KAHV510036482022

Presented on : 07-09-2022
Registered on : 07-09-2022
Decided on : 01-07-2026
Duration : 3 years 9 months 24 days

IN THE COURT OF III ADDL. SR. CIVIL JUDGE AND JMFC, RANEBENNUR

PRESIDED OVER BY SRI. MAHANTESH BHUSAGOL, B.A, (Law) LL.B.
III Addl. Sr. Civil Judge & J.M.F.C, RANEBENNUR.

C. C. No.1232/2022

Dated: This the 1st day of July 2026

COMPLAINANT

Veerayya Gurushantayya Ujjanimath,
Age : 37 years, Occ : Business,
R/o : Near Ayyappa Swamy Temple,
Magod Road, Tq : Ranebennur,
Dist: Haveri.

(By Sri. P.S.C, Adv.)

ACCUSED

Nagaraj S/o Neelappa Koraduru,
Age: 48 years, Occ: Sweat Stall Business,
R/o : C/o Madiwala Teachers Building,
1st cross, Talaralabalu Extention,
“B” block, Tq: Hirekerur road,
Tq: Rattihalli, Dist : Haveri.

(By Sri. V.C. K, Advocate)

The offence complained of	U/s.138 of N.I.Act.
Plea of the accused	Pleaded not guilty.
Date of pronouncement of judgment	01.07.2026.
Opinion of the Judge	As per final order

(MAHANTESH G. BHUSAGOL)
III Addl. Sr. Civil Judge and
JMFC, Ranebennur.

J U D G M E N T

The accused has been prosecuted for the offence punishable U/s.138 of Negotiable Instrument Act-1881 (hereinafter referred as NI Act for brevity).

2. Brief facts of the complainant case are that;

The complainant is resident of Ranebennur and doing business of utensils weekly Bajar nearby the villages and also doing real estate business. The accused is running a sweet stall at Rattihalli and doing his business. The accused and complainant are well known with each other, from last 5-6 years. The accused for his business of sweets, often received hand loan amount from the complainant and repaid the same in time. Therefore, there buildup faith on each other. In the month of November 2021, the accused for his business and other purposes necessity of money, due to which, he met with complainant and demanded an amount of Rs.3,00,000/- and on 10.11.2021 received an amount of Rs.30,000/- from the complainant, as hand loan and promised to repay the same within 3 months. After completion of the said time, the accused not repaid the loan. Then, the complainant for his necessity demanded to repay the said amount. Accordingly, the accused issued cheque bearing its No.000002 for Rs.3,00,000/- dated 18.02.2022 drawn on Bank of Baroda, branch Ranebennur.

3. It is further averred in the complaint that, thereafter, complainant has presented the cheque for encahsment, through his banker Karnataka Vikas Grameen Bank, branch Ranebennr on 23.02.2022. But, the same was dishonored with remarks '**Funds insufficient**' on 24.02.2022. The complainant has issued legal notice through its advocate dated 09.03.2022 and the said notice refused by the accused on 18.03.2022. But, the accused failed to repay the payment within stipulated time. Hence, the accused has committed the offence punishable u/s. 138 of Negotiable Instruments Act. By contending so, the complainant has prayed for punishing the accused, as per law. Hence, this complaint.

4. After filing the present complaint, the sworn statement of the complainant was recorded and also the same was considered, as chief-examination, as per the judgment of the **Hon'ble Supreme Court in Indian Bank Association Case.** To sustain the charge leveled against the accused, the complainant himself got examined as PW1 and got marked, as many as 5 documents, at documents at Ex.P1 to P5.

5. On presentation of the complaint, this court has taken cognizance of the offence punishable U/s.138 of NI Act, as per Section 190 of Cr.P.C. The summons was issued to the accused. In pursuance of the summons, the accused put his appearance before this court and filed bail application under Section 436 of

Cr.P.C. and the same was allowed on executing personal bond and the accused was released on bail.

6. The copies of the complaint papers were furnished to the accused, as per Sec.207 of Cr.P.C.,, the plea was recorded, but, the accused pleaded not guilty. As per the guidelines of the **Hon'ble Apex Court held in the case Indian Bank Association Vs. Union of India reported in (2014) 5 SCC 590,** the accused has filed application under Sec. 145(2) of N. I. Act and submits he has valid defence in the case, for the purpose of cross examining the complainant, in order to rebut the mandatory presumptions.

7. The statement of the accused under Sec.313 of Cr. P. C. was recorded. The accused denied the contents of the said statement. The accused himself enter in to the witness box and got examined himself as DW.1, and got marked five documents at Ex.D1 to Ex.D10 and closed his side evidence.

