KAHV210011632024

**IN THE COURT OF THE CIVIL JUDGE & JMFC, BYADGI**

Present**: Sri Basavaraja Thulasappa Nayaka,**
**L.L.M.,**
Civil Judge & JMFC, Byadgi.

**Dated this the 01st day of August – 2026**

**CC.No.734/2024**

Hajaratali S/o Babusab Halageri
Age: 54 years, Occ: Agriculture,
R/o: Sangameshwar Nagar, Byadgi,
Tq: Dist: Haveri.

**(By.Sri.G.A.N., Advocate)**

**...COMPLAINANT**

**V/S**

Subhas S/o Topanna Nejakar
Age: 65 years, Occ: Business,
R/o: Shivabasavanagar 5th number school
near, Haveri, Tq: Dist: Haveri.

**(By.Sri.M.C.H., Advocate)**

**... ACCUSED**

| | | | |
|---|---|---|---|
| 1. | Date of filing complaint | : | 08.08.2024 |
| 2. | Offences alleged | : | U/s.138 of N.I.Act |
| 3. | Date of recording of evidence | : | 13.08.2024 |

| | | | |
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| 4. | Date of Judgment | : | 01.08.2026 |
| 5. | Opinion of the judge | : | As per final order. |

**Civil Judge and JMFC.,**
**Byadgi.**

**JUDGMENT**

The Complainant has filed the present complaint under section 200 of Cr.P.C 1973 against the Accused alleging the commission of the offence punishable under section 138 of Negotiable Instruments Act.

**2. That, brief facts of the case as per complaint is that,**

It is the case of the Complainant that, himself and accused are known to each other. The complainant is agriculturist and businessman. The accused whenever was in need of money, was taking hand loan from the complainant and returning the amount. The accused approached the complainant stating that, he was in difficulty and struct in another financial business and sought help from the complainant. The complainant believing his words has paid Rs.10,00,000/-. The complainant has paid an amount of

Rs.8,00,000/- through cheque and phonepay and Rs.2,00,000/- by cash till February-2023 and the accused received the said money gradually time to time. The accused promised the complainant that, he would repay within one month. When the complainant demanded the repayment of the amount from the accused, the accused keep on postponing. When the complainant forced the accused that, he is in need of money, the accused issued cheque bearing No.538538 dated 24.06.2024 for Rs.10,00,000/- drawn on SBI Bank, Haveri Branch. When the Complainant presented the above cheque for encashment through the HDFC Bank, Byadgi branch, the said cheque is dishonored with return endorsement "Fund Insufficient" on 26.06.2024.

**3.** After receiving intimation from bank authority, Complainant has got issued a legal notice by RPAD on 09.07.2024 through his counsel to Accused, demanding to pay the cheque amount. The legal notice served to accused on 11.07.2024. The accused has not replied nor paid the cheque amount to the complainant society within the stipulated period. Hence, the present complaint.

**4.** After recording sworn statement of the Complainant, criminal case was registered against Accused in Register No.III and summons was issued to Accused. Accused has appeared through his counsel and secured bail. Plea of Accused was recorded in the language known to him and Accused pleaded not guilty and submitted that, he has defence to make. Hence the matter was posted for recording the evidence of Complainant.

**5.** After closure of complainant side evidence, statement of Accused under section 313 of CrPC was recorded and Accused denied all incriminating materials appearing in the evidence of the complainant and accused did not lead defence evidence.

## POINTS

1] Whether Complainant proves beyond reasonable doubt that, Accused issued cheque bearing number 538538 dated 24.06.2024 for Rs.10,00,000/- drawn on State Bank of India, Haveri Branch in favor of the Complainant towards the discharge of legally recoverable debt and said cheque when presented for collection to his banker HDFC Bank, byadagi Branch and the said cheque was dishonored for funds insufficient and Complainant issued legal notice to accused within statutory period and same is served upon accused and in spite of the same accused did not repay the cheque amount and as such accused has committed offence punishable under section 138 of the Negotiable Instruments Act?

2] What order?

