complainant has discharged his burden of proving that the cheque was issued by the accused dated 14.08.2020 and the same was presented for encashment within the statutory period of 3 months. Ex.P2 is the return Memo, which shows that the cheque was returned with an endorsement 'Funds Insufficient'. Ex.P3 is the legal notice dated 23.09.2020. The said legal notice shows that it is issued within 30 days of the dishonor of cheque. Ex.P4 is the postal receipt. Ex.P.5 is the Postal acknowledgment. The complainant has filed the present complaint on 05.11.2020 which shows that the complaint filed is within time. Therefore, the complainant has complied with the mandatory provision of Section 138 of N.I. Act.

10) Before proceeding further. It is necessary to look into the evidence given by both the parties.

<u>Evidence of complainant :</u> During the cross-examination of PW.1, he has stated that he has studied up to 8th Std. and he is an agriculturist. He has stated that accused is Tata Sumo Driver and also agriculturist. He is admitted that he does not know what is written in Ex.P.3 and he has stated that his advocate read over the contents and thereafter he signed to the same. He has further stated that he knows the accused because the brother of his wife was married to the place where the accused is residing. He has stated that accused asked the money in June 2020 and he paid the amount from the income which he received by selling paddy to the mill at Jagaluru. He has admitted that he has not produced documents to show the sale of the paddy. He has further admitted that, there was no difficulty for him to pay the amount through the account.

11) PW.1has stated that accused borrowed the amount for payment of Tata Sumo installment and he has also stated that, accused gave the cheque as security. He has admitted that in Ex.P.1 there is correction at a place where the word “lakh” is written. He has also admitted that signature found on vakalath and cheque appears to be different.

12) During the further cross-examination of PW.1 he has stated that he does not remember the date of issuance of notice and he does not know whether the accused has given reply notice. He has admitted that he knows L.N.Suresh and the said Suresh has filed the cheque bounce case against the accused. He has also admitted that, Basavaraj is a driver in Police Department and he is his distant relative. It was suggested to PW.1 when cheque given by the accused to Basavaraj has been misused and false complaint has been filed.

13) **Defence Evidence :** The accused examined as DW.1 and got marked Ex.D.1 and D2 and in his examination-in-chief he has stated that he does not know the complainant. He has stated that he has not received Rs.5,00,000/- from the complainant and denied his signature on Ex.P.1 cheque. It is the defence of the accused that in the year 2017, he had borrowed Rs.3,00,000/- from Basavaraj. At that time, he and his mother gave some blank cheques to

Basavaraj as security. He has further stated that in the year 2019, Basavaraj got agreement to sell executed in respect of the land bearing Sy No.162/1 in the name of his father Hanumanthappa Poojar. Basavaraj did not return the cheque and he has misused the cheque by filing this case. Ex.D.1 is the agreement of sale dated 15.07.2019. Ex.D.2 is the statement of account.

14) In his cross examination, DW.1 has admitted that he has account in ICICI bank and SBI Bank. He has admitted that he has been doing bank transaction for last 15 to 16 years. He has admitted that Ex.P.1 cheque belongs to his account but denied the signature on the cheque. He has admitted that he puts signature in different style. One style in Bank account and another style on other documents. He has admitted that signature found on vakalath and Ex.D.1 are different. DW.1 has stated that he had given more than 10 cheques to Basavaraj for loan of Rs.3,00,000/-. He has also stated that he had given cheques belonging to his mother also. He has admitted that he has not filed any complaint against Basavaraj for misuse of cheque and admitted that he had no difficulty to file such complaint.

15) During the cross-examination, notice dated 13.09.2020 issued by Rathnamma and Arunkumar to Hanumanthappa and Basavaraj was confronted and marked as Ex.P.6. DW.1 has admitted issuance of the said notice. But he does not know whether in the said notice it is stated that there was no transaction between him and Basavaraj.

16) **Analysis** : In the present case, the accused has denied the signature on Ex.P.1. DW.1 has admitted that he puts signatures in two different styles. He has further admitted that signature on vakalath and signature on Ex.D.1 are different. Therefore, merely because there is some difference between the signature on cheque and other documents, it cannot be said that Ex.P.1 cheque is not signed by the accused. The accused is not ignorant person. If really his cheque was misused by Basavaraj or any other person forging his signature, the conduct of the accused would have been to file complaint before the police or take proper action. But he has admitted that he has not filed any complaint against the Basavaraj.

17) The accused has taken defence that in the year 2017 he had borrowed Rs.3,00,000/- from Basavaraj and at that time he and his mother gave more than 10 blank cheques as security. This defence is also not acceptable. It is not natural that a person would gave more than 10 cheques including cheques of his mother for a loan of Rs.3,00,000/-. No documents has produced to show that such number of cheques were given to Basavaraj.

18) The accused has relied an Ex.D.1 agreement of sale dated 15.07.2019. No doubt, Ex.D.1 shows that there was an agreement of sale executed by Rathnamma, accused and Asha in favour of Hanumanthappa Poojar. Therefore, the Ex.D.1 may show that there was some transaction between the accused and Hanumanthappa Poojar. But Ex.D.1 by itself does not prove that Ex.P.1 was given to Basavaraj or Ex.P.1 was misused through the complainant. Ex.D.1 is not a document relating to cheque. It does not contain any recital that Ex.P.1 cheque or any other cheque was given as security.

