KAHV510042392019

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

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

DATED THIS 1st DAY OF JULY - 2026

C.C.No. 1193 of 2019

COMPLAINANT: Sri. Sharanabasaveshwar Trading Co., reptd by its Partners by name

1. Sri. Lokappa
S/o: Nagappa Antaravalli & Smt. Akkamma W/o: Lokappa Antaravalli, General Merchants @ Commission Agents.

2. Sri. Lokappa
S/o: Nagappa Antaravalli,
Age: 59 yrs, Occ: Agriculture & 75% Partners of Sri. Sharanabasaveshwar Trading Co.,.

3. Smt. Akkamma
W/o: Lo kappa Antaravalli,
Age: 52 yrs, Occ: 25% partners of Sri. Sharanabasaveshwar Trading Co., General Merchant & Commission Agents.

All are R/o: A.P.M.C, Yard, Ranebennur.

(Rep by Sri. U.M.H, Advocate).

//Versus//

ACCUSED: 1. Sri. Yeshaswi Cotton Traders,
Reptd. By its Proprietor Nagaraj
S/o: Halappa Chalavadi, General
Merchants & Commission Agents,
Near Rajendra Jinning Factory,
R/o: Yelappa Itangi Chal, Good Shed
road, Ranebennur.

2. Nagaraj
S/o: Halappa Chalavadi,
Age: 52 yrs, Occ: Proprietor of
Sri. Yeshaswi Cotton Traders,
General Merchants & Commission
Agents, Near Rajendra Jinning
Factory, R/o: Yelappa Itangi Chal,
Good Shed road, Ranebennur.

Now at Motebennur.

(A.1 & 2 by Sri. S.R.O, Advocate).

Offence complained	: U/Sec.138 of Negotiable Instrument Act.
Name of the complaint	: Sri. Sharanabasaveshwar Trading Co.,. by its partners
Date of commencement of evidence	: 20-11-2019
Date of closing evidence	: 12-11-2024
Opinion of the Judge	: **Accused Nos.1 & 2 found guilty**

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

JUDGMENT

The complainants have filed this complaint U/Sec.200 of Code of Criminal Procedure alleging that the accused persons have committed the offence punishable U/Sec.138 of N.I. Act.

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

The complainant Nos.2 and 3 are partners, running a general merchant and commission agent business under the name and style Sri. Sharanabasaveshwar Trading Co., in Ranebennur. The accused No.2 Nagaraj is the proprietor of Sri. Yeshaswi Cotton Traders., doing similar business. The complainants and accused have a business relationship since 2012, the accused No.2 was frequently purchasing cotton from the complainants. On 21-01-2014, the accused requested a hand loan of ₹.5 lakhs to clear market dues, promising to repay it within six months. Following a written request on the accused’s firm letterhead, the complainant No.2 has lent loan of Rs.5 lakhs by way of cheque bearing No.2153953 dated 22-01-2014 drawn on Union Bank of India. The accused has encashed said cheque on the same day. But the accused No.2 has failed to repay the loan even after expiry of six months period. After repeated delays, the complainant fed up with him and went to the shop of the accused No.2 and demanded for immediate repayment of the loan amount, finally the accused No.2 issued a cheque bearing No.003502 dtd: 06-09-2019 for ₹.5,00,000/- drawn on Bailahongala Urban Co-Operative Bank Ltd., Ranebennur Branch for repayment of hand loan amount. The complainant has presented the said cheque for encashment through his banker at Union Bank of India, Ranebennur Branch on 06-09-2019. However, the said cheque was returned unpaid on 07-09-2019 with a bank endorsement “Funds Insufficient”. The complainant issued first legal notice on 01-10-2019 through registered post to the accused calling upon to pay the cheque amount. But said notice returned as ‘left’ on 10-10-2019. The Complainant verified that the accused No.2 was still residing at the same address, sent notice again on 02-11-2019, but same was returned as left not known on 07-11-2019. Again the complainant sent notice to the accused on 14-11-2019, the said notice was served to the accused on 18-11-2019. Despite of service of notice, the accused No.2 has paid the cheque amount within 15 days of the service of notice. Thus, the accused Nos.1 and 2 have committed an offence punishable under Section 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 No.2 was recorded. Being satisfied that, there are prima-facie materials to proceed against accused persons, summons was issued. The accused No.1 is the proprietary concern firm and accused No.2 is the proprietor of the accused No.1 firm. After appearance, the accused No.2 was enlarged on bail and his plea was recorded

U/Sec.251 of Cr.P.C. The accused No.2 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 No.2 was treated as complainant evidence & got marked 21 documents as Ex.P.1 to P.21. The defense counsel has cross examined PW.1. The statement of accused persons as contemplated U/Sec.313 of Code of Criminal Procedure was recorded. The accused No.2 denied all the incriminating material appears against them in the complainant's evidence. Thereafter, the accused No.2 has led defense evidence by examining himself as DW.1 and got marked three documents at Ex.D.1 to D.3 on their behalf.

