KAHS010034192025

Presented on : 17-05-2025
Registered on : 17-05-2025
Decided on : 20-07-2026
Duration: 1 year, 2 months, 3 days.

BEFORE THE III ADDL. DISTRICT & SESSIONS COURT AT HASSAN

Present: Sri. Doddegowda K., B.A., LL.B.
III Addl. District & Sessions Judge, Hassan.

Dated this 20th day of July, 2026

CRL.A/68/2025

Appellant : Lokesh C.R. S/o Rangaiah,
Aged about 36 years,
R/o Ugane village, Kasaba Hobli,
Hassan Taluk & district.

(By Sri. B.R.J., Advocate)

V/s

Respondent : Puttaswamygowda T.,
S/o Late Thimmegowda,
Aged about 66 years,
R/o Bylahalli village, Kasaba Hobli,
Hassan Taluk & district.

(By Sri. V.C.D., Advocate)

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

This appeal is preferred by the appellant/accused under Section 374(3) of the Code of Criminal Procedure, calling in question the judgment of conviction and order of sentence dated 17.04.2025 passed by the learned III Additional Civil Judge and JMFC, Hassan, in C.C. No.765/2019, whereby the accused was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to pay a fine of ₹6,52,000/-. In default of payment of the fine amount, he was directed to undergo simple imprisonment for a period of three months. Out of the fine amount, a sum of ₹6,50,000/- was ordered to be paid to the complainant as compensation under Section 357 of the Code of Criminal Procedure and the remaining sum of ₹2,000/- was ordered to be remitted to the State.

2. For the sake of convenience, the parties are referred to according to their respective ranks before the Trial Court.

FACTS OF THE CASE

3. The complainant instituted a private complaint under Section 200 of the Code of Criminal Procedure, alleging commission of the offence punishable U/s.138 of the N.I. Act.

4. The case of the complainant, in brief, was that the accused had borrowed a hand loan of ₹7,50,000/- from him on 31.08.2018 for his financial necessities. Towards repayment of the said amount, the accused issued cheque bearing No.543666 dated 31.10.2018 for ₹7,50,000/-, drawn on the State Bank of India, Hassan Branch. The complainant presented the cheque for encashment through his banker. The cheque was returned unpaid under the bank endorsement dated 12.12.2018. Thereafter, the complainant caused a legal notice dated 24.12.2018 calling upon the accused to pay the cheque amount. The notice was duly served upon the accused. In spite of service of notice, the accused neither paid the cheque amount within the statutory period nor issued any reply denying the transaction. Therefore, the complainant approached the Trial Court.

5. After taking cognizance, the learned Magistrate secured the presence of the accused and recorded his plea. The accused pleaded not guilty and claimed to be tried.

6. In order to prove his case, the complainant examined himself as PW.1 and got marked Exs.P.1 to P.5. Ex.P.1 is the original cheque bearing No.543666 dated 31.10.2018 for

₹7,50,000/-. Ex.P.1(a) is the signature of the accused. Ex.P.2 is the bank endorsement. Ex.P.3 is the statutory legal notice. Ex.P.4 is the postal receipt and Ex.P.5 is the postal acknowledgment evidencing service of notice upon the accused.

7. During the pendency of the proceedings before the Trial Court, the complainant and the accused filed a joint memo stating that the matter had been settled for a sum of ₹2,00,000/-. In pursuance of the settlement, the accused paid ₹1,00,000/- to the complainant before the Court on 25.03.2024 and undertook to pay the remaining amount of ₹1,00,000/- on or before 31.05.2024. However, despite granting sufficient opportunities, the accused failed to pay the remaining amount and did not comply with the terms of the joint memo. Consequently, the matter was not compounded and the Trial Court proceeded to decide the case on merits.

8. Upon appreciation of the oral and documentary evidence, the learned Magistrate held that the accused had admitted his signature on the cheque and had failed to rebut the statutory presumptions available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act. The Trial

Court further took into account the payment of ₹1,00,000/- already made by the accused and held that the remaining amount payable towards the cheque liability was ₹6,50,000/-. Accordingly, the accused was convicted and sentenced as stated above.

GROUNDS OF APPEAL

9. The accused has challenged the judgment mainly on the grounds that the Trial Court failed to appreciate the oral and documentary evidence in its proper perspective; that the complainant had not established his financial capacity to advance ₹7,50,000/-; that no bank statement or withdrawal document was produced to prove the source of funds; that the date of presentation of the cheque was not properly proved; that the defence raised by the accused was not considered; and that the judgment of conviction and order of sentence are contrary to law and the evidence available on record.

