

KAKD400010772022



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL MAGISTRATE  
FIRST CLASS, AT SOMWARPET**

**PRESENT**

**SRI. SRINATHA J.N.**, *B.A.L, LL.B.*  
Civil Judge & JMFC  
Somwarpet.

**Dated: 06<sup>th</sup> day of March 2025**

**C.C. No.781 of 2022**

Complainant : Sri.N.S.Jayaram S/o Late Subraya,  
53 years, Mahadeshwara block,  
Somwarpete Town,  
Kodagu.

**Represented by his GPA holder**

Sri.Chethan.B.N S/o Late Narayanaswamy,  
Aged about 36 years,Beluru road,  
Somwarpet Town & Taluk,  
Kodagu.

(Rep. By Sri Venkatesha.H.S, Advocate)

**V/s**

Accused : Sri.Y.S.Nagamani W/o K.N.Shanthamallappa,  
Koogekodi village, Hankod Post,  
Somwarpet Taluk,  
Kodagu District.

(Rep.by Sri.Jeevankumar K.D, Advocate)

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## **J U D G E M E N T**

This case has been registered against the Accused on the basis of the Complaint filed under section 200 of Code Criminal Procedure, 1973, for the offence punishable under section 138 of the Negotiable Instruments Act.

**2. The brief facts of the case of the Complainant is as follows :**

It is the case of the complainant that, First week of June, 2022 the accused borrowed a sum of Rs.6,00,000/- from the complainant for the purpose of husband business and the accused agreed to repay the loan amount within a months and even date of towards repayment of borrowed amount, the accused has issued a post-dated cheque bearing No.409102, dated 07.07.2022 drawn on State Bank of India, Somwarpet branch for Rs.6,00,000/-. Thereafter, the accused has not repaid borrowed amount. Hence, the complainant has presented the said cheque his banker, on 07.07.2022 State Bank of India, Somwarpet branch for encashment. But, the said cheque was returned with an endorsement as "Funds insufficient" on the same day.

**3.** It is further averred that the complainant has requested to accused to repayment of loan amount. But, the accused has not made any arrangements to honour the cheque only to deceive the complainant. Therefore, the Complainant got issued a legal notice to the accused

through his Counsel on 18.07.2022 through a Registered Post and the same has been duly served on the accused on 20.07.2022 and the accused on 03.08.2022 given reply to the complainant. Hence, the complainant has filed this complaint against the accused for the offence punishable U/Sec.138 of Negotiable Instrument Act. This Court took cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act.

4. Upon service of summons, the Accused appeared before this court through his counsel and filed a Bail Application U/Sec.436 of Cr.P.C, which was allowed on 18.03.2023. Thereafter, on 18.03.2023, the plea of the Accused was recorded under Section 251 of Cr.P.C and 313 statement of Cr.PC also recorded by reading over and explaining to her the substance of accusation in the language known and understood by her, the accused pleaded not guilty and claimed to make his defence. Hence, case is posted for evidence.

5. The complainant in order to prove his case, the sworn statement of the complainant during the pre-summonse stage consider as the evidence of the complainant asper the decision of Hon'ble Supreme Court of India (2014) 5 SCC 590 in between Indian Bank Association V/s Union of India, The GPA holder of the complainant examined himself as PW-1 and got marked Seven documents at

Ex.P-1 to Ex.P-7. The Statement of the Accused under section 313 of Cr.P.C was recorded, wherein all the incriminating evidence were put to the accused and he denied of having any liability towards the complainant as alleged. The accused opted to lead defence evidence and case was posted for Defence evidence. On 13.06.2024 the accused orally deposed evidence, the counsel for complainant fully cross examined of DW-1 and closed the defence evidence, the matter was posted for arguments.

**6.** It has been argued by the learned counsel for complainant Sri Venkatesha.H.S, that the case of the complainant is proved and cheque is also in favour of the complainant, therefore, accused must be convicted and amounts should be recovered. On the other hand, the learned counsel for accused, Sri.Jeevankumar.K.D has argued that accused has being falsely implicated in this case and that the complainant has not able to prove his case beyond reasonable doubt against the accused.

**7.** I have heard the learned counsel for both the complainant and the accused and consider the respective arguments as well as gone through the case file very carefully.

