KAMD310045312023

Presented on : 06-12-2023
Registered on: 06-12-2023
Decided on : 02-04-2026
Duration : 02 years, 03 months, 27 days

IN THE CURT OF I ADDITIONAL CIVIL JUDGE AND JMFC AT MADDUR.

PRESENT:

SMT. PARVATHI C.M. B.A.L, LL.B
I ADDL. CIVIL JUDGE & JMFC, MADDUR

DATED THIS THE 02nd DAY OF APRIL 2026

C.C. NO.2745/2023

BETWEEN:

LAKSHMI,
D/o Krishnappa,
Aged about 28 years,
R/at 15th Main Road, 6th Cross,
Near New Bus Stop,
Ullallu Upanagara, Bangalore.

(By M.K.P., Advocate)

........COMPLAINANT

-AND-

GANGADHAR IRAYYA HIREMATH,
S/o Irayya Hiremath,
Aged about 30 years,

R/at 194/2, Haliyal, Teragaon,
Haliyal, Uttara Kannada.

(By H.C.V., Advocate)

.........ACCUSED

Date of Complaint	:	18.10.2023
Offence Charged	:	Under Sec.138 of N.I.Act
Date of Commencement of evidence	:	27.10.2023
Date of Judgement	:	02.04.2026

(SMT. PARVATHI C.M.)
I ADDL. CIVIL JUDGE &
JMFC, MADDUR.

J U D G M E N T

The instant private complaint is filed by the complainant under Section 200 of Cr.P.C against the accused alleging commission of offence punishable Under Section 138 of Negotiable Instruments Act.

2. Brief fact of the case is hereunder:

Fact of this case as per complainant is that, accused have obtained a hand loan of Rs.7,50,000/- from the complainant for your legal necessity i.e., discharge of hand loans and household expenses on

15.04.2023 promising to repay the same within three months, after several request and demand made by complainant, finally in discharge of the above said liability. That the complainant further submits that, at the time of issuing cheque drawn on ICICI Bank, Infosys Branch, Electronic City, Hosur Road, Bangalore by the cheque bearing No.196372 dated 19.07.2023 for Rs.7,50,000/- in favour of the complainant. When the complainant was presented the said cheque for encashment through State Bank of India, Maddur Branch and the same was returned unpaid on 16.08.2023 for the reasons “Funds Insufficient”. Thereafter, the complainant was got issued a legal notice dated 14.09.2023 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of notice and said notice was not served to the accused and RPAD cover was returned on 21.09.2023. And the accused has not paid the cheque amount to the complainant. Hence, the complainant was constrained to file this complaint to take legal action against the accused.

3. This complaint was filed before I Addl. Civil Judge & JMFC Maddur and on the basis of averments of complaint, pre-summoning evidence and documents, and this court was pleased take cognizance of the

offence under section 190 of Cr.P.C and issued process under section 204 of Cr.P.C. Copy of complaint and other relevant materials were supplied to the accused as required under section 207 of Cr.P.C. Substance of accusation as required under section 251 of Cr.P.C were framed and the same were read over and explained to the accused in the language known to him, for which the accused pleaded not guilty and claimed to make defence. Since the accused had chosen to contest the matter by raising defence, apart from submitting that, there is rival controversy involved between the parties in this case and to try the case in the manner of summons trial. Considering the rival controversy involved between the parties, this Court had felt that it is undesirable to try the case in the manner of summary trial and as such in order to provide full opportunity to both parties to prove their respective case had adopted the mode of trial as summons trial by invoking proviso to section 143 of NI Act. Thereafter, matter was posted for evidence.

4. In order to prove the case, the complainant has got herself examined as PW-1 and also got marked the documents as Ex.P-1 to Ex.P-5 and Ex.P-1(a) signature. Thereafter, the incriminating circumstances appeared from the evidence of PW-1 as required under section 313 of Cr.P.C were read over and explained to the accused in

the language known to him, for which the accused had denied all the incriminating evidence appeared against him and submits that, he has a no defence evidence to lead.

5. Heard the arguments of both learned counsel for the complainant and the accused. Perused the entire materials available on record.

6. Based on the contentions raised in the complaint the following points would arise for my consideration:

1. Whether, the complainant proves that, the accused had issued the cheque bearing no. 196372 dated 19.07.2023 for Rs.7,50,000/- drawn on ICICI Bank, Infosys Branch, Electronic City, Hosur Road, Bangalore in favour of the complainant towards discharge of legally enforceable debt or liability and when presented the same were returned unpaid with an endorsements “Funds Insufficient” on 16.08.2023 and even after issuance of legal notice dated 14.09.2023 the accused had failed to pay the cheques amount to the complainant within statutory period and thereby the accused had committed an offence punishable under Section 138 of Negotiable Instruments Act?

