KAMD310014092022

Presented on : 05-03-2022
Registered on: 05-03-2022
Decided on : 01-07-2026
Duration : 04 years, 03 months, 26 days

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC AT MADDUR.

PRESENT:

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

DATED THIS THE 01st DAY OF JULY 2026

C.C. NO.1108/2022

BETWEEN:

SIDDEGOWDA,
S/o Late. Siddegowda,
Aged about 50 years,
R/at Yalladahalli village,
C.A Kere Hobli, Maddur Taluk.

(By H.N.S., Advocate)

........COMPLAINANT

-AND-

SMT. BHARATHI,
W/o Jayaramu,
Aged about 40 years,
R/at Peehalli Village,
Srirangapattana Taluk.

(By H.R., Advocate)

.........ACCUSED

Date of Complaint	:	28.02.2022
Offence Charged	:	Under Sec.138 of N.I.Act
Date of Commencement of evidence	:	01.04.2023
Date of Judgement	:	01.07.2026

(SMT. PARVATHI C.M.)
PRL. 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.3,00,000/- from the complainant for your legal necessity i.e., to discharge hand loans and family expenses on 10.11.2021 promising to repay the said loan amount within two 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 Canara Bank, Arakere Branch, Srirangapattana Taluk by the cheque bearing No.713395 dated 16.01.2022 for Rs.3,00,000/- in favour of the complainant. When the complainant was presented the said cheque for encashment through Bank of Baroda, Bharathi nagar Branch, Maddur Taluk and the same was returned unpaid on 29.01.2022 for the reasons "Funds Insufficient". Thereafter, the complainant was got issued legal notice of the accused dated 03.02.2022 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of notice and said notice was duly served to the accused on 09.02.2022. 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 Prl. 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 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 her, for which the accused had denied all the incriminating evidence appeared against

her and submits that, she has a defence evidence to lead. And he herself examined as DW-1 and got marked Ex.D-1 and 2 documents on her behalf and closed her evidence.

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. 713395 dated 16.01.2022 for Rs.3,00,000/- drawn on Canara Bank, Arakere Branch, Srirangapattana Taluk 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 29.01.2022 and even after issuance of legal notice dated 03.02.2022 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 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 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 16.01.2022 issued in the name of the complainant herein for Rs.3,00,000/-. 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 29.01.2022. 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 duly served to the accused on 09.02.2022 as per Ex.P-5 is the postal acknowledgment. The present complaint was to be filed on or before 26.03.2022 however it was filed on 28.02.2022. 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 disputed the issuance of cheque in favour of the complainant but she has not denied her signature in the cheque. And accused has stated that, the accused has gave the blank cheque to one Sheela for security of loan amount. But it was misused by the complainant by filing the above case. But the accused has not taken any action against the complainant in respect to above misuse. And in this case Ex.P-1 cheque return memo's is returned with shara as 'Funds Insufficient'. 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. It is the specific defence of accused that the accused has gave the blank cheque to one Sheela for security of loan amount. But it was misused by the complainant by filing the above case. And the amount shown in the Ex.P-1 is not a payable by accused to complainant because she has never borrowed of loan amount of Rs.3,00,000/- from the complainant and she has not liable to pay the amount which is reveals in Ex.P-1 to complainant. But the complainant has filed the above case by misusing the same.

12. It is pertinent to note that, except taking such defence the accused has not placed any cogent material evidence to prove her defence except Ex.D.1 and 2. I have carefully perused the Ex.D.1 and 2 they are reveals that the ration card and reply notice to accused and the Ex.D.1 and 2 were not relevant to this case. The defence of the accused is create a doubt in regarding to issuance of blank cheque to one Sheela, therefore the defence of the accused is not believable one. On the other hand, the complainant had produced the documentary evidence in

