

KAHV010007652026



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

DATED THIS THE 2nd DAY OF JULY, 2026

PRESENT

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

Criminal Appeal No.38/2026

Appellant : Sri. Anupa Parashuram
Allappanavar,
Age: 35 years, Occ: Business,
R/o: Basaveshwara Nagar,
'C' Block, Haveri,
Haveri taluk and district.

(Sri. A.F. Chigarer., Advocate)

V/s

Respondent : Rabiya Rahamansab Sangur,
Age: 55 years,
Occ: Business,
R/o: Neharu Nagar,
Nagendranamatti, Haveri,
Haveri taluk and district.

(Sri. V.M. Nadagoudar., Advocate)

JUDGMENT

The appellant has filed this appeal against the respondent under the provisions of Section 378 of Cr.P.C., and Section 415(3) of BNSS, 2023, challenging the judgment of acquittal passed by the Learned Prl. Senior Civil Judge & CJM., Haveri in C.C.No.494/2023 dated 15.11.2025, 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 complainant is as under:

The complainant has been residing in a house situated at 4th Cross, 'C' Block, Basaveshwara Nagar, Haveri, Town, doing business. The accused is the resident of Nehru Nagar, Haveri Town. The complainant and the accused were known to each other since several years. On 13.06.2021, the accused has approached the complainant in his house and requested for hand loan of Rs.2,00,000/- for her family necessities. Therefore, the complainant has paid a hand loan of Rs.2,00,000/- to

the accused on 13.06.2021. The accused has promised to repay the loan within three months. But, inspite of expiry of three months, the accused failed to repay the amount. On demand, the accused has issued a cheque bearing No.067111 dated 13.12.2021 for Rs.2,00,000/- drawn on Karnataka Vikas Grameena Bank, Haveri Branch in favour of the complainant for repayment of loan of Rs.2,00,000/-. Therefore, the complainant has presented the cheque before State Bank of India, Haveri Branch on 13.12.2021 for encashment. But, the cheque was came to be dishonoured for want of sufficient funds in the account of the accused vide bank endorsement dated 14.12.2021. Therefore, the complainant got issued a legal notice dated 22.12.2021 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 23.12.2021. 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 14.01.2022 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.46/2022 vide order dated 17.01.2022.

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.P5.

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.P5 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 28.04.2022 and the case was ordered to be registered as C.C.No.678/2022, which was renumbered as C.C.No.494/2023 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 29.01.2024 through her 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 09.07.2024 and the substance of accusation was read over and explained to the accused in language known to

her. On being plea recorded, the accused has pleaded not guilty, but claims to be tried.

9. In view of the principles laid down by the Hon'ble Supreme Court of India in the case of ***Indian Bank Association Vs. Union of India and another in WP (Civil) No.18/2013 dated 21.04.2013***, the Trial Court has treated the sworn statement of P.W.1 and the documents at Ex.P1 to Ex.P5 as the evidence of complainant.

10. The Learned Counsel for the complainant submits no further evidence to lead.

11. The Learned Counsel for the accused has filed an application under section 145 of N.I.Act and accordingly, the case was adjourned for cross-examination of P.W.1. P.W.1 was subjected for cross-examination at length by the Learned Counsel for the accused vide dated 06.10.2025.

12. The statement of accused as contemplated under the provisions of Section 313 of Cr.P.C., was recorded on 13.10.2025 and the incriminating evidence as such forthcoming against the accused in the evidence of complainant and the documents at Ex.P1 to Ex.P5 were read over and explained to the accused in language known to her. The accused has denied the incriminating evidence of complainant and the documents. Initially, the accused did choose to enter the defence evidence.

But, later on, the accused did not choose to adduce the defence evidence and therefore, the defence evidence was ordered to be taken as nil vide dated 27.10.2025.

13. The Trial Court having heard the arguments of both the side and on considering the oral and the documentary evidence placed on record, has come to the conclusion that the complainant has failed to prove the guilt against the accused and accordingly, acquitted the accused for the offence punishable under the provisions of Section 138 N.I.Act vide judgment of acquittal dated 15.11.2025.

