KAHV010004712026

IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE, AT HAVERI.

DATED THIS THE 17th DAY OF JULY, 2026

PRESENT

SRI. N.M.Ramesha, *B.com, LL.B., LLM*
I Addl. District & Sessions Judge, Haveri.

Criminal Appeal No.16/2026

Appellant : Proprietor,
Mahabaleshwar B.G.,
Sri. Mahabaleshwara
Financier, Haveri,
Age: 65 years,
Occ: Money lenders,
Manjunath Nilaya, Haveri,
3rd Cross, Shivajinagar,
Haveri taluk and district.

(Sri. N.G. Hosamani., Advocate)

V/s

Respondent : Shri. Rudrappa S/o
Jagadevappa Channapura,
Age: 45 years,
Occ: Agriculture,
R/o: Hotanahalli,
Shiggaon taluk,
Haveri district.

(Sri. C.S. Mantagani., Advocate)

JUDGMENT

The appellant has preferred this criminal under the provisions of Section 372 of Cr.P.C., R/w Section 413 of BNSS, 2023, challenging the judgment of acquittal passed by the Learned Prl. Senior Civil Judge & CJM., Haveri in C.C.No.793/2023 dated 07.01.2026, in acquitting the respondent for the offence punishable under the provisions of Section 138 N.I.Act.

2. The appellant was the complainant and the respondent was the accused before the Trial Court. Therefore, for the sake of convenience and clarity, the parties are referred to as per their ranks assigned before the Trial Court.

3. The facts leading to filing of this Criminal Appeal and the facts constituting the case of complainant is as under:

The complainant being the Proprietor of Sri. Mahabaleshwar B.G., finance Haveri, is residing at Haveri along with family members doing money lending business. On 15.05.2019, the accused has approached the complainant along with witness namely Erappa Channabasappa Gondi, residing of Hothanahalli of Shiggaon Taluk, Haveri District and availed a loan of Rs.75,000/- and executed an on demand promissory note agreeing to repay the loan with interest at the rate of 15% per annum. But, the accused has failed to repay the loan inspite of demand made by the complainant for several times. Therefore, on 28.11.2021, the complainant has approached the accused and demanded to repay the out standing loan of Rs.1,23,178/-, for which, the accused has issued a cheque bearing No.910093 dated 28.11.2021 for Rs.1,00,000/- drawn on Union Bank, Bommahahalli Branch, Hanagal which was drawn from his savings bank bearing account No.3451020000191 in favour of the complainant towards repayment of part loan amount. Therefore, the complainant has presented the cheque before the Karnataka Bank Ltd., Haveri Branch on 30.11.2021 for encashment. But the cheque was came to be dishonoured with an endorsement as account blocked vide dated 01.12.2021. Therefore, the complainant got issued a legal notice dated 02.12.2021 on 03.12.2021 calling upon the accused to pay the cheque amount within 15 days from the date of service of legal notice. The legal notice was served upon the accused on 07.12.2021. But, inspite of service of legal notice, the accused neither replied the notice nor make necessary arrangements to pay the cheque amount and thereby committed an offence punishable under Section 138 of N.I.Act. Therefore, the complainant has presented the complaint before the Trial Court on 12.01.2022 against the accused under the provisions of Section 200 of Cr.P.C., for the offence punishable under the provisions of Section 138 N.I.Act.

4. After presentation of complaint, it was ordered to be registered as PCR.No.47/2022 vide order dated 12.01.2022.

5. The complainant has filed his affidavit in lieu of sworn statement and got examined himself as P.W.1 and got the documents marked as per Ex.P1 to Ex.P6.

6. The Trial Court having heard the arguments of Learned Counsel for the complainant and having satisfied with sworn statement affidavit of P.W.1 and the documents at Ex.P1 to Ex.P6 and on being satisfied with prima-facie materials placed on record, has taken the cognizance for the offence punishable under the provisions of Section 138 N.I.Act vide order dated 23.08.2022 and the case was ordered to be registered as C.C.No.793/2023 and the process was ordered to be issued against the accused.

7. On service of process of the Trial Court, the accused has appeared before the Trial Court on 03.12.2022 through his Learned Counsel and obtained the bail by furnishing the surety.

8. The plea of accused for the offence punishable under the provisions of Section 138 N.I.Act was recorded on 18.01.2022 and the substance of accusation was read over and explained to the accused in language known to him. On being plea recorded, the accused has pleaded not guilty, but claims to be tried.

