KADK300002102025

**IN THE COURT OF THE
V ADDL. DISTRICT AND SESSIONS JUDGE,
MANGALURU D.K (SITTING AT PUTTUR).**

**Present : Sri.Sadananda Nagappa Naik,
BAL., LLB.
V Addl. District and Sessions Judge,
Mangaluru, D.K. (Sitting at Puttur).**

Dated this the 17th Day of July 2026

Criminal Appeal No.5034/2025

Ramesh M,
Aged about 39 years,
S/o. Purushottam Poojary,
R/at Marakada House,
Kaimana Village and Post,
Kadaba Taluk, D.K.

.......Appellant/Accused.
(**By Sri. Musthufa M., Advocate.**)

-V/s-

Keshava P,
Aged about 52 years,
S/o. Nagappa Gowda,
R/at Permaje, Pambethady Village and Post, Kadaba Taluk, D.K.

(**By Sri. Venkananda K. S., Advocate.**)

.....Respondent/Complainant.

JUDGMENT

Appellant has filed this Appeal U/sec.374(2) of Cr.P.C., being aggrieved by the Judgment of Conviction and Order of Sentence passed in C.C. No. 427/2023 dated 26.03.2025 on the file of Civil Judge and J.M.F.C., Sullia *(Hereinafter referred as Impugned Judgment and Order for brevity).*

2. Parties to this appeal shall be referred as per their ranking before the Trial Court for the purpose of convenience and for better appreciation of their contentions.

3. In the Memorandum of Appeal, the Appellant/Accused has contended that, the impugned conviction is against the law, weight of evidence and probabilities of the case. The trial Court has committed grave error in law in not appreciating the evidence in proper perspective. The trial Court has given undue weight to the insufficient evidence addressed by the complainant. The complaint is filled with inconsistency and contradiction. In the complaint, the

complainant has contended that he had lent ₹ 2,55,000 in favour of accused as hand loan. However, in sworn statement, he has stated that he has lent only loan to accused. There is a contradiction as to loan and hand loan. During the cross-examination for the first time, he has revealed that the amount was given in the presence of Taranath. However, he has not been examined. The complaint has not proved the loan transaction. The complainant has stated that he has lent the loan through cheque belonging to in his bank account number maintained with SCCC Bank, bearing Reg. No. 283. However, no such document has been produced. There is inconsistency in legal notice, complaint, statement and cross-examination. The trial Court has mechanically implied the presumption under Section 118 and 139 of N.I. Act. During the cross-examination, complainant has admitted that there was a purchaser and vendor relationship with respect to sale of car bearing registration number KA-21-Z-493. Hence, at no point of time, there existed relationship of debtor and creditor. The complainant has not proved his case. The complainant has not produced any evidence with respect to financial capacity. There is no document or evidence of the loan transaction. For the aforesaid reasons, the Appellant/Accused has prayed to set aside the aforesaid Impugned Judgment and Order of Conviction.

4. Along with Memorandum of Appeal, the Appellant has produced certified copy of Impugned Judgment and Order of Conviction passed by the Trial Court in C.C. No. 427/2023.

5. Respondent appeared through his counsel. Heard the arguments. TCR's were called for reference in this appeal.

6. Now, following are the points arising for determination:

1. **Whether in the light of evidence and materials brought before the court, the Trial Court is justified in convicting the Appellant/Accused for the offence punishable U/sec.138 of N.I. Act and sentencing the Accused for the said offence?**

2. Whether interference of this Court is necessitated?

3. What order?

7. It is answered for the aforesaid points as under:-

Point No.1: In the Affirmative.

Point No.2: In the Negative.

Point No.3: As per final order below, for the following,

R E A S O N S

8. **Points No.1 and 2**: Both these points are taken together to avoid repeated discussions.

9. **Brief facts of the Complaint is as follows:**

It is alleged in the complaint that, the accused obtained hand loan of Rs.2,50,000/- for business purpose from the complainant. The complainant demanded to repay the arrears of loan amount of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) which the accused had borrowed and accused issued a Cheque for Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) dated 27.04.2023 in favour of the complainant under cheque No.015684, drawn on South Canara Dist. Central Co-Op. Bank Ltd., Panja Branch, Sullia Taluk, D.K. When the complainant presented the cheque for collection before his banker the SCDCC Bank, Panja Branch, Sullia D.K., the said cheque was dishonored and returned to the complainant unpaid assigning the reason "Insufficient Funds" with a Memorandum dated 27.04.2023. The complainant has issued the notice, even after notice, the accused has not repaid the amount. Hence, complainant filed the present complaint.