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

15. The judgment passed by the Trial Court is improper, unsustainable and hence, liable to be set-aside. The Trial Court has not considered the evidence and the documents of the complainant. The presumptions under Section 138 of N.I.Act was wrongly ignored. The defence raised by the accused is improbable and baseless. The judgment is contrary to law and facts. The Trial Court has failed to note that once the complainant has complied all the mandates of Section 138 N.I.Act, then the onus shifts on the accused to prove her defence, but the accused has failed to prove her defence with oral and the documentary evidence. The

accused has failed to explain as to how the cheque came to the possession of complainant, but the Trial Court has wrongly acquitted the accused. The Trial Court has failed to appreciate the evidence on record. The Trial Court has failed to understand the case of the complainant and also failed to appreciate the case of the complainant. The Trial Court has not given much importance to the evidence of complainant and documents produced by the complainant. The Trial Court has failed to understand that once the signature on the cheque is admitted, then Section 139 of N.I.Act comes to the aid of complainant. Therefore, the judgment of acquittal passed by the Trial Court is liable to be set-aside. It is on these among other grounds, the complainant has prayed for allow the appeal.

16. After presentation of appeal, it was ordered to be registered as C.A.No.38/2026 vide order dated 03.03.2026 and the notice was ordered to be issued to the accused.

17. On service of notice on appeal, the accused has appeared before this Court through her Learned Counsel on 18.03.2026 and contested the appeal.

18. The records of the Trial Court were secured vide dated 25.04.2026.

19. I have heard the arguments of Learned counsels for both the side and perused the oral and the documentary evidence placed on record.

20. Now the points that would arise 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 considering the nature of oral evidence adduced by the complainant and nature of documents at Ex.P1 to Ex.P5 produced by the complainant and scope of Sections 118, 138, 139 and 146 of N.I.Act ?
2. Whether the Trial Court has 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 considering the nature of case made out by the complainant, nature of oral and the documentary evidence adduced and produced by the complainant before the Trial Court and without considering the scope of Sections 118, 138, 139 and 146 of N.I.Act, and re-appreciation and re-consideration of entire complaint averments, oral and the documentary evidence placed 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.P5, clearly establishes the loan transaction of Rs.2,00,000/- between the complainant and the accused,

issuance of cheque in question for legally recoverable debt, dishonour of cheque for want of sufficient funds in the account of accused, service of legal notice on the accused and thereby the complainant has complied all the mandates of Section 138 N.I.Act. Therefore, the presumptions are available under the provisions of Sections 118 and 139 N.I.Act in favour of the complainant, but the Trial Court has failed to raise presumptions in favour of the complainant and wrongly come to the conclusion that the complainant has failed to prove the loan transaction between him and the accused. Hence, the judgment of acquittal passed by the Trial Court is not sustainable under law.

24. It is further contended by the Learned counsel for the complainant that, the accused has taken a contention that the complainant took her to the Bank with a promise to get the amount from Waqf board and opened an account and obtained signed cheque and thereafter, failed to return the cheque and misused the cheque. But, the accused neither adduced oral evidence nor produced documentary evidence or elicited any facts in the evidence of P.W.1 and thereby failed to substantiate her defence. It is further contended by the Learned counsel for the complainant that, the accused has not disputed either cheque or signature on the cheque or dishonour of cheque or service of legal notice. Therefore, the presumptions are available in favour of the

complainant under the provisions of Sections 118 and 139 N.I.Act and the accused has also failed to prove her defence. Therefore, the accused is liable for conviction for the alleged offence, but the Trial Court has failed to appreciate the evidence. Therefore, the judgment of Trial Court is liable to be set-aside by allowing the appeal and the accused is liable for conviction.

25. *Per-contra*, the Learned Counsel for the accused has vehemently contended that the complainant has failed to prove the loan transaction between him and the accused and therefore, question of issuing cheque does not arise. Therefore, the Trial Court has not raised any presumptions in favour of the complainant. The accused has taken a defence that the complainant took her to Bank, opened an account and obtained the signed cheque in question and thereafter misused the cheque and filed false complaint and the material facts have been elicited in the evidence of P.W.1, which clearly establishes the defence taken by the accused and falsify the case made out by the complainant. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 recalling 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.*

32. 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 and re-consider the entire complaint averments, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P5 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 appreciating the nature of oral evidence and documentary evidence placed on record and without considering the scope of Sections 118, 138, 139 and 146 of N.I.Act and other relevant provisions of N.I.Act and whether the judgment of acquittal passed by the Trial Court calls for any interference by this Court or not.

