KAMS010009852026

# IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU

**Dated this the 30th day of June, 2026**

**:: PRESENT ::**

**Sri. Mohan Badagandi,**

**B.Com., LL.B (Spl.,)**

II Addl. District & Sessions Judge,
Mysuru.

**CRL.A/64/2026**

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| **APPELLANT** | :: | Dr. Anuroop Gogi,<br>S/o. Mohan Gogi,<br>Aged about 48 years,<br>R/at. # 307, Maple Block,<br>Sankalp Central Park,<br>Yadavagiri, Ideal Jawa Road,<br>Mysuru – 570020.<br><br>**(By : Sri. R.N., - Adv.,)** |
| | | **V/s** |
| **RESPONDENT** | :: | Sri. Dhiraj Kumar Chaubey,<br>S/o. Narendra Prasad Chaubey,<br>Aged about 53 years,<br>R/at. # 25, 8th Main,<br>1st Stage, Hebbal,<br>Mysuru – 570016.<br><br>**(By : Sri. M.S.K., - Adv.,)** |

## JUDGMENT

This criminal appeal is filed by the appellant/accused under Section 415 of BNSS., against the judgment in C.C.No.11211/2021 dated 05.01.2026 on the file of VI Addl. Civil Judge and JMFC, Mysuru (hereinafter referred as 'trial Court').

2. The appellant was the accused, Respondent herein was the complainant before the trial court. For the sake of convenience, the parties in this appeal would be referred with the ranks they were holding in the trial Court.

3. The complainant initiated the criminal proceedings by filing private complaint under Section 200 of Cr.P.C., against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

4. The brief facts leading to this appeal can be stated as under :-

5. The accused along with Jayashree Gogi, W/o. Mohan Gogi entered into an Agreement on 25.07.2020 and such Agreement pertaining to the taking over the entire right in 'Advika Hospital LLP'. Such Agreement was entered into with Mr. Ram Mohan Sahay, Mrs. Pushpa Rani Sahay, the complainant and Sri. C.B.Keshava Murthy as Second Parties. The various terms and conditions of the Agreement are self explanatory and there is a consideration amount which is also reflected therein. On the same day i.e., on 25-07-2020, Supplementary Agreement for payment and schedule of payment is also reflected. As per the terms of the Agreement for payment, the schedule of payment is reflected.

6. Further, contended that to clear the liability as per the terms of the Agreement, the accused has issued several cheques of which based upon the request of the complainant. The cheque bearing No.000058 dated 10.08.2021 for

Rs.2,50,000/- drawn on Kotak Mahindra Bank, Saraswathipuram Branch, Mysuru and same was presented for encashment through the banker of the complainant i.e., ICICI Bank, K.D. Road Branch, Mysuru. The said cheque was dishonored with an endorsement 'Account closed' received on 18.08.2021.

7. On 08.09.2021 the complainant got issued legal notice through RPAD to the accused calling upon him to make the payment of the said cheque amount the notice sent under R.P.A.D was returned unserved with an endorsement intimation delivered on 14.09.2021. In spite of lapse of 15 days, the Accused has not paid the cheque amount nor replied the same. Hence, the complaint.

8. The records show that the trial Court took cognizance of the offence punishable under Section 138 of N.I.Act and ordered to register C.C. and posted the case for recording the sworn statement on

the side of the complainant, the trial Court passed an order and directed the office to register Criminal Case against the accused for the offence punishable under Section 138 of N.I. Act and ordered to issue summons to the accused.

9. In response to the summons, the accused appeared before the trial Court, obtained bail and contested the case. The plea of the accused was recorded, accused pleaded not guilty and claimed to be tried.

10. Complainant himself is examined as PW.1 and 12 documents are marked as Ex.P.1 to Ex.P.12. Thereafter, the accused has been examined under Section 313 of Cr.P.C., wherein he denied the incriminating circumstances appeared against him. The accused chose to lead defence evidence and himself got examined as DW.1 and got marked the documents at Ex.D.1 to Ex.D.4. After closing the evidence of both the sides and after hearing the

arguments, the trial Court on considering the materials on record has passed the conviction order under Section 255(2) of Cr.P.C. and sentenced to pay a fine of Rs.2,50,000/- for the offence punishable under Section 138 of N.I. Act. In default, he shall undergo simple imprisonment for a period of six months. If the amount deposited, a sum of Rs.5,000/- is to be paid to state and remaining amount shall be paid to the complainant as compensation.

