KAKD200021022021

IN THE COURT OF THE CIVIL JUDGE & JMFC,
KUSHALNAGAR .

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

DATED : **This 17th day of June, 2026**

C.C. No.1493/2021

COMPLAINANT : Nataraja S,
S/o Siddappa,
Aged 46 years,
R/at Hulugunda(Harangi) village,
Kushalnagar.

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

V/S.

ACCUSED : Shiju M,
S/o Prabhakaran P.K,
Aged 40 years,
R/at Kaveri Bakeri
B.M Road, Near DCC Bank,
Kushalngar Town, Kushalnagar.

(By Sri. K.S Padmanabha, Advocate)

J U D G M E N T

Brief statement of reasons for the decision of this case:

As per the case of the complainant, the complainant and the accused were known to each other. It is the case of the complainant that on 15.01.2019, the accused approached him seeking a hand loan of Rs.2,00,000/- for meeting family legal necessities and for establishing a bakery. The accused assured the complainant that he would repay the loan within six months. Believing the representation made by the accused, the complainant advanced a hand loan of Rs.2,00,000/-. It is further contended that when the complainant demanded repayment of the loan , towards discharge of his legally enforceable debt, issued Cheque No.579842 dated 04.08.2021 for a sum of Rs.2,00,000/-, drawn on State Bank of India, Kuthuparamba Branch, Kerala, in favour of the complainant.

2. As instructed by the accused, the complainant presented the said cheque for encashment through his banker. However, the cheque was dishonoured and returned unpaid with the endorsement "Funds Insufficient" vide bank endorsement dated 06.08.2021. Thereafter, the complainant caused a statutory

legal notice dated 09.08.2021 to be issued to the accused demanding payment of the cheque amount. The notice was served on the accused on 10.08.2021. Despite service of the notice, the accused failed to pay the cheque amount within the statutory period. Consequently, the complainant filed the present complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. On the basis of the complaint and the pre-summoning evidence adduced by the complainant, cognizance was taken and the accused was summoned to face trial. Upon his appearance, the accused was enlarged on bail. After hearing both the parties, the substance of accusation under Section 251 of the Code of Criminal Procedure, 1973, for the offence punishable under Section 138 of the Negotiable Instruments Act, was explained to the accused. The accused pleaded not guilty and claimed to be tried. The accused initially did not file any application seeking permission to cross-examine PW.1. Consequently, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. Thereafter, on the application filed by the accused, PW.1 was recalled and was fully cross-examined by the learned counsel for the accused. Subsequently, the accused

entered the witness box and examined himself as DW.1 in support of his defence. Since the accused denied the signature appearing on the cheque in question, the disputed signature was referred to the Forensic Science Laboratory (FSL) for expert opinion. Pursuant to the order of the Court, the Court Commissioner submitted the expert report. The Court Commissioner was examined as CW.1, and the FSL report was marked as Ex.C.1.

4. In support of his case, the complainant examined himself as PW.1 and filed his affidavit in lieu of examination-in-chief, reiterating the averments made in the complaint. He relied upon the cheque in question marked as Ex.P.1, the signature of the accused thereon marked as Ex.P.1(a), the cheque return memo as Ex.P.2, the legal demand notice as Ex.P.3, the postal acknowledgment as Ex.P.4, the signature of the accused on the acknowledgment as Ex.P.4(a), and the RTC extract as Ex.P.5. The accused examined himself as DW.1 and was cross-examined by the complainant. No documents were produced or marked on behalf of the accused. The Court Commissioner, who submitted the FSL report regarding the disputed signature, was

examined as CW.1, and the report was marked as Ex.C.1 and CW1 was cross examined by complainant counsel.

5. On the basis of the pleadings, evidence, and the rival contentions of the parties, the following points arise for determination:

1. Whether the complainant proves beyond reasonable doubt that the accused issued Cheque No.579842 dated 04.08.2021 for a sum of Rs.2,00,000/-, drawn on State Bank of India, Kuthuparamba Branch, Kerala, in discharge of a legally enforceable debt or liability, and that upon its presentation, the cheque was dishonoured with the endorsement "Funds Insufficient" vide bank memo dated 06.08.2021, and despite service of the statutory legal notice dated 09.08.2021, the accused failed to pay the cheque amount within the prescribed period, thereby committing an offence punishable under Section 138 of the Negotiable Instruments Act?

