KAHV010006752026

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

Present: Sri. N.M.Ramesha, B.com., LL.B., LLM
I Addl. District & Sessions Judge,
Haveri.

Dated this the 2nd day of June, 2026

Criminal Appeal No.24/2026

Appellant : Nagesh S/o Shankrappa Keri,
Age: 35 years,
Occ: Business and Agriculture,
R/o: Shivaji Nagar, Haveri,
Haveri taluk and district.

(Sri. K.V. Viraktamath., Advocate)

V/s

Respondent : Abdulgafar S/o Abdulmunaf
Didagur, Age: 42 years,
Occ: Pigmy collector,
R/o: Shivaji Nagar, Haveri,
Haveri taluk and district.
Haveri taluk and district.

(Sri. S.G. Honnappanavar., Advocate)

JUDGMENT

The appellant has preferred this appeal against the respondent under the provisions of section 413 of BNSS, 2023, challenging the judgment passed by the Learned

Prl. Senior Civil Judge & CJM., Haveri (hereinafter referred to as Trial Court) on 11.12.2025 in C.C.No.1529/2023, in acquitting the accused 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 the complainant in brief is as under:

The complainant is a resident of Shivaji Nagar of Haveri doing agricultural work. The accused is also resident of Shivaji Nagar, Haveri and working as pigmy collector and mason work. The complainant and the accused were known to each other having acquaintance with each other and there were transactions between complainant and accused. Therefore, the accused has approached the complainant in the last week of April seeking hand loan of Rs.4,25,000/- and therefore, the complainant has paid hand loan of Rs.4,25,000/- to the accused on 04.05.2019 and the accused has agreed to repay the loan within six months. But, inspite of expiry of six months, the accused did not repay the loan amount of Rs.4,25,000/- and therefore, the complainant has approached the accused on 30.07.2020, requesting the accused to repay the loan, for which, the accused has issued a cheque bearing No.228003 dated 30.07.2020 for Rs.4,25,000/- drawn on State Bank of India, Haveri Branch in favour of the complainant towards repayment of loan amount. The complainant has presented the cheque before the State Bank of India, Haveri Branch on 31.07.2020 for encashment, but the cheque was came to be dishonoured for want of sufficient funds in the account of accused along with bank memo. The accused has approached the complainant with a request to represent the cheque in the month of October 2020. Therefore, the complainant has represented cheque before the State Bank of India, Haveri Branch on 06.10.2020 for encashment, but the cheque was again came to be dishonoured for want of sufficient funds in the account of accused along with bank memo. Therefore, the complainant got issued a legal notice dated 24.10.2020 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of legal notice. The legal notice was served upon the accused on 29.10.2020. But, inspite of service of legal notice, the accused failed to pay the cheque amount within time, but he has issued a evasive reply and thereby committed an offence punishable under the provisions of section 138 N.I.Act. Therefore, the complainant has presented the complaint before the Trial

Court on 11.12.2020 against the accused under the provision of section 200 Cr.P.C., for the offence punishable under Section 138 of NI Act.

4. After presentation of complaint, it was ordered to be registered as PCR.No.323/2020 vide order dated 14.12.2020 and posted the case for sworn statement of the complainant and witnesses.

5. The complainant has filed his affidavit in lieu of sworn statement on 19.08.2022 and got examined himself as P.W.1 and got the documents marked as Ex.P.1 to Ex.P.4.

6. The Trial Court having heard the arguments of Learned Counsel for the complainant and having perusal of the complaint averments, sworn statement affidavit of the complainant and the documentary evidence at Ex.P1 to Ex.P4 and on being satisfied with the prima-facie materials placed on record, has come to the conclusion that the complainant has made out prima-facie case against the accused and complied the mandates of Section 138 N.I.Act and there are sufficient materials to proceed against the accused and accordingly 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.1529/2023 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 10.02.2025 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 vide dated 10.02.2025 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. Therefore, the Trial Court as per the guidelines of Hon'ble Supreme Court of India in case of All India Bank Association Vs. Union of India, treated the sworn statement of complainant and the documents at Ex.P1 to Ex.P4 as evidence of complainant and since the accused did not choose to filed application under Section 145 of N.I.Act, the cross-examination was ordered to be taken as nil vide dated 10.02.2025.