33. P.W.1 who is the complainant in this case, has filed his affidavit-in-chief-examination, wherein he reiterated the entire averments made in the complaint. In support of his oral evidence, the complainant has produced the cheque dated 13.12.2021, bank endorsement dated 14.12.2021, legal notice dated 21.12.2021, postal receipt and postal track consignment which are marked at Ex.P1 to Ex.P5.

34. P.W.1 was subjected for cross-examination at length by the Learned counsel for the accused. However, the accused neither adduced oral evidence nor produced any documentary evidence on her behalf.

35. The Trial Court in Para 12 of page No.11 of its judgment has given a finding to the effect that, the complainant has admitted that he is running a provisional store and earning more than Rs.1,00,000/- and as per the admission of P.W.1, he is paying income tax, but the complainant has not produced any copies pertaining to the payment of income tax and the complainant is having knowledge that the accused is doing coolie work, inspite of that, the complainant has given hand loan of Rs.2,00,000/- and when the complainant knows that the accused is doing coolie work, then having account with the cheque book said to be issued by the accused is one of the crucial point involved in this case and when the person is doing coolie work, how the accused is maintaining her account with cheque

book regarding payment of Rs.2,00,000/- by way of cheque.

36. Further, the Trial Court in page No.15 of its judgment, has observed that the accused is a rustic villager, then how can write English words in Ex.P1 and this type of evidence creates a clouds over the transaction between the complainant and accused and issuance of cheque in favour of the complainant is doubtful. Therefore, the case of the complainant cannot be believable as it is doubtful case and it is on these findings, the Trial Court has come to the conclusion that the complainant has failed to prove the case against the accused and accordingly, acquitted the accused for the offence punishable under Section 138 of N.I.Act.

37. I am of the considered view and opinion that the Trial Court has failed to comprehend the averments made in the complaint, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P5. The Trial Court has not applied its judicial mind about the nature of case made out by the complainant including the nature of evidence on record and in-fact, the Trial Court has failed to appreciate the relevant provisions of N.I.Act and the evidence on record.

38. Firstly, if the premise on which the complainant has set the criminal law into motion by lodging a complaint against the accused under Section 138 of N.I.Act is seen, then 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.P5 that, the complainant and the accused are not the strangers with each other, but on the other hand, they were known to each other for more than 20 years as the accused was working in the house of complainant and it is in this background, the accused has approached the complainant on 13.12.2021 seeking hand loan of Rs.2,00,000/- from the complainant for family necessity. Therefore, the complainant has paid a hand loan of Rs.2,00,000/- to the accused on 13.12.2021 and the accused has agreed to repay the loan within three months, but the accused has failed to pay the loan within three months. Therefore, the complainant has demanded the accused to pay the loan amount of Rs.2,00,000/-, for which, the accused has issued cheque in question for repayment of loan of Rs.2,00,000/- and on presentation of cheque for encashment, it was came to be dishonoured for want of sufficient funds in the account of accused vide bank endorsement dated 14.12.2021 and the notice issued by the complainant as per Ex.P3, has been duly served upon the accused. But, inspite of service of legal notice, the accused neither repaid the cheque amount nor issued reply notice. Therefore, the complainant has presented the complaint before the Court on 14.01.2022.

39. It is pertinent to note here that, the accused neither disputed the cheque vide Ex.P1 nor her signature

on the cheque or dishonour of cheque for want of sufficient funds in her account or service of legal notice. Because, in the entire cross-examination of P.W.1, there is no material suggestions to deny the cheque or signature on the cheque or dishonour of cheque or service of legal notice. This necessarily indicate that the accused by necessary implication has admitted the fact that the cheque vide Ex.P1 is belongs to her, signature on the cheque as per Ex.P1(a) is as that of her signature and dishonour of cheque for want of sufficient funds in her account and service of legal notice. Therefore, it is said that admissions are the best proof for the complainant to comply the mandates of Section 138 N.I.Act. Therefore, it is said that admitted facts need not be proved. Reference in this regard may be made to a provisions of Section 58 of Indian Evidence Act, 1872.

