IN THE COURT OF THE III-ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU-MADIKERI

Present:

SRI.SURENDRA G, *B.A.L. LL.M.*
III-Additional District & Sessions Judge,
Kodagu-Madikeri.

Dated this the 03rd day of July, 2026.

Crl. Appeal. No.144/2025

Appellant/s : Hazira Begum, W/o Mohammed Gaffar, Aged about 51 years, R/o Belagodu Village and Hobli, Sakleshpura Taluk, Hassan District.

(By Shri.H.K.Dwarakanath/ Sri.M.A.Shabaz Ali, Advocates)

Vs.

Respondent/s : K.M.Praveena, S/o K.B.Mallappa, Aged about 50 years, R/o Kibbetta Village, Somwarpet Taluk, Kodagu District.

(By Shri. B.S.Rudra Prasanna & Smt. M.S.Sheethal, Advocates)

JUDGMENT

The present Criminal Appeal is filed by the appellant/accused under Section 374 of Cr.P.C., (corresponding Section 415 of BNSS-2023) challenging the Judgment of conviction and Order of sentence dated 01.12.2025 passed by the Court of the Senior Civil Judge and JMFC, Somwarpet in C.C. No. 5/2023, whereby the appellant was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. For the sake of convenience, the parties herein are referred to as per their litigative status/rank before the trial Court.

3. The case had originally been instituted before the JMFC Court, Sakaleshpura in PCR No.75/2015 and after conviction remand by the Sessions Court in Criminal Appeal No.70/2018 and subsequent transfer on account of territorial jurisdiction, the matter came to be disposed of by the learned Senior Civil Judge & JMFC, Somwarpet.

4. The case of the complainant before the trial Court was that, both parties were engaged in coffee trading business and were well acquainted with each other. According to the Respondent/complainant, in June 2014 the accused borrowed a hand loan of Rs.8,60,000/- for business expansion and repayment of other liabilities. Towards discharge of the said liability, the appellant/accused issued two cheques bearing Nos.004416 and 004417 for sums of Rs.4,00,000/- and Rs.4,60,000/- respectively. On presentation, both cheques were dishonoured with the endorsement "Funds Insufficient". Thereafter, a statutory demand notice was issued and duly served upon the accused. Since the accused failed to comply with the demand within the prescribed period, the complaint under Section 138 of the Negotiable Instruments Act came to be filed.

a) Before the trial Court, the complainant examined himself as PW-1 and produced documentary evidence including the dishonoured cheques, bank endorsements, legal notice, postal receipt and acknowledgment (Ex.P-1 to 7). The accused entered the witness box as DW-1 and produced several documents in support of her defence (Ex.D-1 to 23). The principal defence of the accused was that the disputed cheques had been issued as blank signed security cheques during earlier coffee business transactions and that the complainant had misused those cheques. She further contended that certain cheque leaves had been lost and that the complainant had fabricated a false claim by filling up the cheques and presenting them for encashment. Upon appreciation of the oral and documentary evidence, the learned trial court held that the accused had admitted that the cheques belonged to her account and that the signatures appearing thereon were her own. Consequently, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act came into operation in favour of the complainant. The Court observed that the complainant had successfully established all the foundational requirements constituting the offence under Section 138 of the Act, The trial Court further found that the defence set up by the accused was inconsistent and mutually contradictory. While at one stage she claimed that blank signed cheques had been handed over to the complainant during business transactions, at another stage she alleged loss of the cheque leaves. The Court noticed that despite alleging loss of cheques, the accused had neither issued stop-payment instructions to the bank nor initiated any prompt action against the complainant. The Court also observed that the private complaint regarding alleged loss of cheques was lodged after a considerable lapse of time and appeared to have been instituted only after conviction in the cheque bounce proceedings.

b) Accordingly, the trial Court answered the point for consideration in the affirmative, Consequently, the accused was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act.

5. Being aggrieved by the said conviction and sentence, the appellant has preferred the present appeal seeking setting aside of the judgment and acquittal on the following grounds:

<u>Grounds of Appeal</u>

i) The appellant contends that the impugned judgment and order of conviction passed by the learned trial Judge are opposed to the facts, evidence and settled principles governing prosecution under Section 138 of the Negotiable Instruments Act. It is contended that the learned Magistrate failed to appreciate the evidence in its proper perspective and arrived at conclusions unsupported by the materials available on record. According to the appellant, the findings recorded by the trial court are arbitrary, perverse and unsustainable in law and therefore liable to be set aside by this Hon'ble Appellate Court.

ii) The appellant submits that after remand of the matter by the appellate court, she entered the witness box as DW.1 and subjected herself to lengthy cross-examination. She also produced several documents in support of her defence. It is the grievance of the appellant that the learned trial court failed to properly evaluate the oral and documentary evidence adduced on behalf of the defence. Though the remand order specifically enabled the accused to establish her defence, the trial court allegedly ignored the substance of the defence evidence and mechanically reiterated the earlier findings of conviction.

iii) The appellant specifically contends that the complainant failed to establish the existence of a legally enforceable debt or liability. According to the appellant, except production of the cheque and connected statutory documents, no independent evidence was produced to demonstrate actual advancement of Rs.8,60,000/- as alleged. It is argued that the complainant failed to establish the source of funds, mode of payment, date of payment and surrounding circumstances of the alleged loan transaction. In the absence of satisfactory proof of the debt, the conviction recorded by the trial court is liable to be interfered with.

