KADW200035212025

**IN THE COURT OF THE III ADDITIONAL SENIOR CIVIL JUDGE AND J.M.F.C. HUBBALLI**

***Dated 4th day of August 2026***

**Present:- Sri. Ramesh S. Ganiger,**

**B.Com., L.L.M.,**

*III Addl. Senior Civil Judge & J.M.F.C., Hubballi.*

***Criminal Case No.1645/2025***

| | | |
|---|---|---|
| **COMPLAINANT:-** | | Sri Vithal S/o Bhimappa Burli, Age:about 34 years, Occ: Private, R/o H.No.22, Ashraya Yojana Plot, Amargol, Taluka:Hubballi |
| | | **(By Sri S.C.B Advocate)** |
| | | **V/s** |
| **ACCUSED :-** | | Shrikant Mahadevappa Nagannavar, Age:35 years, Occ:Business, Ashrayayojana Plot, H.No.90, Amargol, Tq:Hubballi. |
| | | **( By Sri N.B.M Advocate )** |

**:: J U D G M E N T ::**

It is the private complaint filed by the complainant against the accused for the offence punishable U/Sec.138 of Negotiable Instrument Act and impose double the cheque amount payable to the complainant.

2. **The brief facts of the complainant's case is as under:-**

According to the complainant he and accused are friends and well acquainted with each other since many years. The accused approached him on 15.03.2024 and requested for a hand loan of Rs.3,00,000/- for his marriage. The complainant being acquainted with the accused, advanced the hand loan of Rs.3,00,000/- to the accused. The said accused is engaged in the wholesale chilly powder business. The accused after his marriage, again approached him on 04.06.2024 and without making repayment of earlier dues, again the accused requested him to advance an another amount of Rs.4,00,000/- for his business purpose promising to make repayment of the total debts within few days. The complainant believing the words of the accused again given a hand loan of Rs.4,00,000/- to him within few days. The complainant believing the accused , again advanced the said amount of Rs.4,00,000/- to him. Subsequently the accused again without making repayment of the total earlier debts, on 10.09.2024 again approached to the complainant and again asked to advance an another amount of Rs.3,00,000 promising of making repayment the total debts of Rs.10,00,000/- within one year. The complainant believing the accused, has advanced the said amount again to the accused and therefore the accused is due to pay a total amount of Rs.10,00,000/- to him.

3. It is further submitted by the complainant that after the stipulated period of one year, when he asked the accused to make repayment, but the accused again went on postponing the repayment, for one or the other pretext and finally to discharge the total debts payable by the

accused to him, he issued a cheque bearing No.131484 dated 11.11.2025 for Rs.10,00,000/- drawn on Canara Bank, APMC Amargol Branch Hubballi and assured that there is sufficient balance in his bank account and the said cheque will be honored on its presentation for encasement. Thereafter the complainant presented the said cheque for collection through his banker State Bank of India, Law University Campus, Sutagatti, Tq:Hubballi, but the said cheque has been dishonored and same returned with an endorsement as funds insufficient in the account of the accused with a bank return memo dated 13.11.2025. Thereafter, the complainant informed the accused about the dishonor of the above said cheque, but there is no response. Thereafter on 27.11.2025 through his counsel, the complainant got issued demand notice calling upon the accused to repay the amount within 15 days from the date of service of notice. The accused has not received the said notice and hence the notice was returned as unclaimed on 03.12.2025. The accused till today has not repaid the said cheque amount. The complainant complied all the statutory compliance U/Sec. 138 N.I. Act and made allegation that accused has committed the offence punishable U/s 138 N.I Act. In order to punish the accused, the complainant constrained to file the case.

4. The court was took the cognizance for the offence punishable U/s.138 of N.I.Act. After recording sworn statement and on other materials available on record issued process against the accused. The accused was appeared and obtained bail. Substance of accusation read over to accused, he pleaded not guilty and claims to be tried.

5. In order to prove the case against the accused, the owner of the complainant firm adopted sworn statement as his evidence and got marked Ex.P.1 to Ex.P.6 documents. At the stage of further evidence of the complainant both the learned counsels and parties have filed Joint memo. Under the said joint memo, matter was

settled for Rs.6,75,000/- and accused is agreed to pay the said settled amount on installment basis as the dates mentioned in the joint memo. If, in case of default, the accused is agreed to pay Rs.10,00,000/- amount. On perusal of order sheet it reveals the dates are fixed for payment as on 14.07.2026 , 21.07.2026 and on 04.08.2026. After giving sufficient time, the accused neither repaid the amount nor bound by the terms of joint memo.