40. However, as could be seen from the document at Ex.P1, the cheque is dated 13.12.2021 and it was presented for encashment before the banker on 13.12.2021 and it was came to be dishonoured for want of sufficient funds in the account of the accused vide bank endorsement dated 14.12.2021 as per Ex.P2. So, it is crystal clear from the careful perusal of documents at Ex.P1 and Ex.P2, the cheque was presented before the banker for encashment within its validity and it was dishonoured for want of sufficient funds in the account of the accused.

41. As could be seen from the documentary evidence at Ex.P3 to Ex.P5, that the complainant got issued a legal notice dated 21.12.2021 giving 15 days time to the accused to comply the demands made in the notice so as to pay the cheque amount and the notice has been duly served upon the accused as per Ex.P5. But, inspite of service of legal notice, the accused neither issued reply notice nor make necessary arrangements to pay the cheque amount.

42. From the careful perusal of documents at Ex.P3 to Ex.P5, it is also crystal clear that the complainant has issued notice within stipulated period of time from the date of dishonour of cheque giving 15 days time to the accused to comply the demands made in the notice and it was duly served upon the accused.

43. The accused has not seriously disputed these documentary evidence at Ex.P1 to Ex.P5. Because, as already stated above, there is no material suggestions to P.W.1 so as to deny these documents at Ex.P1 to Ex.P5.

44. Since, the accused has failed to pay the cheque amount inspite of service of legal notice and since the accused failed to issue reply notice, the complainant without any alternative option, has presented the complaint before the Trial Court on 14.01.2022, which is well within time.

45. So, 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.P5. Therefore, the presumptions are available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act.

46. Though the complainant has complied all the mandates of Section 138 N.I.Act by adducing oral evidence and by producing documentary evidence at Ex.P1 to Ex.P5 and though the accused has not seriously disputed either cheque or signature on the cheque or dishonour of cheque or service of legal notice, but the Trial Court has failed to raise presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act. No valid reasons have been assigned by the Trial Court in its judgment for not drawing presumptions in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act even after compliance of mandates of Section 138 N.I.Act by the complainant. This is one of the aspect of the matter in this case.

47. However, it is to be noted here that 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 all the mandates of Sections 138 N.I.Act by adducing oral evidence as P.W.1 and by producing documentary evidence at Ex.P1 to Ex.P5 and when once

the accused has not seriously disputed the cheque in question, signature on the cheque, dishonour of cheque 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 defence or probable defence and expected to substantiate her defence and also expected to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act.

48. Now keeping these well settled position of law in mind, let us consider as to whether the accused could able to raise either specific defence or probable defence and whether the accused could able to substantiate her defence 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 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 placed on record.

49. It is pertinent to note here that, when the Trial Court has recorded the plea of accused for the offence punishable under Section 138 of N.I.Act vide dated 09.07.2024 and when the Trial Court has read over the plea and explained to the accused in the language known to her, the accused has simply pleaded not guilty and

claims to be tried. In other words, it is to be noted here that the accused has not taken either specific defence or probable defence at the time of recording of her plea vide dated 09.07.2024.

50. Be that as it may, as could be seen from the statement of accused recorded on 13.10.2025, when the Trial Court has recorded the statement of accused under Section 313 of Cr.P.C., and when the Trial Court has read over and explained the incriminating evidence as such forthcoming against the accused in the evidence of complainant and the documents in the language known to the accused, the accused has simply denied all the incriminating evidence of P.W.1 and the documents at Ex.P1 to Ex.P5 as false. In other words, it is to be noted here that the accused even at the time of recording statement under Section 313 of Cr.P.C., did not choose to take either specific defence or probable defence.

51. However, as could be seen from the material suggestions put by the Learned counsel for the accused to P.W.1, the accused tried to put forth her defence to the effect that, there was no necessity for her to take a loan of Rs.2,00,000/- and therefore, she has not issued cheque to the complainant and the complainant took her to Karnataka Vikas Grameena Bank on the guise of providing benefit of Waqf board amount, opened an account in her name, obtained a cheque book and taken the cheque in question, filled the cheque and presented

the same before the bank and thereafter filed false complaint by misusing the cheque in question.

