KADK010024582025

Presented on : 04-06-2025
Registered on : 04-06-2025
Decided on : 29-06-2026
Duration : 1 years, 0 months, 25 days.

In the Court of III Additional District & Sessions Judge, D.K., Mangaluru.

Present:- **Sri. Shridhar Gopalakrishna Bhat,**
III Additional District and Sessions Judge,
D.K., Mangaluru.

Dated: This the 29th day of June, 2026.

Criminal Appeal No.266/2025

Appellant: Naveen Prem Kumar,
S/o. Charles Wilson,
Aged 40 years,
R/at. 6th Cross, Customs Enclave
Layout, Amith Nagar,
Kutti Palke, Vamanjoor,
Mangaluru-575028.

(By Sri. B. Zakeer Hussain, Advocate)

Versus

Respondent: Dinesh D.M.,
Proprietor, M/s HPCL Cab Inc.,
No. 2, Puttaraju Layout,
Kalkere, Bannerghatta Road,
Near A.M.C. Engineering College,
Bengaluru-560083.

(Absent)

J U D G M E N T

The appellant, being aggrieved by the Judgment dated 14.03.2025 passed by the learned Magistrate in C.C.No.6526/2019 on the file of JMFC., IV Court, Mangaluru, wherein the accused was acquitted for the offence punishable under section 138 of Negotiable Instrument Act, (N.I. Act in short) approached this court through present appeal under section 419 of Bharatiya Nagarik Suraksha Sanhita 2023 (B.N.S.S in short) questioning the legality of the impugned Judgment and thereby to set aside the same and to convict the respondent/ accused for the offence punishable under section 138 of N.I. Act.

2. The appellant is the complainant and respondent is the accused before the trial court and parties will be referred to hereinafter as complainant and accused as per their ranking before the trial court.

3. The brief facts of the case of complainant are that ;

The complainant is a businessman, entered into an agreement with the accused on 22.06.2015, whereby he invested Rs.50,00,000/- by way of bank transfers into the cab service venture M/s HPCL Cab Inc., of the accused on the understanding that the said amount would be repaid within a period of 40 months, as per agreed terms. Despite of repeated request made by the complainant the accused failed to repay the said amount. Upon persistent follow-ups, the accused issued Cheque dated 31.10.2018 for Rs. 50,00,000/- drawn on State Bank of India, Malagala Road Branch, Bengaluru, in favour of the complainant. The complainant had presented the said cheque for encashment through his banker Corporation Bank, Pandeshwar Branch, Mangaluru. However the said cheque was dishonored for the reason “Account Closed” as per the endorsement dated 11.01.2019. Thereafter the complainant got issued a statutory legal notice dated 02.02.2019 to the accused demanding payment of the cheque amount within 15 days from the date of receipt of said notice and the accused replied to the said notice through his counsel. The accused being aware of dishonour of the cheque did not make payment to the same. Accordingly, the accused has committed the offence p/u/s. 138 of NI Act. Thereafter, the complainant has filed the private complaint within limitation.

4. It is noticed that after filing the complaint, the learned Magistrate had taken cognizance of the offence p/u/s. 138 of NI Act and issued summons under Section 204 of Cr.P.C after registering the calender case for the said offence. Since the presence of the accused could not be secured, NBW was issued against him and under NBW, he was produced before the learned Magistrate and thereafter he was released on bail. The requirement of Section 207 of Cr.P.C. was complied and thereafter plea of the accused was recorded. The accused did not plead guilty and claimed to be tried.

5. In order to prove the case, the GPA holder of the complainant/wife of the complainant was examined as PW.1 who filed her affidavit in lieu of examination in chief and got marked in all 12 documents as per Ex.P.1 to Ex.P.12 and closed the evidence. The statement of the accused under Section 313 of Cr.P.C. was recorded. The accused has denied the incriminating circumstances truth comes against him. Though the accused has claimed for his evidence, he has not opted to place any evidence and thereby the defence evidence was taken as nil.

6. Thereafter the matter was heard and the learned Magistrate has passed the impugned Judgment dated 14-03-2025 and thereby acquitted the accused for the offence p/u/s. 138 of NI Act.