iv) It is the specific contention of the appellant that the complainant did not produce any account books, ledgers, receipts, promissory notes, acknowledgments, income-tax records or any contemporaneous documents evidencing payment of Rs.8,60,000/-. According to the appellant, when such a substantial amount is alleged to have been advanced, production of supporting documents becomes highly relevant. The trial court failed to draw an adverse inference against the complainant for withholding the best available evidence.

v) The appellant contends that during cross-examination the complainant made several admissions which materially affected the prosecution case. However, the trial court allegedly relied only upon the chief-examination affidavit and ignored the admissions elicited during cross-examination. It is submitted that evidence must be appreciated as a whole and not selectively. Had the trial court considered the admissions in their proper perspective, it would have found that the complainant had failed to prove the alleged transaction beyond doubt.

vi) The appellant contends that neither in the complaint nor in the sworn statement nor in the chief-examination affidavit did the complainant specifically mention the exact date on which the alleged loan amount was paid. The omission to state such an important fact creates serious doubt regarding the genuineness of the transaction. The appellant argues that when a substantial amount of money is claimed to have been advanced, particulars regarding the date, place and mode of payment are essential. The trial court failed to appreciate the significance of this omission.

vii) According to the appellant, the complainant himself admitted in the cross-examination that he maintained books of accounts regarding the transactions. Despite such admission, the said account books were not produced before the court. The appellant submits that if the books had supported the complainant's case, there was no reason for withholding them. Therefore, an adverse inference ought to have been drawn against the complainant under the provisions of the Evidence Act. The trial court failed to consider this important aspect.

viii) The appellant has consistently maintained that the cheque in question was not issued towards repayment of any loan. According to her defence, the cheque was connected with coffee business dealings and not towards discharge of a legally enforceable debt. It is contended that the complainant misused the cheque in his possession and presented the same by giving a false colour of a loan transaction. The trial court failed to appreciate this defence in its proper perspective.

ix) The appellant submits that the evidence on record itself creates serious doubts regarding the alleged loan transaction. There are inconsistencies concerning the timing, nature and manner of advancement of money. The complainant's own testimony, according to the appellant, does not inspire confidence. The settled principle of criminal jurisprudence requires that where two views are possible, the one favourable to the accused should be adopted. The trial court failed to extend such benefit to the appellant.

x) The appellant contends that the learned Magistrate placed undue emphasis on the fact that the accused did not send a reply to the statutory notice. Merely because the accused did not issue a reply notice, an adverse inference regarding existence of liability cannot automatically be drawn. The burden of proving legally enforceable debt always remains on the complainant. According to the appellant, the trial court treated non-reply as a circumstance strengthening the complainant's case, which is legally unsustainable.

xi) The appellant further contends that several judgments and legal precedents were cited before the trial court dealing with the necessity of proving loan transactions, mentioning dates of advancement, and establishing legally enforceable liability. However, the learned Magistrate did not discuss those decisions nor assign any reasons for not applying them. According to the appellant, non-consideration of binding and persuasive precedents amounts to a serious legal infirmity warranting interference by the appellate court.

xii) The appellant submits that the findings recorded by the trial court are based upon assumptions rather than evidence. Instead of scrutinizing the complainant's evidence critically, the trial court allegedly presumed the existence of liability and thereafter searched for circumstances supporting such conclusion. Such an approach is contrary to the principles governing criminal trials and prosecutions under Section 138 of the Negotiable Instruments Act.

xiii) The appellant contends that the earlier appellate court had remanded the matter specifically for the purpose of enabling the accused to adduce defence evidence. Despite the remand, the trial court substantially reproduced its earlier conclusions and failed to independently assess the evidence adduced after remand. According to the appellant, the purpose of remand stood frustrated and the subsequent judgment suffers from non-application of mind.

xiv) The appellant submits that the cumulative effect of the inconsistencies, omissions and deficiencies in the complainant's evidence raises a reasonable doubt regarding the alleged liability. In a criminal prosecution, such doubt must necessarily enure to the benefit of the accused. The learned Magistrate failed to extend such benefit and thereby committed a serious error resulting in miscarriage of justice.

For all the above grounds, the appellant prays to allow the appeal and setting aside of the judgment and order of sentence dated 01.12.2025 in C.C. No.5/2023 pass by Senior Civil Judge & JMFC at Somawarpet and prays for her acquittal in the interest of justice.

6. This Court has secured the Trial Court records, heard the learned counsel appearing for the respondent and perused the written arguments submitted by appellant and the entire evidence, both oral and documentary placed before the Trial Court.

7. The following points that arise for my consideration are as follows:

1. Whether the appellant/accused has made out sufficient grounds to establish that the judgment of conviction and order of sentence dated 01.12.2025 passed by the learned Senior Civil Judge and JMFC, Somwarpet, in C.C. No.5/2023, convicting her for the offence punishable under Section 138 of the Negotiable Instruments Act, is illegal, perverse or contrary to the evidence on record, thereby warranting interference by this Court?

2. What order?

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

Point No.1 : In the **Negative**;
Point No.3 : As per final order, for the following:

-: R E A S O N S :-

9. **Point No.1:-** This Criminal Appeal is preferred by the appellant/accused under Section 374 of Cr.P.C., challenging the judgment of conviction and order of sentence dated 01.12.2025 passed by the learned Senior Civil Judge and JMFC, Somwarpet, in C.C. No. 5/2023, whereby the appellant was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to pay fine of Rs.17,10,000/-, out of which Rs.17,00,000/- was ordered as compensation to the complainant and balance of Rs.10,000/- has been ordered to be paid to the State exchequer, with default sentence of simple imprisonment for one year.