10. Perused entire order sheets, complaint filed U/sec.200 of Cr.P.C., for the offence punishable U/sec.138 of N.I Act, examination-in-chief Affidavit of the Complainant, Plea of accusation, contents of exhibited documents at Ex.P-1 to 5. However no documents produced and got marked on of the accused. There is no procedural defect of any nature while conducting trial relating to private complaint registered for the offence punishable U/sec.138 of N.I. Act.

11. So far as appreciation of evidence is concerned, Complainant is examined as PW-1. The PW-1 has reiterated averments of Complaint in his examination-in-chief. Ex.P1 is Cheque dated 27.04.2023, Ex.P.2 is Bank endorsement, Ex.P.3 is Postal receipt, Ex.P.4 is Lawyer's notice and Ex.P.5 is Postal acknowledgment. PW-1 in his evidence has categorically and unequivocally deposed that,

accused had issued cheque. Upon presentation, the same dishonored. Even after notice, the accused has not repaid the said amount. Therefore, the complainant has successfully discharged the initial burden of proof casts under Section 138 of N.I. Act. Thereafter, burden shifts on the Accused as per presumptions under Sections 118 and 139 of N.I. Act in the form of reverse onus on the Accused to rebut the presumptions.

12. The Accused appeared before the Court and he was enlarged on bail. The Accused has contended that there is no amount due from the accused. Accused has completely repaid the amount. The complainant has misused the

cheque. During the cross examination of PW.1, nothing has been elicited from the mouth of PW1 to disprove the contention of PW.1.

13. It is settled principle of law as held by House of Lords in Vickers Sons and Maxim Ltd., Vs. Evans (1910) AC 444 as quoted with approval by the Hon'ble Apex Court in Jamma Masjid, Mercara Vs Kodimaniandra Deviah and Others AIR 1962 SC 847 and reiterated in Shiv Shakti Co-operative Housing Society vs Swaraj Developers, AIR 2003 SC 2434 and in catena of decisions that the court cannot read anything into a statutory provision which is plain and un-ambigious.

14. On bare perusal of the object of the Negotiable Instruments Act, it shows that the main object of the Chapter introducing dishonour of cheque on account of insufficiency of funds as penal offence in the Act is to enhance the acceptability of cheque. In order to attract the ingredients of Sec.138 of NI Act, the complainant needs to

prove that the cheque drawn by a drawer of the cheque on an account maintained by him issued to the payee in discharge of any debt or other liability, cheque is presented to Bank within three months of the date of cheque and returned by the drawer bank as unpaid, complainant has made a demand for the payment of the said amount of money by giving a notice in writing within 30 days of receipt of information of dishonour by the Bank, and the drawer of such cheque has not made the payment of the said amount of money to the payee within fifteen days of the receipt of the said notice, then such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.

15. It is well settled principle of criminal jurisprudence that a criminal trial proceeds on the presumption of innocence of the accused. An accused is presumed to be innocent unless proved guilty. It is the complainant/

prosecution to prove the guilt of the accused beyond reasonable doubt. However, in respect of offence under Section 138 of the Act, although there is a reverse onus clause contained in Sections 118 and 139 of the Act, the initial burden is on the Complainant.

16. It is also a settled proposition of law that the standard of proof which is required from the accused to rebut the statutory presumption under Section 118 read with Section 139 of the Act is preponderance of probabilities. The accused is not required to prove his case beyond reasonable doubt. This onus on the accused can be discharged from the materials available on record and from the circumstantial evidences or even by admissions in the cross-examination of complainant and his witnesses.

17. In K. Bhaskaran Vs. Sankaran Vaidhyan Balan reported in AIR 1999 SC 3762, the Apex Court held that once the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the N.I. Act can legally be drawn to infer that the cheque

was made or drawn for consideration on the date which the cheque bears.

18. In Rangappa Vs. Sri Mohan reported in AIR 2010 SC 1898, a three judges' bench of the Supreme Court held that that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the Cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post-dated cheque is a well recognized mode of payment.

19. In K.S. Ranganatha Vs. Vittal Shetty reported in 2021 SCC OnLine SC 1191, a three judges' bench of the Supreme Court held that once the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the

cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. It is further held that the position of law makes it crystal clear that when a cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards a consideration which is a legally recoverable amount; such presumption of course, is rebuttable by proving to the contrary. The onus is on the accused to raise a probable defence and the standard of proof for rebutting the presumption is on preponderance of probabilities.

20. M/s.Kalemani Tax Vs. Balan (Crl.A.No.123/2021) (LL 2021 P.75) decided on 10.02.2021, a three judges' bench of the Supreme Court has observed that 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.

