KADK200014852024

Presented on	: 28-08-2024
Registered on	: 28-08-2024
Decided on	: 30-06-2026
Duration	: 01 year, 10 months, 02 days

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT Bantwal, DAKSHINA KANNADA

Presided over by ANIL PRAKASH M.P., B.A.L., L.L.B., M.B.A.
Senior Civil Judge & J.M.F.C., Bantwal, D.K.

Dated this the 30th day of June, 2026

C.C./633/2024

Between :

Odiyoor Shree Vividhodhesha,
Sowhardha Sahakari Niyamitha,
B.C Road Branch, Bantwal Taluk,
Represented by its present branch
Manager Mrs. Sowmya D.A., ... **COMPLAINANT**

(By Adv.: Sri. D.R.P.)

And:

Mr. Rahamathulla,
S/o. Hasanabba,
R/at. D.No.2-236, Soora House,
Navoor Post and Village,
Bantwal Taluk, D.K., 574211. .... **ACCUSED**

(By Adv.: Sri. S. Pai.)

J U D G M E N T

The complainant ‘Odiyoor Shree Vividhodhesha Sowhardha Sahakari Niyamitha’ represented by its Branch Manager by name ‘Mrs. Sowmya D.A’ has filed this private complaint U/s.200 of Cr.P.C. alleging that, the accused person has committed an offence punishable U/sec. 138 r/w 142 of N.I.Act.

2. **<u>The brief facts of the complainant's case are as follows;</u>**

The accused along with his friend by name 'Abdul Rasheed' had approached for taking financial assistance of Rs.25,000/- on 5.08.2022 for the purpose of Auto repair and accordingly loan was sanctioned in the name of 'Abdul Rasheed' to which the accused stood surety.

3. Further it is submitted that 'Abdul Rasheed' was irregular in making repayment of borrowed amount and for that reason the complainant requested Abdul Rasheed and accused to repay the loan amount and also issued legal Notice dated 6.11.2023 to 'Abdul Rasheed' to repay the amount.

4. Further it is submitted that after receipt of notice, 'Abdul Rasheed' appeared along with accused and the accused has issued cheque bearing No.830883 dated 26.03.2024 to be drawn on 'Canara Bank' of Navoor branch for sum of Rs.13,000/- and at that time the accused has assured that on presentation of the cheque same will be honoured.

5. Further it is submitted that believing on the assurance of the accused, cheque was presented for

collection on 26.03.2024 through 'Bharath Co-operative Bank', B.C Road branch which was dishonoured on 27.03.2024 with endorsement as '**payment stopped by drawer**' and accordingly Legal Notice dated 15.04.2024 came to be issued to the accused which was returned as **'refused'** on 16.04.2024 and accordingly present complaint is filed.

6. After registration of complaint, sworn statement of complainant came to be recorded and thereafter cognizance taken against accused for offences punishable under Sec. 138 r/w 142 of N.I.Act and summons came to be issued.

7. The accused appeared before this court through his Advocate and got released on bail and substance of accusation read over to accused and he did not plead guilty and claimed to be tried.

8. In support of its case, the Branch manager by name 'Soumya D.A' got examined as CW.1 and got marked Ex.C1 to C6 and closed their side.

9. Thereafter, the statement of the accused U/s 313 of Cr.P.C. is recorded, wherein the accused had denied all the incriminating evidence found against him as false and has submitted that he has no defence evidence.

10. On the basis of the contentions raised in the complaint, the following points arise for my consideration;

1) Whether the complainant proves beyond reasonable doubt that, the

accused has issued disputed cheque for a sum of Rs.13,000/- towards discharge of his liability towards payment and the said cheque was dishonoured for the reason "Payment stopped by drawer" and the accused failed to comply with the demand notice which was duly served on him and thereby he has committed offence punishable U/s. 138 r/w 142 of N.I.Act?

2) What order ?

