KAHS310001722024

Presented on : 12-01-2024
Registered on : 12-01-2024
Decided on : 03-06-2026
Duration : 2 years, 4 months, 22 days

IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC, ARAKALAGUD.

PRESENT: CHAMPASHREE R., ***B.A.L., LL.B., LL.M.,***
Prl. CIVIL JUDGE & JMFC., ARAKALGUD.

DATED THIS 03rd TH DAY OF JUNE, 2026

C.C NO: 43-2024

BETWEEN:

Sri. Yogesha K. V
S/o Venkategowda,
Aged about 43 years,
R/at Kanchenahalli Village,
Kasaba Hobli, ,
Arakalgud Taulk,
Hassan District. **…. COMPLAINANT**
(By Sri.AMY., Advocate for Complainant)

AND:

K.T Manjegowda S/o Thimmegowda
@ Puttarajegowda,
Aged about 32 years,
R/at Kenchenahalli village,
Hullangalu Post,
Kasaba Hobli,
Arakalgud Taulk,
Hassan District. **...ACCUSED**
(By Sri. PVD., Advocate for Accused)

JUDGEMENT

Complainant filed present complaint against Accused alleging that, the accused has committed the offence punishable under Section 138 of Negotiable Instrument Act,1881.

FACTS IN BRIEF:

2. It is stated that complainant and accused are known person and out of said relationship accused approached the complainant and requested for loan to repay the hand loan and for his house expenses and improve his business on 20.09.2023 of Rs.5,00,000/- as said amount was huge amount, complainant intimated to come after one week and on 30.09.2023 complainant had lent Rs.5,00,000/- by way of cash. It is stated that, accused assured the complainant that he would repay the loan within 2 months, therefore complainant requested for the repayment of the said loan after 2 months i.e. on 30.11.2023 at that time accused has issued cheque of H.D.C.C Bank, Arakalgud branch bearing cheque No.220074. It is stated that, accused had mentioned the date on the cheque as 07.12.2023 and requested complainant to present the cheque either on the said date or any other subsequent days after the said date, therefore complainant presented the said cheque on subsequent day to his bank account in H.D.C.C Bank, Arkalagud branch. It is stated that, complainant presented the said cheque on 07.12.2023 but said cheque was returned with an endorsement ‘funds insufficient’ on 07.12.2023, subsequently Complainant approached the accused and said about the said cheque and requested to repay the loan, at that time accused did not responded properly. It is stated that, subsequently complainant issued legal notice on 13.12.2023 to the

accused through his counsel and said notice was unclaimed and returned on 18.12.2023, as the notice was refused it is presumend as deemed service of notice. Hence, accused has committed an offence punishable under Sections 138 and 142 of Negotiable instrument Act,1881.

3. In respect of this complaint, a complaint was filed by the complainant under Section 200 of Code of Criminal Procedure, 1973 against the accused. This Court took cognizance and recorded the sworn statement of the complainant. On perusal of the documents produced along with the complaint, this Court registered this case against the accused for the offence punishable under Section 138 of Negotiable instrument Act,1881 and issued summons to accused.

4. On service of summons, accused appeared before the Court and filed application under Section 436 of Code of Criminal Procedure, 1973 (Cr.P.C for short), Bail was granted and accused was enlarged on bail. Subsequently on 07.12.2024 this Court recorded the plea of the accused by duly explaining the substance of acquisition to her. Accused had not pleaded guilty and claimed to be tried. Hence the matter was posted for trial.

5. Sworn statement of the complainant filed was considered as evidence of the complainant as per the decision of the Hon'ble Supreme Court in Indian Bank Association and others Vs Union of India and other reported in (2014) 5 SCC 590 Complainant was treated as PW.1. The documents produced by the PW.1 were marked as Ex.P1 to Ex.P5(a).

6. Complainant was not cross examined by accused sides, accused failed to appear before the Court regularly, therefore, on 15.01.2025 statement of the accused under Section 313 of Code of Criminal Procedure, 1973 was dispensed. As statement of Accused under Section 313 of Code of Criminal Procedure, 1973 was dispenses, Defendant evidence could not arise. Heard by complainant counsel.

7. Based on the above facts the following points arises for determination of this Court

8. Based on the above fact the following points arises for determination of this Court:

1. Whether the complainant has proved that Ex.P1 cheque was issued by the accused towards the discharge of legal liability and on its presentation the same was dishonoured for reason of "Funds insufficient" and that inspite of notice the accused failed to repay the cheque amount within the stipulated period and thereby committed the offence punishable under Section 138 Negotiable instrument Act,1881?

