KAHV510043842019

IN THE COURT OF II ADDL.SENIOR CIVIL JUDGE & J.M.F.C, RANEBENNUR

PRESENT: MANJUNATHA M.S., *B.A., LL.B.*
II Addl. Senior Civil Judge & JMFC.,
Ranebennur.

DATED THIS THE 2nd DAY OF JUNE - 2026

C.C.No. 1223 of 2019

COMPLAINANT: Devendrappa
S/o: Manappa Badiger, Age: 56 yrs,
Occ: Agriculture & Business,
R/o: Proprietor Naveen Agro & Services, behind Civil Hospital,
Kanakadas Nagar, Ranebennur,
Tq: Ranebennur, Dist : Haveri.

(Rep by Sri. P.R.K, Advocate).

//Versus//

ACCUSED: Veerupakshappa C.H.
Age: 48 yrs, Occ: Agriculture,
R/o: Kenchapur, Post: Chatnalli,
Tq: Harapanahalli, Dist : Ballary.

(Rep by Sri. R.M.G, Advocate)

Offence complained **:** U/Sec.138 of Negotiable Instrument Act.

Name of the complaint : Devendrappa M. Badiger.

Date of commencement

of evidence	: 12-09-2019
Date of closing evidence	: 05-12-2025.
Opinion of the Judge	: Accused found guilty.

(MANJUNATHA M.S)
II Addl.Sr.C.J & JMFC.,
Ranebennur.

JUDGMENT

The complainant has filed this complaint U/Section 200 of Code of Criminal Procedure, alleging that the accused has committed the offence punishable U/Section 138 of NI Act.

2. **The sum and substance of the complaint is as follows:**

The complainant is running a business of seeds production and sale under the name and style Naveen Agro Service at Ranebennur. The accused is an agriculturist as well as seeds grower and having cordial relationship with complainant. The accused used to borrow hand loans from the complainant and repaying the same time to time for his seeds productions and agriculture establishments as well as family necessities. On 11-01-2017 the accused approached the complainant for financial assistance of ₹.15,00,000/- and assured that, he will repay the same within a year as soon as possible. Considering the urgent necessities of the accused, on the same day the complainant has paid ₹.2,00,000/- to the accused and from the date till 27-03-2017 the complainant has paid ₹.11,40,000/- by way of cheque and cash of ₹.1,78,600/-, in total he has paid ₹.13,18,600/-. On 16-08-2017 the accused has repaid ₹.1,00,000/- only by way of cheque. After lapse of one year, the complainant demanded to return the balance loan amount on several times, but the accused postponed the same on one or other pretext. Finally, the accused has issued four post-dated cheques towards repayment loan amount with a request to present the same on the date mentioned in the cheques. As per the request of the accused, the complainant has presented cheque bearing No.014944 dated 06-06-2019 for ₹.2,70,000/- and cheque bearing No.014945 dtd: 06-06-2019 for ₹.2,69,600/- drawn on Bank of India for encashment through his banker i.e., Axis Bank, Ranebennur Branch on 06-06-2019. But the said cheques were returned unpaid with an endorsement "Payment Stopped by the Drawer" on 07-06-2019. The complainant has informed the same to the accused, but accused has not made any efforts for payment of cheque amount. Hence left with no other option the complainant got issued legal notice to the accused on 05-07-2019 by demanding the payment of cheque amount. The notice was returned unserved with postal endorsement as accused refused to receive the notice on 10-07-2019. But accused has not paid the cheques amount. Thus, he committed an offence punishable U/Sec.138 of Negotiable Instruments Act. Hence, filed the present complaint.

3. After filing of complaint, this court has taken cognizance of the offence punishable U/Sec.138 of Negotiable Instrument Act, sworn statement of the complainant was recorded. Being satisfied that there are prima-facie materials to proceed against accused, summons was issued. After appearance, the accused was enlarged on bail and his plea was recorded U/Sec.251 of Cr.P.C. The accused has not pleaded guilty and submitted that he has defense to make.

4. As per the direction of Hon'ble Supreme Court in ***"Indian Bank Association V/s. Union of India and others*** reported in ***(2014) 5 SCC 590,*** the sworn statement of the complainant was treated as complainant evidence & got marked Nine documents as Ex.P.1 to 9. The accused has filed application U/Section 145(2) of NI Act for recall of PW.1 for the purpose of cross-examination as contemplated by the Hon'ble Supreme Court in ***"Indian Bank Association V/s. Union of India and others reported in (2014) 5 SCC 590***. The defence counsel has fully cross-examined PW1. The statement of accused as contemplated U/Sec.313 of Code of Criminal Procedure was recorded. The accused has denied all the incriminating material appears against him in the complainant's evidence. Thereafter, the accused has led defence evidence as DW.1 and got marked a document at Ex.D1. On his behalf the accused has examined two more witnesses by name Ravikumar and Dyamappa as DW.2 and DW.3.