11. Heard arguments advanced by learned counsel for complainant and accused and accordingly I have answered the above points, which are as follows;

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>

12. **<u>POINT NO.1:</u>**- The learned counsel for complainant has argued that the accused has stood surety to the loan borrowed by his friend and for that reason the accused is liable to repay loan amount and the accused has admitted issuance of cheque and also signature of the cheque and for that reason submits to convict the accused.

13. Per contra, learned counsel for accused has argued that the complainant has not produced any documents, which goes to show about borrowing of loan for the purpose

of Auto repair and also no document is produced, which goes to show that there is a loan and also the accused stood surety to the loan and for that reason submits to acquit the accused.

14. The complainant has produced Ex.C1, which is the notary copy of resolution dated 4.02.2023, which goes to show that the committee of complainant society has authorized CW.1 to conduct this case and in cross-examination of CW.1 in para No.2 it was elicited that,

> "ನಮ್ಮ ಸಂಸ್ಥೆಯಲ್ಲಿ ಎಷ್ಟು ಜನ ನಿರ್ದೇಶಕರು ಇದ್ದಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿ **17** ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಠರಾವುಗೆ ನಮ್ಮ ಸಂಸ್ಥೆಯಿಂದ ಯಾರು ಸಹಿ ಮಾಡುವುದು ಎಂದರೆ ಸಾಕ್ಷಿ ಅಧ್ಯಕ್ಷರು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಿಸಿ-**1** ರಲ್ಲಿ ಅಧ್ಯಕ್ಷರ ಸಹಿ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ನಿಜ. ನಮ್ಮ ಸಂಸ್ಥೆಯ ಬೈಲಾ ಪ್ರಕಾರ ಹಾಗೂ ಸಹಕಾರಿ ಸಂಘದ ಅಧಿನಿಯಮದ ಪ್ರಕಾರ ನಿಸಿ-**1** ಕ್ಕೆ ಅಧ್ಯಕ್ಷರು ಸಹಿ ಮಾಡಬೇಕು ಎಂದರೆ ಸಾಕ್ಷಿ ಉತ್ತರ ನೀಡುವುದಿಲ್ಲ".

and from the above deposition it is clear that, it was elicited that Ex.C1 does not contain the signature of President of the complainant Society and normally the President of society will affix his signature, but nothing is placed before this court as per by law of the complainant society, only the President has to affix signature to resolution and for that reason there is nothing on record which goes to show that the complainant is not authorized to depose before this court.

15. Further the complainant has produced Ex.C2, which is the cheque bearing No.830883 dated 26.03.2024 and on bare perusal of cheque same goes to show that the

signature of accused marked as Ex.C2(a) and the writings of the cheque are in different ink and at this stage it is worthwhile to extract cross-examination of CW.1 dated 5.03.2026 wherein in page No.7 and para No.4 it was elicited that,

> "ಅಬ್ದುಲ್ ರಶಿದ್ ರವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಂಡಿದ್ದೀರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ಇಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಅಬ್ದುಲ್ ರಶೀದ್ ರವರು ರಾಮಲ್ ಕಟ್ಟೆ ನಿವಾಸಿ ಎಂದರೆ ನಿಜ. ಅಬ್ದುಲ್ ರಶೀದ್ ರವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳದೇ ಇರಲು ಏನು ಕಾರಣ ಎಂದರೆ ಸಾಕ್ಷಿ ಅವರು ಸಿಕ್ಕಿರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ".

and from the above deposition it is clear that, CW.1 has stated that though ink forthcoming on Ex.C2 is different from the ink of signature of accused marked as Ex.C2(a), but she has specifically stated that the accused himself got written the cheque and has handed over the same for the purpose of surety and she has denied the suggestion that, she has written the cheque and has filed this case as false and at this stage itself it is pertinent to note that blank cheque voluntarily signed and handed over by the accused gives authority to the complainant to fill the cheque and at this stage it is worthwhile to rely on Judgment of **Hon'ble Supreme Court reported in Bir Singh v/s. Mukesh Kumar,** wherein it is held;

> "36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

and in view of the above ratio it is clear that blank cheque voluntarily signed and handed over authorizes the drawer of the cheque to fill the same and also it has got presumption under Sec.139 of Negotiable Instrument Act and for that reason it is the burden of the accused to rebut presumption.

