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**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
J.M.F.C,HOLENARASIPURA**

**Present:** Smt.Nivedita M.Munavallimath,  
B.Com.,LL.M

Senior Civil Judge & JMFC,  
Holenarasipura.

**Dated this 01<sup>st</sup> day of June -2026**

**Criminal Case No.57/2021**

**Complainant:** H.C.Chandra,  
S/o. Chaluvashetty,  
Age: 43 years,  
R/at Hallimysuru village,  
Hallimysuru hobli,  
Holenarasipura taluk,  
Hassan district.

**(Sri.H.V.J., Advocate)**

**-V/s-**

**Accused :** Manjunatha,  
S/o. Kalashetty,  
Age: 55 years,  
'D' Group employee,  
Prasarabharathi,  
Aakashavani,  
Hassan.

**(Sri.G.G., Advocate)**

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

The complainant has filed this private complaint U/Sec.200 of Cr.P.C against the accused for the offence punishable U/Sec. 138 of Negotiable Instrument Act.

### **2. Brief facts of the complainant case is as under:**

The complainant and the accused are acquainted with each. The accused approached and requested the complainant on 20.10.2020 to advance hand to the tune of Rs.2,00,000/- for his family legal necessity and accordingly, the complainant advanced the same on 23.10.2020. The accused agreed to repay the loan amount within two months and issued post dated cheque bearing No.153191 drawn on State Bank of India, oriental plaza, B.M.Road, Hassan Branch by putting the date on the cheque as 23.12.2020 in favour of the complainant. When the complainant presented the said cheque through his banker, it was returned as **"funds insufficient"** on

23.12.2020. Thereafter, the complainant got issued legal notice to the accused through RPAD on 07.01.2021 and it is duly served on the accused on 08.01.2021. In spite of that, the accused failed to repay the loan amount and thereby committed an offence punishable under Sec-138 of Negotiable Instrument Act. Hence, the complainant constrained to file this complaint.

**3.** After recording the sworn statement of the complainant and the documents produced along with the complaint, in view of prima-facie case is made out against the accused, this court has registered the case against the accused for the offence punishable U/Sec. 138 of NI Act and issued summons to the accused.

**4.** After receiving of the summons, the accused appeared through his counsel and enlarged on bail.

**5.** The Plea is recorded and has been read over and explained to the accused. The accused

having understood the same, pleaded not guilty and claims to be tried. Thereafter, case is posted for recording of evidence of the complainant.

**6.** In order to prove the case, the complainant examined as PW.1 and got marked six documents at Ex.P.1 to Ex.P.6. Thereafter, the accused was examined U/Sec. 313 of Cr.P.C, he totally denied the entire case of the complainant and not adduce any evidence on his behalf and not marked any documents.

**7.** I have heard the arguments addressed by both the side and perused the records.

**8.** The points that arise for my consideration are:

- (1) Whether the complainant proves that the accused has issued a cheque in discharging of legally enforceable debt?
- (2) Whether the complainant proves that the accused has committed an offence punishable U/Sec. 138 of NI Act?

- (3) Whether the accused has rebutted the presumption available under the NI Act?
- (4) What order?

9. My answer to the above points are as under:

- Point No.1 : In the Affirmative**  
**Point No.2 : In the Affirmative**  
**Point No.3 : In the Negative and**  
**Point No.4 : As per final order, for the following:**

### **REASONS**

10. **Point Nos.1 to 3**:- In order to avoid the repetition of facts and since the points No.1 to 3 are inter-related, I have taken the above points together for common discussion.

In order to prove the case, the complainant himself examined as PW.1 by filing affidavit in lieu of chief-examination. In the chief examination PW.1 stated that himself the accused are acquainted with each other and the accused approached and requested him on 20.10.2020 to advance hand to the tune of

Rs.2,00,000/- for his family legal necessity and accordingly, he advanced the same on 23.10.2020. The accused agreed to repay the loan amount within two months and issued postdated cheque bearing No.153191 drawn on State Bank of India, Branch Hassan by putting the date on the cheque as 23.12.2020. When he presented the said cheque through his banker, it was returned as "**funds insufficient**" on 23.12.2020. Thereafter, he got issued legal notice to the accused through RPAD on 07.01.2021 and it is duly served on the accused on 08.01.2021. In spite of that, the accused failed to repay the loan amount.

**11.** In support of his oral evidence he has produced original cheque, bank endorsement, copy of legal notice, postal receipt, postal acknowledgment and bank pass book, which got marked as Ex.P.1 to Ex.P.6 respectively.

**12.** The accused denied the transaction and taken the defence that he has given cheque

in question to the complainant as a security of Chit amount of one Smt.Lakshamma. But the complainant misused the same and filed this false complaint.

**13.** The counsel for the complainant relying the oral and documentary evidence, vehemently argued that the complainant has proved his case and as per Section 139 of Negotiable Instruments Act, the presumption is infavour of the complainant and prays to convict the accused and award suitable compensation to the complainant. On the other hand the learned counsel for the accused vehemently argued that the complainant has not proved the passing of consideration and hence the accused is entitled for acquittal.

**14.** It is pertinent to note that, Sec.118 of Negotiable Instrument Act states that;

***"Until the contrary is proved, it shall be presumed that every Negotiable Instrument was made or drawn for consideration"***

**15.** U/Sec. 139 of Negotiable Instrument Act contemplated that;

***"Unless the contrary is proved, it shall be presume that holder of cheque receive the cheque of the nature referred to Section 138 of the Negotiable Instrument Act for the discharge, in whole or in part, of any debt or that liability."***

**16.** The above referred provisions makes it clear that the presumption U/Sec.139 is rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof of rebutting the presumption is that of preponderance of probabilities. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but

also by reference to the circumstances upon which they rely.

