KAKL310023682024

IN THE COURT OF PRL. CIVIL JUDGE & JMFC, MALUR

PRESENT

Smt. Gayatri., B.Com., LL.M (IPR)
Prl. Civil Judge & JMFC, Malur.

Dated 18th day of June 2026

C.C. No.1248/2024

Complainant : Sri. Nagesh Babu.S, S/o Sh. Sandegowda,
Age about 51 years,
R/o 1, Muthyalamma Temple Road,
Lakkur Hobli and Post,
Malur Taluk, Kolar District.
Also at: M/s LSN Traders, Tank Road,
Malur Town.

[By: Sri. A.N. Advocate]

-V/s-

Accused : Sri.A.Stephen Jones, major,
S/o Artur Vijaya Kumar,
R/o. Flat No.C1404, Karle Zenith Residence,
Kempapura Main Road, Nagavara,
Bengaluru-560045.

Also at: Managing Director,
at Jones Property Management Pvt. Ltd.,
Address: No.648/L, BKN Ambaram Estates,

1st Floor, 1st main, 1st Stage Road,
Binnamangala, Indiranagar,
Bangalore-560038.

[By: Sri.R.A.D. Advocate]

J U D G M E N T

Complainant has filed present complaint U/Sec. 223 of BNSS against Accused for offence punishable U/Sec. 138 of Negotiable Instrument Act,1881.

2. **The brief fact of the case are as under:**

Complainant submits that, himself and accused are well known each other. The Complainant is a businessman and based on the trust on the Accused, he had advanced an amount of Rs.1,50,00,000/- by way of cash from November-2022 to January-23 to the Accused upon his request, due to his family exigency and also with an assurance that the said amount will be return within a month.

3. Complainant further submits that, towards repayment of said hand loan, the Accused has issued three cheques bearing 1) No.506274, 2) 506275, 3)506276 dated:29.02.2024, each for Rs.50,00,000/- drawn on The Federal Bank Ltd, Bangalore-St.Marks Branch, in favour of complainant and assured the complainant that the same will be honoured on its presentation for encashment.

4. The complainant further submits that, believing the words of accused, he presented the said cheques for itself encashment through his banker HDFC Bank Ltd, Malur branch on 14.05.2024. The said cheques were returned for the reason "Funds Insufficient" in accused bank account on 14.05.2024 and 27.05.2024 with an endorsements to that effect.

5. Complainant further submits that, he got issued a legal notice dated 15.06.2024 through his Counsel to the accused and legal notice has been sent to you through RPAD was duly served on 18.06.2024. further, the Accused gave vague reply to the said notice through his Counsel on 18.07.2024. In spite of receipt of the said notice, you had failed to repay the said amount. Hence, complainant left with no other option has filed the present complaint against accused for offence punishable U/Sec. 138 of Negotiable Instrument Act, 1881.

6. Per contra, in pursuance to the complaint, summons was issued to accused, Accused appeared and was enlarged on bail.

7. Plea framed and read over to accused by Predecessor on 17.01.2025. He denied the same and claimed to be tried. Later, matter was posted for cross of PW.1. Thereafter, the Accused has not appeared before this Court to proceed with the matter. This Court by relying upon the decision of Hon'ble Supreme Court of

India in Indian Bank Association Vs. Union of India the recording of the 351 of BNSS of the Accused is hereby dispensed with.

8. Complainant has examined himself as PW-1 produced 16 documents by getting them marked as Ex.P1, 1(a), 2, 2(a), 3, 3(a), 4 to 16. Accused has not cross-examined PW1.

9. The recording of 351 of BNSS of Accused is hereby dispensed with.

10. Heard arguments of learned counsel for Complainant. Accused side arguments taken as nil.

11. The points those arises for the consideration of this court are as under:

> **1. Whether complainant proves that accused borrowed a sum of Rs.1,50, 00,000/- and thereby issued a cheques bearing 1) No.506274, 2) 506275, 3)506276 dated:29.02.2024, each for Rs.50,00,000/- drawn on The Federal Bank Ltd, Bangalore-St.Marks Branch, towards the said amount and the said cheques were returned with an endorsement "Funds Insufficient" on 14.05.2024 and 27.05.2024 and thereby accused committed an offense punishable U/s 138 of N.I. Act,?**
>
> **2. What order?**

12. This court's findings on the above points are as under:

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

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

REASONS

13. POINT NO.1:

Complainant in order to discharge the burden casted upon him, complainant has examined himself as PW-1, produced 16 documents and got them marked as Ex.P1 to 16. Ex.P1 to 3 are the cheques bearing No.1) No.506274, 2) 506275, 3)506276 dated:29.02.2024, Ex.P.1(a) to 3(a) are signature of accused, Ex.P4 and 5 are the Return memos, Ex.P6 is office copies of legal notice on dated:15.06.2024, Ex.P7 & 8 are the postal receipts, Ex.P9 is the track consignment, Ex.P10 is the Reply notice, Ex.P11 to 13 are the cancelled cheques, Ex.P.11(a) to 13(a) are signature of accused, Ex.P14 is the Letter, Ex.P15 is the statement of Accused, Ex.P16 is the Acknowledgement.

