KADW050059872023

Presented on : 03-10-2023
Registered on : 03-10-2023
Decided on : 02-09-2026
Duration : 2 years, 10 months, 30 days.

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 2nd day of September 2026.

C.C. No.3386/2023

Complainant : Sri.Raghavendra S/o Madevappa Ghattad
Age:39 years, Occ: Agriculture/Business,
R/o: Madanabhavi, Tq & Dist:Dharwad.
Pincode:581105.

(By Sri.I.M.S, Adv)

-Vs-

Accused : Kushal S/o Raju Hongal
Age:38 years, Occ: Goldsmith business,
R/o: Plot No.2, Abole Building, Manik Layout, 2nd Cross, Near Charantimath School, Dharwad, Pincode: 580001.
Mobile No:9148485105/9148985105.

(By Sri.B.K.M, 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 and the complainant are known to each other and both are friends. Out of intimacy, accused approached the complainant and demanded hand loan of Rs.8,00,000/- for his domestic necessity and business purpose. Accordingly, in the month of February 2020 complainant paid Rs.8,00,000/- to the accused.

2(a) Further it is the case of the complainant that, accused assured to the complainant that he will repay the same within 3 years. After lapse of stipulated period, complainant reminded the accused to repay the amount, but he postponed the same one or the other reasons. After repeated request by the complainant, accused instead of giving money, issued a

cheque bearing No.030424 of The Hubballi Urban Co-operative Bank Ltd., Dharwad branch for Rs.8,00,000/- dated 17.07.2023 and when complainant presented the said cheque to his bank ie., **KVG Bank, Madanabhavi branch,** the said cheque was returned on **24.07.2023** with an endorsement as "**Funds Insufficient".** Thereafter, complainant issued legal notice on 02.08.2023, said notice served on the accused, but accused returned the notice to sender. Inspite 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. 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 himself as PW.1 got marked **Ex.P1 to P6**. The statement of accused as required **under Section 313 of Cr.PC** is recorded. However, accused not led defence evidence.

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

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

1.	***Whether the complainant proves that, the accused had issued cheque bearing No.030424 dated 17.07.2023 for a sum of Rs.8,00,000/- drawn on The Hubballi Urban Co-operative Bank Ltd., Dharwad branch for legally recoverable debt/liability ?***
2.	***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 ?***
3.	***What order ?***

7. 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:**

R E A S O N S

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

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

8(b). The Ex.P1 is the cheque dated 01.07.2020 bearing No.030424 drawn for Rs.8,00,000/-. Ex.P2 is the bank memo dated 24.07.2023, it recites that, the cheque was returned for the reason "**Funds Insufficient**". Ex.P3 is the office copy of legal notice dated 02.08.2023. Ex.P4 is the postal receipt. Ex.P5 is the postal acknowledgment. Ex.P6 is the certificate issued by KVG Bank, Madanabhai branch.

8(c). P.W.1 in the sworn statement has stated that, on presentation of the cheque dated 17.07.2023 issued by the accused, same was dishonoured on **24.07.2023,** the complainant issued legal notice to the accused on **02.08.2023**, 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.

9. 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.

10. 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:

<u>SECTION 139:-</u>

> ***"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.

11. The complainant in order to establish that, after dishonour of the cheque, he 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.

12. Therefore, the complainant has presented this complaint on **13.09.2023,** which is well in time. On perusal of **Ex.P1 to Ex.P6,** 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 P6 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.P6,** 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.

13. Further, despite providing sufficient opportunity, the accused did not choose to cross examine P.W.1 nor disputed the **Ex.P1 to P6** 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 to discharge legally recoverable liability 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".**

14. **<u>POINT NO.3:</u>-** The complainant has filed this complaint in respect of dishonour of cheque for **Rs.8,00,000**/-. 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.8,10,000/-. 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.8,05,000/- 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 **2nd day of September 2026)**

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

A N N E X U R E

WITNESSES EXAMINED FOR COMPLAINANT :-

CW.1: Raghavendra S/o Mahadevappa Ghattad.

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:	Postal acknowledgment.
Ex.P.6:	Certificate issued by KVG Bank, Madanabhai branch.

WITNESSES EXAMINED FOR DEFENCE:-

NIL.

DOCUMENTS MARKED FOR DEFENCE:-

NIL.

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

For Judgment
02-09-2026

(Judgment pronounced in the open Court vide separate Judgment)

O R D E R

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

Dharwad.