10. The Trial Court records have been secured.

11. Heard the learned counsel appearing for the appellant/accused and the learned counsel appearing for the respondent/complainant. Perused the appeal memorandum, the impugned judgment, the oral and documentary evidence and the entire records of the Trial Court.

POINTS FOR CONSIDERATION

12. The following points arise for consideration:

1. Whether the complainant has proved that Ex.P.1 cheque was issued by the accused towards discharge of a legally enforceable debt or liability and that the accused committed the offence punishable under Section 138 of the Negotiable Instruments Act?
2. Whether the accused has rebutted the presumptions arising under Sections 118 and 139 of the Negotiable Instruments Act by placing a probable defence on record?
3. Whether the judgment of conviction and order of sentence passed by the Trial Court call for interference in this appeal?

13. My findings on the above points are as follows:

Point No.1: In the Affirmative.
Point No.2: In the Negative.
Point No.3: In the Negative.

:: R E A S O N S ::

14. POINT Nos.1 AND 2 :- Since these points are interconnected and arise out of the same set of facts and evidence, they are taken up together for consideration.

15. The essential ingredients of the offence under Section 138 of the Negotiable Instruments Act are that the cheque must have been drawn by the accused on an account maintained by him for discharge, wholly or partly, of a legally enforceable debt or liability; that the cheque must have been presented within its period of validity; that it must have been returned unpaid; that the payee must have issued a written demand notice within the prescribed period; and that the drawer must have failed to make payment within the statutory period after receipt of the notice.

16. In the present case, Ex.P.1 is the original cheque bearing No.543666 dated 31.10.2018 for ₹7,50,000/-. Ex.P.1(a) is the signature of the accused. The accused has not denied that the cheque pertains to his bank account. He has also not denied his signature appearing on Ex.P.1. Once the execution of the cheque and the signature of the accused are admitted or proved, the presumptions under Sections 118 and 139 of the Negotiable Instruments Act come into operation. The Court is required to presume that the cheque was issued for consideration and towards discharge, wholly or partly, of a legally enforceable debt or liability, unless the accused rebuts the said presumptions by raising a probable defence.

17. The burden upon the accused is not as heavy as the burden upon the prosecution or complainant to establish the case beyond reasonable doubt. The accused may rebut the presumption on the standard of preponderance of probabilities. Nevertheless, he must bring on record such facts and circumstances as would make the existence of the alleged debt or liability improbable. A mere denial or a suggestion put in cross-examination, without any supporting material, is not sufficient to rebut the statutory presumption.The principal defence urged by the accused is that the complainant had no financial capacity to advance a sum of ₹7,50,000/- and that he had not produced bank statements or withdrawal slips to show the source of the amount.

18. The complainant, in his evidence, stated that he had retired from the Minor Irrigation Department and that he had withdrawn ₹3,50,000/- and ₹4,00,000/- from the bank and had kept the amount in his house for purchasing a Hitachi vehicle for his son. He further explained the circumstances under which the amount was available with him. It is true that when the financial capacity of the complainant is seriously and specifically disputed and the accused places some probable material before the Court, the complainant may be required to explain the source of funds. However, the mere non-production of a bank statement cannot, by itself, be treated as sufficient to discard the entire transaction, particularly when the signature on the cheque is admitted and the subsequent conduct of the accused supports the case of the complainant.

19. The defence regarding financial incapacity cannot be examined in isolation. The conduct of the accused during the pendency of the case is of considerable importance.The accused, along with the complainant, filed a joint memo before the Trial Court agreeing to settle the dispute for ₹2,00,000/-. He paid ₹1,00,000/- to the complainant before the Court on 25.03.2024 and undertook to pay the remaining amount of ₹1,00,000/- on or before 31.05.2024. The filing of the joint memo, the undertaking given before the Court and the actual payment of ₹1,00,000/- are not insignificant circumstances. They constitute relevant conduct on the part of the accused and lend assurance to the existence of the transaction and the liability claimed by the complainant. Had there been no transaction whatsoever, and had the cheque been misused by the complainant without there being any liability, there was no convincing reason for the accused to enter into a settlement, pay ₹1,00,000/- before the Court and undertake to pay a further sum of ₹1,00,000/-. The accused has not established that the joint memo was obtained by coercion, fraud, misrepresentation or undue influence. No acceptable explanation is forthcoming as to why he paid ₹1,00,000/- to the complainant if, according to him, no amount was borrowed and no liability existed. The mere fact that the complainant agreed to accept a lesser sum of ₹2,00,000/- in settlement does not establish that the original transaction of ₹7,50,000/- was false. In commercial and monetary disputes, a creditor may agree to accept a lesser amount in order to avoid prolonged litigation and secure immediate payment. Such a settlement cannot be treated as an admission that the original debt did not exist.

