

KAHV300027232024



Presented on : 20-12-2024
Registered on : 20-12-2024
Decided on : 25-04-2025
Duration : 0 years, 4 months, 5 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.1351/2024

DATED THIS THE 25th DAY OF APRIL 2025

COMPLAINANT: Shashikumar S/o Hanumantappa
Gollar, Age: 31 Years, Occ: Agri &
Business, R/o. Kopparasikoppa,
Tal.Hangal, Dist.Haveri.

(By Sri.P.M.Jekinakatti, Adv)

V/s.

ACCUSED:- Jagadish S/o Rangappa
Nimbakkalavar, Age: 48 years, Occ:
Employee, R/o: Turamandi Oni, Hangal
Hangal. Tq: Hangal, Dist: Haveri.

(By Sri.S.B.Lakmapura., Adv.)

Date of Institution	27.11.2024
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The offence committed or proved	Under section.138 of the Negotiable Instruments Act.
Plea of the accused.	Pleaded not guilty.
Date of commencement of recording of evidence.	17.12.2024
Final order	Accused is convicted
Date of such order	25.04.2025

J U D G M E N T

The complainant has filed this private complaint U/s.142(1) of Negotiable Instrument Act., 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 many years. The accused has requested the complainant to lend loan of Rs.5,00,000/- for the purpose of his house hold affairs and discharge his loans. Accordingly, the complainant has given loan of Rs.5,00,000/- to the accused and he agreed to repay the said amount within 6

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.097806 dated 03.10.2024 for a sum of Rs.5,00,000/- drawn on State Bank of India, Hangal branch. On 04.10.2024 the complainant has presented the said cheque through his banker i.e., State Bank of India, Hangal branch for en-cashment. But the said cheque was returned to the complainant with a Shara stating that **“Accounts Closed/Transferred to”** on 04.10.2024. 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 28.10.2024 to the accused asking him to make good of cheque amount but the accused refused to receive legal notice. But 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.274 of BNSS 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.228 of BNSS 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/Sec.351 of BNSS., but the accused intentionally not appeared appear for recording of statement. Hence Accused statement U/Sec.351 of BNSS 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.097806 dated 03.10.2024 for a sum of Rs.5,00,000/- drawn on State Bank of India, Hangal branch,

which came to be dishonored with an endorsement **“Account Closed/Transferred to”**, 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 State Bank of India, Hangal Branch, dated 03.10.2024 as per Ex.P.1. Endorsement issued by State Bank of India, Hangal Branch, dated 04.10.2024 as per Ex.P.2, wherein it is mentioned cheque not honored for Account closed/ Transferred to by the accused. Copy of the legal notice is produced as per Ex.P.3. The Postal receipt

and refused postal cover is produced as per Ex.P.4 and Ex.P.5. It shows that the accused refused to receive the notice 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/Sec.274 of BNSS 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 and his witness. After completion of complainant evidence, case is posted for

recording of accused statement but accused intentionally not appeared before this court for recording of accused statement U/Sec.351 of BNSS. Hence accused statement U/Sec.351 of BNSS., is dispensed with. In this regard I relied upon the recent decision of Hon'ble High Court of Karnataka in **Crl.Rev Petition No.664/2020 dated 07.02.2025 in between Sunil Yadav S/o Subramaniraju V/s Smt.Y.C.Manju W/o K. Rajashekar Murthy**, wherein it is held that,

It is also important to note that considering the factual aspect of the case as well as proceedings under Section 138 of N.I. Act, it is settled law that same has to be concluded expeditiously in the light of guidelines issued by the Courts from time to time for speedy disposal of the cases, the scope of Section 142, 143 and 145 of N.I Act, it was not necessary for the Trial Court to wait for accused to make his appearance. The Court is empowered to proceed with the case without recording the statement of the accused under Section 313 of Cr.P.C. The mere use of word 'may' cannot be held to confer a discretionary power on the Court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice. If the

accused has not bothered to remain present before the Court and also Court has to take note of the fact that complainant is running from pillar to pillar after filing of the case and when the material discloses that the accused did not bothered, Court has to exercise discretion and proceed with the case by dispensing with statement under Section 313 of the Code.

11. With due respect to the decision of Hon'ble Apex Court, this decision is applicable to this case. In this case the complainant has filed this case against the accused for the offence punishable U/s.138 of NI Act on 27.11.2024. Cognizance was taken on 18.12.2024. After repeated issuance of summons and warrant, the accused has not appeared before this court. On 13.03.2025 the accused has produced before this court and he enlarged on bail but till today the accused has intentionally not appeared before this court. Thereafter case is posted for recording of accused statement U/Sec.351 of BNSS., but the accused intentionally not appeared before this court. Hence accused statement U/Sec.351 of BNSS., was dispensed with and the

accused has not appeared and not lead any defense evidence.

12. 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/Sec.274 of BNSS 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.

13. 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 U/Sec.330 of BNSS 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.

14. 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.

15. 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 04.10.2024, it shows that cheque issued by accused not honored for the reasons there is Account Closed/Transferred, 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 refused to receive the legal notice issued by the complainant and not paid cheque amount within time prescribed under law.

16. 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, not maintained sufficient amount 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.

17. 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.**

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

O R D E R

Acting under Section 278(2) of BNSS 2023., 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 April 2025 at Hangal).

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

A N N E X U R E

List of Witnesses examined on behalf of prosecution :

PW.1: Shashikumar S/o Hanumantappa Gollar.

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 : Refused postal cover.
Ex.P.5(a) : Copy of the legal notice.

List of documents marked on behalf of Accused:

NIL

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