10. The statement of accused as contemplated under the provisions of section 313 of Cr.P.C., was recorded vide dated 10.02.2025 and the incriminating evidence as such forthcoming against the accused in the evidence of complainant and the documents at Ex.P1 to Ex.P4 has been read over and explained to the accused in Kannada language known to him. The accused has denied the incriminating evidence of the complainant and the documents. However, the accused did choose to enter the defense evidence. Therefore, the case was posted for evidence of defence side.

11. On 14.03.2025, the Learned Counsel for the accused filed application under Section 145(2) of N.I.Act, seeking permission to cross-examine P.W.1, which was came to be allowed vide order dated 14.03.2025 and P.W.1 was subjected for cross-examination by the Learned Counsel for the accused. The legal notice, postal acknowledgment and postal cover were confronted to P.W.1, which were marked as per Ex.D1 to Ex.D4.

12. The Trial Court having heard the arguments of both the side and on appreciation of complaint averments, oral and the documentary evidence placed on record, has come to the conclusion that the complainant has failed to establish the guilt against the accused for the offence punishable under the provisions of section 138 N.I Act and accordingly, passed the judgment of acquittal vide dated 11.12.2025.

13. The complainant being aggrieved by the judgment and order of acquittal, has preferred this criminal appeal on the following grounds:

14. The judgment passed by the Trial Court is illegal and hence, liable to be set-aside. The judgment of the Trial Court is contrary to the established law and facts of the case. The Trial Court has not considered the question of law which are involved in the case and wrongly come to the conclusion that the accused has not committed the offence as alleged by the complainant. The Trial Court has not properly applied its judicial mind in respect of financial capacity of the complainant. The complainant has produced the documents to show that he is an agriculturist and a businessman, but the Trial Court has wrongly presumed that the complainant has not produced any receipt or any other documents. The Trial Court has not properly understood the facts of the case and committed error in acquitting the accused. The Trial Court has not properly answered the facts. It is on these among other grounds, the complainant has prayed for allow the appeal and to convict the accused for the offence punishable under Section 138 of N.I.Act by setting aside the judgment of acquittal passed by the Trial Court.

15. After presentation of Criminal Appeal, it was ordered to be registered as Criminal Appeal No.24/2026 vide order dated 23.02.2026 and notice was issued to the accused.

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 25.03.2026.

18. I have heard the arguments of both the side and perused the oral and the documentary evidence placed on record.

19. 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 N.I.Act, based on the oral and the documentary evidence placed on record ?
2. Whether the Trial Court has rightly appreciated the complaint allegations, oral and the documentary evidence placed on record 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?

20. 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 **affirmative**,
Point No.2 : In the **affirmative,**
Point No.3 : In the **negative,**
Point No.4 : As per final order for the following:

REASONS

21. **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 the provisions of section 138 N.I.Act, based on the complaint averments, oral and the documentary evidence placed on record and re-appreciation and re-consideration of entire oral and the documentary evidence placed on record and interference by 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.

22. 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.P4, clearly establishes that the accused has availed a loan of Rs.4,25,000/- from complainant on 04.05.2019 agreeing to repay the loan within six months, but inspite of repeated request and demands, the accused has failed to repay the loan within time and on final demands, the accused has issued a cheque vide Ex.P1 in favour of the complainant towards legally recoverable debt and on presentation of cheque for encashment, it was came to be dishonoured for want of sufficient funds in the account of accused for two times and therefore, the complainant got issued a legal notice dated 24.10.2020, which was served upon the accused on 29.10.2020, but inspite of service of legal notice, the accused has failed to repay the loan, but issued a evasive reply and thereby committed an offence punishable under Section 138 of N.I.Act and the evidence of P.W.1 is very much consistent and in conformity with documents at Ex.P1 to Ex.P4, which clearly establishes the compliance of Section 138 N.I.Act, but the Trial Court has failed to appreciate the oral and the documentary evidence placed on record, which resulted in miscarriage of justice.

23. It is further contended by the Learned counsel for the complainant that the accused neither disputed the cheque in question nor his signature on the cheque or dishonour of cheque or service of legal notice or issuance of legal notice and therefore, the presumptions are available in favour of the complainant under the provisions of Section 118 and 139 N.I.Act, but the Trial Court has failed to appreciate the materials on record, which resulted in miscarriage of justice.