16. Further in Para No.3 to 6 of the above cross-examination an attempt was made to elicit that the complainant society will take Aadhar card, ration card, bank statement and agreement while sanction of loan and to the case on hand she can produce said documents and to the case on hand 'Abdul Rasheed' had availed loan for the purpose of repair of Auto rickshaw and she has got said documents in her possession and the accused is only surety to the transaction and she has not taken any action against 'Abdul Rasheed', but however it is pertinent to note that the issuance of cheque by the accused is not disputed and also the signature appearing on the cheque is not disputed and as per Ex.C4 notice is issued to the accused and Ex.C5 is the postal receipts and Ex.C6 is the Postal cover, which goes to show that on 8.04.2024 same is intimated to the accused through phone and thereafter when postman went to the address of the accused on 10.04.2024 and 12.04.2024 he was absent and the postman has endorsed that on 13.04.2024 the accused has **'refused'** to receive the notice and in statement U/sec.313 of Cr.P.C the accused has answered that he has received the notice and inspite of that

he has not issued any reply contending that he has not stood as surety to the loan transaction and for that reason the complainant has not produced any documents regarding loan transaction and the accused stood as surety to the loan transaction is not fatal to the case of complainant.

17. Further regarding the contention that the complainant has not taken any action against Abdul Rasheed, it is worthwhile to extract **Sec.128 of Indian Contract Act**, which is as follows;

> "**128. Surety's liability** – The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract".

and by reading above provision it is clear that the liability of surety is co extensive along with principal debtor and illustration clarifies that the surety not only liable to pay loan amount, but also interest and other charges and for that reason the accused is liable to repay loan amount and the accused has failed to rebut the presumption available U/sec.139 of Negotiable Instrument Act and accordingly I have answered **Point No.1 in the Affirmative**.

18. **Point No.2**: In view of above discussions this court proceed to pass following;

ORDER

Acting U/s.255(2) of Cr.P.C. accused is found guilty and convicted for the offence punishable U/s.138 r/w 142 of Negotiable Instrument Act.

It is ordered that the accused shall pay fine of Rs.18,000/- for punishment of offence punishable U/s.138 r/w 142 of N.I.Act. In case of default of payment of fine amount, the accused shall undergo Simple Imprisonment for a period of three months.

Further, acting u/s.357(1)(a) of Cr.P.C., after ensuring deposit of fine amount, out of the fine amount of Rs.18,000/- (Rupees Eighteen Thousand only), a sum of Rs.13,000/- shall be paid to the complainant as compensation and remaining amount of Rs.5,000/- (Rupees Five Thousand only) defrayed as prosecution expenses to the State.

Office is hereby directed to supply the free copy of this Judgment to the accused and duly instruct the appeal provisions to the accused.

(Dictated to the stenographer directly on computer, computerized by her, corrected and then pronounced by me in the open court on this the 30th day of June, 2026).

(ANIL PRAKASH.M.P.)
Senior Civil Judge & JMFC.,
Bantwal, D.K.

ANNEXURE

List of witnesses examined for complainant :-

C.W.1 : Smt. Sowmya D.A

List of witnesses examined for accused:

- Nil -

List of documents marked for complainant

Ex.C1	:	Notary copy of resolution dated 4.02.2023,
Ex.C2	:	Notarized copy of cheque dated 26.03.2024,
Ex.C3	:	Bank endorsement,
Ex.C4	:	Notice dated 5.04.2024
Ex.C5	:	Postal receipt,
Ex.C6	:	Postal cover

List of documents marked for accused:

- Nil -

(ANIL PRAKASH.M.P.)
Senior Civil Judge & JMFC.,
Bantwal, D.K.

ANIL PRAKASH M P

Digitally signed by ANIL PRAKASH M P
Date: 2026.07.02 17:22:30 +0530