10. Before adverting to the detailed discussion on merits, it is just and proper to first consider the arguments advanced by the Appellant as well as Respondent. However, the counsel for the Appellant in spite of sufficient opportunities afforded by the Court, has not addressed arguments on his behalf, neither filed written arguments.

11. The learned counsel appearing for the appellant/ accused filed detailed Written Arguments and vehemently

contended that the judgment of conviction and order of sentence passed by the learned Senior Civil Judge & JMFC, Somwarpet in C.C. No.05/2023 for the offence punishable under Section 138 of the Negotiable Instruments Act. The appellant contends that the impugned judgment is contrary to law, facts and evidence available on record and that the learned trial Judge failed to properly appreciate the defence evidence, documentary evidence and judicial precedents cited on behalf of the appellant/accused. It is therefore prayed that the judgment of conviction and sentence be set aside and the appellant/accused be acquitted.

a) According to the appellant, the complainant/respondent has failed to establish the alleged loan transaction of Rs.8,60,000/- beyond reasonable doubt. It is argued that except production of the disputed cheques, no independent documentary evidence has been produced to prove advancement of the alleged loan. The complainant has not produced any account books, ledger extracts, receipts, income-tax records or any other contemporaneous document to substantiate the alleged payment of cash to the accused. Therefore, the existence of a legally enforceable debt has not been satisfactorily established.

b) The appellant further contends that during cross-examination the complainant admitted maintaining books of accounts relating to his business transactions.

However, despite such admission, the complainant failed to produce those records before the Court. It is argued that the non-production of the best available evidence gives rise to an adverse inference against the complainant and creates serious doubt regarding the very existence of the alleged loan transaction. It is also the specific contention of the appellant that the complaint and chief-examination affidavit do not disclose the exact date on which the alleged amount of Rs.8,60,000/- was advanced. According to the appellant, absence of material particulars regarding the date and circumstances of the transaction renders the complainant's version doubtful and unreliable. The appellant submits that several judicial pronouncements relied upon by the defence emphasize the necessity of proving the underlying transaction and that the trial Court failed to consider those authorities while arriving at the finding of guilt.

c) The appellant further submits that the defence successfully established that there was no monetary transaction between the parties and that the disputed cheques were not issued towards repayment of any loan. It is contended that the cheques had been handed over during the course of earlier coffee business dealings and were subsequently misused by the complainant. The appellant argues that the learned trial Court ignored the probabilities emerging from the defence evidence and erroneously drew adverse inferences merely because the accused had not issued a reply notice. The appellant has also challenged the appreciation of evidence by the trial Court by contending that the learned Judge considered only the chief-examination of the complainant while overlooking vital admissions elicited during cross-examination. According to the appellant, several contradictions and omissions appearing in the complainant's evidence were not properly considered, resulting in an erroneous finding of guilt.

d) Another contention urged by the appellant is that the respondent/complainant admitted that the appellant/accused had discontinued the coffee business during the relevant period and that such admissions create serious doubt regarding the alleged loan transaction. It is argued that these aspects were completely ignored by the trial Court while recording the conviction. The appellant has further contended that various judgments cited on behalf of the defence concerning proof of legally enforceable debt, non-mentioning of the date of transaction and insufficiency of evidence to prove loan liability were not discussed or distinguished by the trial Court. According to the appellant, the trial Court was duty-bound to consider and assign reasons regarding the applicability or otherwise of the precedents relied upon by the defence, but failed to do so.

e) The appellant therefore submits that the complainant has suppressed material facts and failed to establish the foundational facts necessary for attracting liability under Section 138 of the Negotiable Instruments Act. It is contended that the finding of guilt is based on assumptions and presumptions rather than legally admissible evidence and that the conviction has resulted in miscarriage of justice. The appellant has also questioned the sentence imposed by the trial Court and contends that the fine amount of Rs.15,65,000/- is excessive and disproportionate. On all these grounds, the appellant seeks interference by the appellate Court and prays for allowing the appeal, setting aside the judgment of conviction and sentence, and acquitting the accused of the charge under Section 138 of the Negotiable Instruments Act.

12. Per-contra, the learned counsel appearing for the respondent/ complainant while arguing submits that the judgment of conviction passed by the learned Trial Court is well-reasoned, legal and based upon proper appreciation of both oral and documentary evidence. The accused has admitted that Ex.P-1 cheque belongs to her account and that the signature appearing thereon is her own signature. Once execution of the cheque is admitted, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act automatically arise in favour of the complainant. The burden thereafter shifts upon the accused to rebut the presumption by placing a probable defence. The accused has utterly failed to discharge such burden.

a) The respondent would further argue that the defence set up by the accused is inherently contradictory and self-destructive. In her chief-examination and defence evidence, the accused claimed that certain cheque leaves had been lost and even relied upon Ex.D-4 private complaint alleging loss of cheques. At the same time, during the cross-examination of PW-1, the defence specifically suggested that the complainant had misused the cheques which had been handed over during coffee business transactions. Thus, on one hand the accused claims that the cheques were lost and on the other hand she contends that the complainant misused cheques voluntarily given to him. Both stands cannot coexist. Such mutually destructive defences clearly demonstrate that the accused has no consistent or probable explanation regarding the disputed cheques.

