KADW050044332025

Presented on : 10-12-2025
Registered on : 10-12-2025
Decided on : 19-08-2026
Duration : 00 years, 8 months, 9 days

IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE AND CJM, DHARWAD

PRESENT

Sri. Venkatesha Naika V, B.Com., LL.B.
I Addl. Senior Civil Judge & CJM,
Dharwad

Dated this the 19th day of August, 2026

C.C. No.2351/2025

Complainant : Jai Hanuman Finance,
Myageri Oni, Navalur,
Represented by Authorized signatory
Chandrakanth S/o. Malleshappa
Badavannavar, Age : 43 Years.
Occ : Retired Soldier,
R/o. Navalur, Tq & Dist: Dharwad.

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

V/s.

Accused : Sri. Vinod Baburao Mahendrakar,
Age : 47 Years, Occ : Business,
R/o. Hanumant Nagar Road,
Ramanagar, Dharwad-580007.

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

Offence complained	U/Sec.138 of Negotiable Instrument Act
Opinion of Judge	As per final order

JUDGMENT

The aforementioned case has been registered against the accused alleging that the accused has committed the offence punishable U/Sec.138 of Negotiable Instrument Act.

2. **The sum and substance of the complainant in brief is as under :**

The complainant runs a firm under the name and style as Jai Hanuman Finance. The accused and the complainant are well acquainted with each other. The accused approached the complaint firm and availed a loan of Rs.2,30,000/- on 18.10.2022. The accused was agreed to repay within 1 year and thus paid Rs.1,30,000/- and he has a balance of Rs.1,00,000/- to repay. Hence, the complainant requested to repay the balance amount of Rs.1,00,000/-. The accused had issued a cheque bearing No.098487 mentioning an amount of Rs.1,00,000/- drawn on Karnataka Vikas Grameena Bank, Gandhi Chowk Branch, Dharwad on 25.12.2024. Believing the words of the accused the complainant has presented the cheque for collection on 07.01.2025 through the State Bank of India, Main branch, KCD Road, Dharwad, however, on 08.01.2025 the cheque returned unpaid with an endorsement that the “Funds insufficient”.

3. Soon after receipt of return of cheque the notice was issued on 15.01.2025 and the notice returned with a share that was not claimed. In-spite of service of notice the accused neither paid the amount nor replied to the notice. Hence, the complainant has filed the complaint praying criminal action against the accused and also claiming compensation of twice to the amount of cheque.

4. The complainant was examined at the initial stage by way of recording sworn statements. Perusal of the documents produced along with the complaint the cognizance was taken and summons have been issued the accused appeared and was enlarged on bail.

5. The accused was tried under summons case and thus the substance of the accusation stated the accused pleaded not guilty and has claimed for trial. The complainant was examined as PW.-1 and produced in all 08 documents and got marked as Ex.P1 to Ex.P8 and also marked the signature of the accused.

6. After closure of the evidence for the complainant, the accused statement was recorded under Section 351 of Bharatiya

Nagarik Suraksha Sanhita,2023. The accused has denied the incriminating evidence and did not choose to adduce any defence evidence.

7. Heard arguments. Perused the materials placed on record.

8. On appreciation and facts and legal aspects as revealed from the records the points that arise for my consideration are hereunder:

<u>POINTS</u>

1. **Whether the complainant proves beyond all reasonable doubt that the accused had issued the cheque bearing No.098487 as marked as Ex.P1 dated 25.12.2024 for Rs.1,00,000/- to discharge the loan obtained from the complainant and the accused has issued the said cheque knowing fully well that he has no sufficient funds to honour cheque and thereby the accused is guilty of the offence punishable U/Sec.138 of Negotiable Instruments Act, within the jurisdiction of this court?**
2. **What Order?**

9. My findings to the aforementioned points are as follows:

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

<u>REASONS</u>

10. **<u>POINT NO.1:</u>** The case of the complainant was narrated briefly at the beginning of the Judgment. Hence, to avoid repetition the facts of the complaint are not reiterated.