8. Heard arguments from both side.

9. The learned counsel for the accused in support of her case, has relied upon the judgments, which are as follows:

1. Between S A Suryanarayana Vs m S Devendrappa reported in 2013 (5) KCCR 3716.
2. Between M/s Kalamani Tex and another Vs P Balasubramanian reported in 2021 (1) KCCR 545 (SC).
3. Between Nithyanand Mahadev Bhat Vs Manj Vinayak Pandit reported 2018 (4) KCCR 3300.
4. Between M/s Shree Daneshwari Traders Vs Sanjaya and another reported in Criminal Appeal No.61-62 of 2011.

5. Between Rajesh Jain Vs Ajay Singh reported in Crl Appeal No.---/2023 (Spl. Leave Petition) (CRL) No.12802/2022.

10. The points that arise for my consideration are as under:-

1) Whether the complainant proves beyond all reasonable doubt that, the accused has issued a cheque bearing No.000002 dated.18.02.2022 for Rs.3,00,000/- drawn on Bank of Baroda Ranebennur branch, in favour of the complainant for discharging the legal debt or liability and thereby committed an offence punishable U/s 138 of N.I.Act?

2) What Order?

11. My findings on the above points are as follows:

Point No.1	**:**	**In the Negative,**
Point No.2	**:**	**As per final Order, for the following:**

REASONS

12. **Point No.1**:– I have the opinion that, I need not repeat the entire case of the complaint here also, since I have already narrated the same at the inception of this judgment.

It must be noted that, to substantiate the contention, the complainant got examined himself as PW-1 and got exhibited 5 documents as Ex.P1 to Ex.P.5. In my view, it is correct to discuss about the documentary evidence here itself for the sake of convenience.

13. The cheque bearing No.000002 dated 18.02.2022 for Rs.3,00,000/- drawn on Bank of Baroda, Ranebennur has been marked as Ex.P1 and the alleged signature of accused is marked at Ex.P1(a). On perusal of Ex.P1 makes it clear that, it support the stand taken by the complainant. Ex.P.2 is the bank endorsement, which shows the aforesaid cheque is dishonored for the reasons Funds Insufficient and returned on 24.02.2022. However, the records shows that, as per the Ex.P3, the complaint got issued illegal notice, on 09.03.2022 calling upon accused to repay the amount mentioned in the cheque.

14. It must be noted that, the cheque has to be present before the bank within three months (earlier six month) from the date of which it is drawn. Ex.P1 discloses that, it was executed on 18.02.2022 and Ex.P2 discloses that, the cheque was dishonored and return on 24.02.2022. Though it is clear that, cheque was presented within the period of its validity. Further, the said date on which the notice has been issued is within 30 days, from the date of bank endorsement, as per Ex.P2. Thus, these facts makes it clear that, the complainant has comply clause (a) and (b) of provision of Section 138 of N.I. Act. Ex.P3 discloses that, aforesaid notice has been served, as per Clause (c) provision to Section 138 of NI Act. The accused is entitled to have 15 days time to make balance amount. But, failed to repay the said amount. Thus, the complainant complied mandatory provision of Section 138 of NI Act.

15. So, when the complainant present the cheque, it is presumed that, it was given him by the accused for discharge of her legal liability. This presumption has to be rebutted by the accused. Accordingly, the learned counsel for the accused subjected to PW-1 cross examined and accused himself got examined before the court as DW-1 and setup defence before the court that, he has received Rs.30,000/- from the complainant and towards the security of the said hand loan given signed blank cheque in favour of the complainant. The said Rs.30,000/- repaid to the complainant by paying the amount through phonePe and paying the pigmy. Hence, there is no any legally recoverable debt. The complainant has no financial capacity to lend the said amount. Under these circumstances, the accused prays to acquit him from the offences.

16. Keeping in view of the defence set up by the accused and documentary evidence of the complainant, now, I proceed to discuss the main ingredients of Sec.138 of Negotiable Instruments Act, which are as follows;

i) *That there is a legally enforceable debt.*
ii) *That the cheque was drawn from account of Bank for discharge in whole or in part of any debt or other liability which presuppose a legally enforceable debt;*
iii) *That the Cheque so issued, had been returned due to insufficiency of funds.*

17. Keeping in view of the main ingredients of Section 138 N. I. Act now I proceed to discuss, whether the cheque in question issued for legal recoverable debt or whether the cheque in question namely Ex.P.1 is the cheque of accused person or not and whether the cheque in question bears the signature of the accused herein to be seen. Further, it is to be determine that, whether the complainant has financial capacity, to lend the hand loan amount to the accused.