b) It is further submitted that if the cheques were genuinely lost, the accused would have immediately issued stop-payment instructions to the bank, lodged a prompt police complaint, or initiated legal proceedings for recovery of the cheque leaves. Admittedly, no such action was taken at the relevant time. Even according to the accused, the complaint regarding loss of cheques was lodged much later. Such conduct is wholly inconsistent with the conduct of a prudent person whose signed cheque leaves are allegedly lost. The respondent would also point out that the accused admitted long-standing business transactions with the complainant and further admitted that Ex.P-1 and

Ex.P-4 belong to her account and bear her signatures. The accused further admitted receipt of statutory notice at one stage of her evidence, though she subsequently attempted to deny the same. These inconsistent statements further affect her credibility.

c) The complainant would contend that the learned Trial Judge has rightly held that the defence evidence does not rebut the statutory presumption even on the touchstone of preponderance of probabilities. Mere suggestions in cross-examination, unsupported allegations of misuse and contradictory explanations regarding loss of cheques do not constitute a valid defence under Section 138 of the Negotiable Instruments Act. Therefore, the respondent submits that the accused having taken inconsistent and mutually destructive stands regarding the very origin and possession of the cheques, the defence cannot be accepted as probable. The complainant has proved all the ingredients of Section 138 of the Negotiable Instruments Act, whereas the accused has failed to rebut the statutory presumptions.

Hence, the appeal is devoid of merit and is liable to be dismissed, confirming the judgment of conviction and sentence passed by the learned Senior Civil Judge & JMFC, Somwarpet.

13. It is now necessary to consider the evidence of the appellant/accused and the complainant/respondent,

as elicited during their chief examination and cross-examination before the Trial Court.

a) The cross-examination of PW-1 K.M.Praveen/ respondent reveals that he is a graduate and is engaged in coffee trading business as a commission agent. He admitted that he had known the accused for about 7 to 8 years and that both of them were carrying on coffee business transactions from the year 2009-10 onwards. PW-1 further admitted that the accused used to supply coffee seeds to him regularly and that substantial business transactions were taking place between them. He also admitted that he maintained books of accounts and ledger records regarding the coffee business transactions conducted with various customers including the accused. According to PW-1, the entries relating to the accused were available in his account books and the same could be produced before the Court, though admittedly such books were not produced during trial.

b) PW-1 further admitted that he was carrying on transactions not only in cash but also through RTGS and bank transfers. He deposed that in respect of coffee business dealings, payments were sometimes made directly to coffee growers and at times transferred through banking channels. He also admitted that the accused had made payments in connection with coffee business transactions and that details of such transactions could be verified from his records and bank documents. During cross-examination, PW-1 acknowledged that money had been credited from the account of the accused and admitted an entry showing transfer of Rs.2,50,000/- from the accused's account to his account, which was marked through Ex.D-1 and Ex.D-1(a). However, he attempted to explain that the said amount pertained to coffee commission business and not to the loan transaction alleged in the complaint.

c) A significant admission elicited in the cross-examination is that PW-1 maintained books of account regarding his business dealings with the accused and had recorded the relevant transactions therein. However, despite asserting that the details of the alleged loan transaction were available in his books, he admitted that he had not produced the said account books before the Court. PW-1 further stated that he had written the date of the alleged transaction in his records, yet he was unable to state before the Court the exact date on which the accused allegedly borrowed the amount or the date on which he paid the amount to the accused. He also admitted that there was no written agreement, promissory note, receipt or any documentary acknowledgment executed at the time of the alleged advancement of Rs.8,60,000/-.

d) PW-1 further deposed that the alleged amount was paid only once and without any written contract. He admitted that he could not recollect the date on which the accused sought the money and that he did not remember the exact date on which the amount was allegedly paid. He also admitted that no interest was charged on the alleged loan transaction. These admissions were elicited by the defence to contend that the complainant had failed to establish the particulars of the alleged legally enforceable debt. The witness further admitted that the accused had issued two cheques simultaneously with different dates and that both cheques had been handed over at the same time. He stated that the accused had informed him that separate cheques were issued for convenience in arranging repayment. At the same time, PW-1 denied the suggestion that the cheques were issued in connection with coffee business transactions and maintained that they were issued towards repayment of the personal loan amount.

e) During further cross-examination, PW-1 admitted that he had not carried on coffee business with the accused after June 2014 and also admitted that the accused discontinued coffee business transactions with him during November-December 2014. He further admitted that there were business transactions between the parties through banking channels and that records of such transactions were available. However, he denied that the disputed cheques were issued in connection with the coffee business or that he had misused cheques entrusted to him during the course of such business dealings. Thus, the overall tenor of the cross-examination of PW-1 discloses admissions regarding long-standing coffee business relations between the parties, maintenance of account books by the complainant, existence of banking transactions between the parties, receipt of amounts from the accused through bank transfers, and non-production of the relevant books of account. At the same time, PW-1 consistently denied the defence suggestion that the disputed cheques were security cheques connected with coffee business transactions and reiterated that the cheques were issued towards repayment of a personal cash loan of Rs.8,60,000/- allegedly advanced to the accused in June 2014.