24. It is further contended by the Learned counsel for the complainant that the cheque can be presented before the bank for encashment for any number of times and there is no bar and the second notice is also permissible under law and accordingly, the complainant has presented the cheque for encashment for second time, which was came to be dishonoured for want of sufficient funds in the account of the accused and the complainant also issued notice to the accused for second time, but the accused inspite of service of notice, failed to pay the cheque amount, but the Trial Court has failed to appreciate the same and failed to appreciate the evidence on record in accordance with law and therefore, the judgment of acquittal passed by the Trial Court is not in accordance with law and therefore, it is liable to be set-aside and the accused is liable for conviction for the offence punishable under Section 138 of N.I.Act.

25. In support of his submissions, the Learned counsel for the complainant has relied upon a decision reported in ***AIR 2019 S.C 502*** in between ***M/S. Sicagen India Ltd. Vs Mahindra Vadineni*** dated 08.01.2019, wherein while dealing with the provisions of section 138 N.I.Act., the Hon'ble Supreme Court has pleased to held that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments mad in the course of their business or other affairs, there is no reason why a person who ha issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again get dishonoured for the second or successive time. Therefore, the complaint filed based on the second statutory notice is not barred.

26. The Learned Counsel for the complainant has also relied upon a decision rendered by the Hon'ble Supreme Court of India in ***Criminal Appeal No.261-264 of 2002*** in between ***MSR Leathers Vs. S. Palaniappan & Anr***, wherein while dealing with the provisions of Section 138 N.I.Act, the Hon'ble Supreme Court of India has pleased to held that the prosecution based on second or successive dishonour of the cheque is also permissible so long as it satisfies the requirements under the proviso of Section 138 of N.I.Act.

27. *Per contra*, the Learned counsel for the accused has vehemently contended that the complaint averments, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P4, do not establish either the loan transaction of Rs.4,25,000/- between complainant and the accused at any point of time or existence of legally recoverable debt of Rs.4,25,000/- or issuance of cheque in question towards legally recoverable debt of Rs.4,25,000/- and thereby the complainant has failed to establish the ingredients of Section 138 of N.I.Act and in-fact, the complainant has not proved the source of income so as to lend that much of loan of Rs.4,25,000/- to the accused by way of cash and there are full of contradictions between the complaint averments, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P4 with respect to exact date of approach for loan, date of loan, issuance of cheque and thereby, the complainant has failed to prove the guilt against the accused.

28. It is further contended by the Learned counsel for the accused that the complainant has not come to Court with clean hands, but suppressed the material facts before the Court with respect to issuance of second notice and the complaint based on the second notice not maintainable in the eye of law and also barred by time and the Trial Court has rightly appreciated these facts in the judgment and therefore, question of interfering with the judgment of acquittal passed by the Trial Court does not arise.

29. It is further contended by the Learned Counsel for the accused that P.W.1 has admitted in his evidence that he has not produced any documents to show the loan transaction and he had no impediment to pay the amount by way of account transfer and the complainant was aware about the mandates of law with respect to money transaction and the complainant has not placed any materials before the Court to prove the loan transaction including existence of legally recoverable debt and there are full of contradictions with respect to alleged loan transaction, but on the other hand, the accused has raised a probable defence and proved the same by producing documents at Ex.D1 to Ex.D4 and also by eliciting material facts in the evidence of P.W.1, which clearly establishes that there was no transaction between complainant and accused at any point of time, but the accused having received an amount of Rs.50,000/- from one Gyanappa Pagade, who secured two cheques from the accused towards security purpose and even after payment of entire amount, the said Gyanappa Pagade has not return the cheques and the complainant and said Gyanappa Pagade have colluded with each other and misused the cheque by filing false complaint and therefore, accused is not liable to pay any cheque amount to the complainant and the Trial Court on appreciation of all these facts, has rightly acquitted the accused for the offence punishable under Section 138 of N.I.Act and therefore, there are no reasons to interfere with the judgment of acquittal passed by the Trial Court.

