KAKD200003312024

IN THE COURT OF THE CIVIL JUDGE & JMFC, KUSHALNAGAR

PRESENT : Chaithra L B.B.M., L.L.B.,
Civil Judge & J.M.F.C.,
Kushalangar

Dated on this 8th day of May 2026

C.C.No.238/2024

Complainant: C.V. Sathish,
S/o late Venkatappa,
Aged 48 years,
R/at Chikkathuru village, Kushalangar.

(By Sri. M.S Ravikumar Advocate)

//Vs//

Accused : Krishna Prasad,
S/o Mani
Aged 30 years,
R/at C/o Nethra, Coffee curing Works
Sundaranagara village, Mullusoge Post,
Kushalnagar.

(By Sri K.C Shivamurthy, Advocate)

JUDGMENT

The complainant had filed the private complaint under section 200 of Cr.P.C against the accused for the offence punishable under Section 138 of Negotiable Instrument Act. This court had taken cognizance giving rise to the aforesaid criminal case.

2. The brief facts of the complainants case are as follows;

The case of the complainant is that on 01.01.2023, the accused borrowed a sum of ₹3,00,000/- from the complainant for his legal necessities. In discharge of the said liability,the accused issued a **cheque bearing No. 039683 dated 01.03.2023 for ₹3,00,000/-, drawn on the Corporation Bank(Union Bank), Kudumangalore Branch,** assuring repayment of the loan amount. Upon presentation of the said cheque by the complainant through his banker, **Corporation Bank, Kudumangalore Branch**, it was returned unpaid with an endorsement dated 28.03.2023 stating "**cheque is invalid.**" Thereafter, the complainant issued a legal notice dated

03.04.2023 to the accused through RPAD calling upon him to pay the cheque amount of ₹3,00,000/- within fifteen days from the date of receipt of the notice. The said notice was duly served on the accused on 06.04.2023. Despite service of the legal notice, the accused failed to repay the cheque amount, and hence the complainant was constrained to file the present complaint under Section 138 of the Negotiable Instruments Act.

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 detailed 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 consideration of this court:

:POINTS:

1. Whether the complainant proves that accused had issued a cheque bearing No.**039683** dated: **01.03.2023** for the legally enforceable debt of **Rs.3,00,000/-** drawn on **Corporation Bank, Kudumangaluru Branch,** when the said cheque was presented to the bank i.e.,**Corporation Bank, Kudumangalore Branch** the said cheque dishonored with shara **"Cheque is invalid"** 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. My 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. Point No.1: The burden of proving the ingredients necessary to constitute the offence under Section 138 of the Negotiable Instruments Act initially lies upon the complainant. The complainant has to establish that the cheque was issued by the accused towards discharge of a legally enforceable debt or liability, that the cheque was presented within its period of validity, that the cheque was dishonoured for insufficiency of funds or any other reason contemplated under law, that a statutory notice was issued within the prescribed period demanding payment of the cheque amount, and that the accused failed to make payment within fifteen days from the date of receipt of such notice.

10. This Court has already narrated the facts leading to the filing of the present complaint. In order to substantiate the allegations made in the complaint, the complainant has produced

the original cheque dated 01.03.2023 for a sum of Rs.3,00,000/-, the bank endorsement dated 28.03.2023, the legal notice dated 03.04.2023, and 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 maintained at Corporation Bank, Kudumangalore Branch and Ex.P1(a) is the admitted signature of the accused appearing on the cheque. On perusal of the aforesaid facts it can be seen that the legal notice demanding the payment of cheque amount in Ex.P.1 cheque was issued within stipulate time mentioned in section 138 of Negotiable Instrument Act. The notice was served as per requirement of section 138 of Negotiable Instrument Act. The accused had not paid the amount mentioned in the cheque. The private complaint was presented after 4 days before which the complaint should have been filed. However, on the sufficient cause shown by the complainant delay is condoned and cognizance for the offence was taken. Thus the essential ingredients necessary to get all offences under section 138 Negotiable Instrument Act is fulfilled in the aforesaid case. Hence, section 138 Negotiable Instrument Act is attracted to the facts of the aforesaid case.

11. During the course of the trial, the accused has not disputed that the cheque in question belongs to his bank account and the signature appearing on the cheque is his signature. Once the execution of the cheque is admitted, the statutory presumption contemplated under Section 118 and Section 139 of the Negotiable Instruments Act automatically arises in favour of the complainant. The said presumption is that the cheque was issued for discharge of a legally enforceable debt or liability. The burden then shifts upon the accused to rebut the said presumption by placing cogent and convincing evidence before the Court.

