KAHV510060632024

Presented on : 12-09-2024
Registered on : 13-09-2024
Decided on : 16-06-2026
Duration : 1 year 9 months 4 days.

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

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

Dated: This the 16th day of June 2026

C.C. No.3019/2024

COMPLAINANT

Sri Krushnappa S/o Veerappa Sunkapur,
Age : 63 years, Occ : Retired employee,
R/o: 2nd cross, Umashankar Nagar, near Sevalal school,
Ranebennur.

(By Sri.M.B.C, Advocate)

ACCUSED

Mahantesh S/o Gangappa Kammar,
Age: 61 years, Occ : Retired head master,
R/o : Benakanakonda, Tq: Ranebennur.

(By Sri.B.S Advocate).

Offence complained of	U/s.138 N.I.Act
Plea of the accused	Pleaded guilty.
Date of pronouncement of judgment	16.06.2026
Opinion of the Judge	As per final order

(MAHANTESH G.BHUSAGOL)
III Addl. Sr. Civil Judge
& 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 N.I Act for brevity).

2. Brief facts of the complainant case are that, the complainant is the resident of Ranebennur town and accused is residing in Benakanakonda village of Ranebennur taluk. The complainant and accused are well acquainted with each other, they are working in the Education department. Now both are retired persons. There are many transactions between complainant and accused and the complainant having good faith on accused. Likewise, on 20.11.2023 the accused requested the complainant for hand loan amount of Rs.3,20,000/- for his family necessity and for education purpose and promised to repay the said amount within three months. After lapse of three months, on 20.06.2024 the complainant demanded to repay the said amount, at that moment, the accused has issued a cheque bearing No.523223 dated 24.07.2024 for Rs.3,20,000/-drawn on SBI Bank Ranebennur. Thereafter, the complainant presented the said cheque through its banker Canara Bank Ranebennur branch for encashment on 24.07.2024, but, the same was returned dishonored with memo dated: 25.07.2024 for "Funds Insufficient". Thereafter, the complainant got issued a legal notice to the accused through his counsel on 31.07.2024 through RPAD, and the said notice was served upon the accused on 03.08.2024. But, the accused has not made payment within its stipulated period. The accused has cheated the complainant by giving the cheque without having any amount in his account. Hence, the accused has committed the offence punishable u/s. 138 of N.I Act. By contending so, the complainant has prayed for punishing the accused, as per law. Hence, this complaint.

3. 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 PW.1 and got marked the documents at Ex.P.1 to P.5 on his behalf in per-summoning stage.

4. On presentation of the complaint, this court has taken cognizance of the offence punishable u/s. 138 of NI Act, as per Section 210 of BNSS. 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 478 of

BNSS. and the same was allowed on executing personal bond and the accused was released on bail.

5. The copies of the complaint papers were furnished to the accused person, as per Sec. 230 of BNSS., 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.

6. The statement of the accused person under Sec. 351 of BNSS. was recorded. The accused denied the contents of the said statement.

7. In spite of sufficient opportunity given by this Court, but, the accused did not cross examine PW.1 and not set up any defence in the case. Later on, the accused and complainant filed the joint memo and as per the joint memo the accused made some payment, but, he has not been adhere to complied the joint memo. Hence, the case is restored to its original stage.

8. Heard arguments on complainant side.

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

1) Whether the complainant proves beyond all reasonable doubt that the accused person had issued a cheque bearing No.523223

dated.24.07.2024 for Rs.3,20,000/- drawn on State Bank of India, 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 ?

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

Point No.1 **: In the Affirmative,**

Point No.2 : As per final Order,
for the following:

REASONS

11. 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.

12. It must be noted that to substantiate the contention, the complainant got examined himself as PW.1 and got exhibited 8 documents, as per Ex.P1. to 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.523223 dated.24.07.2024 for Rs.3,20,000/- drawn on State Bank of India, Ranebennur branch is marked as Ex.P.1 and the alleged signature of accused is marked as Ex.P1(a). On perusal of Ex.P.1, makes it clear that, it supports the stand taken by the complainant. Ex.P.2 is the Bank endorsement which shows that, the aforesaid cheque has been dishonoured for the reasons '**Funds insufficient**'. The date of dishonored is mentioned in Ex.P.2 on 25.07.2024, however, the record shows that, the complainant got issued legal notice on 31.07.2024 calling upon the accused to repay the amount mentioned in the cheque.