7. Being aggrieved by the said Judgment, the complainant has come up with present Appeal on the following grounds :

a) The learned Magistrate failed to appreciate the statutory presumption of legally enforceable debt arose in favour of the complainant and failed to apply the mandatory presumption under Section 139 of NI Act.

b) As per the well settled principle presumption as mandated by Section 139 of NI Act includes the presumption that there exists a legally enforceable debt or liablity. The said prersumption is rebuttable in nature and it is open to the accused to raise defence. Unless this rebuttal is based on credible evidence, the presumption must stand. But the learned Magistrate has not considered the said fact.

c) The accused neither examined himself nor produced any documents or witness in support of the defence. Mere denial during cross-examination is not sufficient to rebut the presumption under Sections 118 and 139 NI Act. The accused has completely failed to make out the case for "preponderance of probabilities" as to the defence taken. The said fact is not considered by the trial court.

d) The defence taken by the accused that the cheque was issued to one "Prakash" and same was misused by the complainant is baseless and not substantiated by any contemporaneous document or evidence. The accused did not produce any documents in support of his defence. Therefore there is serious doubt in the genuinity of the defence taken. However, the trial Court has failed to consider the said fact.

e) The accused has not filed any complaint, no stop-payment was initiated, and no caution was communicated to the bank with regard to the cheaue involved. Therefore, story put up by the accused is totally afterthought, concocted and without any legal evidence.

f) The bankstatement produced as per Ex.P.12 establishes that Rs. 42,50,000/- was transferred by the complainant to the account of HPCL Cab Inc., the

Respondent's business entity and said fact was not denied by the accused.

g) The Trial Court wrongly treated the mismatch of 7.5 lakh between cheque amount and RTGS transfers as fatal and overlooked the fact that partial repayments, round-figure cheques, and goodwill-based sums are standard commercial practice.

h) The accused never denied the receiving of fund nor challenged the validity of business arrangements and also financial transaction in totality. This admission by silence further proves the admission by the accused. The said fact was not properly appreciated by the trial court.

I) The accused neither examined himself as witness nor produced even a single piece of rebuttal evidence which completely calls for adverse inference against the accused and the same was not appreciated by the trial court.

(j) The complainant has complied with all ingredients of the offence under section 138 of NI Act and there is presumptrion under Section 139 of NI Act. The burden is on the accused to rebut the presumption and the accused has toally failed to do so. The accused was granted with benefit of doubt without any legal justification though the complainant has proved his case beyond reasonable doubt.

(k) Though the legal notice dated 02-02-2019 was returned unserved, the accused never disputed his address during the cross examination of PW.1 nor put up any suggestion in that regard nor claimed non receipt of notice. Hence the notice is deemed to be served on the accused. The accused neither replied to the said notice nor challenged it during the cross examination. Hence statutory compliance was fully complied.

(l) The trial court wrongly faulted the complainant for non-production of agreement, as same is not required once presumption is attracted.

(m) The complainant cited over 15 binding precedents which were not discussed, distinguished or applied by the learned Magistrate, but has granted benefit of doubt without factual or legal justification and thereby frustrating the very object of Section 138 of NI Act.

Accordingly, on these grounds, prayed for allowing the Appeal and thereby to set aside the impugned Judgment and to convict the accused for the offence p/u/s. 138 of NI Act and to pass appropriate sentence as per law.

8. Along with the appeal, the complainant has also filed delay condonation application under Section 5 of Limitation act, praying for condonation of delay of 51 days in filing the present appeal.

9. The said application is supported with the affidavit of the complainant in which it is averred that he was suffering from illness and the doctor has advised him to take complete bed rest. Hence he could not contact his Advocate to give necessary instructions to prepare and file

the appeal in time. The delay in filing the appeal is neither intentional nor deliberate, but due to said bonafide reasons. Accordingly, prayed for condoning the delay. Along with the application, the complainant has also produced Medical Certificate to support his contention.

10. After filing of this appeal, this Court was pleased to issue notice to the Respondent/ accused. However the said notice could not be served on the accused even by sending the same by registered post. Thereafter, the complainant has taken steps to serve notice on the accused by paper publication. Inspite of issuance of notice by paper publication, the accused has not opted to appear before this Court and remained absent. Hence the present appeal and application are remained uncontested.

11. The learned counsel for the Appellant has filed detail written arguments. In the written arguments, the learned counsel has quoted too many number of decisions regarding settled proposition of law as to presumption to be drawn under Section 118 and 139 of NI Act. The standard of proof required for rebuttal of presumption, whether the dishonour of cheque on the ground ‘account closed’ falls within the purview of the offence under Section 138 of NI Act, regarding deemed service of notice and affect if non issuance of reply to the statutory notice.

