

KAMD410000812018



**IN THE COURT OF PRL.CIVIL JUDGE & JMFC, MALAVALLI**

*Present.*

**Sri. Sachinkumar Shivapuji.** BA,L LLB.,  
*Prl.Civil Judge and JMFC.,  
Malavalli*

Dated this the 3rd day of October, 2023.

**C.C.No.19/2018**

Complainant: Sri. H.R.Chikkalingegowda  
S/o Late Ramegowda  
Aged about 68 years,  
R/o Nittur Hosadoddi Village,  
Halaguru Hobli,  
Malavalli Taluk,  
Mandya district.

**(By Shri HCS., Advocate)**

Vs.

Accused: Sri. Nanjundaiah  
Aged about 58 years,  
Cashier,  
Kaveri Kalpatharu Grameena Bank  
Antharavalli and Bydarahalli Branch  
Malavalli Taluk,  
Mandya district.

**(By Shri RNS., Advocate)**

Offences complained of : U/Sec.138 of NI Act  
Plea of accused : pleaded not guilty  
Opinion of judge : As per final order  
Judgment pronounced : 03.10.2023.

### **JUDGMENT**

**1.** This private complaint is initiated by the complainant under Sec.200 of Cr.P.C. against the accused alleging that the accused has committed the offence punishable under Sec.138 of Negotiable Instrument Act.

**2. The facts of the complaint are as follows:**

The complainant and the accused are well known to each other and the accused approached the complainant for financial assistance to meet his urgent legal necessities and the accused has borrowed a loan of Rs.2,00,000/- on 12.02.2017 to clear the hand loans and agreed to repay the loan amount within 02 months from the date of borrowing the said loan. Thereafter, after lapse of prescribed period,

the complainant approached the accused and demanded for the loan amount. At that time, the accused has issued a post dated cheque bearing No.268988 for sum of Rs.2,00,000/- of Kaveri Kalpatharu Grameena Bank, Besagahalli, Maddur Branch, by mentioning the date as 18.04.2017. It is further stated that the complainant accepted the said cheque with all bonafide intention and when he presented the cheque through his account at Kaveri Kalpatharu Grameena Bank, Halaguru Branch, the cheque was returned as dishonoured with an endorsement stating that “ **Funds Insufficient** ” on 02.05.2017. It is further stated that then the complainant approached the accused, narrated the facts regarding the dishonour of cheque, but the accused has not responded and he has not paid the cheque amount. It is further stated that as such, on 15.05.2017 the complainant has issued legal notice through R.P.A.D post to office address, the notices were served upon the accused on 23.05.2017 and 26.05.2017 but the accused has not repaid the amount. Hence, the

accused the accused has committed the offence punishable under Sec.138 of Negotiable Instrument Act. Therefore, the complainant prays to punish the accused. Hence, this complaint.

**3.** After presentation of the private complaint recorded the sworn statement of complainant. The complainant was examined as PW.1 and documents were got marked as Ex.P.1 to P.6 on behalf of the complainant and he closed his side and cognizance was taken for the offence punishable under Sec.138 of Negotiable Instrument Act and my learned predecessor in office ordered to register the Criminal Case against the accused for the offence punishable under Sec. 138 of Negotiable Instrument Act. Thereafter, the presence of accused was secured by issuing summons to him and he was enlarged on bail.

**4.** Copy of complaint was served on accused and the substance of accusation for the offence punishable under Sec.138 of Negotiable Instrument Act was framed and read

over and explained to him. After knowing the consequences of same, the accused pleaded not guilty and stated that he has defence to make. As the counsel for the accused did not file an application under Sec 145 (2) of the N.I.Act, **the statement of the accused under Sec 313 of Cr.PC was recorded** in view of the decision reported in AIR 2014 SC 2528. Hence, the case was posted for defence evidence.