2. What order?

6. This Court has heard the arguments advanced by the learned counsel for the complainant and the learned counsel for the accused. The oral and documentary evidence and written arguments available on record has been carefully perused.

<u>Written Arguments filed by the complainant:</u>

7. In the written arguments, the complainant has reiterated that the complainant and the accused were well acquainted with each other. It is contended that on 15.01.2019, the accused borrowed a hand loan of Rs.2,00,000/- in cash from the complainant for meeting his family legal necessities, clearing his existing hand loans, and establishing a bakery, assuring that the amount would be repaid within six months. When the complainant demanded repayment, the accused issued Cheque No.579842 dated 04.08.2021 for Rs.2,00,000/- drawn on his account bearing No.32033362863 maintained with State Bank of India, Kuthuparamba Branch, Kerala, in favour of the complainant. As instructed by the accused, the complainant presented the cheque through his banker, State Bank of India, Kushalnagar Branch. However, the cheque was dishonoured on 06.08.2021 with the endorsement "Funds Insufficient." Thereafter, the complainant issued a statutory legal notice dated 09.08.2021, which was duly served upon the accused on 10.08.2021. Despite receipt of the notice, the accused neither replied to the notice nor paid the cheque amount, thereby compelling the complainant to institute the present complaint under Section 138 of the Negotiable Instruments Act.

8. It is further submitted that before this Court, the complainant has produced the cheque, bank endorsement, copy of the legal notice, postal receipt, postal acknowledgment and RTC extracts to establish not only the transaction but also his financial capacity to advance the loan. According to the complainant, the oral testimony of PW.1 is consistent with the averments made in the complaint. PW.1 has deposed that he has known the accused for nearly ten years, that the accused was working as a cook in Kaveri Bakery at Kushalnagar, and that the loan was advanced for the accused's legal necessities, repayment of hand loans, and establishment of his own bakery. PW.1 has further stated that the loan amount was paid from the sale proceeds of arecanut and that the payment was made in cash.

9. The complainant has also pointed out that although the accused has taken a defence that one Ashok, his co-worker in Kaveri Bakery, had taken away the unsigned cheque and misused it, the accused has not examined Ashok as a witness before the Court. Nor has he produced any material to substantiate this defence. The complainant contends that the accused has falsely asserted that he had issued stop-payment

instructions to the State Bank of India, Kuthuparamba Branch, Kerala, but has failed to produce any documentary proof of such instructions. It is further argued that the accused never disputed the signature on the cheque either by replying to the statutory notice or by lodging any police complaint alleging theft or misuse of the cheque. The plea that the signature is not his has been raised only at the final stage of the proceedings. Therefore, according to the complainant, the defence is an afterthought and is not worthy of acceptance.

10. With regard to the handwriting expert's report, the complainant submits that the report cannot be relied upon. It is argued that the expert compared only the signature found on Ex.P.1 with the signatures made by the accused before the Court and did not obtain or compare the specimen signature available in the records of the State Bank of India, Kuthuparamba Branch, where the accused maintained his account. The complainant contends that the Bank Manager, who was the best person to produce the specimen signature maintained by the bank, was never examined. Consequently, the opinion of the handwriting expert is incomplete and unreliable.

11. The complainant has further contended that if the signature on the cheque had genuinely differed from the specimen signature available with the bank, the cheque would have been returned with the endorsement "Signature Differs." Instead, the cheque was dishonoured solely for the reason "Funds Insufficient," which, according to the complainant, clearly indicates that the bank found no discrepancy in the signature. It is also argued that the handwriting expert has merely opined that the disputed signature appears to have been written slowly and differs from the admitted signatures. However, the expert has not stated the age of the signatures, whether the same person could intentionally vary his signature, or whether a person could deliberately sign with the left hand or in a different manner to avoid identification. The complainant further alleges that the accused deliberately signed several documents before the Court in different styles during the course of the proceedings, thereby influencing the comparison process. According to the complainant, these aspects create a serious doubt regarding the correctness and impartiality of the expert's opinion.

