

IN THE COURT OF THE IV ADDL.SENIOR CIVIL JUDGE
& JMFC AT DHARWAD

PRESENT:- SRI. Rangaswamy J.
B.A.L., LL.M.,
IV Addl. Sr.Civil Judge and JMFC
Dharwad.

Dated this the 31st day of August 2026.

C.C. No.1458/2022

Complainant : Smt.Anita W/o Sanjay Shetty
Age:48 years, Occ: Household,
R/o: Kempageri Oni, Line Bazar,
Tq & Dist:Dharwad.

(By Sri.S.R.H, Adv)

-Vs-

Accused : Sri.Sanjay Shetty
Age:51 years, Occ: Business,
R/o: 601 Gladoly CHS, Opp.Yari Road,
Panch Marg, Versova Soc.Ltd.
Andheri (West), Mumbai – 400061.

(By Sri.P.P.J, Adv)

J U D G M E N T

This is a private complaint filed by the complainant
against the accused for the offence punishable **U/s 138**
of Negotiable Instruments Act.

2. The case of the complainant is that, accused is the husband of the complainant, but there is no cordial relationship between accused and the complainant. Due to the wedlock, complainant and accused is having one male child, he is aged about 17 years. There was criminal case and maintenance recovery proceedings and also divorce case is pending between accused and complainant. Due to the intervention of the elders, matter has been settled between accused and complainant and accused agreed to pay an amount of Rs32,64,000/- towards permanent alimony and maintenance to the complainant. Accordingly, accused had issued 3 cheques for Rs.10,00,000/-, Rs.11,20,000/- and Rs.10,00,000/- of ICICI Bank of Surat Varachha Branch.

2(a) When complainant presented the said **cheque bearing No.143865, dated 28.02.2018 for Rs.10,00,000/-** to her bank ie., **Karnataka Bank, Shivanandnagar branch, Dharwad** the said cheque was

returned on **11.05.2018** with an endorsement as “**Funds Insufficient**”. Thereafter, complainant issued legal notice on 26.05.2018. Said notice was received by the accused on 29.05.2018. In spite of service of notice, accused did not make arrangement to pay the amount mentioned in the cheque within the stipulated time. Hence the complainant presented this complaint.

3. After filing of this complaint, court ordered to register the case as P.C.R. and after recording the sworn statement of the complainant, the Court took cognizance of the offence punishable U/s 138 of Negotiable Instruments Act and ordered to register a criminal case against the accused for the offence punishable U/s 138 of Negotiable Instruments Act and ordered to issue summons to the accused. After service of summons, the accused appeared through his counsel and got himself enlarged on bail.

4. This case was initially numbered as CC No.588/2018 and the same was pending before I

Addl.Civil Judge and JMFC., Dahrwad and the same was transferred to this Court on 25-05-2022 and renumbered as CC No.1458/2022.

5. The substance of accusation of the offence punishable U/s 138 of Negotiable Instruments Act read over and explained in the language known to the accused, he pleaded not guilty. The complainant by examining herself as PW.1 got marked **Ex.P1 to P5**. The statement of accused as required **under Section 313 of Cr.PC** is recorded. However, accused not led defence evidence.

6. I have heard the arguments of counsel for complainant and perused the material available on record.

7. Now in deciding this case, the points that arise for my consideration are as under :

1.	<i>Whether the complainant proves that, the</i>
----	--

	<i>accused had issued cheque bearing No.143865 dated 28.02.2018 for a sum of Rs.10,00,000/- drawn on ICICI Bank for legally recoverable debt/liability ?</i>
2.	<i>Whether the complainant further proves that, the cheque issued by the accused got dishonoured on presentation and thereafter in spite of notice issued by the complainant, the accused failed to repay the cheque amount and thereby committed offence punishable under Section 138 of Negotiable Instruments Act ?</i>
3.	<i>What order ?</i>

8. My findings on the above points are as follows:

Point No.1:	In the Affirmative.
Point No.2:	In the Affirmative.
Point No.3:	As per the final order, for the following:

REASONS

9. **POINT NO.1& 2:-** As these Points are interlinked with each other, therefore to avoid repetition of facts they are discussed together.

9(a). The complainant in order to prove her case, examined herself as CW.1 and got marked **Ex.P1 to P5**. The complainant in her chief examination reiterated all the averments made in the complaint.

9(b). Ex.P1 is cheque dated 28.02.2018 bearing No.143865 drawn for Rs.10,00,000/-. Ex.P2 is the bank memo dated 11.05.2018, it recites that, the cheque was returned for the reason "**Funds Insufficient**". Ex.P3 is the office copy of legal notice dated 26.05.2018. Ex.P4 is the postal receipt. Ex.P5 is copy of track consignment.

9(c). P.W.1 in the sworn statement has stated that, on presentation of the cheque dated **28.02.2018** issued by the accused, same was dishonoured on

11.05.2018, the complainant issued legal notice to the accused on **26.05.2018**, despite it, the accused did not make arrangement to pay the amount mentioned in the cheque within the stipulated time and also sought to draw presumptions under Section 118 and 139 of Negotiable Instrument Act, thereby sought to convict the accused.

10. For the better appreciation, Section 118 of Negotiable Instrument Act reproduced as under:-

SECTION 118:-

**Presumptions as to negotiable instrument: -
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, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

(b) as to date – that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance – that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer – that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsements – that the endorsement appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps – that a lost promissory note, bill of exchange or cheque was duly stamped;

(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 contained 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 accept 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.

11. At this stage, for the proper appreciation of the case, it is just and proper to peruse the Section 139 of Negotiable Instrument Act which reads as under:

SECTION 139:-

“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, or any debt or other liability.