12. The bank endorsement marked as Ex.P2 clearly reveals that when the cheque was presented through the banker of the complainant namely Corporation Bank, Kudumangalore Branch, the same was dishonoured with the endorsement “Cheque is invalid ” on

28.03.2023 The said endorsement clearly establishes that the cheque was presented within its period of validity and that the dishonour was on account of insufficiency of funds in the account of the accused.

13.Thereafter, the complainant issued a statutory legal notice dated 03.04.2023 as per Ex.P3, calling upon the accused to pay the cheque amount within fifteen days from the date of receipt of the notice. The postal acknowledgment produced at Ex.P5 discloses that the notice sent to the accused was duly served. Despite service of notice, the accused failed to comply with the demand made therein and did not repay the cheque amount within the stipulated period. Though the complaint came to be filed beyond the prescribed period contemplated under Section 142 of the Negotiable Instruments Act, this Court, upon being satisfied with the reasons assigned by the complainant, has condoned the delay by a separate order. Therefore, the complaint is maintainable in law. Thus, the complainant has complied with all the mandatory requirements contemplated under Section 138 of the Negotiable Instruments Act.

14. During the course of cross-examination, PW-1 stated that Ex.P1 cheque was presented through his account maintained in Federal Bank. When a suggestion was made that Ex.P1 was an invalid cheque, PW-1 stated that the accused had issued the cheque pertaining to Corporation Bank. He denied the suggestion that he was aware of the endorsement mentioned in Ex.P2 to the effect that the cheque was invalid. PW-1 further stated that he came to know about the bank merger nearly one year after such merger had taken place, but he does not know the exact month and year of the merger.

15. PW-1 further deposed that he maintains accounts in three different banks and that presently he has accounts in Union Bank and Canara Bank. He stated that the account originally maintained in Corporation Bank, which has now been merged with Union Bank,

is still in operation. He denied the suggestion that he had received any message on his mobile phone regarding the merger of Corporation Bank with Union Bank. He further denied the suggestion that he had knowingly accepted a cheque belonging to Corporation Bank despite being aware of the merger. PW-1 stated that he has general knowledge regarding banking transactions. However, he admitted that he is not aware that transactions exceeding Rs.20,000/- are ordinarily required to be made through banking channels. He denied the suggestion that there is no legal provision to initiate proceedings on the basis of the cheque in question. He also denied the suggestion that despite knowing the contents of Ex.P2 endorsement, he has falsely instituted the present complaint.

16. PW-1 further stated that he is an agriculturist and owns agricultural lands. However, he admitted that he has not produced any documents relating to the said agricultural properties before the Court. He further deposed that he is an income tax assessee and had paid income tax for the assessment year 2022–23, but admitted

that he has not obtained the relevant documents from his auditor. PW-1 also admitted that in his income tax returns and balance sheet, he has not disclosed the alleged loan transaction involved in the present case. PW-1 further admitted that during the years 2022 to 2024, he had filed two cases at Kushalnagar and three cases at Madikeri and that out of the cases filed at Madikeri, two cases were settled amicably. He also admitted that he had not disclosed the said cases in his income tax returns.

17. PW-1 further stated that he had verified Ex.P1 cheque and that when the same was presented before the bank, it was returned with the endorsement “Funds Insufficient”. He admitted that he does not recollect the contents of the complaint and affidavit filed in the present case. However, he stated that he is aware of the contents of the legal notice issued to the accused. He further stated that he does not recollect whether the notice specifically mentions the endorsement issued by the bank.

18. Though several suggestions were made regarding the validity of the cheque, bank merger, non-disclosure of the transaction in the income tax returns and absence of supporting documents relating to agricultural income, the accused has not placed any cogent material before the Court to establish that the cheque in question was not issued towards discharge of a legally enforceable debt or liability. Mere omissions in income tax returns or lack of knowledge regarding technical banking procedures by themselves are not sufficient to disbelieve the consistent evidence of PW-1.

19. Once the execution of the cheque and signature thereon are admitted or proved, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act arise in favour of the complainant. The presumption includes existence of a legally enforceable debt or liability. The burden lies upon the accused to rebut the said presumption by placing cogent and probable evidence before the Court. In the present case, except making suggestions during cross-examination, the accused has not adduced any

substantive rebuttal evidence. Hence, the statutory presumption available in favour of the complainant remains unrebutted.