5. The accused had been irregular to Court and trying to delay the matter intentionally. In spite of giving several opportunities, the accused has not cross examined PW-1 and chosen to lead any defense evidence nor has produced any documents in support of his defense. Thereafter, the case was posted for compliance of Sec 437-A of Cr.PC and arguments.
6. Heard arguments on by Complainant counsel accused and counsel absent argument of accused taken as 'Nil' and the accused has also not complied with Sec 437- A of Cr.PC.

The accused had been willingly absent to the Court throughout, so as to drag on the matter. It is to be noted that in 2017 EGLRHC10006044, SHARATH JETHALAL SAVLA V/s STATE OF GUJARATH AND OTHERS, in CRIMINAL MISC.APPLICATION No.19862 of 2015, dated 14.11.2016, the Hon'ble Gujarat High Court with regard to offence punishable under Section 138 of NI Act, has held that no illegality as regards the pronouncement of the judgment and order of conviction and sentence in the absence of the accused and further held that, when the accused sentenced to imprisonment, is not present in the Court, the Court has to issue a warrant of his arrest and the sentence shall commence on the date of his arrest. Further held that *"Be you ever so high, but law is above you"*.

**7. The following points arise for my consideration:**

*1) Whether the complainant has established that, the cheque in question is issued by the accused towards legally enforceable debt, on being presented for encashment it was*

*dishonored for 'Funds Insufficient' and the accused inspite of the statutory notice failed to pay the cheque amount and thereby committed an offence punishable under Sec.138 of Negotiable Instrument Act?*

*2) What order or sentence?*

**8.** My answer to the above points are as follows:

*Point No.1 – In the Affirmative,*

*Point No.2- As per final order,*

*for the following: -*

### **REASONS**

9. **POINT No.1:-** In order to prove his case, the complainant has examined as P.W-1 and he filed an affidavit in lieu of chief-examination reiterating the averments made in the complaint.

10. He has specifically deposed that, he and the accused are well known to each other and the accused has borrowed a loan of Rs.2,00,000/- on 12.02.2017 for the purpose of legal necessity and agreed to repay the loan amount within 02 months. Thereafter, the complainant approached the

accused and demanded for the loan amount and accordingly, the accused had issued a cheque as per Ex.P-1. Further he has deposed that, in spite of repeated requests and demands, the accused failed to keep up his promise made while borrowing the loan amount. Finally he has presented the said cheque for its encashment through his account in Kaveri Kalpatharu Grameena Bank, Halaguru Branch, the cheque was returned as unpaid for the reason that “ *Funds Insufficient* ” on 02.05.2017. In that regard, the complainant has produced the endorsement issued by the Bank as per Ex.P- 2 .

11. It must be noted that, as per clause (b) of provision of Section 138 of NI Act, the complainant was required to make a demand for repayment of the said amount within 15 days from the date of receipt of cheque as unpaid. In this case the complainant has further deposed that on receipt of intimation from the Bank, he got issued legal notice to the accused on 15.05.2017 calling upon him to pay the cheque amount within 15 days as per Ex.P.3 and the same was served to the accused on 25.05.2017 as per Ex.P.4 postal receipt and



Ex.P.5 & 6 are the postal acknowledgements. The notice sent by the complainant is within 30 days from the date of receipt of cheque as unpaid. As per clause (c) of proviso of Section 138 of NI 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 09.06.2017. Thus the cause of action for this complaint has arisen on 09.06.2017. Further, as per Section 142(b) of NI Act the complaint is to be filed within 30 days from the date on which the cause of action arises. Thus the complainant had to file this complaint on or after 09.06.2017. But this complaint has been filed on 20.06.2017 and hence the complaint is well within time. Thus the complainant has fulfilled all the components which were required for the completion of the offence under Section 138 of NI Act.

**12.** It is relevant to state that in the case on hand, despite of giving several opportunities, the accused did not enter into the witness box and examined himself as witness in support

of his defense. It is well settled law that, the presumption can be rebutted by the accused by preponderance of probabilities drawn from the materials brought on record by the complainant. Therefore, the question to be determined is whether the materials available on record are sufficient to hold that the accused has successfully rebutted the presumption drawn against him.