2. What Order or Sentence?

9. On the basis of the materials on record, this Court proceeds to answer as under:

Point No.1: In the Affirmative.

Point No.2: As per final order

for the following:

:: R E A S O N S::

10. Point No.1: It is the case of the complainant that the accused had sought the loan of Rs.5,00,000/- from the complainant and accordingly the complainant had given an amount of Rs.5,00,000/- to the accused, at the time of lending loan accused assured he would repay the loan within 2 months. Even after 2 month accused failed to repay the same, therefore, Complaint approached the accused and accused had issued the cheque towards the repayment of the same and the same was returned dishonored as ‘Funds insufficient’. Even though, the legal notice was served to the accused he did not pay the amount inspite of knowledge of demand notice regarding dishonor of cheque.

11. In order to prove his contention, the complainant got examined himself and has reiterated the entire complaint averments in his affidavit. Further, the complainant got marked five documents as per Ex.P1 to Ex.P5. Ex.P1 is the cheque dated 07.12.2023 for an amount of Rs.5,00,000/- , Ex.P.2 is the bank acknowledgment. Ex.P.3 is the legal notice dated 13.12.2023, Ex-P.4 is postal receipt, Ex.P5 is the postal acknowledgment card.

12. Having regard to the said documentary evidence, it would be relevant to discuss about Section 139 of the Negotiable Instruments Act, 1881 as under.

> *139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability.*

13. In the light of the aforesaid presumption if we advertto the facts of the present case, the complainant has stated that the accused borrowed a sum of Rs.5,00,000/- from the complainant and in pursuance of payment of the amount the accused has issued cheque bearing number 220074 dated 07.12.2023 for a sum of Rs.5,00,000/- drawn on H.D.C.C Bank, Arakalgud branch as per Ex.P1. Ex.P2 reflects that when the cheque as per Ex.P1 was presented to the bank the said cheque was dishonoured and returned with an endorsement 'funds insufficient'. Further, it is relevant to note that as per Section 138(b) of the Negotiable Instruments Act,1881 the complainant is required to make demand for payment of the cheque within 30 days from the receipt of information from the bank regarding the receipts of cheque as unpaid, accordingly complainant has also issued legal notice to accused on 13.12.2023.

14. Ex.P3 to P5 reflects that complainant made a demand in writing, calling upon the accused to make repayment of the said loan amount by issuing notice on 18.12.2023 and as per Ex. P5 said notice was refused and returned on 05.09.2022. Therefore, it is clear that complainant has duly complied with the mandatory provisions of Sect 138 (b) of the Negotiable Instruments Act,1881.

15. On meticulously observing Ex.P1, it is noticed that Ex.P1 belongs to the account of accused and name of complainant is in Ex.P1, this shows that complainant is the holder of the aforesaid cheque as per Section 8 of the Negotiable Instruments Act, 1881.

16. It is clear that as per Section 139 of the Negotiable Instruments Act,1881, presumption lies in favour of the complainant that accused had issued the aforesaid cheque as per Ex.P1 in discharge of legal debt. The presumption is rebuttable. This presumption lies in favour of the complainant until the Contrary is proved by the accused. This ratio is held by the Hon'ble Supreme Court of India in the case of ***K. N. Beena v. Muniyappan and another AIR 2001 SC 2895*** reported in 201 8 SCC 458, the burden of proving that the cheque has not been issued for the debt or the liability is on the accused.

17. Herein present case, though accused appeared, he neither cross examined the PW-1 nor lead his evidence. As accused failed to be present before the Court, statement of accused under Section 313 of Code of Criminal Procedure, 1973 was dispensed on 28.11.2025, and consequently Defendant evidence was taken as nil.

18. Further, at this junture, this Court would rely on the Judgment reported in ***Basalingappa v. Mudibasappa, reported in (2019) 5 SCC 418.***

> *In Kumar Exports v. Sharma Carpets [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] , this Court*

again examined as to when the complainant discharges the burden to prove that the instrument was executed and when the burden shall be shifted. In paras 18 to 20, the following has been laid down: (SCC p. 520)

"18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19 . The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the

Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. … The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a *prudent man would under the circumstances of the case, act upon the plea that they did not exist."*

19. On going through above dictum of Hon'ble Apex Court it is clear that once complainant discharges his burden , then burden shifts to accused. Bare denial of transaction by accused is not acceptable and burden is heavily on the accused to disprove the transaction and presumption. Herein present case complainant discharged his burden but accused failed to rebut the evidence of complaint. Further, as accused failed to cross examine the accused and failed to deny the incriminating evidence against accused it is presumped that as said fact is admitted by accused.