6. The Hon'ble Apex Court in its judgment reported in parties between **Gian Chand Garg V/s Harpal Singh and another** in para No.6, 7, 8 and 9 held as follows:

*6. This court in M/s. Meters and Instruments Private Limited & Anr. v. Kanchan Mehta 2018 (1) SCC 560 held that the nature of offence under section 138 of the NI Act is a mainly a civil wrong and has been made specifically compoundable by section 147 of the NI Act which was inserted by the 2002 amendment to the said Act. The relevant observations have been extracted for reference:*

*"This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions' cheques were issued merely as a device to defraud the creditors. Dishonor of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable."*

*7. It is also apposite to reiterate the observations in P. Mohanraj & Ors. v. M/s. Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258 wherein this court referred the offence under section 138 NI Act as a "Civil Sheep" in "Criminal Wolf's Clothing" which meant issues agitated by the parties under the said provision are of private nature which are brought within the sweep of criminality jurisdiction in order to strengthen the credibility of the negotiable instruments.*

*8. Further in M/s. Gimpex Private Limited v. Manoj Goel (2021) SCC OnLine SC 925 this court took into* *consideration the effect of settlement arrived between the parties and observed that:*

*"38. When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons- Higher Compensation, faster recovery of money, uncertainty of trial and strength of complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties voluntarily entered into such an agreement and agree to abide by the consequence of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The Settlement agreement subsumes the original complaint......"*

*9. In B.V. Seshaiah v. State of Telangana & Anr. (2023) SCC OnLine SC 96 this court was of the view that when parties enter into an agreement and compound the offence, they do so to save themselves from the process of litigation and when such a step is taken by the parties, the law very well allows them to do so. Hence, the courts cannot override such compounding and impose its will.*

*10. Therefore, it is very clear that although dishonour of cheque entails criminal consequence, the legislature by virtue of section 147 of the NI Act has made it compoundable notwithstanding the provisions of the Code of Criminal Procedure, 1973 and the same can be compounded at any stage of the proceedings especially when the parties have themselves arrived at a voluntary compromise.*

7. The judgment of **the Hon'ble Apex Court reported in (2023) 18 supreme court cases 512 parties between B.V. Seshaiah Vs. State of Telangana held as follows:**

> *Terms and conditions of the settlement entered into by the parties binds them to settle the dispute amicably, or through an arbitration as has been stated in This is a very clear case of the Cl. 8 of the memorandum of understanding parties entering into an agreement and compounding the offence to save themselves from the process of litigation When such a step has been taken by the parties, and the law very clearly allows them to do the same, High Court thereafter cannot override such compounding and impose its will complainant was duty-bound to file a compromise petition before High Court, and by not doing the same would have withdrawn key*

> *information from High Court But by doing so has led to an unwarranted confirmation of the appellants' conviction Hence, conviction of appellant-accused set aside and parties to settle dispute as per terms of the memorandum of understanding.*

8. As the above proposition of law of Hon'ble Apex Court the cases pertaining to the section 138 NI Act are originally civil in nature. But to strengthen the credibility of the negotiable instruments, it could be conducted the proceedings under the criminal penal laws. So basically section 138 NI Act is a civil wrong, Court can accept Joint Memo filed by both the parties to resolve the disputes. Further, go with the said terms of joint memo and pass the necessary order and not convict the accused for the offence punishable under Section 138 of NI Act.

9. Bear in mind of above proposition of law of Hon'ble Apex Court in various decisions as discussed supra, without posting the matter for concluding the cross examination of PW.1, recording of evidence of accused,

directly the matter was posted for orders on joint memo and for final disposal of the case.

10. Heard the arguments on joint memo.

11. The available materials on record, the following points arises for my consideration:

**POINTS**

**1. Whether the Complainant beyond the reasonable doubt proves that the accused has issued Ex.P.1 cheque bearing No.131484 in his favour for discharging the legally enforceable debt or liability of Rs.10,00,000/- and after presentation, the same has been dishonored and it has complied all mandatory requirements and accused has committed the offence punishable U/sec.138 of N.I. Act?**

**2. Whether the complainant proves that the accused failed to perform terms of joint compromise memo ?**

**3. What order?**

12. My findings to the above points are as follows:

**Point No.1 : Partly in the affirmative**
**Point No.2 : In the affirmative**
**Point No.3 : As per final order, for the following:**

## **REASONS**

13. **Point No.1 and 2 :** These points are interconnected and they are taken together for common discussion.

In order to prove the guilt of accused, the complainant examined himself as PW.1 and in his examination in chief he reiterated the averments made in the complaint.

