



**IN THE COURT OF II ADDL.DISTRICT AND
SESSIONS JUDGE, KODAGU-MADIKERI
SITTING AT VIRAJPET**

Present: **Sri.S.NATARAJ.,B.A.L., LL.B.,**
II Addl.District and Sessions Judge,
Kodagu-Madikeri, Sitting at Virajpet.

DATED THIS THE 02nd DAY OF SEPTEMBER 2026

Crl.Appeal No.5032/2026

Appellant : Sri.Lavakumar.M.K, S/o late
Kariyappa M.T, Age:53 years,
R/at Chennangi Gudaloor Village,
Maldare Post, Virajpet, S.Kodagu.

(By Sri B.N.Subbaiah, Advocate)

V/S

Respondent: Sri. Kiran B.M, S/o B.A.Mothaiah,
Age:36 years, R/at Chennangi,
Gudaloor, Chennayanakote village,
Ammathi Hobli, S Kodagu.

(By Smt.Vijayalakshmi.C, Advocate)

JUDGMENT

This appeal is filed by the appellant/accused, under
Sec.415, 430 of BNSS, challenging the judgment of
conviction and order of sentence passed by the Principal
Civil Judge and JMFC Virajpet in CC 338 of 2024 dated

11.03.2026, for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. For the sake of convenience the parties are referred to as per their rank before the trial Court.

3. The facts leading to the appeal: The case of the complainant in brief is that the complainant and accused are known to each other for several years. On 04.01.2024, the accused approached the complainant and requested a hand loan of ₹3,50,000/- for his family and legal necessities. Considering their acquaintance, the complainant paid the said amount in cash.

4. According to the complainant, towards discharge of the said liability, the accused issued Cheque No.656885 dated 04.03.2024 for ₹3,50,000/- drawn on Canara Bank, Chennainakote branch, Kodagu District in favour of the complainant with an assurance that the cheque would be honoured on its presentation. The complainant presented

the cheque through his banker, Bank of Baroda, Virajpet branch. The cheque was returned unpaid on 11.03.2024 with endorsement of 'funds insufficient'. Thereafter the complainant caused a legal notice dated 20.03.2024 calling upon the accused to pay the amount. The notice was served on the accused. As the accused failed to comply with the demand within the prescribed period, the complainant filed the complaint under Section 138 of Negotiable Instruments Act.

5. After taking cognizance, the accused was secured. He appeared through counsel and released on bail. The plea was recorded. He pleaded not guilty claimed to be tried.

6. The complainant examined himself as PW1 and produced Ex.P1 to Ex.P5 documents. Thereafter, the statement of accused under Section 313 Cr.PC was recorded and he denied the incriminating circumstances appearing against him, but did not choose to lead defence evidence or produce documents. After hearing the

arguments the trial court on appreciation of evidence, held that the cheque belongs to the account of the accused and that the signature on the cheque was not disputed. It further held that Ex.P1 was dishonored for the reason funds insufficient. Notice was duly issued and said the accused failed to pay the cheque amount within statutory period.

7. The trial Court has also noticed sufficient opportunities were given to the accused to cross examine PW1 and to lead defence evidence. However the accused did not avail those opportunities. Consequently the evidence of PW1 remained unchallenged and therefore the trial Court has concluded that the accused has found guilty and convicted for the offence under Section 138 of NI Act and sentenced to pay a fine of ₹ 3,50,000/- and in default of payment of fine to undergo simple imprisonment for 6 months.

8. Being aggrieved with the judgment of conviction and order of sentence the accused has preferred this appeal.

Contending that the trial Court has not properly considered the defence of the accused, that the complainant suppressed material facts, that the cheque came to the hands of the complainant under suspicious circumstances, and that the judgment of the trial Court is illegal, improper, and not based on proper appreciation of evidence. On these grounds, the appellant has sought for setting aside judgment for his acquittal.

9. The respondent appeared through counsel. The trial court records are secured. The appellant in spite of sufficient opportunity not choose to address arguments taken as heard.

10. Heard arguments of both sides. Trial Court records are secured.

11. Perused the record, the following points arise for my consideration:

- 1) *Whether the appellant-accused made out any grounds to interfere with the finding of the trial*

court that Ex.P1 cheque was issued towards discharge of a legally enforceable debt or liability?

2) Whether the judgment of Conviction and order of sentence passed by the trial Court requires interference by this Court?

3) What order?

12. My findings on the above points are as under:

Point No.1 & 2 : **Negative**

Point No.3 : As per final order

For the following:

REASONS

Point No.1 & 2: Both points are interconnected and therefore they are taken together for common discussion in order to avoid repetition of facts.

13. I have carefully gone through the records of the trial Court, the evidence of PW1, the documents marked at Ex.P1 to Ex.P5, the grounds urged in the appeal and the impugned judgment.

14. Ex.P1 is the original cheque dated 04.03.2024 for ₹3,50,000/-. The fact that the cheque pertained to the

account of the accused and that Ex.P1(a) is his signature has not been effectively disputed. Ex.P2 bank endorsement shows that the cheque was returned unpaid for the reason 'funds insufficient'. Ex.P3 is the legal notice dated 20.03.2024. Ex.P4 postal receipt and Ex.P5 shows service of notice upon the accused. Thus the complainant has produced necessary documents in support of the ingredients of Section 138 of Negotiable Instruments Act.

