KAHV020006922023

Presented on : 07-06-2023
Registered on : 07-06-2023
Decided on : 21-07-2026
Duration : 3 years, 1 months, 14 days

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC, HAVERI.

:: PRESENT ::

SMT. SHOBHA B.G. M.A., LL.B.,

ADDL. SENIOR CIVIL JUDGE & JMFC, HAVERI.

C.C. NO.213/2023

Dated: This the 21th day of July-2026

Complainant: - Navachetana Micro Pin Services Private Limited, Head office Haveri, Rept. By P.A.Holder, Sri.Subhas S/o Nagappa Nagannanavar, Age:45 years, Occ:Area manager, R/o:Hitaishi, building P.B.Road, Haveri, Tq: & Dist:Haveri.

(Reptd. by Sri.N.C.K., Adv.)

-V/s-

Accused: - Sri.Praveen Kadakbavi Janata plot, R/oDupadal, Tq:Gokak, Dist:Belagavi.

(Rep. by Sri.M.M.B.,Adv.,)

J U D G M E N T

This is a private complaint filed by the complainant against accused under section 200 of Criminal Procedure Code complaining that the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

2. The brief facts of the case are as follows:

The accused was working as fied officer (Employee No.1885) in the complainant organization from 12.03.2018 by agreeing agreement and liability of said organization. When the accused was working at branch office Nippani, it was found through the annual accounts dated 30-10-2019 that he had misappropriated Rs.157,096/-. The complainant company informed the accused through official correspondence and initiated the necessary action. The company repeatedly demanded repayment of the misappropriated amount, but the accused was seeking more time and failed to repay the said money. The accused admitted that an amount of Rs.1,57,096/- had been misused during his period of employment. He had gave his consent to recover not only the principal amount but also the interest, additional interest, penalty and other expenses.

As on 05-08-2020 the amount payable consisted on principal amount of Rs.96,824/- interest of Rs.19,067/- from 30-10-2019 to 05-08-2020, additional interest of Rs.25,174/-, penalty of Rs.9,682./-, other expenses of Rs.5,809./- Total payable amount is Rs.1,57,096/-. The accused issued Cheque bearing No.000064 drawn on HDFC Bank, Malingpur–Nippani Road, Chikkodi Branch, towards payment of said amount. When the complainant presented said cheque for collection through his banker i.e., Central Bank of India, Haveri branch on 05.08.2020, said cheque was returned and dishonored with an endorsement that **"funds insufficient"** on 07.08.2020. The accused issued said cheque knowingfully that he had no sufficient fund in his account. The complainant got issued legal notice to the accused through his advocate by RPAD on 21.08.2020 requesting for payment of said cheque amount. Inspite of service of notice, the accused neither repaid the cheque amount nor given reply to said notice.

Thereby he has committed an offence punishable under section 138 of NI Act.

3. After filing of the complaint, the learned Prl. Civil judge and JMFC Court Haveri took cognizance for the offence punishable under section 138 of NI Act against accused and sworn statement of the complainant has been recorded. Thereafter a criminal case has been registered against the accused. In view of Notification No.T.C.(N.I Act) 01/2023, dated 26-05-2023, entire records of this case has been received from Prl. Civil Judge and JMFC Court Haveri and registered the case in this Court.

4. The presence of accused secured by issuing summons/warrant and he got enlarged on bail and copy of complaint has been furnished to the accused as contemplated U/s.207 of Cr.P.C. Subsequently, substance of the accusation for the offence punishable under section 138 of NI Act was read over and explained to the accused in Kannada language known to him. The accused has not pleaded guilty and claimed for the trial. Hence the case was listed for recording the evidence.

5. In order to prove the case of the complainant, its manager examined himself as P.W.1 and 6 documents got marked as Ex.P1 to Ex.6. When the case was reserved for recording of statement of accused Under Section 313 of Cr.P.C., the accused absconded. Hence statement of accused Under Section 313 of Cr.P.C., was not recorded.

6. Perused all the oral and documentary evidence placed before this court.

7. On considering the records, the points that arise for my consideration are as follows:-

1. Whether the complainant proves the compliance of the mandatory provision of Sec.138 (a) to (c) of Negotiable Instrument Act?
2. Whether the complainant proves that the accused had issued Cheque bearing No.000064 dated 05.08.2020 for a sum of Rs.1,57,090/- drawn on HDFC Bank, Chikodi branch towards the discharge of legally enforceable debt or other liability?

