IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC., AT: GADAG.

PRESENT: Smt.Dipti Nadgauda, B.Com.,LL.B.
Prl.Civil Judge & JMFC,Gadag

DATED ON THIS THE 07th DAY OF AUGUST, 2026

CC.No.37/2023

Complainant: Shri Beereshwar Co-Op. Credit Society Ltd., Examba (Multi State), Gadag branch by its manager Sri. Kiran S/o Kuber Chougule, age: 36 years, Occ: Manager, R/o Tontadarya Complex, 1st Floor, J.T Math Road, Gadag, Tq:Dist: Gadag

(By Sri.V.R.A.Adv.,)

V/s

Accused : Sri. Manjappa @ Manjunath S/o Yallappa Bentur, Age: 36 years, Occ:Business R/o. Soratur Tq: Dist: Gadag.

(By Sri. G.B.G.Adv.,)

01. Date of filing of complaint : 04.01.2023

02. Name of the complainant : Sri. Kiran S/o Kuber Chougule,

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

04. Date of commencement of recording of evidence	:	07.11.2025
05. Date of closing of evidence	:	16.06.2026
06. Opinion of the Judge.	:	As per final order
07. Complainant by	:	Sri. V.R.A. Adv.
08. Defence by	:	Sri. G.B.G. Adv.

JUDGMENT

The complainant has filed this complaint under section 200 of the Code of Criminal Procedure 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:

The accused and his brother by name Laxman S/o Yallappa Bentur have borrowed the loan of Rs.2,00,000/- from the complainant society on 23.01.2020 for the development of their business and accused has mortgaged the house bearing its VPC No.1274 measuring 646.00 sq feet situated at Soratur village for the security of the loan. Accused and his brother have signed the loan papers agreeing the terms and conditions of loan. As per the terms and conditions of loan agreement the accused agreed to repay the same in yearly installments of Rs.40,000/- PA with interest at the rate of 18% within a period of 5 years. The accused and his brother have executed necessary loan papers in favour of complainant Society agreeing to pay interest at the rate of 18% with penal interest for the above said loan amount. But as accused has not paid the regular installments towards the loan amount, the Manager the complainant society requested the accused to repay the installments due towards the loan in the first week of October, 2022. The accused said that he is going to close the loan account and pay the entire loan balance amount to the complainant Bank. Accordingly, the accused on 19.10.2022 had issued a cheque bearing No. 015861 for Rs.1,01,569/-. drawn on KVG Bank, Soratur Branch in favour of complainant Society. But when the complainant as per the request of the accused has presented the said cheque on 19.10.2022 through its banker Yes Bank, Gadag Branch the said cheque was returned with an acknowledgment stating “Funds Insufficient” on 20.10.2022. The Manager of complainant Society intimated the same to the accused. But accused neither replied nor complied the intimation given by the Manager of the complainant Society. On receiving the information of dishonor of cheque for the aforesaid reason, the complainant society got issued a legal notice on 17.11.2022 under registered post acknowledgement due, within 15 days of the receipt of the information of the dishonor of the cheque calling upon the accused to make the payment of cheque amount within 15 days. The said notice has been received by the accused on 21.11.2022. The accused neither replied nor complied the notice issued by the complainant Society and thereby he has committed an offence punishable u/sec. 138 of Negotiable Instruments Act.

3. On taking cognizance, sworn statement of the complainant was recorded. Process was issued to the accused and the accused did not appear before the Court and NBW has been issued against the accused. Thereafter, the accused appeared before the Court through his learned counsel and the accused was enlarged on bail on execution of personnel bond on 29.09.2023 by furnishing surety.

4. The substance of accusation was read over to the accused and his plea was recorded. The accused pleaded not

guilty and stated that he has defence to make. In support of the case complainant examined himself as P.W.1 and got marked 14 documents at Ex.P.1 to Ex.P14. Thereafter, PW1 was cross-examined by the accused counsel. On closure of evidence on the side of complainant, the statement of accused under section 313 Code of Criminal Procedure was recorded wherein he denied all incriminating evidence appearing against him and stated that he has defence evidence to lead. But subsequently when the case is posted for defence evidence accused submitted there is no defence evidence to lead.

