IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC AT GADAG

Present:- **Smt. Dipti Nadgauda** B.Com.,L, LL.B,
Prl.Civil Judge and J.M.F.C
Court, Gadag

DATED THIS THE 13th DAY OF AUGUST, 2026

CC.No.488/2025

Complainant: Shivanand S/o Bapugouda Patil,
Age 42 years,
Occ: Private work, R/o # MIG-144,
Surya Nagar, Behind Ambedkar
Bhavana Gadag,
Tq:Dist: Gadag

(By Sri.M.P.K.Adv.,)

V/s

Accused : Shivkumar S/o Channappa Koti
Age: 23 years, Occ:Agriculture
R/o. Yalishirur, Post: Yalishirur
Tq:Dist: Gadag

(By Sri. V.S.K.Adv.,)

01. Date of filing of complaint : 12.02.2025

02. Name of the complainant : Shivanand S/o Bapugouda Patil,

03. Offences complained of : U/Sec.138 of NI Act

04. Date of commencement of recording of evidence : 27.11.2025

05. Date of closing of evidence : **28.07.2026**

06. Opinion of the Judge. : As per final order

07. Complainant by : Sri. M.P.K.Adv.

08. Defence by : Sri. V.S.K.Adv.

JUDGMENT

The complainant has filed this complaint under section 223(1) of the Bharatiya Nagarika Suraksha Sanhithe 2023 against the accused for the offence punishable under section 138 of the Negotiable Instruments Act.

2. The case of the complainant in brief is as under:

That, the complainant is permanent resident of Surya Nagar Gadag and works in private sector. The accused is the resident of Yelishirur Gadag and is an agriculturist. The complainant and the accused are well acquainted with each other from many years. Due to the said acquaintance the accused requested for hand loan of Rs.2,80,000/- to the complainant for his family necessity and for the purpose of tractor about one year back. On good faith, the complainant helped the accused by giving hand loan of

Rs.2,80,000/- about one year back which the accused assured to repay within 06 months. After 06 months when the complainant asked the accused to repay the said hand loan amount, the accused went on postponing the same on one or the other pretext. Thereafter, upon finally asking the accused to repay the hand loan amount the accused issued cheque bearing 010509 for Rs.2,80,000/- dated 16.12.2024 drawn on Karnataka Vikas Bank, Yalishirur Branch and assured that the cheque will be realized on presentation. Believing the words and assurance of the accused, complainant presented the cheque bearing 010509 for Rs.2,80,000/- dated 16.12.2024 through his banker State Bank of India Mulgund Naka, Gadag Branch on 24.12.2024. But to the utter surprise of the complainant the said cheque issued by the accused came to be dishonored and the same was intimated by the banker vide cheque return memo dated 26.12.2024 with an endorsement "12-Drawers signature differs". Then the complainant got issued a legal notice dated 10.01.2025 to the accused through Registered Post Acknowledgment Due calling upon the accused to make payment of the amount covered under the cheque within 15 days from the date of receipt of the notice and the said notice was unserved with an endorsement as "Returned as unclaimed" dated 15.01.2025. But the accused neither replied to the same nor made payment of the cheque amount. Hence, the accused has committed the offence punishable U/s. 138 of Negotiable Instruments Act.

3. On taking cognizance, sworn statement of the complainant was recorded. Process was issued to the accused and in response, the accused appeared before the Court through his learned counsel and was enlarged on bail.

4. The substance of accusation was read over to the accused and his plea was recorded. The accused pleaded not guilty and claimed to be tried. In support of the case complainant examined himself as P.W.1 and got marked 6 documents at Ex.P.1 to Ex.P.5. Ex.P.6 and 6(a) marked by confronting D.W-1/accused. Thereafter, PW1 was cross-examined by the accused counsel. On closure of evidence on the side of complainant, the case was posted for recording statement of accused under section 313 Code of Criminal Procedure. On that day accused remained absent and learned predecessor has dispensed statement of accused u/sec.313 of Cr.P.c as per order

dated 02.04.2026. Subsequently as per orders dated 17.04.2026 on application filed by accused, the accused was given chance to lead defence evidence. The accused got himself examined as D.W.1 and his examination in chief was recorded on oath. He was also cross examined by the complainant counsel.

5. Heard the arguments. Perused, the entire materials available on record coupled with oral and documentary evidence adduced by the complainant and accused.