12. Finally, it is contended that the handwriting expert was not effectively examined before the Court regarding these

deficiencies in the report. Therefore, the complainant submits that the expert opinion deserves to be discarded and that the other oral and documentary evidence on record sufficiently establishes the guilt of the accused. Accordingly, it is prayed that the accused be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act.

Written Arguments filed by the accused:

13. The learned counsel for the accused, in the written arguments, has contended that the accused has consistently denied the execution of Ex.P.1-cheque and has specifically disputed the signature appearing thereon. It is argued that once the signature itself is disputed, the initial burden lies upon the complainant to establish that the cheque belongs to the accused and that the signature found on it is that of the accused. It is further contended that the specific defence of the accused is that one Ashok, who was his co-worker in a bakery, had stolen an unsigned cheque belonging to the accused and that the said cheque ultimately came into the possession of the complainant. According to the accused, the complainant has misused the said

cheque and filed the present false complaint with an intention to make unlawful gain.

14. It is further submitted that during the course of the trial, Ex.P.1-cheque was referred to a handwriting expert for scientific examination. The expert, after examination, submitted his report opining that the disputed signature found on Ex.P.1-cheque does not tally with the admitted signatures of the accused. According to the learned counsel, the expert's opinion supports the defence of the accused and creates serious doubt regarding the genuineness and execution of Ex.P.1-cheque. Though expert evidence is advisory in nature, it is a relevant piece of evidence under Section 45 of the Indian Evidence Act and cannot be brushed aside in the absence of any contrary material.

15. It is also argued that the complainant has failed to produce any independent evidence to establish that the accused had signed and delivered Ex.P.1-cheque. Mere possession of the cheque by the complainant, by itself, does not prove its execution. It is further submitted that the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act arise only when the execution of the cheque is either admitted or

proved. Since the accused has specifically denied his signature and the expert opinion supports such denial, the complainant cannot claim the benefit of the statutory presumptions.

16. It is further contended that the complainant has neither examined any independent witness who was present at the time of the alleged loan transaction nor produced any documentary evidence to establish the advancement of the alleged loan amount. Therefore, the existence of a legally enforceable debt itself is doubtful. It is argued that the evidence adduced by the accused is sufficient to raise a probable defence and that the settled position of law is that an accused is not required to prove his defence beyond reasonable doubt, but only on the touchstone of preponderance of probabilities. Accordingly, it is prayed that, in view of the expert opinion, the denial of the signature, the absence of proof regarding execution of the cheque, and the failure of the complainant to establish the alleged legally enforceable debt, the complainant has failed to prove the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act and, therefore, the accused is entitled to be acquitted.

17. After hearing the arguments advanced by the learned counsel for the parties, and upon appreciation of the oral and documentary evidence available on record, this Court answers the above points for determination as follows:

Point No.1: In the Affirmative.

Point No.2: As per the final order,

for the following:

REASONS

18. **Point No.1:** Before appreciating the evidence available on record, it is necessary to examine whether the complainant has established the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant is required to prove that the cheque in question was issued by the accused on an account maintained by him towards discharge of a legally enforceable debt or liability; that the cheque was presented within the period of its validity; that it was dishonoured for the reasons contemplated under the Act; that the complainant caused issuance of a statutory demand notice within the prescribed period; and that despite service of such notice, the accused failed to make payment of the cheque amount within fifteen days. Once the complainant proves the

foundational facts regarding execution of the cheque, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act come into operation, whereupon the burden shifts to the accused to rebut the same by raising a probable defence on the touchstone of preponderance of probabilities. It is in the light of these settled principles that the evidence adduced by both parties is required to be appreciated.

19. In order to establish the above ingredients, the complainant examined himself as PW.1 and filed his affidavit in lieu of examination-in-chief reiterating the facts pleaded in the complaint. PW.1 has deposed that the accused had approached him on 15.01.2019 seeking a hand loan of Rs.2,00,000/- for family legal necessities, repayment of hand loans and for establishing a bakery. According to him, considering the acquaintance between them, he advanced the said amount in cash and the accused agreed to repay the same within six months. PW.1 has further stated that upon repeated demands for repayment, the accused issued Ex.P.1-cheque dated 04.08.2021 for Rs.2,00,000/- drawn on State Bank of India, Kuthuparamba Branch, Kerala. He has further deposed that the cheque, when presented through his banker, was dishonoured under Ex.P.2

with the endorsement "Funds Insufficient". According to PW.1, despite issuance of statutory notice under Ex.P.3 and its service under Ex.P.4, the accused failed to comply with the demand, compelling him to institute the present complaint.

