KAKL010030012025

IN THE COURT OF THE I ADDL. DISTRICT & SESSIONS JUDGE AT KOLAR

PRESENT

SMT.B.S. JAYASHREE, LL.M.,
I Addl. District and Sessions Judge, Kolar.

DATED THIS THE 20th DAY OF JULY, 2026

Crl. A. No.129/2025

Appellant/ Accused	:	V.Rajesh S/o.Venkataramegowda, Aged about 55 years, R/o.6th Cross, Near Cambridge School, Karanjikatte, Kolar. Owner of Kanchi Co Sri Lakshmi Narasimha Silk Sarres, Kalamma Gudi Temple, Kolar. (Rep. by Sri.**R.K.C** Advocate)
	V/s.	
Respondent/ Complainant	:	K.V.Ramesh S/o.Venkataramegowda, Aged about 78 years, R/o.Sri Raksha Nilaya, Near Shreerama Temple, 9th Cross, Cambridge School, Karanjikatte, Kolar. (Rep.by Sri.**T.V.R.** Advocate)

JUDGMENT

This is an appeal preferred by the appellant/ accused U/s.415 of BNSS against the judgment of conviction and sentence passed against him by the III Addl. Civil Judge & JMFC, Kolar in C.C No.904/2014 dated 18.09.2025 for the offence punishable U/s.138 of NI Act.

2. The brief facts of the case are as hereunder:

The complainant and accused are known to each other. On 07.05.2014, the accused had approached the complainant and requested for hand loan of Rs.5,00,000/-. By considering the request of the accused, the complainant had paid Rs.5,00,000/- to the accused. In turn, the accused has agreed to repay the said loan. Accordingly, the accused has issued a cheque bearing No.214783 dated 07.05.2014 drawn on ING Vysya Bank, Kolar Branch towards discharge of legally recoverable debt. The complainant had presented the aforesaid cheque for encashment through his banker State Bank of India, Kolar Branch on 07.05.2014 and the same has been returned unpaid for the reason "*Account Closes*". Hence, the complainant had issued notice to the accused on 17.05.2014 through RPAD calling upon him to pay the cheque amount. The said notice has been duly served to the accused, but the accused has failed to repay the cheque amount and also failed to comply the terms of notice. As such, the complainant has filed this complaint and prays to prosecute the case against the accused for the offence punishable U/Sec. 138 of N.I. Act.

3. The trial court took cognizance of the offence on the basis of materials placed by the respondent and registered the case for the offence U/s.138 of N.I. Act against the appellant and issued process for appearance

of appellant. In pursuance of summons, appellant put his appearance and enlarged on bail by the trial court. The trial court recorded plea of the appellant explaining the accusation made against him. The appellant pleaded not guilty and claimed to be tried for the said charges.

4. To prove the case and guilt of the accused, respondent /complainant examined himself as P.W.1 and got marked 16 documents at Ex.P.1 to Ex.P.16. On the other hand, the accused /appellant appeared through his counsel and adduced evidence as R.W.1 and got marked 15 documents at Ex.D.1 to Ex.D.15 documents. After closure of the evidence, the trial court recorded the statement of the appellant under section 313 of Cr.P.C. by posing the questions and explaining the incriminating circumstances that appeared in the evidence of P.W.1. The accused did not admit the incriminating circumstances appeared in the evidence of P.W1.

5. After hearing the appellant and respondent, the trial court passed Judgment and convicted the appellant U/s.255 (2) Cr.P.C. for the offence U/s.138 of N.I. Act and sentenced to pay fine of Rs.10,05,000/-. A sum of Rs.10,00,000/- shall be paid to the complainant as compensation U/s.357 of Cr.P.C and Rs.5,000/- to the State. Further, in default of paying fine, shall undergo simple imprisonment for six months.

6. Being aggrieved by the conviction and sentence the present appeal has been filed.

7. After registering the appeal notice has been issued to respondent. In pursuance of notice the respondent appeared through his counsel, but had not filed any objection.

8. Trial court records secured.

9. Heard arguments

10. The points that arise for my consideration are as hereunder:

1. Whether the complainant has proved that the cheque issued by the accused is for discharge of legally enforceable debt and the same was returned unpaid for the reason "*Account Closed*" and notice was not complied by the accused, as such, the accused has committed an offence Punishable U/s.138 of NI Act?

2. Whether the appellant proves that the trial judge has grossly erred in appreciating the defence contention that complainant had no sufficient source of income to lend loan and had wrongly held the accused guilty for the offence charged against him?

3. Whether appellant has made out any grounds to warrant interference in the judgment of conviction and sentence?

4. What order?

11. My answer to the above points are as hereunder:

Point No.1 : In the **Affirmative**;

Point No.2 : In the **Negative**;

Point No.3 : In the **Negative**;

Point No.4 : As per the order for the following:

REASONS

12. **Points No.1 to 3:-** All these points are interconnected with each other and in order to avoid repetitions of facts, they are taken up together for common discussion.

