

KAHV300014112024



Presented on : 15-07-2024
Registered on : 15-07-2024
Decided on : 25-02-2025
Duration : 0 years, 7 months, 10 days

**IN THE COURT OF
Addl Senior Civil Judge And JMFC
AT HANGAL,HAVERI
(Presided Over by B Venkatappa)**

**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE AND
JMFC, HANGAL AT: HANGAL**

PRESENT: Sri.B.Venkatappa, B.A., LL.M.
Addl.Senior Civil Judge & JMFC,
Hangal.

C.C. No.713/2024

DATED THIS THE 25th DAY OF FEBRUARY 2025

COMPLAINANT: Kallappa S/o Ramappa
Shettibanagigera, Age: 31 Years,
Occ: Agriculturist & Business,
R/o. Akkivalli village, Tal.Hangal,
Dist.Haveri.

(By Sri.M.S.Chinnannavar., Adv)

V/s.

ACCUSED:- Ganesh S/o Neelappa Kolar,
Age: 29 years, Occ: Agriculture,
R/o: Akkivalli, Tq: Hangal,
Dist: Haveri.

(By Sri.M.H.Harijan., Adv.)

Date of Institution	07.06.2024
The offence complied off or proved	Under section.138 of the Negotiable Instruments Act.
Plea of the accused.	Pleaded not guilty.
Date of commencement of recording of evidence.	03.06.2024
Final order	Accused is convicted
Date of such order	25.02.2025

J U D G M E N T

The complainant has filed this private complaint U/s.200 of Cr.P.C., against the accused for the offence punishable U/s.138 of Negotiable Instrument Act.

2. The brief facts of the complainant case is as follows:

The complainant and accused are well known to each other since 10-15 years. On 03.11.2023 the accused has requested the complainant to lend loan of Rs.11,00,000/- for the purpose of his household affairs and discharge the hand loans. Accordingly, on 03.11.2023 the complainant has given loan of Rs.11,00,000/- to the accused and he

agreed to repay the said amount within five months. But he did not repay the said amount. After completion of agreed time, the complainant has requested the accused to repay the loan amount but he did not repay the said loan amount. Finally, the accused has issued a cheque bearing No.463413 dated 26.04.2024 for a sum of Rs.5,00,000/- drawn on Canara Bank, Hangal branch. On 29.04.2024 the complainant has presented the said cheque through his banker i.e., IDFC First Bank, Makaravalli branch for encashment. But the said cheque was returned to the complainant with a Shara stating that **“Cheque Destroyed”** on 03.05.2024. The complainant has met the accused and inform to the accused about dishonor of the cheque. But he did not repay the said loan amount.

3. Thereafter the complainant got issued legal notice dated 08.05.2024 to the accused asking him to make good of cheque amount. Accused has refused to receive legal notice issued by complainant and he did not repay the loan

amount. Hence accused has committed an offence punishable U/Sec.138 of N.I.Act.

4. After issuance of summons, accused has appeared before the Court and got enlarged himself on bail. Plea was recorded, read over and explained to the accused, he pleads not guilty and claims to be tried. In view of ratio laid down Hon'ble Supreme Court in case of **Indian Bank Association V/s Union of India reported in 2014(2) DCR 209**, while framing plea against the accused asked him to take notice U/Sec.251 of Cr.P.C to enable him to enter his plea of defense if any. Further it is informed to the accused he is at liberty to file an application as provided U/Sec.145(2) of N.I.Act for recalling complainant and his witnesses if any for cross examination. Further presence of accused on all dates of hearing during trial is dispensed with as provided U/Sec.205 of Cr.P.C as case shall be tried as summons case.

5. To prove the guilt of the accused the complainant examined himself as P.W.1 and got marked documents as

per Ex.P.1 to Ex.P.5 and closed his side evidence. Even though sufficient opportunity has been given to the accused to cross examine the P.W.1 but the accused has not cross examine the P.W.1. After completion of complainant evidence, case is set down for recording of accused statement U/s.313 of Cr.P.C., but even though sufficient opportunity has been given to the accused to appear for recording of statement but the accused intentionally not appear before this court. Hence Accused statement U/Sec.313 of Cr.P.C was dispensed with and he has not led any defense evidence.

6. Heard both counsels at length.

7. Upon hearing the arguments and on perusal of the materials placed on record, the following points arise for my consideration:

POINTS

1. Whether complainant proves that, accused in discharge of legally recoverable debt has issued Cheque bearing No.463413 dated 26.04.2024 for a sum of Rs.5,00,000/- drawn on Canara Bank, Hangal branch, which

came to be dishonored with an endorsement "**Cheque Destroyed**", in spite of due service of notice, the accused has not paid the Cheque amount within time prescribed under law, thereby accused has committed an offence punishable under section 138 of N.I.Act?

2. What order?

8. My answers to the above points are as under

Point No.1 - In the Affirmative

Point No.2 - As per final order for the following.

REASONS

9. Point No:1: The complainant in order to prove legally recoverable debt from the accused has placed cheque said to have been issued by the accused for sum of Rs.5,00,000/- drawn on Canara Bank, Hangal Branch, dated 26.04.2024 as per Ex.P.1. Endorsements issued by IDFC First Bank, Makaravalli Branch, dated 03.05.2024 as per Ex.P.2, wherein it is mentioned cheque not honored for Cheque destroyed by the accused. Copy of the legal notice is produced as per Ex.P.3. The Postal receipt and postal

envelope cover are produced as per Ex.P.4 and Ex.P.5. It shows that the accused intentionally refused to receive legal notice issued by complainant and he did not repay the said loan amount.