14. To prove the case, on the basis of documentary evidence, PW.1 was produced Ex.P-1 to P.6 documents. Ex.P-1 is the original cheque bearing No.131484 shows that the said cheque bears signature of accused and has amount in the words as well as figures as Rs.10,00,000/- and mentioned the date as 11.11.2025. Ex.P-2 is the copy of bank return memo which shows that the said cheque returned with an endorsement as funds insufficient on 13.11.2025, Ex.P-3 is the legal notice dated 27.11.2025 calling upon the accused to repay the

above said hand loan amount within 15 days from the receipt of this notice, Ex.P-4 is the postal receipt, Ex.P-5 is the postal cover with copy of legal notice. Ex.P.6 Copy of legal notice.

15. As per Section 118 of N.I Act the date, consideration amount mentioned in the cheque which is a negotiable instrument are presumed to be believed unless and until contrary proved by the other side, that it is issued for some other purpose and there is no existence of legally recoverable debt. Section 139 of Negotiable Instrument Act clearly states that, in Negotiable Instrument Act the presumption is always in favour of holder of the cheque. So for the legal presumption is concerned prima-facie Ex.P-1 cheque clears that the alleged Ex.P-1 drawn for payment existing legally recoverable debt in favor of complainant.

16. During the course of proceedings both parties were entered into a compromise and filed joint memo. Go

through the said joint memo the accused was agreed to repay the settled amount of Rs.6,75,000/- to the complainant and if in case of default, the accused agreed to pay Rs.10,00,000/- amount. On Perusal of order sheet it reveals that after giving sufficient time for payment of hand loan, the accused neither repaid the above said amount nor bound by the terms of joint memo. So for the above statutory presumption under the law and joint memo clearly show that if there is no existing legally enforceable debt, the accused would not intended to settle the matter and agreed to repay the said amount. If there is no existing legally enforceable debt definitely accused would contest the case. Under these circumstances it clears that as per **Sec. 58 of Indian Evidence Act,** any party in course of proceedings admitted certain facts, that time there is no need to take other materials on record. Applying the above Law of the Land, herein the accused voluntarily admitted the existence of legally enforceable debt and settled the matter. But he could not comply the terms of joint memo.

17. As per terms of joint memo, the accused was agreed to pay the Rs.6,75,000/- to the complainant. As per the terms of joint memo in case of default to pay the amount of Rs.6,75,000/- the accused is agreed to pay Rs.10,00,000/-. So as the proposition of law in B.V Shshaiah case as cited supra there is no need to convict the accused on the offense punishable under section 138 Negotiable Instrument Act. No doubt as per the terms of joint memo accused is agreed to pay settled amount Rs.6,75,000/- to the complainant. As per terms of joint memo in case of default to pay the amount, the accused is agreed to pay Rs.10,00,000/-. So for the said term is concerned the accused has to pay Rs.10,00,000/- to the complainant. Taking into consideration of said payment, so it is necessary to direct the accused to pay Rs.10,00,000/- to the complainant. Accordingly, under the above discussion the complainant has proved the very existence of legally enforceable debt and the accused is failed to perform the joint memo terms and **I answered**

**point No.1 in partly affirmative and point No.2 in the affirmative.**

18. **POINT NO.3:-** For the foregoing reasons, I proceed to pass the following:

**ORDER**

The accused found not guilty for the offence punishable under Section 138 of N.I. Act.

The accused is hereby directed to pay Rs.10,00,000/- (Rupees Ten Lakhs only) amount to the complainant.

In default to pay the above ordered amount of Rs.10,00,000/-(Rupees Ten Lakhs only), the complainant is at liberty to take action for recovery amount against the accused as per Section 471 of BNSS.

(Dictated to the stenographer directly on computer, typed by her, corrected and signed by me, and then pronounced in the open Court on this the 4th day of August 2026).

**(Ramesh .S. Ganiger)**
*III Addl. Senior Civil Judge & J.M.F.C.,*
*Hubballi.*

**ANNEXURE**

**List of witnesses examined on behalf of complainant:**

| | | |
|---|---|---|
| PW.1 | : | Sri Vithal S/o Bhimappa Burli |

**List of Documents marked on behalf of complainant:**

| | | |
|---|---|---|
| Ex.P-1 | : | Original cheque |
| Ex.P-1(a) | : | Signature of accused |
| Ex.P-2 | : | Bank return memo |
| Ex.P-3 | : | Legal Notice |
| Ex.P-4 | : | Postal receipt |
| Ex.P-5 | : | Postal cover |
| Ex.P-6 | : | Copy of legal notice dated 27.11.2025 |

**List of witnesses examined on behalf of accused**

-Nil-

**List of Documents marked on behalf of accused:**

-Nil-

**(Ramesh .S. Ganiger)**
*III Addl. Senior Civil Judge & J.M.F.C.,*
*Hubballi.*