12. On perusal of the entire materials available on file and also considering the arguments, and relied various Judgment, the points that would arise for consideration are;

1. Whether the complainant has made out grounds for condoning the delay in filing the present appeal?

2. Whether the complainant has proved that the accused has committed the offence p/u/s. 138 of NI Act as contended?

3. Whether the impugned Judgment dated 14-03-2025 passed by the learned Magistrate is illegal and opposed to law and calls for any interference by this Court by setting aside the same as sought for?

4. What order?

13. On meticulously verifying the entire materials made available and also contents of various rulings referred, the above points are answered as under;

Point No.1 : In the Affirmative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4: As per the final order for the following;

REASONS

14. **Point No.1** : The complainant has filed the application under Section 5 of Limitation Act, praying for condoning delay of 51 days in filing the present appeal. Admittedly, the impugned Judgment was passed on

14-03-2025 and present appeal was filed on 04-06-2025. Therefore, there is delay in filing the present appeal as stated by the complainant. The complainant in his affidavit stated that due to his ill-health, he could not contact his advocate to give necesssary instructions to prepare and file the appeal in time and the said delay is neither intentional nor deliberate, but due to bonafide reasons. In support of the said contention, the complainant has also produced the Medical Certificate dated 29-03-2025 which reveals that the complainant was suffering from respiratory throat infection with acute bronchitis and he was advised to take bed rest from 14-03-2025 to 29-03-2025. The said document supports the reason stated by the complainant for delay caused. In this case inspite of issuance of notice by paper publication also, the accused has not opted to appear before the Court and contest the application. This Court did not find any such grounds to disbelieve the reason stated by the complainant for the delay caused. Hence, this Court is of the considered view that the delay in filing the present appeal could be condoned and matter could be taken on merit. Therefore, the complainant has made out grounds for condoning the delay in filing the present appeal. Accordingly, Point No.1 is answered in the **"Affirmative"**.

15. **POINT NOs.2 AND 3:** Since these two points are inter-linked and to avoid repetition of facts and for convenience, they are taken together for consideration.

16. As already stated, the complainant has approached the Court by filing the private complaint against the accused for the offence p/u/s. 138 of NI Act. It is the specific case of the complainant that the complainant being a businessman entered into an agreement with Respondent on 22-06-2025 and thereby invested Rs. 50,00,000/- by way of bank transfer into M/s. HPCL Cab Inc., belonging to the accused on the understanding that the said amount would be repaid within a period of 40 months. It is also the specific case of the complainant that the accused failed to repay the said amount and upon persistent follow-ups, the accused issued cheque bearing No.734295 dated 31-10-2018 for Rs. 50,00,000/- drawn on State Bank of India, Malagala Road Branch, Bengaluru and the complainant inturn presented the said cheque for encashment and same was dishonoured for the reason "account closed" as per the endorsement dated 11-01-2019. Thereafter, the complainant got issued statutory notice dated 02-02-2019 calling upon the accused to pay the cheque amount within 15 days from the date of said notice and the accused replied through his counsel and did not pay the amount and thereby the accused has committed the offence p/u/s. 138 of NI Act.

17. In support of the said claim, the complainant has filed his affidavit by way of sworn statement and thereafter his wife being the Power of Attorney holder was examined as PW.1 before the learned Magistrate and got marked 12 documents. Ex.P.1 is the cheque dated 30-10-

2018, Ex.P.2 is the bank endorsement dated 11-01-2019, Ex.P.3 is the statutory notice dated 02-12-2019, Ex.P.4 is the return RPAD envelope addressed to the accused, Ex.P.4(a) is a notice contained in the returned RPAD envelope, Ex.P.5 is the GPA executed by the complainant in favour of his wife, Ex.P.6 is the account statement relating to the loan status of the complainant with Protestant Christian Co-operative Society Ltd, Ex.P.7 is the bank account statement relating to the account of Mr. Jeofry Oswald Palanna and Mrs. Neena Sujan Palann, Ex.P.8 to Ex.P.11 are the challan counterfoil and Ex.P.12 is the account statement relating to the bank accounts of the complainant maintained with Corporation Bank, Pandeshwara, Mangaluru.

18. On the other hand, on going through the cross examination of PW.1, it is clear that it is the specific defence of the accused that he had not taken any money from the complainant and there was no any financial transaction between himself and complainant. It is also noticed that the accused has taken the contention that accused was not running HPCL Cab Service business and the address shown in Ex.P.3 statutory notice is not of his address. Further it is the specific contention of the accused that the complainant and one Prakash were doing Real Estate business and Mr. Prakash had taken blank cheques of accused for security purpose and the said Prakash had handed over the said cheque to the complainant and complainant has misused the said cheque and filed false complaint.

