KAMD400006932025

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC AT: MALAVALLI

PRESENT

SRI.MAHENDRA. M,
BA., LL.B.,
SENIOR CIVIL JUDGE, AND JMFC.,
MALAVALLI.

Dated this the 6th day of June 2026

CC No.273/2025

Old CC No.1529/2021

Complainant : **Sri. M.K.Somashekar**
S/o Late K.Kempaiah
Aged about 43 years,
R/o Ward No.14,
Soda Muddana Keri, Pete,
Malavalli Town, Mandya District.

(By Sri C.H.V., Advocate)

V/s

Accused : **Sri. J.J.Prakash**
S/o Late J.Joseph
Aged about 59 years,

Technical Assistant,
Central Sericulture Department Office,
Kanakapura Road, Malavalli Town,
Mandya District.

(By Sri K.S.L., Advocate)

JUDGMENT

This case emanates from the complaint is filed by the complainant alleging that, the accused has committed the offence punishable Under Section-138 of Negotiable Instruments Act.

2. Initially, the complaint presented before 1st Addl. Civil Judge and JMFC, Malavalli and registered as CC No.1529/2021. In view of order No.16/2025 of Hon'ble Prl. Senior Civil Judge and CJM, Mandya dated 24.04.2025, the case has been transferred before this court and given new CC number as 273/2025.

3. **The brief facts of the case of the complainant are as follows:-**

The complainant submitted that, the accused known to him. The accused approached the complainant for financial assistance of Rs.3,00,000/- for his legal necessities i.e., discharge of hand loans and to meet household expenses. The complainant agreed the same and gave Rs.3,00,000/- to the accused on 08.11.2020. The accused has agreed to repay the same within 3 months from the date of borrowed. After lapse of 3 months, the complainant had approached the accused and requested to repay the loan amount. At that time, the accused had issued the cheque bearing No.969368 dated 10.02.2021 for Rs.3,00,000/- drawn on State Bank of India, Kaalamutthanadoddi (K.M.Doddi) Branch, Maddur Taluk in favour of complainant.

4. The complainant further submitted that, he had presented the said cheque before his banker State Bank of India, Malavalli Branch, Malavali Taluk for

encashment. But, the said cheque was returned with endorsement "funds insufficient" and "drawer's signature incomplete/eligible/differs/required" dated 10.02.2021. Thereafter, the complainant approached the accused and given intimation regarding dishonored of the cheque. The accused does not response to the request of complainant. The complainant got issued the legal notice to the accused on 20.02.2021 by RPAD. The said notice not served to the accused. In spite of it, the accused did not make any attempt to discharge the amount due under the cheque. **Hence filed complaint.**

5. On presentation of the complaint this court has taken cognizance of the offence u/Sec.138 of N.I. Act. The pursuance of service of summons the accused has put her appearance before this court and filed bail application u/Sec.436 of Cr.P.C. and the same was allowed and the accused was released on bail.

6. The copies of the prosecution paper was forward to the accused as per Sec.207 of Cr.P.C. The plea was recorded u/Sec.251 of Cr.P.C. The accusation was read over to the accused, to which she pleaded not guilty and claimed to be tried.

7. To substantiate his contentions, the complainant has examined himself as PW1 and got marked ExP1 to 5. The side of the complainant was closed. The statement of the accused u/Sec.313 of Cr.P.C. has been recorded. The accused has failed to step into the witness box.

8. Heard the arguments from the learned counsel appeared on behalf of the complainant. The learned counsel for the accused has failed to address the arguments.