9. The Learned counsel for the accused filed an application under Section 145 of N.I.Act, seeking permission to cross-examine P.W.1 and therefore, it was allowed by order dated 18.01.2023.

10. P.W.1 was subjected for cross-examination at length by the Learned counsel for accused vide dated 04.10.2024 and 11.03.2025 and during cross-examination of P.W.1, the Learned counsel for the accused has confronted certified copy of judgment in C.C.No.156/2017 dated 30.08.2021 on the file of Addl. Senior Civil Judge & JMFC., Hanagal, certified copy of cheque bearing No.000491 dated 31.05.2017 for Rs.45,000/- drawn on Union Bank, Bommanahalli Branch, certified copy of the bank endorsement dated 06.06.2017, certified copy of postal acknowledgment and bank passbook, for which P.W.1 has admitted and accordingly, they have been marked as per Ex.D1 to Ex.D5 through the cross-examination of P.W.1.

11. After closure of evidence of complainant side, the Trial Court neither recorded the statement of accused as contemplated under the provisions of Section 313 of Cr.P.C., nor dispensed with recording of statement of accused under Section 313 of Cr.P.C and posted the case for arguments.

12. The Trial Court having heard the arguments of both the side, has come to the conclusion that the complainant has failed to prove the guilt against the accused for the offence punishable under Section 138 of N.I.Act and accordingly, passed the judgment of acquittal vide dated 07.01.2026.

13. The complainant being aggrieved by the judgment of acquittal passed by the Trial Court, has preferred this appeal on the following grounds:

14. The judgment of acquittal passed by the Trial Court is not proper and legal. The Trial Court has failed to consider that there are sufficient evidence and documents to prove the guilt against the accused. The Trial Court has failed to consider the evidence of P.W.1 and has not given sufficient opportunity to lead further evidence of the complainant. The Trial Court has erred in holding that the complainant has failed to prove the guilt against the accused beyond all reasonable doubt. The Trial Court has failed to consider the documents exhibited on behalf of the complainant and not properly appreciated the provisions of Sections 118 and 139 of N.I.Act. The Trial Court has erred in appreciating the evidence on record, which resulted in miscarriage of justice. The complainant has placed sufficient materials to prove the guilt against the accused, which has not been considered by the Trial Court. The Trial Court has failed to provide sufficient opportunity to the complainant to lead further evidence of Bank Manager as P.W.2 and not appreciated the evidence of P.W.1. The

Trial Court has also failed to hold that the transaction between complainant and the accused was taken place long back and therefore, the judgment passed by the Trial Court is not sustainable under law. It is on these among other grounds, the complainant has prayed for allow the appeal by setting-aside the judgment of acquittal passed by the Trial Court and to remand the matter to the Trial Court for fresh disposal in accordance with law.

15. After presentation of appeal, it was ordered to be registered as C.A.No.16/2026 vide order dated 06.02.2026 and the notice was ordered to be issued to the respondent.

16. On service of notice on appeal, the accused has appeared before this Court through his Learned Counsel and contested the appeal.

17. The records of the Trial Court were secured vide dated 07.04.2026.

18. I have heard the arguments of both the side. The Learned counsel for the accused also filed written argument.

19. In the light of the arguments canvassed by both the side, I have carefully perused the entire records.

20. Now the points that would arises for my consideration are as under:

1. Whether the Trial Court was justified in acquitting the accused for the offence punishable under the provisions of Section 138 of N.I.Act without providing sufficient opportunities to the complainant to lead the evidence of witness and without complying the mandates of Section 313 of Cr.P.C., or without dispensing with recording of statement of accused under Section 313 of Cr.P.C., and without providing an opportunity to the defense side to lead evidence ?
2. Whether the Trial Court has properly appreciated the complaint averments, oral and the documentary evidence placed on record including the relevant provisions of Negotiable Instrument Act in accordance with law, facts and probabilities of the case?
3. Whether the judgment of acquittal passed by the Trial Court calls for any interference by this Court?
4. What order?

