KAHS600000452020

Presented on : 18-01-2020
Registered on : 18-01-2020
Decided on : 20-06-2026
Duration : 06 years, 05 months, 02 days

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & JMFC, CHANNARAYAPATNA

PRESENT: **H.K.NAVEEN**
L.L.B., L.L.M.,
PRINCIPAL SENIOR CIVIL JUDGE
CHANNARAYAPATNA

Dated on this 20th day of June 2026

C.C./7/2020

Complainant : Sri.Rajappa,
S/o Nanjundegowda,
Aged about 69 years,
R/o Utthenahalli Village,
Shravanabelagola Hobli,
Channarayapatna Taluk,
Hassan District.

(By Sri.K.N.K., - Adv.,)

-V/s-

Accused : Sri.Dileepa A.M,
S/o Manjegowda,
Aged about 30 years,
R/o Aladahalli Village,
Shravanabelagola Hobli,
Channarayapatna Taluk,
Hassan District.

(By Sri.G.R.G., - Adv.,)

JUDGMENT

The complainant has filed the complaint against the accused under Sec.200 of Cr.P.C. for the offence punishable under Sec.138 of Negotiable Instruments Act.

2) **The brief facts of the complainant case is as under:**

The complainant and accused are well acquainted with each other. The accused has approached the complainant for hand loan for the purpose of his mobile shop and zerox shop business and to repay his hand loan and borrowed a sum of Rs.3,10,000/- from the complainant on 25.08.2019. The accused has assured to repay the said amount and in discharge of his legal liability the accused has issued a cheque dated 25.11.2019 drawn on HDCC Bank, Shravanabelagola branch. The complainant has presented the cheque for encashment through his Bank. But said cheque returned with endorsement 'Funds Insufficient' dated 25.11.2019. Thereafter the complainant has issued legal notice to the accused calling upon him to repay the borrowed amount. Inspite of the legal notice, the accused has not repaid the borrowed amount and not replied to the legal notice. Therefore the complainant has constrained to file the complaint against the accused for the offence punishable under Sec.138 of N.I.Act.

3) After filing of the complaint, cognizance taken and recorded the sworn statement of the taken and complainant.

The complainant has complied all the statutory requirements under Sec.138 of N.I.Act. Thereafter, the case is registered against the accused and summons issued. The accused appeared through his Advocate and released on bail. Copy of the complaint furnished to the accused. Plea recorded and read out to the accused. The accused pleaded not guilty and claimed to be tried.

4) In support of the case, the complainant himself examined as PW 1 and got marked 5 documents as Ex.P.1 to Ex.P.5. After closure of the evidence of the complainant, 313 Cr.P.C statement of the accused has been recorded. The accused denied the version of the complainant evidence. To prove the defence, the accused himself examined as DW1 and got marked 4 documents as Ex.D.1 to ExD.4.

5) Heard arguments and perused the material on record.

6) On the basis of the contents of the complaint the following points arise for my consideration :

1. ***Whether the complainant proves beyond reasonable doubt that the accused had issued the cheque bearing No.568989 dt.25.11.2019 for a sum of Rs.3,10,000/- drawn on HDCC Bank, Shravanabelagola branch in favour of the complainant towards discharge of legal liability ?***

2. ***Whether the complainant proves beyond reasonable doubt that the***

accused has committed the offence punishable under Sec.138 of N.I.Act?

3. What order ?

7) My findings to the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point.No.3 : As per final order, for the following:

REASONS

8) **Point No.1 and 2:** Both the points are interconnected with each other. In order to avoid repetition of facts, both points are taken up together for common discussion.

9) The complainant has filed the complaint against the accused for the offence under Sec.138 of N.I.Act. It is the specific case of the complainant that the accused approached the complainant and requested a hand loan of Rs.3,10,000/- for the purpose of his mobile shop business and repayment of hand loan. The complainant has paid a sum of Rs.3,10,000/- to the accused and accused has issued a postdated cheque in discharge of his legal liability. The accused has failed to repay the borrowed amount inspite of receipt of the legal notice.