14. It is specific allegations of the complainant that, himself and accused are well known each other. The Complainant is a businessman and based on the trust on the Accused, he had advanced an amount of Rs.1,50,00,000/- by way of cash from November-2022 to January-23 to the Accused upon his request, due to his family exigency and also with an assurance that the said amount will be return within a month. towards repayment of said hand loan, the Accused has issued three cheques bearing

1) No.506274, 2) 506275, 3)506276 dated:29.02.2024, each for Rs.50,00,000/- drawn on The Federal Bank Ltd, Bangalore-St.Marks Branch, in favour of complainant and assured the complainant that the same will be honoured on its presentation for encashment. In order to prove said fact of accused issuing the same, the complainant has produced Ex.P.1 to 3 alleged cheques, he has identify the signature of the accused, the said signature is marked as Ex.P.1(a) to 3(a).

15. It is further allegations of the complainant that, the alleged cheques on its presentation to his banker The HDFC Bank Ltd., Malur branch were returned with shara "Funds Insufficient" in accused bank account on 14.05.2025 and 27.05.2025. He in order to prove the said fact he has produced Ex.P4 and 5 is the return memos issued by the HDFC Bank, Malur branch. After the effect of return of the said cheques with the said endorsements. The complainant as per Ex.P6 has issued legal notice to the accused which was served upon him as per the Ex.P7 to 9 and reply notice as per Ex.P10.

16. After the complainant examined himself as PW.1 in spite of sufficient time and opportunity given to Accused, he has not come forward to proceed with the matter by cross examining PW.1. this Court finding no sufficient grounds to adjourn the matter. Further, by relying upon the decision of Hon'ble Supreme Court of India in Indian Bank Association Vs. Union of India the recording of the 351 of BNSS of the Accused was thereby dispensed with and proceeded with matter by hearing the arguments of Lr. Counsel for Complainant. Accused has not cross examined PW.1. Accused by not appearing before this Court to cross examine PW.1, it is clear that Accused is indirectly admitting the financial transaction with Complainant.

17. Under the Criminal jurisprudence prosecution is required to establish the guilt of accused beyond all reasonable doubt. However, the proceedings U/s 138 of Negotiable Instrument Act, 1881 are Quasi Criminal in nature. In these proceedings proof beyond reasonable doubt is subject to presumptions envisaged U/s 118, 139 and 146 of Negotiable Instrument Act, 1881. An offence U/s 138 of of Negotiable Instrument Act, 1881 is committed not only as to dishonor of cheque, but it is upon the failure of the drawer of cheque to make repayment within 15 days of receipt of notice of dishonor.

18. The essential ingredients of Sec.138 of Negotiable Instrument Act, 1881 is that cheque in question must have been issued towards a legally enforceable debt or liability. If there was no legally enforceable debt, it is not enforceable. Under Sec. 118 and 139 of Negotiable Instrument Act, 1881 has envisaged certain presumptions. U/Sec. 118 of presumption shall be raised regarding consideration, date, transfer, endorsement and regarding the holder in case of Negotiable Instrument. Even

U/Sec. 139 a rebuttable presumption shall be raised that the cheque in question was issued regarding discharge of a legal enforceable debt. These presumptions are mandatory presumption that are required to be raised in case of negotiable instrument. Though, these presumptions are not conclusive but are rebuttable in nature.

19. In the present case on hand accused has utterly failed to rebut the presumption so available in favour of complainant. Hence, there is nothing to disbelieve the complainant's case. Moreover, the proceedings with a regard to offence U/s 138 of of Negotiable Instrument Act, 1881 are summary in nature. Hence, holding accused guilty of offence punishable U/s 138 of Negotiable Instrument Act, 1881 this court without further discussion proceeds to answer this point accordingly.

20. POINT NO.2:

In view of above discussion and the reasons stated therein this court proceeds to pass the following:

ORDER

Acting under Section 278(2) of BNSS, Accused is hereby convicted for offence U/Sec. 138 of Negotiable Instrument Act, 1881.

Accused shall pay a fine of Rs.1,50,10,000/- (Rupees One crore Fifty Lakhs Ten Thousand

Only). In default accused shall undergo simple imprisonment for One year.

Amongst, Rs.1,50,10,000/- (Rupees One crore Fifty Lakhs Ten Thousand Only) out of said amount of Rs.1,50,00,000/- shall go to the Complainant as compensation U/Sec.395 of BNSS and remaining Rs.10,000/- (Rupees Ten Thousand Only) shall be defrayed as state expenses.

In case Accused fails to pay the fine amount and undergo imprisonment, complainant is at liberty to take action for recovery of fine amount against the Accused as per Sec. 461(1) of BNSS

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

Office to supply free copy of this judgment to Accused.

[Dictated to the Stenographer directly on Computer. Corrected and then pronounced by me in the Open Court on this the 18th day of June 2026)

Sd/-
(Gayatri)
Prl. Civil Judge & JMFC,
Malur.

ANNEXURE

1. List of witnesses examined for the Complainant :

PW-1	:	Nagesh Babu.S

2. List of documents exhibited for the Complainant:

Ex.P1 to 3	:	Cheques.
Ex.P.1(a) to 3(a)	:	Signature of accused.
Ex.P4 & 5	:	Return memos.
Ex.P6	:	Office copies of legal notices.
Ex.P7 & 8	:	Postal receipts.
Ex.P9	:	Track consignment
Ex.P10	:	Reply notice
Ex.P.11 to 13	:	Cancelled Cheques
Ex.P.11(a) to 13(a)	:	Signature of accused.
Ex.P.14	:	Letter dated 10.10.2023
Ex.P15	:	Statement of Accused
Ex.P16	:	Acknowledgment

3. List of witnesses examined for the accused:NIL

4. List of documents exhibited for the accused: NIL

Sd/-

(Gayatri)
Prl. Civil Judge & JMFC,
Malur.