IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE AND JMFC AND AMACT AT HANGAL

Dated this the 25th day of June 2025 Present:

Smt. Rajeshwari-J-Puranik,
B.A.LL.B. (Spl.)
C/c Addl Senior Civil Judge & JMFC and AMACT., Hangal.

CC.No.715/2024

Complainant: Parameshappa S/o Basavanneppa Bidarakoppa, Agriculturist, R/at Hanumapura, Hangal Taluk and Haveri District.

[By: Sri.B.N.Mavakoppada, Advocate]

-V/s-

Accused: Ravikumar H.N., S/o Late Nagaraj N., Aged 35 Years, Cab driver, R/at: 323, 2nd Main, 6th cross, Near Ganesh Temple, Panchasheela Nagar, Mudalapalya, Bengaluru-560072.

(By: Sri.P.M.Jekinakatti, Advocate)

JUDGMENT

The Complainant filed this complaint against the accused under Section 200 of Cr.P.C for the offence punishable under Section 138 of N.I. Act.

2. It is the case of the complainant that, the Complainant is doing agricultural work. Accused is resident of Bangalore. About 3-4 years back complainant was doing work in garments factory at Bangalore. During that period accused and complainant came to know to each other. In the 2nd week of January-2024 the accused requested the complainant to lend loan of Rs.4,50,000/- for the purpose of his household affairs. Accordingly, complainant had given loan of Rs.4,50,000/- to the accused and he agreed to repay the said amount before last week of April-2024. But he did not repay the said amount. After completion of agreed time, the complainant requested the accused to repay the loan amount but he did not repay the said loan amount. Finally, the accused issued a cheque bearing No.658211 dated 14.05.2024 for a sum of Rs.4,50,000/- drawn on Yes Bank, Bangalore branch. On 14.05.2024 the complainant has presented the said cheque through his banker i.e., Canara Bank, Hangal branch for en-cashment. But the said cheque was returned to the complainant with a Shara stating that **"Funds Insufficient"** on 15.05.2024. The complainant informed the accused about dishonor of the cheque. But he did not repay the said loan amount.

3. Thereafter the complainant issued legal notice dated 31.05.2024 to the accused asking him to make payment of cheque amount. The said returned as unclaimed and he did not repay the

loan amount. Hence accused committed an offence punishable U/Sec.138 of N.I.Act. So this complaint was filed against the accused.

4. After filing of the complaint, it was registered under P.C.R and cognizance was taken for the offence punishable U/s 138 of N.I. Act. Then sworn statement of the Complainant was recorded by the then Presiding Officer. After considering the documents and Sworn Statement of the Complainant case was registered and summons was issued to the accused.

5. In pursuance of the Summons and warrant, the accused appeared through Counsel and got enlarged on bail. The Substance of accusation read over to the accused, accused pleaded not guilty and claimed to be tried. Hence case was posted for trial.

6. The complainant in order to establish his case, the sworn statement affidavit was treated as chief examination affidavit and got examined himself as PW1 and got marked Ex.P1 to 5(a) documents. The accused had not cross-examined the complainant. Then the Statement U/sec.313 was dispensed with. Accused had not adduced any evidence on his behalf.

7. Heard the arguments of Learned Counsel for the Complainant. The accused was absent no representation for accused. Hence, the case was posted for judgment as per the guidelines of Hon'ble Supreme Court of India, Indian Bank association & others, V/s Union of India and others.

8. Perused the materials available on record. The Points that arise for my consideration are as under:

POINTS

1. Whether the Complainant proves that, the accused issued one Cheque bearing No. 658211 for a sum of Rs.4,50,000/- dated 14.05.2024 drawn on Yes Bank, Bangalore branch, in favor of the Complainant to discharge of legal recoverable debt or other liability?

2. Whether the Complainant further proves that, on presentation of said cheque for encashment before Canara Bank, Hangal branch, which was dishonoured and returned with endorsement dated 15.05.2024 for the reasons **"Funds Insufficient**". Inspite of issuance of legal notice, accused failed to pay the due amount and thereby the accused committed an offence punishable U/sec.138 of N.I. Act?

3. What order?

9. The findings on the above points are as hereunder:

Point No.1: In the Affirmative
Point No.2: In the Affirmative
Point No.3: As per the final order
for the following:

R E A S O N S

10. **Point No.1 and 2:-** Complainant & accused were well known to each other. The accused asked the complainant to lend loan of Rs.4,50,000/-. For repayment accused issued cheque but said cheque was dishonored.

11. The complainant in order to establish his case, the sworn statement affidavit was treated as chief examination affidavit and got examined himself as PW1 and got marked Ex.P1 to 5(a) documents.

12. Ex.P1 is the Cheque bearing No.658211 for a sum of Rs.4,50,000/- dated 14.05.2024 drawn on Yes Bank, Bangalore Branch, Ex.P2 is the bank endorsement dated 15.05.2024, Ex.P3 is the legal notice dated 31.05.2024, Ex.P4 is the postal receipt dated 31.05.2024, Ex.P5 is the postal unclaimed cover dated 03.06.2024. The complaint was filed on 01.07.2024. Hence, the complaint was filed within the period of limitation and complainant complied all the ingredients of Section 138 of NI Act.