52. But, though the accused has taken all these bald contentions and bald defences, same has not been amplified before the Court in any manner. Because, the accused neither adduced her oral evidence before the Court nor adduced oral evidence of any independent witnesses before the Court or at-least produced any documentary evidence in this regard either to substantiate her defence or to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act or to falsify the case made out by the complainant or to falsify the oral evidence of P.W.1 or to falsify the documentary evidence at Ex.P1 to Ex.P5.

53. No doubt, it is 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 witness box and need not adduce any oral evidence and need not adduce the evidence of any independent witness before the Court and need not produce any documentary evidence before the Court to substantiate her defence and to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act and to falsify the case made out by the complainant and to

falsify the oral and the documentary evidence placed on record.

54. But, on the other hand, it is also well settled position of law that the accused can definitely make use of the material produced by the complainant before the Court and can definitely falsify the case made out by the complainant and can definitely falsify the oral and the documentary evidence adduced and produced by the complainant before the Court and can definitely substantiate her defence and can definitely rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act by eliciting the material facts in the cross-examination of complainant.

55. But, in the present case, though P.W.1 was subjected for cross-examination at length, but nothing worth has been elicited either to falsify the case made out by the complainant or to falsify the oral and the documentary evidence placed on record or to substantiate the defence taken by the accused or at-least to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act.

56. No doubt, it is suggested to P.W.1 during the course of his cross-examination by the defence side that, he has visited the house of accused on several occasions and called accused for household work; that there was no

necessity for the accused to avail that much of loan of Rs.2,00,000/-; that the accused had not issued the cheque in question; that he has been doing money lending business; that though there was no necessity for the accused to avail loan of Rs.2,00,000/-, but he took the accused to the Karnataka Vikas Grameena Bank, wherein he had opened an account in the name of accused on the ground that he would provide benefit of Waqf board amount and taken a cheque book and also taken a cheque; that he has filled the cheque and presented the same before the banker and filed false complaint by misusing the cheque.

57. But, all these material suggestions have been specifically denied by P.W.1. Therefore, it is said that the denied suggestions are always remained as suggestions only and not come in the way of accused either to substantiate her defence or to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act or at-least to falsify the case made out by the complainant or to falsify the oral and the documentary evidence placed on record.

58. But, on the other hand, it is forthcoming in the evidence of P.W.1 that, he has been doing grocery business under the name and style of Parashuram grocery shop, earning sufficient source of income and he and the accused were known to each other and having

acquaintance with each other for more than 20 years as accused was working in the house of complainant and she left the work about 2 to 3 years back.

59. It is also forthcoming in the evidence of P.W.1 that he is having 2 JCB vehicle and he has been paying a GST bill amount and also paying income tax. It is also forthcoming in the evidence of P.W.1 that, he kept an amount of Rs.2,00,000/- in his house for business purpose and when the accused has approached him for loan for family necessity, he has paid an amount of Rs.2,00,000/- by way of cash to the accused.

60. Under these circumstances, even if the complainant has not complied either the provisions of Section 269ss of Income Tax Act, 1963 or any other provisions of law and even if the complainant indulged in running money lending business without any license, then it is for the concerned authority to take legal action against the complainant for violation of any of the provisions of Income Tax Act. But, the accused cannot challenge all these aspects before this Court in a trial for the offence under Section 138 of N.I.Act without laying a foundation for all those contentions at the earliest point of time by issuing reply notice.

61. It is pertinent to note here that, if really the accused had not availed any loan of Rs.2,00,000/- from the complainant at any point of time for legal and family necessity and if really the accused had not issued the

cheque in question to the complainant and if really the complainant took the accused to the Karnataka Vikas Grameena Bank on the promise of providing benefit of Waqf board amount and if really the complainant has opened an account in the name of accused and obtained the cheque book and misused the cheque by filing false complaint against the accused, then the accused could have taken some legal action either by lodging complaint before jurisdictional police station for misuse of cheque or at-least lodging a complaint before any police station or at-least before the Court of law and the accused could have issued stop payment instruction to the concerned bank to stop the honour of the cheque and the accused could have issued reply notice narrating all these contentions in her reply notice at the earliest point of time or the accused could have adduced the oral evidence or produce some documentary evidence or adduce the evidence of any independent witnesses before the Court to prove her contention. But, the accused has not done so. No explanation as such forthcoming during the course of cross-examination of P.W.1. In the absence of such an explanation, an adverse inference has to be drawn against the defence raised by the accused and consequently, the defence raised by the accused is not probable as the accused has failed to prove the same before the Court with legal evidence.