5. Heard the arguments of both side. The learned counsel for complainants filed written argument. I have perused the materials available on record. The learned counsel for the complainant has relied on the judgment reported in (2023) ACR 988, Cri.Appeal No.230-231-2019 (SC), 2022 Cr.R.289 (Kant), 2021 Cr.R.350 (Kant), 2016 Cr.R. 532 (Kant) and 2024 Cr.R. 955(Kant). The learned counsel for the accused has relied on the judgment reported in Crl.Appeal No.2743/2023 (arising out of SLP (Crl) No.7455 of 2019).

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

1. Whether the complainants proves that the accused persons have issued cheque bearing No.003502 dtd: 06-09-2019 for ₹.5,00,000/- drawn on Bailahongal Urban Co-Operative Bank Ltd., Ranebennur Branch towards discharge of legally enforceable debt, which was returned unpaid on presentation for the reason "Funds Insufficient" and despite service of notice, they have 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 persons have committed an offence punishable U/Section 138 of N.I. Act. The complainants plead and assert that, the accused No.2 has availed a hand loan of ₹.5,00,000/- by way of cheque on 22-01-2014 to clear the pending market dues and towards repayment of said amount, issued Ex.P1 cheque, when they presented the said cheque for encashment through their banker, the same came to be returned unpaid with an endorsement "Funds Insufficient" on 07-09-2019. Thereafter, they got issued demand notice to the accused persons on 01-10-2019, 02-11-2019 and on 14-11-2019 by demanding the payment of cheque amount.

Despite service of demand notice, the accused persons have not paid the cheque amount within 15 days, which gave raise cause of action to file this complaint.

9. To substantiate its case, one of the partners and authorized signatory of the complainant firm by name Lokappa Antravalli has stepped into witness box and examined himself as PW.1 and got marked 21 documents at Exs.P1 to P21. He has reiterated the contents of the complaint in his affidavit evidence about lending of loan of ₹.5,00,000/- to the accused persons, issuance of cheque towards repayment of the said loan amount by the accused persons and its dishonour for "Funds Insufficient" and issuance of legal notice to the accused persons calling upon them to pay the amount covered under the said cheque and their failure to comply the same. The learned counsel for the accused has cross-examined PW1 by suggesting that during the business transaction he has collected blank signed cheque and signed letter head and he used to transfer excess amount to the accused No.2's account and by misusing the security cheque and letter head he filed false complaint against the accused. The said suggestions have been denied by PW1 in clear terms.

10. In this scenario, let me scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged U/Sec.138 of N.I. Act. Among them, Ex.P1 is the authorization letter, Ex.P.2 is the cheque bearing No.003502 for a sum of ₹.5,00,000/- dtd: 06-09-2019, drawn

on Bailahondal Urban Co-Operative Bank Ltd., Ranebennur Branch. Ex.P.3 is the Bank Endorsement dated 06-09-2019 issued by Union Bank of India, Ranebennur Branch. The contents of Ex.P3 disclose that cheque in question was dishonored for the reasons 'Funds Insufficient". Ex.P4 is the legal notice, the recitals of Ex.P4 disclose that by issuing said notice, the complainants called upon the accused persons to pay the cheque amount of ₹.5,00,000/- within 15 days from the date of receipt of notice. Ex.P.5 to Ex.P.10 are the postal receipts, Ex.P.11 to Ex.P.14 are the unserved postal covers, Ex.P.15 and Ex.P.16 are the postal acknowledgments, Ex.P.17 is the partnership deed of the complainant firm, Ex.P.18 is the IT returns, Ex.P.19 is the licence issued by APMC, Ex.P.20 is the GST Registration certificate and Ex.P.21 is the letterhead. This complaint came to be filed on 20-11-2019. 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 complainants have discharged their initial burden by examining partner/authorized signatory as PW1 and by production of documents.