6. The points that arise for consideration are as under:

Point No.1: 1) Whether the complainant proves beyond all reasonable doubt that the accused had issued cheque bearing 010509 for Rs.2,80,000/- dated 16.12.2024 drawn on Karnataka Vikas Grameena Bank, Yalishirur Branch infavour of complainant towards discharge of the legally recoverable debt or liability, which when presented by the complainant through his banker State bank of India, Mulagund Naka Gadag Branch, came to be dishonoured with an endorsement "12-Drawers signature differs" dated 26.12.2024 and despite issuance of legal notice which received by accused on 15.01.2025, the accused failed to pay amount covered under the cheque and thereby accused has committed the offence punishable under Section 138 of Negotiable Instruments Act?

Point No.2: What order?

7. My answers to the above points are as under.

Point No.1: In the Affirmative.

Point No.2: As per the final order for the following.

REASONS

8. Point No.1: The entire case of the complainant herein, is narrated at the inception of this judgment. In order to substantiate the case of the complainant, the complainant examined himself as P.W.1 and has filed his affidavit in lieu of examination-in-chief and reiterated the complaint averments. In support of his contention, the P.W.1 produced Ex.P1 to Ex.P6(a) documents. The Ex.P.1 is the cheque dated 16.12.2024 for Rs.2,80,000/- drawn on Karnataka Vikas Grameena Bank Yalishirur Branch, infavour of complainant, Ex.P.1(a) is the signature of the accused on Ex.P.1. Ex.P.2 is the return memo issued by the bank authority with an endorsement “12-Drawers signature differs” dated 26.12.2024. Ex.P.3 is the office copy of legal notice dated 10.01.2025 sent to the accused. Ex.P.4 is the postal receipt for having sent legal notice to the address of accused dated 10.01.2025, Ex.P.5 is the postal cover, Ex.P-5 (a) is the legal notice removed from the postal cover-Ex.p.5 which was issued to the accused but returned unclaimed on 15.01.2025. Ex.P.6 is the Vakalath of the accused given to his advocate marked by confronting by Accused/DW-1, Ex.P-6(a) is the signature of the accused.

9. Ex.P.3 is the office copy legal notice dated 10.01.2025 sent to the address of the accused. It must be noted as per clause (b) of proviso (2) of Negotiable Instruments Act the complainant was required make a demand for the repayment of said amount within 30 days from the date of receipt of cheque as unpaid. Ex.P.3 shows that complainant made demand in writing, calling upon accused to make repayment of said amount by issuing legal notice dated 10.01.2025, which is within 30 days from the date of receipt of cheque as unpaid along with bank memo dated 26.12.2024.

10. Ex.P. 5 is the postal cover in which legal demand notice sent to the residential address of the accused was returned with

endorsement “Not claimed” on 15.01.2025.

11. As per clause (c) of proviso to Sec 138 of NI Act the accused was entitled to have 15 days time to make repayment of aforesaid amount. It is pertinent to note that the demand notice sent to the address of the accused was returned with endorsement “not claimed” on 15.01.2025 as per Ex.P5. Here it is important to note that though the accused has denied the receipt of notice. The accused has stated that he did not receive the statutory notice because he was residing at the house of Srisailappa Mullal at Betageri, whereas the notice was sent to the Yelishirur address. The complainant has produced Ex.P.4 postal receipt and Ex.P.5 returned postal cover bearing the endorsement "Returned as unclaimed". The accused in his cross examination admits that Yelishirur is his village. He has stated that he was residing elsewhere but has not produced any documentary evidence to establish that the complainant was aware of such alleged alternate residence. More importantly, the notice was not returned with an endorsement such as "wrong address" or "addressee not known". It was returned as "unclaimed". Hence, by virtue of section 27 of General Clauses Act, 1897,

when the legal notice is sent to a proper address, the service of the same shall be deemed to have been made, unless the contrary is proved. Therefore, the accused has also failed to prove the non-service of legal notice on him. Thus, if Ex.P.5, is considered the complainant had to wait to till 30.01.2025. Therefore the cause of the action for this complaint has arisen on 31.01.2025. Further as per sec 142(b) of NI Act the complaint is to be filed within 30 days from the date on which the cause of action arises. Therefore the complainant had to file this complaint on or before 02.03.2025. And this complaint is filed on 12.02.2025 and hence the complaint is well within the time. Thus the complainant has fulfilled all the components, which were required for the completion of offence u/sec 138 of Negotiable instruments Act.