5. Heard the arguments of both side and I have perused the materials available on record.

6. The points that arise for my consideration are as follows;

*1. Whether the complainant proves that the accused has issued cheque bearing No.014944 dated 06-06-2019 for ₹.2,70,000/- and cheque bearing No.014945 dtd: 06-06-2019 for ₹.2,69,600/- drawn on Bank of India towards discharge of legally enforceable debt, which was returned unpaid on presentation for the reason **"Payment Stopped by the drawer"** and despite service of notice, he has not paid the cheque amount and thereby committed an offence punishable U/Sec.138 of Negotiable Instruments Act?*

2. What Order?

7. My answer to the above points is as follows;

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

<u>R E A S O N S</u>

8. **<u>POINT NO.1</u>**: The complainant has filed this complaint alleging that the accused has committed an offence punishable U/Sec.138 of N.I. Act. He pleads and asserts that the accused was owed a sum of ₹.13,18,600/- and towards discharge of his liability, the accused has issued Ex.P.1 and Ex.P.2 cheques, when he presented the said cheques for encashment through his banker, the same came to be returned unpaid with an

endorsement ***"Payment Stopped by the drawer"*** on 07-06-2019. Thereafter, he got issued demand notice to the accused on 05-07-2019 by demanding the payment of cheque amount. Despite of demand notice, the accused has not paid the cheque amount within 15 days, which gave raise cause of action to file this complaint.

9. To substantiate his case, the complainant himself stepped into witness box and examined himself as PW.1 and got marked Exs.P1 to P9. The complainant has reiterated the contents of the complaint in his affidavit evidence about lending of ₹.13,18,600/- to the accused, issuance of cheque in question towards payment of portion of the said amount by the accused and its dishonour for ***"Payment Stopped by the drawer"*** *and* issuance of legal notice to the accused calling upon him to pay the amount covered under the said cheque and his failure to comply the same.

10. In this scenario, let me scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged U/Section 138 of N.I. Act. Among them, cheque bearing No.014944 dated 06-06-2019 for ₹.2,70,000/- and cheque bearing No.014945 dtd: 06-06-2019 for ₹.2,69,600/- drawn on Bank of India, are marked as Ex.P1 and Ex.P.2. Ex.P3 and P.4 are the Bank Endorsements dtd: 07-06-2019 issued by Axis Bank, Ranebennur Branch. The contents of Ex.P3 and P.4 disclose that Ex.P.1 and P.2

cheques were dishonored for the reasons '**Payment Stopped by the Drawer**". Ex.P.5 is the Legal Notice dtd: 05-07-2019, the recitals of Ex.P5 disclose that by issuing said notice, the complainant called upon the accused to pay the cheque amount of ₹.2,70,000/- and ₹. 2,69,600/- respectively within 15 days from the date of receipt of notice. Ex.P6 is the postal receipt, Ex.P7 is the unserved postal cover, which disclosed that the accused has refused to receive the said notice and Ex.P.8 and Ex.P.9 are the statement of accounts of the complainant. This complaint came to be filed on 31-07-2019. A careful scrutiny of the documents relied by the complainant goes to show that, statutory requirements of Sec.138 of Negotiable Instruments Act have been complied with and this complaint is filed within the period of limitation. The complainant has discharged his initial burden by examining himself as PW1 and by production of documents. The Hon'ble Supreme Court in **Laxmi Dyehem Vs State of Gujarat and others, (2012) 13 SCC 375** has held that even cheque is dishonoured for payment stopped by drawer, which attracts section 138 of NI Act. In the present case the accused has not led any evidence to show that he was having sufficient balance in his account to honour the cheque. Under such circumstance section 138 of NI Act attracts even though cheque in question dishonoured for payment stopped by drawer/accused.