12.1. In the appeal memo it is contended by the appellant that the trial court had not properly appreciated the evidence on record and had arrived at a wrong conclusion and passed impugned judgment and sentence which is perverse, capricious and oppose to facts and circumstances of the case. It is contended by the appellant / accused that the complainant has not complied the mandatory provision of Sec.138(b) of NI Act. The trial court has erred in not considering the fact that the complainant has lending capacity to pay such huge amount. The trial court has not considered the admission of respondent in his cross examination with regard to non service of legal notice to the appellant. There is no monitory transaction between the appellant and the respondent. The complainant has suppressed the real facts in the alleged transaction. It is further contended that the trial judge had not properly appreciated the arguments advanced by the appellant and had convicted the appellant erroneously and therefore, the impugned judgment is liable to be set aside.

13. The first appellate court has ample power to scan the entire evidence both oral and documentary which is available on record and re-appreciate the same in order to find out as to whether the trial court made a proper assessment of the evidence before coming to the

conclusion that accused is guilty of the offence as alleged in the pre paras.

14. The complainant / respondent to prove the ingredients of Sec.138 of NI Act had got filed his affidavit in lieu of oral evidence and got examined himself as P.W.1. In his affidavit he had affirmed regarding the transaction and issuance of cheque, subsequent dishonour of cheque, service of legal notice and failure of the accused to repay the amount. In support of his contention he has got marked the Cheque as Ex.P.1, bank endorsement as Ex.P.2, copy of legal notice as per Ex.P.3, postal receipts as per Ex.P.4 and P.5, postal acknowledgment as per Ex.P.6 and P.7, reply notice as per Ex.P.8, Movable and immovable property list as per Ex.P.9, complaint as per Ex.P.10, permission letter as per Ex.P.11, Form No.1 and 2 as per Ex.P.12 to P.15 and copy of order passed in CC No.985/2014 as per Ex.P.16.

15. The complainant affirmed on oath that the accused had borrowed a sum of Rs.5,00,000/- and had issued a cheque towards repayment and on presentation the cheque returned dishonoured with a shara as “Account Closed”. In-spite of issuance of legal notice the accused did not come-forward to make payment.

16. The appellant/accused had taken up a contention that there is no transaction between himself and the complainant. He and his brother and father were doing saree business since from 2008 in Kolar and the name of the saree shop is Kanchi Co-Lakshmi Narasimha Silk and Saree. The cheques were being used for the business transaction. He was keeping the signed cheques in the shop for utilization of the same for business. From 2008 till 2013, he his brother and father were doing business jointly. Thereafter in the year 2013 they got separated. In the year 2012 he has closed his

account, he is not aware how his cheque has gone to the hands of complainant.

17. With the aforesaid affirmation and testimony of accused, the defence counsel had cross examined the complainant. In the cross examination it is suggested that complainant is well acquainted with the accused, therefore the signed cheques have been taken by the complainant and false case is filed, the said suggestion is denied. It is suggested that he is spending his salary of Rs.49,000/- towards the education of his children and family maintenance, the said suggestion is denied. He has stated that he is owning movable and immovable properties which he has declared in his annual assets and liabilities to his appointing authority. It is suggested that complainant is not owning any land, no jewells and cash and he has no capacity to lend loan to the accused, the said suggestion is denied.

17.1. In the further cross examination it is suggested that the department permission taken by him to lend loan of Rs.5,00,000/- is a created document, but the said suggestion is denied. It is suggested that complainant is often visiting the shop of accused and had stolen the cheque, the said suggestion is denied. Much was suggested regarding the income of complainant to lend loan to the accused, he has explained in detail his capability to lend loan. The complainant is a teacher by profession, he had taken permission from his department to lend loan to the accused.

17.2. In the cross examination of accused, when it is suggested that complainant after obtaining permission from his department has lent loan, the said suggestion is denied. It is suggested that towards repayment of loan he has issued cheque dated 07.05.2014, the said suggestion is denied. Accused states Ex.P.1 cheque belongs to him, but the signature and writing does not tally. He admits that bank had not issued any endorsement about difference in signature. He further admits that complainant had visited his shop. He further admits that one Muniyappa had filed case against him which is in CC No.985/2014 which is also a cheque bounce case. One Nagarajappa had filed case against him. He further admits that in the case of Muniyappa he has filed joint memo and settled the matter. He further admits that in regard to his annual income of Rs.20 lakhs he has not declared in his income tax returns and not produced IT returns for the period from 2013-14 and 2014-15 to the court. He admits that as per Ex.D.8, 11 and 12 he had not deposited the business amount in the bank. Though he has stated his annual income is Rs.15 to Rs.20 lakhs, but it is not stated in his income tax returns. He has admitted Ex.P.1 cheque, but denied the signature in the cheque. Further it is elicited that he has not given any complaint against the complainant for stealing of the cheque.

18. In the instant case the signature of accused in the cheque is referred to FSL examination and as per the FSL report the signature found in the cheque is made by the accused herein. The FSL expert has expressed the signature marked as Ex.P.1(a) is found freely and firmly written. The line quality of signature is smooth, precise, rhythmic and uniform. On tallying the disputed signature in the cheque with the admitted signatures in other documents the FSL expert had opined that there is no divergence in writing habit and the signature in Ex.P.1 cheque and signature in other admitted documents are written by one and the same person.

