KAMD210017882016

Presented on : 01-12-2016
Registered on : 03-12-2016
Decided on : 04-04-2026
Duration : 9 years, 4 months, 3 days

IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC KRISHNRAJAPETE

Present: **SMT.ARPITHA K.V.,**
B.A. LL.B., LL.M.
I ADDL.CIVIL JUDGE & J.M.F.C., KRISHNARAJAPETE.

C.C.No.457/2016

DATED THIS THE 04th DAY OF APRIL- 2026

Complainant :- S. Thimmgowda
S/o Siddegowda,
aged about 50 years,
Ganesha Samiyana Center,
Hostile Buildng road,
K.R.Pete Town,
K.R.Pete Taluk,
Mandya district.

(By Sri.K.P., Advocate)

Vs.

Accused :- Ramakrishna
S/o Rudraiah,
Aged about 35 years,
R/at Manju Hair Dresses,
In front of Acharya Convent Shop,
K.R.Pete Town,
Mandya District.

(By Sri.B.G, Advocate)

Date of Commission of Offence	02.05.2016
Date of report of Offence	07.06.2016
Date of recording of evidence	08.09.2016
Date of closing of evidence	27.03.2026
Offences complained of	U/S.138 of N.I Act.
Opinion of the Judge	As per the final Order.

I Addl. Civil Judge and JMFC,
K.R.Pete.

J U D G M E N T

The Complainant has filed the private complaint under section 200 of the Code of Criminal Procedure has against the Accused for the offence punishable under section 138 of the Negotiable Instruments Act, 1881.

2. **The Brief facts of the case is as under:**

The case of the Complainant is that, the Accused and Complainant are well known to each other. That the Accused had approached the Complainant on 25.01.2016 and requested for loan of Rs.3,80,000/- for the purpose of repaying his hand loan and for his household expenses and agreed to return the amount. The Complainant believing the words of the Accused, lent Rs.3,80,000/- to the Accused on same day, the Accused in return issued a cheque dated 28.04.2016 bearing No.099731 for a sum of Rs.3,80,000/- drawn on Vijaya Bank, K.R.Pete Branch.

3. After the completion of few months when the Complainant presented the said cheque for encashment through Canara Bank, K.R.Pete Branch, the said bank on 02.05.2016 issued an endorsement stating "**Funds Insufficient"** hence the cheque was returned. Thereafter the Complainant got issued legal notice dated 23.05.2016 to the Accused calling upon him to repay the amount through registered post and said notice was received on 24.05.2016 by the accused. Though the accused was well aware about the said transaction has failed to repay the loan amount and hence the Complainant having left with no other alternative was constrained to come up with the present complaint.

4. On perusal of the averments made in the complaint this court took cognizance after recording the sworn statement. On being satisfied that there is primafacie case to proceed, summons was issued to the Accused. The Accused has appeared before the court and was enlarged on bail. The Substance of Accusation was read over to the Accused in Kannada language for which the Accused has pleaded not guilty and submits of defense to be made. Hence this court called upon the Complainant to prove his case.

5. In view of the decision passed by the ***Hon'ble Apex Court in Indian Bank Association and others Vs Union of India and another reported in (2014) 5 SCC 519,*** the

sworn statement of the complaint was considered as his examination in chief and got marked 5 documents at Ex.P1 to Ex.P5. Ex.P1 is the Cheque dated 28.04.2016, Ex.P1(a) is the signature of the Accused, Ex.P2 is the Bank endorsements, Ex.P3 is the legal notice dated 21.05.2016 Ex.P4 is the postal receipt, and Ex.P5 is postal acknowledgment. The learned counsel for the Accused cross examined PW-1. Thereafter all the incriminating evidence appearing against the Accused was read over to him, the Accused has denied to all the incriminating evidence appearing against him. The accused has also lead his evidence orally and was cross examined by learned counsel complainant.

6. Heard the arguments. On perusal of the materials placed on record and upon hearing, following points arise for the consideration of this court:

> **Point No.1:** Whether the Complainant proves that the Accused issued a post dated cheque bearing No.099731 dated 28.04.2016 for a sum of Rs.3,80,000/- drawn on Vijaya Bank, K.R.Pete Branch in favour of the Complainant for discharging the legal debt or liability and the same was dishonored for reason "**Funds Insufficient**" and that in spite of issuance of notice to the Accused, he has failed to repay the loan amount due in cheque within stipulated period and thereby has committed offence punishable under

section 138 of Negotiable Instruments Act, 1881?

Point No.2: What order or sentence?