30. In the light of the arguments canvassed on both the side, I have carefully gone through the principles laid down in the above said decisions. In order to appreciate the arguments canvassed by both the side, it is just and necessary to go through the relevant provisions of Negotiable Instruments Act and the principles laid down and the guidelines issued by the Hon'ble Supreme Court of India in a decision reported in ***(2014) 5 SCC 490*** *in between* ***Indian Bank Association Vs. Union of India***.

31. 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.

32. 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.*

33. 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.

34. 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.

35. 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.*
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> *(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.

36. Now keeping the arguments canvassed by both the side and the relevant provisions of N.I.Act and the principles and the guidelines issued by the Hon'ble Supreme Court of India and Hon'ble High court of Karnataka in the above cited decisions in mind, let us re-appreciate and re-consider the complaint averments, the oral and the documentary evidence placed on record and also consider as to whether the Trial Court was justified in acquitting the accused for the offences punishable under the provisions of section 138 N.I.Act on the basis of complaint averments, oral and the documentary evidence placed on record and whether the Trial Court has appreciated the oral and the documentary evidence placed on record in accordance with law, facts and probabilities of the case and whether the judgment of acquittal passed by the Trial Court calls inference by this Court.

37. Firstly, if the premise on which the complainant has set the criminal law into motion by lodging complaint under Section 200 of Cr.P.c., for the offence punishable under Section 138 of N.I.Act against the accused is seen, it can be gathered from the complaint averments, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P4 and Ex.D1 to Ex.D4 including material suggestions put to P.W.1 by the Learned counsel for the defence side that the cheque vide Ex.P1 is belongs to accused and the signature on the cheque also is as that of accused and on presentation of cheque for encashment, it was came to be dishonoured for want of sufficient funds in the account of the accused and the notice dated 24.10.2020 issued by the complainant was served upon the accused on 29.10.2020 and the accused has issued reply notice.

38. It is pertinent to note here that, the accused neither disputed the cheque vide Ex.P1 belongs to him nor his signature on the cheque or dishonour of cheque for want of sufficient funds in his account or issuance of legal notice or service of legal notice. On the other hand, it is suggested to P.W.1 during the course of his cross-examination that he has presented the cheque for two times and also issued notice to the accused for two times and in-fact the accused has issued reply notice. There is no material suggestions to P.W.1 to the effect that the cheque in question vide Ex.P1 is not belongs to accused and the cheque was not dishonoured for want of sufficient funds in the account of the accused and notice was not issued to the accused and notice was not served upon the accused. No such defence is forthcoming during the course of cross-examination of P.W.1. This necessarily indicate that the accused by necessary implication, has admitted the cheque, signature on the cheque, dishonour of cheque for want of sufficient funds in his account including issuance of legal notice, service of legal notice and issuance of reply notice. Under these circumstances, admissions are the best proof for the complainant to comply the mandates of Section 138 N.I.Act. Therefore, it is said that the admitted facts need nor be proved. Reference in this regard may be made to a provision of Section 58 of Indian Evidence Act of 1872.

39. However, as could be seen from the document at Ex.P1, the cheque is dated 30.07.2020 and it was presented before the bank for encashment on 06.10.2020 and it was dishonoured for want of sufficient funds in the account of the accused vide Ex.P2 bank memo. Further, as could be seen from the documents at Ex.P3 and Ex.P4, the legal notice dated 24.10.2020 was served on the accused as per Ex.P4. So, it is crystal clear that the complainant has got issued the legal notice to the accused giving 15 days time to comply the demands made in the notice and it was served upon the accused.

40. No doubt, when the documents at Ex.D1 to Ex.D4 were confronted to P.W.1, he has admitted and therefore, they were marked as per Ex.D1 to Ex.D4 through the cross-examination of P.W.1, which reveals that the complainant also got issued legal notice dated 29.08.2020 and it was served upon the accused and the accused has issued reply notice vide Ex.D1.

