

KAMD310005982021



Presented on : 17-02-2021
Registered on: 17-02-2021
Decided on : 02-04-2026
Duration : 05 years, 01 months, 16
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.377/2021

BETWEEN:

A.GOWTHAM,
S/o Ananda,
Aged about 32 years,
R/at Deshahalli Village,
Maddur Taluk.

(By Y.M.M., Advocate)

.....COMPLAINANT

-AND-

SANCHANA H.S,
D/o Shivakumar,
Aged about 25 years,
R/at Near Old Post Office,
Gejjalagere Village,

Maddur Taluk.

(By H.R., Advocate)

.....ACCUSED

Date of Complaint : 01.02.2021
Offence Charged : Under Sec.138 of N.I.Act
Date of Commencement
of evidence : 26.11.2024
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.1,50,000/- from the complainant for your legal necessity for discharge of hand loans and house hold expenses on 01.08.2020 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 IDBI Bank, 100 feet Road Branch, Mandya City by the cheque bearing No.132097 dated 02.11.2020 for Rs.1,50,000/- in favour of the complainant. When the complainant was presented the said cheque for encashment through Union Bank of India, Mandya Branch and the same was returned unpaid on 09.12.2020 for the reasons "Funds Insufficient". Thereafter, the complainant was got issued legal notice dated 04.01.2021 calling upon the accused to pay the cheque amount within 15 days from the date of notice and said notice was not served to the accused and returned on 12.01.2021. 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 her, 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 himself examined as PW-1 and also got marked the documents as Ex.P-1 to Ex.P-5. 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 her, for which the accused had denied all the incriminating evidence appeared against her and submits that, she 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. 132097 dated 02.11.2020 for Rs.1,50,000/- drawn on IDBI Bank, 100 feet Road Branch, Mandya City 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 09.12.2020 and even after issuance of legal notice dated 04.01.2021 the accused had failed to pay the cheque 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

6

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 himself got examined as PW-1 by filing affidavit-in-lieu of his examination-in-chief and in the affidavit it is nothing but reiteration of averments of the complaint. In support of his case, PW-1 has also got marked the documents as Ex.P-1 to Ex.P-5. I have carefully perused the documents got marked by the complainant Ex.P-1 is the disputed cheque dated 02.11.2020 issued in the name of the complainant herein for Rs.1,50,000/-. The accused has disputed the issuance of cheque in favour of the complainant but she has not disputed her signature in the cheque. 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 09.12.2020. 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 notice and said notice was not served to

accused and returned on 12.01.2021 as per Ex.P-5 is the postal cover. Since, Ex.P-3 notice was not served to the accused and returned on 12.01.2021, the present complaint was to be filed on or before 26.02.2021 however it was filed on 01.02.2021. 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 she has not denied her 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 her own in some cases and she 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 her to undergo imprisonment, otherwise their relationship may be further deteriorated. Since, both the parties have litigated this case from 2021 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.1,52,000/- (Rupees One Lakh Fifty

10

Two Thousand Only) and in default of payment of fine amount she 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.1,50,000/- (Rupees One Lakh Fifty Thousand Only) shall be payable to the complainant towards compensation and the remaining amount of Rs.2,000/- 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 her from payment of compensation to the 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	A. Gowtham
------	------------

**LIST OF DOCUMENTS MARKED FOR
COMPLAINANT:**

Ex.P-1	Original cheque bearing No.132097 dated: 02.11.2020
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.