19. With the above rival contention of parties, truth has to be unearthed on the basis of available materials on file. On going through the materials on record as submitted by the learned counsel for the complainant, it is clear that Ex.P.1 cheque belongs to the accused and he has also admitted his signature on Ex.P.1. Further on going through Ex.P.2 bank endorsement it is clear that the complainant has presented the cheque within its validity and Ex.P.1 cheque was dishonoured for the reason 'account closed' as found in Ex.P.2 bank endorsement dated 11-01-2019. Further as found from Ex.P.3 notice it is clear that after dishonour of cheque, the complainant got issued statutory notice dated 02-02-2019 in time. It is also clear that since the accused did not make payment of the cheque amount, the complainant has filed the complaint within the prescribed period. As submitted by the learned counsel for the complainant relying on various Judgments cited in his written arguments, it is settled principle of law that when once the accused admits issuance of cheque and his signature on the said cheque, then presumptions are to be raised in favour of the complainant as provided under Section 139 and 118 of Negotiable Instruments Act. As provided under Section 139 of Negotiable Instruments Act, unless and until contrary is proved, it shall be presumed that the holder of the cheque received the cheque for discharge in whole or in part or any other debt or other liability. Similarly as provided under section 118 of Negotiable Instruments Act unless contrary is proved it has to be presumed that the cheque has been issued and accepted

for consideration on the date mentioned in the cheque. At the same time, it is also equally true that the presumption to be raised under Section 118 as well as under section 139 of Negotiable Instruments Act are rebuttal presumptions. The accused once admits that the cheque issued by him, then onus lies upon the accused to rebut the presumption that is to be drawn in favour of the holder of the cheque. However he need not prove his defence beyond reasonable doubt, but he has to prove his defence with preponderance of probabilities. The accused can rebut the presumption either by cross-examining the complainant's witness or by leading his evidence. A mere denial of existence of consideration or debt does not suffice to rebut the presumption. The accused need not prove his case beyond reasonable doubt, but there must be an evidence which fairly and reasonably tends to show the presumption is not correct. Therefore, the accused has to make out probable case as to his defence. In this regard, this court is also being guided by the various decisions referred by the learned counsel for the complainant in his written argument. It is pertinent to note that the presumption available under Section 139 of Negotiable Instruments Act is only with regard to the existance of legally enforcible debt. It does not give any presumption as to monetary transaction or due amount as such.

20. Now in the light of the above aspects, the facts of the present case are analysed, it is certain that the complainant has come up with a specific contention that himself and accused have entered into an agreement on

22-06-2015 and accordingly, invested Rs.50,00,000/- through bank account only in the accused concerned by name HPCL Cab Inc., Therefore it is clear that, based on the agreement dated 22-06-2015 the complainant had paid Rs. 50,00,000/- in favour of the accused. On the other hand, the accused has specifically denied any monetary transaction with the complainant and also receipt of any amount from him. In this regard, the evidence on record is analysed, admittedly the complainant has not produced agreement dated 22-06-2015 which is basis for his claim. As per the complaint averments, the sworn statement filed by the complainant and also affidavit evidence of PW.1 make it clear that an amount of Rs. 50,00,000/- was paid to the accused through bank account only. However, the complainant has not produced any document before this Court to show that he had paid Rs. 50,00,000/- in favour of the accused as contended. Though the complainant has produced the account statement as per Ex.P.12 and challans as per Ex.P.8 to Ex.P.11 that does not disclose the payment of Rs.50,00,000/- as on 22-06-2015 as claimed by the complainant. Further though the complainant has produced the loan status as on 07-08-2024 issued by the Protestant Christian Co-operative Society Ltd., as per Ex.P.6 that does not link payment made by the complainant in favour of the accused. Further though the complainant has produced the bank account statement relating to the joint account of Mr. Jeofry Oswald Palanna and Mrs. Neena Sujan Palanna dated 30-06-2015 that again noway support the case of the complainant and on the other hand, it is inconsistent with the case of the complainant. Nowhere the complainant has stated that, he has taken Rs. 13,50,000/- from Jeofry Oswald Palanna and paid the said amount to the accused. The case of the complainant that he had paid Rs. 50,00,000/- through his bank account only. Therefore, Ex.P.7 also does not aid the case of the complainant in any manner so as to prove the alleged payment. No doubt if the contents of Ex.P.12 are analysed on different dates, the complainant had transferred different amount to the account of HPCL Cab Inc., The loan account statement reveals that on 22-06-2015 a sum of Rs.5,29,000/- was transferred to the account of HPCL Cab Incorporation and not Rs. 50,00,000/- as contended by the complainant. It is not the case of the complainant that he had paid Rs. 50,00,000/- on different dates subsequent to 22-06-2015. But the account statement reveals monetary transaction between the complainant and HPCL Cab Inc., belongs to the accused on various dates subsequent to 22-06-2015. But the complainant nowhere stated as to the payment made on different dates as found in Ex.P.12.