20**.** In support of his oral testimony, PW.1 has relied upon Ex.P.1 to Ex.P.5. Ex.P.1 is the cheque in question and Ex.P.1(a) is the disputed signature attributed to the accused. Ex.P.2 is the bank endorsement dated 06.08.2021 disclosing that the cheque was dishonoured for the reason "Funds Insufficient". Ex.P.3 is the office copy of the statutory legal notice, while Ex.P.4 and Ex.P.4(a) establish that the notice was duly served upon the accused. Ex.P.5 is the RTC extract relied upon by the complainant to demonstrate his ownership of agricultural property and his financial capacity to advance the loan amount. The documentary evidence produced by PW.1 substantially supports the version spoken to by him in his examination-in-chief. The accused has also not disputed that Ex.P.1 pertains to his bank account, though he disputes the signature appearing thereon.

21**.** The evidence of PW.1 further discloses that the statutory requirements contemplated under the Negotiable Instruments Act have been duly complied with. The cheque was presented within its validity period, it was returned unpaid under Ex.P.2, the legal notice was issued within the period prescribed under law, the notice was admittedly served upon the accused, and the complaint has been instituted within the period of limitation. These aspects are borne out from the documentary evidence and have not been seriously disputed during the course of trial. Therefore, the procedural compliance required under Section 138 of the Negotiable Instruments Act stands satisfactorily established by the complainant.

22. During the course of cross-examination, PW.1 has deposed that he is carrying on vegetable commission business and is also an agriculturist. He has further stated that though he does not possess any licence for carrying on the commission business, he owns agricultural lands wherein arecanut, coconut and coffee are cultivated. PW.1 has consistently maintained that the amount advanced to the accused was out of the sale proceeds of arecanut. The mere absence of a licence for commission business does not render his testimony unreliable, particularly when the loan transaction pleaded by him is not stated to have arisen out of his business activities but from his personal funds.

Therefore, this admission does not probabilise the defence put forth by the accused.

23. PW.1 has further deposed that the arecanut sold by him measured approximately ten tonnes and that the sale was effected in favour of one Anand of Siddapura. He has deposed that he has not produced any weighment slips, sale receipts or documentary proof relating to the said sale and that the amount was received in cash. He has also deposed that the loan amount was not withdrawn from his bank account and that no promissory note, receipt or written agreement was executed by the accused at the time of advancing the loan. However, these admissions, in the considered opinion of this Court, do not by themselves demolish the complainant's case. Friendly loan transactions between persons who are admittedly acquainted are often advanced in cash without formal documentation. The absence of such documents may require careful scrutiny of the evidence, but it is not sufficient to discard the transaction altogether when the complainant relies upon a negotiable instrument allegedly issued towards repayment.

24. PW.1 has further stated during his cross-examination that he had known the accused for nearly ten years and that the

accused was working as a cook in Kaveri Bakery, Kushalnagar. He has also stated that the accused had informed him that the loan was required for meeting his legal necessities, discharging earlier hand loans and for establishing a bakery. Though PW.1 admitted that he was unaware of the name of the bakery subsequently started by the accused, such admission does not affect the substratum of the complainant's case. A lender cannot be expected to possess complete knowledge regarding the subsequent business affairs of the borrower. The said admission, therefore, does not render the transaction improbable.

25. It has also come in the evidence of PW.1 that he was not acquainted with one Ashok and was unaware whether Ashok and the accused were residing together. Suggestions were put to PW.1 that there was no transaction between him and the accused and that Ex.P.1-cheque was handed over by Ashok. PW.1 has categorically denied all such suggestions. Except these suggestions made during cross-examination, no material was available before the Court at that stage to indicate the involvement of Ashok in the alleged transaction. Mere suggestions denied by a witness do not constitute evidence and cannot discredit an otherwise consistent version.