**8.** The following points that arise for my consideration:

1. Whether the Complainant establishes beyond reasonable doubt that the accused, in discharge of his debt liability towards the Complainant, issued a Cheque bearing No. 409102 dated 07.07.2022 for sum of Rs.6,00,000/- drawn on State Bank of India, Somwarpet main Branch, then the complainant has presented the said cheque in State Bank of India, Somwarpete Branch on 07.07.2022, which was returned dishonored for the reasons "Funds Insufficient" and even after issuance of legal notice, the Accused failed to make payment due under the Cheque and thereby the accused committed an offence punishable under section 138 of the Negotiable Instruments Act ?

2. What Order ?

9. My answers to the above points are as under:

Point No.1 : In the ' **Negative** ',

Point No.2 : As per the final order,  
for the following:

### **REASONS**

10. **POINT No.1:** It is the case of the complainant that, First week of June, 2022 the accused borrowed a sum of Rs.6,00,000/- from the complainant for the purpose of husband business and the accused agreed to repay the loan amount within a months and even date of towards repayment of borrowed amount, the accused has issued a post-dated cheque bearing No.409102, dated 07.07.2022 drawn on State Bank of India, Somwarpet branch for Rs.6,00,000/-. Thereafter,

the accused has not repaid borrowed amount. Hence, the complainant has presented the said cheque his banker, on 07.07.2022 State Bank of India, Somwarpet branch for encashment. But, the said cheque was returned with an endorsement as "Funds insufficient" on the same day. Thereafter through his Counsel on 18.07.2022 through a Registered Post and the same has been duly served on the accused on 20.07.2022 and the accused on 03.08.2022 given reply to the complainant. Hence, the complainant has filed this complaint against the accused for the offence punishable U/Sec.138 of Negotiable Instrument Act. This Court took cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act.

**11.** The Complainant in order to prove his case, GPA holder of the complainant examined as PW-1, has filed sworn statement affidavit in lieu of his examination-in-chief on 24.08.2022, and got marked Seven documents as Ex.P-1 to 7. In the said affidavit PW-1 has virtually reiterated the averments made in the complaint. All Seven exhibits are marked through GPA holder of the Complainant. Ex.P-1 is the Power of Attorney, wherein complainant execute GPA in favour of Chethan B.N, Ex.P-2 is cheque dated 07.07.2022 bearing No.409102. Ex.P-1(a) is the signature of the accused. Ex.P-3 is the dishonor memo showing that the cheque was presented through his banker i.e., The

State Bank of India, Somwarpete Branch and the same was returned dishonored by the State Bank of India, Somwarpete Branch by stating that "Funds insufficient", which reflects in Ex.P-3. Ex.P-4 is the legal notice issued to the accused dated 18.07.2022, calling him to comply the said legal notice. Ex.P-5 and 6 are the postal receipts and acknowledgment. Ex.P7 is the reply notice dated 03.08.2022.

**12.** The essential ingredients in order to attract Section 138 of NI Act, 1881 are as following :

*i) The cheque for an amount is issued by the drawer to the payee/ complainant on a bank account being maintained by him.*

*ii) The said cheque is issued for the discharge, in whole or in part of any debt or liability,*

*iii) The cheque is returned by the bank unpaid on account of insufficient amount to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with the bank.*

*iv) The cheque is presented within 3 months from the date on which it is drawn or within the period of its validity.*

*v) Within 30 days a legal demand notice is issued by the payee or the holder in due course to the drawer of the cheque on receipt of information by him from the bank regarding the dishonour of the cheque.*

*vi) The drawer of the said cheque fails to make payment of the said amount of the money as demanded in the legal demand notice to the payee or the holder in due course within 15 days of the receipt of said notice.*

*Vii) The debt or other liability against which the cheque was issued is legally enforceable."*

**13.** Now coming to the facts of the present complainant's case, keeping in the view essential ingredients of Section 138 of NI Act. In this case, it is not disputed and duly admitted by the accused that the cheque in question bears her signature. However, she denies the other particulars fulfilled by her, but admitted that the same was given post-dated Cheque to Complainant for security purpose. Therefore, it cannot be said that the cheque was drawn by him in favour of the complainant. Therefore, essential ingredients (i) as discussed in the preceding paragraphs stand fulfilled.