3. Whether the complainant proves that said cheque has been dishonored as“Funds Insufficient” and despite issuance of notice also the accused not complied and thereby committed an offence punishable U/s.138 of N.I Act?
4. What order?

8. On perusal of materials placed on record, my answer on the above points is as follows:-

Point No.1 to 3	;-	In the Affirmative
Point No.4	:-	As per the final order for the following: -

<u>R E A S O N S</u>

9. <u>Point No.1 to 3:-</u> All theses points are taken together for discussion to avoid repetition as they required same set of documents and evidence.

I have perused the oral and documentary evidence placed before the court in detail. In support of the case of the complainant company, its manager examined himself as PW.1, he filed affidavit in lieu of his sworn statement and his sworn statement was treated as his examination in chief. In support of his case, he produced documents which were marked as Ex. P1 to 6. As per

Sec. 139 of Negotiable Instrument Act it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred in Sec. 138 Negotiable Instrument Act for the discharge, in whole or in part, of any debt or other liability. The presumption U/s. 139 of Negotiable Instrument Act is a presumption of law. It is not the presumption of fact. This presumption has to be raised by the court in all the cases once the factum of dishonour is established. The onus of proof to rebut this presumption lies on the accused. This standard of such rebuttal evidence depends on the facts and circumstances of the case.

10. The initial burden is on the complainant to prove that there exists legally enforceable debt. Whether the complainant complied the mandatory requirements as contemplated under sec 138 N.I Act? It has to be looked into. In this regard in the instant case the complainant adduced oral and documentary evidence. In support of his case he has produced the documents, which were marked as Ex.P.1 to Ex.P.6. On perusal of said documents, Ex.P.1 is Power of attorney which reveals that the Managing Director of complainant company executed power of attorney on 12.02.2020 in favour of one Subhash Area Manager of complainant company by nominating him as lawful power of attorney to do all acts on behalf of company and prosecute the civil and criminal case. Ex.P.2 is the cheque said to be issued by the accused in favour of complainant bearing No.000064 dated 05.08.2020 for a sum of Rs.1,57,096/- drawn on HDFC Bank, Chikodi Branch. Ex.P.2 contains signature said to be signed by the accused which was marked at Ex.P.2(a). Ex.P.3 is bank endorsement which reveals that said cheque has been dishonoured and returned on 07.08.2020 for the reasons that **'Funds Insufficient'.** Ex.P.4 reveals that complainant issued legal notice through his advocate on 21.08.2020 to the accused by calling upon him to pay the cheque amount within 15 days from the date of receipt of said notice.

Ex.P.5 and 6 are the postal receipt and acknowledgment which reveal that said notice was duly served on the accused.

11. However as per Sec.118 of Negotiable Instrument Act the presumption that the cheque was issued for valuable consideration, it can be raised only when the proceedings are initiated after complying with the statutory requirement of notice on the drawer. In the instant case the complainant has filed this complaint on 24.09.2020. The complainant has issued notice within 30 days from the date of dishonour of cheque. He has filed this compliant after expiry of 15 days from the date of service of notice and within 30 days. Aforesaid material disclose that the complainant has complied mandatory provision of Sec.138(a) to (c) of Negotiable Instrument Act.

12. On considering material placed before the Court, it discloses that when the case was reserved for recording of statement Under Section 313 of Cr.P.C., the accused absconded. Hence statement Under Section 313 of Cr.P.C was not recorded. When the NBW issued against accused was pending, the accused appeared before the court after lapse of more than two years and filed application for canceling NBW issued against him and stated that he has settled the matter. Hence NBW issued against accused was canceled. On that day i.e., on 03.06.2026 the complainant and accused filed joint memo stating that " the case has been settled between the complainant and accused for an amount of Rs.1,00,000/-, out of the settled amount the accused paid Rs.30,000/- on 15.07.2024 to the complainant and paid Rs.10,000/- today. He agreed to pay balance amount of Rs.60,000/- on 06.06.2026. If he fails to pay said amount the complainant is entitled to recover the entire cheque amount." Subsequently on 06.06.2026 the accused remained absent and has not paid remaining settlement amount as agreed by him. When the complainant and accused entered into compromise and accused agreed to pay the amount, it makes clear that the accused has issued cheque/Ex.P.2 towards discharge of his liability.

