Presented on : 03.03.2016
Registered on : 03.03.2016
Decided on : 29.08.2026
Duration :10years 05 months 26 days

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT SRIRANGAPATNA

PRESENT: Sri.UMESHA, M.P., **B.A.L., LL,B.**
PRL. CIVIL JUDGE & JMFC.,
SRIRANGAPATNA

DATED: ON THIS THE 29th DAY OF AUGUST - 2026

CRIMINAL CASE No. 240 / 2016

COMPLAINANT: **H. L. HEMAKUMAR** S/o Laxminarasimha murthy,
Aged about 36 years,
R/o Hunasanahalli Village, Arakere Hobli,
Srirangapatna Taluk, Mandya District.
(Represented by Sri.CMS., Advocate)

-V/s-

ACCUSED : **N. K. DEVARAJ,**
Aged about 45 years,
R/o SDA, MIMS, Mandya.
(Represented by Sri.NPM, Advocate)

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Date of Presentation of the Complaint	03.03.2016
Date of Registration of the Complaint	03.03.2016
Date on which the Sworn Statement was recorded	29.04.2014
Date of arrest of the accused	05.01.2023
Date of release of the accused	05.01.2023
Name of the Complainant	**H. L. HEMAKUMAR** S/o Laxminarasimha murthy,

Date on which the plea of the accused was recorded	12.04.2023
Plea of the accused	Pleaded not guilty
Date on which the statement of the accused U/Sec. 313 of Cr.P.C was recorded	07.11.2023
Date of recording evidence	29.04.2016
Date of closing evidence	07.04.2025
Offence complained of	U/Sec.138 of N.I.Act
Opinion of the Judge	Accused is hereby convicted for the offence punishable U/Sec.138 of N.I.Act
Date on which the judgment was pronounced	29.08.2026

(UMESHA M.P)
Prl. Civil Judge & JMFC
Srirangapatna.

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J U D G E M E N T

The complainant has filed this private complaint under Section 200 of Cr.P.C, against the accused alleging the commission of an offence punishable under Section 138 of Negotiable Instrument Act.

2. Brief facts of the case leading to filing of this complaint is as under:

It is stated that, the accused and the complainant were/are well acquainted each other. It is further stated that, the accused had approached the complainant and requested him for a hand loan of Rs.1,50,000/- for his legal necessities. It is further stated that, the complainant had paid a sum of Rs.1,50,000/- to the accused on 13.10.2013. It is further stated that, the accused issued a cheque bearing No.447264 dated:13.11.2013 for a sum of Rs.1,50,000/- drawn on State Bank of Mysuru, Mandya Branch. The complainant has presented the said cheque through his banker for collection. But, to the utter surprise of complainant the said cheque came to be returned to him along with return memo of SBM, Mandya Branch, dated:19.11.2013 with reason "**FUNDS INSUFFICIENT**". Then, the complainant approached the accused and informed about the same. Thereafter, the complainant has got issued a legal notice to the accused through his counsel by RPAD on 03.12.2013 calling upon the accused to make the payment of the above said cheque amount within 15 days from the date of receipt of the said notice. The said notice was served to the accused on 11.12.2013. But, the accused neither made payment of the said cheque amount nor replied to the said legal notice. Thus, the accused committed an offence punishable U/Sec.138 of N.I.Act. Hence complainant constrained to file the case. Therefore, the accused is liable to be punished and treated as is prescribed under the provisions of the Negotiable Instruments Act.,1881.

3. After filing the private complaint before this Court, cognizance was taken for the offence punishable U/Sec.138 of N.I.Act and the case was ordered to be registered as Private Complaint and accordingly, it was

registered as PCR No.04/2014. Sworn statement of Complainant was recorded as per Sec.200(a) of Cr.P.C., and after hearing the learned counsel for the complainant and on perusal of the documents placed before this Court, it was held that, the complainant has made out sufficient grounds to proceed with the case for the offence alleged and accordingly, the private complaint was ordered to be registered as criminal case and accordingly the summons was issued against the accused.

4. After receipt of summons, the accused appeared before the Court through his counsel and he was enlarged himself on bail vide order-sheet dated:05.01.2023. Copy of the complaint and documents have been supplied to the accused. Plea for the offence punishable U/Sec.138 of NI Act recorded and substance of accusation has been read over and explained to the accused in Kannada Language known to him. The accused pleaded not guilty and claimed to be tried. Thereafter, case was posted for the evidence for complainant side.