**14.** The accused has further admitted that the fact of dishonour of cheque in question, the Ex.P-2 cheque dated 07.07.2022 bearing No.409102, Ex.P-2(a) is the signature of the accused. Ex.P-3 is the dishonor memo showing that the cheque was presented through his banker i.e., The State Bank of India, Somwarpete Branch and the same was returned dishonored by the SBI Bank Ltd, Somwarpet Branch, 07.07.2022. Therefore, the cheque is presented within three months from the date on which it is drawn and within stipulated time. Hence, the another essential ingredients (iii) and (iv) also stands proved by the complainant.

**15.** The accused has further admitted that the fact of receiving the legal notice sent to her by the complainant during her statement

recorded under Section 294 of Cr.P.C. also the accused has been admitted that the addressee on the legal notice is of her and postal receipts/ acknowledgment show that legal notice is duly served on 20.07.2022 the given address which is of the accused. Therefore, presumption also draws against the accused the legal notice has been served. Also after accused appearing before the court and matter came her knowledge and documents were supplied to her after summoning, accused given a reply on 03.08.2022. Moreover, the address mentioned in the legal notice and the accused mentioned address in the bail bond, also shows that legal demand notice were served at the given address. So, it can be rightly said that he has received the legal notice, hence, the essential ingredients (v) and (vi) also stand proved.

**16.** Now coming to the last and remaining core ingredients (ii) and (vii) of Section 138 of N.I. Act, the discussed above and the real issue of controversy herein, i.e., whether the cheque in question was issued in discharge of any debt or liability, whole or in part and whether the same is legally enforceable debt.

**17.** With regard to the point of blank cheque raised by the accused, it is pertinent to mention that Section 20 of the N.I. Act talk about the inchoate instruments. As per this provision, if a person gives a duly

signed cheque which is either blank or partly filled then he is deemed to have given implied authority to the holder to fill up the particulars in it and complete the cheque, thus making drawee liable for the payment mentioned in it. It is immaterial that the cheque may have been filled by any person other than the drawer when the cheque is duly signed by the drawer, if the cheque is otherwise valid. The penal provision of Section 138 of NI Act would be attracted. At this juncture, it is pertinent to refer to the decision passed by the Hon'ble Supreme Court of India, in the case of *Birsingh vs. Mukhesh Kumar reported (2019) 4 SCC 197*, wherein the Apex Court while upholding the validity of blank signed cheque in a proceedings under Section 138 of the Act as inter-alia held the following :

*“If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.”*

**18.** It is a settled proposition of Law, that a cheque issued as a security, pursuant to or for a financial transaction, cannot be considered as a worthless piece of paper. It is given to ensure the fulfillment of an obligation undertaken. If a cheque is issued to secure the repayment of a loan advanced and if the loan is not repaid on or before the due date, the drawee would be entitled to get the cheque for payment and if

such cheque is disordered, the consequences contemplated under Section 138 of NI Act would follow. At this juncture, it is pertinent to refer the decision passed by the Hon'ble Supreme Court of India, in the case of *Sripati Singh V/s. State of Jarkhand, reported in (2021) SC Online 1002*. Further as to the plea of cheque being a security cheque, it was held in *ICDS V/s. Beena Shabbir & Another reported in (2002) 6 SCC 426*. That security cheque is also fall in the preview of Section 138 of N.I. Act. And a person cannot escape from his liability unless he proves that the debt or liability for which cheque was issued as a security is satisfied otherwise.

**19.** The post dated cheques when read with purpose of Section 138 of NI Act, indicate that an offence under the provision arises if the cheque represents a legally enforceable debt on the date of maturity. The offence under Section 138 is tipped by the dishonor of the cheque when it is sought to be encashed. Though a post dated cheque might be drawn to represent a legal enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legal enforceable debt at the time of encashment. If there has been a material change in the circumstances, such that the sum in the cheque does not represent a legal enforceable debt at the time of maturity or encashment. Then, the offence under Section 138 is not made out.

**20.** In the instant case, the statutory presumption under Section 118(A) and under Section 139 would be raised in favour of the complainant. Since the accused has admittedly execution of impugned cheque and signature on the cheque in question, the aforementioned statutory presumption would be raised in favour of the complainant regarding the fact that the impugned cheque has been drawn for consideration and issued by the accused in discharge of legally enforceable debt.