11. The accused No.2 has denied the borrowing of loan and issuance of cheque in question for repayment of alleged loan amount. He has put-forth the defense that, he used to purchase cotton from the complainant firm and sell the same to his customers. The customers who bought cotton from him often

depositing amount directly into the complainant's account. The complainant after deducting the price of the cotton was paying the excess amount to the accused through account transfer. During the said transaction, the complainant took a signed blank cheque and a signed blank letter head solely as a security. About 3 to 4 years back he stopped the cotton business. Thereafter, the complainant has misused the security cheque and blank letter head to file false complaint. After receipt of summons from this court, he came to know that, the complainant has misused his cheque and letter head. As such, the cheque in question was not issued for discharge of any legally enforceable debt or other liability. As on the date of the cheque, the alleged outstanding amount claimed by the complainant was time barred debt and there is no legally recoverable debt as claimed by the complainant. Hence, Sec.138 of NI Act is not applicable to the cheque in question. On these grounds the accused prays to acquit them from the case.

12. In the backdrop of the aforesaid rival contentions, this court has given anxious consideration to the materials on record and the submissions made by both the side. At the outset, it is pertinent to state that the accused No.2/DW.1, during his cross-examination has clearly admitted that the cheque in question belongs to his firm and it bears his signature. The main contention of the accused No.2 is that the complainants have misused the blank signed cheque which

was issued for security for his convenience to extract money. By contending so the accused No.2 has admitted the issuance of cheque and signatures thereon. When the drawer has admitted the issuance of cheque as well as the signature appears thereon as belongs to him, then presumption envisaged U/Sec.118 and R/w Sec.139 of NI Act, would operate in favour of the complainant. In this regard, it is appropriate to refer the decision reported in **(2021) 5 Sec.283** in the case of **M/s Kalamani Tex and Another V/s P. Balasubramanian,** wherein the **Hon'ble Apex Court** was 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' causes become operative, such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon them. Therefore, once the drawers have admitted the cheque as well as signatures present thereon or it is established that, signature in cheques belongs to accused, then the presumption envisaged U/Sec.118 and 139 of NI Act, would operate in favour of the complainant. The said provision lays down a special rule of evidence applicable to negotiable instrument. The presumption is one of law and thereunder the court shall presume that the instrument was endorsed for consideration. So also, in the absence of contrary evidence on behalf of the accused, the presumption U/Sec.118 and 139 of the NI Act, goes in favour of the complainant. In the present case on hand, it is established that cheque in question belongs to the accused firm and signature thereon belongs to accused No.2. As such, the presumption U/Sec.118 and 139 of Negotiable Instruments Act, has to be drawn in favour of the complainant. Sec.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 the holder of the 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 under Section 118 read with section 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.P2 cheque was not issued for discharge of any debt or liability, but the complainant has misused blank signed

security cheque. 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 complainant misused their cheque.

14. To rebut the aforesaid statutory presumption and to prove their defense, the accused No.2 has stepped into witness box and examined himself as DW.1 and got marked Ex.D.1 to D.3. Ex.D.1 is the VAT Registration certificate, Ex.D.2 is the certificate of enrollment and Ex.D.3 is the license issued by APMC. During the chief examination he deposed that, he used to doing cotton business under the name and style Yashaswi Cotton Traders and 3 to 4 years back he has closed said business. He knows the complainants and he used to purchase cotton from the complainant's firm, sell it to others and subsequently, pay the money to the complainant. The customers used to deposit the money into the complainant's account. But no document was prepared regarding said business transaction. However, for security purpose, the complainant had obtained a signed blank cheque and a signed blank letterhead from him. Now he does not have any business transaction with the complainant. He closed the business relationship with them 3 to 4 years ago. He further stated that,

regarding the cotton business, no financial transaction pending between him and the complainant. He has not conducted any other business transaction with the complainant. He has not taken any hand loan from the complainant. He had given the cheque only as security regarding their cotton business transaction. He further stated that, those who purchased cotton from him used to deposit the money directly into the complainant's account and the complainant used to transfer the excess money to his account. He stated that, online transaction always took place between him and the complainant. There was never any cash transaction between them. Apart from this cotton business, he did not done of any financial transaction with the complainant. He has not taken any loan from the complainant. The complainant misused the cheque given as security in the cotton business and filed this case.