21. On re-appreciation and re-consideration of entire oral and the documentary evidence placed on record, now my answers to the above points are as under:

Point No.1 : In the **Negative,**

Point No.2 : In the **Negative,**

Point No.3 : In the **Affirmative,**

Point No.4 : As per final order for the following:

REASONS

22. **POINTS NO.1 TO 3:** These three points are interrelated, interconnected and interlinked with each other. Findings on point No.1 has great bearing on points No.2 and 3 also. These three points revolve round the aspect of justification on the part of the Trial Court in acquitting the accused for the offence punishable under Section 138 of N.I.Act, without appreciating the evidence on record and without complying the mandates of Section 313 of Cr.P.C., or without dispensing with recording of statement of accused under Section 313 of Cr.P.C., and without providing an opportunity to the complainant to lead oral and the documentary evidence and re-appreciation and re-consideration of entire evidence on record and interference of this Court to the judgment of acquittal passed by the Trial Court. Therefore, for the sake of convenience, clarity and also to avoid repetition of facts and evidence being narrated separately, these three points are taken up together for common discussion.

23. The Learned counsel for the complainant has argued with force that, the complaint averments, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P6, clearly establishes that the accused has availed a loan of Rs.75,000/- on 15.05.2019 and executed an on demand promissory note agreeing to repay the loan with interest at the rate of 15% per annum, but inspite of several requests and demands, the accused has failed to pay the outstanding loan of Rs.1,23,178/- and on demand for repayment of loan, the accused has issued a cheque in question for legally recoverable debt of Rs.1,00,000/- and on presentation of the cheque for encashment, it was dishonoured with an endorsement as account blocked as per Ex.P2 and in spite of issuance of notice vide Ex.P3 and inspite of service of legal notice, the accused has failed to pay the cheque amount within time and therefore, the complainant has filed the complaint against the accused within time and thereby, the complainant has complied all the mandates of Section 138 N.I.Act, by adducing oral evidence of P.W.1 and also by producing documentary evidence at Ex.P1 to Ex.P6, but the Trial Court has failed to appreciate the complaint averments, oral evidence of P.W.1 and also documentary evidence at Ex.P1 to Ex.P.6.

24. It is further contended by the Learned counsel for the complainant that, the accused neither adduced oral evidence nor produced any documentary evidence or elicited any facts during the cross-examination of P.W.1 and the accused has disputed the fact that the cheque is belongs to him, but the accused inspite of service of legal notice has failed to issue reply notice and also not adduced any evidence to rebut the statutory presumptions and moreover, the Trial Court has not recorded the statement of accused under Section 313 of Cr.P.C., and without considering the evidence on record, the Trial Court has hurriedly pronounced the judgment of acquittal, which is not in accordance with law and also facts and circumstances of the case and therefore, the judgment of acquittal passed by the Trial Court is deserves to be set-aside by allowing the appeal and the matter is required to be remanded back to the Trial Court to lead further evidence and to record the statement of accused under Section 313 of Cr.P.C., and then to decide the case afresh.

25. *Per-contra*, the Learned Counsel for the accused has vehemently contended that the complaint averments, oral evidence of P.W.1 and and the documentary evidence at Ex.P1 to Ex.P6, do not establish either loan transaction and the execution of documents or issuance of cheque for legally recoverable debt and thereby, the complainant has failed to comply the mandates of Section 138 N.I.Act with legal evidence before the Court. It is further contended by the Learned counsel for the accused that the accused has not at all availed any loan from the complainant and also not issued cheque in question and in-fact, the cheque vide Ex.P1 is not at all belongs to accused and in this regard, the accused has produced documents at Ex.D1 to Ex.D5, which were marked through the cross-examination of P.W.1, which substantiate the defense taken by the accused.

26. It is further contended by the learned counsel for the accused that the complainant has concocted and created the documents and misused the cheque which was belong to somebody and the complainant has been indulged in doing money lending business, extracting exorbitant interest from the public and in this regard several cases have been initiated against complainant, which has been elicited during the course of cross-examination of P.W.1 and the evidence on record do not establish the guilt against the accused. Therefore, the Trial Court has rightly appreciated the evidence on record. Hence, question of interfering with the judgment of acquittal passed by the Trial Court does not arise and the appeal is liable to be dismissed.

27. In order to appreciate the rival contentions made by both the side, it is just and necessary to go through the relevant provisions of Negotiable Instrument Act and also principles and guidelines issued by the Hon'ble Supreme Court of India in respect of disposal of cases under the provisions of Negotiable Instrument Act.