20. The settlement did not culminate in compounding of the offence because the accused failed to perform his part of the undertaking. He did not pay the remaining amount of ₹1,00,000/- despite sufficient opportunities. Therefore, the criminal proceedings continued and the Trial Court was required to decide the case on the basis of the evidence available on record.The accused cannot take advantage of his own failure to comply with the joint memo. Having obtained indulgence from the complainant and the Court on the basis of the settlement and having made part-payment pursuant thereto, he cannot thereafter completely disown the transaction and contend that no liability existed.

21. In the present case, the joint memo stated that the parties had agreed to settle the dispute for Rs.2,00,000/-. On 25-03-2024, the accused paid Rs.1,00,000/- and agreed to pay the remaining Rs.1,00,000/- on or before 13-05-2024. Thus, payment of the balance amount was an essential and unperformed part of the settlement. More importantly, the order passed by the trail court does not state that the offence was compounded U/s.147 of

Negotiable Instruments Act. It does not state that the joint memo was accepted in full satisfaction of the complaint. It does not record an acquittal of the accused. It does not dismiss or finally dispose of the complaint. On the contrary, the trial court specifically deferred the matter for payment of the balance settled amount. The word “deferred” assumes significance. It clearly indicates that the court kept the proceedings pending and granted time to the accused to perform the remaining obligation under the compromise. The order was therefore only an interlocutory arrangement made to facilitate completion of the settlement. It was not a final order terminating the criminal proceedings.

22. The recital in the order sheet that the case is settled for Rs.2,00,000/- has to be read along with the remaining part of the order. The same order records that only Rs.1,00,000/- had been paid and that the matter was being deferred for payment of the balance amount. The expression cannot be read in isolation to hold that the offence had already been compounded, particularly when no order of compounding or acquittal was passed. A settlement involving payment in installments becomes fully effective, for the purpose of bringing the criminal case to an end, when the agreed terms are complied with and the court passess an appropriate order accepting the settlement and compounding the offence. Until such order is passed, the complaint continues remain on the file of the court, unless the terms of the settlement or the judicial order indicate otherwise. The joint memo in the present case is also silent regarding the consequences of default. It does not provide that acceptance of the first installment would finally extingnish the original cheque liability. It does not state that, upon default, the complainant would be entitled only to recover the unpaid balance of the compromise amount. It also does not state that complaint stood finally disposed of immediately upon payment of Rs.1,00,000/-. Where only part of the settlement amount is paid, the balance remains unpaid and the court merely adjourns the matter awaiting compliance, in such a case unless the terms or order provide otherwise, the complaint continues and the court retains jurisdiction to proceed in accordance with Law. In these circumstances, this court is of the considered opinion that the joint memo and the order dated 25-03-2024 did not culminate in compounding of the offence or acquittal of the accused. The trial court was legally competent to proceed with the case when the accused failed to pay the balance amount.

23. The accused has not entered the witness box. No doubt, an accused in a proceeding under Section 138 of the Negotiable Instruments Act is not invariably required to lead independent defence evidence. He may rebut the presumption from the material elicited during the cross-examination of the complainant. However, in the present case, no such material has been elicited so as to render the complainant's case improbable. The accused has not produced any document to show that the cheque was issued for any purpose other than repayment of the debt. He has not lodged any complaint alleging theft or misuse of the cheque. He has not produced any material to show that he had instructed his banker to stop payment on the ground that the cheque had been lost or misused. He has also not initiated any civil or criminal proceedings seeking return of the cheque or alleging its unauthorized use.

24. Ex.P.3 is the statutory demand notice. Ex.P.4 is the postal receipt and Ex.P.5 is the postal acknowledgment. These documents establish that the notice was sent to and served upon the accused. The accused did not send any reply to the statutory notice. He did not deny the loan transaction, question the financial capacity of the complainant, allege misuse of the cheque or explain how the cheque bearing his admitted signature came into the possession of the complainant. Non-issuance of a reply notice may not, by itself, be conclusive proof of guilt. However, when the accused admits his signature, fails to reply to the statutory notice, does not lead any defence evidence, enters into a settlement, makes part-payment and thereafter fails to comply with the settlement, the cumulative effect of such conduct cannot be ignored.

25. Ex.P.2 is the bank endorsement showing that Ex.P.1 cheque was returned unpaid on 12.12.2018. Ex.P.3 statutory notice was issued on 24.12.2018. The complaint was thereafter filed after accrual of the cause of action. The statutory requirements contemplated under Section 138 of the Negotiable Instruments Act have thus been duly complied with. The contention that the date of presentation of the cheque has not been properly established is without merit. Ex.P.1 cheque is dated 31.10.2018 and Ex.P.2 bank endorsement establishes that it was dishonoured on 12.12.2018. The cheque was therefore presented within its period of validity. The documentary evidence sufficiently establishes presentation and dishonour of the cheque. The accused has not denied his signature on Ex.P.1. He has also not placed any probable material to explain the circumstances under which the signed cheque came into the possession of the complainant.