15. During the cross-examination, DW1 deposed that, he is the proprietor of Yashaswi Cotton Traders and has been running it since the year 2012-13. Before starting the firm, he used to work as a cotton seeds commission agent. There is no accountant in the firm and himself doing accounting work. He is acquainted with all the merchants in the APMC market. He has experience regarding cotton purchase and brokerage. He denied the suggestion that, he has been conducting business in the APMC for 25 years. He does not know that, the complainant firm doing business in the APMC for 30/35 years. He has been acquainted with the complainant since the year

2012-13. He admitted the suggestion that, generally before purchasing any goods at a brokers' shop any buyer commences the purchase only after giving a detailed introduction. His firm was active until 2017-18. He admitted that, as per the license produced by him before the court, his license was active until 2020-21. However, the witness clarifies that, the business closed in 2017-18 itself. He deposed that, while conducting business, he used to have an annual transaction of ₹.40 to 50 lakhs. He used to file returns after getting an audit done by the auditor. He admitted that, his balance sheet indicates how much income his firm has. He used to maintain accounts of daily transactions. He was maintaining the petty cash book and stock registers. He has not produced the ledger accounts and income tax returns of his firm before the court. He has no problem to produce the same. He denied the suggestion that, since he was faced a shortage of funds, he took a loan of ₹.5,00,000/- from the complainant. He denied that, he asked the complainant to provide ₹.5,00,000/- in cash, but the complainant has paid the same through cheque on 22-01-2014. He denied the suggestion that, in the complainant's account statement there is an entry that ₹.5,00,000/- arriving via cheque on 21-01-2014. He admitted that, he has not produced his bank statement before the court and he has no problem to produce the same. He denied the suggestion that, he has intentionally avoided producing the Bank statement pertaining to his firm before the court to conceal the loan amount received from the complainant. He denied the suggestion that, when the complainant demanded him to return the loan quickly, he handed over the cheque marked as Ex.P.2 to the complainant. The witness clarifies that, while purchasing cotton he had given the cheque for security purpose. He admitted that, cheque marked as Ex.P.2 belongs to his account. The signature and seal on it belong to him. But the remaining hand writing on it is not belongs to him. He denied that, the cheque Ex.P.2 which he gave for the repayment of the loan, was dishonored due to insufficient funds in his account. He denied that, while taking the loan of ₹.5,00,000/- he wrote and gave an acknowledgment of the loan on a letterhead. He admitted the letterhead and signature on it, on his admission, it was marked as Ex.P.21 and his signatory was marked as Ex.P21(a). He admitted that, after cheque got bounced, the complainant sent him a notice through their Advocate and it was served upon him. He denied that, he is giving false evidence.

16. On perusal entire evidence of DW.1, it appears that, the accused No.2 has taken a specific defense that, he used to purchase the cotton from the complainant and sell it to others for higher price. They used to deposit the amount directly to the Bank account of complainant and complainant used to transfer excess amount to his account. In the said process, the complainant has transferred ₹.5,00,000/- to his account. The said transaction is not the loan transaction. During the said transaction, the complainant has taken blank signed cheque

and a signed blank letterhead for security, later he misused it to file false case to extract money. But the accused has not produced his bank statement to show that, not only this ₹.5,00,000/-, there were other amount that have been transferred by the complainant as excess amount during regular course of their business transaction. Though he has deposed that he has no problem to produce his bank statement, but he has not produced the same for the reason best known to him. Therefore, an adverse inference has to be drawn that, except this ₹.5,00,000/-, the complainant has not transferred any excess amount to his account as stated by him. The learned counsel for the accused has much relied on the stray admission of PW1 and argued that PW1 himself has clearly admitted that he has not lent any hand loan amount to the accused No.2. At page No.7 and page No.11 of the cross-examination of PW1, he deposed that he has not lent Rs.5 lakhs as hand loan but he has paid amount through cheque. But said stray piece of evidence cannot be given much emphasis. A single, isolated statement taken out of context cannot automatically decide the case. Instead the court has to weigh the entire evidence. The evidence of PW1 clearly discloses that he consistently states that he has lent ₹.5 lakhs to the accused no.2 by way of cheque.

17. The accused contended that, the cheque in question and Ex.P.21 letterhead were issued in blank as security to the complainant during the course of business transaction.