28. The provisions of Chapter XVIII of Negotiable Instruments Act, 1881 deals about special rules of evidence. The provisions of section 118 of Negotiable Instruments Act, 1881 deals about the Presumption as to the Negotiable Instruments. As per this provisions of law, until the contrary is proved, the following presumptions shall be made:

(a) of consideration; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date; that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer; that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements; that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped;

g) that the holder is a holder in due course; that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an SP offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

29. The provisions of section **138 of N.I. Act** deals about Dishonour of cheque for insufficiency, etc., of funds in the account. As per this provision of law, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

> *(a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;'*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and'*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

30. The provisions of section **139 of N.I.Act, 1881** deals about Presumption in favour of holder. As per this provisions of law, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

31. The provisions of section **146 of N.I.Act 1881** deals about Bank's slip prima facie evidence of certain facts. As per this provisions of law, the Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

32. The Hon'ble Supreme Court of India in a decision reported in **(2014) 5 S.C.C. 490** in the case of **Indian Bank Association Vs. Union of India and others**, has pleased to laid down the principles, guidelines and directions which are as under:

(1) Metropolitan Magistrate/Judicial Magistrate on the day when the complaint under section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

(2) Metropolitan Magistrate/Judicial Magistrate

should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

(3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

(4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.

(5) The Court concerned must ensure that examination-in-chief, cross- examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

33. Now keeping the arguments canvassed by the both the side, above extracted relevant provisions of N.I.Act and the principles laid down and the guidelines issued by the Hon'ble Supreme Court of India in the above decision in mind, let us re-appreciate the entire evidence on record and let us consider as to whether the Trial Court was justified in acquitting the accused for the offence punishable under Section 138 N.I.Act, without complying the mandates of Section 313 Cr.P.C., or without dispensing with recording of statement of accused under Section 313 of Cr.P.C., and without providing an opportunity to the complainant to lead the evidence of Bank Manager and let us consider as to whether the judgment of acquittal passed by the Trial Court calls for any interference by this Court or not.

34. Firstly, if the premise on which the complainant has set the criminal law into motion by lodging a complaint against the accused under the provisions of Section 200 of Cr.P.C., for the offence punishable under Section 138 of N.I.Act is seen, it can be gathered from the averments made in the complaint, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P6 including the documentary evidence at Ex.D1 to Ex.D5 which were confronted to P.W.1 during the course of his cross-examination and the material facts elicited during the course of cross-examination of P.W.1 that, P.W.1 being the complainant in this case and being the Proprietor, has been running a financial business under the name and style Sri. Mahabaleshwar Finance, Haveri.

The accused stated to have approached the complainant on 15.05.2019 and availed a loan of Rs.75,000/- from the complainant for family necessity and executed an on demand promissory note agreeing to repay the loan with interest at the rate of 15% per annum and on demand for repayment of outstanding loan of Rs.1,23,178/- as on 28.11.2021, the accused has issued cheque in question vide Ex.P1 for repayment of part loan and on presentation of cheque for encashment, it was came to be dishonoured with an endorsement as account blocked vide bank endorsement at Ex.P2. Therefore, the complainant got issued a legal notice vide Ex.P3 calling upon the accused to pay the cheque amount and the said legal notice was served upon the accused as per Ex.P5. But, the accused neither replied the notice nor make necessary arrangements to pay the cheque amount. Therefore the complainant has presented the complaint before the Trial Court.

35. As could be seen from the document at Ex.P1, the cheque is dated 28.11.2021. It was presented before the banker for encashment on 30.11.2021, which was came to be dishonoured vide dated 01.12.2021. As could be seen from the documents at Ex.P3 to Ex.P5, the complainant got issued the legal notice dated 02.12.2021, which was served upon the accused on 07.12.2021. But, the accused has failed to pay the cheque amount within time. Therefore, the complainant without any alternative option, has presented the complaint before the Court on 12.01.2022, which was well within time.

36. So, it is crystal clear from the documents at Ex.P1 to Ex.P6, the complainant has presented the cheque before the banker for encashment within its validity and the complainant got issued legal notice within time from the date of dishonour and it has been duly served upon the accused and the accused has failed to pay the cheque amount within time and the complaint lodged by the complainant before the Court was well within time. So, the complainant has complied the initial mandates of Section 138 N.I.Act by adducing oral evidence of P.W.1 and also by producing documentary evidence at Ex.P1 to Ex.P6.

37. Admittedly, the presumptions available in favour of the complainant under the provisions of Sections 118 and 139 of N.I.Act are not the conclusive proof, but they are rebuttable in nature. Therefore, when once the complainant has complied the basic mandates of Sections 138 N.I.Act, then the onus shifts on the accused to raise a specific defence or probable defence and expected to substantiate the same before the Court with legal evidence either by adducing oral evidence or by eliciting material facts during the course of cross-examination.