19. In the case on hand, it is astonishing to note that accused in his defence had taken up a contention that complainant is a stranger and the cheques were

stolen from his shop and were misused by the complainant. But during the course of his cross examination he has expressed his well acquaintance with the complainant and complainant and he are good friends and complainant had purchased several clothes from his shop. That apart the accused has stated that during the course of his business he had kept several signed cheques in the shop, but in the cross examination he has denied his signature in the cheque while admitting the cheque. The FSL expert to whom the disputed signature in Ex.P.1 cheque and the admitted signatures were sent for analysis who had opined that the writing in Ex.P.1 cheque and in the admitted documents were made by the same person. Further complainant is a teacher by profession, he had taken permission from his department to lend loan to the accused to the tune of Rs.5 lakhs which is at Ex.P.11, the said document further amplifies the transaction between the complainant and the accused. Further the complainant has produced his assets and liabilities statement wherein it depicts that he is having sufficient source of income to lend the money to the accused. The learned trial judge on careful assessment on evidence had rightly held the cheque in question is issued by the accused towards legally liable debt. In the present appeal the appellant had reiterated the contention taken before the trial court. He has failed to place any fresh material before this court to substantiate his contention that the cheque is stolen, there is no transaction, further the complainant had no sufficient source of income to lend the loan. The learned trial judge had carefully appreciated the material on record by the appellant and the respondent and had rightly arrived at a conclusion that the cheque in question issued towards the transaction, further the complainant had sufficient source of income to lend the loan.

20. Sec.139 of NI Act contemplates that it shall be presumed unless contrary is proved that the holder of the cheque received the cheque of the nature referred to in Sec.138 towards discharge of whole or in part of any debt or liability. The presumption U/s.138 of NI Act is a mandatory presumption and the accused is entitled to rebut the said presumption, but what is required to be established by the accused in order to rebut the presumption is different in each case under given circumstances. But the fact remains that mere plausible explanation is not expected from the accused and it must be more than plausible explanation by way of rebuttal evidence. In the case on hand, he had not placed probable evidence before the trial court to disbelieve the version of complainant.

20.1. Further, the Hon'ble Apex Court in the case of **APS Forex Services Pvt. Ltd., V/s. Shakti**

International Fashion Linkers reported in **(2020) 12 SCC 724**, wherein the Hon'ble Apex Court at Special Para discussed as hereunder,

> *A. Debt, Financial and Monetary Laws Negotiable Instruments Act, 1881 Ss. 139, 118 and 138 - Dishonour of cheque - Presumption in favour of holder of cheque under S. 139 Is rebuttable by evidence to be led by accused - In absence of any such evidence, version put forward by accused cannot be accepted - All ingredients of Ss. 138 and 139 being satisfied in present case, conviction confirmed.*
>
> *Neither issuance of cheque by accused nor his signature thereon disputed by respondent-accused nor transaction between parties Rather, accused admitting that some amount was due and payable Besides, earlier cheques issued by accused were dishonoured on ground of "insufficient funds" while fresh consolidated cheque was returned unpaid for "stop payment" Held, once accused admitted issuance of cheque which bore his signature, presumption exists of a legally enforceable debt or liability under S. 139 Further held, though such presumption is rebuttable, accused is required to lead evidence therefore In absence of any such evidence, version put forward by accused that cheques were given by way of security not believable Courts below erred in not appreciating and considering presumption in favour of complainant in such cases and shifting burden on complainant to prove debt or liability Respondent-accused liable to be convicted under S. 138."*

The principle enunciated in the dictum is aptly applies to the case on hand.

20.2. The cheque which was issued by the appellant was of the year 2022. The complainant was deprived of the money which was rightfully due to the complainant for a over a period of more than one year, hence the complainant is entitled for compensation as per Sec.80 and 117 of NI Act and had sentenced the accused to pay fine of Rs.15,05,000/- to the complainant in default of payment of fine he shall under go S.I for a period of six months. The order of learned trial judge is in proper perspective. Therefore, the impugned order in question need not be interfered with. Consequently, the points for consideration deserves to be answered accordingly as stated supra.

21. **<u>Point No.4:</u> -** In the result, this court proceeds to pass the following: -

ORDER

The Appeal filed by the appellant U/s.374 of Cr.PC is hereby **dismissed.**

The Judgment of conviction passed by the III Addl. Civil Judge and JMFC, Kolar in C.C No.904/2014 dated 18.09.2025 is hereby **confirmed.**

Send the copy of Judgment along with TCR to the trial court.

[Dictated to the Stenographer on computer, revised and corrected by me and then pronounced in the open court on this the **20th day of JULY, 2026**]

BENNALI SHIVAKUMAR JAYASHREE

Digitally signed by BENNALI SHIVAKUMAR JAYASHREE Date: 2026.08.05 10:58:54 +0530

(B.S.Jayashree),
I Addl. District & Sessions Judge,
Kolar.