13. It is pertinent to note here that, the accused had not cross-examined PW1 and had not denied the issuance of cheque and signature. Therefore, the accused failed to cross-examine PW1 and Ex.P1 to 5(a) remained unchallenged and unrebutted.

14. Ex.P1 cheque and signature is not denied by the accused. Under these circumstances, the Learned Counsel for the Complainant stated that, Cheque belongs to the accused and same was not denied by the accused. Accused had not led any defence evidence.

15. Therefore, towards discharge of his liability, the accused had issued Ex.P1 Cheque for total amount of Rs.4,50,000/- and on presentation of said cheque for encashment through Complainant's banker, the said cheque was returned with endorsement as per Ex.P2 stating **"funds insufficient."** Therefore, it is established by the Complainant that, the accused had issued Ex.P1 Cheque towards discharge of legally enforceable debt.

16. Further it is pertinent to note here that, the Cheque was presented within time and legal notice was also issued to the accused. Therefore, the Complainant complied all the ingredients U/sec.138 of N.I. Act, hence court can drawn the presumption U/sec.139 of N.I. Act., that the Cheque issued by the accused for legally recoverable debt.

17. Under Sec.139 of N.I. Act the presumption is in favour of holder of cheque,

Sec.139 which reads as under:

> "Presumption in favour of holder: It shall be presumed, unless the contrary is proved that holder of a cheque received the Cheque of the nature referred to in Sec.138 for the discharge, in whole or in part, of any debt or other liability."

18. So, said presumption is presumption of law and not the presumption of fact. Further as per Section 118(a) of N.I. Act, the presumption is that,

every negotiable instrument was made or drawn for consideration. So, such presumption has to be raised in all cases once the factum of issuance of cheque and its dishonour is established, the onus of proof to rebut the said presumption lies on the accused, though the accused need not rebut the presumption beyond all reasonable doubt, but the accused has to adduce sufficient material to show that, his case is more probable than the case of the Complainant. Therefore evidence of PW.1 and Ex.P1 to 5 reveal that, the accused had issued the Cheque for legally enforceable debt and he utterly failed to discharge his onus and also failed to rebut the legal presumption.

19. Further, in the case of Indian Bank Association V/s Union of India. The Hon'ble Apex Court issued direction for disposal of cases falling under Section 138 of NI Act which are as hereunder;

> *"Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-"*

> DIRECTIONS:
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> 1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), 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) MM/JM 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.
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> 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.
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> 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.
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> (5) The Court concerned must ensure that examination-in-chief, cross-
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> 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.
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> *22. We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.*

Under these circumstances the accused inspite of giving sufficient opportunity failed to cross-examining PW1. Hence, entire case of the complainant unchallenged and unrebutted. Therefore the accused is found guilty for the offence punishable

U/sec. 138 of N.I. Act. Accordingly, I answer Point No.1 & 2 in the **Affirmative.**

20. **Point No.3:** The punishment for the offence punishable U/sec.138 of N.I. Act is imprisonment for a period which may extent to two years or with fine. The accused had issued Cheque in the year 2024. Hence, by considering the facts and circumstances, nature and year of transaction and interest, this Court is of the considered opinion that, it is just and proper to impose fine of Rs.4,60,000/- and awarding Rs.4,50,000/- as compensation to the Complainant as per Sec.357(1) of Cr.P.C. and remaining amount of Rs.10,000/- shall be remitted to the State. Accordingly, I proceed to pass the following :

ORDER

Acting U/sec.255(2) of Cr.P.C the accused is hereby convicted for the offence punishable U/sec.138 of N.I. Act.

Accused is sentenced to pay fine amount of Rs.4,60,000/-. In default to pay the fine, accused shall undergo simple imprisonment for a period of 3 months.

In exercise of powers conferred U/sec.357(1) (b) of Cr.P.C, out of fine amount a sum of Rs.4,50,000/- (rupees Four lakh Fifty thousand only) is Order to be paid to the Complainant as compensation and remaining amount of Rs.10,000/- shall be remitted to State.

Bail bonds of the accused stands canceled.

Supply free copy of Judgment to the accused.

(Dictated to the Stenographer directly on computer, then corrected by me and pronounced in open court on this the 25th day of June 2025)

(Rajeshwari-J-Puranik)
C/c Addl Senior Civil Judge & JMFC.,
Hangal

A N N E X U R E:

List of witnesses examined for Complainant:

Pw.1 : Parameshappa S/o Basavanneppa Bidarakoppa.

List of documents marked for Complainant:

Ex.P1: Cheque,

Ex.P2: Bank endorsement,

Ex.P3: Legal notice,

Ex.P4: Postal receipt,

Ex.P5: Postal cover.

Ex.P5(a): Copy of legal notice.

List of witnesses examined and List of documents exhibited for Accused:

Nil

(Rajeshwari-J-Puranik)
C/c Addl Senior Civil Judge & JMFC.,
Hangal