38. It is well settled position of law that in order to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act, the accused need not enter into witness box or need not adduce any oral evidence of or need not produce any documentary evidence or need not adduce any evidence of independent witnesses. But, on the other hand, in order to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act, he can definitely make use of the materials produced by the complainant.

39. Now keeping these well settled position of law, let us consider as to whether the accused could able to raise a probable defense or specific defense and whether the accused could able to substantiate the same before the Court and whether the accused could able to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act .

40. As could be seen from the plea of accused recorded on 18.01.2023, when the Trial Court has recorded the plea of accused for the offence punishable under Section 138 of N.I.Act and when the substance of accusation was read over and explained to the accused in the language known to him, the accused has simply denied the case of the complainant as false and claims to be tried. In other words, the accused did not choose to take any probable defense or specific defense at the time of recording of plea for the offence under Section 138 of

N.I.Act.

41. However, as could be seen from the material suggestions put to P.W.1 during the course of cross-examination of P.W.1, the accused tried to put forth the defense to the effect that the cheque number and the account number is wrongly mentioned in the complaint and affidavit-in-chief-examination and the accused has not at all availed any loan from the complainant and the cheque vide Ex.P1 is not belongs to the accused and the complainant and his wife have been running money lending business without license and they have indulged in taking exorbitant interest from customers and therefore, several cases have been initiated against the complainant and his wife. Therefore, the accused is not liable for payment of cheque amount to the complainant. Therefore, the material suggestions have been put to P.W.1 on behalf of defense side, which have been specifically denied by P.W.1. The accused neither adduced oral evidence nor adduced the evidence of any independent witnesses or at-least the Bank manager to substantiate his defense.

42. However, the accused has not specifically denied the fact that, he is having a bank account at Union Bank, Bommanahalli Branch, Haveri District. Because, as could be seen from the documents at Ex.D1 to Ex.D5, which were confronted to P.W.1 that, the accused is having bank account at Union Bank, Bommanahalli Branch, Haveri District. Further, as could be seen from the document at Ex.D5, which is the passbook of the accused that the accused is having a savings bank account by Union Bank, Bommanahalli Branch, Haveri District.

43 Therefore, whether the cheque in question vide Ex.P1 was drawn on an account maintained by the accused at Union Bank, Bommanahalli Branch or not is a matter which requires evaluation of evidence of Bank Manager or any officer of the Union Bank, Bommanahalli Branch, Haveri District, to be recorded at the trial. Further, whether the cheque in question vide Ex.P1 belongs to accused or not is also a matter which requires evaluation of evidence of Bank Manager to be recorded at the trial. But, the accused did not choose to either summon Bank Manager or any officer of the Bank and to adduce evidence of said witnesses. No explanation as such forthcoming from the defense side in this regard for non-examination of Bank Manager or any officer of the Bank.

44. However, as could be seen from the Trial Court records, the Learned counsel for the complainant has filed an application under the provisions of Section 254(2) R/w Section 91 of Cr.P.C., seeking to issue summons to the Bank Manager and also for production of documents. But, the said application was came to be dismissed vide order dated 22.12.2025.

45. It is pertinent to note here that, when the accused has disputed the cheque in question and also disputed the fact that the cheque was drawn on an account maintained by him in his banker and when the complainant has filed an application seeking Court to issue summons to the Bank Manager and to produce the bank statement and other relevant documents and also considering the nature of defense taken by the accused and since the accused did not choose to either summon Bank Manager or to produce bank statement, then the prudency was prevailed on the Trial Court to provide an opportunity to the complainant to adduce the evidence of Bank Manager and to produce relevant bank documents. But, the Trial Court has not done so. Under these circumstances, it cannot be said that the Trial Court was justified in acquitting the accused for the offence punishable under Section 138 of N.I.Act without providing an opportunity to the complainant to adduce further evidence of Bank Manager and also for production of relevant bank documents.

46. Be that as it may, as already stated above, the accused did not choose to take any defense at the time of recording plea under Section 138 of N.I.Act. The complainant has adduced oral evidence of P.W.1 and also produced documentary evidence at Ex.P1 to Ex.P6, which reveals that the complainant has complied the initial mandates of Section 138 N.I.Act. After completion of evidence of complainant side, the Trial Court was expected to record the statement of accused under Section 313 of Cr.P.C., and read over and explain the incriminating evidence of complainant and the documents to the accused in the language known to him so as to provide an opportunity to the accused to raise either probable defense or specific defense and also to say about the documents at Ex.P1 to Ex.P6. But, the Trial Court has not done so.