21. With the above aspects, now the oral evidence of PW.1 regarding payment is concered. PW.1 in her examination-in-chief re-iterated the complaint averments regarding the payment of Rs. 50,00,000/- as per the agreement dated 22-06-2015. But during the cross examination, she has stated that the amount was paid to the accused in one hotel at Mangaluru and at the time of

lending the amount, herself, her husband and the accused were present. She further deposed during the cross examination that they have paid the amount to the accused on 15-06-2015 and the accused had asked for money in the month of June. It is further deposed by her that in three months, they have paid in all Rs. 50,00,000/- to the accused in installments. It is also deposed by her that she has produced document to show that on which date how much amount was paid to the accused. This version of PW.1 goes to the very root of the complaint averments as to the alleged loan transaction. It is not the case of the complainant that he had paid any amount to the accused on 15-06-2015. If the above evidence of PW.1 is analysed it appears that the amount was paid to the accused in cash and not through RTGS. However during her further cross examination she has stated that they have paid Rs.50,00,000/- to the accused through RTGS only. But as already stated there is no convincing and acceptable evidence to establish the said payment made by the complainant through RTGS within a period of three months as stated by her.

22. It is further noticed that during the cross examination, PW.1 further deposed that "ಆರೋಪಿಗೆ ರೂ.50 ಲಕ್ಷ ಹಣದಲ್ಲಿ ರೂ.25 ಲಕ್ಷ ಹಣ ನಮ್ಮ ಮನೆಯನ್ನು ಬಲ್ಮಠದಲ್ಲಿರುವ ಕೋ ಅಪರೇಟಿವ್ ಸೊಸೈಟಿಯಲ್ಲಿ ಅಡಮಾನ ಮಾಡಿ ಸಾಲ ಪಡೆದಿದ್ದು, ರೂ. 15 ಲಕ್ಷ ಹಣವನ್ನು ನನ್ನ ಗಂಡನ ಭಾವನಿಂದ ಸಾಲ ಪಡೆದಿದ್ದು, ರೂ.7 ಲಕ್ಷ ಹಣವನ್ನು ಸಿಂಡಿಕೇಟ್ ಬ್ಯಾಂಕ್ ನಲ್ಲಿ ಸಾಲವಾಗಿ ಪಡೆದು ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಸದರಿ ಎಲ್ಲಾ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಲು ನನಗೆ ಯಾವುದೇ ತೊಂದರೆ ಇರುವುದಿಲ್ಲ. This version of the complainant gives different scinario.