9. In view of the materials placed before this court the points arise for consideration of this court are as follows;

POINTS

1. **Whether the Complainant proves beyond all shadow of doubt that, the accused has committed the offence punishable u/Sec.138 of Negotiable Instruments Act?**
2. **What Order?**

10. The findings of this court to the above points are as under:-

Point No.1: In the Negative,

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

REASONS

11. **Point No.1:-** This court has carefully perused the Section 138 N.I. Act and the law declared by the **Hon'ble High Court of Karnataka in the decision reported in ILR 2008 Karnataka 4629**

between Shivamurthy V/s Amruthraju & Another decision, rendered by **Hon'ble Apex Court reported in AIR 2008 Supreme Court 1325 between Krishna Janardhan Bhat V/s Dattatreya G.Heggade**. A careful reading of Sec.138 of N.I Act and the ratio laid down in aforesaid decisions makes it clear that the Sec.138 of N.I. Act has three ingredients, which are as follows:

1. **That there is legally enforceable debt.**
2. **That the cheque was drawn for the account of Bank for discharge in whole or in part of any debt or other liability which pre-sopposes a legally enforceable debt.**
3. **That the cheque so issued had been returned due to Insufficiency of funds.**

12. Keeping in view the ingredients of Sec.138 of N.I. Act now, this court feel that it is correct to reproduce the Sec.139 and 118 of N.I. Act here itself.

<u>Sec.139 of N.I. Act reads as follows:-</u>

<u>Presumption in favour of holder:-</u> It shall be presumed, unless the contrary is proved that, the holder of a cheque received the cheque of the nature referred to in Sec.138 for the discharge in whole or in part, or any debt or other liability.

<u>The Sec.118(a) of N.I. Act reads as Follows:-</u>

Presumption as to Negotiable Instruments:- until the contrary is proved, the following presumption shall be made.

a) <u>Of Consideration:</u>- That every Negotiable Instruments was made or drawn for consideration and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.

13. Keeping in view the ingredients of Sec.138 and the provision of Sec.139 and 118(a) of N.I. Act, now this court has proceed to discuss the documents of this case. This court of the opinion that, this court has need not report the entire case of the

complainant here also, since this court have already narrated the same at the inception of this judgment.

14. It must be noted that, to substantiate his contentions the complainant has examined himself as PW1 and got marked 5 documents as per ExP1 to 5. In view of this court is correct to discuss about the documentary evidence here itself for the convenient sake.

15. The ExP1 is the cheque bearing No:969368 dated 10.02.2021 of Rs.3,00,000/- drawn on State Bank of India, K.M.Doddi Branch. According to complainant the ExP1(a) is the signature of accused herein. A perusal of the original complaint and original cheque makes it clear that they buttress the stand taken by the complainant herein.

16. ExP2 is the endorsement issued by the Banker and ExP3 is the office copy of legal notice dated

20.02.2021. ExP2 is show that, the complainant had presented the aforesaid cheque bearing No.969368 for en-cashment, before State Bank of India, Malavalli Branch, Malavalli Taluk, but the same was returned unpaid on 10.02.2021 with remarks **“Funds insufficient and drawer’s signature incomplete/eligible/differs/required”.**

17. It must be noted that, as per clause (b) of proviso of Sec.138 of N.I Act the complainant was required to make a demand for payment of said amount with in 30 days from the date of receipt of cheque as unpaid. The ExP3 show that, the complainant made a demand, in writing, calling upon the accused to make repayment of the said loan amount by issuing notice dated 20.02.2021 which is within 30 days from the date of receipt of cheque as unpaid. The ExP5 is the unserved postal cover show that, the legal notice issued by the complainant which is not served to the

accused on 22.02.2021. As per clause(c) of proviso to Sec.138 of N.I. Act the accused was entitled to have 15 days time to make the repayment of aforesaid loan amount. Thus, the complainant had to wait till 07.03.2021. Thus, the cause of action for this complaint has arisen on 08.03.2021. Further, as per Sec.142(b) of N.I. Act the complaint is to be filed with in 30 days from the date on which the cause of action arises. Therefore, complainant had to file this complaint on or after 09.03.2021 and on or before 10.04.2021. This case has been filed on 23.03.2021 and hence, the complaint is well with in time. Thus, the complainant has fulfilled all the components. Which were required for the completion of the offense u/Sec.138 of N.I. Act.