11. Being aggrieved by the said conviction order, the Appellant/accused has preferred this appeal urging the following grounds ;

The learned magistrate has erred in convicting and sentencing the Appellant. The Respondent has not approached with clean hand and suppressed all the material facts and circumstances. The complaint is a premeditated abuse of criminal process and an attempt by the Respondent to extract money by fabricating documents, misusing a misappropriated cheque, and misleading Court with deliberate falsehoods. From the very inception, the Respondent's conduct demonstrates complete malafides, suppression of material facts, and reliance on documents that are not merely doubtful but demonstrably forged. The Respondent has failed to prove the existence of any legally enforceable debt liability an essential foundational requirement for maintaining a prosecution under Section 138-while the Appellant has established a clear, consistent, and overwhelming defence rebutting every statutory presumption, he has produced incontrovertible materials proving the falsity of the Respondent’s case.

12. The Respondent's entire prosecution case on two alleged Agreement dated 25.07.2020 one titled "Agreement," purportedly involving five parties, and another titled "Agreement for Payment and

Schedule of Payments," involving only three parties. The said documents contradict each other fundamentally in structure, content, and legal effect. If the Respondent's story were true, there would have been one coherent partnership-related Agreement-not two inconsistent and incoherent documents. The so-called partnership-looking Agreement contains none of the standard clauses associated with reconstitution or induction of a partner, while the payment schedule Agreement appears to be created solely for the purpose of manufacturing an alleged liability.

13. The Appellant and his mother have never signed the documents, and their signatures do not belong to him. The improbability, inconsistency, and internal contradictions in these documents alone dismantle the Respondent's story. The Trial Court gravely erred in placing reliance on two alleged Agreement and supplementary Agreement for

payment and schedule of payments dated 25th July 2020 relating to a commercial transaction concerning takeover of the business of Advika Hospital LLP. That the said Agreements being unregistered and insufficiently stamped, is inadmissible in evidence for proving the alleged liability and could not have been relied upon to fasten criminal liability under Section 138 of N.I.Act.

14. The reconstitution of Partnership Deed dated 07.08.2020 executed between the Appellant, Respondent and other parties is the final one and same is registered before the Ministry of Corporate Affairs.

15. The Appellant's defence has been consistent from day one. Immediately after receiving the legal notice, the Appellant replied through email categorically denying the existence of any Agreement dated 25.07.2020 and asserting that the cheque was never issued for any liability. This early, consistent,

and unequivocal stand reinforces the Appellant's credibility and rebuts the statutory presumption.

16. Moreover, the independent witness summoned by this Hon'ble Court, namely Mr.Keshav Murthy-himself a partner of Advika Hospitals LLP-categorically testified that no Agreements dated 25.07.2020 exist and that the only genuine and operative document among the partners is the LLP Agreement dated 07.08.2020. This testimony has completely destroyed the very foundation of the Respondent's prosecution. The witness further confirmed that the Respondent's documents (i.e. Agreements dated 25.07.2020) do not reflect the genuine terms of partnership, thereby exposing the fraudulent nature of the alleged Agreements. Further, reliance on the Agreements dated 25.07.2020 is unlawful.

17. The genuine Reconstitution of Partnership Agreement dated 07.08.2020, already admitted into

evidence, is a properly drafted, legally consistent document signed by all partners and submitted before the Ministry of Corporate Affairs. It clearly records that the Appellant and his mother invested Rs.30,00,000/-, and this investment is corroborated by bank statements. If the Respondent's alleged earlier Agreements of 25.07.2020 really existed, it would have been reflected in the LLP Agreement dated 07.08.2020 and the Respondent must explain why they were not mentioned, referred to, or incorporated into the 07.08.2020 Agreement. Hence the total absence from a subsequent, formal, statutory partnership document proves conclusively that the Respondent's documents are fabricated and were created later solely for litigation. The Respondent has failed to prove the legal recoverable debt.