19) Further, Ex.P.6 notice is also very important. Ex.P.6 is the notice issued by Rathnamma and Arunkumar to Hanumanthappa, Basavaraj and one Manju. In Ex.P.6 it is stated that there is no transaction with respect to landed property. This statement is contrary to the defence taken by the accused. In this case, the accused says that Basavaraj got an agreement of sale executed in the name of his father as a security for loan transaction. But in Ex.P.6, there is a statement that there was no transaction related to the landed properties. If the present defence of the accused was true, the accused would have clearly stated in Ex.P.6 itself that Ex.D.1 agreement was executed only as a security for Rs.3,00,000/- loan and the cheques were given as a security. But no such clear statement is found. Therefore, Ex.P.6 creates serious doubt about the defence of the accused.

20) The complainant has admitted that he has not produced documents to show the sale of Paddy. He has also admitted that he paid amount by cash. These circumstances are considered by this court. Mere non production of document regarding source of income is not sufficient to reject the case of the complaint unless, the accused is able to raise a probable defence.

21) The accused has also relied on Ex.D.2 statement of Account and contended that the loan was cleared in the year 2019 itself. Even assuming that the vehicle loan was cleared earlier, the same by itself is not sufficient to disbelieve the entire transaction. The purpose for which the accused borrowed the amount may not be decisive, when the cheque has been issued and dishonored and the accused has failed to rebut the statutory presumption.

22) Another important circumstance is that the accused has not taken any steps to prove that signature on Ex.P1 is forged. He has stated that he has no problem to send the cheque for forensic lab. He has not proved by the evidence that the signature found on Ex.P.1 is forged. Moreover, Ex.P.1 is returned for the reasons FUNDS INSUFFICIENT and not for the reasons SIGNATURE DIFFERS. Therefore, on appreciating the entire oral and documentary evidence, this court is of the opinion that the complainant has proved that the Ex.P.1cheque was issued by the accused towards discharge of legally enforceable debt. The cheque was dishonored for Funds Insufficient. Legal notice was issued and it was served. Accused has failed to pay the cheque amount. The accused has failed to rebut the presumption available in favor of the complainant U/Sec.118 and 139 of NI Act. Accordingly, I answer **Point No.1 in the Affirmative.**

23) <u>Point No.2</u>:- Having considered the facts and circumstances of the case, it is evident that the complainant has been deprived of the legitimate amount due to him under the cheque, which was issued by the accused for Rs.5,00,000/-. The cheque is of the year 2020, was dishonored and despite statutory notice being issued, the accused failed to make payment within the stipulated time. The complainant has been unable to utilize the amount owed to her, which justifies the grant of interest to mitigate the loss caused by the accused's failure to honor the cheque. Considering the prevailing economic conditions and interest rates, awarding 6% per annum interest on the cheque amount of Rs. 5,00,000/- from the year 2020 to 2026 to the date of realization is deemed reasonable. This rate ensures fair compensation to the complainant without imposing an undue burden on the accused. The calculation of interest for six years (from 2020 to 2026) amounts to Rs.1,80,000/-, bringing the total amount payable by the accused to Rs. 6,80,000/-, including the principal amount. In view of the above discussion, I proceed to pass the following:-

O R D E R

In exercise of powers conferred under Section 255(2) Cr.P.C., accused is convicted for the offence punishable under Section 138 of N.I. Act.

The accused is sentenced to pay a fine of Rs.6,90,000/- (Six Lakhs Ninty Thousand Only) for the offence punishable under Section 138 of N.I. Act and in default of payment of fine, the accused shall undergo simple imprisonment for a period of one year.

Acting under section 357(1)(b) Cr.P.C., accused is ordered to pay the fine amount of Rs.6,80,000/- (Six Lakhs Seventy Thousand Only) to the complainant as compensation and the remaining amount of Rs.10,000/- to defray the expenses of the State.

Bail bond and surety bond of the accused and his surety are cancelled forthwith.

Furnish free copy of this judgment to the accused forthwith.

(Dictated to the Stenographer, transcribed and computerized by her, revised, corrected and then pronounced by me in the open court on this the **13th Day of July 2026)**

Sd/-
(SHRINIVAS PATIL)
I Addl.Civil Judge & JMFC.,
Harihara.

ANNEXURE

List of witnesses examined on behalf of the complainant:

PW.1	:	Nagaraj.,

List of documents marked on behalf of the complainant:

Ex.P1	:	Cheque,
Ex.P1(a)	:	Signature of accused,
Ex.P2	:	Bank return memo,
Ex.P3	:	Copy of legal notice,
Ex.P.4	:	Postal receipts,
Ex.P5	:	Postal acknowledgment,
Ex.P.6	:	Legal notice,

<u>List of witnesses examined on behalf of Accused</u>:

DW.1 : Arun Kumar

<u>List of documents marked on behalf of the Accused</u>:

Ex.D1 : Sale deed,
Ex.D.2 : Statement of account.

Sd/-
(SHRINIVAS PATIL)
I Addl.Civil Judge & JMFC.,
Harihara.