11. The accused has specifically denied the borrowing of hand loan from the complainant and issuance of cheque in question for repayment of alleged debt. He has put-forth defense that, he is a seeds grower. The complainant used to supply foundation seeds to farmers to grow seeds along with fertilizers, mesh and amount for expenses for growing seeds by collecting blank signed cheques for security. In the said process, the complainant used to form a group containing 15-20 farmers by making one of the farmer among them as leader of the said group and used to pay the amount towards the expenses to the leader of the said group on behalf all. After growing the seeds, the farmers have to supply the same to the complainant and after testing regarding germination of seeds, he used pay the amount to the farmers by adjusting the amount which was already paid. Similarly, he contacted the accused to grow and supply 5 quintal of seeds and formed one group under the leadership of accused. He supplied foundation seeds and also transferred an amount of Rs.13,18,600/- for expense to him. He has collected 4 blank signed cheques from him for security of the said transaction. Accordingly they grown the seeds and supplied the same to the complainant and after adjusting the seeds price, he was in due of ₹.1,00,000/- to the complainant. Therefore he repaid ₹.1,00,000/- to the complainant by way of cheque and demanded for return of security cheques, for which the complainant stated that transaction should continue as it is and security cheques would

be with him only. Thereafter in the year 2019, he was able to supply only 47 Kg of seeds due to heavy rain and he could not meet the demand of the complainant. But the complainant took up quarrel with him by saying that he has sold the seeds outside and on the said grudge by misusing the security cheques has filed three false cases against him. Hence the cheque in question was not issued for discharge of any legally enforceable debt or liability. As such Sec.138 of Negotiable Instruments Act, is not attracted. On these grounds the accused prays to acquit him from the case.

12. In the backdrop of aforesaid rival contentions, this court has given anxious consideration to the materials on record and submission made by both side. At the outset, it is pertinent to state that the accused has not disputed the cheques in question and signature therein. It is the specific defence of the accused that the complainant has misused the security cheques which was issued in the seeds transaction. The accused by contending so has admitted the issuance of cheques and signature thereon. When the drawer has admitted the issuance of cheques as well as the signature appears thereon as belongs to him, then presumption envisaged U/Sec.118 and 139 of Negotiable Instrument Act, would operate in favour of the complainant. At this juncture, it is worthy to cite the decision reported in **(2021) 5 SCC 283** in the case of **M/s Kalamani Tex and another V/s P. Balasubramanian,** wherein the **Hon'ble**

Supreme Court has pleased to held that, the statute mandates that, once the signature (s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative, such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. Therefore, once the drawer has admitted the issuance of cheque as well as on the signature present therein or it is established that, signature in cheque belongs to accused, then the presumption envisaged U/Sec.118 and 139 of NI Act would operate in favour of the complainant. The said provisions lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder the court shall presume that the Negotiable instrument was endorsed for consideration. So also, in the absence of contrary evidence on behalf of the accused, the presumption under section 118 and 139 of the NI Act, goes in favour of the complainant. As such, presumption under Sec. 118 and 139 of NI Act has to be drawn in favour of the complainant. Section 118 reads as here: - "That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration". Further Section 139 of the Negotiable Instruments Act provides for presumption in favour of a holder. It reads as here: - "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, or any debt or other liability." A combined reading of above said sections raises a presumption in favour of holder of cheque that he has received the same for discharge in whole or in part of any debt or other liability.

13. No doubt, the said statutory presumptions are rebuttable in nature. It is for the accused to place cogent and probable defence to rebut presumption raised in favour of the complainant. As discussed above when the complainant has relied upon the statutory presumption enshrined U/Sec.118 R/W Sec.139 of NI Act. It is for the accused to rebut the said presumption with cogent and convincing evidence. To put it other way, the burden lies upon the accused to prove that Ex.P1 cheque was not issued for discharge of any debt or liability, but the complainant has misused security cheque which was issued in the seeds transaction. It is worth to note that section 106 of Indian Evidence Act postulates that, the burden is on the accused to establish the fact which is especially within his special knowledge. This provision is exception to the General Rule that, the burden of proof is always on the prosecution to establish their case beyond all reasonable doubt. In view of the above matter, the burden is on the accused to prove that the cheques in question were not issued for discharge of legally enforceable debt or liability, but

the complainant has misused security cheques even through there was no legally enforceable debt or other liability existed. Hence, Sec.138 of NI Act is not attracted.