11. To discharge the initial burden concerned, the complainant was examined as PW.-1. The complainant has produced the cheque and marked it as Ex.P1. The counter file of the Challan marked as Ex.P2. The endorsement issued by SBI, Bank, Dharwad having regard to unpaid cheque marked as Ex.P3. The notice issued by the complainant dated 15.01.2025 marked as Ex.P4. The receipt and envelope are marked as Ex.P5 and Ex.P6. The notice kept in Ex.P6 is marked as Ex.P6(a). The loan application and demand promissory note with receipt also produced and marked as Ex.P7 and 8. The accused did not reply to the notice and paid the amount mentioned in Ex.P1 or denied issuance of cheque even while recording his statement U/sec.351 of BNSS. But the accused has denied the entire incriminating evidence as false.

12. While cross examination of PW.-1 the learned counsel for the accused has made some suggestions and the same were denied by PW.-1. At the time of cross examination of PW.-1 the specific suggestion has been made that **the accused availed a loan of Rs.2,30,000/- and out of which he has paid Rs.1,30,000/-.** The suggestion was categorically admitted by PW.-1. The suggestion made for the accused and same was admitted by PW.-1 that itself

clinches that the accused admitted the fact about availment of loan from the complainant and has paid part of the loan amount and Rs.1,00,000-00 arrears required to be paid. The fact that suggested for the accused itself whispers that the accused was availed of loan and he has not cleared the entire loan and had balance.

13. According to the complainant the accused was running business in the Dharwad city and thus considering immediate need of money the complainant lent the money. The said facts evinced through Ex.P7 and 8. Though P.W.1 was cross examined elaborately but the accused neither denied and disputed Ex.P1, Ex.P7 and 8 and the signature of the accused as reflected therein. Hence, Ex.P7 and 8 itself throws light that the accused approached the complainant and availed loan of Rs.2,30,000/-. As per the fact that suggested for the accused that it is clear that the accused has paid Rs.1,30,000/- and Rs.1,00,000/- required to be paid by the accused. Ex.D1 and 2 reveals part payment, but such payment shall be considered and adjusted to the interest accrued on said advance. The fact that suggested to P.W.1 and elicited through the mouth of P.W.1 that itself clinches that the

accused has not denied the loan transaction between himself and the complainant.

14. Further it is suggested PW1 during his cross-examination that the accused had issued Ex.P1 on 25.12.2024 and on the same day the accused had made part payment. The facts that suggested are categorically and in unequivocal terms admitted by P.W.1 Hence, one can infer that the accused availed loan of Rs.2,30,000-00 from the complainant and paid an amount of Rs.1,30,000-00 and so far to pay remaining amount concerned the accused had issued Ex.P1. Here the accused did not deny issuance of Cheque/Ex.P1 and signature reflected as Ex.P1(a). Hence, it is clear that the accused issued Ex.P1 to pay the balance amount. According to the accused, the complainant misused the Ex.P1 which is issued for the Ex.P1 given for security. The contention of the accused that Ex.P1 issued as a security itself has no force. The materials placed on record that itself indicates that the accused had issued Ex.P1 to clear legally enforceable debt. Further the accused did not try to rebut the evidence placed on record by adducing evidence or even producing substantial pieces of evidence. From over all materials placed on record and the facts that are not denied and disputed by the accused that

itself amplifies that the accused himself admitted the fact that he was availed of a loan and paid in part and he has issued Ex.P1 to discharge the loan and the complainant not misused Ex.P1 as the said cheque issued for the security. Further the accused has not denied or disputed Ex.P7 and 8. Hence, those documents further stand in support of the complainant and clinches that the accused himself approached the complainant and submitted loan application vide Ex.P7 and availed loan on executing Demand Promissory Note vide Ex.P8.