18. The Respondent's conduct grows more suspicious by the fact that they moved an application

to summon the company secretary-who possessed critical knowledge about the genuine partnership documents-but after obtaining permission from the Trial Court. The Respondent deliberately avoided producing her in the witness box. This suppression of best evidence entitles the Appellant to a presumption under Section 114(g) of the Evidence Act that such evidence, if produced, would have gone against the Respondent. The action of the Respondent and the remaining partners of the Aadvika LLP clearly establishes a reasonable doubt and collusion to cheat the innocent Appellant for wrongful gain.

19. Furthermore, the cheque in question was not dishonored due to any action or decision of the Appellant. Kotak Bank's endorsement clearly states that the dishonor occurred because the Appellant's earlier account was migrated to the Kotak Privy League system, under which his phone number

became the new account number, and the earlier account reflected as "closed." This was purely an internal administrative migration by the bank. The Appellant neither closed the account nor acted in any manner to cause dishonour. The Trial Court has failed to understand the fact that the account of Appellant was closed by the bank not on the request of the Appellant in order to avoid payment.

20. The Appellant has further produced email correspondence between himself, and the Respondent and the company secretary, as well as MCA requisitions submitted by the Respondent. All these contemporaneous documents refer only to the 07.08.2020 Agreement and do not mention the alleged Agreements of 25.07.2020 even once. This silence in official records is fatal to the Respondent's case. If earlier Agreements existed, they would appear somewhere in statutory filings, internal communications, or MCA submissions. Their total

absence confirms that they are fabricated. The Respondent's falsehood permeates every stage of this litigation, revealing a deliberate, calculated attempt to misuse criminal law for extracting money by fraudulent means.

21. The Trial Court failed to appreciate that the alleged cheque arose out of a proposed commercial business takeover, which admittedly failed and never fructified. In the absence of completion of the financial transaction, no legally enforceable debt or liability existed on the date of the alleged cheque, which is a mandatory requirement under Section 138 of the NI Act. For these reasons, the Appellant submits that the Respondent has utterly failed to establish any legally enforceable debt or liability, has relied on forged documents, has misused a misappropriated cheque, has suppressed material witnesses, has concealed statutory records, and has attempted to mislead this Trial Court by

constructing a false narrative. In contrast, the Appellant has conclusively rebutted the statutory presumption through credible documents, independent witness testimony, bank records, statutory filings, and consistent defense. Hence, Appellant deserves for an honorable acquittal with exemplary costs.

22. The further submits that, the Respondent has misused the above said cheque for the purpose of filing the above case, there is no kind of legal transactions between the Appellant and Respondent.

23. The Appellant specifically denied the Agreements dated 25.07.2020, signature on the cheque and issuance thereof. The Trial Court failed to properly consider this crucial defense and erroneously presumed execution without strict proof, thereby shifting the burden wrongly upon the Appellant.

24. The Trial Court has failed to consider the legality of the alleged Agreement dated 25.07.2020 which is an unenforceable Agreement under the law. The said Agreement being executed on a stamp paper of the value of Rs.200 only and the said Agreement has not been sufficiently stamped under the Indian Stamp Act and same must have been notarized before the Notary Officer. These above mentioned facts have been ignored by the said Trial Court.

25. The Appellant further submits that the LLP Agreement dated 07.08.2020 has been executed between the Appellant and the Respondent, that is the final document related to LLP transaction which was not considered by the Trial Court. If there was Agreement for Payment and schedule of Payments and Agreement dated 25.07.2020 prior to above mentioned LLP Agreement dated 07.08.2020, then such terms and other covenants agreed upon by Appellant and Respondent should have been

reflected in the above mentioned LLP Agreement dated 07.08.2020. But no such terms or other covenants have been reflected in the above mentioned Agreement, which creates doubt and suspicion on the authenticity of the said Agreements dated 25.07.2020. The above said real facts were completely ignored by the Trial Court.