18. As regards to issuance of cheque in question and signature bears on the cheque is concerned.

It is the specific case of the complainant that, due to good relationship between himself with accused, as per request of the accused, he has lent hand loan amount of Rs.3,00,000/- to him towards his business purpose. For the repayment of the said loan amount the accused, issued cheque in question. Therefore, the cheque in question is of accused and the signature bears on the cheque is also of accused person.

19. As against, it is the contention of the accused that, he had only received Rs.30,000/- from the complainant and towards security of the said hand loan issued blank signed cheque to the complainant. But, he did not give cheque towards repayment of Rs.3,00,000/- to the accused.

20. The accused himself got examined before the court as DW.1 and during his cross-examination at para 6 admitted that, Ex.P.1 cheque is his cheque and identified his signature on Ex.P.1. But, the accused deposed that, he has issued the cheque towards the payment of Rs.30,000/-.

21. So, considering the defence set up in chief affidavit and consider the admission of DW.1, wherein he clearly admitted that, Ex.P.1 is his cheque and signature bears on the cheque is also his signature. Therefore, it is proved before the court that, Ex.P.1 is accused cheque and Ex.P.1(a) signature is of the accused.

22. As regards to financial capacity of the complainant, to pay the hand loan amount of Rs. 3,00,000/-, is concerned.

In this case the accused has questioned the financial capacity of the complainant to lend an amount of Rs.3,00,000/- to the complainant, further in its argument urged before the court that, the complainant has filed many cases in respect of Sec.138 of NI Act, in all the cases it alleged that, the complainant made hand loan to all the accused, but, the complainant doing utensils at weakly market surrounding the villages and alleged to be doing real estate business. On the other hand, the complainant has not shown the income derived by him to pay to the alleged accused persons.

23. As against, the learned counsel for complainant argued before the court that, the bank statement produced by the complainant itself it clearly extract before the court that, the complainant having sufficient means of income to lend the hand loan to the accused.

24. The accused during the cross examination of PW.1 categorically raised the question of financial capacity of the complainants. On the other hand, he has produced Ex.D.1 to D.10 documents pertaining to the complaint filed by the complainant herein against the other persons in respect of Sec.138 of NI Act. Even during his evidence raised the function of financial capacity of the complainant. So, considering the oral evidence and documentary evidence it depicts before the court that, the accused has seriously disputed the financial capacity of the complainant.

25. When the question raised for the financial capacity of the complainant, then, again burden shifted on complainant to prove his financial capacity. For which, the complainant can adduced in the evidence to prove the financial capacity to pay the hand loan amount to the accused.

26. The said ratio held by the Hon'ble Apex Court of India in the case of **APS Forex Service Private Ltd, Vs. Shakthi International Fashion Linkers and Others, in Crl. No. 271/2020 disposed on 14.2.2020 the Hon'ble Court in para 6.4, it is held that"**

> 6.4 " Now so far as the reliance is placed by Learned Counsel appearing on behalf of the accused on the decision of this Court in the case of Basalingappa (supra), on going through the said decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the accused. In that case before this Court, the defence by the accused was that the cheque amount was given by the complainant to the accused by way of loan. When the proceedings were initiated under Section 138 of the N.I. Act the accused denied the debt liability and the accused raised the defence and questioned the financial capacity of the complainant. To that, the complainant failed to prove and establish his financial capacity. Therefore, this Court was satisfied that the accused had a probable defence and consequently in absence of complainant having failed to prove his financial capacity, this Court acquitted the accused. In the present case, the accused never questioned the financial capacity of the complainant. We are of the view

that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the presumption under Section 139 of the N.I Act, about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter the onus shifts again on the complainant to prove his financial capacity and at that stage the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of a cheque. That is not a case here."

. . . . . .Underlined by me.

27. Before discussing on the other facts of financial capacity of the complainant, let me discuss, what is financial capacity?

28. The financial capacity means, there should be some evidence before the court to believe that, the complainant was having financial capacity and he is a man of means. Also, does not mean that, there should be document to shows that, he has paid through such and such amount, but, capacity literally means, he should be having certain financial income to give loan to the tune of Rs. 24,00,000/-.

29. In **Veerayya Vs. G. K. Madiwalar reported in 2012 (2) KCCR 2057 wherein Hon'ble court held that;**

"Mere issuance of cheque is not sufficient unless it is shown that the said cheque was issued towards discharge of a legally recoverable debt." when the financial capacity of the complainant is questioned the complainant has to establish his financial capacity.