15. Once the execution of the cheque and signatures thereon are admitted or remained undisputed, the statutory presumption under Section 118, 139 of Negotiable Instruments Act operate in favour of holder of the cheque. Such presumptions are rebuttable. Therefore, the accused was at liberty to rebut the same by cross examining the complainant or by placing probable defence material before the court.

16. In the present case, the trial Court order sheet assumes importance. On perusal of the same, it is seen

that six adjournments were granted to the accused for cross-examination of PW1. PW1 was also recalled twice on 311 Cr.PC applications filed by the appellant-accused. In spite of such opportunities, the accused did not cross-examine PW1.

17. The record further shows that after completion of complainant evidence, the accused was given three dates for leading defence evidence. Even those opportunities were not utilized by the accused and no defence evidence was adduced. Therefore, it cannot be accepted that the accused was denied an opportunity to contest the case. On the contrary, the record disclosed that the repeated and sufficient opportunities were given to him. Merely because the accused did not make use of those opportunities, it cannot be said that there was a denial of a fair opportunity by the trial Court. It is also significant that in the memorandum of appeal the appellant has not taken a specific ground that the trial Court denied him an opportunity to cross examine PW1 or to lead his defence

evidence. Therefore any such contentions at this stage is also not supported by the grounds of appeal or by the trial Court record.

18. The appellant has contended that the cheque came into the hands of complainant under suspicious circumstances and that the trial Court failed to consider his defence. But no material was placed before the trial Court to substantiate such contention. When PW1 was not cross examined, the appellant did not even put his defence to the complainant. No documentary or oral evidence was produced by the accused to show how Ex.P1 came to the possession of complainant. The certain grounds of appeal refers to cross examination of PW1, repay notice and other defence materials. However, the trial Court record itself shows that PW1 was not cross-examined and that no defence was led and such grounds are contrary to the record and cannot be acceptable.

19. The appellant has also contended that he has sought time for repayment of the amount after receipt of notice. Even this contention does not assist the appellant in disproving the legally enforceable liability. There is no material placed before the trial Court capable of rebutting the statutory presumption arising in favour of the complainant.

20. It is true that the burden upon the accused to rebut the statutory presumption is not as heavy as burden upon the prosecution in a criminal case. The accused can rebut the presumption on basis of probabilities. But there must be some material before the court from which a probable defence can be gathered. In the present case, no such material has been brought on record.

21. The evidence of PW1 regarding issuance of cheque. Its presentation, dishonour, issue and service of notice and failure of the accused to make payment has remained unchallenged. The documentary evidence at Ex.P1 to Ex.P5

supports his evidence. Therefore, there is no sufficient ground to discard the evidence of PW1.

22. The trial Court has considered the cheque, bank endorsement, legal notice, postal documents and has rightly held the complainant has complied with the requirements of Section 138 of Negotiable Instruments Act. The accused having failed to rebut the statutory presumption. The finding of the trial Court that Ex.P1 was issued towards discharge of a legally enforceable debt or liability cannot be termed either perverse or contrary to the evidence on record.

23. The grounds of appeal are most in general in nature, mere allegation that the judgment is illegal, improper or that the Trial Court has not considered that defence is not sufficient to interfere with the judgment of conviction. When the record discloses that sufficient opportunity were afforded to the accused and the accused himself failed to avail the same.

24. On re-appreciation of the entire material record, this Court finds no illegality or perversity in finding recorded by the trial Court. The conviction of the appellant for the offence under Section 138 of NI Act is supported by oral and documentary evidence available on record.

25. In so far as the sentence is concerned, the trial Court has imposed a fine of ₹3,50,000/- with a simple imprisonment for 6 months in default of payment of fine. Having regard to the cheque amount, the year of transaction and facts and circumstances of the case, the sentence cannot be said to be excessive, so as to call for interference in the appeal. Therefore, the appellant has failed to make out any ground either for setting aside the conviction or for modifying the sentence. Accordingly, point No.1 and 2 are answered in the ***Negative***.

26. **Point No.3:** In view of findings on Point No.1 & 2 following order is passed :

ORDER

The Criminal Appeal filed by the appellant - **Lavakumar.M.K.** Under Section 415, 430 (1) of BNSS is hereby **dismissed**.

The Judgment of Conviction and order of Sentence passed by the Principal Civil Judge and JMFC Virajpet in CC No.338 of 2024 dated 11.03.2026 for the offence punishable under Section 138 of Negotiable Instruments Act is hereby **confirmed**.

Office to transmit the copy of this judgment along with the TCR to the trial Court forthwith.

(Dictated to the dictaphone, transcribed through AI adalath, and thereafter corrected and pronounced by me in the open Court on this the **02nd day of September 2026**).

(S.NATARAJ)

II Addl.District and Sessions Judge,
Kodagu-Madikeri, Sitting at Virajpet.