18. In the decision of **Hon'ble Appellant court in AIR 2010 SC 1898 between Rangappa V/s Mohan**, the Hon'ble Apex Court has held that once the execution of Negotiable Instruments is either proved or

admitted, then, the court shall draw the presumption to the effect that, the said Negotiable Instruments has been drawn for valid consideration and the legally recoverable debt was existence.

19. Keeping in view this position of law, now, this court has proceed to discuss that, whether the cheque in question is belonged to the accused and whether the signature of the accused herein is available in the cheque in question?

20. It must be noted that, an answer lies to this question in the deposition of PW1. It is well settled that, suggestion is the reflection of the case of the opponent. The accused has admitted his signature on ExP1 through cross-examination of PW1.

21. Once this court concludes that, the execution of the cheque in question is proved, then, this court shall draw a presumption available u/Sec.139

of N.I. Act. In other words, this court shall draw a presumption that, the cheque in question has been drawn towards the discharge of legally enforceable debt and it is drawn for valid consideration. However, it is relevant to mention that, the position very clear that, **presumption available u/Sec.139 of N.I. Act is not conclusive proof, but, the said presumption is rebut-able one**. Therefore, in view of the aforesaid facts and circumstances and position of law, the accused has to dispel or rebut the presumption which is available and favourable to complainant herein. With this perception, now this court has proceed to discuss the evidence available on record.

22. It must be noted that, the complainant has only produced 5 documents and they are marked as ExP1 to 5. This court has already discussed about ExP1 to 5 in the preceding paragraphs of this judgment.

23. It must be noted that, the complainant has examined himself as PW1. The PW1 has filed his affidavit u/Sec.145 of NI Act, containing his examination-in-chief, wherein he has reiterated the entire complaint averments. However, this court cannot draw any conclusion without perusing the cross-examination of PW1.

24. The accused taken defense during the cross-examination of PW1 that, the complainant had obtained 11 cheques from the accused, some of the cheques are presented before his banker and obtained the amount from the account of accused and the complainant misused the ExP1 cheque and filed this false complaint against the accused.

25. The relevant portion of the cross-examination of PW1 as hereunder:

“ಆಗಸ್ಟ್ **2017** ರಲ್ಲಿ ನನ್ನಿಂದ ಆರೋಪಿಯು ಒಂದು ಲಕ್ಷ ರೂಪಾಯಿಗಳನ್ನು ಸಾಲವಾಗಿ ಪಡೆದಿದ್ದರು ಎಂದರೆ ಸರಿ**.** ಸದರಿ ಕಾಲಕ್ಕೆ ಸದರಿ ಸಾಲದ ಭದ್ರತೆಗಾಗಿ ಆರೋಪಿಯು ನನಗೆ **11** ಚೆಕ್ಕುಗಳನ್ನು ಅಂದರೆ **969371, 72, 74, 75, 79, 80, 82, 83, 84, 89** ಮತ್ತು ನಿಪಿ**1** ಚೆಕ್ಕುಗಳನ್ನು ನೀಡಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ**.** ಸದರಿ ಚೆಕ್ಕುಗಳಲ್ಲಿ **969354, 969357** ಮತ್ತು **229979** ನಂಬರಿನ ಚೆಕ್ಕುಗಳನ್ನು ಬ್ಯಾಂಕಿಗೆ ಹಾಜರು ಪಡಿಸಿ **34,000/- + 29,000/- + 40,000/-** ರೂ**.** ಮೊತ್ತವನ್ನು ಪಡೆದಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ**.** ಅದೇ ರೀತಿ ನನ್ನ ಬ್ಯಾಂಕ್ ಖಾತೆಗೆ ಆರೋಪಿಯು **22,000/- +35,000/-** ರೂ ಮೊತ್ತವನ್ನು ವರ್ಗಾಹಿಸಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ**.** ಸದರಿ ನಾನು ಡ್ರಾ ಮಾಡಿರುವ ಒಟ್ಟು ಮೊತ್ತ ರೂ**.1,58,500/-** ಎಂದರೆ ಸರಿ**. 11** ಚೆಕ್ಕುಗಳಲ್ಲಿ ನಾನು **3** ಚೆಕ್ಕುಗಳನ್ನು ಆರೋಪಿಗೆ ವಾಪಸ್ಸ್ ನೀಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ**.** ನಾನು ನಿಪಿ**1** ಚೆಕ್ಕನ್ನು ದುರುಪಯೋಗ ಪಡಿಸಿಕೊಂಡು ಪ್ರಸ್ತುತ ದೂರನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ**.”**

