KACB010000172026

Presented on : 06-01-2026
Registered on : 06-01-2026
Decided on : 01-08-2026
Duration : 06 months 26 days

# IN THE COURT OF PRL. DISTRICT AND SESSIONS JUDGE, AT : CHIKKABALLAPURA

Dated this the 1st day of August 2026

Present

***Sri. T.P.RAMALINGE GOWDA,***

***B.Sc., LL.M., M.B.A.***

***Principal District & Sessions Judge,***

***Chikkaballapura.***

**Criminal Appeal No.1/2026**

**APPELLANT/S:**

Balu B
Basappa Shetty,
aged about 57 years,
r/at #206, 2nd floor,
IRIS Block, Pavani Residency,
Puttenahalli,
Bengaluru – 560064.

(**Represented by Sri.H.B.G., Advocate**)

//Versus//

**RESPONDENT/S:**

Rajashekara K.M.
s/o Mahadevappa,
aged about 48 years,
r/at #48, 1st floor,
B-Block, 5th cross,
Thirumala Nagar,
Attur layout, Yalahanka,
Bengaluru – 560064
Also r/at Thumukalahalli village,

Nandi hobli,
Chikkaballapura taluk & District.
(**Represented by Sri.M.J.R., Advocate**)

## JUDGMENT

This is an appeal preferred under Section 415 of BNSS by the accused in C.C.No.1064/2022 questioning the legality and correctness of the judgment of conviction and sentence, dated 09.12.2025 passed by the II-Addl. Senior Civil Judge & JMFC, Chikkaballapura, wherein he had been convicted for the offence punishable under section 138 of Negotiable Instruments Act (Herein after referred in short as ***'NI Act'***) by the learned Magistrate.

2. For the sake of convenience, the parties are referred as per their rank before the trial court.

3. The necessary facts in brief of the complainant's case are as under:

The accused and complainant are known to each other. The accused has approached the complainant during the month of October 2020 and sought for financial assistance for a sum of Rs.3,00,000/- to fulfill his family and legal necessities. He has also assured the complainant that if aforesaid sum were lent, he would repay the same within three months. The complainant by taking into consideration long acquaintance with the accused paid a sum of Rs.3,00,000/- to him. At the time of receiving the said loan the accused had issued a post dated cheque bearing No.708033 for a sum of Rs.3,00,000/- drawn at State Bank of India, Yalahanka 4$^{th}$ phase main road, Yalahanka New town, Bangalore, dated 28.12.2020. As per the assurance of the accused the complainant presented the said cheque for encashment through his banker State Bank of India, Chikkaballapura branch on 28.01.2021. But the said cheque was dishonoured with an endorsement, dated 29.12.2020 that “Insufficient Funds”. The said fact was brought to the notice of the accused. Even after the said fact was brought to the notice of the accused, he was neglected to repay the amount due for complainant. Therefore, the complainant has issued a legal notice, dated 11.01.2021 demanding the repayment of loan rendered by him. The said notice was duly served on the accused. Even after receipt of the said notice the accused neither paid the amount nor replied to the notice issued by the complainant. Thus, the accused has committed an offence punishable under Section 138 of Negotiable Instruments Act. On these grounds complaint came to be registered.

4. Trial court after recording the sworn statement of complainant took cognizance and registered the case as C.C.No.1064/2022. In pursuance of service of summons, the accused appeared before the trial court and released on bail. His plea was recorded. Accused claimed to be tried.

5. In support of his case the complainant was examined as Pw.1 and got marked 5 documents as per Ex.P1 to P5.

6. After closure of complainant's side evidence, accused has been subjected for examination as required under Section 313 of Cr.P.C. in order to enable him to offer any plausible explanation about the incriminating evidence and circumstances brought by the complainant against him during trial. Accused has denied the entire case of the complainant as false and he has chosen to lead defence evidence. In support of his case, the accused has been examined as Dw.1 and got marked one document as per Ex.D1.

7. The learned Magistrate on appreciating the oral and documentary evidence found the accused guilty of the offence punishable under Sections 138 of Negotiable Instruments Act. Accordingly, he has convicted the accused for the above said offence by

sentencing him to pay fine of Rs.3,05,000/- and in default to undergo simple imprisonment for a period of 3 months. Further out of the said amount, Rs.3,00,000/- is ordered to be paid to the complainant and it was ordered to adjust Rs.5,000/- towards the exchequer.

8. Being aggrieved by the said judgment of conviction and sentence, it has been challenged by the appellant/accused on the following grounds:

It is contended that the trial court has committed grave error in law and facts and as such the conviction and sentence is bad in law. The trial court is manifestly erroneous in relying upon the arguments of the respondent and accepting the evidence for convicting the accused. The trial court seriously erred in not applying its mind to the rulings of the Hon’ble Apex Court regarding the presumption drawn on the conduct of the accused. The trial court has not provided sufficient opportunity to cross-examine Pw.1. The trial court has seriously erred in not observing and appreciating the fact made out by the appellant/accused that the appellant/accused had not issued the cheque to the respondent. The accused has rebutted the presumption under Sections 118 and 139 of N.I. Act by cross-examining the complainant.