**6.** In order to prove the case Complainant is examined as PW-1 and reiterated the averments made int he complainant. got marked following documents.

| | | |
|---|---|---|
| Ex.P1 | : | Cheque |
| Ex.P2 | : | Bank endorsement |
| Ex.P3 | : | Office copy of legal notice |
| Ex.P4 | : | Postal receipt |
| Ex.P5 | : | Postal acknowledgment |
| Ex.P6 | : | Reply notice |
| Ex.P7to9 | : | HDFC Bank Statements |
| Ex.P10 | : | Bank of Baroda statement |
| Ex.P11 | : | ICICI Bank statement |
| Ex.P12 | : | Copy of MR.No.H-57 |
| Ex.P13 | : | Copy of MR.No.T401 |
| Ex.P14 | : | RTC. |

**7.** The accused did not lead evidence.

**8.** Heard the arguments. The Accused counsel filed written arguments.

**9.** Upon consideration of oral and documentary evidence my findings on the above points as here under:

**10.** My findings on the above points are as follows:

Point No.1: In the Affirmative

Point No.2: As final order for following :-

**REASONS**

**11.** **Point No.1:-** It is the case of the complainant that, himelf and the accused are known to each other. The accused used to barrow money from the complainant and repay the same. The accused asked for more money telling that he is in financial trouble. Beleving the words, the complainant lent a sum of Rs.10,00,000/- to the accused till 2023 Febraury. The accused promised to pay within one month. When the complainant demanded his money, the accused issued the cheque bearing No.538538 for Rs.10,00,000/-. The said cheque when presented dishonoured for the reasons Funds Insufficient. The complainant society got issued a legal notice to the accused through RPAD dated 10-7-2024, through its counsel and inspite of receipt of notice neither repaid the loan amount nor replied to the notice.

**12.** The complainant has examined himself as PW-1 and reiterated the averments made in the complaint. Further relied on Ex.P1 to 14. The accused did not lead evidence.

**13.** The complainant counsel argued that, The complainant has produced the bank statement and record of right to show his financial capacity. The signature is not denied by the accused. Presumption is infavour of the complainant. Further argued that the land transaction with the one Anil kulkarni is no way concerned with giving money to the accused. The accused has given untenable reply.

**14.** The accused counsel argued that, the complainant in the complaint stated that, the accused received money till February 2023. In the cross examination of pw1 states that from 2022 to febraruy 2023 he had given money. No dates were mentioned. Mentioning of the dates are important. Further argued that, there are 2 other cases filed by the complainant similar to the present complaint. In all the complaints, the complainant stated that, he has paid amount till Febraury 2023. The total which according to the complainant in all cases paid was rupees more than 28 lakhs. The PW.1 in the cross examination states that, B.S.Halageri Traders is the chilly business done by his family i.e., himself and his brothers. He cannot say what is the income of the said business and also stated he cannot say his personal income. The complainant has not produced the income tax returns. The complainant claims to have a book regarding lending money to the accused, but the said book is not produced. On perusal of the statement , it does not appear that, the complainant has paid money to the accused through phonepay. Further argued that, the complainant had entered into agreement in respect of land with one Anil Kulkarni. The said agreement was done through Accused. The agreement amount was Rs.18,00,000/-. The amount which was deposited to the accused to Nejakar account was towards the said land matter. No money was lent to the Accused. Further argued that, The PW.1 in the cross examination admits that, he has signed the Ex.D.1 with regard to the bike which was kept with him. Further argued that, the amount paid by the complainant was to Nejakar was paid to Anil Kulkarni. If the sale deed entered in respect of the said land, then question of filing the complaint would not arise. Further relied on the admission of PW.1 in the cross examination that, the PW.1 states that, he does not know what financial problem the accused had. The accused counsel argued that the cheque was taken by the complainant by threatening the accused. In this regard, relied on statement of PW.1 in the cross examination the complainant admits that, he has called to the accused regarding cheque and bond . The accused counsel argued that, the PW.1 in the cross examination could not say date of giving money, it creates doubts in the case of the complainant. Further argued that, the complainant was accused in Cr.No.27/2025 with regard to Bit Cion and Crispo Currency Agency. Further argued that, amount paid to Subhas Nejakar was with regard to payment made towards land agreement. The accused counsel relied on the followig decisions.