26. The above deposition clearly show that, the complainant already draw of Rs.1,58,500/- from the account of accused through 3 cheques. The said fact is suppressed by the complainant in the complaint. Hence, the complainant is not entitled the relief as sought for. As per the deposition and admission of the complainant, the complainant took 11 cheques from the

accused and 3 cheques already handed over to accused. It is clear that, there is no alleged transaction taken place between complainant and accused. Hence, the accused has no liability to pay the alleged cheque amount to the complainant.

27. The complainant got issued the legal notice to the accused on 20.02.2021 as per ExP3. The said legal notice unserved due to the accused left the address mentioned in the complaint. In the legal notice the complainant mentioned the address of the accused is office address not residential address. The PW1 during his cross-examination admitted that,

> “ಆರೋಪಿಯು ಪ್ರಕಾಶ್‌ಪಾಳ್ಯದ ಪಕ್ಕ ಮರೆಯಾಲಪುರ, ಕೊಳ್ಳೇಗಾಲ ತಾಲ್ಲೂಕಿನವರಾಗಿರುತ್ತಾರೆ. ಸದರಿ ಗ್ರಾಮವನ್ನು ನಾನು ನೋಡಿರುತ್ತೇನೆ. ಆರೋಪಿಯು ಆರೋಗ್ಯವಾಗಿದ್ದಾಗ ನನ್ನನ್ನು ಅವರ ಊರಿಗೆ ಹಲವು ಬಾರಿ ಕರೆದುಕೊಂಡು ಹೋಗಿದ್ದರು. ನಾನು ತಿಳುವಳಿಕೆ ನೋಟೀಸ್ ಅನ್ನು ಮಳವಳ್ಳಿಯ ಆರೋಪಿಯ ಕಛೇರಿಯ ವಿಳಾಸಕ್ಕೆ ಮತ್ತು ಮೈಸೂರಿನ ಬಾಡಿಗೆ ವಿಳಾಸಕ್ಕೆ ನೀಡಿರುತ್ತೇನೆ. ಆರೋಪಿಯು ಮೈಸೂರಿನಲ್ಲಿ ವಾಸವಿರಲಿಲ್ಲ ಮತ್ತು ಸದರಿ ಮೈಸೂರಿನ ವಿಳಾಸಕ್ಕೆ ನಾನು ನೋಟೀಸ್ ಅನ್ನು ಕಳುಹಿಸಿಲ್ಲ

ಎಂದರೆ ಮೈಸೂರಿನ ವಿಳಾಸಕ್ಕೆ ನೋಟೀಸ್ ಅನ್ನು ಕಳುಹಿಸಿರುವ ಬಗ್ಗೆ ಮರೆತಿರುತ್ತೇನೆ. ಆರೋಪಿಯು ನಿವೃತ್ತಿ ಹೊಂದಿದ ನಂತರ ನಾನು ಅವರಿಗೆ ನೋಟೀಸ್ ನೀಡಿರುತ್ತೇನೆ. ಆರೋಪಿಯು ನಿವೃತ್ತಿ ಹೊಂದಿದ ನಂತರ ಅವರ ವಾಸದ ವಿಳಾಸಕ್ಕೆ ನೋಟೀಸ್ ನೀಡದೆ ದುರುದ್ದೇಶದಿಂದ ಅವರು ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದ ಸ್ಥಳದ ವಿಳಾಸಕ್ಕೆ ನೋಟೀಸ್ ನೀಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ."

