KAKD200006942023

IN THE COURT OF THE CIVIL JUDGE & JMFC, KUSHALNAGAR

PRESENT : SMT. CHAITHRA L, BBM. LLB.,
Civil Judge & J.M.F.C.,
Kushalnagar.

DATED : This 21st day of July 2026

C.C. No.490/2023

COMPLAINANT : Ramesh P.N,
S/o late Nanjunda
Aged about 45 years,
R/at Niluvadi village,
Harnahalli Hobli,
Periyapatna Taluk, Mysore.

(By Sri.B.N Santhosh Kumar, Advocate)

V/S.

Accused: Jameer M.M,
S/o Anwar M.P,
Aged 30 years,
R/at Badrunissa Badavane,
2nd Block, Kushalanagar.

(By Sri.H.C. Mohan Kumar, Advocate)

J U D G M E N T

The complainant has instituted the present complaint against the accused alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act.

2. The facts of the Complainant case are as under :

The complainant and the accused are known to each other. On 10.03.2022, the accused borrowed a sum of ₹4,58,000/- from the complainant for the purpose of his legal necessities, Financial requirements, capital investments for his business and agreed to repay the same within a short period. However, the accused failed to repay the loan amount despite repeated demands. Subsequently, towards discharge of the said liability, the accused issued a cheque in favour of the complainant bearing No.139222 dated 24.01.2023 for ₹4,58,000/- drawn on Canara Bank, Kushalangar Branch. The complainant presented the said cheque through his banker, Bank of Baroda, Kushalnagar branch. The cheque was returned unpaid with the endorsement **"Drawers Signatures differs"** on 30.01.2023. Thereafter, the complainant caused issuance of a statutory legal notice dated 24.02.2023 calling upon the accused to pay the cheque amount. The notice was served on 25.02.2023 . In spite of having knowledge of the notice, the accused failed to make payment of the cheque amounts. Hence, the present complaint came to be filed.

3. The complainant thereafter presented a private complaint before this Court, which came to be registered. Upon registration of the complaint, the sworn statement of the complainant was recorded. On perusal of the complaint, sworn statement, and the documents produced, this Court found prima facie material against the accused and accordingly took cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act and issued process to the accused.

4. The summons was duly served on the accused. Pursuant to the service of summons, the accused appeared before the Court and was enlarged on bail. Thereafter, the substance of accusation was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. Subsequently, the statement of the accused under Section 313 of Cr.P.C. was recorded by putting to

him all the incriminating circumstances appearing in the evidence, which the accused denied and opted to lead defence evidence.

5. In view of the guidelines laid down by the Hon'ble Supreme Court in *Indian Bank Association & Ors. v. Union of India & Ors.*, the evidence recorded at the stage of sworn statement was treated as the examination-in-chief of the complainant. In order to substantiate his case, the complainant examined himself as P.W.1 and relied upon documents marked as Ex.P.1 to Ex.P.5 . As no application was initially filed for recalling P.W.1, the matter was posted for arguments. Subsequently, P.W.1 was recalled and subjected to cross-examination. On a written application filed by the learned counsel for the accused, permission was granted to lead defence evidence. Accordingly, the accused examined himself as D.W.1. The learned counsel for the complainant did not choose to cross-examine D.W.1. Thereafter, the matter was posted for final arguments.

6. Heard the learned advocate for accused and learned advocate for complainant.

7. On hearing and perusal of the relevant records on hand, the following points arise for the determination of this court:

:POINTS:

1. Whether the complainant proves that accused had issued a cheque bearing No.**139222** dated: **24.01.2023** for the legally enforceable debt of **Rs.4,58,000/-** drawn on **Canara Bank, Kushalangar Branch,** when the said cheque was presented to the bank i.e.**, Bank of Baroda, Kushalangar Branch** the said cheque dishonored with shara **" Drawers Signature differs"** and the complainant issued the legal notice demanding the cheque amount to be paid within time and that the accused did not repay the money thereby committing an offence punishable under section 138 of the Negotiable Instruments act, 1881?

2. What order ?

8. This court answers to the above said Points are as follows:-

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

REASONS:

9. Points No.1:- The burden to prove that all the essential ingredients necessary to get the offence under section 138 of NI Act, 1881 attracted to the case is on the complainant.

10.This Court has already narrated the facts leading to the filing of the present complaint. In order to substantiate the averments made therein, the complainant has produced the cheque dated **24.01.2023**, the bank endorsement dated **30.01.2023**, the legal notice dated **24.02.2023**, the postal receipt, and Postal Acknowledgment, which are marked as **Ex.P1 to Ex.P5** . Ex.P1 is the cheque drawn on the bank account of the accused, and Ex.P1(a) is the admittedsign ature of the accused. Since the accused has not disputed his signature on the cheque, the statutory presumption under Sections **118(a)** and **139** of the Negotiable Instruments Act arises in favour of the complainant. The bank endorsement further establishes that the cheque was presented within its period of validity and was dishonoured with the endorsement **"Drawers Signature differs."** The complainant thereafter issued the statutory legal notice within the period prescribed under Section 138 of the Negotiable Instruments Act, as evidenced by Ex.P3, and the said notice was duly served on the accused as reflected in Ex.P5. Despite service of notice, the accused failed to comply with the demand for payment within the stipulated period. Thus, the complainant has complied with all the mandatory requirements contemplated under Section 138 of the Negotiable Instruments Act, and the essential ingredients constituting the offence under the said provision stand fulfilled. Consequently, the offence punishable under Section 138 of the Negotiable Instruments Act is attracted to the facts of the present case.

