KAMD400011372025

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 1st day of July 2026

CC No.583/2025

Old CC No.242/2019

Complainant : **Sri. Marigowda**
S/o Maayigegowda
Aged about 36 years
R/o Thalagavadi Village,
Kirugavalu Hobli, Malavalli Taluk,
Mandya District.

(By Sri N.N.S., Advocate)

V/s

Accused : **Sri. Mahesh.T.K**
S/o Kullaraiah
Aged about 28 years

R/o Thalagavadi Village,
Kirugavalu Hobli, Malavalli Taluk,
Mandya District.

(By Sri B.R., 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. This case already disposed on 05.04.2023 by convicted the accused. The accused had preferred an appeal before Hon'ble IV Addl. District and Sessions Judge, Mandya in Crl. Appeal No.52/2023. The said appeal came to be allowed on 22.08.2024 and matter was remanded back to the Trial court with a direction to permit the accused to cross examine the PW1 and dispose off the matter in accordance with law. Accordingly, the parties appeared before Trial court.

3. Initially, the complaint presented before 1st Addl. Civil Judge and JMFC, Malavalli and registered as CC No.242/2019. 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 583/2025.

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

The complainant submitted that, the accused known to him. The accused has approached the complainant for financial assistance to discharge the hand loans and purchase the auto. The complainant considering his circumstances had agreed to pay the same. The accused has received of Rs.3,00,000/- from the complainant on 23.08.2018. The accused has agreed to repay the same within 3 months from the date of borrowed. After the lapse of stipulated period, the complainant approached the accused to repay the loan amount on 27.11.2018. At that time, the accused has issued the cheque bearing No.882798 of his account Canara Bank, Thalagavadi Branch, dated 27.11.2018 for Rs.3,00,000/-.

5. The complainant further submitted that, he has presented the said cheque through his banker Canara Bank, Thalagavadi Branch on 27.11.2018. The bank issued the endorsement that, “funds insufficient” on 03.12.2018. The complainant approached the accused and given intimation regarding dishonored of cheque. The accused did not cared for the same. The complainant got issued the legal notice to the accused on 10.12.2018 through RLAD. The accused intentionally not received the said notice. But, the accused not comply the notice and not given reply to the said notice. **Hence filed complaint.**

6. 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.

7. 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 he pleaded not guilty and claimed to be tried.

8. 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.

9. Heard the arguments from the learned counsel appeared on behalf of the complainant. The learned counsel for the accused has not address the arguments.

10. 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?**

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

Point No.1: **In the Affirmative,**

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

REASONS

12. **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.**

13. 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.**

14. 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.

15. 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.

16. The ExP1 is the cheque bearing No:882798 dated 27.11.2018 of Rs.3,00,000/- drawn on Canara Bank, Thalagavadi 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.

17. ExP2 is the endorsement issued by the Banker and ExP3 is the office copy of legal notice dated 10.12.2018. ExP2 is show that, the complainant had presented the aforesaid cheque bearing No.882798 for en-cashment, before Canara Bank, Thalagavadi Branch, but the same was returned unpaid on 03.12.2018 with remarks **“funds insufficient”.**

18. 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 amount by issuing notice

dated 10.12.2018 which is within 30 days from the date of receipt of cheque as unpaid. The ExP5 is the un-served postal cover show that, the legal notice issued by the complainant which is not claimed by the accused and same was returned on 26.12.2018. 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 amount. Thus, the complainant had to wait till 11.01.2019. Thus, the cause of action for this complaint has arisen on 12.01.2019. 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 12.01.2019 and on or before 13.02.2019. This case has been filed on 17.01.2019 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.

19. 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.

20. 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?

21. 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 indirectly.

22. As per ExP3 the complainant issued the legal notice to the accused on 10.12.2018. The said notice unclaimed by the accused and the same was returned to the complainant on 26.12.2018. In this regard, this court has relied upon the decision reported in **2002 Crl. L.J. 1926(Kar)** between **Fakirappa V/s Siddalingappa and** another decision reported in **2017(5) SCC 737** between **N.Parameshwara Unni V/s G.Kannan and another.** In these decisions held that,

> **"The only requirement for the service of demand notice is that, the notice should have been sent to the correct address of the drawer. Since, the mode of service is not prescribed by the law, it can be sent either by registered post or under certificate of posting or otherwise. The expressions "left", "not known", "not available in the house", "house locked" etc., are**

all synonyms. Therefore, if the address of the drawer is proved to be correct, even if the notice is returned with the above remarks, then the notice is deemed to have been served on the drawer."

23. In the present case on hand, the legal notice issued by the complainant it was not claimed by the accused as per Postal Department report. As per above decisions, it is deemed service. The accused has not reply to the said notice. Hence, this court has draw the adverse inference against the accused as per Section 114 of The Indian Evidence Act.

24. The learned counsel for the accused has been cross examined the PW1. During the cross-examination, the accused has denied the transaction with complainant and further denied that, he had not given the cheque to the complainant. During the cross-examination of PW1, the accused has not taken any

specific defense. The accused has failed to step into the witness box to rebut the case of the complainant. The learned counsel for the accused during cross-examination of PW1 only put general questions. The PW1 denied the same.

25. 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.

26. 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.

27. 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. As discussed above the accused has failed to rebut the case of the complainant.

28. 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".**

29. In view of above discussion the complainant succeeded to prove that, the accused give the cheque in favour of the complainant for the liability of legal recoverable debt. The accused has failed 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 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 liable to pay the cheque

amount of Rs.3,00,000/- and the state expenses of Rs.5,000/- and compensation of Rs.1,50,000/-. The complainant has entitled to receive the compensation of Rs.4,50,000/-. **Hence this court has answer the Point No.1 in the affirmative.**

30. **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(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Section-138 of Negotiable Instruments Act.

The accused is sentenced to pay fine of Rs.4,55,000/- in default of payment of fine amount, the accused shall undergo simple imprisonment for the period of six months.

Out of the fine amount of Rs.4,50,000/- shall pay to the complainant as compensation under Section 357(1)(b) of Cr.P.C. and the remaining amount of Rs.5,000/- is to be deposited to the State.

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

Office is directed to supply the free copy of this judgment to the accused for therein as per Sec.363 of Cr.P.C.

*(Dictated to the Stenographer, directly typed by her on the laptop, then corrected and pronounced by me in open Court on this **1st day of July, 2026**).*

(MAHENDRA M)
Senior Civil Judge, & JMFC
Malavalli

ANNEXURE

Witnesses examined on behalf of the Complainant:

PW1 : Sri. Marigowda

Documents exhibited on behalf of the Complainant:

ExP1	:	Cheque bearing No:882798 dated 27.11.2018
ExP2	:	Endorsement issued by the bank
ExP3	:	Office copy of legal notice dated 10.12.2018
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.