13. On considering evidence placed before the Court it discloses that there are no dispute regarding cheque/Ex.P1 belongs to accused. The accused has not denied the issuance of Ex.P.1/cheque and also not denied his signature on Ex.P.1/cheque.

14. ***The Hon'ble Supreme Court has held in the case of Rangappa V/s Mohan, reported in 2010AIR SCW296,*** *the presumption that the cheque was drawn in discharge of legally recoverable debt is a presumption of law that ought to be raised in every case, though it is a rebuttable presumption. Of course, the presumption under sec 139 and 118of the N.I.Act are rebuttable presumption. Further it is also held that mere plausible explanation by the drawer is not sufficient and proof of that explanation is necessary.* The principle laid dawn in said citation is applicable to the case on hand.

In the instant case the complainant has proved that there are legally enforceable debt and accused has issued Ex.P.2/cheque towards payment of cheque amount. When the accused filed memo agreeing to pay the settlement amount, it amounts that Ex.P.2/cheque has been issued to the complainant towards payment of cheque amount. Initially the accused did not raise any defense. The counsel appearing for the accused has not subjected PW-1 for cross-examination. Hence the evidence of PW-1 remained unchallenged. Therefore there is no reason to disbelieve the testimony of PW-1.

15. From the oral and documentary evidence placed before the Court it discloses that there are no reasons to disbelieve the testimony of P.W.1 so as to create a doubt about existence of legally enforceable debt or liability. Admittedly as per sec.139 of Negotiable Instruments Act the presumption is in favour of the complainant. Moreover the accused has also admitted to settle the matter, which means he admitted that there exists legally enforceable debt. Therefore, this court is of the opinion that the complainant has proved his case that the accused has committed an offence punishable U/s.138 of NI Act which provides punishment with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of cheque or with both. Ex.P.2 was came to be drawn on 05.08.2020 for a sum of Rs.1,57,096/-. Hence, considering the facts and nature of offence the accused is liable to pay fine amount. This private complaint is filed before the learned Prl.Civil Judge and JMFC Haveri in the year 2020. Since the complainant suffered loss from 2020, he is entitled for compensation out of the fine amount. **Accordingly, point Nos.1 to 3 answered in *Affirmative.***

16. Point No.4:- In view of the above findings, I proceed to pass the following:

ORDER

Acting under section 255 (2) of Criminal Procedure Code, accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1882 and he shall pay a fine of Rs.1,10,000/-.

In total fine amount, a sum of Rs.2,000/- shall be deposited as fine to the State.

In default of payment of fine, the accused shall undergo Simple Imprisonment for the period of 3 months.

Acting under section 357 (3) of Cr.P.C accused is directed to pay a compensation of Rs.1,08,000/- out of fine amount to the complainant towards the loss and injury suffered by him. Since the accused already paid Rs.40,000/- to the complainant, he shall pay a compensation of remaining amount of Rs.68,000/- to the complainant.

The Bail bond and surety bond of the accused and his surety stands cancelled forthwith.

Furnish free copy of this judgment to the accused.

(Dictated to stenographer directly on computer, computerized by him, revised, corrected, signed and then pronounced by me in the open court on 21th day of July, 2026.)

(Smt.Shobha B.G.)
I. Addl. Senior Civil Judge
and JMFC, Haveri.

ANNEXURE

I. LIST OF WITNESSES EXAMINED ON BEHALF OF THE COMPLAINANT SIDE:

P.W.1 : Subhas Nagannanavar

II. LIST OF EXHIBITS MARKED ON BEHALF OF THE COMPLAINANT SIDE:

Ex.P.1	:	Power of Attorney
Ex.P.2	:	Cheque
Ex.P.2(a)	:	Signature of the accused
Ex.P.3	:	Bank Return memo
Ex.P.4	:	Legal Notice
Ex.P.5	:	Postal Receipt
Ex.P.6	:	Postal acknowledgment

II. LIST OF WITNESSES EXAMINED ON BEHALF OF THE ACCUSED SIDE:

- NIL -

IV. LIST OF DOCUMENTS MARKED ON BEHALF OF THE ACCUSED SIDE:

- Nil -

(Smt.Shobha B.G.)
I. Addl. Senior Civil Judge
and JMFC, Haveri.