The complainant has not produced any documents before this Court to show that he had taken mortgage loan from Co-operative society to the tune of Rs.25,00,000/- and taken hand loan of Rs.15,00,000/- from his brother-in-law and so also taking of loan of Rs.7,00,000/- from Syndicate Bank. The evidence makes it clear that though the complainant is having document in that regard, the complainant has not opted to produce the same before the Court. Though the complainant has produced Ex.P.6 loan status issued by Protestant Christian Co-operative Society Ltd., that does not disclose the availment of mortgage loan of Rs.25,00,000/- as stated by PW.1. Apart from that, it is also noticed that during the cross examination PW.1 has given another version as to the payment made by the brother of her husband. During the cross examination she has stated that "ನಿಪಿ-7 ನನ್ನ ಗಂಡನ ಬಾವ ಜಾಫಿ ಓಸ್ವಾಲ್ಡ್ ರವರು ಆರೋಪಿಯ ಬ್ಯಾಂಕ್ ಖಾತೆಗೆ ಹಣವನ್ನು ವರ್ಗಾವಣೆ ಮಾಡಿದ್ದು ಆಗಿರುತ್ತದೆ. ಸದರಿ ಹಣವನ್ನು ನನ್ನ ಗಂಡ ಅವರ ಭಾವನಿಂದ ತೆಗೆದುಕೊಂಡಿರಲಿಲ್ಲ. ನನ್ನ ಗಂಡನ ಭಾವನೇ ನೇರವಾಗಿ ರೂ.13,50,000/- ಹಣವನ್ನು ಆರೋಪಿಯ ಬ್ಯಾಂಕ್ ಖಾತೆಗೆ ವರ್ಗಾವಣೆ ಮಾಡಿದ್ದರು. ನಿಪಿ-7 ರಲ್ಲಿ ಇರುವ ಹಣವನ್ನು ನನ್ನ ಗಂಡ ಸಾಲವಾಗಿ ಕೇಳಿದ್ದರೋ ಅಥವಾ ನನ್ನ ಗಂಡನ ಹಾಗೂ ಭಾವನ ನಡುವೆ ವ್ಯವಹಾರ ಆಗಿದೆಯೋ ಎಂದು ನನಗೆ ಗೊತಿಲ್ಲ." This version of PW.1 is inconsistent with her previous evidence as to the loan availed from the brother-in-law of her husband. Added to that, PW.1 during her cross examination further deposed that "ಆರೋಪಿಯು ನಮಗೆ ಚೆಕ್ ಕೊಟ್ಟ ದಿವಸ ಆರೋಪಿಗೆ ಹಣವನ್ನು ನಾವು ಆರ್.ಟಿ.ಜಿ.ಎಸ್ ಮಾಡಿರುತ್ತೇವೆ. ಆರ್.ಟಿ.ಜಿ.ಎಸ್ ಮೂಲಕ ರೂ.20 ಲಕ್ಷ ಹಣವನ್ನು ಬೇರೆ ಬೇರೆ ರೀತಿಯಲ್ಲಿ ಬೇರೆ ಬೇರೆ ದಿನಾಂಕಗಳಂದು ಕೊಟ್ಟಿರುತ್ತೇವೆ. ಯಾವ ಯಾವ ದಿನಾಂಕದಂದು ಆರೋಪಿಗೆ ಹಣವನ್ನು ಕೊಟ್ಟಿರುತ್ತೇವೆಂದು ನಿಖರವಾಗಿ ಗೊತ್ತಿಲ್ಲ. ಆದರೆ ಬ್ಯಾಂಕ್

ಸ್ಟೇಟ್ ಮೆಂಟನ್ನು ಹಾಜರುಪಡಿಸುತ್ತೇವೆ. ಅದರಲ್ಲಿ ನಿಖರವಾಗಿ ನಮೂದು ಇರುತ್ತದೆ." This evidence of PW.1 during the cross examination gives another version as to the loan transaction which is totally contrary to the complaint averments. As per the above said evidence, the complainant had paid amount of Rs.20,00,000/- on the date when the accused had issued cheque, but that is not the case of the complainant at all.

23. Added to the above aspects, it is also noticed that when the matter is pending in the present appeal, the learned counsel for the complainant has filed the application under Section 432 read with Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023 praying for permission to lead additional evidence and to summon and examine Jeofry Oswald as additional witness and also for permission to produce investment agreement dated 22-06-2015. Along with the said application, the complainant has produced xerox copy of agreement dated 22-06-2015 stated to be entered into between himself and the accused. If the contents of the said agreement is analysed, it depicts that the complainant had paid a sum of Rs. 50,00,000/- in cash for business transaction relating to the cab services for Multi National Company. In the said agreement, it is stated that in the presence of witnesses mentioned in the said agreement, the complainant had paid entire Rs.50,00,000/- in cash. As per the said agreement, no amount was paid through account as stated by the complainant in his complaint. Further, the said agreement also reveals that after

receiving Rs. 50,00,000/-, the accused had provided cheque for Rs. 50,00,000/- drawn on State Bank of India in favour of the complainant. Thus, if the contents of this agreement, which is produced by the complainant himself goes to the very root of the averments made in the complaint and falsifies the case of the complainant in toto. The said agreement admittedly produced by the complainant himself falsifies the payment of Rs. 50,00,000/- through bank account and issuance of cheque subsequently on 31-10-2018 by the accused as put up by the complainant. In the light of these aspects, there arose serious doubt as to the very loan transaction alleged by the complainant.

24. No doubt as submitted by the learned counsel for the complainant in this case though the accused has taken the defence of misuse of his cheque, he has not opted to place any evidence and the said defence of the accused is not established by placing required evidence. But as discussed above, the materials on record itself falsify the case of the complainant. It is needless to say that in order to rebut presumption, the accused need not step into the witness box, he may rebut presumption by cross examining the witness. Therefore, just because the accused is not examined before the Court and not produced any documents before the court in support of his defence, it cannot be accepted that the case of the complainant is proved and presumption is not rebutted. As discussed supra, the oral and documentary evidence produced by the complainant himself creates clear cloud

as to the claim of the complainant. Therefore, though under the facts and circumstances of the case, the presumption is required to be drawn in favour of the complainant, same is rebutted on the basis of evidence on record placed before this Court.