The complainant failed to substantiate the legally enforceable debt and liability. Hence, the accused is entitled for acquittal, but the same is not considered by the trial court. Therefore, he has prayed to allow the appeal.

9. Heard the arguments on both sides.

10. Being heard the arguments and perused the record, the points that arise for my consideration are:

> 1) Whether the complainant has proved his case beyond reasonable doubt that he has paid a sum of Rs.3,00,00/-, for which he has issued the impugned cheque, dated 28.12.2020 towards repayment of the said amount and the same is dishonoured and thereby he has committed an offence punishable under Section 138 of Negotiable Instruments Act?
>
> 2) Whether the appellant proves that the impugned judgment is not proper and correct and thereby calls for interference?
>
> 3) What order?

11. My finding to the above points are as follows;

Point No.1: ***In the Affirmative.***

Point No.2: ***In the Negative.***

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

**REASONS**

12. **Point No.1 & 2**:- As both the points are interconnected with each other, they are taken together for common discussion in order to avoid repetition of facts and evidence.

13. Before proceeding to appreciate the case and defence, it would appropriate to refer the provisions of law under Section 118 and 139 of Negotiable Instruments Act, which reads as under;

***"118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—***

***(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;***

***(b) to (f) **********

***(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by***

> ***means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.***
>
> **"139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability".**

14. *Thus, meaningful reading of Section 118 of N.I. Act would indicates that the negotiable instrument like cheque, DP note and any other documents would carries presumption in their favour that they are issued for consideration. Presumption can also be drawn about the date, amount mentioned therein, the contents and signature of drawer etc. Similarly, Section 139 of N.I. Act would envisaged that, unless the contrary is proved court shall presume that every cheque is issued towards repayment of debt or liability in full or part. The said presumption is not a conclusive presumption, rather it is a rebuttable presumption and thereby it can be rebutted by the accused by offering any plausible explanation or by adducing proof that the said cheque was not issued towards repayment of debt or liability. Here it is worthy*

*to mention that the standard of proof in respect of case of the complainant and defence of accused are not one and the same, rather it varies.* ***Therefore, it is trite law that like that of prosecution, the complainant must be proved his case beyond reasonable doubts. Whereas accused is required to be established his defence on the principles of preponderance and probabilities and not on the principles of beyond reasonable doubt.***

15. *At the same time it is also required to be kept in mind that, as has been enunciated by the Hon'ble Apex Court in case of* **Rangappa v. Mohan; 2010(11) SCC 441** *and reiterated in catena of decisions,* ***"accused is need not bound to step into the witness box to give evidence in support of his defence. Rather he can very well demolish the case of the complainant on the basis of materials available on record or by eliciting admissions from the mouth of complainant, which are contrary to the complaint averments".***

16. By keeping in mind the aforesaid provisions of law and well settled principles of law, let me critically examine the case of the complainant with that of defence set up by the accused. In this case the complainant examined himself as Pw.1 and reiterated the very

averments of the complaint. He has produced 5 documents as per Ex.P1 to P5. Ex.P1 is the original cheque, dated 28.12.2020. Ex.P2 is the endorsement issued by the bank stating that "Funds Insufficient". Ex.P3 is the copy of legal notice, dated 11.01.2021. Ex.P4 is the postal receipt and Ex.P5 is the postal acknowledgment. All these documents shows that the impugned cheque, dated 28.12.2020 issued to the complainant towards repayment of loan amount has been dishnoured, when it was presented for encashment with an endorsement "Funds Insufficient". Even after issuance of legal notice, dated 11.01.2021 i.e., within the statutory period, accused failed to repay the said amount. Consequently, it can be held that, complainant has proved all the necessary ingredients of Section 138 of N.I. Act. In the result, presumption available under Section 139 of N.I. Act should required to be drawn in favour of complainant and accordingly, it was drawn by the trial court.

17. Though the accused has cross-examined Pw.1 at length, nothing worth has been elicited to disprove the issuance of Ex.P1 cheque to the complainant towards repayment of the loan amount.

18. On the otherhand, the accused was examined himself as Dw.1 before the trial court and deposed that he has given the impugned cheque to one Prakash when he was working at Adichunchanagiri college as he had a financial transaction with him in the year 2017-18 and the said Prakash was died in October 2019. But the complainant has filed the complaint in October 2020 stating that he had paid loan to him. Further stated that he was admitted to hospital in the month of September 2020 on account of COVID-19 and he was in quarantain in the month of October 2020. Therefore, there was no chance of payment of loan by the complainant as he was unable to went outside the house at the time of quarantain. But later he has stated that he doesn’t know how the impugned cheque went into the hands of complainant. In support of his evidence the accused has produced a discharge summary pertaining to Aster CMI hospital, Bangalore as per Ex.D1.

