KAMD310022372022

Presented on : 06-05-2022
Registered on: 06-05-2022
Decided on : 02-04-2026
Duration : 03 years, 10 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.1674/2022

BETWEEN:

M.P.KUMAR,
S/o Puttaswamigowda,
Aged about 50 years,
R/at House No.148,
Behind LIC Office, 2nd Cross,
Bandigowda Badavane,
Mandya city.

(By K.K., Advocate)

........COMPLAINANT

-AND-

SMT. H.M JAYALAKSHMI,
W/o Late. Nagaraj,
Aged about 48 years,

R/at Opposite Maruthi Wood World,
Karnataka Tent Road,
Maddur Town.

(By M.M.M., Advocate)

.........ACCUSED

Date of Complaint	:	29.04.2022
Offence Charged	:	Under Sec.138 of N.I.Act
Date of Commencement of evidence	:	29.04.2022
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.8,00,000/- from the complainant for your legal necessity i.e., to discharge hand loans and house hold expenses on

14.11.2021 promising to repay the said loan amount 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 Syndicate Bank (Now Canara Bank), Maddur Branch by the cheque bearing No.175958 dated 21.02.2022 for Rs.8,00,000/- in favour of the complainant. When the complainant was presented the said cheque for encashment through Bank of Baroda, Mandya Branch and the same was returned unpaid on 23.02.2022 for the reasons "CTS IS NOT ACCEPTING OLD e-SYNDICATE BANK CHQ'S KINDLY ADVICE THE CUSTOMER TO TAKE NEW CANARA BANK CHQ OR SEND CHQ TO SYNDICATE BANK MADDUR KAMALA NEHRU GIRLS HIGH SCHOOL BRANCH FOR DIRECT COLLECTION". Later again the complainant was presented the said cheque for encashment through Syndicate Bank, Kamala Nehru Girls High School Branch, Maddur and the same was returned unpaid on 11.03.2022 for the reasons "Funds Insufficient". Thereafter, the complainant was got issued legal notice of the accused dated 25.03.2022 calling upon the accused to pay the cheque amount from the date of receipt of notice and said notice was not served to the accused and returned on 04.04.2022. 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 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-6 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 she herself examined as DW-1 and got marked Ex.D-1 document 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. 175958 dated 21.02.2022 for Rs.8,00,000/- drawn on Syndicate Bank (Now Canara Bank),

Maddur Branch 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 11.03.2022 and even after issuance of legal notice dated 25.03.2022 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 Negative,
Point No. 2:	As per final order for the following:

:<u>R E A S O N S</u>:

8. **<u>Point No.1:</u>** 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-6 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 21.02.2022 issued in the name of the complainant herein for Rs.8,00,000/-. The accused has disputed the issuance of cheque in favour of the complainant. On perusal of Ex.P-3 is cheque return memo, the Ex.P-1 cheque in question was dishonored for the reasons “Funds Insufficient” on 11.03.2022. 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-4 legal notice the complainant was demanded the accused for payment of cheque amount from the date of receipt of notice and said notice was not served to the accused and returned on 04.04.2022 as per Ex.P-6 postal cover. The present complaint was to be filed on or before 19.05.2022 however it was filed on 29.04.2022. On perusal of Ex.P-1 to P-6 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. But she has stated that, the cheque in question was issued by her to complainant for security of loan amount. But the complainant has misused the Ex.P.1. But the accused has not taken any action against the complainant in respect to above misuse. 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 her 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 cheque in question was issued by her to complainant as security at the time of loan amount and she has paid the loan amount of Rs.4,75,000 as decided at police station on the basis of complaint by complainant dated 09.11.2020 itself. Hence this court has go through the materials available on record it is appears that the accused has examined herself as DW.1 and she got marked Ex.D.1 document in respect to non issuance of cheque to complainant as alleged by complainant in his complaint. Therefore the court may presumes that the