41. But, it is pertinent to note here that, the complainant has presented the cheque for two times within its validity and also issued second notice based on the dishonour of cheque for second time. It is well settled position of law that the cheque may be presented before the bank for encashment for any number of time within its validity. Accordingly, in the present case also, the complainant has presented the cheque for two times before the bank for encashment and both the times, the cheque were came to be dishonoured for want of sufficient funds in the account of the accused and it is on the instruction of the accused, the complainant has presented the cheque for encashment for second time and also issued second notice. Reference in this regard may be made to a decision relied upon by the Learned Counsel for the complainant rendered by the Hon'ble Supreme Court of India reported in ***AIR 2019 S.C 502*** in between ***M/S. Sicagen India Ltd. Vs Mahindra Vadineni*** and ***Criminal Appeal No.261-264 of 2002*** in between ***MSR Leathers Vs. S. Palaniappan & Anr***, wherein it has been held that the complaint filed based on the second statutory notice is not barred and it is maintainable. Under these circumstances, it has to be held here that the complainant has complied all the mandates of Section 138 N.I.Act. Therefore, the presumptions are available in favour of the complainant under the provisions of Section 118 and 139 N.I.Act.

42. Admittedly, the presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act are not the conclusive proof, but they are rebuttable in nature. Therefore, when once the complainant has complied all the mandates of Section 138 N.I.Act and when once the accused has admitted the cheque, signature on the cheque, dishonour of cheque for want of sufficient funds in the account of accused, issuance of legal notice and service of legal notice and when once the Court has drawn the presumptions in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act, then the onus shifts on the accused to raise a specific and probable defence and to substantiate the same before the Court and to rebut statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act either by adducing oral evidence or by adducing the evidence of any witnesses or by producing documentary evidence or by eliciting material facts during the course of cross-examination of P.W.1/complainant.

43. It is also well settled position of law that the accused in order to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act, need not enter into the witness and need not adduce the oral evidence and need not adduce the evidence of any independent witness and need not produce the documentary evidence. But, on the other hand, it is also well settled principle of law that, the accused can definitely make use of the materials produced by the complainant so as to substantiate his defense and to rebut the statutory presumptions available in favour of the complainant under the provisions of Section 118 and 139 N.I.Act and the accused can definitely falsify the case made out by the complainant and falsify the oral and the documentary evidence adduced by the complainant and can substantiate his defence by eliciting the material facts during the course of cross-examination of P.W.1. It is also well settled position of law that proof of probable defence is preponderance of all probabilities and not proof of beyond all reasonable doubt as applicable to the complainant.

44. Now keeping these settled position of law in mind, let us consider as to whether the accused could able to raise a probable defence and whether the accused could able to falsify the case made out by the complainant and whether the accused could able to falsify the oral and the documentary evidence adduced and produced by the complainant 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.

45. As could be seen from the plea of accused recorded vide dated 10.02.2025, the accused has denied the entire case made out by the complainant. Further, as could be seen from the statement of accused recorded under Section 313 of Cr.P.C., dated 10.02.2025, the accused has denied all the incriminating evidence as such forthcoming against him in the evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P4 and further submitted that he do not know as to who is the complainant and the complainant has misused the cheque which was given to others.

46. Further, as could be seen from the material suggestions put to P.W.1 during the course of his cross-examination, that the accused has specifically denied the loan transaction of Rs.4,25,000/- between him and the complainant and existence of legally recoverable debt of Rs.4,25,000/- and also denied the issuance of cheque in question to the complainant towards legally recoverable debt of Rs.4,25,000/-. On the other hand, the accused has taken a specific stand that he had availed a loan of Rs.50,000/- from one Gyanappa Pagade, who has secured two cheques bearing No.228003 and 228004 and he has already repaid the entire loan amount to the said Gyanappa Pagade, but he failed to return the cheques and misused the cheques colluding with complainant. Same defence has been taken by the accused in his reply notice vide Ex.D1.

47. Under these circumstances, considering the nature of defence taken by the accused, burden lies on the complainant to prove the loan transaction of Rs.4,25,000/- between him and the accused and existence of legally recoverable debt of Rs.4,25,000/- including issuance of cheque in question towards legally recover debt of Rs.4,25,000/-. The Learned Counsel for the accused has projected several circumstances during the course of cross-examination of P.W.1, which renders the evidence of P.W.1 is highly doubtful and also unbelievable with respect to alleged loan transaction of Rs.4,25,000/- between P.W.1 and the accused.