12. Now, let me ascertain whether the complainant is entitled to the presumption available U/s. 139 of Negotiable Instruments Act. In order to raise a presumption u/sec 139 of Negotiable Instruments Act, the following three ingredients have to be ascertained and established, in view of decision of **Hon'ble Apex Court in Rangappa V/s. Shri. Mohan**

reported in AIR 2010 SC 1898:

i). **The cheque in question must relate to the account of the accused:**

ii). **The cheque in question must have been issued by the accused to complainant.**

iii). **The accused must have admitted his signature on the cheque in question. To put it otherwise, the accused must not have denied his signature on the cheque.**

13. In the case on hand, all the ingredients of section 138 Negotiable instruments Act have been complied as discussed above. The foremost defence of the accused is that, although Ex.P.1-cheque belongs to his bank account, the signature appearing on Ex.P.1 is not his signature. Therefore, this Court has carefully considered the evidence relating to execution of the cheque. The complainant has categorically identified Ex.P.1(a) as the signature of the accused. On the other hand, the accused admits that Ex.P.1 is a cheque belonging to his account maintained with KVG Bank, Yelishirur.

14. It is relevant to note that, the accused has not produced any material to establish that Ex.P.1 was lost, stolen or

otherwise came into the possession of the complainant without his authority. He has also not lodged any complaint alleging forgery or misuse of the cheque. He has not made any attempt to send it for expert opinion. This leads to adverse inference that the said signature Ex.P.1(a) on the cheque-Ex.P.1 is of the accused and no one else. Hence, when once it is established that the cheque relates to the account of accused and that the signature on the cheque is that of the accused, then the mandatory statutory presumption under section 139 of Negotiable Instruments Act, that the cheque Ex.P1 was issued by the accused to the complainant for discharging his legally enforceable debt, comes into play. Hence in view of the above discussion the presumption under section 139 of the Negotiable Instruments Act, that the cheque Ex.P1 was issued by the accused to the complainant for discharging his legally enforceable debt, is drawn in favor of complainant as held by Hon'ble Apex Court in **Rangappa V/s. Shri. Mohan** reported in **AIR 2010 SC 1898.**

15. However, it is relevant to mention that in aforesaid decision the Honble Apex Court has made the position very clear

that **presumption available u/s. 139 of Negotiable Instruments Act is rebuttable one.**

16. Now, let me examine in the light of defence taken up by the accused, as to whether he has successfully rebutted the presumption drawn in favor of the complainant as per section 139 of Negotiable Instruments Act. The accused herein has not tendered reply to Ex.P.3 legal notice issued by complainant calling upon him to repay the amount covered under the cheque Ex.P1. But, the accused has stepped into the witness box after cross-examining the complainant. Hence, the case or defence of the accused can be ascertained by examining the questions and suggestions put by the accused to P.W.1 during the cross- examination of P.W.1 and further by looking into the defence taken up by him as D.W.1.

17. Accordingly, the accused has denied the case of the complainant that he had borrowed Rs.2,80,000/- hand loan from the complainant and towards repayment of the same he had issued cheque Ex.P.1 in favour of complainant. As already discussed above, the foremost defence of the accused is that, although Ex.P.1-cheque belongs to his bank account, the

signature appearing on Ex.P.1 is not his signature. The complainant has categorically identified Ex.P.1(a) as the signature of the accused. On the other hand, the accused admits that Ex.P.1 is a cheque belonging to his account maintained with KVG Bank, Yelishirur.

18. Further, the accused admitted that Ex.P.1 cheque belonged to his bank account and that he had voluntarily handed over the cheque to Raghavendra, but denied the signature on the cheque. Although the disputed signature appears visually different from his admitted signatures and Ex.P.2 bears the endorsement"Drawers signature differs,"such difference is not conclusive proof of forgery. It is well settled law that, even when the cheque is dishonoured by reason of "alteration in date or drawers signature differs" the court has to presume by virtue of section 139 of the Negotiable Instruments Act that the cheque is received by the holder for discharge, in whole or in part, of any debt or liability. The accused can rebut the same by showing to the court that the alteration in signature or date were not made because of insufficiency or paucity of funds. But in the present case, the accused failed to explain satisfactorily how a cheque