5. During the course of trial, the complainant examined himself as PW-1 and got marked documents ExP-1 to ExP-5, ExP-1(a) & ExP-5(a) and closed his side.

6. Statement of accused U/Sec.313 of Cr.P.C, recorded and the incriminating evidence forth coming against the accused has been read

over and explained to the accused in Kannada language known to him. He totally denied the entire case of the complainant / PW-1. On the other hand, the accused did not chosen to adduce any evidence and not produced any documents on his behalf.

7. I have heard the arguments of learned counsel for the complainant and the learned counsel for the accused on merits. Perused the oral and documentary evidence placed before this Court.

8**.** On the basis of the above facts, following, the following points arise for my consideration:

POINTS

1. ***Whether complainant proves that, the accused in discharge of legally recoverable debt has issued the Cheque bearing No.447264, dated: 13.11.2013 for an amount of Rs.1,50,000/-, drawn on State Bank of Mysuru, Mandya Branch, which is came to be dishonored with an endorsement "FUNDS INSUFFICIENT" on 19.11.2013. In spite of due service of notice accused has not paid the aforesaid Cheque amount and thereby committed an offence under section 138 of N.I.Act?***
2. ***What Order?***

9. My findings to the above Points are in the following because of below-discussed reasons:

Point No.1: IN THE AFFIRMATIVE.

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

R E A S O N S

POINT No.1:

10. In order to prove the guilt of the accused, the complainant was examined as PW-1 by way of an affidavit in lieu of his chief-examination. In his affidavit he has testified regarding lending of Rs.1,50,000/- to the accused, issuance of cheque, its dishounor, issuance of demand notice and also failure of the accused to pay the cheque amount. The complainant has produced the cheque bearing No.447264 dated:13.11.2013 for the amount of Rs.1,50,000/-drawn on State Bank of Mysuru, Mandya Branch. ExP-1 is the cheque said to have been issued by the accused, ExP-1(a) is the signature of the accused on ExP-1, ExP-2 is the bank endorsement which reveal that, ExP-1 was dishonored for the reason **"FUNDS INSUFFICIENT",** ExP-3 is the office copy of the legal notice dated:03.12.2013, ExP-4 is the postal receipt, ExP-5 is the unclaimed / not claimed RPAD cover. These documents reveals that, after dishonor of the cheque, the complainant had issued statutory notice to the accused within time.

11. In order to prosecute the drawer for the offence U/Sec.138 of N.I. Act, the following facts are required to be proved:-

1. That the cheque was drawn for payment of amount of money for discharging of a debt or liability,
2. The cheque was dishonored,
3. That the cheque was presented within the prescribed period,
4. The payee made a demand for payment of money by giving demand notice in writing to the drawer within stipulated period,
5. That the drawer failed to make the payment within 15 days of the receipt of notice.

12. Learned counsel for the complainant contended that, the cheque in question is dated:13.11.2013 the complainant has presented within time from the date of the cheque as it could be seen from ExP-2 endorsement. ExP-2 further show that, the cheque in question was dishonored for the reason **"FUNDS INSUFFICIENT"** and the demand notice was issued on 03.12.2013, the notice was issued within the statutory period of time. It is further contended that, the ExP-3-Legal Notice was issued by the complainant was served to the accused on 11.12.2013. ExP-5 is the unclaimed / not claimed RPAD cover which is discloses that, the accused has not received the ExP-3-legal notice and hence, ExP-5 has been returned as unclaimed / not claimed RPAD and hence, it is deemed

service. It is further contended that, the complainant has filed this complaint well within time. In this way the complainant has complied all the mandatory requirement of sections 138 and 142 of N.I.Act.

13. Learned counsel for the complainant further argued that, the complainant has discharged his initial burden of proving the case by his oral evidence and also producing by the required documents. He has also contended that, benefit of presumption under section 118 and 139 of N.I.Act is in favour of the complainant and therefore, the accused has failed to rebut the presumption. Hence, the accused is liable to be convicted.

14. It is necessary to note here that the accused has not denied the fact that the ExP-1-cheque in question belongs to the account maintained by him and also his signature on the ExP-1-cheque. By considering facts and circumstances of the case on hand, it is clearly goes to show that the cheque in question is reached the hands of the complainant through the accused only. Moreover, the accused did not entered into the witness-box to substantiate his defense and not produced any documents. Added to this the accused has not chosen to enter into the witness box to prove that the cheque in question is not issued to complainant in order to discharge any legally enforceable debt.

