KAKB610010802022

Presented on : 21-10-2022
Registered on : 21-10-2022
Decided on : 06-05-2026
Duration: 3 years 6 months 16 days

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC., AT JEWARGI.

PRESENT:- **Smt. Tayyaba Sultana,** *B.A., LL.B.*,
Senior Civil Judge & JMFC.,
Jewargi.

DATED THIS 6th DAY OF MAY, 2026

CC No.368/2022

Complainant :

Shri. Beereshwar Co-Op Credit Society Ltd.,
Examba (Multi State)., Br. Jevaragi,
Represented by it is Br. Manger,
Shri Sameerahamad Manik Naikwadi,
Age: 46 years, Occ: Br. Manger,
R/o Examba, Taluk Chikodi,
Now Residing at Jevaragi.

(R/by Sri Y.G.P., Adv)

V/s

Accused :

Shri Ningannagouda Honnappagouda Nandihalli,
Age: Major, Occ: N.A.
R/o Vidyanagar, Jewargi,
Taluk Jewargi,
District Kalaburagi.

(R/by Sri V. S. N., Adv)

JUDGEMENT

1. The complainant has filed this complain under section 200 of Cr.PC against the accused for the offence punishable under Section 138 of Negotiable Instrument Act.

2. **The brief facts of the complainant's case are as under;**

The complainant society is established and registered under the provisions of co-operative act (Multi state) having its head office at Examba and one of the branch office at Mangur and carrying business of money banking as per the bylaws. The Board Directors of the said complainant Society have passed the Resolution to file the complaint and proceed with the said case in the name Branch Manger, Jevargi Branch and the said resolution is produced along with this Complaint. The accused availed under M.T. loan of Rs.10,00,000/- on dated 11-08-2016 from complainant society under loan MT account No.78 from complainant society by executing all the necessary loan documents and agree to repay the same yearly installment as agreed rate of interest with penal interest. But as per terms of the accused has neglected to repay the amount in spite of repeated request made by complainant.

3. It is further case of the complainant that, the accused become defaulter to the complainant society total an amount of Rs.15,39,276/- is due from above said the accused as on 24-12-2020 pertaining to his loan account. The complainant approached and demanded to the accused pertaining to loan account along with interest but he has failed to repay the balance loan amount. On demand the accused issued a cheque bearing No.225211, dated 24-12-2020 of state bank of India, Br. Jeveragi of his SB account No.30708592716 for Rs.15,39,276/- to due loan amount pertaining to his account and complainant has presented the said cheque through its Banker Karanataka Grameen Bank Branch, Jevaragi for collection on 24-12-2020 but unfortunately on 30-12-2020 and complainant received intimation with the memo of Karanataka Grameena Bank Branch, Jevaragi. That the said cheque is dishonored for the reason “FUNDS INSUFFICIENT”.

4. It is further case of the complainant that, the complainant has sent a lawyers notice to accused dated 23-01-2021 as required under law. The said notice served to the accused and not claimed the said notice on 29-01-2021 and same is intimated to the complainant on

05-02-2021. The accused has replied on 15-02-2021 the said notice by denying come contents of the notice.

5. It is further case of the complainant that, the cheque has been dishonored and bounced, the accused has not made the payment within the time stipulated under the Negotiable instrument act. The accused knowing fully well that there is no amount in his account he has issued a cheque in order to cause loss to the complainant and has thereby committed the offence punishable under Section 138 of Negotiable Instrument Act R/w Sec.420 of IPC. Hence, the complainant constrained to file this complaint.

6. After filing complaint, the court has taken cognizance of the offence punishable u/s 138 of Negotiable Instrument Act. Sworn statement of complainant was recorded. Since there were sufficient grounds to proceed against the accused for the alleged offence, hence this case was registered against the accused.

7. In pursuance of the summons accused appeared before the Court and he has been enlarged on bail. Thereafter, the substance of accusation was recorded and read over to the accused and he did

not plead guilty and submitted that, he has got defence in this case. Hence case was posted for trial.

8. In order to substantiate the case the complainant society has examined its Branch Manager as PW.1 and got marked exhibit P.1 to 10 and closed the side.

9. The accused examined under Section 313 of Cr.P.C who denied incriminating evidence against him. Counsel for accused submitted that, no defence evidence of accused.

10. Heard the arguments by both side counsels and perused the materials placed before the Court.

11. On the basis of the above said materials, the following points arose for the consideration of this Court:

    1. Whether complainant proves that, accused in discharge of legally recoverable debt has issued cheque bearing No.225211 dated 24-12-2020 for Rs.15,39,276/- drawn in Karnataka Grameena Bank which came to be dishonored with an endorsement **funds insufficient** on

30-12-2020. Inspite of due service of notice accused has failed to pay the cheque amount and thereby committed an offence under Section 138 of NI Act?