**21.** In the cross-examination of complainant, the accused has brought to the notice that court certain contradictions and omission made by the complainant. During the cross examination of PW-1 dated 08.04.2024, he stated that The accused demanded Rs.6 lakhs in June 2022. The accused had received the money for the business of the husband of the accused. It is also correct that Jayarama had said that he was collecting the money from the finance company. It is not correct that he had taken the cheque for security at the time of giving the loan. While giving the loan, we had personally given to the accused, we pay income tax, we do not enter in the income tax that we have given this much loan to such and such person, it is not correct to say that since the loan was not given to the accused, it is not shown in the income tax.

**22.** Further cross of PW-1 he has sated that It is not correct to say that except this case, I have registered more than 100 cases on other people. It is correct that I have given evidence as a G.P.A. of Jayaram in many cases. All the cases are of money given by Jayaram personally. In the cross-examination, the PW-1 he himself admitted that he deposed in the case of Jayaram as a G.P.A. in many cases. I have also deposed that all the cases were of personal dealings with Jayaram. It is true that Jayaram did not have a license for conducting the business of finance. It is also true that no cheque was presented by the Finance Company. I was present at the time. I do not remember what time it was. The accused had signed and issued the cheque. The accused had written the cheque.

**23.** It is pertinent to note that in the cross-examination of PW-1, one strich he has stated that accused had received the money for the business of the husband of the accused, But another strich PW1 sated that the accused had asked for Rs. 6 lakhs in the month of June 2022. The said transaction took place in the office in the month of June 2022. but complainant not explained exactly what date the complainant had given amount to the accused, simply complainant stated that 1<sup>st</sup> week of June 2022, accused had borrowed amount from the complainant, However, the complainant not produced documents

to show that he possessed around Rs.6,00,000/- with him, and he has not produced any Bank ledger extract to show that he had given Rs.6,00,000/- to the accused by way of cash. Hence without documentary evidence i.e ledger extract of bank statement of the complainant. Here it is impossible to ascertain the legal liability of the accused, because, the question of legal liability of debt does not arise at all.

**24.** The accused deposed evidence orally on 24.12.2024 as DW-1. In her chief examination, she has deposed that the N.S.Jayaram is doing business of Pigmy, Recovery and Finance and used to deposit the money with him. I had borrowed Rs.2 lakhs from the complainant in 2018. At that time I had given two cheques, one in my name and the other in the name of my husband, as security. I have given Rs. 2,90,000 as balance holding 30% share. I have replied to the notice given by the complainant for refund of the chit amount. During the cross-examination of DW-1 dated 05.07.2024, she denied the suggestion When the pigmy mount gave to the complaint he gave me a receipt. But she has not received any receipt. Further she denied the suggestion that she and her husband have not given any cheque to the security of chit business.

**25.** The learned counsel for accused relied the decision passed by the hon'ble Supreme court **AIR 2014 SUPREME COURT 630** between *A.C Narayanan V/s State of Maharashtra & another : the Hon'ble Court held that; in para No.26.*

*The Power of Attorney holder can depose ad verify on oath before te Court in order to prove the contents of the complainant. However, the power of attoney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transaction.*

*lii. It is required by the complainant to make specific assertion as to the knowledg of the power of attorney holder in the said trasaction explicity in the complaint and the power of attorney hoder who has no knowledge regarding the transactions cannot be examined as a witnes in the case.*

**26.** The above ratio aptly applicable to the present case at hand, During the cross-examination of PW-1 (GPA holder) he himself admitted that, In this case money given by Jayaram personally to the accused. However, in this case GPA holder of the complainant have no knowledge regarding the transaction of between complainant and accused. Because, but The learned counsel for accused further relied the decision passed by the Hon'ble Apex court **AIR 2019 SUPREME COURT 1983** between *Basalingappa V/s Mudibasappa : the Hon'ble Court held that; in para No.29.*

*High Court without discarding the evidence, which was led by dfnce could not have held that finding of trial court regarding*

*financial capacity of the complainant is perverse. We are, thus, satisfied that accused have raised a probable defence and the findings of the trial court that complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial Court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable.*

**27.** The above ratio aptly applicable to the case at hand because the complainant has not produced any documents to show that, complainant has having a financial capacity to show that the complainant had given a Rs.6,00,000/- to the accused. On Perused the material on record, The accused has been able to establish that there exists material contradictions and discrepancies in the version put forward by the complainant. The primary onus on the accused was to rebut the presumption raised under Section 118(a) and Section 139 of NI Act. The standard of proof required by the accused to discharge his burden is of preponderance of probabilities and he has successfully discharge her burden by punching holes in the version of complainant.