20. It is also important to note that during the cross-examination of PW-1, the accused himself suggested that he had already paid a portion of the cheque amount and that only a balance amount of Rs.95,000/- remains to be paid. The accused also suggested that he is willing to pay the remaining amount within three months i.e., on or before 07.08.2026. The complainant has clearly stated that he has no objection if the accused pays the remaining amount within the said period.

21. The said suggestion made by the accused during cross-examination clearly amounts to an admission of liability. Once such admission is made by the accused himself, the defence sought to be taken by him regarding denial of the transaction loses its significance. Further, the accused himself entered the witness box as DW-1 and deposed that he has already paid some portion of the cheque amount and that he is ready and willing to pay the remaining

balance amount of Rs.95,000/- within three months i.e., on or before 07.08.2026. The said admission made by the accused in his evidence further strengthens the case of the complainant.

22. The complainant has not seriously disputed the statement made by the accused regarding part payment. The evidence of both parties therefore clearly establishes that there existed a monetary transaction between the complainant and the accused and that the cheque in question was issued by the accused towards discharge of the said liability. The Hon’ble Supreme Court in Rangappa v. Mohan (2010) 11 SCC 441 has held that once the signature on the cheque is admitted, the presumption under Section 139 of the Act includes the presumption regarding legally enforceable debt and the burden lies upon the accused to rebut the same by producing probable defence. In the present case, the accused has failed to rebut the statutory presumption by producing any convincing evidence.

23. On the contrary, the admissions made by the accused during cross-examination as well as during his own evidence clearly indicate that the cheque was issued towards discharge of liability. Therefore, the complainant has successfully established that the accused issued the cheque in question and that the cheque was dishonoured due to invalid cheque. The complainant has also established that the statutory notice was issued within the prescribed period and that the accused failed to make payment within the stipulated period. Thus, all the essential ingredients required to constitute the offence under Section 138 of the Negotiable Instruments Act stand satisfied. Therefore, this Court is of the considered opinion that the complainant has proved his case beyond reasonable doubt and the accused has failed to rebut the statutory presumption available in favour of the complainant. **Accordingly, Point No.1 is answered in the Affirmative.**

24. Point No.2: The offence under Section 138 of the Negotiable Instruments Act is primarily compensatory in nature. The object of the provision is to ensure credibility in transactions and to ensure that the cheque issued by a person is honoured by him. The Hon’ble Supreme Court in Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560 has held that the object of Section 138 proceedings is mainly compensatory and the punitive element is intended to ensure enforcement of the compensatory aspect.

25. In the present case, the cheque amount is Rs.3,00,000/-. The materials on record disclose that the accused has already paid a substantial portion of the amount and only the balance amount of Rs.95,000/- remains to be paid. The accused himself has expressed readiness to pay the said balance amount within a period of three months. However, it is well settled that once the ingredients of Section 138 are satisfied, subsequent payment of the cheque amount does not absolve the accused from criminal liability, though such payment can certainly be taken into consideration while determining the sentence to be imposed upon the accused. This

position of law has been clearly laid down by the Hon'ble Supreme Court in Rajneesh Aggarwal v. Amit J. Bhalla (AIR 2001 SC 518). Considering the admissions made by the accused, the evidence placed on record and the compensatory nature of the proceedings under Section 138 of the Negotiable Instruments Act, this Court is of the opinion that the ends of justice would be met by convicting the accused and directing him to pay the remaining balance amount to the complainant within a reasonable period. Accordingly, in the light of the finding given on point no.1 and in the facts and circumstances of the case and in view of findings on Point No.2, this court proceed to pass the following;

ORDER

In exercise of power conferred under section 255(2) of Crpc 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.95,000/-(Rupees Ninenty Five thousand only) and in default shall undergo a simple imprisonment for a terms of 6 months.

The fine amount of Rs.95,000/-(Rupees Ninenty Five thousand only) shall be payable to the complainant as compensation under section 357 of Crpc on or before 8.06.2026.

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 8th day of May 2026)

Sd/xxx

(Chaithra L),
Civil Judge & JMFC,
Kushalnagar.

ANNEXURE

WITNESS EXAMINED BY THE COMPLAINANT:-

PW.1 : **C.V. Sathish**

DOCUMENTS MARKED BY THE COMPLAINANT: -

Ex.P.1 : Original 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

WITNESS EXAMINED BY THE ACCUSED:-

D.W.1 : Krishna Prasad

DOCUMENTS MARKED BY ACCUSED:-

NIL

Sd/xxxx

Civil Judge & JMFC,

Kushalnagar.