KADK500008802025

Presented on : 21-07-2025
Registered on : 21-07-2025
Decided on : 01-08-2026
Duration : 1 year 0 month 10 days

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC, BELTHANGADY, D.K. DISTRICT

:PRESENT:

SRI. MANU B.K., *B.A.L., LL.M.,*
Senior Civil Judge & JMFC,
Belthangady, D.K. District

Dated, this the 1st day of August 2026

C.C./484/2025

COMPLAINANT: Vijaya Credit Co-Op. Society Ltd., Guruvayanakere, Kakkinje Branch, Kakkinje post, Belthangady Taluk, D.K. Represented by its Manager,
Mr. Theerthesh,
S/o. M.Babanna Gowda,

Aged 30 years,
R/at Mata House,
Puduvettu village and post,
Belthangady Taluk, D.K.

(By Sri. V.G.M Advocate)

-Versus-

ACCUSED : Mr. Iliyas Ahamad
S/o. Kizer Ahamad
Aged about 51 years,
Koppadabailu house,
Charmady village,
Kakkinja Post,
Belthangady Taluk, D.K.

(By Smt. M.B Adv.)

1.	The offence complained off	U/s 138 of N.I.Act.
2.	Plea of the accused	Pleaded not guilty
3.	Final Order	Acting U/s 278(2)of B.N.S.S, the accused is convicted.

4.	Date of final order	1st day of August 2026.

MANU BYCHANAHALLI KRISHNEGOWDA

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(MANU B.K.)
Senior Civil Judge & JMFC
Belthangady, D.K.

J U D G M E N T

The complainant has prosecuted the accused for the offence P/U/S 138 of Negotiable Instruments Act, 1881 (herein after referred as N.I. Act for brevity).

2. **The facts adumbrated are as follows:-**

The accused had borrowed loan from the complainant and owing a sum of Rs.8,65,205/-.

Therefore, when the complainant has demanded the accused for repayment of the same, he has issued cheque in question towards discharge of legally recoverable debt. When the complainant has presented the said cheque for encashment, it was dishonoured for the reason 'funds insufficient'. Therefore, the complainant has issued notice through its advocate calling upon the accused to pay the cheque amount. Albeit, the said notice is served on the accused, he has failed to comply the terms of notice and also failed to repay the loan. Therefore, the complainant has knocked the hallow portals of this court through subject complaint seeking prosecution against the accused for the offence punishable under Section 138 of N.I.Act.

3. This court after taking cognizance issued summons to accused. In response to the summons, the accused has appeared before the court and enlarged on bail. Plea for the offence punishable under section 138 of N.I. Act was read over and explained to the accused, the accused pleaded not guilty and pleads his innocence.

4. In order to probare the case of the complainant, it has examined its Branch

Manager as PW1 and produced -15- documents, which are marked and exhibited as Ex.P-1 to Ex.P-15.

5. After closure of evidence on the side of complainant, the statement of accused was recorded as per the provision u/s 351 of B.N.S.S and read over to the accused person. The accused person has denied all the incriminating circumstances appearing against him. The accused person has not adduced any evidence.

6. Heard the arguments of erudite counsel for the complainant and the accused person.

7. **The points that arise for my consideration are as follows:-**

1. **Whether the complainant proves that the cheque issued by the accused is for discharge of legally enforceable debt and the same was returned unpaid for the reason 'Funds insufficient' and notice was not complied by the accused, as such, the accused has committed an offence P/U/S 138 of N.I. Act?**

2. **What order?**

8. My findings on the above Points are;

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

Point No.2: **As per final order** for the following:

<u>REASONS</u>

9. **<u>Point No.1:</u>** Before embarking upon the facts of the case, let me ascertain the essential elements which constitute an offence punishable under section 138 of N.I. Act. In order to constitute an offence p.u.s 138 of N.I. Act, the complainant is required to establish few essential ingredients. Those essential ingredients are, a person must have drawn a cheque on, an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account. The cheque should have been issued for discharge in whole or in part, of any debt

or liability, that the cheque has been presented to the bank within time and cheque was returned unpaid for the reason funds insufficient or account blocked or other reasons in the account of drawer of the cheque. The complainant is also required to establish that the notice was not complied by the accused. By considering the above elements as basic touchstone, now let me evaluate the factual matrix of this case.

10. In order to demonstrate the case of the complainant, it has examined its Branch Manager by name Theerthesh as PW1. During the course of his evidence, he has echoed the

averments of complaint and produced 15 documents, which are marked and exhibited as Ex.P1 to Ex.P15. Thereafter, he has been subjected to the litmus test of cross examination.

