KAMD410040232022

Presented on : 29-12-2022
Registered on : 06-01-2023

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

Present.

Present: ***Smt.Nazia Kouser,***
B.E., L.L.B.,
Prl. Civil Judge and JMFC.,
Malavalli.

Dated this the 04th day of April, 2026.

C.C.No.13/2023

Complainant: **The Manager**
M.D.C.C. Bank
Halaguru Branch
Malavalli Taluk,
Mandya District.

(By Shri.N.K.S., Advocate)

Vs.

Accused: **Sri. Santhoshkumar**
S/o Puttegowda
R/o Hullahalli Village,
Kasaba Branch
Malavalli Taluk,
Mandya District.

(By Shri K.S.M., 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 : 04.04.2026.

JUDGMENT

1. This private complaint is initiated by the complainant Bank under Sec.200 of Cr.P.C. against the accused, alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act.

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

The accused had approached the complainant bank seeking financial assistance to meet his urgent legal necessities. Accordingly, on 19.07.2018, the accused has borrowed customer overdraft (COD) loan amount of Rs.1,00,000/- from the complainant bank, the accused executed document in favour of the complainant bank and the same is renewed last year. Further the accused agreed to pay the interest at 15% P.A. Further accused had paid the some interest amount long back to the complainant bank. Further accused issued a post-dated cheque bearing No.552841 dated 17.09.2022 for a sum of Rs.1,24,500/-, drawn on Canara Bank, Malavalli Branch, towards discharge of the said liability.

3. The complainant bank accepted the cheque in good faith and presented it for encashment through his banker at MDCC Bank, Halaguru Branch. However, the cheque was returned dishonoured on 23.09.2022 with an endorsement stating "**Funds Insufficient**."

4. Thereafter, the complainant bank approached the accused and informed him about the dishonour of the cheque. Despite the same, the accused gave evasive replies and failed to pay the cheque amount. Consequently, the complainant issued a legal notice dated 03.10.2022 to the accused through R.L.A.D., demanding payment of the cheque amount but the same was returned as not claimed. Thereafter, the accused has not repaid the amount to the complainant. Hence, the accused has committed the offence punishable under Sec.138 of Negotiable Instrument Act. Therefore, the complainant has filed the present complaint seeking punishment of the accused.

5. 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. Summons were issued to the accused. The accused appeared before the Court and was enlarged on bail.

6. 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 Sec145 (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.

7. Despite being granted several opportunities, the accused merely made attempts to recall the cross-examination of

PW-1 and did not choose to lead any defence evidence nor produced any documents in support of his defence. Thereafter, the case was posted for arguments.

8. Heard arguments and perused the records.

9. 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?

10. 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: -

<u>REASONS</u>

<u>11. POINT No.1:-</u> 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.

12. PW.1 has specifically deposed that, accused has borrowed a loan of Rs.1,00,000/- on 19.07.2018 under customer overdraft (COD) Loan. Further the accused agreed to pay the interest at 15% P.A. and the accused had issued a cheque as per Ex.P-2 towards discharge of the said liability. 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 banker MDCC Bank, Halaguru Branch, the cheque was returned as unpaid for the reason that ***"Funds Insufficient"*** on 23.09.2022. In that regard, the complainant has produced the endorsement issued by the Bank as per Ex.P- 3.

13. It is true that Ex.P2 cheque is a negotiable instrument. It is pertinent to note that, as per clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, the complainant is required to issue a demand notice seeking payment of the cheque amount within 30 days from the date of receipt of information regarding dishonour of the cheque. In the present case, the complainant has deposed that upon receipt of intimation from the bank regarding dishonour of the cheque, he caused issuance of a legal notice to the accused on 03.10.2022, calling upon him to pay the cheque amount within 15 days, as evidenced under Ex.P.4 and Ex.P.5. The said notice was returned to the complainant on 13.10.2022 as per Ex.P6, being the unserved postal cover.

14. The legal notice issued by the complainant is well within 30 days from the date of dishonour of the cheque. Further, as per clause (c) of the proviso to Section 138 of the Negotiable Instruments Act, the accused is entitled to a period of 15 days from the date of service of notice to make payment of the cheque amount. In the present case, the said 15 day period expired on 28.10.2022. As the accused failed to make payment within the stipulated period, the cause of action for filing the complaint arose on 29.10.2022.