On careful perusal of the above said provisions of law, it clearly reveals, until the contrary is proved, the consideration amount mentioned in the Negotiable Instrument and the date mentioned in the said instrument and endorsement made on it, are presumed that the consideration was accepted, endorsed or transferred and was made or drawn on such date and holder of the said instrument is holding the same in due course. Therefore, it is the case of the complainant that, the consideration mentioned in the cheque was due from the accused and complainant

holding the Ex.P1 in due course, therefore accused had issued Ex.P1 to clear legally recoverable amount.

12. The complainant in order to establish that, after dishonour of the cheque, she had issued notice as per provisions of Section 138 of Negotiable Instrument Act, produced Ex.P3, inspite of that accused failed to repay the said cheque amount.

13. Therefore, the complainant has presented this complaint on **27.06.2018**, which is well in time. On perusal of **Ex.P1 to Ex.P5**, it appears that, the complainant has complied with all the formalities as contemplated **under section 138 of Negotiable Instruments Act**. It is pertinent to mention here that, the accused has not attempted to dispute Ex.P1 to P5 nor denied the allegations of the complaint. Therefore, in the absence of any contrary evidence on record in favour of the accused and against the complainant, on perusal of the **Ex.P1 to Ex.P5**, it can be inferred that the accused has issued a cheque of this case mentioned above for

the legally recoverable debt availed by him from the complainant and the same is returned with an endorsement "**Funds Insufficient**" and dishonoured.

14. Further, despite providing sufficient opportunity, the accused did not choose to cross examine P.W.1 nor disputed the **Ex.P1 to P5** documents and also did not choose to lead his evidence, this itself gives rise to draw the inference that the complaint allegations against the accused regarding the debt and issuance of cheque in connection with the same as true. Further accused not made any efforts to rebut the presumptions available in favour of complainant. Therefore, the complainant successfully proved that accused had issued cheque towards permanent alimony and maintenance to the complainant and said cheque got dishonoured and inspite of statutory compliance accused failed to pay the amount. Hence, for the above stated reasons, I answered **point No.1 & 2** "**in the Affirmative**".

15. In the instant case, on 25.03.2023 complainant and accused have filed memo stating that, accused and complainant have settled case for Rs.36,20,000/-, out of which accused has paid Rs.10,00,000/- to the complainant through NEFT. Remaining amount is concerned, accused agreed to pay remaining amount in 4 installments, rest of the installments not yet paid. According to complainant, claim of complainant has been settled for Rs.36,20,000/- and Rs.10,00,000/- has been paid. Remaining amount of Rs.26,20,000/-, 3 cheques have been issued by accused according complainant. If Rs.26,20,000/- is divided into 3 parts it becomes Rs.8,73,333/-. Cheque in this case is confined only to Rs.8,73,333/-.

16. **POINT NO.3:-** The complainant has filed this complaint in respect of dishonour of cheque for **Rs.10,00,000/-**. For the offence punishable U/s 138 of Negotiable Instruments Act, the Court may sentence

the accused to undergo imprisonment upto 2 years or with fine which may extend to twice the amount of the cheque or with both. Imposing of sentence of imprisonment can be exercised if the accused is habitual offender and the object of the Negotiable Instrument Act is not to put the drawer of the cheque behind the bars, but to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in certain cases while at the same time providing adequate safeguards to prevent harassment of honest drawers. Therefore, with that object in view, I feel it proper to **impose fine only** and consequently, I proceed to pass the following:-

ORDER

Acting U/s 255(2) Cr.P.C., the accused is convicted for the offence punishable U/s 138 of Negotiable Instruments Act and she shall pay fine of Rs.8,83,334/-. In default of payment of fine, the accused shall undergo simple imprisonment for four months.

Out of the total fine amount, an amount of Rs.8,78,334/- shall be paid to the complainant towards the compensation. The rest of Rs.5,000/- amount shall be remitted to the State.

The accused shall pay the fine amount imposed above within 30 days from the date of this judgment.

Bail bonds of the accused and surety shall stands cancelled.

Office is directed to supply a free copy of this Judgment to the accused.

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in the open court on **31st day of August 2026**)

(Rangasway J)
IV Addl.Sr.Civil Judge & JMFC,
Dharwad.

A N N E X U R E

WITNESSES EXAMINED FOR COMPLAINANT :-

PW.1: Anita W/o Sanjay Shetty.

DOCUMENTS MARKED FOR COMPLAINANT :-

Ex.P.1:	Cheque.
----------------	---------

Ex.P.2:	Bank memo.
Ex.P.3:	Office copy of legal notice.
Ex.P.4:	Postal receipt.
Ex.P.5:	Track consignment.

WITNESSES EXAMINED FOR DEFENCE:-

NIL.

DOCUMENTS MARKED FOR DEFENCE:-

NIL.

(Rangasway J)
IV Addl.Sr.Civil Judge & JMFC.,
Dharwad.

For Judgment
31-08-2026

(Judgment pronounced in the open Court vide separate Judgment)

ORDER

Acting U/s 255(2) Cr.P.C., the accused is convicted for the offence punishable U/s 138 of Negotiable Instruments Act and she shall pay fine of Rs.8,83,334/-. In default of payment of fine, the accused shall undergo simple imprisonment for four months.

Out of the total fine amount, an amount of Rs.8,78,334/- shall be paid to the complainant towards the compensation. The rest of Rs.5,000/- amount shall be remitted to the State.

The accused shall pay the fine amount imposed above within 30 days from the date of this judgment.

**Bail bonds of the accused and surety
shall stands cancelled.**

**Office is directed to supply a free
copy of this Judgment to the accused.**

(Rangaswamy J)

IV Addl.Sr.Civil Judge & JMFC.,
Dharwad.