15. Because, initially the presumption U/Sec.139 of N.I.Act, is standing in favour of complainant. It is the accused must rebut the initial presumption by leading cogent evidence or by relying upon the materials produced by the complainant. The burden of proof is on the accused, he has to show the preponderance of the probabilities about the existence of debt in connection with the alleged cheque. Moreover, the accused did not entered into the witness-box to substantiate his defense and not produced any documents. Added to this the accused has not chosen to enter into the witness box to prove that the cheque in question is not issued to complainant in order to discharge any legally enforceable debt. Therefore the accused failed to rebut the initial presumption, which stands in favour of complainant.

16. In this connection it is relevant to extract section 118 of N.I.Act:- Presumption as to negotiable instrument: Until the contrary is proved, the following presumption 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 endorsed, negotiated or transferred for consideration,

(b). **As to date:** That every negotiable Instrument bearing a date was made or drawn on such date, (c). **As to time of acceptance:** that every accepted bill of exchange was accepted with in a reasonable time after its date and before its maturity,

(d). **As to time of transfer:** That every transfer of a negotiable Instrument was made before its maturity,

(e). **As to order of endorsement:** That the endorsements appearing upon a Negotiable Instrument were made in the order in which they appear thereon,

(f). **As to stamps:** That a lost promissory note, bill of exchange or cheque was duly stamped,

(g). **That holder is a holder in due course**: that the holder of a negotiable instrument is a holder in due course- that….. lies upon him.

17. So it is clear from the above provision of law that even negotiable instrument must made or drawn for consideration and the date on which it was drawn. There is no say by the accused regarding this presumption. On the other hand the categorical case of the complainant is that ExP-1 cheque was came to be issued by the accused when he had obtained a loan of Rs.1,50,000/- from the complainant and one thing is certain that ExP-1-cheque is issued for payment of the above said amount.

18. Now come into section 139 of N. I. Act which reads as: 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 of N.I.Act, for the discharge, in whole or in part, of any debt or other liability. when the presumption is available to the complainant regarding the fact that, the ExP-1-cheque was issued towards discharge of legally enforceable debt, then it is on the accused to prove the contrary to show that how ExP-1 cheque came to be issued. There is no explanation by the accused. By considering facts and circumstances of the case on hand, it is clearly goes to show that the ExP-1-cheque in question is reached the hands of the complainant through the accused only and the accused has not disputed the issuance of cheque in question belongs to the account maintained by him and his signature on the ExP-1-cheque. Moreover, the accused did not entered into the witness-box to substantiate his defense and not produced any documents.

19. As per Sec.118 and Sec.139 of Negotiable Instrument Act, until the contrary is proved, it shall presume the alleged cheque issued for repayment of debt or other liability. However, the said presumption is rebuttal presumption, the accused can rely upon the material on record to bring the preponderance of probabilities, which creates doubt about existence of legally recoverable debt.

20. Until the contrary is proved, it shall presume the alleged cheque in question was issued for recovery of any debt or other liability, in view of Sec. 118 and Sec.139 of NI Act. The evidence of PW-1 and document at ExP-1 to ExP-5, ExP-1(a) & ExP-5(a) also remained unchallenged by accused. There are no reasonable to disbelieve or to discard the evidence of PW-1 including document at ExP-1 to ExP-5, ExP-1(a) & ExP-5(a). Even though accused has appeared before this court he has not adduced any evidence to prove his defence. The accused has not produced any documents on his behalf. Therefore, there is no credible evidence to rebut and dilute the initial presumption, which stands in favour of Complainant U/Sec.118 and 139 of N I Act. Therefore, the benefit of presumption must be given to complainant. From above a discussion it is shown that, accused has committed an offence punishable under section 138 of NI Act. If an offence committed by accused under Section 138 of N.I.Act is proved, accused can be punished with imprisonment up to two years or fine up to double the amount mentioned in ExP-1 cheque or both. Accordingly, I answer point No.1 in the affirmative.