19. Except the above said document the accused has not produced any other documents to show that he is not in need of availing any loan from the complainant and he doesn’t know the complainant. Infact, during cross-examination of Pw.1 it has been suggested and admitted in an unequivocal and unambiguous terms that this accused acquired the

friendship of complainant through the aforesaid Prakash. Which undoubtedly indicates that complainant and accused are not strangers, rather they are well known to each other even prior to the date of alleged loan transaction. Not only that during cross-examination of Pw.1 it is also suggested and denied that impugned cheque at Ex.P1 was issued to the said Prakash and not to the complainant. Even as per the evidence of accused the said Prakash was died in the year 2019. When the matter stood thus, if at all the impugned cheque was issued to Prakash, why he has not withdrawn the impugned cheque from the family members of Prakash is not at all explained.

20. Not only that, in his cross-examination Dw.1 has specifically admitted about service of legal notice at Ex.P3 issued by the complainant and in turn he has not given any reply to the said legal notice. Here it is worthy to mention that if at all the impugned cheque was not issued to the complainant, absolutely nothing prevents him to issue reply notice by denying the issue of cheque to the complainant and raising his probable defence. But for the reasons best known to him accused has not at all bothered to issue reply by denying the very issue of impugned cheque. Added to this he has further admitted that he did

not given any complaint to the college in which the complainant is working as Professor stating that the complainant had misused his cheque. In view of the above said admissions of the accused in his cross-examination and in the absence of supportive documents to prove the defence set up by the accused, this court has no other option except to hold that accused has issued the impugned cheque towards repayment of dues towards him as provided under Section 139 of NI Act.

21. That apart, during cross-examination of Pw.1 it is suggested and argued that complainant has not produced any documents to show his capacity to lend loan to the accused. But Pw.1 has stated that he is working as a Professor and getting monthly salary of Rs.1,10,000/-. Infact accused himself admitted that complainant is working in the SJCIT college, that itself shows the source of income of complainant. Here it is worthy to mention that if at all really no financial transaction was existing between the complainant and accused, why he has not taken any probable steps against the complainant regarding alleged misuse of cheque is not at all explained. It is well settled that once the accused has admitted the impugned cheque and signature found on it

are belongs to him, then it is his bounden duty to prove before the court under what circumstances it was pass on to the hands of complainant. But on this respect except pleading his ignorance in his chief examination, he has not at all taken any recourse to law being an ordinary prudent man to ensure his safety. As such, viewed from any angle the defence set up by the accused is not probable. Under these factual scenario, it can be held without any kind of hesitation that accused has taken false defence before the court as an afterthought just to escape from his liability. Being appreciated all these crucial aspects the trial court has rightly believed the case of the complainant and accordingly convicted the accused.

22. For the detailed discussions made above and conclusion arrived, in the considered opinion of this court the appellant/accused has not at all made out any legal grounds to interfere with the impugned judgment. At this juncture, I would like to mention the ratio laid down by the Hon'ble Apex Court in case of ***State of Karnataka v/s Hema Reddy AIR 1981 SC 1417,*** wherein their lordships have held that ***"Where the appellate court agrees generally with the view of trial court, it is not necessary for the appellate court to repeat the narration***

***of the evidence or to reiterate reasons given by trial court”*** In view of the same, this court has not discussed the findings and the reasons assigned by the Trial court. Rather, this court being the first appellate court has re-appreciated the facts and evidence available on record in the light of the settled principles of law. In the result, the impugned judgment is well considered and well reasoned one, thereby this court finds no reasons to interfere with the impugned judgment. Consequently, the same is required to be confirmed. On the otherhand, appeal being sans merit liable to be dismissed. ***Accordingly, point No.1 is answered in the affirmative and point No.2 is answered in the negative.***

23. **Point No.3**: In view of my findings on point No.1 and 2, I proceed to pass the following;

**ORDER**

Appeal filed by the appellant/accused under Section 415 of BNSS, 2023 is hereby dismissed.

Consequently, the judgment of conviction and sentence passed by the II-Addl. Senior Civil Judge & JMFC, Chikkaballapura in C.C.No.1064/2022, dated 09.12.2025 is hereby confirmed.

Send back the trial court records along with a copy of this judgment.

*(Dictated to the STENOGRAPHER GRADE-I directly on computer, revised and corrected by me, signed and then pronounced in the Open Court on this the 1st day of August 2026)*

T P RAMALINGE GOWDA

Digitally signed by T P RAMALINGE GOWDA
Date: 2026.08.07 14:49:15 +0530

(T.P.RAMALINGE GOWDA)
Prl. District and Sessions Judge,
Chikkaballapura.