voluntarily delivered by him came to bear the disputed signature. He neither examined Raghavendra nor produced any material regarding the alleged tractor loan or the cheque being given as security. He also did not produce bank records, examine the bank official, or obtain expert evidence regarding the disputed signature. Hence, this leads to the conclusion that the accused did not have sufficient funds and knew that the cheque will not be honored. Further the signature of the accused on his vakalat-Ex.P.6 and on his evidence recorded on oath are also different from each other. The said acts of accused clearly shows that the accused it trying to misguide. Hence, from this it is clear that the accused is inhabit of making different signatures and has intentionally made a different signature on the cheque-Ex.P.1 only to defeat the encashment as the bank will return the cheque with endorsements such as “signature of the drawer differs” and to take advantage of the specific words under section 138 of Negotiable Instruments Act. Hence, considering the evidence cumulatively, this Court finds that the accused has failed to establish a probable defence sufficient to displace the complainant's case regarding execution of Ex.P.1.

19. It is further the defence of the accused thatEx.P.1 was given as a security cheque for tractor loan. The accused has stated that about four years earlier he obtained a tractor loan from Kotak Mahindra Bank, Gadag, and that Ex.P.1 was obtained as a security cheque. He has further stated that he gave the cheque to one Raghavendra, who was allegedly working in the said bank.

20. But the accused has not produced the tractor-loan application; the loan agreement; any document showing the cheque number supplied as security; any receipt or acknowledgment for handing over Ex.P.1; any document from Kotak Mahindra Bank showing that Ex.P.1 was a security instrument; any correspondence relating to return of the cheque; any complaint alleging misuse of the cheque; or any evidence of Raghavendra, who according to the accused received the cheque. The accused himself admits that he had obtained a tractor loan from Kotak Mahindra Bank and that the tractor was subsequently taken back by the bank. If Ex.P.1 was genuinely handed over as security in connection with that loan, the accused could reasonably have produced the loan records or examined the

concerned person to establish the said defence. More importantly, the accused has not explained how a cheque allegedly given as security to Kotak Mahindra Bank came to be presented by the present complainant in his personal capacity for Rs.2,80,000/-. Thus accused has also failed to establish the said defence.

21. Here it is relevant to note that, the complainant admits in his cross examination that he is working in Kotak Mahindra Bank and that he had previously worked with Raghavendra. This admission may provide a basis for the defence suggestion, but an admission that the complainant and Raghavendra were colleagues does not establish that Ex.P.1 was entrusted to Raghavendra as a security cheque or that the complainant subsequently obtained and misused it. The accused was required to bring the defence beyond the stage of a mere suggestion. He has failed to do so. The accused has not established that no liability existed or that Ex.P.1 could not lawfully have been presented for discharge of the liability alleged by the complainant. Therefore, the security-cheque defence does not rebut the statutory presumption.

22. It is also the defence of the accused that, the complainant is not known to him and that there was no financial

transaction between them. However, this defence is inconsistent with the surrounding circumstances brought on record. P.W.1 has specifically deposed regarding his acquaintance with the accused for four to five years. He has also stated that there were monetary transactions between himself and the accused earlier. The accused has not produced any material to establish that the complainant had no occasion whatsoever to come into possession of Ex.P.1. The important circumstance is that the accused admits that Ex.P.1 belongs to his bank account. Therefore, the burden was upon him to give a probable explanation as to how the cheque came into the hands of the complainant if, as claimed, there was absolutely no relationship or transaction between them. The accused's explanation is that it was given to Raghavendra in connection with the tractor loan. As already discussed, that explanation is not supported by independent evidence. Thus, the bare denial that "I do not know the complainant" cannot be accepted as sufficient rebuttal of the statutory presumption. Hence the said defence holds no water.

23. It is further defence of the accused that, the Complainant has not furnished not produced his salary slip, Form

No.16 or income-tax returns in respect of his income. The accused has relied upon the admissions of P.W.1 that the alleged loan was given in cash, that the exact date and place of payment were not mentioned in the complaint, and that the complainant has not produced his salary slip, Form No.16 or income-tax returns. In the present case P.W.1 has specifically deposed that he is employed in Kotak Mahindra Bank and earns approximately Rs.70,000/- per month. The accused has not elicited any material admission showing that P.W.1 was financially incapable of advancing Rs.2,80,000/-. Further, though the accused has suggested about not furnishing documents inrespect of income of the complainant no where the capacity of the complainant to grant loan to accused is denied by the accused in his oral evidence. Non-production of income-tax returns or salary slips may be a circumstance for consideration, but it does not automatically establish that the complainant lacked financial capacity. Further, here it is relevant to note that it is well settled law that, once the foundational facts necessary to invoke Sections 118 and 139 of the Negotiable Instruments Act are established, the statutory presumption operates in favour of the complainant.