7. The findings to the above points are as follows:

Point No.1: In the A*ffirmative*

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

REASONS

8. **Point No.1:** The Complainant has alleged that the Accused has committed an offence punishable under section138 of Negotiable Instrument Act.

9. The contention of the Complainant is that he is well acquainted with the Accused. Since the Accused was in need of money for the purpose of repayment of loam amount and for house hold expenses, he approached the complainant for loan of Rs.3,80,000/- and agreed to repay the loan amount. The Complainant believing the words of the Accused, lent loan of Rs.3,80,000/- for which the Accused issued cheque dated 28.04.2016 bearing No.099731 drawn on VIjaya Bank, K.R.Pete Branch.

10. When the Complainant presented the said cheque to his bank for encashment, the said cheque was dishonored vide bank endorsements dated 02.05.2016 stating "**Funds Insufficient**". Hence the Complainant got issued legal notice dated 21.05.2016 to the Accused through registered post calling upon him to repay the loan amount but the said notice was returned. Though the accused had knowledge of the said

transaction, has failed to repay the loan amount. Hence the Complainant has filed this complaint.

11. In the statement recorded under section 313 of Cr.P.C, the Accused denied his liability towards the cheque amount to the Complainant. The accused has appeared before the court and contends that he had issued cheque in lieu of the chit business and accordingly the complainant has misused the cheque. Hence, prays to dismiss the complaint.

12. The Complainant in his affidavit evidence has reiterated the averments made in the complaint and deposes that he had lent sum of Rs.3,80,000/- to the Accused as hand loan.

13. To properly appreciate the facts of the case reference is made to relevant statutory provision. For the sake of convenience the relevant statutory provision is extracted below:

Section 138. Dishonor of cheque for insufficiency, etc., of funds in the account -

> ***"person must have drawn a cheque on an account maintained by him in a bank for payment of certain amount of money to another person from out of that account;***
>
> ***The cheque should have been issued for discharge, in whole or in part, of any debt or other liability;***

That the cheque has been presented to the bank within a period of three months from the date of which it is drawn or within the period of its validity which ever is earlier;

That the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honor the cheque or that it exceeds the amount arranged to possess and enjoyment paid from that account by an agreement made with the bank; the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

14. It is only when all of the above mentioned ingredients are satisfied that the person who had drawn the cheque can be convicted for having committed an offense under Section. 138 of the NI Act". The burden is on the accused to rebut the presumption an accordingly the learned counsel for accused has cross examined PW1. Upon cross examination it was elicited that the complainant has instituted several criminal cases and that he has income from cultivation, rent and from awning business and that he has income of Rs.11 to 12 lakh per annum and further has denied to all the suggestion made to him during the course of cross examination.

15. The accused himself got examined as DW-1 and deposed orally stating that he was acquainted with the accused with respect to chit business and accordingly would have entered the said business for an amount of Rs.1,00,000/-. That he was paying Rs.5,000/- monthly and in total would have paid Rs.70,000/-. Subsequently, he would have obtained the said amount and would have given blank cheque and blank stamp paper as security.

16. The remaining Rs.30,000/- was to be given to the complainant but would have not given the same. Except for the above said transaction he would have not had any business with the complainant. The Complainant would have misuse the said cheque and would have instituted false case against him. Accordingly prays to dismiss the complaint.

17. DW1 was cross examined and it was elicited that the cheque was given to the complainant in lieu of chit business and accordingly admits Ex.P1 and further has denied to all the suggestion made to him during the course of cross examination.

18. Further the accused has not produced any documents to show that he had issued cheque in lieu of the said transaction.

19. With regard to the presentation of cheque the Complainant presented Ex.P1 to his bank and received an endorsement stating "**Funds Insufficient**". The Complainant has placed on record the bank endorsement at Ex.P2. The bank endorsement has not been disputed by the Accused.

20. The Complainant has issued legal notice dated 21.05.2016 to the Accused marked at Ex.P3 through registered post, stating that the cheque issued at Ex.P1 by him is dishonored and called upon the Accused to repay the cheque amount as mentioned in Ex.P1. The said legal notice, the said receipt and postal acknowledgment has been marked at Ex.P3 to 5. Though the Accused in his defense states that he had issued cheque in lieu of the chit business, has not disputed the cheque. Further the Accused has not produced any documents to show the contrary.