62. On re-appreciation and on re-consideration of entire complaint averments, oral evidence and the documentary evidence placed on record, it is found that the cheque vide Ex.P1 is belongs to the accused and she has drawn the said cheque on an account maintained by her with her banker and the signature on the cheque as per Ex.P(a) is as that of the signature of the accused and the notice issued by the complainant has been duly served upon the accused, but, inspite of service of legal notice, the accused neither issued reply notice nor make necessary arrangements to pay the cheque amount. Therefore, the complainant has presented the complaint before the Court within time and thereby complied all the mandates of Section 138 N.I.Act. Therefore, the presumptions are available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act.

63. But, the accused though raised some bald defences during the course of cross-examination of P.W.1, same has not been amplified before the Court in any manner and in-fact, the accused has failed to adduce either oral evidence or produce documentary evidence and thereby failed to rebut the statutory presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act..

64. The Trial Court has failed to appreciate the complaint averments, oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P5. In-fact, the

Trial Court has not properly appreciated the nature of oral and the documentary evidence placed on record. The Trial Court also failed to consider the nature of presumptions available in favour of the complainant under the provisions of Sections 118 and 139 N.I.Act. In other words, it is to be noted here that though the complainant has complied the mandatory provisions of Section 138 N.I.Act with oral evidence of P.W.1 and the documentary evidence at Ex.P1 to Ex.P5, but the Trial Court declined to raise proper presumptions under Sections 118 and 139 of N.I.Act. The Trial Court was not justified in acquitting the accused for the offence punishable under Section 138 of N.I.Act, without appreciating the oral and the documentary evidence placed on record. 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**.

65. POINT NO. 4 : As already stated above, while discussing on point Nos.1 to 3, the complainant has proved the guilt against the accused with legal evidence before the Court for the offence punishable under Section 138 of N.I.Act. The provisions of Section 138 of N.I.Act provides an imprisonment for a term which may be extended to two years or with fine which may extend to twice the cheque amount or with both. The materials

placed on record would reveal that the complainant and the accused were known to each other for more than 20 years and in-fact, the accused was doing work in the house of complainant and left the work about 2 to 3 years back as forthcoming in the evidence on record. The accused has availed a loan of Rs.2,00,000/- from the complainant for family necessity. Therefore, considering the nature of transaction between complainant and the accused and also regard being had to the nature of loan and time taken for disposal of the case including facts and circumstances of the case, this Court is of the considered view that if the following sentence is awarded, then it would meet the ends of justice. Hence, 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 378 of Cr.P.C., and Section 415(3) of BNSs, 2023 is hereby allowed.

Consequently, the judgment of acquittal passed by the Trial Court on 15.11.2025 in C.C.No.494/2023, in acquitting the accused for the offence punishable under Section 138 of N.I.Act is hereby set-aside.

The accused is found guilty for the offence punishable under the provisions of Section 138 of N.I.Act.

Hence, acting under section 255(2) of Cr.P.C., R/w Section 386 of Cr.P.C., the accused is convicted and sentenced to pay a fine of Rs.**2,25,000/-**, in default of fine she shall undergo simple imprisonment for six months for the offence punishable under the provisions of Section 138 N.I.Act.

Out of the fine amount collected from the accused, an amount of Rs.**2,20,000/-** is ordered to be paid to the complainant as compensation under the provisions of Section 357 of Cr.P.C. The remaining fine amount of Rs.**5,000/-** is ordered to be adjusted towards the cost of the State expenses.

Office to supply the copy of the judgment to the accused forthwith without any amount of delay.

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 along with copy of the judgment forthwith without any amount of delay.

The accused is specifically directed to surrender before the Trial Court to comply the judgment within 30 days without fail and in the event of accused failed to do so, the Trial Court is

directed to proceed against the accused in
accordance with law.

*(Dictated to the Stenographer, transcribed and typed by him, corrected,
signed and then pronounced in the open court on this the **2nd day of
July, 2026.**)*

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