11. After the examination-in-chief of the complainant was concluded, during the course of cross-examination, the accused suggested that he had already paid a portion of the cheque amount and further stated that he is willing to pay the balance amount of **₹2,20,000/-** to the complainant within nine months, i.e., on or before **20.04.2027**. In response, the complainant stated that he is willing to accept the said amount. Except for the aforesaid suggestion, the accused did not cross-examine the complainant on any other material aspect of the case. The said suggestion amounts to a clear admission of the transaction and the subsisting liability arising therefrom and is wholly inconsistent with any defence disputing the

existence of a legally enforceable debt or liability. Such an admission made during the course of cross-examination substantially corroborates the case of the complainant and further strengthens the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act.

12. The accused then entered the witness box and deposed that he had already paid a portion of the cheque amount and is ready to pay the remaining balance of Rs. 2,20,000/- within nine months i.e., on or before 20.04.2027. The learned advocate for the complainant, who was present during the cross-examination, did not cross-examine D.W.1. Hence, the complainant has effectively accepted the compensation amount proposed by the accused. In view of the admissions made and the evidence on record, this court is of the considered opinion that the complainant has conclusively and convincingly proved his case. **Accordingly, Point No. 1 is answered in the Affirmative.**

13. Point No.2 :- The offence under Section 138 of the Negotiable Instruments Act is primarily compensatory in nature, with the punitive aspect intended mainly to ensure enforcement of such compensation. **The Hon'ble Supreme Court of India, in *Meters and Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560 : 2017 SCC OnLine SC 1197 : (2018) 1 SCC (Cri) 477 : (2018) 1 SCC (Civ) 405, at page 572, has observed as follows:**

"...The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at a later stage subject to appropriate compensation as may be found acceptable to the parties or the court."

14. In the present case, the complainant initiated proceedings to enforce the compensatory element under Section 138 for a cheque amount of Rs. 4,58,000/-. It is admitted by the complainant that he has received part payment from the accused

during the trial and has agreed to receive the remaining amount of Rs. 2,20,000/- within 9 months i.e., on or before 20.04.2027. The records also indicate that during the trial, the accused admitted to having paid a portion of the cheque amount. On the other hand, during evidence, the accused has further admitted that he is ready to pay the remaining balance amount as well.

15. However, once the offence is complete, any subsequent payment does not absolve the accused of criminal liability. Nevertheless, such payment may have a bearing on the Court while determining the appropriate sentence. This position is supported by the judgment of the ***Hon'ble Supreme Court of India in Rajneesh Aggrawal v. Amit J. Bhalla, AIR 2001 SC 518(B).***

16. Applying the principles laid down by the Hon'ble Supreme Court in *Meters and Instruments (P) Ltd. v. Kanchan Mehta* (supra) and *Rajneesh Aggrawal v. Amit J. Bhalla*, this court is of the considered view that the compensatory aspect of Section 138 of the Negotiable Instruments Act should be

enforced in this case. The accused has admitted and expressed readiness to pay the remaining balance of Rs.2,20,000/- to the complainant. Therefore, this Court finds that directing payment of the remaining amount of Rs. 2,20,000/- would meet the ends of justice and adequately serve the compensatory objective underlying Section 138 of the Negotiable Instruments Act. Hence, the conviction and consequential order are being passed with due emphasis on securing the compensatory relief to which the complainant is legally entitled.

17. In the light of the finding given on point no.1 and in the facts and circumstances of the case and in view of this court findings on Point No.2, this court proceed to pass the following;

ORDER

In exercise of power conferred under section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable u/s 138 of N.I.Act.

Accused is hereby sentenced to pay a fine of Rs.2,20,000/-(Rupees Two Lakh Twenty thousand only) and in default shall undergo a simple imprisonment for a terms of 6 months.

The fine amount of Rs.2,20,000/-(Rupees Two Lakh Twenty thousand only) shall be payable to the complainant as compensation under section 357 of Cr.PC on or before 21.08.2026.

Bail Bond of the accused and surety shall stand canceled forthwith.

Office is directed to supply the free copy of the judgment to the accused.

(Dictated to the stenographer, transcribed by her, corrected, then signed by me and pronounced in the open court on this the 21st day of July 2026)

Sd/xxx
(Chaithra L),
Civil Judge & JMFC,
Kushalnagar.

ANNEXURE

List of witnesses examined for Complainant :

PW.1 : Ramesh P.N

List of documents marked for Complainant:

Ex.P-1 : Cheque

Ex.P-1(a) : Signature of accused

Ex.P-2 : Bank Endorsements

Ex.P-3 : Legal notice

Ex.P-4 : Postal Receipt

Ex.P-5 : Postal acknowledgment

List of witnesses examined for accused :

NIL

List of Documents marked for accused:

NIL

Sd//xxx
Civil Judge & JMFC.,
Kushalnagar.