KADK500002662024

Presented on : 26-03-2024
Registered on : 26-03-2024
Decided on : 01-06-2026
Duration : 2 years 2 months 5 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 July 2026

C.C./189/2024

COMPLAINANT: Tailors Co-operative Society (Ltd), Belthangady
Pinto Complex, Main Road,
Belthangady,
Belthangady Kasba village,
Belthangady Taluk,
D.K.- 574214,

By its Chief Executive Officer,
Rolson Joel Moras,
S/o. Robert Moras,
Aged about 28 years,

(By Sri. F.K.V Advocate)

-Versus-

ACCUSED : Mr. Pradeep Bhandary,
S/o. B.Krishnappa Bhandary,
Aged about 45 years,
R/at Janani Nivasa,
Kuthyar Temple,
Belthangady Kasba village and post, Belthangady Taluk,
D.K-574214.

(By Sri. P.M 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 255(2)of Cr.P.C, the accused is convicted.

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

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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 in brief, now germane, are as follows:-**

The accused has borrowed loan from the complainant society. When the complainant has demanded the accused for repayment of loan, he has issued cheque in question towards discharge of legally recoverable debt. But when the complainant presented the said cheque for encashment, it was dishonoured for the reason "funds insufficient". As such, the complainant has issued notice through his advocate calling upon the accused to pay the cheque amount. But alas, the said notice has been returned as unclaimed. However, the accused has failed to comply the terms of notice and also failed to repay the wherewithal. Ergo, 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 CEO by name Rolson Joel Moras as PW1 and produced -12- documents, which are marked and exhibited as Ex.P-1 to Ex.P-12.

5. After closure of evidence on the side of complainant, the statement of accused was recorded as per the provision u/s 313 of Cr.P.C and read over to the accused. The accused has denied all the incriminating circumstances

appearing against him. The accused has not adduced any evidence.

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

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:

REASONS

9. **Point No.1:** 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 manifest the case of the complainant, it has examined its CEO as PW1.

During the course of his evidence, he has filed an affidavit in lieu of his examination in chief and examined as PW1. In the course of his evidence, he has produced as many as 12 documents, which are marked and exhibited as Ex.P1 to Ex.P12. Thereafter, he has been subjected to the litmus test of cross examination.

11. On careful scrutiny of cross examination of PW1, he has testified that, on 13.11.2021 the accused has filed an application seeking for loan. The said loan was borrowed to improve his JCB business. On 17-11-2021 the wherewithal was sanctioned. At that point

of time, the accused has submitted copy of Aadhar card, Pan card and also executed agreement. The PW1 further testified that, the term for repayment of loan was not completed as on the date of presentation of cheque for encashment. He also testified that, the complainant has issued a notice to the accused by intimating the factum of non repayment of loan. The cumulative reading the testimony of PW1 would present a lucid tableau that, the issuance of cheque and signature of the accused in the cheque are not disputed. Therefore, the factum of issuance of cheque would unequivocally manifested and depicted with conspicuous dormancy.

12. In order to maintain a complaint under Sec.138 of N.I.Act, the complainant has to manifest about the due compliance of proviso (a) to proviso (c) of Sec.138 of N.I. Act. As per proviso (a) of Sec.138 of N.I. Act, the cheque shall be presented for encashment within a period of 3 months from the date on which it is drawn or within the period of its validity, whichever is earlier. If the said preposition is paraphrased to the case on hand, it clearly unravels that, the Ex.P1 is the cheque dated 03-02-2024 and Ex.P2 is the endorsement dated

06-02-2024. The afore-narrated graphic details vis-a-vis dates and events would unequivocally manifested that, the complainant has complied proviso (a) of Sec. 138 of N.I.Act.

13. As per proviso (b) of Sec.138 of N.I.Act, if the payee or holder in due course of the cheque, as the case may be makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of cheque, within 30 days of receipt of information received from the bank regarding return of cheque as unpaid. Here in this case, the PW1 has produced endorsement issued by the Bank on dated 06-02-2024 as Ex.P2 and

notice issued by the Advocate of the complainant on dated 10-02-2024 as Ex.P3. If the afore-narrated provision is juxtaposed to the case on hand, it is abundantly clear that, the complainant has issued notice within statutory time as mentioned supra. Ergo, it can infer that, the complainant has complied proviso (b) of Sec.138 of N.I. Act.

14. As per proviso (c) of Sec.138 of N.I.Act, if the drawer of such cheque fails to make payment of money to payee or to the holder in due course of the cheque as the case may be within 15 days of receipt of notice, then as per Sec.142(1)(b) of N.I.Act, the

complaint shall be filed within one month of the date of which cause of action arises under the aforementioned provision. In order to comply the said provision, the PW1 has produced notice dated 10-02-2024 as Ex.P3, unclaimed postal cover dated 16-02-2024 as Ex.P5. Thereafter, the complaint has been lodged on 26-03-2024. The aforementioned narrative of dates and events would underpins the case of the complainant.