30. The Hon'ble Apex Court in its judgment reported in 2011 CRI.L.J.552 in between Amzad Pasha Vs. H.N.Lakshmana , wherein it held as under;

> *Apart from this technical defect of the complaint, the Magistrate has also noticed that the complainant has not placed any evidence to show that he had financial capacity to lend substantial amount of Rs 4,50,000. Admittedly, no document evidencing the loan transaction has come into existence. Therefore, the Magistrate is justified in holding that the case of the complainant that he had lent Rs 4,50,000 to the respondent is highly improbable and not acceptable. The complainant had also filed civil suit and received the entire amount due and still wants to continue criminal proceedings. Rejecting the application for leave to appeal and the appeal filed by the complainant, the High Court therefore*
> ***Held:***
>
> The acquittal of the respondent-accused is confirmed.

31. The Hon'ble Apex Court of India in the case of **John.K Abraham Vs. Simon C. Abraham and another reported in (2014) 2 SCC 236 held para 9 that**

> ***9.*** *It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.*

32. The Hon'ble High Court of Karnataka in its Judgment reported in 2009 (2) KLJ 98 between Shivamurthy Vs. Amruth Reddy wherein the court has held that

> "The complainant was below poverty line and there were no documents for lending the money and considering the other documents hence, held that the presumption that arise under Section 139 and 118 of the N. I. Act stood rebutted."

33. So, on conjoint reading of these Judgments, wherein it is clearly held by the Hon'ble Courts that, the burden is on the complainant, when the question raised by the accused regarding his financial capacity, then the complainant has to discharge his burden by showing that he has financial capacity to pay the said amount. Therefore, the complainant has to establish his financial capacity regarding payment of huge amount by producing cogent evidence before the court.

34. Moreover, as the Hon'ble Supreme Court of India in the case of **Jhon K. Abraham (**supra case) held that, the burden lies on complainant to show these grounds.

(1) that he had the requisite funds for advancing the sum of money which lent in question to accused.

(2) that the issuance of cheque by accused in support of repayment of money advanced was true.

(3) that the accused was bound to make payment had been agreed while issuing cheque in favour of complainant.

35. I have drawn the attention of the Judgment reported in **2011 CRI. L. J. 552 between Amjad Pasha Vs. H. N. Lakshmana,** wherein the Hon'ble court observed that, "If the complainant failed to produce materials before the court, then court can draw adverse inference against the complainant."

36. With this background of law in mind, let me discuss, whether the complainant has financial capacity to lent the money of Rs.3,00,000/- to the accused, as alleged by him.

37. In order to discharge the burden of the complainant, subsequently the complainant has produced bank statement of the complainant, as per the complaint averments the complainant has lent hand loan amount of Rs.3,00,000/- to the accused on 10.11.2021. Further, as per the bank statement on 08.10.2021, he has balance of Rs.5,20,719/- and on 11.10.2021 he has the balance of Rs.5,23,719/-. So as on the date of alleged payment made by the complainant in his account having Rs.5,20,719/- but, on the date of hand loan given a previous dates, he has not withdrawn any amount except withdrawn amount on 01.10.2021 for Rs.1,00,000/-. But, in the account statement of the complainant, as on the date of alleged amount given to the complainant in his account having sufficient balance.

38. On the other hand, in order to rebut the said contention the accused has produced Ex.D.1 to D.10 documents, which are confronted during the cross examination of PW.1. Ex.D.1 to D.10 are the certified copies of complaints filed by the complainant herein, against the other persons. Ex.D.1 is certified copy of C.C No.761/2022 wherein the complainant herein filed the case against one

Danappa S/o Fakkirapapa Doddamani for a dishonor of cheque of Rs.1,00,000/- alleged to be given the said amount on 03.01.2021. Ex.D.2 of cheque in the case of C.C No. 761/2022.

39. Ex.D.3 is another complaint filed in C.C No.1234/2022 filed by the complainant herein, against one Yakub S/o Nisarahamed Jamadar alleged to be received Rs.1,75,000/- on 20.10.2021. Ex.D.4 is cheque in respect of C.C No.1234/2022. Ex.D.5 is another complaint registered in C.C No.1287/2022 by the complainant herein, against one Sunil S/o Ramesh Ganachari alleged to be given hand loan amount of Rs.2,50,000/- on 10.08.2021. Ex.D.6 is cheque and bank endorsement of the said case. Ex.D.7 is another complaint registered in C.C No.1235/2022 by the complainant herein against one Yakub S/o Nisarahamed Jamadar alleged to be given hand loan amount of Rs.1,50,000/- on 15.12.2021. Ex.D.8 is cheque and bank endorsement of the said case.