2. If so what order?

12. My findings on the above points are:

Point No 1 : In the Affirmative,

Point No 2 : As per the final order for the following :

REASONS

13. **Point No.1** : It is the case of the complainant that, the accused approached the complainant society and availed loan amount of Rs.10,00,000/-. Assured that, he will repay the loan amount with interest, but has not repaid the amount. In spite of repeated request made by complainant the accused become defaulter to the complainant society total an amount of Rs.15,39,276/- is due from above said the accused as on 24-12-2020 pertaining to his loan account. The complainant approached and demanded to the accused pertaining to loan account along with interest but he has failed to repay the balance loan amount. On demand the accused issued a cheque bearing No.225211, dated 24-12-2020 of state

bank of India, Br. Jeveragi of his SB account No.30708592716 for Rs.15,39,276/- to due loan amount pertaining to his account and complainant has presented the said cheque through its Banker Karanataka Grameen Bank Branch, Jevaragi for collection on 24-12-2020 but unfortunately on 30-12-2020 the complainant received intimation with the memo of Karanataka Grameena Bank Branch, Jevaragi that, the said cheque is dishonored for the reason “FUNDS INSUFFICIENT”.

14. Existence of legally recoverable debt is a sine qua non for prosecuting the case under Section 138 of Negotiable Instrument Act. For convenient purpose the essential ingredients to constitute offence under Section 138 of NI Act is summarized as below;

1. That there must be a legally enforceable debt.

2. That the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes the legally recoverable debt.

3. That the cheque so issued had been returned due to insufficiency of funds.

15. Now reverting to the factual matrix of the present case, according to the complainant the accused availed loan of Rs.10,00,000/- from the complainant society. The accused not repaid the loan amount, hence when the complainant asked to pay the amount, the accused issued cheque for Rs.15,39,276/-. Now let us examine whether the complainant is able to prove existence of legally recoverable debt.

16. In order to establish legally recoverable debt, the complainant society has examined its Branch Manager as PW.1. The PW.1 has filed his affidavit evidence in lieu of examination-in-chief and deposed in consonance with the complaint averments. The PW.1 in order to substantiate his oral evidence also got marked the documents vide Ex.P.1 to Ex.P.10. Ex.P.1 is the copy of Resolution document. Ex.P.2 is the original cheque dated 24-12-2020 for sum of Rs.15,39,276/-. Ex.P.3 is the Bank Slip dated 24-12-2020. Ex.P.4 is the Return Memo bearing remark as " Founds Insufficient". Ex.P.5 is the Legal Notice By R.P.A.D dated 23-01-2021 issued to the accused. Ex.P.6 is Postal receipt. Ex.P.7 is the Postal Acknowledgement. Ex.P.8 is the Reply to Legal Notice. Ex.P.9 is the Loan Personal Ledger of Shri Beereshwar Co-Op. Credit Society

Ltd., Examba (Multi-State) Branch Jewargi, for the period 01-01-2000 to 23-02-2021. Ex.P.10 is the copy of Resolution document.

17. On careful perusal of the Ex.P.8 Reply to the Legal notice dated 23-01-2021, it shows that, in the reply notice it is stated that, "it is true that my client availed a loan of Rs.10,00,000/- on dated 11-08-2016 from your client society under loan account MT-78 by executing all the necessary loan documents and also issued 5 bank signed cheques for the purpose of security towards the loan amount and agreed to repay the same on monthly installments and not yearly installments as mentioned in your legal notice". It is further stated that, " my client have paid the loan amount and the interest regularly until the Karnataka Debt Relief Act 2018 was enacted ". In the reply notice accused further stated that, "your client have taken total 5 cheques for the purpose of security and have misused one of them". On careful perusal of the entire contents of the Ex.P8 reply notice it shows that, if really the accused has not issued cheque infavour of complainant for repayment of loan amount and if realy the complainant has misused one of them, definitely accused might have lodged the complaint against the complainant, but no such

complaint was lodged by the accused and no action taken against the complainant, hence it shows that the accused has issued cheque for repayment of loan amount.

18. In this case it is not disputed that, the cheque belongs to the accused and accused also not denied the signature thereon. The accused in the reply notice clearly admitted the availment of loan from the complainant society. The accused in order to prove his defence not produced any documents. Hence, the accused failed to rebut the evidence. Hence, by perusal of evidence on record shows that, the accused availed loan from the complainant society and executed the loan documents. In the present case issuance of cheque not disputed by the accused and not denied his signature in Ex.P2 cheque.