**13.** In this case the accused has failed to lead his defence evidence inspite of giving several opportunities. Therefore to avoid more delay the case was posted for compliance of Sec 437-A of Cr.PC and Arguments. Moreover, on the perusal of the order sheet, it reveals that the accused has deliberately and willingly remained absent to drag on the case.

**14.** It is pertinent to note that the Hon'ble Apex Court has given the direction for speedy and expeditious disposal of cases falling u/s 138 of NI Act in Indian Bank Association Vs Union of India 2014 (5) SCC 599. In the said case the Hon'ble Supreme Court of India has held that the recording of

statement of the accused under Sec 313 of Cr.PC is not mandatory. In this case the accused has not led any defense evidence on his behalf inspite of giving several opportunities.

**15.** It is pertinent to note that the accused has also failed to comply with Sec 437- A and address arguments. On perusal of the material on record it reveals that this Court has given ample opportunities to the accused to settle the matter, to lead defense evidence, to comply with Sec 437-A and to address arguments. But the accused has failed to comply the same.

**16.** It is true that Ex.P.1 cheque is a Negotiable Instrument, which is attached with the statutory presumptions as per Sec.118 and 139 of Negotiable Instrument Act. In this regard, the said presumptions are rebuttable presumption and burden is casted upon the accused to rebut the same as per the decision of Apex Court in K.SUBRAMANI V/s K.DAMODARA NAIDU-2015(4) KLJ 118. Further the Hon'ble Supreme Court in the case of RANGAPPA V/s MOHAN, AIR

2010 1989, has held that, 'Mere fact that the accused had failed to reply to the notice under Section 138 of NI Act leads an inference that there was merit in the complainant's version'. In the case on hand though the accused was having knowledge about the dishonour of the cheque in question, but he did not choose to issue any reply disclosing his defense. The counsel for the complainant during the course of argument also submits that the accused has not made any attempts to pay part amount or even settle the matter. Hence the cheque amount of Rs.2,00,000/- is due from the accused to the complainant. More over in this case the accused has not drawn any line of defense to rebut the same.

**17.** On considering all these aspects from the oral and documentary evidences coupled with the presumption under Section 118 and 139 of NI Act, the complainant has clearly proved all the ingredients of Section 138 of NI Act. Hence I hold that the complainant has proved Point No.1 with cogent and convincing evidence. Accordingly, I answer Point No.1 in Affirmative.

**18. Point No.2:** For the reasons discussed supra, I proceed to pass the following:

**ORDER**

*Acting under Sec.255(2) of Cr.P.C. the accused is hereby convicted of the offence punishable under Section 138 of NI Act.*

*The accused is hereby sentenced to pay a fine amount of Rs. 2,20,000/-and in default to undergo simple imprisonment for 02 months. Out of the fine amount a sum of Rs. 2,18,000/- shall be payable to the complainant as compensation and Rs.2000/- shall be adjusted towards the expenses incurred by the State. The Bail bond and surety bond hereby stand cancelled.*

*Supply free copy of judgment to the accused forthwith.*

*The accused is given time till 03.11.2023.*

(Dictated to the Stenographer, Corrected and then pronounced by me in the open Court on this the 03<sup>rd</sup> day of October, 2023.)

**(Sachinkumar Shivapuji),**  
Prl..Civil Judge and JMFC.  
Malavalli.

**ANNEXURE****1. LIST OF WITNESSES EXAMINED FOR COMPLAINANT :**

PW.1 - Sri. H. R. Chikkalingegowda.

**2. LIST OF DOCUMENTS EXHIBITED FOR COMPLAINANT:**

Ex.P.1 - is the Cheque.

Ex.P.1(a) - is the Signature of accused.

EX.P.2 - is the Bank Endorsement.

Ex.P.3 - is the Legal Notice.

Ex.P.4 - is the Postal Receipt.

Ex.P.5 & 6 - are the Postal Acknowledgements.

**3. WITNESSES AND DOCUMENTS MARKED ON BEHALF OF ACCUSED:**

Nil

*Prl.Civil Judge and JMFC.  
Malavalli.*