14. Whereas, DW-1 Hazira Begum/accused-appellant entered the witness box and denied the entire case of the complainant. She deposed that she and her husband were engaged in coffee trading business at Belagodu village and had been doing coffee transactions with the complainant for nearly seven to eight years. According to her, the parties had regular business dealings involving purchase and sale of coffee seeds through various coffee curing works such as CN Coffee Curing Works, Chikkamagaluru and Allana Coffee Curing Company, Hassan. She stated that payments relating to coffee transactions were frequently made through RTGS, bank transfers and cash. DW-1 specifically contended that during the course of coffee business in the year 2014, she had issued three signed blank cheques belonging to her Kaveri Grameena Bank account as security for business transactions. According to her, the disputed cheques involved in the present case were among those security

cheques. She asserted that no personal loan whatsoever was borrowed from the complainant and that the complainant had misused two of the security cheques after business relations between the parties came to an end.

a) DW-1 further deposed that the business relationship between herself and the complainant ceased during the first half of the year 2014 and thereafter she repeatedly demanded return of the security cheques. However, the complainant did not return them. According to DW-1, her husband had also questioned the complainant regarding the cheques and due to such disputes the complainant developed ill-will and subsequently filed the present false complaint with an intention to harass her and obtain unlawful gain. DW-1 further asserted that the complainant had failed to produce the books of accounts admittedly maintained by him regarding business transactions between the parties. She contended that the complaint does not disclose the exact date of the alleged loan transaction and there was no legally enforceable debt as alleged. According to her, the disputed cheques were never issued towards repayment of any personal loan but were only business security cheques which were subsequently misused by the complainant. On these grounds, she prayed for dismissal of the complaint and her acquittal.

b) In support of her defence, DW-1 relied upon several documents marked as Ex.D-1 to Ex.D-23. Ex.D-1 is the bank passbook containing entries relating to transactions between the parties, including an entry marked as Ex.D-1(a). Ex.D-2 to Ex.D-6 consist of certified copies of the order sheet in PCR No.97/2019, FIR, complaint, charge sheet and objection filed to the B-report in proceedings initiated by the accused regarding loss or misuse of cheque leaves. Ex.D-7 to Ex.D-13 comprise certified copies of complaint, cheque, bank endorsement, legal notice, postal receipts and returned postal covers in another cheque bounce case. Ex.D-14 is the certified copy of the sworn statement of the complainant. Ex.D-15 is the certified copy of the judgment and decree in R.A. No.25/2019. Ex.D-16 to Ex.D-18 are certified copies of depositions and chief-examination affidavits of the accused and DW-2. Ex.D-19 and Ex.D-20 are certified copies of complaint and sworn statement of one Subrahmanya, while Ex.D-21 is a certified copy of a legal notice. Further, Ex.D-22 is a certified copy of a cheque and Ex.D-23 is a certified copy of a return memo. Through these documents, the accused attempted to demonstrate that the disputed cheques were connected with business transactions and had been subsequently misused by the complainant.

c) During cross-examination, DW-1 admitted that she had been carrying on coffee business for nearly ten years and that she along with her husband regularly purchased coffee from growers and traded through various curing companies. She further admitted that she had longstanding business relations with the complainant since about 2008 and that both parties used to transact through cash, bank transfers and cheques. She also admitted that she maintained accounts relating to coffee business and that entries regarding issuance of cheques to the complainant were available in her records, though she had not produced those records before the Court. DW-1 admitted that she had issued three signed cheques of Kaveri Grameena Bank to the complainant in connection with coffee business transactions. However, she expressed inability to specify the cheque numbers, dates or the exact transactions for which those cheques had been issued. She further admitted that she had not initiated any legal proceedings for recovery of the remaining cheques allegedly retained by the complainant despite repeatedly claiming that the cheques were not returned after closure of business dealings. The accused also admitted that several cheque bounce cases had been instituted against her by different persons during the relevant period. Though she denied allegations of borrowing money and issuing cheques to various persons, she acknowledged that multiple cheque cases had been filed against her and that such cases were subsequently disposed of.

d) During further cross-examination, DW-1 made inconsistent statements regarding receipt of the statutory legal notice. At one stage she admitted that notice had been received from the complainant, while at another stage she stated that she did not remember whether any reply had been issued. She further admitted that her husband had signed the postal acknowledgment relating to the notice and that they were residing together at the relevant time. A significant admission elicited from DW-1 was that the disputed cheques namely Ex.P-1 and Ex.P-4 belonged to her bank account and that the signatures appearing on those cheques were indeed her own signatures. Though she denied having filled up the contents of the cheques, she admitted execution of the signatures thereon. She also admitted that after her conviction by the JMFC Court, Sakaleshpur, she had filed a private complaint on 13.05.2019 alleging misuse and loss of cheque leaves. She further admitted that the police, after investigation, submitted a final report finding no substance in her allegations.

e) Another material contradiction was brought on record when DW-1 admitted that in her private complaint she had alleged loss of cheque leaves bearing Nos.004411 to 004420, whereas in her chief-examination she claimed that the disputed cheques had been voluntarily handed over to the complainant in the year 2014 and later misused. The complainant's counsel confronted her with these contradictory versions and suggested that her defence was false and inconsistent.

f) A significant admission elicited from DW-1 was that Ex.P-1 and Ex.P-4 cheques belonged to her bank account and that the signatures appearing thereon were admittedly her own. However, she denied filling up the contents of the cheques and maintained that they were blank signed cheques handed over in connection with coffee business transactions. She also admitted that she had not taken any legal action for recovery of the cheques allegedly retained by the complainant despite claiming that they were not returned after closure of business dealings.

