KAKD030034452023

IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC, MADIKERI

PRESENT

Present :- Smt.Vinutha.D.S,. B.Sc.(Seri), L.L.B., Prl. Civil Judge & JMFC, Madikeri
Dated, this the 24th day of June, 2026

C.C. No.2417/2023

COMPLAINANT : Rakshak Credit Co-operative Society,
Rep. By its C.E.O
Smt. Danya K.L,
D/o Lokanath K.A,
Aged 27 years,
R/o: Madikeri Town,
Kodagu District.

(By Sri. H.U.N., Adv.)

-Vs-

ACCUSED : Mubarak Ali,
S/o Farook M.H,
R/o Fish Market,
Mahadevpet, Madikeri.

(By Sri. S.M.M., Adv.)

J U D G M E N T

This case emanates from complaint filed by the Complainant in PCR No.433/2023 on the file of this Court U/Sec.200 of Cr.P.C. for an offence punishable U/Sec.138 of Negotiable Instrument Act, 1881 (Herein after referred as N.I. Act for brevity).

2. **The brief facts of the case of the complainant is that;**

Complainant is a Registered Co-Operative Society and the accused is the member and share holder of the complainant society. The accused borrowed loan from the complainant society and agreed to repay the same on regular installments. After obtaining the loan, inspite of oral demands, the accused failed to repay the loan amount due of Rs.51,000/-. The complainant on several occasions demanded accused to repay the loan, for which the accused issued the cheque bearing No.010648 dated 08.08.2023 for Rs.51,000/- drawn at Bank of India, Madikeri branch. It is further stated that on 15.09.2023 the complainant bank presented the aforesaid cheque for encashment through his Banker Central Bank of India, Kushalnagara Branch. However, the said cheque was returned unpaid for the reason "funds insufficient" on 16.09.2023. Therefore, the complainant had issued a legal notice on 04.10.2023 through its counsel to the accused calling upon him to pay the cheque amount. The said notice was duly served to the accused on 10.10.2023. Inspite of receipt of notice, the accused neither replied to the notice nor paid the cheque amount to the complainant. Therefore, the complainant has filed present complaint against the accused for the offence punishable under Section.138 of Negotiable Instrument Act.

3. After taking cognizance of the offence, Sworn Statement of the Complainant was recorded and thereafter, the accused was summoned. The accused has appeared through his counsel and got enlarged on bail, copy of the Complaint was furnished to the accused as required under law. Substance of the accusation was made over and stated to the accused. His plea was recorded. Accused has pleaded not guilty and stated that he has got defence to make in support of his case.

4. To substantiate the plea leveled against the accused, the CEO of complainant society examined herself as PW.1 and produced 5 documents marked as Ex.P.1 to Ex.P.5.

5. After closure of evidence on the side of complainant, the statement of accused recorded as per the provisions under Section. 351 BNSS(Sec.313 of Cr.P.C). The accused denied all the incriminating circumstances appeared against him.

Accused had filed application U/Sec.145(2) of N.I.Act. Later, the Accused has stated that he has no cross of Pw.1 and no defence evidence. Hence cross of Pw.1 and the defence evidence was taken as nil.

6. Heard both sides. Perused the materials on record.

7. The points that arise for my determination are as under :

(1) Whether the Complainant proves that the cheque in question is issued by the Accused in discharge of legally enforceable debt or liability?

(2) Whether the Complainant further proves that the Accused has committed the offence punishable U/Sec. 138 of N.I. Act?

(3) What Order?

8. My findings are as under :

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : As per final order for the following;

REASONS

9. **Points No.1 and 2 :** Since these 2 points are intrinsically interconnected, they are taken together for common discussion. In view of the present legal position as held by our Hon'ble High Court as well as Apex Court of India in a catena of decisions as well as

relevant provisions of the Act, this court has to see whether the complainant has complied all the requirements as contained in Sec.138 of NI Act so as to bring home the guilt of the accused for the alleged offence. If so, whether the accused is able to rebut the legal presumption available to the complainant under Sec.139 of the Act by adducing probable defence or not. However, it is held by the full bench of our Apex Court in the case of ***Rangappa Vs. Mohan reported in 2010 (1) DCR 706*** **that ;**

> ***"the Statutory presumption mandated by sec.139 of the Act, does indeed include the existence of a legally enforceable debt or liability. However, the presumption U/S 139 of the Act is in the nature of a rebuttable presumption and it is open for the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested".***

Therefore, in view of the above decision once the cheque is admitted the statutory presumption would automatically fall in favour of the complainant that, the alleged cheque was issued for the discharge of an existing legally enforceable debt or liability against the accused and the burden will shift on to the accused to rebut the same.

10. The complainant has filed this complaint alleging that accused has committed offence U/Sec.138 of N.I.Act. He pleads and asserts that towards discharge of his liability, accused has issued the cheque in question bearing No.010648 dated 08.08.2023 for Rs.51,000/-. The said cheque came dishonored on presentation on 16.09.2023. Complainant has issued notice on 04.10.2023, within time stipulated calling upon accused to pay the amount covered under cheque. The said notice was served to the accused. Inspite of receipt of notice, the accused has not paid the cheque amount within 15 days, which gave rise to cause of action to file this complaint.