14. It must be noted here that, the cheque has to present before the bank within three months (earlier within six months) from the date on which it is drawn. Ex.P.1 discloses that, it was executed on 24.07.2024 and Ex.P.2 discloses that, the cheque was dishonoured and returned on 25.07.2024. So, it is clear that the 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.P.2. Thus, these facts make it clear that, the complainant has complied the clause (a) and (b) of Proviso to Sec.138 of NI Act. The Ex.P.3 discloses that, the aforesaid notice issued to the accused has been served, as per clause (c) of proviso to Sec.138 of Negotiable Instruments Act. The accused is entitle to have 15 days time to make balance amount, but, failed to repay the said amount. So, the complainant complied the mandatory provisions of Sec.138 of NI Act.

15. So, when the complainant presents the cheque, it is presumed that, it was given to him, by the accused for discharge of his legal liability. This presumption has to be rebutted by the accused. But, in this case, though the accused has appeared before this Court, through his counsel and enlarged on bail, he pleaded not guilty and claimed for trail, but, to substantiate the said defence, the accused neither cross-examined PW.1 nor set up his defence by producing iota of documentary evidence.

Further, the accused failed to prove that, how his cheque in question was possessed by the holder in due course i.e., complainant. Further, the accused has not produced any evidence, except he denied the claim at the time of recording his accusation. Since, during the cross-examination of PW.1 not denied the issuance of cheque and not denied the legal debt and also not challenged the documents. Further, on perusal of the Ex.P.1, there is no any ambiguity, as the complainant prior to filing of the said complaint, he had complied all the ingredients U/Sec. 138 of NI Act.

16. Moreover, it is an admitted fact that, even after issuance of the legal notice by the complainant, to the accused prior to filing the said complaint and which was duly served. But, the accused has not given any reply notice to the said notice. Further, during the pendency of the case accused and complainant have settled the matter and have filed joint memo. As per the joint memo the accused has agreed to pay an amount of Rs.2,30,000/-. So, by filing the joint memo, the accused has admitted the issuance of cheque to the complainant. Hence, the complainant has proved his case by adducing cogent and corroborative evidence.

17. If really, the accused has not at all received the amount in question from the complainant, he ought to have given stop payment instructions to his banker or given reply notice to the legal notice issued by the complainant or he ought to have cross examine PW.1 or challenged the cognizance taken by this Court. Therefore, non performing the aforesaid legal proceedings itself it very much fatal to the alleged defence setup by the accused, during the course of recording of his accusation. Further, the drawer of the cheque has to take abundant precaution prior to issuance of cheque in question. Therefore, in the instant case also, it can be presumed that, no any ordinary prudent man will issue signed cheque to any other person, without having monetary transaction between themselves. Moreover, the accused has entered into compromise and filed joint memo. It shows that, the accused has issued the cheque for discharging his liability.

18. The authenticity of Ex.P.1 to 5 documents are not challenged by the accused. Therefore, Ex.P.1 to 5 documents admitted by the accused regarding the transaction between the complainant and accused. Hence, by perusal of these documents, it reveals that the accused has obligation to pay the amount and towards discharge of his liability, he has issued the alleged cheque. Hence, the accused has failed to rebut the presumptions available to the complainant u/s 139 and 118 of N.I Act.

19. I repeat here that, during the pendency of the case, the accused and complainant have been arrived for settlement and have filed joint memo. As per the joint memo the accused has been ready to pay the amount for Rs.2,30,000/-. But the accused had not paid said amount to the complainant. Thereafter, the accused has failed to complied the Joint memo. Hence, this court by following the ratio laid down by **the Hon'ble Apex Court in between M/s.Moser Baer Photo**

Voltalc Ltd Vs. M/s. Photon Energy Systems Ltd. & ors in Criminal Appeal No. 235/2016 {Arising out of S.L.P(cri.) No. 9288/2011}. recalled the case where its stands and recorded the further proceedings.