40. The another complaint registered in C.C No.1489/2022 marked as Ex.D.9 by the complainant herein against one Danappa S/o Fakkirappa Doddamani alleged to be given hand loan amount of Rs.2,00,000/- on 20.12.2020. Ex.D.10 is cheque and endorsement of the bank. So, these documents discloses before the court that, from 20.12.2020 to 15.12.2021 the complainant has given hand loan amount of Rs.8,75,000/-. But, during that, period in his account statement from 12.01.2021 till 27.12.2021 the balance shown Rs.5,94,653/-.

41. Even, consider the dates shown in the complainants marked as Ex.D.1, D.3, D.5, D.7 and D.,9 on the said dates i.e., on 03.1.2021, not shown any withdrawal from his account. On 10.08.2021 not withdrawn any amount. Even, on 20.10.2021, 15.12.2021 or 20.12.2021 now withdrawal from the said account. In order to pay the hand loans shown in the said complaints. Moreover, as per the total amount given to the accused persons in total Rs.8,75,000/- given by the complainant. But, that much amount not shown in the account statement of accused. Even, if the present case amount is also includes, then during that period the complainant herein has given Rs.11,75,000/- to the accused persons including the present case.

42. In this regard, during the cross examination of PW.1, wherein he elicited that, in the year 2008 he started real estate business with the work of priest (ಪುರೋಹಿತ). From the said work, his monthly income, is Rs.25,000/- to 30,000/-. Approximately he sold 100 to 150 sites in Ranebennur. But he unable to remember that, from whom he had been business with real estate transaction. He did not obtain permission to do the business of real estate. Except he doing real estate and priest work no other source of income to him.

43. So, consider the admission given by PW.1, wherein it extract before the court that, the complainant doing real estate and priest work and his monthly income is Rs.25,000/- to 30,000/-, but, in his complaint or chief examination, he has not stated regarding doing priest work.

Though, in the complaint and in his evidence shown that, he was doing grocery selling business at markets, but, during his cross-examination he admitted that, except real estate business and priest work there were no other sources derived income from him. The complainant in order to show that, he is doing real estate business, for that has not produced any documents or oral evidence before the court. Even, the complainant is not able to say that, to whom he was sell the sites, as he was not remember the said facts. Hence, it creates suspicious regarding the business of real estate by the complainant.

44. Further, during the cross-examination of PW.1 wherein he elicited that, he is residing in rented house at Eshwar Nagar of Ranebennur. He had four children, out of them, two children are studying and their yearly expenditure for school is 50-60 thousand. Further, he elicited that, he is not the tax assesee. PW1 admitted regarding the cases registered by him, as per Ex.D.1 to D.10 documents. Further he admits that, he has also field other cases and admits that, in the year 2021 approximately more than, Rs. 25,00,000/- given as hand loan to the other persons.

45. Further, consider the evidence of PW.1, which depicts before the court that, for the overall cases filed by the complainant, which shown the amount given by the complainant during the year 2021, for Rs.25,00,000/- but, that extent of amount not shown in the account statement given by the complainant herein. It is worth to note here that, as per the account statement, during the year 2021, has not shown the amount withdrawal, for more than 2 or 3 lakhs.

46. On the other hand, during the further cross-examination of PW.1, elicited that, he was possessed the said amount at his house. Approximately, he was of with Rs.25,00,000/- in his house. He kept the said amount in his account for the purpose of real estate business, due to which, he kept the said amount in his account.

47. It is worth to note here that, the complainant on one breath deposed before the court that, he has made real estate business approximately for 100 to 150 persons. But, he unable to remember that, to whom he has made real estate businesses. But, on the other breath deposed before the court that, he has kept the money of Rs.25,00,000/- at his house and only for the purpose of his real estate business. If really the complainant is doing real estate business and made the business with more than, 100 to 150 persons, then the complainant ought to have speak about to whom with, he had with transaction. But, the complainant said that, he does not remember.

48. On the other hand, further during the cross-examination of PW.1 elicited that, for the selling of groceries he has not owned any shop, but, it was selling in the market. Further elicited that, while giving hand loan amount, he has maintain one dairy and he has no objection to produce the said dairy before the court.

49. Thus, over all considering the admission given by the complainant and as per his account statement, the admission of PW.1 shows that, except doing real estate and priest (ಪುರೋಹಿತ) work, there is no any other source of income, but, again PW.1 deposed that, he was selling groceries in the market. The complainant in proof of his avocation no piece of documents put forth before the court. On the other hand, elicited before the court that, his monthly income was Rs. 25 to 30 thousand, and he is paying Rs.5,000/- towards rent. Further complainant having four children, out of that, two children studying and yearly expenditure is Rs.50 to 60 thousand. So, the complainant derived his income from the remaining amount, he has to lead his family. So, the source of the income for given Rs.25,00,000/- to the other persons during the year 2021 not explained by the complainant.