48. Firstly, the complainant all the while in his complaint and all the while in his affidavit-in-chief-examination has stated that the accused was known to him as there were several transactions between him and the accused and therefore, he has approached him in the last week of April seeking loan of Rs.4,50,000/- and therefore,he has paid loan of Rs.4,25,000/- to the accused. But, during the course of his cross-examination, P.W.1 has feigned his ignorance about the background of the family of accused including his wife and children.

49. Be that as it may, the complaint and the affidavit-in-chief-examination of P.W.1 do not indicate or establish as to the exact date on which the accused has approached the complainant seeking loan of Rs.4,50,000/-. If really the accused had approached the complainant for loan of Rs.4,50,000/- at any point of time, then the complainant could have disclosed the exact date on which the accused has approached him seeking loan of Rs.4,50,000/-. But, the complainant has not disclosed the same either in his complaint or in his affidavit-in-chief-examination.

50. The accused has seriously disputed the source of income of the complainant so as to lend a loan of Rs.4,25,000/- by way of cash. Under these circumstances, heavy burden lies on the complainant to prove the source of income so as to pay huge loan of Rs.4,25,000/- to the accused by way of cash. But, the complainant has not placed any materials to establish the same. But, on the other hand, it is forthcoming in the evidence of P.W.1 that he was residing in a rented house situated at Haveri paying a monthly rent of Rs.5,000/-. It is also forthcoming in the evidence of P.W.1 that he do not have any documents and he has not produced any documents before the Court to show that he was having a huge amount of Rs.4,25,000/- as on 04.05.2019. It is also forthcoming in the evidence of P.W.1 that he do not know as to the exact date on which the accused approached him seeking loan and he do not have any document to show that the accused was having any loan transaction with him.

51. According to the contents of complaint and contents of affidavit-in-chief-examination that the accused has stated to have approached the complainant in the last week of April 2019. But, on the contrary, P.W.1 has stated in his cross-examination that the accused approached him in the month of March 2019 seeking loan, which is highly contrary to the case made out by the complainant. Further, according to the contents of complaint and affidavit-in-chief-examination of P.W.1 that the accused has sought for loan of Rs.4,50,000/-, but he had paid a loan of Rs.4,25,000/- to the accused on 04.05.2019. But on the contrary, P.W.1 has stated in his cross-examination that he has paid a loan of Rs.3,75,000/- by way of cash and also paid loan of Rs.50,000/- by way of phone-pay. But, these facts do not finds a place either in the complaint averments or in the affidavit-in-chief-examination of P.W.1.

52. It is also forthcoming in the evidence of P.W.1 that he is aware about the fact that any money transaction exceeding an amount of Rs.20,000/- has to be made only through account transfer. It is also forthcoming in the evidence of P.W.1 that he has not disclosed the loan transaction of Rs.4,25,000/- between him and the accused in his Income Tax returns.

53. It is pertinent to note here that, if really the complainant has paid a loan of Rs.4,25,000/- to the accused at any point of time and if really the accused has issued the cheque in question to the complainant towards legally recoverable debt of Rs.4,25,000/-, then the complainant could have pay the loan of Rs.4,25,000/- to the accused either by way of cheque or by way of RTGS or by way of NEFT or by way of account transfer or by way of any other mode which evidencing the loan transaction of Rs.4,25,000/- and he could have disclosed the same in his Income Tax returns. But, the complainant has not done so. No explanation as such forthcoming either in the complaint averments or in the evidence of P.W.1. In the absence of such an explanation, an adverse inference has to be drawn against the case made out by the complainant. Consequently, the case of the complainant that he has lend a loan of Rs.4,25,000/- to the accused and the accused has issued the cheque in question towards legally recoverable debt of Rs.4,25,000/- is highly doubtful and therefore, cannot be accepted.