20. The Hon'ble High court of Karnataka in its reported judgment passed in between Sri. Somashekar Reddy Vs Smt.G.S Geetha in Writ Petition No.23519/2018 Disposal Date: 07.02.2020. Wherein it is held that, if the parties have been arrived for settlement, in case the accused in default of payment, then the complaint can restore its file and proceed with the complaint, from its original stage. Hence, by considering the ratio laid down by the Hon'ble Apex court and High court of Karnataka, recalled the case, where its stands and recorded the further proceedings.

21. The accused by entering into the settlement, it seems that, he has admitted the issuance of cheque for discharge of his legal liability. Further, it is well established preposition of law laid down in the case of **Rangappa Vs. Mohan reported in (2010) 11 S C C 441** *held that, if the accused has admitted the issuance of cheque and signature. Hence there arises a presumption in favour of the complainant that there is legally recoverable debt. Further, once the execution of Negotiable Instruments Act, is either proved or admitted, then the court shall draw a presumption u/s. 139 of Negotiable Instruments Act, in favour of the complainant to that effect that the said Negotiable Instrument i.e. the disputed cheque has been drawn for valid consideration and it is towards legally recoverable debt and it is* *drawn for valuable consideration. Thus, it is the burden of the accused to rebut the presumption, which arose in favour of the complainant with necessary probable defence.*

22. It is held in the decision of the Hon'ble Apex Court in the case of **Bir Singh V. Mukesh Kumar** reported in **(2019) 4 SCC 197 that** Section 139 of the N.I. Act mandates, unless the contrary is proved, it is to be presumed that the holder of a cheque received the cheque of the nature referred to in Section 138 of the N.I. Act for the discharge, in whole or in part, of any debt or other liability. The said presumption is rebuttable by proving the contrary and burden shifts on the accused to prove by cogent evidence that there was no debt or liability. Mere denial or rebuttal by the accused is not enough.

23. The Hon'ble Apex court of India in its Judgment reported in (2021) 5 SCC 283 between Kalmani Techs Vs. P.Subramaniyan , wherein the Hon'ble court 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."

24. On combined reading of these Judgments, it is clear that, the initial burden is on the complainant and if he proved the transaction then, the accused has to rebut the presumptions by proving the contrary and burden shifts to the accused to prove the same with cogent evidence that, there was no debt or liability. Mere denial or rebuttal by the accused is not enough to hold that, he has set up probable defence and the case of complainant is not believable one. Therefore, in this case, the complainant has successfully proved his case. On the contrary the accused had failed to prove his story, as narrated before the court. Under such circumstances, this court is of the opinion that, there is a legally recoverable debt and the accused in order to discharge his burden issued the cheque in question.

25. Further, in view of the procedure prescribed by **the Hon'ble Supreme Court in (2014) 5 SCC 590 in between Indian Bank Association and others vs. Union of India and others,** wherein the Hon'ble Apex Court held that, since the offence under section 138 of NI Act is a document based offence, if proviso (a), (b) and (c) to section 138 of NI Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that, no offence could have been committed by him for specific reasons and defenses. Accordingly, relying upon the above said judgments I am of the considered opinion that accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act and I answer this **Point No.1 in the affirmative.**

26. **Point No.2**: In the result, I proceed to pass the following:

ORDER

Acting under Sec.278(2) BNSS, accused is convicted for the offence punishable U/s.138 of Negotiable Instruments Act.

Accused shall liable to pay a sum of **Rs.3,25,000/**- and in that, a sum of **Rs.3,20,000/-** shall be paid to the complainant as compensation provided under section 395 of BNSS, and **Rs.5,000/-** to the state.

In default, accused shall undergo SI for a period of six months.

The bail bonds of the accused is hereby stand cancelled.

The separate copy of Judgment and order of sentence shall be provide to convicted person, free of cost.

The convict is informed of his right of appeal against the Judgment and Order of conviction and sentence.

(Dictated to the stenographer, typed and transcribed her and corrected by me then pronounced in the open Court, this the 16th Day of June 2026.)

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

ANNEXURE

List of witnesses examined for the complainant:

PW1 : Krushnappa Veerappa Sankapur.

List of documents marked for the complainant:

Ex.P.1	:	Cheque,
Ex.P.1(a)	:	Signature of accused,
Ex.P.2	:	Endorsement,
Ex.P.3	:	Legal Notice,
Ex.P.4	:	Postal receipt,
Ex.P.5	:	Track consignment.

List of witnesses examined and documents marked for the accused:-

-Nil-

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