11. In the cross examination of PW1, he has testified that the Ex.P3 notice has been issued on the basis of information given by him. The accused has borrowed loan twice from the complainant society and he has borrowed wherewithal of Rs.6,00,000/-. The accused has issued cheque in question towards the discharge of legally recoverable debt. On careful marshaling of entire cross examination

of PW1, what would unmistakably emerge is that the accused has not disputed the issuance of cheque from his account and also not disputed the signature found on the cheque. Ergo, the initial presumptions as adumbrated under Section 118 and 139 of N.I.Act are to be raised in favour of the complainant.

12. In order to turn down the case of the complainant, the accused has not stepped into the witness box nor he has issued reply to the notice issued by the complainant. However, in the course of cross examination of PW1, few obfuscations have been generated by the accused. Therefore, it is now germane to

ascertain the case of the complainant so as to evaluate whether those obfuscations have been steer cleared by the complainant or not.

13. The complainant has contended that the accused has borrowed wherewithal and owing a sum of Rs.8,65,205/-. The factum of loan borrowed by the accused and due of cheque amount were not disputed even in the test of cross examination of PW1. Further, the PW1 has produced certified copy of loan application as Ex.P8, receipt as Ex.P9, agreement as Ex.P10, letter of undertaking as Ex.P11. If those documents are read in juxtaposition, it clearly gives a facile

insinuation that the accused has filed an application as per Ex.P8 seeking for a wherewithal of Rs.6,00,000/-. The very same documents would ushered the factum of tendering loan of Rs.6,00,000/- by the complainant to the accused. The Ex.P9 to Ex.P11 would also coalesce the contention of the complainant regarding execution of agreement and other documents by the accused by agreeing to repay the loan. Therefore, those documents coupled with ocular evidence of PW1 would clearly ushered the case of the complainant vis-a-vis aforementioned contention.

14. The complainant further contended that when it has demanded the accused for repayment of loan, he has issued cheque in question, which was unequivocally dishonoured and consequent notice has not been complied. The very same fact has been echoed in the evidence of PW1. Further, the PW1 has produced cheque dated 22-04-2025 as Ex.P1, endorsement dated 24-04-2025 as Ex.P2, notice dated 06-05-2025 as Ex.P3, postal receipt as Ex.P4 and postal acknowledgment dated 13-05-2025 as Ex.P5. Thereafter, the instant complaint came to be lodged on 21-06-2025. The dates and events as narrated supra would

unveiled the factum of due compliance of proviso(a) to (c) of Section 138 of N.I.Act and sec 142(1)(b) of NI Act. Further, those documents would unequivocally manifest the factum of issue of cheque by the accused, dishonour of cheque as well as non-compliance of statutory notice. Therefore, the entire contentions urged by the complainant stands manifested.

15. If the cross examination of PW1 is seen in its entirety, the accused has contended that the amount mentioned in the cheque was not due. Therefore, to topsy-turvey such contentions of the accused, the complainant

has produced loan statement as Ex.P14 and loan adjustment statement as Ex.P15. If those documents are read in juxtaposition, it depicted with unmistakable poignancy that what the accused raised in the course of cross examination is nothing but a figment of imagination. Whereas, on fusion of Ex.P14 and Ex.P15 would ushered the factum of owing liability of the cheque amount. Therefore, the Ex.P14 and Ex.P15 are also corroborate the case of the complainant.

16. On careful marshaling of entire cross examination of PW1, no substantial defences were raised. The accused has taken a

contention with respect to authority of PW1 to issue notice as per Ex.P3, but the said contention has failed to find anchorage in law. The other defences are mere possible defences, but not probable defences. Therefore, there is nothing on record to turn down the case of the complainant.

17. On the bed rock of discussion made supra, on perusal of material on record, what would unmistakably emerge is that the accused has borrowed a wherewithal of Rs.6,00,000/- from the complainant by filing application as per Ex.P8. The accused has also executed few documents as Ex.P7 to Ex.P11 by agreeing to

repay the loan. But alas, he has failed to repay the loan, which clearly depicted in the Ex.P14 and Ex.P15. Therefore, when the complainant has demanded the accused for repayment of loan, he has issued cheque in question by making a hallow promise that it will be honoured on its presentation. But alas, when the cheque was presented for encashment, it was dishonoured and consequent notice has not been complied. The complainant has produced all the cogent oral and documentary evidence and manifested its case. Albeit, the accused has conducted the test of cross examination of PW1, but he has failed to topsy-turvey the case of the complainant. Therefore, this court is of the view that the complainant has unequivocally manifested its case with unmistakable poignancy. Ergo, the accused is liable to be convicted.