50. It is worth to note here that, during the year 2021 an amount of Rs.25,00,000/- have been given by the complainant to the various persons, due to which, his financial capacity being questioned. It was incumbent on the complainant to have explained his financial capacity. But, in this case, except producing the account statement of complainant no other piece of documents placed before the court to show the financial capacity of the complainant. Even, the complainant himself admitted before the court that, he is not paying any yearly income tax to the Central Government. If rally the complainant having more than Rs.25,00,000/- alleged to be given to the various persons then, he would have pay the income tax to the Government. So, non paying of the income tax, yet another fact to raise suspicious the contention taken by the complainant for having financial capacity to lend an amount of Rs.3,00,000/- to the complainant.

51. The Hon'ble Apex Court of India in the case of **Basalingappa Vs Mudibasappa reported in AIR 2019 SC 1983** at para 24 observed as follows;

24.Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of the PW1, when the specific question was put that cheque was issued in relation to loan of Rs.25,000/- taken by the accused, the PW1 said that he does not remember. PW1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs. 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs.4,50,000/- to Balan Gouda towards sale consideration. Payment of Rs.4,50,000/- being admitted in the year 2010 and further payment of loan of Rs.50,000/- with regard to which complaint No.119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ex.D2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs.18 lakhs. During his cross-examination, when financial capacity to pay Rs.6 lakhs to the accused was questioned, there was no *satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.*

52. Consider the above observation, which is same like in the present case. In this case also as discussed in aforesaid paras the complainant has lend more than Rs.25,00,000/- for the year 2021 to the various accused persons and in the present case, he has lend an amount of Rs.3,00,000/- but, for the source of income the complainant has not placed any reliable evidence before the court. Further, the admission given by PW.1 which probabalize before the court that, his monthly income was only 25 to 30 thousand and even he is not able to deposed before the court that, to whom he has made business of real estate. Even though, he has made transaction in total for 100 to 150 persons, but, not able to say about to whom he has made the business. Therefore, which also create some suspicious regarding the whether the complainant has doing real estate business. Under such circumstances, the complainant has fails to discharge his burden when financial capacity to pay Rs.3,00,000/- to the accused was questioned. There was no satisfactory reply given by the complainant. Hence, the evidence on record, thus, is a probabale defence on behalf of the accused. But, the complainant fails to prove his financial capacity, by producing cogent and reliable evidence.

53. ***As regards to legally enforceable debt and the accused in order to discharge in hole or in part of any debt or other liability issued the cheque in question, is concerned.***

In this case, the complainant has stated in the complaint that, the accused for his business and other purposes received hand loan amount of Rs.3,00,000/- and in order to repay the said amount accused issued cheque in question. Therefore, there is a legally recoverable debt and accused in order to repay the said hand loan issued cheque in question.

54. As against, the defence set up by the accused is that, he has received Rs.30,000/- from the complainant and towards the security of the said hand loan issued signed blank cheque. The complainant in-spite of payment of the said Rs.30,000/- he has misused the cheque and presented to the bank.

55. In this case, the issuance of cheque and signature bears on the cheque is not seriously disputed by the accused. So the transaction between complainant with accused is accepted only for the amount of Rs.30,000/-. The accused denied for issuance of cheque for Rs.3,00,000/-.

56. During the cross-examination of PW.1 wherein he admitted regarding, while issuing the amount, he maintained one dairy and he has not objection to produce the said dairy before the court. Even during the cross-examination of PW.1 deposed before the court that, earlier for the year 2019 -20, the accused has received hand loan amount of Rs.10 and 20 thousand from the complainant. Though, it is suggested that, the said fact is false but, he denied the same. In order to prove the same the complainant has not produced any documents. Again, it was cross examined subsequently and suggested that, why he has not brought the dairy to the court. But again he deposed that, he has no objection to produce the said dairy. Every year he has been maintaining separate diaries.

57. Again on perusal of the evidence of PW.1, wherein for issuing of amount he has maintaining a dairy, but, in-spite of that, he has no problem to produce the said dairy before the court, but, not produced. Even when the complainant has denies for not received an amount of Rs.3,00,000/- from the complainant but, in proof he has not produced the said dairy.

58. Even during the cross examination of PW.1 admitted that, his mobile cell number is 8317331718 and to that number he received Rs.60,000/- from the accused. But, the said amount was given by the accused in the year 2022 i.e., after the filing of the present complaint.