Ex.P.1 is not issued by accused for the payment of Rs.8,00,000/- on 21.02.2022, because as per contention of complainant he has gave the amount of Rs.8,00,000/- to accused on 14.11.2021, but accused has stated that he has gave amount as per settlement between the complainant and accused in the year of 2020 and also she has produced the Ex.D.1 to corroborate with the defence of the accused itself. And in this case the Ex.P.1 is belongs to the Syndicate Bank and the cheque leaves are taken by the accused from the said bank itself and it was reflected in Ex.P.1. As per the government notification the Syndicate Bank was merged with the Canara Bank on 01.04.2020. On perusal of the Ex.P.2 it is appears that the Ex.P.2 is the not CTS endorsement and also there is no endorsement was given by the Canara Bank in respect to presentation of cheque which is Ex.P.1 which is belongs to Syndicate Bank on 21.02.2022 and also the Bank of Baroda has given the endorsement that the Ex.P.1 is not acceptable due to old cheque as per Ex.P.2 itself. As per the banking law a CTS endorsement is a signature or endorsement on the bank of a cheque i.e, processed through the cheque truncation system (CTS) the system replaced physical cheque movement with digital images and data for faster clearance. While a traditional endorsement involves physically signing the back for cashing or transfer, under CTS bank captures on images of endorsement cheque and the digital image and data are transmitted electronically for processing. But in this case the complainant has not produced the CTS endorsement for the above endorsement for the reason Funds insufficient, because the Syndicate Bank is merged with the Canara Bank on 01.04.2020 itself and also the Canara Bank has not given the endorsement for presentation of Ex.P.1 before the Canara Bank and also it was not reflected in Ex.P.2. As per the above endorsement the complainant should be present the Ex.P.1 within the valid the period of three months from the date of Ex.P.1 before the proper bank, but the complainant has straightly filed the above complaint against the accused without presenting the Ex.P.1 for encashment through proper forum and also not produced CTS endorsement. And Ex.P.1 is lost is validity after merging Syndicate Bank with the Canara Bank itself. As per Ex.P.1 is not a valid cheque on 21.02.2022, because the Syndicate Bank cheque were become invalid after 30.06.2021 itself. And they are not acceptable one from 01.07.2021 as per the banking rules and notification of government. Therefore the court may presumes that the Ex.P.2 is not given by the accused bank under CTS clearance system. Hence the presumption U/s 139 of NI Act in regarding offence U/s 138 of NI Act is not drawn against the accused. Because the complainant has not complied the mandatory requirement U/s 138(a) of NI Act. Therefore the complaint against the accused is not maintainable. Hence the accused is succeeded to probalize the her defence through cogent documentary evidence. Therefore the burden of proof is shifted to complainant after proving of onus by the accused. After shifting of burden back to complainant in respect to disproving of onus of proof the complainant has not produced any sufficient materials to prove the burden after proving of onus by the accused in respect to payment which is disclosed by the complainant in her complaint and also Ex.D.1. Hence court may presumes that the complainant misused the cheque which is belongs to accused by obtaining from her at the time of hand loan. Hence, the contention of the complainant is creates the doubt in regarding to presumption U/s 139 of NI Act to issuance of cheque for legally recoverable debt or liability and also the complainant has failed to prove the burden which is shifted to her after proving of onus by the accused on point No.1 by producing the cogent material evidence. Hence, the benefit of doubt has to be extended to accused, because accused has succeeded probabilize her defence by rebutting the presumption which is drawn in favour of the complainant U/s 139 of NI Act by producing the cogent material evidence. Therefore this Court has comes to conclusion and answered the point No.1 in the 'Negative'.

12. **POINT NO.2 :** Since, the Complainant has failed to prove the case beyond reasonable doubt that, the Ex.P1 cheque in question was issued towards discharge of legally enforceable debt or liability, the benefit of doubt should certainly be extended to the accused and consequently the accused is entitled for acquittal. In view of the aforesaid discussions. This Court proceed to pass the following:

O R D E R

Acting under section 255(1) of Cr.P.C. the accused is hereby acquitted for the offence punishable under section 138 of Negotiable Instruments Act.

In this case the complainant has stated that he has paid the amount of Rs.8,00,000/- (Rupees Eight 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 if any is hereby cancelled.

(*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

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:

PW-1	M.P.Kumar

LIST OF DOCUMENTS MARKED FOR COMPLAINANT:

Ex.P-1	Original cheque bearing No.175958 dated: 21.02.2022
Ex.P-1(a)	Signature of accused
Ex.P-2	Acknowledgment of receipt of cheque
Ex.P-3	Cheque return memo

Ex.P-4	Office copy of legal notice
Ex.P-5	Postal Receipt
Ex.P-6	Postal cover
Ex.P-6(a)	Notice

LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED :

DW-1	H.M Jayalakshmi

LIST OF DOCUMENTS MARKED FOR ACCUSED

Ex.D-1	Police acknowledgment

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