g) DW-1 further admitted that she had filed a private complaint alleging loss of cheque leaves. In the said complaint, she had stated that several cheques including the cheque series relating to the present case were lost while travelling in a bus. At the same time, in her chief-examination she had asserted that the disputed cheques had been voluntarily handed over to the complainant during coffee business transactions. When confronted with these inconsistent versions, she attempted to explain that she filed the complaint because the complainant had informed her that the cheques entrusted to him were lost. Thus, a material contradiction emerged in her defence regarding the origin and possession of the disputed cheques.

h) The accused further admitted that multiple cheque dishonour cases had been instituted against her in various Courts at Somwarpet, Kushalnagar, Madikeri and Sakaleshpur. Though she denied borrowing money from various persons, she acknowledged the existence of several cheque bounce proceedings against her. She also admitted that a B-report had been filed by the police in the complaint initiated by her regarding the alleged loss of cheque leaves. Despite these admissions, DW-1 consistently denied having borrowed Rs.8,60,000/- from the complainant or having issued Ex.P-1 and Ex.P-4 towards repayment of any loan. She maintained that the cheques were only blank signed security cheques connected with coffee business transactions and that the complainant had misused them after the business relationship ended. She further denied liability to pay any amount under the cheques and asserted that she was falsely implicated in the present proceedings.

i) Thus, the evidence of DW-1 reveals that while she consistently denied the alleged hand loan transaction and maintained that Ex.P-1 and Ex.P-4 were security cheques issued in connection with coffee business transactions, she admitted long-standing business relations with the complainant, admitted her signatures on the disputed cheques, admitted filing proceedings regarding alleged loss of cheque leaves, admitted non-recovery of the disputed cheques, admitted existence of several cheque bounce cases against her and took inconsistent stands regarding the loss and issuance of the disputed cheques. The defence exhibits were relied upon by her to probabilise the defence of misuse of security cheques and absence of any legally enforceable debt, whereas the complainant relied upon the admissions elicited in cross-examination to challenge the credibility and consistency of her defence.

15. The appellant/accused examined one independent witness as DW-2, namely Sri M.N. Mahesha, aged about 54 years, resident of Belagodu Village, Sakaleshpura Taluk. In his examination-in-chief affidavit DW-2 deposed that he had known the accused for several years as she belonged to his village and had been carrying on coffee seed business for nearly 15 to 20 years. According to him, the accused had approached him seeking information regarding coffee traders and coffee seed purchasers. Thereafter, he introduced the complainant Praveen Kumar to the accused and facilitated business relations between them. DW-2 further deposed that at the time of commencement of coffee business between the parties, the complainant insisted upon obtaining signed blank cheques from the accused as security and guarantee for future business transactions. He stated that he advised the accused to furnish such security cheques and continue the coffee business. According to him, the accused subsequently informed him that she had handed over signed blank cheques to the complainant and the complainant had also informed him that he had received such cheques.

a) DW-2 further stated that after closure of the coffee business the accused informed him that despite settlement of business accounts, the complainant had not returned the security cheques. According to DW-2, the complainant thereafter along with certain other persons including Krishnakumar, Ranjukumar and Subramanya, initiated cheque bounce proceedings against the accused by misusing the security cheques. He specifically deposed that there was no personal loan transaction between the complainant and the accused and that the disputed cheques were never issued towards repayment of any hand loan. According to him, the complainant misused the security cheques for unlawful gain and instituted a false case against the accused. Thus, the evidence of DW-2 was intended to support the defence theory that the disputed cheques were security cheques issued during the course of coffee business transactions and not towards discharge of any legally enforceable debt.

b) During cross-examination, DW-2 admitted that he was a coffee grower and coffee trader and that he had earlier deposed on behalf of another accused, namely Krishnakumar, in a cheque bounce case bearing C.C. No.266/2018. He further admitted that the accused was a resident of his village and that he had known her for nearly 40 years. He also admitted that the complainant had been engaged in coffee business and had been selling coffee for several years. DW-2 admitted that he himself had been involved in coffee business since 1994 and was functioning as an agent of a coffee storage and curing concern. A significant admission elicited during cross-examination was that several cheque dishonour cases had previously been instituted against him. He admitted that three cheque bounce cases, namely C.C. Nos.725/2011, 726/2011 and 727/2011, involving substantial amounts had been filed against him and that he had been convicted by the trial Court in those cases, though he claimed that the matters were subsequently set aside in higher proceedings.

c) The complainant's counsel elicited that DW-2 had not mentioned several material facts in his chief-examination including the alleged business transactions between himself and the complainant. He admitted that there was no documentary material produced by him to establish that he had personal knowledge of the alleged transaction between the complainant and the accused. He further admitted that he was not personally involved in the alleged loan transaction and had no direct knowledge regarding the actual financial dealings between the parties. DW-2 also admitted that he did not know the precise details of the business transactions carried on by the accused with various coffee curing companies and coffee growers. Though he claimed that the disputed cheques were security cheques, he was unable to produce any contemporaneous records or documentary evidence to support that assertion.

d) The complainant's counsel suggested that DW-2 was a close acquaintance of the accused and had deposed falsely only to support her defence. It was also suggested that since several cheque dishonour cases had earlier been filed against DW-2 himself, he was attempting to assist the accused by giving interested testimony. DW-2 denied all such suggestions and maintained that there was no loan transaction between the complainant and the accused and that the disputed cheques had been misused. Thus, the cross-examination of DW-2 reveals that while he supported the defence version regarding issuance of security cheques and absence of any hand loan transaction, he admittedly had no direct participation in the alleged transaction between the parties. His evidence was largely based upon information allegedly received from the accused and complainant during the course of their business relationship. The cross-examination further brought on record that DW-2 himself had faced multiple cheque dishonour cases in the past and was a long-standing acquaintance of the accused, factors which were relied upon by the complainant to challenge the independence and credibility of his testimony.