**1) Criminal Appeal No.636 of 2019, between Basalingappa V/s. Mudibasappa (Supreme Court).**

**2) Criminal Appeal No.2043 of 2013 (@ SLP (CRL.) No.9505 of 2011), between John K. Abraham V/s. Simon C. Abraham & Another.**

**3) CIS No.45357/2016, between Shyam Sunder V/s. Rahul Jain.**

**4) M/s Kumar Exports vs M/s Sharma Carpets (Supreme Court).**

**5) S.Murugan V/s. M.K.Karunagaran.**

**6) 2020(3) KCCR 2373, between Vishal V/s Prakash Kadappa Hegannawar.**

**7) 2016(3) KCCR 1341, between Smt.Threja V/s Smt.Jayalaxmi.**

**8) 2022(3) KCCR 2239, between Kantha Raj V/s.Sham Shudin.**

**9) 2009(1) KCCR 508, between Sri.A. Viswanatha Pai V/s Sri Vivekananda S. Bhat.**

**15.** It is pertinent to note that, there is a presumption under section 139 of N.I.Act in favor of the complainant that ,the cheque was issued for the purpose of discharge of debt or other liability. In the instant case, the accused is not disputing that Ex.P1 does not belong to him and further does not deny the signature. Further on perusal of the Ex.P2, the endorsement issued by the HDFC bank, it appears that the cheque was dishonored for the reason funds insufficient. The

Ex.P3 is the notice and Ex.P4 is the postal receipt and Ex.P5 is the postal acknowledgement, Ex.P6 is the reply notice. This clearly shows that the complainant has issued the notice within the statutory period and served on the accused on 11-07-2024. The service of notice is not disputed. Further on perusal of the complaint, it appears that the complaint is filed within the statutory period. The initial mandatory statutory presumption under section 118 and 139 of N.I.Act is in favor of the complainant. However, they are rebuttable presumptions and the accused is expected to rebut the presumptions by raising probable defence. It is pertinent to note that,the accused can also rely on the materials submitted by the complainant in order to raise such a defence.

**16.** According to the accused, the Ex.P1, cheque was obtained by the complainant by threatening him and the amount was paid by the complainant is towards the sale agreement entered with one Anil Kulakarni. It is pertinant to note that on perusal of the Ex.P6, the reply notice there is no whisper regarding the receipt of the amount by cheque and phone pay with regard the land agreement entered with one Anil kulakrni by the complainant. In the reply notice stated that the complainant came in contact with the accused through Nazir Ahmed and shabbir Ahmed Lohar, when he came to accused house along with them, at the time the accused met with an accident. At that time the complainant took the bike telling that he will get the vehicle repaired. The accused had kept signed 4 blank cheques and Rs.500/- Bond in the bike. The complainant took the same without his knowldege and not returned it back the bike and the said cheques and papers inspite of request. Whereas in the Ex.D1, the statement relied on by the accused, it only contains averments that the complainant has returned the bike to the accused. In the said letter also there is no whisper regarding the cheque and the blank stamp paper. In the cross of the pw1, the accused for the first time claim that the amount which the complainant was given, was towards the land agreement entered with the one anil Kulakrni. Though, the complainant admits the agreement entered with anil Kulkarni through the accused, it is pertinent to note that the accused stated that the amount paid by the complainant was paid to anil Kularnai. The complainant in the cross examination states that he does not know whether the said amount paid to the said person. Further states that the some amount paid to pay to anil Kulkarni and some paid as hand loan to the accused. The accused has not placed before the court any material to show that, the amount which complainant had paid was paid to anil with respect to the said land agreement. It is pertinent to note that the defence taken by the accused in the cross examination is contrary to the defence raised in the reply notice.