10) On the other hand, the accused has taken specific contention that, one Dharmegowda S/o Manjegowda has borrowed the loan for a sum of Rs.2,00,000/- from BGS, Co-

operative Society in the year 2018. The said Dharmegowda has issued 2 blank cheque and a blank stamp per for security of loan borrowed, the accused was standing as surety for the said loan and he has issued a blank cheque in favour of the Bank for surety and security. The complainant is a President of Society and he has misused the cheques issued by the accused. The accused never borrowed any person loan from the complainant. The complainant has filed several cases against borrower of the Society. The accused has not received any legal notice and contents and averments of the complaint specifically denied.

11) On perusal of the complaint and defence taken by the accused, the accused has not admitted the loan transaction between the accused and complainant and cheque issued in discharge of his legal liability. Under such circumstances, the burden of proof lies on the complainant to prove that accused has borrowed a sum of Rs.3,10,000/- from the complainant and issued cheque in discharge of his legal liability.

12) In support of the complainant contention, the complainant has produced 5 documents which are marked as ExP.1 to ExP.5. ExP.1 is cheque. ExP.2 cheque return memo, ExP.3 is the copy of legal notice, ExP.4 is postal receipt and ExP.5 is postal acknowledgment.

13) On perusal of the documents, ExP.1 is a cheque which contains the date, amount and signature of the accused. The accused has not denied the cheque and his signature, but he has denied the issuance of the cheque in favour of the complainant.

14) In support of the documentary evidence the complainant himself examined as PW-1 and reiterated the complaint averments. In the cross examination he specifically admits that he is the President of the BGS Co-operative Society. It is specifically suggested that, the accused has issued ExP.1 Cheque as a surety for the loan borrowed by Dharmegowda from the BGS, Society and also suggested that, Dharmegowda is regularly repaying the installment amount. PW-1 specifically denied the suggestions. It is further suggested that, the accused has not borrowed Rs.3,10,000/- from the complainant at any point of time and complainant has misused the cheque issued by the accused at the time of Dharmegowda borrowing the loan from the BGS Society. All these suggestions are also denied by PW-1. The other portion of the cross examination is not helpful to the accused to disprove the complaint averments.

15) In support of the accused contention, the accused himself examined as DW-1. In his examination-in-chief he has specifically stated that, Dharmegowda has borrowed the loan for a sum of Rs.2,00,000/- from BGS, Co-operative Society in the year 2018 and issued 2 blank cheque and

accused has issued a blank cheque for surety of loan borrowed by Dharmegowda. The Dharmegowda has repaid portion of the borrowed amount and not repaid due to financial difficulties. The complainant is a President of Society and misused the cheques issued by the accused. The accused never borrowed any person loan from the complainant. The complainant has filed several case against borrower of the Society. The accused has not received any legal notice and contents and averments of the plaint specifically denied.

16) In support of the accused contention, accused has produced 4 documents which are marked as ExD.1 to ExD.4. ExD.1 is legal notice, ExD.2 is Bank Pass Book, ExD.3 is Rent agreement and ExD.4 is also Shop Rent Agreement. In the cross examination he has admitted the cheque and signature thereon. He further admits that, he has issued a cheque in relation to Cheeti business. The Advocate for the accused specifically suggested that the accused has borrowed a sum of Rs.3,10,000/- from the complainant for his individual purpose and cheque issued in discharge of his legal liability and there is no specific evidence to prove that accused has issued cheque as a security for the loan borrowed by the Dharmegowda. On perusal of the entire oral evidence there is no credible evidence in favour of the accused.

17) Accused take any steps to examine any other witnesses in support of his contention. In such circumstances, the contention of the accused is not supported

by any relevant and reliable evidence. The accused has failed to establish that he has not borrowed any loan from the complainant personally and alleged cheque in question is issued as security in the loan borrowed by Dharmegowda and complainant has misused the said cheque. In such circumstances the contention of the accused is not acceptable without any reliable and cogent evidence.