59. On the other hand, during the cross-examination of DW.1, it was denied the suggestion that, though he is doing business for selling of sweet items, but, falsely deposing evidence before the court. He deposed before the court that, he has received Rs.30,000/- from the complainant in his house for his personal work. At that time, his friend Mallikarjun Hiremath was present. The said Rs.30,000/- repaid by him through phonePe. Again it was denied the suggestion that, he has received 3-4 times hand loan from the complainant. Through pigmy he has been paid Rs.14,000/- and remaining Rs.16,000/- paid through phonePe. Further he admitted that, in order to show that, he has paid the amount through pigmy not produced any documents. The said pigmy book received by the complainant for calculation and did not return to the accused.

60. Further DW.1 elicited that, he has requested to hand over the cheque to him, but, the complainant has not given. He denies the suggestion that, on 10.11.2021 received Rs.3,00,000/- from the complainant and promised to repay the said amount within three months. For the payment of the said amount, he has issued cheque in question. He admitted that, receipt of demand notice and he made enquiry to the complainant, why he has sent notice by claiming that much of amount.

61. On perusal of the cross-examination made by the complainant counsel to DW.1, wherein he admitted the service of demand notice to him and also admitted the issuance of cheque. Further he admits the signature bears on the cheque is of his cheque. But, the accused categorically deposed before the court that, he has issued the cheque in question for the security of hand loan amount of Rs.30,000/-. Though, he deposed before the court that, Rs.40,000/- paid by paying pigmy. But, no proof is produced before the court. In respect of remaining Rs.16,000/- is concerned the complainant admitted during his cross-examination.

62. The learned counsel for complainant argued before the court that, once the issuance cheque and signature bears on the cheque is admitted by the accused, then, court can drawn presumptions U/Sec.118 and 139 of N.I Act.

63. Learned counsel for accused in support of his argument relied upon the judgment reported in **2013 (v) KCCR 3716 between S A Sooryanarayana Vs M.S. Devendrappa** wherein at para 9 observed as follows;

9. "In the instant case, as the signature in the cheque (Ex.P-2) is admitted to be that of the accused, the presumption envisaged in S.118 of the Act can legally be inferred that the cheque was made and drawn for consideration on the date which the cheque bears. S.139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden is on the accused to rebut the burden. The Trial Court and the Appellate Court have not been persuaded to rely on the evidence of the accused - DW-1 to rebut the statutory presumption".

64. Another judgment reported in **2021 (I) KCCR 545 (SC) between M/S. Kalmani Text and another Vs P .Balasubramanian** wherein it is held that,

" Once issuance of cheque and signature is admitted, it is necessary to presume that the cheque was issued as consideration for a legally recoverable debt.

65. Also relied upon the another judgment reported in **2018 (IV) KCCR 3300 between Nitayanand Mahadev Bhat Vs Manoj Vinayak Pandit** wherein at para 14 observed as follows;

14. "Lastly, with regard to the contention that the cheque in question was retained by the complainant and the same has been misused by him to lay a false claim also does not merit any acceptance. Though the learned counsel for the petitioner appears to have taken up this plea, based on the entries contained in Ex.P-8, but there is no material whatsoever to show that the accused had in fact borrowed a sum of Rs.1,50,000/- on 07.12.1999 *and same has been repaid by him on 10.01.2000 as contended by the accused. In the absence of any material to show that at the time of availing the said loan, the accused had left the cheque in question with the complainant, this contention has no legs to stand. The said plea appears to have been taken up only during the trial without any supporting evidence. At the earliest instance, when the complainant caused a notice to the accused, informing him that the cheque has been dishonoured, the accused did not choose to reply to the said notice. If in fact, the cheque in question was issued by him in respect of the earlier transaction and the same was unlawfully retained by the complainant and has been misused to lay a false claim against the accused, nothing prevented the accused to at the earliest instance to bring to the notice of the complainant these facts by issuing a reply thereto. That having not been done, even on this score, I do not find any justifiable reason to accept the contention urged on behalf of the petitioner - accused in this regard".*

66. Also relied upon another judgment passed by Hon'ble Supreme court of India in the case of **M/s Shree Daneshwari Traders Vs Sanjaya Jain and another** decided in Crl. Appeal No.61-62/2011 on 21.08.2019,

The defence of the respondent that, though he made payment for the commodities/rice bags, the blank cheques were not returned by the Appellant/complainant is quite unbelievable and unacceptable. The impugned of the High Court cannot be sustained and he is liable to be set aside.