14. To rebut the aforesaid statutory presumption and to prove his defense, the accused has stepped into the witness box and examined himself as DW.1 and got marked Ex.D.1 which is the copy of the reply notice. The accused also examined two more witnesses in support of his case as DW2 and DW3. The accused has reiterated his defence in his chief examination by deposing that the complainant has paid amount of ₹.13,18,600/- towards expense of seeds growing on behalf all the farmers of his group and after growing seeds they has supplied the same to the complainant and after adjustment of seeds amount and after calculation, there was excess amount of ₹.1,00,000/-. Therefore he has repaid the said amount by way of cheque on 16-08-2017. As such there is no due amount payable to the complainant. Despite of the same the complainant without returning his security cheques has filed false case by misusing the said security cheques. DW2 and 3 also deposed in the line of defence taken by the accused. During the cross-examination, DW.1 has specifically admitted that he received ₹.13,18,600/- from the complainant by way of cheque, RTGS and cash. However he has denied that, he received the said amount as hand loan and issued cheque in question for repayment of the said loan amount. He also

denied suggestion that, despite of liability to repay the loan amount, after issuance of cheque he intentionally issued stop payment intimation.

15. The accused has not disputed the receipt of ₹.13,18,600/- from the complainant. During the cross-examination he has clearly admitted that, he received ₹.13,18,600/- from the complainant. He also admitted the cheque in question and signature thereon belongs to him. However, he has specifically deposed that, the complainant has paid said amount for growing of seeds by collecting security cheques. The accused contended that, he has supplied seeds to the complainant and after adjusting the seeds price, ₹.1,00,000/- excess amount was repaid by him to the complainant by way of cheque on 16-08-2017. The complainant admitted the receipt of ₹.1,00,000/- from the accused. But he contended that, the accused approached him for financial assistance of ₹.15 lakhs. Therefore, he paid ₹.13,18,600/- to the accused by way of cheque, RTGS and cash from 11-01-2017 to 27-03-2017 and for repayment of said amount, the accused issued four post dated cheques. All four cheques came to be dishonored for stop payment.

16. The learned counsel for the complainant argued that, during the cross-examination of PW.1 at page No.6 para No.5, the defense counsel suggested that, ನನ್ನ ಹಾಗು ಆರೋಪಿತನ ಮದ್ಯ ಬೀಜಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಯಾವುದೇ ವ್ಯವಹಾರ ಇಲ್ಲ ಎಂದರೆ ನಿಜ.

Therefore the accused admitted that, there was no seeds transaction in between himself and the complainant. He further argued that, the accused clearly admitted the receipt of ₹.13,18,600/- from him and issuance of cheque and signature thereon. Under such circumstances, it has to be presumed that, the cheque in question was issued for discharge of debt only. Per contra, the learned counsel for the accused argued that, as per para No.3 of the complaint, there was no seeds transaction between the complainant and the accused. But during the cross-examination of DW.1 at page No.3 it was suggested to him that, he used to grow seeds and supplying the same to the complainant since several times. These suggestions are totally contrary to the complaint averments and support the defense of the accused that, in the seeds transaction, the accused has issued cheque in question for security.

17. No doubt, during the cross-examination of PW.1 the defense counsel suggested to him that, there was no seeds transaction at all in between them. Similarly during the cross-examination of DW.1 the complainant counsel suggested that, the accused used to grow and supply seeds to the complainant since several times. These stray suggestions are totally contradictory to their respective case and cannot be give much importance to the said suggestions in the absence of any documentary proof.

18. The accused during his cross-examination admitted that, he has possessed documents regarding supply of seeds to the complainant, but he has not produced the same. Hence, an adverse inference U/Sec.114 of Evidence Act, has to be drawn against him that, he had no such documents. Therefore, he has not produced the same. The accused contended that, after supplying the seeds and after calculation, he was in due of ₹.1,00,000/- and said excess amount was repaid by him to the complainant on 16-08-2017. He also admitted that, in the year 2018-19 he has not taken any foundation seeds from the complainant. Then how he supplied 47 kgs of seeds in the year 2019, which is unbelievable one. DW.2 and DW.3 have also deposed similar things in their evidence. But to the contrary, DW.1 in his cross-examination has claimed that, in the year 2019 he supplied several quintals of different types of seeds to the complainant. The said version is totally contradictory to his own version as stated in chief-examination and evidence of DW.2 and DW.3. Therefore, in the absence of any documentary evidence, their version cannot be believed one. The documents which are produced by the accused are complaint, order sheet, cheques and other documents relating to two more cases filed by the complainant against him. They are not in any way helpful to the accused to prove his defense.