25. Added to the above aspects on going through the materials on record, it also appears that even the complainant has not complied necesssary requirements to file the complaint for the offence punishable under Section 138 of Negotiable Instruments Act. As provided under under Proviso (b) to Section 138 of the NI Act, the complainant shall issue notice in writing, to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. It is clear from the proviso appended to Section 138 of the NI Act that Section 138 shall not apply unless the conditions specified in the proviso. In this case it is clear that the complainant has presented the cheque within its validity and there is no dispute in that regard. However the accused has disputed the service of notice. During the cross-examination of PW1, the learned counsel for the accused specifically suggested that the address of the accused shown in Ex.P3 notice is not the address of the accused. In Ex.P3 notice, the complainant has shown the address of the accused as M/s. HPCL CAB INC. Represented by Mr. Dinesh D.M, No.2, Puttaraju Layout, Kalkere, Bannerughatta road, near A.M.C. Engineering College, Bangalore-560083. But on what basis the complainant has given the said address is not

understood. The complainant has not produced any document before the court to show that the address of the accused shown in the statutory notice is his correct address. In this regard it is pertinent to note that in the complaint, sworn statement of the complainant and evidence of PW1, it is specifically stated that the statutory notice was sent to the accused on 02-02-2019, demanding the accused to pay the cheque amount within 15 days from the date of receipt of the said notice and the accused has replied to the said notice through his counsel and the same has been produced before the court. But such reply notice is not produced as stated. However in the appeal memo it is stated that the legal notice dated 02-02-2019 issued to the accused demanding payment was returned unserved and no payment was made. Therefore in this regard the averments made in the complaint, as well as in the sworn statement and evidence of PW1, as to the issuance of reply by the accused through his counsel, is false. Apart from that the complainant himself has produced the return envelope containing the legal notice as per Ex.P4 and the notice addressed to the accused found in the said envelope is marked as Ex.P4(a). Ex.P4 makes it clear that the notice sent to the accused on the address as mentioned in the said notice was not served. The complainant has not produced any document before this court to show that the address given in the registered notice is the correct address of the accused. It is not understood on what basis the complainant had shown such address in Ex.P3 notice.

26. In this regard the evidence of PW.1 during cross-examination is analyzed, PW.1 during her cross-examination stated that “ಹೆಚ್.ಪಿ.ಸಿ.ಎಲ್ ಕ್ಯಾಬ್ ಸರ್ವಿಸ್ ಸಂಸ್ಥೆಯು ಬೆಂಗಳೂರಿನಲ್ಲಿ ಇದೆ ಎಂದು ಆರೋಪಿಯು ನಮಗೆ ಹೇಳಿದ್ದರು. ಆದರೆ ನಾವು ಬೆಂಗಳೂರಿಗೆ ಹೋದಾಗ ಆರೋಪಿ ನಮಗೆ ಸಿಕ್ಕಿರಲಿಲ್ಲ ಹಾಗೂ ಸದರಿ ಸಂಸ್ಥೆಯನ್ನು ನಾವು ನೋಡಿರುವುದಿಲ್ಲ.” She further deposed that “ ಆರೋಪಿಗೆ ಸೇರಿದ ಹೆಚ್.ಪಿ.ಸಿ.ಎಲ್ ಕ್ಯಾಬ್ ಸಂಸ್ಥೆಯ ವಿಳಾಸ ದೂರಿನಲ್ಲಿ ನಮೂದು ಇರುವ ಆಗಿರುತ್ತದೆಯಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅರೋಪಿಯು ನಮಗೆ ಸಿಕ್ಕಿರುವುದಿಲ್ಲ ಹಾಗೂ ಸದರಿ ಸಂಸ್ಥೆಯನ್ನು ನಾವು ನೋಡಿರುವುದಿಲ್ಲ.” This evidence of PW.1 reveals that the complainant is not aware of the place where the HPCL Cab Service is situated and even the complainant could not secure the accused. Even PW.1 during her cross-examination further stated that the accused was not residing at the address given to them. Therefore it is not understood how the complainant addressed the notice to the accused to the address shown in the notice. The complainant has not produced any material before this court to show that the address given in the notice is correct last known address of the accused. The matter would have been different if the complainant produced any material before this court to show the address of the accused as shown in the legal notice. Therefore it cannot be accepted that the statutory notice was served on the accused. In this regard in written arguments the learned counsel for the complainant has contended that though the notice was returned unserved, the accused never disputed the address and never denied the receipt of the notice during cross-examination and did not reply to the said notice. He has also relied on the decision of the Apex court in