26. PW.1 has further denied the suggestion that after issuance of the statutory notice the accused had submitted any application before his banker regarding misuse of the cheque. He has also denied the suggestion that the present complaint has been instituted by obtaining the cheque from Ashok. It is relevant to note that no material contradiction has been elicited in the cross-examination of PW.1 with regard to the issuance of Ex.P.1, its dishonour under Ex.P.2, service of statutory notice or the existence of acquaintance between the parties. Thus, the cross-examination has not shaken the credibility of PW.1 on the material particulars of the transaction. Having carefully appreciated the evidence of PW.1 in its entirety, this Court finds that his testimony remains consistent on all material aspects and receives substantial corroboration from Ex.P.1 to Ex.P.5. The admissions elicited during cross-examination relate principally to the absence of documentary proof regarding the source of funds and the absence of written loan documents. In the facts of the present case, those admissions are insufficient to discard the otherwise reliable testimony of PW.1. Consequently, the complainant has succeeded in placing before the Court the foundational facts necessary for consideration of the defence set up by the accused.

27. In order to rebut the case of the complainant, the accused entered the witness box as DW.1. In his examination-in-chief, he has denied borrowing any amount from the complainant. According to him, one Ashok, who was working along with him in Kaveri Bakery and residing in the same room, had stolen the cheque belonging to him, which ultimately came into the hands of the complainant. It is also his case that he had never issued Ex.P.1 towards discharge of any liability and that the complainant has misused the said cheque by creating a false transaction. DW.1 during cross examination has deposed that though he had received the statutory notice issued by the complainant, he did not send any reply thereto. He has stated that he had submitted an application before his banker regarding the cheque. However, except making such a statement, no document has been produced to establish that any such application was in fact submitted. Likewise, despite alleging theft and misuse of his cheque, DW.1 has admitted that he did not lodge any complaint either against Ashok or against the complainant. These omissions assume significance while appreciating the probability of the defence subsequently put forward by the accused.

28. The specific defence of the accused is that one Ashok, who was allegedly residing with him and working in Kaveri Bakery, had stolen an unsigned cheque belonging to him and that the said cheque ultimately reached the hands of the complainant. However, except the bare testimony of DW.1, there is absolutely no independent material placed before this Court to substantiate the said defence. The accused has neither examined Ashok nor produced any other witness acquainted with the alleged incident. Though DW.1 has admitted during his cross-examination that he does not know the present whereabouts of Ashok, no explanation is forthcoming as to why no attempt was made to secure his presence before the Court or to place any material showing that Ashok was in fact residing with him during the relevant period. In the absence of any corroborative evidence, the plea regarding theft of the cheque remains a mere assertion incapable of creating a probable defence.

29**.** Equally significant is the conduct of the accused immediately after receiving the statutory notice issued by the complainant. DW.1 has admitted that the notice was served upon him. If really the cheque had been stolen and misused, the normal conduct expected of a prudent person would have been to immediately issue a reply denying the transaction, disputing the signature and alleging theft of the cheque. Admittedly, no such reply was issued. Though the accused has stated that he submitted an application before his banker, the said application has not been produced before the Court despite admitting in his cross-examination that there was no impediment for producing the same. This unexplained omission considerably weakens the defence set up by the accused. Further, the accused has also admitted that he has not lodged any police complaint either against Ashok or against the complainant alleging theft or misuse of the cheque. The explanation offered by DW.1 that it was the period of the COVID-19 pandemic and, therefore, he could not approach the police does not inspire confidence. Even after normalcy was restored, no complaint has admittedly been lodged till the date of his evidence. Had the defence of theft been genuine, nothing prevented the accused from taking appropriate legal action at least after receipt of the statutory notice or during the pendency of the present proceedings. The prolonged silence on the part of the accused is wholly inconsistent with the conduct expected of an ordinary prudent person.

30. Another important aspect emerging from the evidence of DW.1 is that the accused does not dispute that Ex.P.1 belongs to his account . His dispute is confined only to the signature. This admission assumes significance because it considerably narrows the controversy between the parties and requires the Court to carefully examine whether the denial of signature is genuine or has been taken as a defence to avoid liability. In view of the specific denial of the signature by the accused, this Court referred the disputed signature appearing on Ex.P.1 along with the admitted signatures of the accused found on the vakalath, plea and statement recorded under Section 313 of the Code of Criminal Procedure to the handwriting expert for scientific examination. Pursuant to the reference, the handwriting expert submitted her report, which has been marked as Ex.C.1 through CW.1. The opinion of the expert, therefore, requires careful examination in the light of the remaining evidence available on record.