47. It is pertinent to note here that, the importance of recording the statement of accused under Section 313 of Cr.P.C., is to afford an opportunity to the accused to explain the incriminating circumstances as such forthcoming against him in the evidence of complainant and the documents and also to raise either probable defense or specific defense and also afford an opportunity to the accused to substantiate his defense so as to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act. But, the Trial Court has not complied the mandates of Section 313 of Cr.P.C.

48. As could be seen from the Trial Court records more particularly the order sheet dated 25.02.2025, when the evidence of complainant side was closed, the case was adjourned for statement of accused under Section 313 of Cr.P.C., and adjourned to 11.03.2025. On

11.03.2025, the Learned counsel for the accused filed an application under Section 311 of Cr.P.C., which was came to be allowed with cost of Rs.300/- and accordingly, P.W.1 was subjected for cross-examination by the Learned counsel for the accused and Ex.D1 to Ex.D5 were marked through the evidence of P.W.1. Thereafter, an application under Section 254(2) R/w Section 91 of Cr.P.C., was filed, which was also came to be dismissed and thereafter, the case was directly posted for arguments on merits without complying the mandate of Section 313 of Cr.P.C., and the Trial Court has passed the judgment on 07.01.2026.

49. So, it is crystal clear that the Trial Court has not complied the mandates of Section 313 of Cr.P.C., and failed provide an opportunity to the accused to explain the incriminating evidence as such forthcoming against him in the evidence of complainant and the documents. Under these circumstances, this Court has no option, but to remand the matter to the Trial Court with a direction to provide an opportunity to the complainant to adduce the evidence of Bank Manager and also comply the mandates of Section 313 of Cr.P.C., by explaining the incriminating evidence as such forthcoming against the accused in the evidence of complainant and the documents and thereafter, provide an opportunity to the accused to adduce the defense evidence if any and to hear the arguments and then to proceed with the case in accordance with law.

50. Hence, for the reasons discussed above, this Court is of the considered view that the Trial Court was not justified in acquitting the accused for the offence punishable under Section 138 of N.I.Act without affording an opportunity to the complainant to adduce evidence of Bank Manager considering the nature of defense taken by the accused and without complying the mandates of Section 313 Cr.P.C. The Trial Court has failed to appreciate the evidence on record in accordance with law, facts and probabilities of the case. Therefore, interference of this Court to the judgment of acquittal passed by the Trial Court is necessary. Hence, for the reasons discussed above, I answer point Nos.1 and 2 in the **negative** and point No.3 in the **affirmative**.

51. **POINT NO. 4 :** In view of my findings on point Nos.1 to 3, I, proceed to pass the following:

ORDER

The Criminal Appeal preferred by the appellant/complainant against the respondent/ accused under the provisions of Section 372 of Cr.P.C., R/w Section 413 of BNSS 2023, is hereby allowed.

The judgment of acquittal passed by the Trial Court in on 07.01.2026 in C.C.No.793/2023 is hereby set-aside.

The matter is remanded back to the Trial Court with a direction to restore the criminal case No.793/2023 to its original file and to provide an opportunity to the complainant to adduce the evidence of Bank Manager and also to produce documents considering the nature of the defense taken by the accused and thereafter, comply the mandates of Section 313 of Cr.P.C., by explaining the incriminating evidence as such forthcoming against the accused in the evidence of complainant and witnesses and the documents and then to provide an opportunity to the defense side to adduce defence evidence if any and then to proceed in accordance with law.

It is made it clear that since the matter is relates to the year of 2023, which is admittedly more than 3 years old case, the parties and their respective Learned counsels are specifically directed to approach and appear before the Trial Court on 07.08.2026 without expecting any fresh notice or fresh summons and assist the Trial Court in disposal of the case as expeditiously as possible.

Office to send the copy of the judgment to the Trial Court through E-mail.

The office is also directed to send back the entire trial court records along with copy of the judgment forthwith without any amount of delay.

*(Dictated to the Stenographer, transcribed and typed by him, corrected, signed and then pronounced in the open court on this the **17th day of***

***July, 2026**.)*

(N.M. Ramesha)
I Addl. District and Sessions Judge,
Haveri.