5. Heard the arguments of the Complainant counsel. The accused counsel has filed written 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 015861 for Rs.1,01,561/- dated 19.10.2022 drawn on KVG Bank, Soratur Branch infavour of complainant towards discharge of the legally recoverable debt or liability, which when presented by the complainant through his banker Yes Bank, Gadag Branch, came to be dishonoured with an endorsement "insufficient funds" dated 20.10.2022 and despite issuance of legal notice dated 17.11.2022, 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 negative

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 Manager of the complainant institution has 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.P14 documents. The Ex.P.1 is the cheque dated

19.10.2022 for Rs.1,01,569/- drawn on Karnataka Vikas Grameena Bank, Soratur 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 "funds insufficient" dated 20.10.2022. Ex.P.3 is the pay in slip dated 19.10.2022. Ex.P.4 is the office copy of legal notice dated 17.11.2022 sent to the accused. Ex.P.5 is the postal receipt for having sent legal notice to the address of accused dated 17.11.2022, Ex.P.6 is the postal acknowledgement dated 21.11.2022, The Ex.P.7 is the resolution passed by committee of the complainant institution authorizing P.W.1 to conduct this case. Ex.P.8 is the Loan application. Ex.P.9 is the Loan application form, Ex.P.10 is the Loan Agreement Letter dated 23.01.2020, Ex.P.11 is the on demand promissory note, Ex.P.12 is the deed for mortgage of immovable property. Ex.P.13 is the Form No.15, Ex.P.14 is the VPC extract.

9. Ex.P.4 is the office copy legal notice dated 17.11.2022 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.4 shows that complainant made demand in writing, calling upon accused to make repayment of said amount by issuing legal notice dated 17.11.2022, which is within 30 days from the date of receipt of cheque as unpaid along with bank memo dated 19.10.2022.

10. Ex.P.5 is the postal receipt dated 17.11.2022 in respect of having sent the demand notice to the accused. Ex.P.6 is the postal acknowledgment dated 21.11.2022 showing the receipt of the legal notice by the accused.

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 duly served on 21.11.2022 and the acknowledgment in respect of the same is marked at Ex.P.6. Here, it is pertinent to note that the accused has where disputed address mentioned on Ex.P.4. The defence of accused is that the statutory notice was not received by the accused. However, except for making such a suggestion in

cross-examination, the accused has not produced any documentary evidence to establish what his correct address was at the relevant point of time. Neither has he entered the witness box nor examined any witness to substantiate this plea. A mere suggestion put in cross-examination does not constitute evidence. In the absence of any evidence from the accused proving that the address was incorrect or that he was residing elsewhere, a bald denial cannot be accepted. Consequently, 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. Thus, if Ex.P.6, is considered the complainant had to wait to till 06.12.2022. Therefore, the cause of the action for this complaint has arisen on 07.12.2022. Further, as per sec 142(b) of Negotiable Instruments 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 06.01.2023 and this complaint is filed on 04.01.2023 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. Moreover, no where in Cross examination of the complainant/P.W.1 accused has taken the contention that the Ex.P.1 cheque does not relate to his account. It is not in dispute

that Ex.P.1 cheque belongs to the accused and the signature appearing thereon is also not disputed. 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.P.1 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.P.1 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.

14. 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.

15. 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.4 legal notice issued by complainant calling upon him to repay the amount covered under the cheque Ex.P1. But, the accused has also not stepped into the witness box. But has cross-examined 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.

16. Accordingly, the accused has denied the case of the complainant. The accused has taken a specific defence that he has not availed the alleged loan and that the loan transaction was in fact between the complainant Society and his brother Laxman. It is contended that his name has subsequently been included in the loan documents and that the documents relating to loan and mortgage have been created and misused for filing the present complaint. In this regard, the admissions elicited from P.W.1 during cross-examination assume importance. P.W.1 has admitted that the left thumb impression appearing on

Ex.P.8 loan application belongs to the brother of the accused. He has further admitted that Ex.P.8 does not disclose whose left thumb impression is affixed on the said document. P.W.1 has also deposed that he does not know whose thumb impression appears on Ex.P.12 mortgage deed.

17. Here it is important to note that, when the complainant relies upon the loan application and mortgage deed to establish the liability of the accused, it is expected to establish that the accused was a borrower and had executed the relevant documents. However, the complainant has failed to satisfactorily explain the identity of the executants of the material documents. The uncertainty regarding the thumb impressions creates doubt regarding the involvement of the accused in the alleged loan transaction.