54. It is pertinent to note here that, at one point of time, the complainant has contended that the accused has approached him in the last week of April 2019 seeking loan of Rs.4,50,000/-. But, at another point of time, the complainant has taken a contention that he has paid a loan of Rs.4,25,000/- to the accused on

04.05.2019. But, at another point of time, the complainant has taken a contention that he has paid a loan of Rs.3,75,000/- by way of cash and paid an amount of Rs.50,000/-by way of phonepay, for which, the complainant has not placed any documents. But, at another point of time, the complainant has taken a contention that the accused has approached him in the month of March 2019 seeking loan, which is highly contrary to the contents of complaint. But, at another point of time, the complainant has feigned his ignorance to the suggestion that the contents of cheque, amount and signature are different. But, at another point of time, the complainant has feigned his ignorance to the suggestion that the accused had availed a loan of Rs.50,000/- from one Gyanappa Pagade, who secured two cheques and inspite of repayment of entire loan, he has misused the cheque and the accused has disclosed the same in his reply notice. All these necessarily indicate that the complainant has not come to Court with clean hands, but he has suppressed the material facts before the Court and he has kept on changing his version from stage to stage and also from time to time and thereby laid on the material facts before the Court. Under these circumstances, utmost confidence cannot be reposed on the evidence of P.W.1 and much reliance cannot be placed on the documentary evidence placed on record.

55. A careful perusal of cheque vide Ex.P1, goes to show that the contents of the cheque and the signature including date and amount of the cheque are in different handwriting and also in different ink. P.W.1 in his cross-examination has not specifically denied these inconsistencies and also glaring discrepancies found on Ex.P1 cheque, but he has feigned his ignorance. Further, the complainant has categorically admitted in his cross-examination that reply notice send by the accused, has been served upon him. But, he has not produced the copy of the reply notice and the copy of the earlier notice before the Court. Under these circumstances, the defence taken by the accused that he had availed a loan of Rs.50,000/- from one Gyanappa Pagade, who secured two cheques for security purpose and inspite of repayment of loan, the said Gyanappa Pagade has failed to return the cheques and thereafter, filled the cheque and filed the case, seems to be more probable than that of the case made out by the complainant.

56. From the oral and documentary evidence placed on record, it is not shown by the complainant as to how and in what manner an amount of Rs.4,25,000/- was due as on 30.07.2020 payable by the accused. The complainant is required under law to establish by producing relevant documents to prove the loan transaction of Rs.4,25,000/- and therefore, the accused has issued the cheque in question towards discharge of legally recoverable debt of Rs.4,25,000/-. But, the complainant has not placed any materials to show or to prove the alleged loan transaction of Rs.4,25,000/- between him and the accused at any point of time. In the absence of such proof, an adverse inference has to be drawn against the case made out by the complainant.

57. On re-appreciation and re-consideration of entire complaint averments, oral and the documentary evidence placed on record, it is found that the contents of complaint, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P4 are contrary with each other and the materials placed on record do not establish the alleged loan transaction of Rs.4,25,000/- between complainant and the accused at any point of time and the materials on record also do not establish the existence of legally recoverable debt of Rs.4,25,000/- and issuance of cheque in question towards legally recoverable debt of Rs.4,25,000/-. Under these circumstances, issuance of cheque in question to the complainant does not arise. The accused has raised a probable defence and also proved the same by producing documents at Ex.D1 to Ex.D4 and also by eliciting material facts in the cross-examination of P.W.1. Therefore, the defence taken by the accused is more probable than that of the case made out by the complainant.

58. The Trial Court on appreciation of complaint averments, oral and the documentary evidence placed on record, has rightly come to the conclusion that the complainant has failed to prove the loan transaction and also issuance of cheque in question towards legally recoverable debt. The findings of the Trial Court on the points for consideration is based upon the oral and the documentary evidence placed on record. The Trial Court was justified in acquitting the accused based on the oral and the documentary evidence placed on record. The Trial Court has rightly appreciated the evidence on record in accordance with law, facts and probabilities of the case. Therefore, question of interfering with the judgment of acquittal passed by the Trial Court does not arise. Hence, for the reasons discussed above, I answer points No.1 and 2 in the **affirmative** and point No.3 in the **negative**.

59. **POINT NO. 4 :** In view of my findings on points No.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 413 of BNSS, 2023, is hereby dismissed with cost.

The judgment of acquittal passed by the Trial Court on 11.12.2025 in C.C.No.1529/2023 in acquitting the accused for the offence punishable under the provisions of section 138 N.I.Act, is hereby confirmed.

The Office to send the copy of the judgment to the Trial Court forthwith through e-mail.

The Office is also directed to send back the entire Trial Court records to the Trial Court 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 by me in the open court on this the **2nd day of June, 2026**.)*

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