18) The accused has taken specific contention that, the legal notice is not properly served to the accused. He has taken specific defence that, he was not residing in the alleged address and he is residing at Bengaluru. Admittedly the complainant has issued a legal notice through registered post dated 12.12.2019. The complainant has produced postal acknowledgment and same is duly served on 16.12.2019. The accused has produced Rent Agreement which is marked as per ExD.3 and ExD.4. As per ExD.3 the house rent agreement started on 19.03.2024 which is much later than the legal notice and acknowledgment. The another Shop Rent Agreement in the year 2019. Therefore, the documents are helpful to the accused to disprove the complaint averments.

19) On perusal of the entire oral and documentary evidence, it is very clear that the accused has borrowed a sum of Rs.3,10,000/- from the complainant and in discharge of his legal liability he has issued a cheque in favour of the complainant. It is relevant to refer judgment reported in;

Triyambak S.Hegde V/s Sripad (Crl.A.No.849-850/2011) wherein the Hon'ble Supreme Court held that, once the execution of the cheque is admitted Sec.139 of N.I.Act mandate a presumption that cheque was for discharge of any debt or legal liability. The principles of the above case is aptly applicable to this case. The complainant has proved the existence of legally recoverable debt. It is also proved that the accused has issued a cheque in discharge of his legal liability. Hence the court can raise the presumption mandate under Sec.139 of N.I.Act as per the ratio laid down by the Hon'ble Apex Court in **2010(11) SC441(Rangappa V/s Mohan)**. As per the guidelines of Hon'ble Supreme Court, once the cheque relates to account of accused and he accepts and admits the signature on the cheque, then initial presumption as contemplated under Sec.139 of N.I.Act has to be raised by the court in favour of the complainant.

20) In the light of the above discussion and evidence placed on record, the court is opinion that, the complainant has proved the existence of legal liability and also proved that the accused has issued the cheque in question towards discharge of legal liability. The complainant has proved the ingredients of Sec.138 of N.I.Act. Therefore, considering the entire facts and circumstances of the case and available evidence on record, the court come to conclusion that the accused has committed an offence punishable under Sec.138 of N.I.Act. The complainant is entitled for compensation under Sec.357 of Cr.P.C. Therefore the complainant has proved

Point No.1 and 2 beyond all reasonable doubt. Hence, I answer **Point No.1 and 2 in the Affirmative.**

21) **Point No.3:-** In the light of the above findings on point No.1 and 2, I proceed to pass the following;-

ORDER

Acting under section 278 of BNSS, the accused is convicted for the offence punishable under section 138 of N.I.Act.

The accused is sentenced to pay fine amount of Rs.3,20,000/- (Rs.Three Lakhs Twenty Thousand only).

In default of payment of fine, shall undergo SI for one year.

Acting under Sec.395(1)(b) of BNSS out of fine amount, the complainant is entitled for Rs.3,15,000/- (Rs.Three Lakhs Fifteen Thousand only) towards compensation amount.

Acting under Sec.395(1)(a) of BNSS, the remaining fine amount of Rs.5,000/- (Rs.Five Thousand Only) is to be remitted to the State.

Copy of the judgment shall be furnished to the accused free of cost.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open court on this 20th day of June 2026)

(H.K.NAVEEN)
Prl. Senior Civil Judge and JMFC
Channarayapatna.

-:**ANNEXURE:-**

LIST OF WITNESSES EXAMINED BY PROSECUTION:

PW.1	-	Sri.Rajappa S/o Nanjundegowda

LIST OF DOCUMENTS MARKED BY PROSECUTION:

ExP.1	-	Cheque
ExP.1(a)	-	Signature of Accused
ExP.2	-	Cheque Return Memo
ExP.3	-	Copy of Legal Notice
ExP.4	-	Postal Receipt
ExP.5	-	Postal Acknowledgment

LIST OF WITNESSES EXAMINED BY DEFENCE:

DW-1	-	Sri.Dileepa A.M S/o Manjegowda

LIST OF DOCUMENTS MARKED BY DEFENCE:

ExD.1	-	Legal Notice
ExD.2	-	Bank Pass Book
ExD.3	-	Rent Agreement
ExD.4	-	Shop Rent Agreement

(H.K.NAVEEN)
Prl.Senior Civil Judge and JMFC
Channarayapatna