16. Let us discuss this case in the light of the statutory presumptions available under the Negotiable Instruments Act 1881, the relevant statutory provisionsare extracted below:

> **Section 118 of Negotiable Instruments Act 1881, deals with -Presumptions as to negotiable instruments**.—Until 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) **as to date**:— that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance**:— that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer**:-that every transfer of a negotiable instrument was made before its maturity;

(e) **as to order of indorsements**:-that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;

(f) **as to stamp**:— that a lost promissory note, bill of exchange or cheque was duly stamped;

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

Section 139 deals with - 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.

144. **Mode of service of summons.—**

(1) xxx

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

17. Heard the oral submissions of the learned counsel appearing for the appellant/accused and the written arguments of learned counsel for the respondent/complainant and carefully perused the memorandum of appeal, the impugned judgment, oral and documentary evidence adduced before the learned Trial Court.

18. At the outset, it is not in dispute that Ex.P-1 and Ex.P-4 cheques belong to the bank account of the appellant/accused. More importantly, during her cross-examination as DW-1, the appellant has unequivocally admitted that the signatures appearing on Ex.P-1 and Ex.P-4 are her own signatures. Such admission regarding execution of the cheques is of considerable legal significance. Once the execution of the cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act immediately come into operation in favour of the holder of the cheque. Section 118 raises a presumption that every negotiable instrument

was made for consideration, while Section 139 mandates a presumption that the cheque was received towards discharge of a legally enforceable debt or liability. These presumptions are statutory in nature and remain operative until rebutted by the accused by adducing a probable defence. The Respondent/complainant has proved the foundational facts necessary for invoking the statutory presumptions by producing the original cheques, bank endorsements showing dishonour for "Funds Insufficient", statutory demand notice, postal records evidencing service, and by establishing non-payment within the statutory period. These foundational requirements having been established, the burden shifted upon the appellant to rebut the presumptions on the touchstone of preponderance of probabilities. The question, therefore, is not whether the complainant proved the debt independently in the first instance, but whether the accused has discharged the burden cast upon her by law.

19. The main defence of the appellant is that the disputed cheques were blank signed security cheques issued during coffee business transactions and that the complainant subsequently misused them. However, on careful scrutiny of the entire evidence, this Court finds that the defence is neither consistent nor probable. Throughout the proceedings, the appellant has taken mutually destructive and irreconcilable stands. In her evidence before the Court, she categorically asserted that

she voluntarily handed over blank signed cheques to the complainant as security during coffee business transactions. At the same time, she relied upon Ex.D-2 to Ex.D-6 relating to a private complaint alleging that the very same series of cheque leaves had been lost while travelling. During cross-examination she admitted filing such complaint. Thus, one version suggests voluntary delivery of the cheques to the complainant, while the other alleges loss of the cheque leaves. Both versions cannot simultaneously be true. Such contradictory stands strike at the very root of the defence and substantially diminish its evidentiary value. The learned Trial Court has rightly noticed that if the signed cheque leaves had actually been lost, any prudent person would immediately issue stop-payment instructions to the banker, intimate the bank regarding the missing cheques and promptly lodge a complaint with the police. The appellant admittedly did not take any such immediate action. Even the private complaint regarding the alleged loss of cheque leaves came to be instituted much later, after commencement of the cheque bounce proceedings and admittedly after the earlier conviction. The delay in initiating such proceedings and the subsequent filing of the complaint after adverse developments in the present case rightly led the Trial Court to draw an adverse inference regarding the genuineness of the defence. The appellant has heavily relied upon the admissions elicited from PW-1 during cross-examination, particularly regarding maintenance of account books, non-production thereof, and inability to recollect the exact date of advancement of the alleged loan. This Court has carefully examined those admissions. It is true that PW-1 admitted maintaining books of accounts relating to his coffee business and admitted that those records were not produced before the Court. He also admitted that he could not recollect the precise date on which the amount was advanced. However, these admissions, viewed in the backdrop of the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, do not by themselves demolish the complainant's case. Once execution of the cheque is admitted, the law does not require the complainant to independently prove the debt in the same manner as in an ordinary civil suit unless the accused first succeeds in rebutting the statutory presumption by raising a probable defence. Mere non-production of account books or inability to remember the exact date of payment cannot, in the facts of the present case, be treated as sufficient to rebut the mandatory statutory presumptions, particularly when the defence itself suffers from serious inconsistencies.

20. The appellant has further contended that the complainant failed to establish the source of funds or produce documentary evidence regarding payment of Rs.8,60,000/-. This contention also cannot be accepted. The statutory presumption itself extends to the existence of legally enforceable debt or liability. The complainant

cannot be compelled to prove the transaction independently unless the accused first establishes a probable defence capable of displacing the presumption. In the present case, the accused has failed to create such probability. Consequently, the omission to produce additional documentary evidence regarding the source of funds does not become fatal to the complainant's case. The defence has sought to rely upon the existence of earlier coffee business transactions between the parties. Indeed, PW-1 candidly admitted that both parties had business dealings since 2009-10 and that substantial coffee transactions had taken place between them. DW-1 also admitted longstanding commercial relations. However, these admissions by themselves do not probabilise the defence that the disputed cheques were only security cheques. On the contrary, these admissions merely establish previous business acquaintance between the parties. There is absolutely no contemporaneous documentary material produced by the appellant demonstrating that Ex.P-1 and Ex.P-4 were issued exclusively as security for coffee transactions or that the liability under such business dealings had already been fully discharged.