26. Even assuming that the remaining particulars in the cheque were filled by a person other than the accused, that circumstance alone would not invalidate the instrument once the signature and delivery of the cheque are admitted, unless the accused establishes that the cheque was not issued towards any legally enforceable liability. No such probable defence has been established in the present case. The testimony of PW.1 is supported by Exs.P.1 to P.5. Nothing substantial has been elicited in his cross-examination to discredit his evidence or to show that the transaction was inherently improbable. The Trial Court has properly appreciated the oral and documentary evidence. The conclusion that the accused issued Ex.P.1 cheque towards discharge of a legally enforceable liability is supported not only by the statutory presumptions but also by the subsequent conduct of the accused in entering into the settlement and making part-payment. The defence put forward by the accused remains a mere denial. It does not satisfy even the standard of preponderance of probabilities. The accused has therefore failed to rebut the presumptions arising under Sections 118 and 139 of the Negotiable Instruments Act. Accordingly, Point No.1 is answered in the affirmative and Point No.2 is answered in the negative.

27. POINT No.3 :- The Trial Court, after considering the cheque amount of ₹7,50,000/-, has given due credit to the payment of ₹1,00,000/- made by the accused during the pendency of the proceedings. It has accordingly held that a sum of ₹6,50,000/- remained payable to the complainant. The Trial Court has imposed a fine of ₹6,52,000/-, out of which ₹6,50,000/- has been ordered to be paid to the complainant as compensation and the remaining amount of ₹2,000/- has been ordered to be remitted to the State.

28. Section 138 of the Negotiable Instruments Act permits the Court to impose imprisonment which may extend to two years, or fine which may extend to twice the cheque amount, or both. In the present case, the Trial Court has imposed only a sentence of fine. The amount of fine is neither excessive nor disproportionate. The Trial Court has not imposed any substantial additional amount over and above the unpaid portion of the cheque amount, except the nominal sum of ₹2,000/- directed to be remitted to the State. The default sentence of simple imprisonment for three months is also reasonable and cannot be said to be harsh.

29. The cheque transaction pertains to the year 2018. The complainant has been compelled to pursue the proceedings for several years. The accused obtained time before the Trial Court on the basis of the joint memo, paid only ₹1,00,000/- and thereafter failed to honour his undertaking. The sentence imposed by the Trial Court is therefore just and proper.

30. During the pendency of this appeal, the appellant was directed to deposit 20% of the fine amount. Despite granting sufficient opportunities, he has not complied with the said direction. The failure to deposit 20% of the fine amount is not being treated as the sole ground to dismiss the appeal or to confirm the conviction. The appeal has been independently considered on the basis of the oral and documentary evidence and the applicable legal principles. This Court, being the first Appellate

Court, has independently re-appreciated the entire oral and documentary evidence. The Trial Court has considered the material placed before it in its proper perspective. Its findings are neither perverse nor contrary to the evidence on record. No material evidence has been ignored by the Trial Court. No inadmissible material has been relied upon. The reasons assigned by the learned Magistrate are sound, proper and in accordance with law. The grounds urged in the appeal are either a repetition of the defence raised before the Trial Court or general allegations that the evidence has not been properly appreciated. No legal or factual infirmity warranting interference has been pointed out.

31. The judgment of conviction and order of sentence do not suffer from any illegality, perversity or material irregularity. Therefore, the appeal is devoid of merits and is liable to be dismissed. Accordingly, Point No.3 is answered in the negative.

:: O R D E R ::

The Criminal Appeal filed by the appellant/accused under Section 374(3) of the Code of Criminal Procedure is hereby dismissed.

The judgment of conviction and order of sentence dated 17.04.2025 passed by the learned III Additional Civil Judge and JMFC, Hassan, in C.C. No.765/2019, convicting the appellant/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, is hereby confirmed.

The appellant/accused shall appear before the Trial Court on or before 14-08-2026 and comply with the order of sentence, if the sentence has not already been complied with.

In the event of failure of the appellant/accused to appear before the Trial Court within the time granted, the Trial Court shall take necessary steps to secure his presence and execute the sentence in accordance with law.

Transmit the Trial Court records forthwith along with a copy of this judgment.

*(Dictated to the Stenographer, transcribed and typed by her, corrected and revised, then pronounced by me in open Court on this the **20th day of July, 2026**)*

(Doddegowda K.)
III Addl. District & Sessions
Judge, Hassan.