15. Since the statutory presumption as contemplated under Section 118 of Indian Evidence Act/U/Sec.139 of Negotiable Instrument Act, have not at all tried to rebut the accused with an aid of reliable and cogent evidence. All these facts clearly go to show that the accused by knowing very well that he has not maintained sufficient balance in his account and thus issued Ex.P1 in favour of the complainant and thus the cheque returned unpaid.

16. During cross examination of PW.-1 it has been suggested that after issuing cheque/Ex.P1 and during the pendency of the case the accused also paid an amount of Rs.40,000/- and said fact also admitted by P.W.1. According to

the accused, if he has not issued Ex.P1 to discharge the existing legally enforceable debt, then the reason to issue a cheque in favour of the complainant itself is not explained. According to the accused, if there was no existence of legally enforceable debt, then the significance attached behind the issuance of Ex.P1 itself is not explained.

17. Ex.P5 and 6 itself clinches that after return of Ex.P1 as unpaid the complainant issued notice and compelled to pay the amount mentioned in Ex.P1, but the accused has not explained the reason for not claiming notice and tried to pay the amount mentioned in Ex.P1. Hence, the complainant has established that the Ex.P1 belongs to the accused as issued for clearance of debt and the accused by knowing very well that there was no sufficient balance in his account to honour Ex.P1 he intentionally issued a cheque in favour of the complainant. There are three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable.

> ***(i) The cheque ought to have been presented to the bank within a period of 6 months [3 months] from the date on which it is drawn or within the period of its validity, whichever is earlier.***

(ii) The payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

(iii) The drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

18. Here the complainant has satisfied all the three conditions enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the accused. Under the facts and circumstances of the case I am of the view that there was no reason to disbelieve or distrust the ample evidence available on record that the accused issued cheque/Ex.P1 putting his signature vide Ex.P1(a) to discharge legally enforceable debt by knowing that he has not maintained sufficient balance of amount in his account to honour the cheque. Hence, I am of the view that the complainant successfully established the facts without leaving any rooms of doubt. Accordingly, point No.1 answered in the **Affirmative.**

19. **POINT NO.2:** In view of my findings to aforementioned point I proceed to pass following:

ORDER

In exercise of power conferred U/sec. 278(2) of BNSS, the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act.

The accused is sentenced to pay a fine of Rs.1,10,000-00 (Rupees One Lakh Ten Thousand Only) within 30 days from the date of this Judgment.

In default of payment of fine amount, the accused shall undergo simple imprisonment for a period of 06 months (six months).

The bail bonds of the accused and his surety stands continued till the appeal period is over.

Out of the total fine amount, an amount of Rs.1,00,000-00 shall be paid to the complainant towards compensation U/sec. 395 of BNSS.

The balance fine amount of Rs.10,000-00 shall be payable to the State towards the trial expenses.

If the accused did not pay the compensation amount and underwent simple imprisonment for six months, the same cannot prevent the complainant from recovering the compensation amount by filing necessary petition.

The office is directed to supply a free copy of the Judgment to the accused forthwith.

(Judgment dictated to the Stenographer, transcription typed by her, then corrected and pronounced by me in the open Court on this the **19th day of August, 2026)**

(Sri. Venkatesha Naika V.)
I Addl. Senior Civil Judge & CJM.,
Dharwad.

ANNEXURE

List of Witnesses examined on behalf of complainant :

P.W.1 : Chandrakant Mallappa Badavannavar.

List of documents on behalf of complainant :

Ex.P.1	:	Cheque dated 25.12.2024
Ex.P1(a)	:	Signature of accused
Ex.P.2	:	Bank Slip
Ex.P.3	:	Return memo report
Ex.P.4	:	Legal notice
Ex.P.5	:	Postal receipt
Ex.P.6	:	Registered Post
Ex.P.6(a)	:	Notice
Ex.P.7	:	Loan Application
Ex.P.8	:	Promissory note

List of witnesses for the Accused :

NIL

List of documents for Accused :

Ex.D1 and D2 : 2 passbooks (P.W-1)

(Sri. Venkatesha Naika V.)
I Addl. Senior Civil Judge & CJM.,
Dharwad.

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