"ನಾನು ಆರೋಪಿಯನ್ನು ಸಾಲ ಕೊಟ್ಟ ನಂತರ ಅವರ ತೋಟದಲ್ಲಿ ಭೇಟಿ ಮಾಡಿರುತ್ತೇನೆ. ನೋಟೀಸ್ ನೀಡಿದ ನಂತರ **2-3** ಬಾರಿ ಆರೋಪಿಯನ್ನು ಭೇಟಿ ಮಾಡಿರುತ್ತೇನೆ. ತೋಟದ ಮನೆಯ ವಿಳಾಸಕ್ಕೆ ಆರೋಪಿಗೆ ನೋಟೀಸ್ ನೀಡಲು ತೊಂದರೆ ಇತ್ತೇ ಎಂದರೆ ಸದರಿ ವಿಳಾಸಕ್ಕೂ ಸಹ ನೋಟೀಸ್ ನೀಡಿರುತ್ತೇನೆ. ಸಾಕ್ಷಿಯು ತಾನು ಹಾಜರುಪಡಿಸಿರುವ ದಾಖಲೆಗಳನ್ನು ನೋಡಿ ಆರೋಪಿಯ ತೋಟದ ವಿಳಾಸಕ್ಕೆ ನೋಟೀಸ್ ನೀಡಿರುವ ಬಗ್ಗೆ ನೆನಪಿಲ್ಲವೆಂದು ಉತ್ತರಿಸಿರುತ್ತಾರೆ."

28. The above admission very clear that, at the time of issuance of legal notice by the complainant, the accused was retired from his service. But, the complainant got issued the legal notice to the accused through office address of the accused. Hence, the legal notice issued by the complainant is not proper. In this ground also the complainant has not entitled the relief as sought for.

29. This court has relied upon one decision regarding who has to prove the elements of consideration for issuing the cheque, that, **AIR 2001 SC 2895 between K.N.Beema V/s Muniyappa and Another**.

> **"The burden to prove the consideration for the cheque lies on the accused. If not rebutted, the presumption is that, the cheque was issued for consideration. It is for the accused to prove that, the cheques were not issued towards a debt or liability. He has to lead credible evidence for rebuttal of this presumption. Mere denied of averements will not suffice to shift this burden on to the complainant".**

30. In view of above discussion the complainant failed to prove that, the accused give the cheque in favour of the complainant for the liability of legal recoverable debt. The accused has succeeded to rebutted to presumption u/Sec.139 of N.I. Act. Hence this court come to the conclusion that, the materials available on records are not sufficient to conclude that,

the accused has committed the offense punishable u/Sec.138 of N.I. Act. Therefore this court come to the conclusion that, the accused is acquitted. **Hence this court has answer the Point No.1 in the negative.**

31. **POINT NO.2:** In view of findings of Point No.1, this court has proceed to pass the following;

ORDER

By exercising powers conferred under Section-255(1) of Cr.P.C., the accused is hereby acquitted for the offence punishable under Section-138 of Negotiable Instruments Act.

The bail bond of the accused and his surety stand canceled.

(Dictated to the Stenographer, directly typed by her on the laptop, then corrected and pronounced by me in open Court on this ***6th day of June, 2026****).*

(MAHENDRA M)
Senior Civil Judge, & JMFC
Malavalli

ANNEXURE

Witnesses examined on behalf of the Complainant:

PW1	:	Sri. M.K.Somashekar

Documents exhibited on behalf of the Complainant:

ExP1	:	Cheque bearing No:969368 dated 10.02.2021
ExP2	:	Endorsement issued by the Banker
ExP3	:	Office copy of legal notice dated 20.02.2021
ExP4	:	Postal receipt
ExP5	:	Un-served postal cover

Witnesses examined on behalf of the Accused persons**:**

- Nil -

Documents exhibited on behalf of the Accused persons:

- Nil -

(MAHENDRA M)
Senior Civil Judge, & JMFC.,
Malavalli.