10. The complainant in his evidence which is filed by way of an affidavit has re-iterated the contents of complaint. It is worth to note here that, as per direction issued by **Hon'ble Supreme Court in case of Indian Bank Association and others V/s Union of India and others**, this Court after presentation of complaint by the complainant along with affidavit and other documents took cognizance of the offence and issued summons to the accused. Further as per direction of Hon'ble Supreme Court in said decision itself, when accused put his appearance in pursuance of summons, this Court has asked the accused to taken notice U/s.251 of Cr.P.C to enable him to enter his plea of defense and also accorded liberty to the accused to file an application U/s.145(2) of NI Act in case he intended to cross examining the complainant.

11. It is worth to note here that, as per ratio laid down by **Hon'ble Supreme Court in decision reported in AIR 2010 SC 1402** in case of **M/s Mandvi Co-operative Bank Limited V/s Nomesh B Thakare** has held that, the plea that when the complainant gives his evidence on affidavit, then the documents produced along with the affidavits are not proved automatically and unless the accused admits those documents under Sec.294 of the code of Criminal procedure the documents must be proved by oral testimony would not be tenable. There is no reason why the affidavits should not also contain the formal proof of the enclosed documents.

12. In view of proposition laid down by Hon'ble Supreme Court in above decision, contents of affidavit filed by complainant and documents filed along with affidavit or substantive evidence. Even though sufficient opportunity has been given to the accused cross-examine the P.W.1 by filing necessary application U/s.145(2) of Cr.P.C., but the accused has not appear before this court and not filed

application for cross-examination of P.W.1. Therefore an evidence of complainant by way of affidavit and documents remained unchallenged and uncontroverted.

13. On combined appreciation of evidence of complainant filed by way of affidavit and documents produced along with affidavit it is evident that, the accused in order to pay legally recoverable debt has issued cheque as per Ex.P.1 for sum of Rs.5,00,000/- in favor of complainant. As per Ex.P.2 bank memo dated 03.05.2024, it shows that cheque issued by accused not honored for the reasons there is cheque destroyed in the account of accused to honored the cheque within time prescribed by law, the complainant has issued legal notice to the accused as per Ex.P.3. As could be seen in Ex.P.4 and Ex.P.5, the accused intentionally not received the notice issued by the complainant. Even after service of notice, the accused has not paid cheque amount within time prescribed under law.

14. It is worth to note here that, even accused has not denied his signature on cheque by entering his defense

evidence. Once signature of accused on cheque is admitted, it can be held that, the accused has issued the cheque as per Ex.P.1 in favor of complainant. In case signature of accused on cheque not tally with his specimen signature maintained by bank authorities, definitely the bank authorities would have issued endorsement to the effect drawers signatures is defective one. In case such endorsement is not issued by bank authorities, it can be presumed signature on Ex.P.1 cheque belong to accused herein. The accused having issued cheque as per Ex.P.1 in favor of complainant and the said cheque is destroyed to honor the cheque in case same is produced by complainant. Further more the accused even after receipt of notice issued by the complainant as per Ex.P.4 and Ex.P.5 has not paid cheque amount to the complainant in time as prescribed by law. Hence, it can be held that, accused has committed an offence punishable U/s.138 of NI Act.

15. It is worth to note that, fine has to be imposed on the accused for the offences committed by him taking into

consideration of his paying capacity. The accused has borrowed loan of Rs.5,00,000/- from the complainant. On consideration of all these facts, if fine of Rs.5,10,000/- is imposed which would meet ends of justice. If fine amount is recovered, an amount of Rs.5,00,000/- shall be paid as compensation to the complainant. Remaining amount of Rs.10,000/- remitted to the State as expenditure towards case. Hence I answered point No.1 in the **Affirmative.**

16. **Point No: 2:-** For the reasons discussed herein above, I proceed to pass the following.

O R D E R

Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act.

The accused is sentenced to pay fine of Rs.5,10,000/- in default of payment of fine he shall undergo Simple Imprisonment for one year.

Out of total amount of fine, an amount of Rs.5,00,000/- is ordered to be paid as compensation to the complainant and

remaining amount of Rs.10,000/- is ordered to be remitted to the State.

The bail bond and surety bond of the accused stand canceled.

Supply copy of this judgment to the accused immediately at free of cost.

(Dictated to the stenographer directly on computer typed by him, corrected and then pronounced by me, in the open Court on this the 25th day of February 2025 at Hangal).

(Sri.B.Venkatappa)
Addl.Senior Civil Judge & JMFC, Hangal.

ANNEXURE

List of Witnesses examined on behalf of prosecution :

PW.1: Kallappa S/o Ramappa Shettibanagigera.

List of witnesses examined on behalf of accused : NIL

List of documents marked on behalf of prosecution :

Ex.P.1 : Cheque
Ex.P.1(a) : Signature of accused
Ex.P.2 : Bank endorsement.
Ex.P.3 : Copy of legal notice.
Ex.P.4 : Postal receipt.
Ex.P.5 : Postal Envelope cover.
Ex.P.5(a) : Copy of the notice.

List of documents marked on behalf of Accused:

NIL

(Sri.B.Venkatappa)
Addl.Senior Civil Judge & JMFC, Hangal.