The complainant is not required, merely because the accused questions the source of funds, to independently establish the source of funds as a precondition for invoking the presumption. The burden then lies upon the accused to rebut the statutory presumption by raising a probable defence. In the case on hand, complainant has disclosed his source of fund and accused has failed to prove his defence by leading cogent evidence. As such, the onus will not shift upon the complainant and there is no burden on the complainant to disclose his source of fund.

24. In view of the above discussion it is clear that,the accused have miserably failed in rebutting the presumption drawn in favor of complainant under Section 139 of Negotiable Instruments Act, or even to disprove the case of complainant. It is well settled law that once the presumption under Section 139 of Negotiable Instruments Act is drawn in favor of complainant, it is for the accused to put forth a probable defence, which could be believed by a prudent man. Only when such probable defence is so put forth, the onus would again shift back to the complainant to prove his case beyond all reasonable doubt. But in this case, when the accused

himself has failed to put forth a probable defence, the complainant need not prove any further fact. Hence, the accused has utterly failed to prove his defence by placing cogent evidence on record, even on a scale of preponderance of probability.

25. Therefore, the complainant has proved beyond all reasonable doubt that the accused has issued cheque Ex.P.1 for discharging his liability and in discharge of legally enforceable debt. For the foregoing reason I hold that, accused has committed the offence punishable U/sec. 138 of N.I. Act Accordingly, I answer Point No.1 in the Affirmative.

26. **Point No.2:** Ex.P1 cheque pertains to the month of December-2024 and the complainant was deprived of the money which was rightfully due to him for a period of about 1 year 7 months. Hence, I deem it fit to impose a fine of Rs.3,00,000/- on the accused. Accordingly, in the light of above discussions, I proceed to pass the following:

ORDER

The accused is found guilty of offence punishable U/Sec. 138 of Negotiable Instruments Act.

Acting under Section 278(2) of Bharthiya Nagarika Suraksha Sanhithe the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instruments Act, and she is sentenced to pay fine of Rs.3,00,000/-. In default of payment of aforesaid amount of fine, the accused shall undergo Simple Imprisonment for a period of four(4) months.

Out of the fine amount of Rs.3,00,000/-,the amount of Rs.2,95,000/- shall be paid to the complainant as compensation U/s. 395 of Bharthiya Nagarika Suraksha Sanhithe and Rs.5,000/- shall be paid as fine to the State.

Further, it is made clear that in view of provision to Section 461(1) of Bharthiya Nagarika Suraksha Sanhithe, the accused shall not be absolved of his liability to pay compensation amount of Rs.2,95,000/- awarded U/s. 395 of Bharthiya Nagarika Suraksha Sanhithe, even if he undergoes the default sentence.

The bail bond of the accused stands canceled.

Office is directed to supply copy of the judgment to the accused free of cost forthwith.

(Dictated to the stenographer, directly on computer, typed by him, the same is corrected and then pronounced by me in the open court on this the **13th day of August, 2026)**

(Smt.Dipti Nadgauda)
Prl. Civil Judge & JMFC. Gadag.

A N N E X U R E

1. List of witnesses examined for the complainant:

PW-1: Shivanand S/o Bapugouda Patil

2. List of documents marked for the complainant:

Ex.P.1: Cheque dated 16.12.2024
Ex.P.1(a): Signature
Ex.P.2 : Return Memo dated 26.12.2024
Ex.P.3 : Office coy of legal notice dated 10.01.2025
Ex.P.4 : Postal Receipt
Ex.P.5 : Postal Cover
Ex.P.5(a) : Legal notice removed from the postal cover
Ex.P.6 : Vakalath
Ex.P.6(a) : Signature

3. List of witnesses examined for the accused:

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DW1: Shivakumar S/o Channappa Koti

4. <u>List of documents marked for the accused:</u>

NIL

(Smt.Dipti Nadgauda)
Prl. Civil Judge & JMFC. Gadag.