20. Hence, on perusal of the depositions, materials available on record there are no reasons to disbelieve the case of complainant against the accused and accused has failed to rebut the statutory presumption raised in favor of the complainant. Hence, it can be safely held that the Ex.P1 cheque was issued in discharge of legally recoverable debt. As per Section 138 of the Negotiable Instruments Act, 1881, it is necessary that the cheque has to be presented within a period of 6 months from the date on which it is drawn (within 3 months as per the circular of Reserve Bank of India dated 04.11.2011) or within a period of its validity and the payee or the holder in due course of the cheque as a case may be makes a demand for the payment of the said amount by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and the drawer of the said cheque fails to make payment of the said cheque amount to the payee or as a case may be to the holder in due course of the

cheque within 15 days of the receipt of the said notice, then such act is punishable under Section 138 of the Negotiable Instruments Act, 1881.

21. Herein present case cheque was dated as 07.12.2023 and the said cheque was presented on 07.12.2023 and said cheque was returned with a return memo on 07.12.2023. Therefore it is clear that cheque was presented within 3 months from the date of the cheque. Further, payee or the holder in due course i.e. complainant has made a demand for the payment of the cheque amount in writing to the accused on 07.12.2023 i.e. he has made demand for the payment within a period of 30 days and same was refused by the accused on 18.12.2023. As the notice demanding the payment of the amount was deemed to be know on 18.12.2023, the drawer of the cheque i.e. the accused should have paid the cheque amount within 15 days i.e., on or before 02.01.2024 but complainant contends that accused has not paid any such amount therefore, complainant should have filed this complaint within 30 days from 02.01.2024 i.e., on or before 11.01.2024 and accordingly present complaint was filed on 11.01.2024, therefore there is delay in filing the complaint.

22. On perusal of the oral and documentary evidence it reveals that there are sufficient materials to hold that the accused had issued a cheque for legally enforceable debt and has not paid the amount inspite of having knowledge about dishonor of the cheque. Hence, the accused has committed the offence punishable under Section 138 of the Negotiable Instrument Act and accordingly **answer Point No.1 in the Affirmative.**

23.**Point No.2:** For the discussion made above and considering the fact this Court proceed to pass the following:

:: ORDER ::

Exercising power under Section 255(2) of Cr.P.C. accused is convicted for the offence punishable under Section 138 Negotiable Instrument Act.

The accused is sentenced to pay a fine of Rs.5,05,000/- for the offence punishable U/Sec.138 of N.I.Act. In default of payment of fine amount, the accused shall undergo simple imprisonment for a period of three months.

Further, exercising the power conferred U/Sec.357(1) of Cr.P.C. out of total fine amount of Rs.5,05,000/-, a sum of Rs.5,00,000/- shall be paid to the Complainant as compensation and Rs.5,000/- is ordered to be remitted to the State.

The bail bond and surety bonds stand cancelled.

Supply the free copy of this judgment to the accused.

(Dictated to the steno, transcribed on computer and corrected, signed and then pronounced by me in the Open Court dated this the 03rd day of June 2026)

(Smt. CHAMPASHREE R.)
Prl. Civil Judge & JMFC
Arakalagud.

:A N N E X U R E:

List of the witnesses examined on behalf of the Complainant

PW1 : Sri. Yogesha K.V

List of the documents exhibited on behalf of Complainant

Ex.P1	:	Cheque
Ex.P 1(a)	:	Signature of the accused.
Ex P 2	:	Bank endorsement
Ex P 3	:	Legal notice
Ex P 4	:	Postal receipt
Ex P 5	:	Postal acknowledgment

List of the witnesses examined on behalf of Accused

Nil

List of the documents marked on behalf of Accused

Nil

Prl. Civil Judge & JMFC
Arakalagud.

(Judgment pronounced in open court vide in separate order)

<u>O R D E R</u>

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Prl. Civil Judge & JMFC.,
Arakalgud.