18. It is trite law that the complainant is entitled for compensation along with interest. While passing an order of sentence, the court shall also pass an order to pay future interest at the rate of 9% per annum on the compensation amount. In this regard, it is now germane to rely upon the Judgment of **Hon'ble High Court of Karnataka reported in NC:2025:KHC:25140, Crl.R.P. No.996/2016 (M/S**

Banavathy & Company vs Mahaeer Electro Mech (P) Ltd)

21. In case lesser interest is awarded and only default sentence is imposed, the rigor of offence under Section 138 will be diluted and thereby the object of the Statute will be defeated. If recovery and compensatory part is not taken care of while determining the quantum of sentence and appropriate interest is not awarded, until the date of recovery of the entire amount, the complainant will be forced to file civil suit on the same subject matter. In view of Section 143(3) the trial for offence under Section 138 of N.I.Act has to be completed within six months. If the said provision is not adhered to and the trial for the offence under Section 138 of N.I.Act takes 4 to 5 years, in the mean time, the claim of the complainant for recovery of the cheque amount by filing civil suit becomes barred by limitation. Not only that the accused

who is convicted for offence under Section 138 of N.I.Act challenges the same before the Sessions Court wherein the matter takes 2 to 3 years. The accused unsuccessful in the said appeal prefers revision petition before the High Court and it is seen that the disposal of revision takes more than 5 years. After all this if the complainant has to receive the fine/compensation as awarded by the trial Court, if it is cheque amount or little higher than the cheque amount, he will be at loss and put to injustice. Therefore, while passing the order of sentence after determining the fine/compensation, the Court shall also pass an order to pay future interest @ 9% p.a. on the compensation amount payable to the complainant by fixing time of one/two months to deposit compensation amount so that even if the matter is challenged before the Sessions Court in appeal and High Court in revision the interest of the complainant will be protected.

19. As per the above judgment of Hon'ble High Court of Karnataka, while passing the order of sentence after determining the fine/compensation, the court shall also pass an order to pay future interest at the rate of 9% per annum on the compensation amount payable to the complainant by fixing time of one or two months to deposit the compensation amount. If the above law is juxtaposed to the case on hand, it is unequivocally clear that the complainant is also entitled for compensation with interest at the rate of 9% per annum on the compensation amount. Hence, it is

appropriate to direct the accused to pay fine of Rs.8,67,205/-. Out of the aforesaid amount, an amount of Rs.8,65,205/- with interest of 9% p.a shall be paid to the complainant as compensation. The remaining amount of Rs. 2000/- shall be defrayed to the State towards prosecution expenses. As such, for the praefatus reasons, this court is of the view that the complainant has proved its case. Hence, the accused is liable to be convicted. Accordingly, this court answering point no.1 in the **AFFIRMATIVE.**

20. **Point No.2:** In view of the findings on Point No.1, this court proceed to pass the following;

ORDER

Acting U/Sec. 278(2) of B.N.S.S, the accused is convicted for the offence P/U/S 138 of Negotiable Instruments Act.

The accused is sentenced to pay a fine of Rs.8,67,205/-. Out of recovered fine amount, an amount of Rs.8,65,205/- shall be paid to the complainant as compensation along with interest at the rate of 9% per annum from the date of this Judgment till the date of realisation.

On recovery of the fine amount, a sum of Rs.2,000/- shall be defrayed to the State towards prosecution expenses.

In default to pay the fine amount, the accused shall undergo simple imprisonment for a period of 6 months.

The bail bond and surety bond of accused stands canceled after appeal period is over.

Supply a free copy of Judgment to the accused.

(Dictated to the Stenographer, transcribed by her, transcript then corrected by me and pronounced in the Open Court on this the 1st day of August 2026).

MANU BYCHANAHALLI KRISHNEGOWDA

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Date: 2026.08.01 15:24:17 +0530

(MANU B.K.)
Senior Civil Judge & JMFC
Belthangady, D.K.

A N N E X U R E

List of witnesses examined on behalf of the Complainant's side:

PW-1: Theerthesh.M

List of documents marked on behalf of the Complainant's side:

Ex.P-1: Cheque

Ex.P-1(a): Signature of accused
Ex.P-2 : Bank endorsement
Ex.P-3 : Office copy of legal notice
Ex.P-4 : Postal receipt
Ex.P-5 : Postal Acknowledgment
Ex.P-6 : Authorisation letter
Ex.P-7 : Resolution
Ex.P-8 : C.Copy of loan application
Ex.P-9 : C.C of receipt
Ex.P-10: C.C of loan agreement
Ex.P-11: C.C of undertaking letter
Ex.P-12: C.C of loan statement
Ex.P-13: Receivable status
Ex.P-14: Mortgage loan statement
Ex.P-15: Loan Adjustment statement

List of witnesses examined on behalf of the Accused side:

-Nil-

List of documents marked on behalf of the Accused side:

-Nil-

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(MANU B.K.)
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