31. CW.1, the handwriting expert, has deposed that she received the disputed and admitted signatures pursuant to the order of this Court and after examination submitted Ex.C.1 report. However, during the course of cross-examination, CW.1 has

made certain admissions which assume considerable importance while appreciating the evidentiary value of Ex.C.1. She has admitted that the comparison was confined only to the questioned signature and the admitted signatures forwarded by the Court. She has further admitted that the specimen signature maintained by the drawee bank was not available for comparison. The witness has also admitted that her report does not indicate the age of the signatures and the ink used. These admissions indicate that the opinion expressed under Ex.C.1 is necessarily confined to the limited material made available for comparison and not on the basis of the best possible standards available from the bank records.

32. The principal contention urged on behalf of the accused, both in the course of arguments and in the written submissions, is that once the signature on Ex.P.1 has been specifically denied and the handwriting expert has opined that the disputed signature does not tally with the admitted signatures, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act cease to operate. This Court is unable to accept the said contention in its entirety. An expert opinion rendered under Section 45 of the Indian Evidence Act is only an advisory

opinion intended to assist the Court. It is well settled that such opinion is not conclusive in nature and the Court is required to appreciate the same in conjunction with the entire oral and documentary evidence available on record. Therefore, Ex.C.1 cannot be viewed in isolation while deciding the controversy involved in the present case. On a careful reading of Ex.C.1 and the evidence of CW.1, it becomes evident that the comparison was undertaken only with reference to the admitted signatures available on the vakalath, plea and the statement of the accused recorded under Section 313 of the Code of Criminal Procedure. Admittedly, no specimen signature maintained by the drawee bank at the time of opening of the account was secured or forwarded for comparison. Equally, no contemporaneous admitted signatures of the accused executed during the period proximate to the issuance of Ex.P.1 were made available to the expert. Therefore, the very foundation on which the opinion has been rendered stood confined to the limited admitted signatures supplied by the Court. Consequently, the persuasive value of Ex.C.1 necessarily depends upon the reliability of those admitted signatures themselves.

33. During the appreciation of the record, this Court has carefully perused the admitted signatures of the accused available on the vakalath, plea and the statement recorded under Section 313 of the Code of Criminal Procedure. Even on a plain visual examination, noticeable variations are apparent amongst those admitted signatures themselves. This Court is conscious that it is not expected to substitute its own opinion for that of a handwriting expert. Nevertheless, while appreciating the evidentiary value of Ex.C.1, the Court cannot ignore the fact that the admitted signatures themselves do not exhibit complete uniformity. The visible variations found in those admitted signatures indicate that the accused has not maintained a consistent pattern of signing before the Court. In such circumstances, the possibility of conscious variation in the admitted signatures furnished during the proceedings cannot be completely ruled out. Therefore, this Court is not persuaded to treat those signatures as the safest standards for scientific comparison in the absence of the specimen signatures maintained by the bank. Another important circumstance which cannot be overlooked is the reason assigned by the drawee bank while returning Ex.P.1. Ex.P.2 clearly discloses that the cheque was dishonoured for the reason "Funds Insufficient". At no point

has the drawee bank returned the cheque with the endorsement "Signature Differs" or "Drawer's Signature Incomplete". Ordinarily, when the signature found on a cheque materially differs from the specimen signature available with the bank, the cheque would be returned on that specific ground. The absence of such an endorsement assumes significance in the facts of the present case, particularly when the accused has taken a complete denial of his signature. Though this circumstance by itself may not be conclusive, it certainly constitutes a relevant piece of evidence which substantially weakens the defence based solely upon Ex.C.1.