**17.** It is relevant to note that the Hon'ble Apex Court in a case of **Rangappa V/s Mohan** reported in **(2010) 11 SCC 441**, a bench consisting of Hon'ble three judges held that the presumption mandated by Sec.139 of Negotiable Instrument Act, includes a presumption that there exist a legally enforceable debt or other liability and that is a rebuttal presumption and it is opened to the accused to raise a defence wherein the existence of legally enforceable debt or liability can be contested. Further held that once issuance of cheque and signature there upon are admitted, presumption of legally enforceable debt in favour of the holder of the cheque arises and it is for the accused to rebut the said presumption, though the accused need not adduce his own evidence and can rely upon the material submitted by the complainant. Further held that mere statement of the accused

may not be sufficient to rebut the said presumption.

**18.** It is relevant to note that the Hon'ble Apex Court in the recent judgments namely in the case of **M/s.Kalmani Tex and Another Vs. P.Balasubramanian, reported in 2021 (1) KCCR 545 (SC)** and **M/s.M/s Shree Daneshwari Traders Vs. Sanjay Jain and Another (Decided on 21 August, 2019)**, laid down a dictum that the statute mandates that once the signatures of the accused on the cheque is established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. In the light of ratio laid down by the Hon'ble Apex Court I turned to the case on hand.

**19.** In the instant case, during the chief examination PW.1 categorically stated that the accused borrowed hand loan to the tune of Rs.2,00,000/- and towards repayment of the

same, the accused has issued Ex.P.1. But Ex.P.1 returned as "funds insufficient". In spite of demand notice, the accused failed to pay the amount. On perusal of Ex.P.1 it appears that the cheque is standing in the name of complainant for Rs.2,00,000/- and the signature of accused is found in the cheque. On perusal of Ex.P.2 it appears that the cheque in question returned as "funds insufficient". On perusal of Ex.P.3 to Ex.P.5, it appears that the complainant has issued demand notice to the accused which is served on the accused.

**20.** It is pertinent to note that the accused has not denied the issuance of cheque and his signature found in the cheque. Therefore, I am of the considered opinion that the complainant has established issuance of cheque and signature. Now the onus is on the accused to rebut the presumption. It is the defence of the accused that he has given cheque in question as a security of Chit amount of one

Smt.Lakshamma. But the complainant misused the same and filed this false complaint.

**21.** It is relevant to note that the accused has not placed sufficient and cogent evidence to show that he has given cheque in question as a security of chit amount of Smt.Lakshamma. Moreover, the accused not attempted to examine the said Smt.Lakshamma and not taken any legal steps against the said Smt.Lakshamma. By considering all these aspects, in my opinion the defence raised by the accused is not probable.

**22.** It is relevant to note that when the statutory presumption stands in favour of complainant, it is the accused must rebut the initial presumption. In the instant case, as I have already discussed the accused has not rebutted the initial presumption by placing the cogent evidence. Of course, it is true that, the accused need not stepped into witness box to rebut the presumption. But, he can made out

the preponderance of probability that the alleged cheque was not issued for any debt or other liability, which creates doubt in the court to believe the existence of legally enforceable debt or other liability. Through PW.1 subjected for cross-examined by the learned defence counsel, but nothing has been elicited. Unless and until the defence is proved by accused, the presumption U/Sec.139 of stands in favour of complainant. In the present case, the accused not at all rebutted the presumption stands in favour of complainant Therefore, the benefit of presumption must goes in favour of complainant. Hence, I answer **point No.1 and 2 in the Affirmative** and **point No.3 in the Negative.**

**23. Point No.4:** In view of my findings to the above points, I hold that the accused fund guilty of the offence punishable U/Sec.138 of Negotiable Instrument Act. Hence, I proceed to pass the following:

**ORDER**

**Acting U/Sec.255(2) of Cr.P.C the accused is hereby convicted of the offence punishable U/Sec.138 of Negotiable Instrument Act.**

**The accused is sentenced to pay the fine of Rs.2,05,000/- for an offence punishable U/Sec.138 of Negotiable Instrument Act. In default of payment of fine amount, he shall undergo simple imprisonment for three months.**

**Out of fine amount, Rs.5,000/- shall pay to State Government. Further the remaining fine amount of Rs.2,00,000/- shall pay to the complainant as a compensation U/Sec.357(1) of Cr.P.C.**

**The bail bonds of the accused and surety bond stands cancelled.**

**Office is directed to supply copy of judgment free of cost.**

(Directly typed by me on laptop and signed by me and then pronounced in the open court, on this **01st day of June - 2026**).

**(Smt.Nivedita M. Munavallimath)  
Senior Civil Judge & JMFC,  
Holenarasipura.**

**Annexure****Witnesses examined for complainant:**

PW.1 : H.C.Chandra S/o: Chaluvashetty

**Documents exhibited for complainant:**

- Ex.P.1 : Original cheque  
Ex.P.1(a) : Signature of accused on the cheque  
Ex.P.2 : Bank endorsement  
Ex.P.3 : Copy of legal notice  
Ex.P.4 : Postal receipt  
Ex.P.5 : Postal acknowledgment  
Ex.P.6 : Bank pass book

**Witness examined for accused:**NIL**Documents marked for accused:**

.... NIL ....

**Senior Civil Judge and  
JMFC, Holenarasipura**