POINT NO.2:

21. Before passing final order, it is just and necessary to discuss about the quantum of compensation to be award to the complainant. As

per section 357 of Cr.P. C, and as per the principles laid down in the decision reported in 2001 Crl. L. J 950(SC), (Pankaj Bai Nagibai Patel -V/s- State of Gujarath) the court can award compensation and there were no limits for the same. As such, the court has to consider how much compensation could be awarded in this case. On careful perusal on record at ExP-1 cheque clearly disclose that the accused had borrowed a sum of Rs.1,50,000/-from the complainant as a hand loan and he has not made any attempt to pay the said amount till to this day. Taking into consideration of these facts, fine of Rs.10,000/- over the cheque amount is imposed would meet ends of justice. Because in case, said amount was deposited in any nationalized bank, it would have fetched minimum interest at rate of 6% p.a. Further according to the principal laid down in the decision reported in 2000 Crl. L. J-1793(SC)(State of Karnataka -V/s- Krishnappa), while imposing sentence, the courts are expected to properly operate sentence system, it should be impose such sentence for code offence which serve as detention of commission of like offences by others-socio economic status, prestige, race, caste, or creed of the accused or victim are irrelevant considerations in sentencing policy. Hence in this case also, if the accused is punished with simple imprisonment for one year and to pay compensation to the complainant. As per the principles laid down in the decision reported in 2002 Crl. L. J-1003(SC) (Suginith

Suresh Kumar -V/s- Jagadishan) wherein it is held at page No.1005, at para No.5 that “In the said decision this court reminded all concerned that is well to remember the emphasis laid on the need for making liberal use section 357(3) of the code. Hence in this case also, if the accused is punished with simple imprisonment for one year and to pay compensation to the complainant.

22. In view of my findings to the above point, I proceed to pass the following order:

ORDER

Accused is found guilty of the offence punishable under section 138 of Negotiable Instruments Act.

Acting under Section 255 (2) of Cr. P. C, the accused is hereby convicted for the offence punishable under section 138 of N.I.Act and the accused is sentenced to undergo simple imprisonment for the period of one year and the accused is sentenced to pay fine of Rs.1,60,000/- in default of payment of fine, he shall undergo simple imprisonment for three months.

Out of total amount of fine Rs.1,55,000/ is ordered to be paid to the complainant as compensation U/Sec 357 (3) of Cr.P.C, and remaining amount of Rs.5,000/- ordered to be remitted to the state.

The bail bond of the accused and his surety bond shall be in force till appeal period is over as per the provision of U/Sec.437 (A) of Cr.P.C.

Office is hereby directed to send the copy of this judgement to the Jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any, in compliance of the directions of the Hon'ble Supreme Court of India in Civil Appeal No.5200/2025 (which is reported in 2025 INSC 490), as the amount transaction involed in this case is Rs.1,50,000/- and the complainant has paid a sum of Rs.1,50,000/- to the accused by cash.

Supply copy of this judgement to the accused immediately, at free of cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open Court on this the 29th day of August - 2026 at Srirangapatna)

(UMESHA.M.P)
Prl. Civil Judge & JMFC,
Srirangapatna.

ANNEXURE TO THE JUDGMENT

List of the witnesses examined on behalf of the Complainant:-

PW-1 : **H. L. HEMAKUMAR** S/o Laxminarasimha murthy,

List of the witnesses examined on behalf of the Accused:

-NIL-

List of the documents marked on behalf of Complainant:-

ExP-1 : Cheque bearing No.447264 dated:13.11.2013 for a sum of Rs.1,50,000/- drawn on State Bank of Mysuru, Mandya Branch,

ExP-1(a) : Signature of the accused on ExP-1,

ExP-2 : Endorsement dated:19.11.2013 which reveals that, ExP-1 was dishonored for the reason **"FUNDS INSUFFICIENT",**

ExP-3 : Office copy of the legal notice dated:03.12.2013

ExP-4 : Postal receipt,

ExP-5 : Unclaimed / Not claimed RPAD Cover,

ExP-5(a) : Copy of the legal notice dated:03.12.2013 kept in ExP-5

List of the documents marked on behalf accused:-

-NIL-

(UMESHA M.P)
Prl. Civil Judge & J.M.F.C,
Srirangapatna.

Judgment signed and pronounced in the open Court.
(Vide separate judgment)

ORDER

Accused is found guilty of the offence punishable under section 138 of Negotiable Instruments Act.

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Supply copy of this judgement to the accused immediately, at free of cost.

(UMESHA.M.P)
Prl. Civil Judge & JMFC,
Srirangapatna.