11. In this background, we have to analyze the documents relied by complainant in order to examine the compliance of statutory requirements envisaged U/Sec.138 of N.I.Act. Ex.P.1 is the cheque of accused and the signature of accused on Ex.P.1 is not in dispute. Ex. P.2 is Endorsement issued by bank, Ex.P.3 is legal notice, Ex.P.4 is postal receipt and Ex.P.5 is postal acknowledgment. A careful scrutiny of Ex.P.1 to 5 documents goes to show that statutory requirements of Sec.138 of N.I.Act is complied with and this complaint is filed within time. The accused has not disputed the cheque Ex.P1 and his signature on it at Ex.P1(a). When this is the circumstance, then the statutory presumptions envisaged U/Sec.118 r/w Sec.139 of N.I.Act runs in favour of the complainant.

12. No doubt, the said presumptions are rebuttable in nature. The accused can take probable defence and rebut the presumption available. Let us examine whether accused has specifically rebutted the presumptions of law. It is also settled law that accused need not step into the witness box and adduce evidence to rebut the presumption raised in favour of complainant, but accused can also rebut the presumption based on materials relied by complainant by making dents in his case.

13. On perusal of the entire record, it fortifies that, in this case Accused stated that he has no cross examination of Pw.1 and no defence evidence on his side. Accused has not led evidence on his side. So accused has failed to discharge the burden of rebuttal. It is the bounden duty of the accused to rebut the presumption raised in favour of the complainant by leading cogent and probable defence evidence. In absence of any contrary evidence, the oral and documentary evidence of Pw.1 remained unrebutted and unchallenged. Hence, this court is of the opinion that the case of

the complainant can be believed. Further, from the records it transpires that on 10.12.2025 the accused has paid Rs.10,000/- to the complainant towards cheque amount and on 12.01.2026 Rs.5,000/- and on 04.02.2026 Rs.5,000/- . Thereafter, the accused has not paid any amount. However, by making partial payment of Rs.20,000/- to the complainant, the accused has admitted his liability towards the complainant.

14. On perusal of the entire material available on record the accused has not raised any defence and also not cross-examined the PW.1 and failed to contradict the case of the complainant. Consequently, it is held that the complainant has established that the Ex.P.1 has been issued by the accused towards the discharge of legally recoverable debt. Accused has failed to rebut the presumption raised in favour of complainant U/Sec.139 of N.I. Act. Therefore, for the aforesaid reasons this court is of the opinion that, the complainant has proved his case that the issuance of cheque by the accused to the complainant towards discharge of legally recoverable debt. Hence, **Points No.1 & 2 are answered in the Affirmative.**

15. **Point No.3:** In view of my findings at Points No.1 & 2 the complainant has proved the guilt of the accused punishable under Sec.138 of N.I.Act. Learned counsel for the complainant had prayed to impose fine of double the cheque amount. No doubt the Sec.138 of N.I.Act provides punishment for dishonour of cheque for insufficiency of funds. It provides that one who is defaulter can be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of cheque or both. Thus it is clear from the aforesaid provision that it is not mandatory that in every case, the double the cheque amount shall be imposed as fine. It is purely discretionary power

of Court. **The Hon'ble Apex Court in M/S.Kalamani Textiles and another Vs. P.Balasubramanian Crl.Apeal No.123/2021 dated:10.02.2021** had observed and held that object of chapter XVII of N.I Act is not only punitive but also compensatory and restitutive provisions of N.I. Act envision a single window for criminal liability for dishonor of cheque as well as civil liability for realization of cheque amount. There needs to be a consistent approach towards awarding compensation and unless there exist special circumstance. Therefore, as per aforesaid decision of Hon'ble Supreme Court of India has not made it mandatory to levy fine up-to twice the cheque amount. But states that in exceptional circumstances the fine amount less than double the cheque amount can be levied. It is worth to note that, the offence of the nature of civil wrong. Honb'le Apex court in decision reported in **(2015)17 SCC 368 H.Pukhraj V/s D.Parasmal,** observed that, observed that, having regard to the purpose for loan borrowed; length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount along with litigation cost. In the present case, the alleged loan said to be is borrowed for business purpose. Considering all these aspects, this court proceed to pass the following;

ORDER

Acting U/Sec.278(2) BNSS [Sec.255 (2) of Cr.P.C] the accused is hereby convicted for the offence punishable under Sec.138 of N.I.Act and sentenced to pay fine of Rs.55,500/- (Rupees Fifty Five Thousand only) in default he shall undergo simple imprisonment for 6 months.

Acting u/s 395(1)(b) BNSS [Sec.357(1)(b) of Cr.P.C] it is ordered that Rs.55,000/- (Fifty five thousand Five Hundred only) shall be paid to the complainant towards the compensation, and the remaining fine amount of Rs.500/- shall be paid to the State.

The bail bond of accused stands cancelled.

Office to provide free copy of this judgment to the accused forthwith.

(Dictated to the Stenographer directly on computer, then corrected and pronounced by me in the Open Court on this the 24^{th} day of **June 2026**).

Sd/-xx
(VINUTHA D.S.)
Prl. Civil Judge & JMFC.,
Madikeri.

A N N E X U R E

I. List of witnesses examined on behalf of the Complainant:

PW.1	Danya K.L

II. List of documents marked on behalf of the Complainant:

Ex.P.1	Cheque
Ex.P.1(a)	Signature of accused
Ex.P.2	Bank endorsement
Ex.P.3	Legal notice
Ex.P.4	Postal receipt
Ex.P.5	Postal acknowledgment

III. List of witnesses examined on behalf of the accused:

NIL

IV. List of documents marked on behalf of the accused:

NIL

Sd/-xx
Prl. Civil Judge & JMFC.,
Madikeri.