67. Finally relied upon another judgment passed by the Hon'ble Supreme Court of India in the case of **Rajesh Jain Vs Ajaya Singh decided in Crl Appeal No.---/2023 (Spl. Leave Petition) (CRL) No.12802/2022** wherein at para 60 observed as follows;

> *60. "Coming to the finding of High Court, we find again, there has been fundamental error in the approach with which the High Court has proceeded to consider the evidence on record. In paragraph 6 of the impugned order, the High Court finds that the complainant has proved the issuance of cheque, which means that the presumption would come into immediate effect. In paragraph 13, it rightly observes that the burden is on the accused to rebut such presumption. In the very next paragraph, it finds that the accused has rebutted the presumption by putting questions to the complainant and explaining the circumstances under section 313 Cr.P.C".*

68. So, overall consider the judgments relied upon by the complainant, which shows that, once the issuance of cheque and signature on cheque admitted to be that of accused, then, the court can drawn presumption U/Sec.118(A) of NI Act that, there is a legal presumption. Further it also held that, the pleading of the accused regarding payment of loan amount, but, in-spite of service of legal notice not given any reply. But, raising the plea only during trial without giving any supporting evidence, the contention of the accused cannot be acceptable.

69. In this case, admittedly, issuance of cheque and signature bears on cheque in question is admitted by the accused and even he has not given any reply notice to the complainant, despite of service of demand notice. But, as per the ratio laid down by the Hon'ble Apex court of India, in the case of **APS Forex Service Private Ltd (supra case)** wherein it is held that, once, the accused seriously disputed about the financial capacity of the complainant, then, again the burden shift on the complainant to prove his financial capacity. If, the complainant fails to prove his financial capacity, then as per the ratio laid by the Hon'ble Apex Court of India in the case of Basavrajappa Vs Mudibasappa the accused set up probabale defence to rebut the presumptions drawn U/Sec.118 and 139 of NI Act.

70. Therefore, in this case, the complainant has failed to prove the financial capacity to lend an amount of Rs.3,00000/- to the accused. Therefore, when the financial capacity is not proved, then the question of legally recoverable debt does not arise.

71. Thus, overall considering the above discussion this court is of the opinion that, the complainant has not proved before the court that, he has financial capacity to pay Rs.3,00,000/- to the complainant in the year 2021. as in that, year he has lent more than Rs.25,00,000/- to the other accused persons, as admitted during his cross-examination and as per Ex.D.1 to D.10 documents disclose the said fact. Under such circumstances, the complainant fails to prove the fact before the court regarding the financial capacity to pay an amount of Rs.3,00,000/- to the accused. Accordingly, accused has rebutted the presumptions drawn under Sec.118 and 139 of NI Act. Hence, accused is entitle to get acquit from the case. **Therefore, I answer the point No.1 in the Negative.**

72. <u>Point No.2</u> : Hence, I proceed to pass the following:

ORDER

Exercising the power under Sec.255(1) of Cr.P.C., the accused person is hereby acquitted for the offence punishable under Section 138 of N.I Act.

The bail bond and surety bond of the accused is hereby stands cancelled.

(Dictated to the stenographer, typed by her and corrected by me, then pronounced in the open Court, this the 01st Day of July 2026)

(MAHANTESH G. BHUSAGOL)
III Addl. Sr. Civil Judge
& JMFC, Ranebennur.

ANNEXURE

<u>List of witnesses examined for the complainant:</u>

PW1 : Veerayya Gurushantayya Ujjanimath.

<u>List of witnesses examined for accused</u>:-

DW:1 : Nagaraja S/o Neelappa Koraduru.

<u>List of documents marked for the complainant:</u>

Ex.P1 : Cheque, Ex.P.1(a) signature of accused.
Ex.P2 : Bank Endorsement.
Ex.P3 : Registered Legal Notice.
Ex.P4 : Postal receipt.
Ex.P5 : Unserved RPAD cover. Ex.P5(a) Notice.

<u>List of documents marked for the accused:</u>-

Ex.D1: Copy of complaint of C.C. No.761/2022.
Ex.D2: Copy of cheque in C.C. No.761 of 2022.
Ex.D3: Copy of complaint of C.C. No.1234/2022.
Ex.D4: Copy of cheque in C.C. No.1234/2022.
Ex.D5: Copy of complaint of C.C. No.1287/2022.
Ex.D6: Copy of cheque in C.C. No.1287 of 2022.

Ex.D7: Copy of complaint of C.C. No.1235/2022.
Ex.D8: Copy of cheque in C.C. No.1235 of 2022.
Ex.D9: Copy of complaint of C.C. No.1489/2022.
Ex.D10: Copy of cheque in C.C. No.1489 of 2022.

(MAHANTESH G.BHUSAGOL)
III Addl. Sr. Civil Judge
& JMFC, Ranebennur.