2. What order or sentence ?

7. My findings on the above points are as hereunder:

Point No.1: In the Affirmative

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

:R E A S O N S:

8. **Point No.1:** In order to satisfy the essential ingredients of section 138 of NI Act, the complainant herself got examined as PW-1 by filing affidavit-in-lieu of her examination-in-chief and in the affidavit it is nothing but reiteration of averments of the complaint. In support of her case, PW-1 has also got marked the documents as Ex.P-1 to Ex.P-5 and Ex.P-1(a) signature. I have carefully perused the documents got marked by the complainant Ex.P-1 is the disputed cheque dated 19.07.2023 issued in the name of the complainant herein for Rs.7,50,000/-. The accused has disputed the issuance of cheque in favour of the complainant. On perusal of Ex.P-2 is cheque return memo, the Ex.P-1 cheque in question was dishonored for the reasons ‘Funds Insufficient' on 16.08.2023. The accused also not disputed the factum of presentation of cheque to the bank and consequent dishonor of the same for the reasons 'Funds Insufficient'. As per section 146 of NI Act there is presumption in

respect of Bank Slip's/memo's as to dishonor of cheque. On perusal of Ex.P-3 legal notice the complainant was demanded the accused for payment of cheque amount within 15 days from the date of receipt of notice and said notice was not served to the accused and RPAD cover was returned on 21.09.2023 as per Ex.P-5 is the postal cover. The present complaint was to be filed on or before 05.11.2023 however it was filed on 18.10.2023. On perusal of Ex.P-1 to P-5 documents, it appears that, the complainant has complied all the mandatory requirement of section 138 of NI Act and presented the complaint well within the period of limitation.

9. Coming to the merits of the case, in the case on hand the accused has not disputed the issuance of cheque in favour of the complainant and he has not denied his signature in the cheque. And accused has not taken any defence. Therefore, mandatory presumption U/s. 139 of N.I. Act is drawn in favour of the complainant in respect of issuance of cheque towards discharge of legally enforceable debt or liability. It is also to be noted that, the presumption mandated under section 139 of NI Act would also extends to the extent of liability as to the existence of debt as on the date of cheque. **The Hon'ble Apex Court in the decision reported in AIR 2010 SC**

1898 in Rangappa Vs. Sri Mohan clearly held that, *“presumption mandated by Section 139 of NI Act does indeed include the existence of legally enforceable debt or liability, this is of course in the nature of rebuttable presumption and it is open to the accused to raise defense whether the existence of legally enforceable debt or liability can be contested. However, there can be no doubt that, there is an initial presumption which favors the complainant.”.*

10. From the above it is clear that, the presumption mandated by section 139 of N.I. Act is not at all a conclusive proof and on the other hand the same is rebuttable in nature. The accused can rebut the presumption by raising a probable defence. For this purpose the accused need not adduce evidence on his own in some cases and he can rely upon the evidence materials placed by the complainant and also the circumstances under which the complainant has relied upon to prove his case. Therefore, the standard of proof for rebuttable of the presumption by the accused is 'preponderance of probabilities'.

11. With these aforesaid settled legal principles let me embark upon the defence raised by the accused in this case. But in this case accused has not taken any defence

in regarding to Ex.P.1. Therefore, it is to be held that, the Ex.P-1 cheque in question was issued towards discharge of legally enforceable debt. Hence, I answer Point No.1 in the **'Affirmative'**.

12. **Point No.2**: This Court has already come to the conclusion that, the Ex.P-1 cheque in question was issued by the accused towards discharge of legally enforceable debt or liability, and the accused has committed offence punishable U/s 138 of NI Act. This Court has power to impose sentence of imprisonment and sentence of fine on the accused. Admittedly, both complainant and the accused are well acquainted with each other, therefore, considering the long standing acquaintance of accused with the complainant and the totality of the circumstances of the case, I deem it proper to impose sentence of fine only on the accused instead of sentencing him to undergo imprisonment, otherwise their relationship may be further deteriorated. Since, both the parties have litigated this case from 2023 and as such, the accused has to compensate the complainant in terms of money by paying interest on the cheque amount. In the result, This Court proceeds to pass the following:

ORDER

Acting under section 255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable under section 138 of Negotiable Instruments Act.

The accused is hereby sentenced to pay a fine of Rs.7,55,000/- (Rupees Seven Lakh Fifty Five Thousand Only) and in default of payment of fine amount he shall undergo simple imprisonment for a period of 3 months.

Acting under section 357(1)(a) of Cr.P.C. out of total fine amount payable by the accused, a sum of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand Only) shall be payable to the complainant towards compensation and the remaining amount of Rs.5,000/- shall be defrayed as state expenses.

Further, it is made it clear that, if the accused opt to undergo default sentence, that would not exonerate him from payment of compensation to the complainant.

In this case the complainant has stated that she has paid the amount of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand Only) by cash itself. Hence office is hereby directed to report the same to income tax department in respect to above cash transaction of complainant.

The bail bond and surety bond executed is hereby extended as per law.

Office is hereby directed to supply free certified copy of this Judgment to the accused.

(*Dictated to the stenographer, transcribed by him, transcript revised, corrected by me and then pronounced in the Open Court on this the 02nd day of April 2026).*

(SMT. PARVATHI C.M.)
I ADDL. CIVIL JUDGE & JMFC,
MADDUR

ANNEXURE

LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:

PW-1	Lakshmi

LIST OF DOCUMENTS MARKED FOR COMPLAINANT:

Ex.P-1	Original cheque bearing No.196372 dated: 19.07.2023
Ex.P-1(a)	Signature of accused
Ex.P-2	Cheque return memo
Ex.P-3	Office copy of legal notice
Ex.P-4	Postal Receipt
Ex.P-5	Postal cover
Ex.P-5(a)	Notice

LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED :

	NIL

LIST OF DOCUMENTS MARKED FOR ACCUSED

	NIL

(SMT. PARVATHI C.M.)
I ADDL. CIVIL JUDGE &
JMFC, MADDUR.