15. As per Section 142(b) of the Negotiable Instruments Act, the complaint is required to be filed within 30 days from the date on which the cause of action arises. Accordingly, the complainant was required to file the complaint on or before 29.11.2022. In the present case, the complaint has been filed on 04.11.2022, which is well within the prescribed period of limitation. Hence, it is clear that the complainant has complied with all the statutory requirements and timelines prescribed under Sections 138 and 142 of the Negotiable Instruments Act. Therefore, the complainant has fulfilled all the essential ingredients necessary to constitute an offence punishable under Section 138 of the Negotiable Instruments Act.**16**. At this juncture, it is necessary to go through the provisions of Negotiable Instrument Act before proceeding further. The provisions under Section 118(a)&(b) and 139 of the Negotiable Instrument Act, 1881 are extracted and they read thus:

> **118. Presumptions as to negotiable instruments– Until the contrary is proved, the following presumptions shall be made: -**
>
> **(a) of consideration – that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was**

> **accepted, indorsed, negotiated or transferred for consideration.**
>
> **(b) as to date: - that every Negotiable Instrument bearing date was made or drawn on such date;**
>
> **"139. Presumption in favour of holder:- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."**

16. On plain perusal of the provisions under Section 118(a)&(b) and 139 of the N.I.Act., as extracted herein above, it can be seen that initially the presumptions constituted under these two provisions in favour of the complainant.

17. It is also well established that an accused for discharging the burden of proof placed upon him, under a statute need not examine himself. He may discharge his burden on the basis of the materials already available on record. Standard of proof on part of the accused in N.I. Act cases and that of the prosecution in a Criminal case is different. The prosecution must prove the guilt of an accused beyond all reasonable doubts, the standard of proof so as to prove a defence on the part of an accused is "Preponderance of probabilities".

18. Despite of giving several opportunities, the accused neither entered into the witness box nor let in defence evidence.

19. The accused has not cross examined PW.1 and has not set up any defence. 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 the cheque amount of Rs.1,24,500/- is due from the accused to the complainant bank. More over in this case the accused has not drawn any line of defence to rebut the same. Hence I hold that the complainant has proved Point No.1 with cogent and convincing evidence. Accordingly, I answer Point No.1 in Affirmative.

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.1,26,500/-and in default to undergo simple imprisonment for 02 months. Out of the fine amount a sum of Rs. 1,24,500/- shall be payable to the complainant as compensation and Rs.2,000/- shall be adjusted towards the expenses incurred by the State. The Bail bond and surety bond hereby stand cancelled.

The Hon'ble High Court of Gujarat in a case between Sharad Jethalal Savla V/s State of Gujarat and others in Criminal Misc. Application No.19862 of 2015 dated 14.11.2016 has observed as under "in so far as offence under Section 138 of NI Act is concerned. It is observed asunder "As regards the pronouncement of the judgment and other of conviction and sentence in the absence of the applicant accused, I am of the view that no illegality could be said to have been committed by the trial Court". In view of the aforesaid observation by the said Hon'ble Court, in the absence of accused, the judgment can be pronounced. Accordingly judgment is pronounced.

Supply free copy of judgment to the accused forthwith.

The accused is given time till 04.05.2026.

(Dictated to the Stenographer, Corrected and then pronounced by me in the open Court on this the 04th day of April, 2026.)

(Nazia Kouser),
Prl..Civil Judge and JMFC.
Malavalli.

ANNEXURE

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

PW.1	-	Vijaykumar K.L.

2. LIST OF DOCUMENTS EXHIBITED FOR COMPLAINANT:

Ex.P.1	-	Identity card.
Ex.P.2	-	Cheque.
Ex.P.2(a)	-	Signature of accused.
EX.P.3	-	Bank Endorsement.
Ex.P.4	-	Legal Notice.
Ex.P.5	-	Postal Receipt.
Ex.P.6	-	Unserved Postal Cover.

3. WITNESSES AND DOCUMENTS MARKED ON BEHALF OF ACCUSED:

Nil

Prl.Civil Judge and JMFC.
Malavalli.