According to the accused no.2, 3 to 4 years back he stopped his business. Even after closer of his business he has not made any efforts to take back his blank signed cheque and letter head. The accused No.2 being businessman knows the consequence of issuance of blank cheque to someone. Despite of the same, he has not taken any action to take back his blank signed cheque and letterhead. Even he has not issued any stop payment intimation to his Bank. This gives indication that, he voluntarily issued Ex.P.2 cheque and Ex.P.21 letterhead to the complainant, therefore he kept quite without taking any action. The accused No.2 contended that, during the business transaction with the complainant, he issued Ex.P.2 cheque for security. He deposed that, he was doing business with the complainant since 2012-13. That means according to him, he issued cheque in the year 2012-13. But to prove the same, he has not produced any material such as his bank statement or counterfoils of subsequent series of cheques to show that, during his regular course of business he used the subsequent series of cheque prior to presentation of Ex.P.2 cheque. Except self serving statement of the accused No.2, nothing is on record to prove that he has issued Ex.P2 cheque as security in the business transaction with complainant. Thereby the accused has failed to prove that, he has issued Ex.P.21 cheque for security, the complainant misused the same to file the complaint. The account extract which was confronted to accused No.2 during cross-examination, clearly discloses that

that, ₹. 5,00,000/- was paid to the accused No.2 by way of cheque on 22-01-2014 and he has encashed the sad cheque.

18. The learned counsel for the accused argued that, the complainant has not produced any money lending license to do money lending business. But lending amount without license does not itself debar him from recover it, but he is only disentitle to recover the interest. There is no material on record to say that, the complainant doing money lending business apart from the present transaction. Hence, question of obtaining licence under money lending Act does not arise at all.

19. No doubt, PW.1 admitted that, if amount has been lent, it will show in the IT returns. But in the IT returns of the complainant for the year 2014-15, he has not shown the loan amount. But the account statement of the complainant discloses the payment of Rs.5 lakhs to the accused through cheque. The learned counsel for the accused argued that, the complainant has produced Kate Kirdi. But he has not marked it since it may goes against him. In the said khate kirdi, there is a reference that, during the course of business, complainant paid ₹.5,00,000/-. No doubt, the copy of the kate Kirdi produced by the complainant reflect that, there is a reference that on 22-01-2014 ₹.5,00,000/- was paid to the accused Yashaswi Cotton by way of cheque. But nowhere it is mentioned that, they purchased cotton from the complainant and it was paid as excess amount. On perusal of Kate Kirdi it appears that

complainant have mentioned the particular day transaction in the Khate kirdi including the amount paid to accused by cheque. It will not helpful to the accused in any way to prove the defense that there is no existence of legally enforceable debt or liability as on the date of cheque.

20. It is the further defence of the accused is that as on the date of cheque the alleged debt was a time barred debt. Therefore, dishonour of cheque issued for discharge of time barred debt does not attract Sec.138 of Negotiable Instruments Act. The defence counsel has argued that, as per complaint averments, the amount of Rs.5 lakhs was paid on 22-01-2014 and it was lent for 6 month period. As per Section 9 of Limitation Act, the limitation period starts after expiring 6 months i.e. on 22.07.2014. The three years limitation was expired on 22.07.2017 as per Article 19 of Limitation Act. Admittedly the date of cheque is 06-09-2019. There was no acknowledgment of debt under Section 18 of Limitation Act and there was no part payment made under Section 19 of Limitation Act to save the limitation. In order to attract the Section 25(3) of Contract Act, there must be acknowledgment of debt in writing. But in the present case on hand, from the date of alleged loan till the date of presentation of cheques no payment was made, no acknowledgment was executed. Therefore, as per Article 19 of Limitation Act, the debt is a time barred debt and cheque issued for a time barred debt would not attract Section 138 of Negotiable Instruments Act.

21. On the other hand, the learned counsel for complainants by referring judgment of Apex Court in **K Hymavathi Vs. State of Andra Pradesh** and another reported in **2023 ACR 988,** has argued that issuance of cheque for a time barred debt is itself is an acknowledgment of debt in writing and dishonour of such cheque would certainly attracts Section 138 of Negotiable Instruments Act.

22. As per the complaint averments, the date of loan is 22.01.2014. The period of loan was 6 months. Therefore, after expiry of 6 months, period of limitation starts. Admittedly, there is no acknowledgment of debt or part payment from the date of loan till presenting cheque. As such, the period of limitation of three years as per Article 19 of Limitation Act expired on 22.07.2017. The date of Ex.P2 cheque is 06-09-2019. That means as on the date of cheque, the debt is a time barred debt.

23. Now the question before the court is that, mere issuing cheque for discharge of time barred debt is amounts acknowledge debt U/Sec.25(3) of Contract Act and fresh limitation starts from the date of cheque. In this connection, it is appropriate to refer the judgments referred by both counsels. The defence counsel in support of his submission has referred judgment of **Hon'ble Apex Court** in the case of **A.V. Murthy Vs. B.S. Nagabasavanna** reported in **(2002) 2 SCC 642,** wherein the Hon'ble Apex Court has observed that, this is not a case where the cheque was drawn in respect of a debt or

liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that, debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous.