21. The evidence of DW-1 further weakens rather than strengthens the defence. She admitted that Ex.P-1 and Ex.P-4 belong to her account and bear her signatures. She admitted longstanding business relations with the

complainant. She admitted that she did not initiate proceedings for recovery of the alleged security cheques. She admitted filing a private complaint alleging loss of cheque leaves, which ultimately culminated in submission of a B-report by the investigating agency. She further admitted that several cheque dishonour cases had been instituted against her during the relevant period. Although the existence of other cheque cases by itself cannot be used as substantive evidence of guilt in the present matter, these admissions become relevant while assessing the overall credibility and consistency of the defence. This Court also finds that the evidence of DW-2 does not materially improve the defence. Admittedly, DW-2 had no personal knowledge regarding the alleged loan transaction. His entire testimony is based upon what was allegedly informed to him by the accused and the complainant. He admitted that he was neither present at the time of the alleged loan nor personally aware of the financial dealings between the parties. He also admitted previous cheque dishonour proceedings against himself. Being a close acquaintance of the appellant for several decades, his testimony is not that of a wholly independent witness. The learned Trial Judge has therefore rightly treated his evidence with due caution. His testimony, at the highest, establishes that business transactions existed between the parties. It does not establish that Ex.P-1 and Ex.P-4 were issued solely as security cheques without any subsisting liability.

22. The appellant has repeatedly argued that the disputed cheques were merely security cheques. Even assuming, for the sake of argument, that the cheques were initially issued as security, the legal position is now well settled.

23. The Hon'ble Supreme Court in case of **Sripati Singh v. State of Jharkhand and Anr, 2021 SCC Online SC 1002,** at Para 21 & 22 held that-

> **21.** "A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow".
>
> **Para 22**- "When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due

> and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented."

24. Similarly, the Hon'ble Supreme Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458** at Para 12 held that -

> "If on the date of the cheque, the liability or debt exists or the amount has become legally recoverable, Section 138 is attracted. The cheque cannot be treated as a mere security, if the liability had already crystallised."

25. Thus, the defence based solely on the nomenclature of "security cheque" does not absolve the appellant from criminal liability. What is material is the existence of legally enforceable liability on the date of presentation. The appellant has failed to establish that no such liability existed.

26. Another important circumstance against the appellant is the absence of any reply to the statutory demand notice. Though non-issuance of reply is not by itself conclusive proof of liability, it certainly constitutes one relevant circumstance while appreciating the conduct of the parties. More importantly, DW-1 herself gave inconsistent evidence regarding receipt of notice. At one stage she admitted receipt of notice and admitted that her husband signed the postal acknowledgment. Subsequently she expressed ignorance regarding issuance of any reply.

These inconsistent answers further affect the credibility of her defence.

27. This Court is therefore satisfied that the complainant successfully established the foundational facts necessary for attracting Section 138 of the Negotiable Instruments Act. The appellant admitted execution of the cheques. Consequently, the statutory presumptions under Sections 118(a) and 139 operated in favour of the complainant. The appellant failed to rebut those presumptions by adducing a consistent, credible and probable defence. On the contrary, the defence suffers from material contradictions, delayed conduct, absence of contemporaneous supporting material and inconsistent explanations regarding the origin and possession of the disputed cheques. The oral evidence of DW-2 also does not probabilise the defence. Hence, the findings recorded by the learned Trial Court do not suffer from any illegality, perversity or misappreciation of evidence warranting interference in appellate jurisdiction. Accordingly, this Court answers the point for consideration in the **Negative,** holding that the appellant/accused has failed to establish that the judgment of conviction and order of sentence dated 01.12.2025 passed by the learned Senior Civil Judge & JMFC, Somwarpet in C.C. No.5/2023 is illegal, perverse or contrary to the evidence on record. The conviction recorded by the learned Trial Court is fully supported by the statutory presumptions under Sections 118 and 139 of

the Negotiable Instruments Act, the oral and documentary evidence available on record and the law laid down by the Hon'ble Supreme Court. Consequently, the appeal being devoid of merit is liable to be dismissed and the judgment of conviction and order of sentence deserve to be confirmed.

28. **Point No.2:-** In view of the findings given on Points No.1, this court proceeds to pass the following:-

ORDER

The Appeal filed by the Appellant/ accused under Section 374 of Cr.P.C., (corresponding Section 415 of BNSS-2023 is hereby **dismissed.**

The Judgment of conviction and sentence passed by the learned Senior Civil Judge & JMFC, Somwarpet dated 01.12.2025 in C.C.No. 5/2023 is hereby **confirmed.**

Office to transmit the copy of this Judgment along with the TCR to the trial court forthwith.

File be consigned to record room.

(Dictated to the Stenographer Grade-I, computerized by her, corrected, signed and then pronounced by me in the open court on this the 03rd day of July, 2026).

Sd/xxx

(SURENDRA G.)

III-Addl. District & Sessions Judge,

Kodagu-Madikeri.