ORDER

The complainant has filed application U/Sec. 143A of Negotiable Instruments Act, praying to issue direction to the accused to deposit 20% of cheque amount before the court.

2. In the application the complainant stated that the accused has issued cheque towards discharge of legally enforceable debt and thereby committed an offence punishable U/Sec. 138 of Negotiable Instruments Act. As per the amended provision, the accused may be directed to deposit 20% of cheque amount before the court.

3. Per contra, the accused has filed objection stating that the application is not maintainable because the averments of the complaint itself discloses that the debt is time barred as such Section 138 of Negotiable Instruments Act, has no application. Hence prays to dismiss the application.

4. Heard both side and perused the records.

5. The point that arises for my consideration is:

> Whether the complainant has made out sufficient grounds to issue direction to the accused to deposit 20% of cheque amount?

6. My findings to the above point is **in the Negative,** for following:

<u>REASONS</u>

7. The complainant has filed the complaint U/Sec. 200 of Cr.PC for the offence punishable U/Sec.138 of Negotiable Instruments Act. The present application is filed by the complainant praying to direct the accused to deposit 20% of cheque amount in compliance of Section 143A of Negotiable Instruments Act, on the ground that the accused has issued cheque towards discharge of legally enforceable debt and thereby committed an offence punishable U/Sec. 138 of Negotiable Instruments Act.

8. As against this, the accused specifically contended that the application is not maintainable because the averments of the complaint itself discloses that the debt is time barred as such Section 138 of Negotiable Instruments Act, has no application.

9. In the light of above contentions of the parties, I have gone through the provisions of Section 143A of Negotiable Instruments Act, which states that the Court may order for the drawer to make payment upto 20% of cheque amount during the pendency of the matter. This amended provision is not mandatory, but it is a discretionary because word 'may' is used in the section.

10. In this background, I have gone through the records of the case. According to the complainant, the accused requested through a letter dated 22.01.2014 for hand loan of Rs.5,00,000/- and accordingly the complainant has paid the same through cheque bearing No.2153953. Towards repayment of said loan amount, the accused has issued Ex.P.2 dated 06.09.2019.

11. During the argument, the defence counsel submitted that the debt is time barred and hence the provisions of Section 138 of Negotiable Instruments Act, is not applicable. In support of his arguments, he relied upon a Judgment rendered by the **Hon'ble High Court of Karnataka, Kalburgi Bench in Criminal Appeal No.200057/2016,** decided on 17.12.2020 in the case of **The Bidar Urban Co-operative Bank Ltd., Vs. Mr.Girish S/o Late Gunderao Kulkarni.**

12. I have gone through the above referred Judgment. In the above referred Judgment, the complainant was co-operative Bank and filed the complaint U/Sec. 200 of Cr.P.C for the offences punishable U/Sec. 138 of Negotiable Instruments Act, stating that the accused has borrowed the loan from their bank and repayment of the same he has issued cheque on 24.05.2007 for Rs.3,28,000/- which came to be dishonoured for insufficient. In the said case, the complainant has not stated the date on which the accused has borrowed the amount. But in the cross examination, the complainant stated that the father of the accused has borrowed loan from the bank in the year 2001 and he died on 2004. These facts were not stated either in the complaint or in the legal notice. The complainant in the cross examination further admitted that he new very well that the father of the accused is no more and the loan is that of father of accused but not a accused. Inspite of that, the complainant has not mentioned these facts in the complaint filed before the Court. But during the cross examination, the complainant stated that the accused gave a cheque stating that he will pay the loan of his father. By considering all these aspects, the Hon'ble

High Court of Karnataka concluded that Section 138 of Negotiable Instruments Act, is a penal provision and applicable only the cheques which are issued for the discharge in whole or in part, of any debt or other liability, which according to Explanation must be a legally enforceable debt or other liability. A cheque given in discharge of a time barred debt will not constitute an unconditional undertaking or promise in writing either expressly or impliedly so as to attract the criminal offence under section 138 of N.I. Act. This was elaborated in SASSERIYIL JOSESPH's case (supra) which is affirmed by the Hon'ble Supreme Court as stated above. A cheque given in discharge of a time barred debt will not constitute a promise in writing not even an implied promise so as to attract a criminal liability under Section 138 of N.I.Act.

13. In the instant case also, the accused specifically contended that as per the averments of the complaint it is time barred date. Therefore in my opinion, the full-fledged trial is required to appreciate the evidence placed by the complainant in respect of allege offence. Therefore in my opinion, the complainant has not made out sufficient grounds to direct the accused to deposit 20% of cheque amount as per Section 143A of Negotiable Instruments Act. Accordingly I answer the above point in the **Negative** and I proceed to pass the following:

ORDER

The application filed by the complainant U/Sec. 143A of NI Act is hereby rejected.

Call for cross of PW.1

Call on:18.01.2022.

II Addl. Senior Civil Judge & JMFC.,
Ranebennur.