21. The Accused has not disputed the issuance of cheque at Ex.P1. This clearly demonstrates that there was financial transaction. In this regard it is pertinent to note here the decision passed by ***Hon'ble Apex court in Rangappa Vs Sri.Mohan, reported in AIR 2010 SC 1898*** the relevant portion of the decision is extracted below:-

> ***" once the cheque relates to the account of the Accused and he accepts and admits the signature on the said cheque then initial***

> ***presumption as contemplated under section 139 of the NI Act has to be raised by the court in favour of the Complainant".***

22. If the Accused is able to make a probable defense about the existence of legally enforceable debt, then the Complainant would fail. In the present case the cheque is admitted by the Accused. Hence the presumption under section 139 of NI Act is drawn. The burden is upon the Accused to disprove the existence of legally enforceable debt or liability. In this case, though the Accused states that he has not issued cheque to the complainant but only had issued in support of the chit business, the same is not supported by any oral or documentary evidence.

23. The Complainant states that Ex.P1 was issued by the Accused for the loan amount that he had borrowed. Though the accused has received the legal notice, he has failed to repay the loan amount, hence, it can be seen that the accused had knowledge of the said transaction. At this juncture it is important to note that whenever signed blank cheques are issued then the presumption as to the legally enforceable debt will suffice and in this regard it is pertinent to refer to the decision passed by the ***Hon'ble Apex Court in Kalamani Tex and another Vs P.Balasubramanyam reported in 2021 5 SCC 283,*** the relevant portion on the decision is extracted below:

> "***Even a blank cheque leaf, voluntarily signed and handed over by the Accused, which is towards***

> ***some payment would attract presumption under section 139 of Negotiable Instrument Act, in absence of any cogent evidence to show that the cheque was not issued in discharge of her debt".***

24. Though the Accused states that no transaction had taken place between himself and the complainant, presumption can be drawn that the cheque was issued with respect to the present transaction.

25. In such cases, the Accused has not discharged his liability towards the Complainant. In this regard it is pertinent to refer to the decision of **Hon'ble Apex Court in Sripati Singh V/s State of Jharkand, reported in 2021 SCC Online SC 1002,** the relevant portion of the decision is extracted below:

> "***this Court observed that if a cheque is issued as security and if the debt is not repaid in any other form before the due date or if there is no understanding or agreement between the parties to defer the repayment, the cheque would mature for presentation."***

26. Though the Accused in his defense states that he had not issued the cheque to the complainant, but had lost the

same, has not produced any oral or documentary evidence in support of his contention. Such vague defense does not survive and preponderance of probabilities is not shifted on the Complainant.

27. Though the accused got examined himself as DW-1 and states that no transaction had taken place between himself and the complainant but states that Ex.P1 belongs to him. But, the accused has not adduced any other oral or documentary evidence in support of his contention. As mentioned above the Accused has not placed any probable evidence to rebut the presumption as contemplated under section 139 of Negotiable Instrument Act. As such the factum of borrowing the loan by the Accused and issuance of cheque in question towards the discharge of the said loan has remained unrebutted and unchallenged. Thus this court is of the considered view that the Accused has miserably failed to rebut the mandatory presumption under section 118(a) and under section 139 of Negotiable Instrument Act and even on preponderance of probabilities. By analyzing the entire evidence it is clear that the Accused has failed to rebut the presumption as discussed above. Hence this court proceeds to answer Point No.1 in the **Affirmative**.

28. **Point No.2**:- For the reasons assigned in Point No.1, this court proceeds to pass the following :

ORDER

Acting under Sec. 255(2) of Cr.P.C., Accused is convicted for the offence punishable under Section 138 of Negotiable Instrument Act and sentenced to pay fine oaf ₹4,50,000/-. In default of payment of fine amount, the Accused shall undergo simple imprisonment for a period of 3 months.

Further Acting under section 357(1) (b) of Cr.P.C a sum of Rs.4,45,000/- shall be paid to Complainant has compensation and remaining amount of Rs.5,000/- shall go to the state.

Office is directed to furnish free copy of Judgment to Accused.

[Dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in the Open Court on this the **04th day of April-2026]**

(Smt. Arpitha K.V.,)
I Addl. Civil Judge and JMFC,
K.R.Pete.

ANNEXURE

List of witnesses examined for the Complainant:

PW.1	:	S. Thimmegowda

List of documents marked for the Complainant:

Ex.P1	:	Cheque
Ex.P2	:	Bank endorsement,
Ex.P3	:	Legal notice dated 21.05.2016
Ex.P4	:	Postal receipt
Ex.P5	:	Postal acknowledgment

List of witnesses examined for Accused:

DW-1	:	Ramakrishna

List of documents marked for the Accused:

-NIL-

I Addl. Civil Judge and JMFC,
K.R.Pete.

* * * *

(Judgment pronounced in the open court vide separate order)

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