**17.** Accused counsel argued that the date of lending of the amount is not mentioned in the complaint and further argued that in all the three complaint filed by the complainant contains same averments that he has paid the amount gradually till Febraruy 2023,If all the three complaint amount is considered the total comes to 28,00,000./-. The complainant has no financial capacity to pay the said amount. It is pertinent to note that on perusal of the account statement of the complainant, it is evident that the complainant has paid amount through cheque and phone pay to the accused. There is no denial by the accused that he has received a sum of Rs.2,00,000/- twice by chque. It also appears that the complainant paid the amount by phone pay to the accused. The pw1 in the cross examination states that he paid through cheque 4 lacks and phone pay also and also paid by cash 4 lakhs. It is pertinent to note that, it is suggested to pw1 in the cross examination, the said amount paid with respect to land agreement. The pw1 denied the said suggestion. As stated supra, in the reply notice, there is no whisper about the agreement and further in order to prove that the said amount was paid to anil kularni it respect of land agreement has not placed any material before the court. As stated supra, the defence taken by the accused in the cross examination and in the reply notice contrary to each other. Further it is pertinent to note that the complainant has placed before the court, the Account statement and the Rtcs, on perusal of the RTC it appears that, his wife has agricultural land. On perusal of the said materials it appears that the capacity of the complainant to pay Rs.10,00,000/- so far as the accused is concerned can be presumed. As stated supra, the accused has failed to prove that the Ex.P1 cheque was taken by the complainant when the complainant alleged to have took the accused bike for repair and further the accused has not placed any material before the court to show that he has paid the said amount to anil Kulkarni. Further it is not the defence of the accused that the Ex.P1 cheque was given as security to the amount paid to anil Kulkarni. Such being the case, mere admission of the PW.1, the complainant regarding entering of an agreement with respect to land with anil Kulkarni through accused and payment of some money is not helpful the accused to raise probable defence that the cheque was not issued for repayment of Rs.10,00,000/-. There is no dispute as to the decision relied on by the accused counsel. The said decisions are not applicable to the present facts of the cased. Hence, I am of the opinion that the Ex.P1 cheque was issued by the complainant for the discharge of legaly recoverable debt. Hence, I answer **Point No.1 in the Affirmative.**

**18. POINT No.2:-** This court has held that the accused issued the Ex.P1 cheuqe for the discharge of the legaly recoverable debt. It is worth to note that, offence is of the nature of civil wrong. Hence, it is proper to award the sentence of fine, instead of awarding sentence of imprisonment .Hence, the complainant has deprived the lawful money due to him for approximate period of more than two years. Therefore, this court fit to impose fine of Rs.12,00,000/- (Rupees Twelve lakh only) on accused. Accordingly, in the light of above discussions and reasonings, this court proceed to pass the following;

**ORDER**

Acting under Sec.278(2) of BNSS., the accused is convicted for the offence punishable under Sec.138 of NI Act-1881 and he is sentence to pay fine of Rs. 12,00,000/ -( Twelve lakh only/-) in default of payment of fine the accused shall undergo simple imprisonment for a period of two years.

It is further ordered that, out of the said fine amount an amount of Rs. 11,95,000/- (Rupees Eleven Lakh Ninety Five thousand only) shall paid to the complainant as compensation as per sec.,395 of BNSS., and remaining amount of

Rs.5,000/-(Five thousand only) shall be remitted to the state.

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

(Dictated to the Stenographer, directly on computer typed by her, corrected and then pronounced by me in the open court on this the 0**1st day of August, 2026**)

**(Basavaraj Thulasappa Nayaka)**
**Civil Judge and JMFC,**
**Byadgi.**

**: ANNEXURE :**

**I. List of witnesses examined on behalf of complainant:**

PW1 : Hajaratali S/o Babusab Halagri.

**II. List of Witnesses examined on behalf of defence:**

NIL

**III. List of Exhibits marked on behalf of complainant:**

| | | |
|---|---|---|
| Ex.P1 | : | Cheque |
| Ex.P2 | : | Bank endorsement |
| Ex.P3 | : | Office copy of legal notice |
| Ex.P4 | : | Postal receipt |
| Ex.P5 | : | Postal acknowledgment |
| Ex.P6 | : | Reply notice |
| Ex.P7to9 | : | HDFC Bank Statements |
| Ex.P10 | : | Bank of Baroda statement |
| Ex.P11 | : | ICICI Bank statement |
| Ex.P12 | : | Copy of MR.No.H-57 |
| Ex.P13 | : | Copy of MR.No.T401 |
| Ex.P14 | : | RTC. |

**IV. <u>List of Exhibits marked on behalf of defence:</u>**

NIL

Basavaraja Thulasappa Nayak

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Date: 2026.08.03 13:43:10 +0530

**(Basavaraja Thulasappa Nayaka)**
**Civil Judge & JMFC,**
**Byadgi.**