(**2007) 6 SCC 555** in case between **C.C. Alavi Haji -Vs – Palapetty Muhammed** contending that the notice is deemed to be served on the accused when it is sent to the correct address. However, in this regard it is pertinent to note that the complainant has not produced any material before this court to show that the notice was sent to the correct address of the accused. Therefore the deemed service of the notice as stated cannot be accepted. Therefore it is clear that even the statutory notice as required is not served on the accused. Such being the case Section 138 of the Negotiable Instruments Act cannot be made applicable.

27. Thus as discussed above, there is a clear cloud as to the very monetary transaction pleaded by the complainant as to passing of consideration amount as stated by him. No doubt the accused has admitted Ex.P1/cheque and his signature Ex.P.1(a) and admittedly the said cheque was issued by the accused. On presentation of said cheque for encashment, the same was dishonored as 'account closed'. On the basis of said fact no doubt, as contended by the learned counsel for the complainant, presumption has to be drawn as to the fact that the cheque was issued for legally recoverable debt. However, as discussed above, the complainant has failed to prove the existence of the legally recoverable debt as contended and as mentioned in Ex.P.1 cheque the case of the complainant itself is comprised of full of inconsistencies and that itself is sufficient to rebut the presumption available in favour of the complainant.

Therefore this court is of the considered view that though the presumption as provided under Section 118 and 139 of Negotiable Instruments Act is to be attracted, the complainant has failed to prove the passing of consideration and the total amount paid. Under these attending circumstances, considering the entire material available on file meticulously, this court is of the considered view that the complainant has failed to make out the case for the offence punishable under Section 138 of Negotiable Instruments Act as against the accused as contended by him. No doubt one cannot dispute the principles held in various decisions referred in the written arguments. But under the facts and circumstances of the case and in the light of the evidence on record, the said decisions will not come to the aid of the complainant. Hence this court is of the considered view that the complainant has failed to prove that the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act, as contended.

28. At this stage this court has also meticulously considered the judgment passed by the learned Trial Judge. On going through the contents of the judgment, it is clear that the learned Magistrate has appreciated the facts of the case and ultimately come to the conclusion that the complainant has failed to show the existence of legally recoverable debt to the extent of Rs.50,00,000/- as shown in Ex.P1 and thereby acquitted the accused for the offence punishable under Section 138 of Negotiable Instruments Act. No doubt the trial court records

received reveals that the learned counsel for the complainant has relied upon many decisions, but the learned Magistrate has not specifically stated too many number of judgments relied by the learned counsel for the complainant in the judgment. However, the Judgment reveals that the effect of the said judgments are considered in the judgment passed by the learned Magistrate.

29. On going through the entire judgment, it is clear that the learned magistrate has weighed the evidence made available in its proper perspective and reached the right conclusion. This court did not find any ground to hold that the impugned judgment passed by the Magistrate is illegal or opposed to law. On the other hand the learned Magistrate has reached right and just decision after appreciating the evidence placed on record. Therefore this court did not find any grounds to interfere with the judgment passed by the trial court and thereby to set aside the same and to convict the accused for the offence punishable under Section 138 of Negotiable Instruments Act as sought for in the present appeal. Therefore Point Nos.2 and 3 are required to be answered in the **Negative** and answered accordingly.

30. **Point No.4**: For the reasons discussed in connection with Point Nos.1 to 3 and the findings given thereon, this court proceeds to pass the following:

ORDER

The application filed by the Appellant under Section 5 of Limitation Act is hearby allowed.

Consequently, the delay in filing the appeal is condoned.

Further the appeal filed by the Appellant under Section 419 of Bharatiya Nagarik Suraksha Sanhita, 2023 is hereby **dismissed**.

Consequently, Judgment dated 14-03-2025 passed by the the learned Magistrate in C.C.No.6526/2019 is confirmed.

Send the copy of this Judgment to the trial court along with the trial records forthwith.

(Typed on my dictation by the Stenographer Gr-I corrected, signed and then pronounced by me in open Court on this the 29th day of June, 2026)

(**Shridhar Gopalkrishna Bhat**),
III Additional District & Sessions Judge,
D.K, Mangaluru.

SHRIDHAR G BHAT

Digitally signed by SHRIDHAR G BHAT
Date: 2026.06.29 11:41:11 +0530