19. It is the specific defence of the accused that he has issued four blank signed cheques for security to the complainant in

the seeds business, the complainant has misused the said cheques to file false case. According to the accused those blank signed cheques were issued in the year of 2017. Admittedly, the complainant has presented the cheques in the year 2019. In between 2017 to 2019, there is two years gap, in the said period the accused might have used subsequent series of the cheque in question. But the accused has not produced his bank statement or counterfoils of cheque book to establish that he has issued these cheques in the year 2017 itself as security and subsequent series of the said cheque book were used prior to the presentation of Ex.P1 and Ex.P.2 cheques. No efforts was made by the accused to prove that cheques in question was issued in the year 2017 itself as security and the complainant with the possession of the same till their presentation. Therefore, this court is of the opinion that, the accused has failed to prove that, he has issued blank signed cheques as a security to the complainant in the seeds transactions. As such, the defense taken by the accused is not a probable one. Thereby the accused have failed to rebut the presumption envisaged U/Secs.118 and 139 of NI Act. From the discussion made supra, it is clear that, the accused neither taken probable defense nor taken step to prove the same. To put it other way, the accused has not taken and proved probable defence to rebut the presumption of law available in favour of the complainant, envisaged U/Sec.118 R/W Sec.139 of N.I. Act. Accordingly, the case of the complainant is acceptable one. The complainant has proved that, for discharge of his liability, the accused has issued Ex.P.1 and Ex.P.2 cheques and he has intentionally not maintained sufficient amount in his account to honour the said cheques and given stop payment intimation. Hence, this **point No.1** under consideration is answered **in the Affirmative**.

20. **<u>POINT NO.2</u>**: In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable U/Sec.138 of N.I. Act. **Hon'ble Supreme Court of India** in a decision reported in, ***(2015) 17 SCC 368, in a case of H.Pukhraj Vs. D.Parasmal,*** observed that, having regard to the length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount along with cost of litigation. Further the Hon'ble Apex Court in its recent decision in ***M/s. Meters & Instrument Pvt Ltd. Vs. Kanchana Mehta*** reported in ***(2018)1 SCC-560*** held at para 18 that "The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged, but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court." Therefore, keeping in mind, the time when the transaction has taken place and primary object of the provision, this court is of the opinion that, rather than imposing punitive sentence, if sentence of fine

is imposed with a direction to compensate the complainant for its monitory loss, by awarding compensation U/Sec.357 of Cr.P.C, would meet the ends of justice. The amount covered under the disputed cheques is ₹.2,70,000/- and ₹.2,69,600/- and the date of the cheques is 06-06-2019 and the loan transaction taken place in the year 2017. By considering all these aspects, this court is of the opinion that, it is just and proper to imposed fine amount of ₹.5,50,000/-, which includes interest and cost of litigation, out of which compensation of ₹.5,45,000/- has to be awarded to the complainant U/s.357 Cr.P.C and remaining fine amount of ₹.5,000/- (Rupees Five Thousand only) is defrayed to the State for the expenses incurred in the prosecution. Accordingly, this court proceeds to pass the following;

ORDER

Acting U/Section 255(2) of Criminal Procedure Code, accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act and accused is sentenced to pay fine of **₹.5,50,000/-** (Rupees Five Lakhs Fifty Thousand only). In default thereof he shall undergo simple imprisonment for the term of six months.

Acting U/Section 357(1) (b) of code of criminal procedure, it is ordered that, ₹.5,45,000/- (Rupees Five Lakhs Forty-Five Thousand only), therefrom shall be paid to the complainant as a compensation, remaining fine amount of ₹.5,000/- (Rupees Five Thousand only) is defrayed to the State for the expenses incurred in the prosecution.

Office is directed to supply free copy of Judgment to the accused.

(Directly dictated to the Stenographer through computer, typed by her, corrected by me and then Judgment signed and pronounced in the open court on this the **2nd day of June - 2026**).

(MANJUNATHA M.S)
II Addl. Senior Civil Judge & JMFC,
Ranebennur.

ANNEXURE

List of Witnesses examined on behalf of Complainant:

PW-1	:	Devendrappa M. Badiger.

List of Exhibits marked on behalf of Complainant:

Ex.P1 & 2	:	Original Cheque s
Ex.P3 & 4	:	Bank endorsements
Ex.P5	:	Legal notice
Ex.P6	:	Postal receipt
Ex.P7	:	Unserved postal cover
Ex.P8 & 9	:	Statement of accounts.

List of Witnesses examined on behalf of the defence:

DW.1	:	Virupakshappa C.H
DW.2	:	Ravikumar K
DW.3	:	Dyamappa N.R.

List of Exhibits marked on behalf of defence:

Ex.D.1	:	Reply notice.

II Addl. Senior Civil Judge & JMFC,
Ranebennur.