18. Further, P.W.1 in his cross examination has admitted that as per the Rules and Regulations of the Cooperative Society, loans can be granted only to members, account holders, or Pigmy account holders. He has also admitted that no such documents have been produced to show accused and his brothers were account holders or Pigmy Account holder or

members. However, the complainant has not produced any documents to show that the accused and his brother were members, account holders, or Pigmy depositors of the Society. No membership records, account details, or relevant registers have been produced before the Court. Here it is relevant to note that, if membership or holding an account with the Society is a prerequisite for sanction of a loan, the relevant records such as the membership register, membership application, account opening forms, passbooks, Pigmy account records, or extracts from the Society's registers constitute the best evidence to establish the eligibility of the borrowers. These records are admittedly in the custody of the complainant Society. The non-production of such material documents, without any satisfactory explanation, gives rise to an adverse inference against the case of the complainant. 19. It is also the defence of the accused that the loan was sanctioned for business purposes, but the complainant Society has not verified or produced any documents regarding the alleged business of the accused. In his cross examination, the P.W.1 has admitted that documents such as business licence, permission from competent authority, tax returns, GST registration, and photographs of the place of business were not obtained by the Society. The non verification of such material documents by complainant society creates doubt regarding the purpose and genuineness of the alleged loan transaction.

19. The accused has further contended that as per the loan agreement Ex.P.10, the repayment period was five years. P.W.1 has admitted that the loan was repayable within five years. It is also admitted that at the time of obtaining Ex.P.1 cheque, the said period of five years had not expired. The complainant has not produced any evidence to show that there was any default clause enabling immediate recovery of the entire loan amount before expiry of the repayment period or that the loan was recalled. Therefore, obtaining the cheque for the entire alleged outstanding amount before expiry of the agreed repayment period creates doubt regarding the existence of legally enforceable liability as on the date of the cheque.

20. P.W.1 has further in his cross examination, admitted that the accused had repaid Rs.25,000/- before filing of the present complaint. However, the said payment is not mentioned

either in the complaint, legal notice, or examination-in-chief affidavit. The complainant has not explained why credit was not given for the said payment while calculating the alleged liability. Suppression of such material fact affects the correctness of the claim made by the complainant.

21. Further, P.W.1 has admitted that arbitration proceedings have been initiated against the accused in respect of the same loan transaction and that no award has yet been passed. He has also admitted filing another cheque bounce case relating to the same loan transaction for Rs.3,16,000/-. Though P.W.1 has stated that the cheque amount in the present case has been deducted while filing the other case, no statement of accounts or calculation sheet has been produced to substantiate the same. Therefore, the exact amount allegedly due from the accused remains doubtful.

22. Further, the accused has further questioned the very nature of Ex.P.1 cheque. During the course of cross-examination, P.W.1 has admitted that Ex.P.1 is neither an account payee nor a crossed cheque, but is a self cheque. A self cheque is ordinarily intended to enable the drawer to withdraw

cash from his own bank account and is not generally issued for payment to a third party. P.W.1 has also admitted that such a self cheque cannot ordinarily be received or encashed by the complainant Society in its own favour. This admission assumes significance in the facts of the present case. If Ex.P.1 had in fact been issued by the accused towards discharge of a legally enforceable debt due to the complainant Society, the normal course of conduct would have been to issue an account payee or crossed cheque in favour of the complainant. The issuance of a self cheque, which is not ordinarily intended for payment to the complainant, creates a serious doubt regarding the purpose for which the cheque was issued. The complainant has not offered any satisfactory explanation as to why a self cheque was accepted towards discharge of the alleged liability or how such a cheque was legally capable of being presented by the complainant for collection. The absence of any explanation on this material aspect renders the complainant's version doubtful.

23. Further, P.W.1 has admitted that in Ex.P.11 promissory note and the connected consent letter only signatures were obtained and that the name of the borrower,

loan details, interest particulars, and other material details were not filled in. Though Ex.P.10 contains filled particulars, the inconsistency between the documents has not been explained by the complainant. This circumstance also lends support to the defence of the accused that signed documents were obtained and subsequently filled up.