19. The Negotiable Instrument Act raises two presumptions. One contained in section 118 and the other in section 139 thereof. For the sake of convenience section 118(1) of the NI Act is extracted here below;

Sec.118: Presumptions as to Negotiable Instruments Act---------Untill the contrary is proved, the following presumptions shall be made:-

(a) of consideration -that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) To (g)- - - - - - - - - - -

Provided that, where the instrument has been obtained from its lawful owner, or from any person, in lawful custody thereof, by means of any offence of fraud, or has been obtained from the maker or acceptor thereof by means of an offence of fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

20. Further section 139 of Negotiable Instrument Act, which reads as under:-

Sec.139: Presumption in favour of holder:-

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, of any debt or other liability.

21. Thus, that Act clearly lays down the presumptions in favour of the complainant with regard to the issuance of the cheque by the accused, towards the discharge of his liability in favour of the complainant. Under the scheme of the Act, the onus in upon the accused or rebut the presumption infavour of the complainant by raising a probable defence.

22. In the present case the accused failed to rebut the evidence of complainant, In this case issuance of cheque and signature thereon is not in dispute. Hence it shows that, the accused issued cheque to discharge legal debt. Hence it can be inferred that, the accused has admitted the issuance of cheque infavour of complainant.

23. Since the accused has not denied his signature, it shows that, accused issued cheque to the complainant, it is clear that, the complainant is the holder of the said cheque. As such as per Section 139 of Negotiable Instrument Act, it shall be presumed that, the holder of a cheque received the same for the discharge, in whole or

in part, of any debt or other liability and the said presumption is a rebuttable presumption. Hence, the complainant proved that, the accused issued cheque for the repayment of loan amount. Under such circumstances, the indisputable fact is that, accused has issued the cheque as per Ex.P.2 to the complainant. As already noticed, it carries presumption under Sections 118(a) and 139 of Negotiable Instrument Act. Hence the complainant is able to prove the existence of legally recoverable debt as accused has failed to rebut the presumption.

24. Since the accused has admitted his signature on cheque marked at Ex.P2, it shows he issued cheque infavour of complainant, it is clear that, the complainant is the holder of the said cheque. As per Sec.139 of Negotiable Instrument Act, it shall be presumed that, the holder of a cheque received the same for the discharge, in whole or in part, of any debt or other liability and the said presumption is a rebuttable presumption. Considering all these aspects of the case and on perusal of evidence lead on behalf of complainant and accused it clearly reveals that, the complainant has established existences of legally recoverable debt. Accused has failed to rebut

the presumption u/s 139 of NI Act. Under these circumstances the imperative conclusion is that the accused has committed for the offence punishable u/s 138 of Negotiable Instrument Act. **Therefore, I proceed to answered Point No.1 in Affirmative.**

25. **Point No.2**:- For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

ORDER

Acting under Section 255(2) of Cr.P.C, the accused is hereby convicted for the offence punishable under Section 138 of NI act.

The Accused is sentenced to pay a fine of Rs.15,44,276/- to the complainant and in default of payment of fine amount, the accused shall undergo simple imprisonment for a period of one year.

It is further directed that, the accused shall pay fine of Rs.15,44,276/- out of which Rs.15,39,276/- to the complainant and remaining Rs.5,000/- shall be paid to the State Government as expenses of the litigation as contemplated u/s 357(3) of Cr.PC.

The bail bond and surety bond of the accused shall stand cancelled.

Office to furnish free certified copy of this judgment to accused forthwith.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced by me in open court on this the 6th day of May, 2026).

(SMT. TAYYABA SULTANA)
Sr. Civil Judge & JMFC,
Jewargi.

ANNEXURE

List of witnesses examined on behalf of the complainant:

PW1 : Sagar Nanndanage S/o Chandrakanth.

Documents exhibited for complainant

Ex.P.1:	Resolution copy.
Ex.P.2:	Cheque.
Ex.P.3:	Bank slip.
Ex.P.4:	Bank return memo.
Ex.P.5:	Copy of legal notice.
Ex.P.6:	Postal receipt.
Ex.P.7:	Postal acknowledgment.
Ex.P.8:	Reply notice.
Ex.P.9:	Account statement.
Ex.P.10:	Resolution copy.

Witnesses examined for accused:

-Nil-

Documents exhibited for accused:

-Nil-

(SMT. TAYYABA SULTANA)
Sr. Civil Judge & JMFC,
Jewargi.