34. The written arguments filed by the complainant also deserve acceptance to the extent that the accused, despite disputing his signature during trial, neither replied to the statutory notice alleging forgery nor lodged any complaint against Ashok or the complainant regarding theft or misuse of the cheque. The plea that Ashok had stolen an unsigned cheque remained wholly unsubstantiated throughout the trial. No independent witness has been examined to establish that Ashok was residing with the accused or that he had access to the cheque. Even the alleged application said to have been submitted to the bank has not been

produced before this Court. Thus, the defence remains a mere explanation unsupported by acceptable evidence and falls short of the standard required to rebut the statutory presumptions on the touchstone of preponderance of probabilities. The learned counsel for the accused has further contended that the complainant has failed to establish the advancement of the loan by producing independent witnesses or documentary proof. This submission also cannot be accepted. The transaction pleaded by the complainant is a friendly hand loan between two persons admittedly acquainted with each other. The law does not insist that every such transaction should invariably be supported by written agreements, promissory notes or independent witnesses. The complainant has entered the witness box, subjected himself to an elaborate cross-examination and has produced the original cheque, bank endorsement, statutory notice and the postal acknowledgment. His evidence has remained substantially consistent on all material particulars. Merely because certain documents relating to the source of funds have not been produced, the otherwise trustworthy evidence of PW.1 cannot be discarded.

35. The defence has also relied upon the proposition that the presumption under Sections 118 and 139 of the Negotiable Instruments Act would arise only after the execution of the cheque is proved. There can be no quarrel with the said proposition. However, in the present case, the totality of the evidence, including the admitted ownership of the cheque, the reason for dishonour being "Funds Insufficient", the conduct of the accused after receipt of the statutory notice, the absence of any contemporaneous complaint alleging theft or forgery and the deficiencies noticed in Ex.C.1, cumulatively persuade this Court to hold that the accused has failed to probabilise his plea that the signature on Ex.P.1 is not his. Consequently, the statutory presumptions available to the complainant continue to operate.

36**.** The Hon'ble Supreme Court in **Rangappa v. Mohan** and **Basalingappa v. Mudibasappa** has consistently held that once the foundational facts are established, the burden shifts upon the accused to rebut the statutory presumptions by placing before the Court a probable defence. The accused is not required to prove his defence beyond reasonable doubt. Nevertheless, the explanation offered must be probable, consistent and supported by acceptable material. In the present case, the defence put forward by the accused suffers from material omissions, remains unsupported by independent evidence and does not inspire the confidence of the Court. Consequently, the accused has failed to discharge the burden cast upon him by law.

37. Having regard to the entire oral and documentary evidence, this Court is satisfied that the complainant has successfully established that Ex.P.1 was issued by the accused towards discharge of a legally enforceable debt or liability; that the cheque was dishonoured for want of sufficient funds; that the complainant complied with all the mandatory requirements prescribed under Section 138 of the Negotiable Instruments Act; and that the accused has failed to rebut the statutory presumptions available in favour of the complainant. Accordingly, this Court answers **Point No.1 in the Affirmative**.

38. **Point No.2:** In view of the reasons assigned while answering Point No.1, this Court proceeds to pass the following:

ORDER

In exercise of Power conferred **under section 255(2) of Cr.P.C accused is hereby convicted for the offence punishable under section 138 of**

Negotiable Instrument Act and sentence to pay fine of Rs.2,00,000/- in default thereof to undergo simple imprisonment for a period 6 months.

In exercise of power conferred under section 357[1][b] of Code of Criminal Procedure, the entire fine amount of Rs.2,00,000/-, shall be paid as compensation to the complainant .

The bail bond and surety bond of the accused stands canceled.

Office is directed to furnish copy of this judgment to accused free of cost.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced in the open Court, on this day of 17th day of June, 2026)

Sd/xxx
(Smt. Chaithra. L)
Civil Judge and JMFC.
Kushalnagar

ANNEXURE

List of witnesses examined for the complainant:

PW1 : Nataraj S

List of documents marked for the complainant:

Ex.P1 : Cheque

Ex.P1(a) : Signature of accused

Ex.P2 : Return Memo

Ex.P3 : Office copy legal notice

Ex.P4 : Postal Acknowledgment

Ex.P4(a): Signature of accused

Ex.P5 : RTC

List of witnesses examined for the complainant

CW1 : Apoorva

List of documents marked for the complainant

Ex.C.1 Truth Lab Report (5 pages)

Ex.C.1(a) Signature of C.W.1.

Sd/xxxx

Civil Judge and JMFC,
Kushalnagar.