21. Applying the above said principles to the present case and before considering the point whether the Accused has succeeded to rebut presumptions and to establish his defence to the extent of probabilities, it is just and necessary to accumulate undisputed facts in this case.

22. It is not in dispute that bounced Cheque belongs to the bank account of the Accused. It is also not in dispute that, signature appearing on the bounced Cheque is the signature of the Accused. It is also not in dispute that, the cheque presented by the complainant came to be dishonoured by the banker of the accused for the reason stated in the dishonour memo.

23. To consider whether the Accused has succeeded to rebut the presumption and established his defence to the extent of probabilities, though accused has contended that, he has repaid the amount, he has failed to establish his defence. During recording of the Plea u/s.255 of Cr.P.C, the Accused has denied the accusation and claimed to be tried. Thereafter, during recording the Statement u/s.313 of

Cr.P.C., he has denied the allegations and submitted that he has got evidence.

24. It is the contention of the accused that he had sold car bearing registration number KA-21-Z-493 to the complainant. At the time of selling the Car, he had kept his cheque in the dashboard of the Car which was sold to the complainant by the accused. The complainant has misused the said cheque. However, though he has been examined as DW1, he has not produced any documents on the same with respect to his contentions or not led any further evidence. During the cross-examination, it is suggested that as complainant was working in SCDC Bank, he has got the cheque in the name of accused and misused the same. It is also suggested that the accused has signed the signature of accused on the cheque and misused the cheque. During the cross-examination, complainant has denied that some of the documents belonging to accused was in the Omni Car sold by the accused to the complainant and the same has been misused. During the evidence of accused as DW1, it is contented that the

accused had given three signed black cheque to complainant and the same has been misused. During the cross-examination of DW1 by counsel for complainant, the accused has admitted that Exhibit P1 cheque belongs to him and Exhibit P1(a) is his signature. Therefore, the Trial Court has rightly held that, the Accused has not rebutted the presumption arisen u/s.139 of the N.I Act.

25. In addition to that, the Accused didn't produce any documents to show that, the accused filed any complaint before jurisdictional police against complainant for misuse of the cheque. The Accused did not produce any documents to show that he has filed any private complaint before the jurisdictional Magistrate in this regard. The Appellant/Accused did not produce any documents to establish the fact that, he has repaid the cheque amount to Respondent. On the other hand, the oral and documentary evidence adduced by the complainant, it is proved that the accused issued the cheque for legally recoverable debt.

26. This Court has compared reasons assigned by the

Trial court in the Impugned Judgment of Conviction as discussed above with the allegations made in the Memorandum of Appeal. No grounds are made out in the Memorandum of Appeal to interfere with the Impugned Judgment of Conviction. The trial Court has rightly passed the Judgment and Order of Conviction.

27. So far as quantum of punishment is concerned, fine of Rs.2,55,000/-. was imposed for dishonor of cheque for Rs.2,50,000/-. In default of payment of fine, the Accused was directed to undergo simple imprisonment for Six months. Out of the fine amount, Rs.2,50,000/- is ordered to be paid to Complainant by way of compensation and Rs.5,000/- to the State Exchequer. Fine amount imposed is within the purview of Section 138 of N.I Act. Appellant/Accused has failed to show that the sentence imposed is excessive. The Appellant/Accused has failed to show that the quantum of fine imposed is exorbitant. There is no merit in the Appeal. Order under appeal is sustainable in law. Hence, interference of this court is not necessary. Accordingly, Point No.1 is answered in the

'*Affirmative*' and Point No.2 is answered in the '*Negative*'.

28. **Point No.3:-** In view of findings on the above Point Nos.1 and 2, this Criminal Appeal is devoid of merits and the same is liable to be dismissed by confirming impugned Judgment of Conviction and Order of sentence. Hence, following order is made:

O R D E R

Invoking the provisions of Section 386 of Cr.P.C., this Criminal Appeal filed U/sec.374(2) of Cr.P.C., is hereby dismissed.

The Impugned Judgment of Conviction and Order of Sentence in C.C. No. 427/2023 dated 26.03.2025 on the file of Court of Civil Judge and J.M.F.C., Sullia is hereby confirmed.

Appellant/Accused is hereby directed to appear before Trial Court to deposit the fine amount or to serve the sentence.

Office is hereby directed to send the true copy of this Judgment along with TCR's to the above said Trial Court for necessary information and action, forthwith.

(Dictated to the steno, directly on Computer and corrected by me and then pronounced in the open Court today, this **17th day of July, 2026**.)

(Sadananda Nagappa Naik)
V Addl. District and Sessions Judge,
Mangaluru (Sitting at Puttur, D.K.)

Sadananda Nagappa Naik

Digitally signed by Sadananda Nagappa Naik
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