24. During the cross-examination, P.W.1 denied that the complaint contains an averment that, in the year 2022, the accused had assured the complainant Society that he would close the loan account by paying the entire outstanding loan amount. In order to contradict the witness, the relevant portion of the complaint was confronted to P.W.1 and was marked as Ex.D.1. The contradiction elicited in the cross-examination materially affects the credibility of P.W.1, as he has denied a statement contained in the pleading on the basis of which the present complaint has been instituted.

25. The complainant has relied upon Ex.P.2 return memo. However, during the course of cross-examination, P.W.1 has admitted that the cheque return memo produced in the present case contains the cheque amount. However, when his attention

was drawn to the fact that the amount of Rs.1,42,000/- is mentioned in the cheque return memo, whereas the amount mentioned in Ex.P.1 cheque is different, P.W.1 has stated that the said document does not belong to the complainant Society. The said admission creates a serious doubt regarding the genuineness and reliability of the documents relied upon by the complainant. When the complainant has relied upon the cheque return memo as a material document to establish the dishonour of Ex.P.1 cheque, it is expected to explain any discrepancy appearing in the said document, particularly with regard to the cheque amount. The complainant cannot disown the cheque return memo when the same is produced and relied upon in support of the complaint. Here it is relavent to note that on perusal of ExP.2 return memo it discloses that the said cheque return memo is in respect of some other cheque as the cheque number and the amount both are different from Ex.P.1. So, if the document is not related to the complainant's transaction, it was incumbent upon the complainant to clarify the circumstances under which such document came to be produced before the Court and to produce the correct return memo relating to Ex.P.1 cheque. The inconsistency between the cheque number and amount mentioned in Ex.P.1 cheque and the cheque number and amount reflected in the cheque return memo, coupled with the denial of P.W.1 regarding the said document, creates a serious doubt about whether the cheque in question was in fact dishonoured in the manner alleged by the complainant.

26. Considering the entire evidence on record, this Court is of the opinion that though the complainant is successful in proving that Ex.P.1 cheque bears the signature of the accused and was dishonoured, the accused has succeeded in raising a probable defence regarding the very existence of the alleged legally enforceable debt. 28. The cumulative effect of the admissions of P.W.1 regarding the identity of the borrower, absence of proof regarding membership and eligibility, absence of documents relating to business purpose, non-proof of actual disbursement, repayment period not being completed, suppression of part payment, multiple proceedings relating to the same transaction, inconsistencies in loan documents, and other contradictions creates serious doubt regarding the

complainant's claim. Once the accused has rebutted the presumptions under Sections 118 and 139 of the Negotiable Instruments Act by raising a probable defence, the burden shifts upon the complainant to prove the existence of legally enforceable debt beyond reasonable doubt. The complainant has failed to discharge the said burden.

27. Therefore, this Court is of the considered opinion that the complainant has failed to establish that Ex.P.1 cheque was issued by the accused towards discharge of a legally enforceable debt or liability. Hence, Complainant has failed to prove Point No.1. Hence, Point No.1 is answered in the Negative.

28. **Point No.2:** For the foregoing reason, I pass the following:

O R D E R

Acting U/sec. 255(1) of Cr.P.C., the accused is acquitted for the offence punishable U/sec. 138 of Negotiable Instruments Act.

The accused shall execute bail bond and surety U/Section 437(A) of Cr.P.C.

(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 07th day of August, 2026)

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

ANNEXURE

1. List of witnesses examined for the complainant:

PW-1: Sri. Kiran S/o Kuber Chougule

2. List of documents marked for the complainant:

Ex.P.1:	Cheque dated 19.10.20222
Ex.P.1(a):	Signature
Ex.P.2 :	Cheque return memo dated 20.10.2022
Ex.P.3 :	Pay in slip dated 19.10.2022
Ex.P.4 :	Office copy of legal notice dated 17.11.2022
Ex.P.5 :	Postal receipt
Ex.P.6 :	Postal acknowledgment dated 21.11.2022
Ex.P.7 :	Resolution
Ex.P.8 :	Loan application
Ex.P.9 :	Loan application form

Ex.P.10 :	Loan Agreement Letter
Ex.P.11 :	On demand promissory note
Ex.P.12 :	Deed for mortgage of immovable property
Ex.P.13 :	Form No.15
Ex.P.14 :	VPC extract

3. List of witnesses examined for the accused:

-Nil-

4. List of documents marked for the accused:

-Nil-

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