15. Swinging back to the case of the complainant, it has contended that, the accused has borrowed loan and issued cheque in question, which was dishonored and

consequent notice has not been complied. In order to manifest the aforementioned contention of the complainant, it has examined its CEO as PW1. In the course of his evidence, he has re-emphasized the averments of the complaint. Further, if the cross examination of PW1 is perused in its entirety, what would unmistakably emerge is that, the accused did not dispute the factum of filing application, issuance of cheque, dishonor of cheque and the issuance of notice by the complainant. Further, to coalesce the case of the complainant, it has produced loan application filed by the accused as Ex.P7, copy of agreement executed by accused as Ex.P8, receivable status as Ex.P9 and notice as Ex.P10. On conglomeration of those documents, it clearly unravels that, the accused has filed an application through Ex.P7 seeking for wherewithal of Rs.1,00,000/-. The very same document would exhibit the factum of sanction of said loan by the complainant. The Ex.P8 would provide a perspicuous image that, the accused has executed agreement as per Ex.P8 by agreeing to repay the loan along with interest in monthly installments. But alas, the careful reading of Ex.P9 would depicted that, the accused has failed to comply the terms of agreement in payment of installments. As such, the amount mentioned in the cheque was due. In the complaint, the complainant has contended about demand made by it for repayment of loan. To usher the case of the complainant, it has produced Ex.P10 notice which clearly coalesce the aforementioned contention of the complainant with imbued clarity. As such, on harmonious synthesis of those facts, circumstances and evidence would unequivocally established that, the complainant has proved his case with luminous clarity.

16. In order to turn down the case of the complainant, the accused neither issued reply

notice nor adduced independent defence evidence. However, he has conducted the test of cross examination and raised few defences. Therefore, it is now germane to ascertain those defences. The first defence of the accused is that, the purpose of lending loan is not mentioned in the complaint. To find out answer to the said question, on marshaling of averments of the complaint, it appears that, the complainant has mentioned about the loan application filed by the accused seeking for loan. Further, the PW1 has produced Ex.P7 which clearly indicates the factum of purpose for which loan was borrowed. Further, the

PW1 has reemphasized the reason for tendering loan. Albeit, there is few discrepancy among the ocular evidence of PW1 and Ex.P7 regarding purpose of lending loan, but, those two elements would clearly depicted the reasons for lending loan. As such, the first defence of the accused is cloaked in the infirmity.

17. The second contention of the accused is that, the complaint is not maintainable as the complaint has been filed at the premature stage. It is galored that, the time for repayment of installment was available to the accused, but the complaint has been filed

before expiry of installment period. But in the cross examination of PW1, he has clearly testified that the accused has failed to pay the installments, hence the complainant has issued notice as Ex.P10 by demanding the accused for repayment of loan, as such he has issued cheque in question. Further, the PW1 produced the agreement as Ex.P8. On perusal of condition No.7 of said Ex.P8 agreement, it is clear that, the complainant can recover the entire amount before expiry of stipulated period of installments if any conditions stipulated thereon are violated. Herein this case, the Ex.P9 would clearly manifest that, the accused has failed to pay installments as per agreed terms and conditions. As such, the complainant has exercised its power as per condition No.7 of agreement by issuing notice as per Ex.P10. As such, the case filed by the complainant is absolutely maintainable. Therefore, the chronology of events, when viewed in its entirety would unequivocally manifest that, the second defence of the accused is nothing but a futile ritual. Apart from that, the accused has not taken any substantial defence. Further, the defences urged by the accused as mentioned in the penultimate paragraph are not sufficient to turn down the case of the complainant.

18. On cumulative reading of entire oral and documentary evidence on record, what would unmistakably emerge is that, the accused has filed an application through Ex.P7 seeking for wherewithal. The said application has been allowed by the complainant and tendered loan to the accused. Ergo, the accused has executed agreement as per Ex.P8 by agreeing to repay the loan by way of installments. However, the Ex.P9 and Ex.P10 would clearly unravels that, the accused has failed to repay the loan, hence the amount

mentioned in the Ex.P9 was due. As such, as per the testimony of PW1, on receipt of Ex.P10, the accused has issued Ex.P1 in favour of the complainant. The complainant has presented the said cheque for encashment, which was dishonored as per Ex.P2 and notice issued under Ex.P3 is not complied. Moreover, the oral and documentary evidence produced by the complainant are remained unquestionably enlivened. Thus, it can infer that the complainant has proved its case with unmistakable poignancy. As such, the accused is liable to be convicted for the offence punishable under Sec.138 of N.I.Act.

19. 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.**

20. 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.1,52,340/-. Out of the aforesaid amount, an amount of Rs.1,50,340/- 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 his case. Hence, the accused is liable to be convicted. Accordingly, this court answering point no.1 in the **AFFIRMATIVE.**

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

ORDER

Acting U/Sec. 255(2) of Cr.P.C, 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.1,52,340/-. Out of recovered fine amount, an amount of Rs.1,50,340/- 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 of accused stands canceled after appeal period is over.

Cash surety of Rs.2000/- shall be forfeited to the State after expiry of appeal period.

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 July 2026).

MANU BYCHANAHALLI KRISHNEGOWDA

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(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: Rolson Joel Moras

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 cover
Ex.P-6: Authorisation letter
Ex.P-7: C.C of loan application
Ex.P-8: C.C of Loan agreement
Ex.P-9: Receivable status
Ex.P-10: Office copy of notice
Ex.P-11: Receipt
Ex.P-12: Postal acknowledgment

List of witnesses examined on behalf of the Accused side:

-Nil-

List of documents marked on behalf of the Accused side:

-NIL-

MANU BYCHANAHALLI KRISHNEGOWDA

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(MANU B.K.)
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