respect of prove of point no.1. On perusal of the same, it discloses that, the complainant had gave the amount to accused. But accused has disputed the said payment by suggesting witness at the time of cross examination of PW-1, but there was no documentary evidence is placed by the accused in support of her defence. Merely the accused had disputed the payments shown in Ex.P-1 but it was not disproved by the accused. It is the burden on the accused to disprove the case of the complainant when there is strong presumption available in favour of the complainant under section 139 of NI Act. It is well settled position that, the burden of complainant in prosecution under section 139 of NI Act will be discharged with the aid of presumption of law and facts. The Hon'ble Apex Court in **Criminal Appeal Nos. 230-231/2019 in Bir Singh Vs Mukesh Kumar,** the Hon'ble Apex Court held that; *Negotiable Instruments Act (26 of 1881), S 138, S.139-Evidence Act (1 of 1872), S.4-Presumption U/s 139- Is presumption of law, distinguished from presumption of facts-Presumptions are rules of evidence and do not conflict with presumption of innocence, which requires prosecution to prove case against accused-Obligation on prosecution may be discharged with aid of presumptions of law and presumptions of fact unless accused adduces evidence* *showing reasonable possibility of non-existence of presumed fact.*

13. Applying the principle enunciated by the Hon'ble Apex Court, heavy burden cannot be put on the complainant unless the accused able to raise a probable defence and probablize the same by cogent material evidence. Except denial of debt and putting suggestions to the complainant during cross examination, nothing placed on record by the accused to disprove the case of the complainant. Mere denial of debt is not sufficient to shift the burden back to the complainant.

14. To add more, till date the accused has not taken any action against the complainant for the alleged misuse of cheque. If really the accused had gave the cheque in blank to one Sheela and there was no existence of debt or liability as on the date of cheque to complainant, certainly the accused could have initiated legal action against the complainant. Silence on the part of the accused clearly goes to show that, the cheque in question was issued towards legally enforceable debt due towards the complainant. Therefore the defence of the accused is not probablize. After that also the accused has not taken any action against the complainant in respect to her defence. There are some anomalies

suggestion and questions were put to the witness by the learned counsel for the accused during cross examination as to, the capacity of complainant to lend money, purpose of lending loan and its term, acquaintance with the accused etc., these are the irrelevant consideration in prosecution under section 138 of NI Act. The Hon'ble Apex Court in a decision reported in **AIR 2019 Supreme Court 1876, Rohitbhai Jivanlal Patel Vs State of Gujarat and Another;** held that, *needless to reiterate that the result of such presumption is that existence of a legally recoverable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of founds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.* ***The other observation as regards, any variance in the statement of complainant and witness;*** *or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains through the office of the complainant being on the 8th floor had also been* ***are irrelevant factors of consideration of a probable defence of the accused****.*

15. Though the accused contended that, the cheque which is given by accused to one Sheela and it was misused by the complainant, she has not taken any action against the complainant. If the issuance of cheque and signatures admitted the mandatory presumption under section 118 and 139 of NI Act would get attracted. The accused has failed to raise a probable defence to rebut the statutory presumption. Mere denial is not sufficient to discharge the onus shifted on the accused. The accused has taken a vague and bald defence without placing any cogent evidence to prove the same. It is well settled that, mere distorted version or mere taking up defence by the accused that he is not liable to pay any amount, are not sufficient to put back the burden on the complainant. The accused has to brought on record something which is probable in rebuttal of presumption. However, the accused has failed in all respects. Under such circumstances, it is to be held that, Ex.P-1 cheque in question was issued by the accused towards discharge of legally enforceable debt or liability.

16. What prevented the accused to give a complaint to the police about misuse of cheque and also not explained by the accused. The inaction on the part of the accused even after having knowledge about dishonor of cheque would creates doubt on her defence. The accused

has failed to make out a probable defence in rebuttal of presumption. The defence raised by the accused in this case is not probabilize and 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'**.

17. **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 2022 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:

O R D E R

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.3,03,000/- (Rupees Three Lakh Three 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.3,00,000/- (Rupees Three Lakh Only) shall be payable to the complainant towards compensation and the remaining amount of Rs.3,000/- 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.

In this case the complainant has stated that he has paid the amount of Rs.3,00,000/- (Rupees Three

Lakh 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 01st day of July 2026).*

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

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:

PW-1	Siddegowda

LIST OF DOCUMENTS MARKED FOR COMPLAINANT:

Ex.P-1	Original cheque bearing No.713395

	dated: 16.01.2022
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 acknowledgment

LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED :

DW-1	Bharathi

LIST OF DOCUMENTS MARKED FOR ACCUSED

Ex.D-1	Ration card
Ex.D-2	Reply notice

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