24. To the contrary, the Hon’ble Apex Court in ***K.Hymavathi V/s. State of Andhra Pradesh and another*** reported in ***2023 SCC OnLine SC 1128*** has observed that “From a perusal of the legal position enunciated, it is crystal clear that this court keeping in perspective the nature of the proceedings arising under the NI Act and also keeping in view that the cheque itself is a promise to pay even if the debt is barred by time has in that circumstance kept in view the provision contained in Section 25(3) of the Contract Act”. In the judgment of Hon’ble High Court of Karnataka in **Crl.R.P.No.256/2022** in the case of **Sri.Sudhakar Reddy.C.B V/s. Smt.Pushpa** decided on **12th October 2023,** the Hon'ble High Court of Karnataka after referring several judgments has observed that, issuance of cheque for discharge of a time barred debt amounts to written promise to pay the said debt as provided U/Sec.25(3) of the Contract Act and it creates legally enforceable debt. Hence, it squarely attracts Sect.138 of Negotiable Instruments Act.

Therefore, in view of the law laid down by the Hon'ble Apex Court in **K.Hymavathi's** case and Hon'ble High Court of Karnataka in the recent judgment in Crl.R.P.No.256/2022, the issuance of Ex.P2-cheque would attracts Section 138 of NI Act, even though the debt was a time barred debt as on the date of cheque because mere issuance of cheque itself amounts acknowledge of debt in written as per Section 25(3) of the Contract Act. Therefore, for the aforesaid reasons, I am of the considered opinion that, the defence raised by the accused No.2 is not a probable one. Thereby, the accused have failed to rebut the presumption envisaged U/Sections 118 and 139 of Negotiable Instruments Act.

25. From the discussion made supra, it is clear that the accused No.2 neither taken probable defence nor taken steps to prove the same. To put it other way, the accused have not taken and proved probable defence to rebut the presumption of law available in favour of the complainant, envisaged under Section 118 R/W Section 139 of Negotiable Instruments Act. Accordingly, the case of the complainant is acceptable one. The complainant has proved that towards discharge of their debt, the accused have issued Ex.P2-cheque and they have intentionally not maintained sufficient funds in their account to honour the said cheque. Hence, this **point No.1** under consideration is answered in the **Affirmative**.

26. **POINT NO.2**: In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused

Nos.1, 2 and 4 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 cheque is ₹.5,00,000/- and the date of the cheque is 06-09-2019. The loan transaction taken place in the year 2014. By considering all these aspects, this court is of the opinion that, it is just and proper to impose fine amount of ₹.7,55,000/-, which includes interest and cost of litigation, out of which, compensation of ₹.7,50,000/- has to be awarded to the complainant U/Sec.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 Nos.1 and 2 are hereby convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act and accused No.2 is sentenced to pay fine of ₹.7,55,000/- (Rupees Seven Lakhs Fifty Five Thousand only). In default thereof, they shall undergo simple imprisonment for the term of one year.

Acting U/Section 357(1) (b) of code of criminal procedure, it is ordered that, ₹.7,50,000/- (Rupees Seven Lakhs and Fifty 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 the Judgment to the accused No.2.

(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 **1st day of July - 2026**).

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

ANNEXURE

List of Witnesses examined on behalf of Complainant:

PW-1 : Lokappa S/o: Nagappa Antaravalli.

List of Exhibits marked on behalf of Complainant:

Ex.P1	:	Authorization letter
Ex.P2	:	Original Cheque
Ex.P3	:	Bank endorsement
Ex.P4	:	Legal notice
Ex.P5 to 10	:	Postal receipts
Ex.P11 to 14	:	Unserved postal covers
Ex.P15 & 16	:	Postal acknowledgments
Ex.P17	:	Deed of partnership
Ex.P18	:	IT returns
Ex.P19	:	APMC License
Ex.P20	:	GST Registration certificate.
Ex.P21	:	Letterhead.

List of Witnesses examined on behalf of the defense:

DW.1	:	Nagaraj H.Chalavadi.

List of Exhibits marked on behalf of defense:

Ex.D1	:	Notarized copy of VAT registration certificate
Ex.D2	:	Notarized copy Enrollment certificate
Ex.D3	:	Notarized copy of trade license.

II Addl. Senior Civil Judge & JMFC,
Ranebennur.