**28.** On perused the entire materials on record, the complaint has not produced any bank extract to show that he had given a amount to the accused. In view of the above factual matrix, let me examine the position of law in this point.

*“The definition of the word 'proved' in Section 3 of the Evidence Act to the provisions of Section 118 and 139 of the Act, in a trial under Section 138 of the Act is presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the accused, the rules of presumption under sections 118 and 139 of the Act help him, shift the burden on the accused. The presumptions end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability.”*

**29.** The accused had given her blank cheques as security to the complainant for doing a chit fund transaction. Hence the question is whether the accused had given a blank cheque as security to the complainant, does under Section 138 of NI Act is attracted or not. Hence, the burden was on the complainant himself to prove that the cheque in question was drawn in his favour to discharge of the legal liability of the cheque amount. However, no further evidence and explanation has been lead by the complainant as the accused had given a cheque for doing a chit fund transaction. Without ledger extract of bank statement, here it is impossible to asserting the legal liability of the accused, The complainant has failed to prove that the commission

of offence under Section 138 of NI Act. The cheque, i.e., dishonored must represent legal enforceable debt.

**30.** Hence, in the light of discussion, it is apparent that the case of the complainant that the cheque in question was issued by the accused for the purpose of repaying the amount and the complainant fails to inspire that confidence of the court and his full of clouds. The accused has rebutted the presumption raised under Section 139 of NI Act, consequently, it can be said that no legal liability exists in favour of the complainant. Thus, (ii) & (vii) ingredients to the offence under Section 138 of NI Act does not stand proved by the complainant. Hence, I am of the considered opinion that the circumstances in the present case in hand keeping view the facts and circumstances of the present case, the presumption of law asper Section 118 (a) and Section 139 of NI Act do not arise in favour of the complainant and it cannot be said that the Complainant has satisfied the ingredients of the offence punishable under section 138 of the Negotiable Instruments Act by proving that the cheque was issued for a legal enforceable debt. Thus the Complainant has failed to prove that the accused has committed an offence under section 138 of the Negotiable Instruments Act, 1881. Hence in view of the foregoing reasons and discussion, I answer the Point No.1 in the **Negative**.

**31. POINT No.2 :** In view of my answer to Point No.1, I proceed to pass the following

**ORDER**

Acting under section 255 (1) of the Code of Criminal Procedure, 1973, the Accused is found not guilty and therefore accused acquitted of the offence punishable under section 138 of the Negotiable Instruments Act.

The accused bail bond and surety bond is ordered to be continued to be in force for six months or till issuance of notice in respect of any appeal [if preferred] against the present judgment before the appellate court.

[Dictated to the stenographer directly on the computer, corrected, revised and then pronounced by me in open court this the **06<sup>th</sup> day of March 2026.**]

Sd/-  
**(SRINATHA J.N)**  
Civil Judge & JMFC,  
Somwarpet.

**ANNEXURE**

**List of witness examined for prosecution:**

PW-1 : Chethan.B.N

**List of documents exhibited for Prosecution:**

Ex.P.1 - GPA  
Ex.P.2 - Cheque bearing No.409102,  
Ex.P.3 - Bank Endorsement

- Ex.P.4 - Legal notice  
Ex.P.5 - Postal receipt  
Ex.P.6 - Postal acknowledgment  
Ex.P.7 - Reply notice

**List of witnesses examined on behalf of the accused :**

DW-1 - Nagamani

**List of exhibits marked on behalf of the accused :**

-NIL-

Sd/-  
(SRINATHA.J.N)  
Civil Judge & JMFC,  
Somwarpet.

(Vide separate judgment is passed and pronounce din the open court today)

**ORDER**

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Sd/-  
Civil Judge & JMFC,  
Somwarpet.