26. The Appellant further submits that the Trial Court has completely failed to verify the authenticity of the Agreements dated 25.07.2020 and the entire commercial transactions and the alleged issuance of various cheques by the Appellant was based on the Agreements dated 25.07.2020.

27. The Appellant further submits that the Respondent has concealed material facts and fabricated the material documents to mislead the Trial Court. The Respondent has failed to pay required stamp duty while execution of the alleged Agreement dated 25.07.2020 and the Appellant prays

interference of this Hon'ble Court to direct the concerned authority to take proper action related to Agreement dated 25.07.2020.

28. The Trial Court has failed to consider the fact that the Respondent was in possession of other various cheques for various amount alleged to have been issued by the Appellant as narrated in the alleged Agreement dated 25$^{th}$ July, 2020. The Respondent has presented only selective cheques instead of presenting all the cheques for encashment. The above act of the Respondent clearly establishes an ulterior motive of the Respondent to file the case for illegal gain in wrongful manner. The findings of the Trial Court are based on surmises and conjectures and not on legal evidence.

29. The learned Magistrate has further erred in not noticing the failure of the Respondent to place the valid evidence before the Court. The very judgment is illegal, contrary to law and against to the

principles of natural justice and equity. Hence, same is liable to be set-aside.

30. After filing of this appeal, notice duly served on the Respondent, who made his appearance through the counsel. The trial Court records have been secured.

31. In support of the contention of the appeal memo the counsel for the accused has also filed written synopsis and relied upon several decisions as said in the written argument and appeal memo, but no decision is made available to the court.

32. Heard the arguments of learned counsels of both sides.

33. In the light of the contentions taken up in the memorandum of appeal and arguments of both sides, the common points that arise for my determination are as follows;

1. Whether learned Magistrate is not justified in convicting and

sentencing this Appellant/accused for the offence punishable under Section 138 of N.I. Act ?

2. Are there any grounds to interfere with order of the conviction and sentence ?

3. What order ?

34. My findings on the above points are as under :

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| **Point No.1** | **:** | **In the Negative,** |
| **Point No.2** | **:** | **In the Negative,** |
| **Point No.3** | **:** | As per final order for the following : |

**:: R E A S O N S ::**

35. **POINT NOS.1 AND 2:-** Since these points are inter-connected, they are discussed together to avoid repetition of the facts.

36. The complainant/Respondent is examined as PW.1 and PW.1 in his examination-in-chief has reiterated the contention taken up in his complaint. He has stated that accused and his wife, mother have entered into an Agreement and accused has

taken-up the company of the complainant i.e., 'Advik Hospital LLP' and Agreement was entered with Mrs. Ram Mohan Sahay, Mrs. Pushpa Rani Sahay, Complainant and C.B.Keshava Murthy. The Agreement was executed on 25.07.2020 and Supplementary Agreement for payment and schedule payment is also reflected in the Agreement. The accused gave cheque cheque for repayment on repeated requests. The cheque under consideration was issued by the accused. The said cheque when presented for payment, was returned as dishonoured on 18.08.2021 with the reason of 'Account Closed'. In that regard, registered notice was issued to the accused on 08.09.2021 and accused failed to make good the cheque amount. He got produced and marked the documents at Ex.P.1 to P.12. Ex.P.1 is the Cheque, Ex.P.2 is the Cheque return memo, Ex.P.3 is the copy of legal notice said to have been sent to the accused, Ex.P.4 is the postal receipt, Ex.P.5 is the legal notice, Ex.P.5(a) is the returned

RPAD cover, Ex.P.6 is the Certified copy of Agreement dated 25.07.2020, Ex.P.7 is the Certified copy of Agreement for Payment and schedule Payment dated 25.07.2020, Ex.P.8 is the certified copy of order sheet in CC.No.33/2025, Ex.P.9 is the Copy of E-Mail with regard to reply to legal notice by complainant dated 30.11.2021, Ex.P.10 is the E-Mail message dated 23.05.2020, 23.06.2020, 05.09.2025 and 25.07.2020, 18.11.2022 along with attachment of Agreement and Mail dated 25.07.2020 along with attachment of Agreement, Ex.P.11 is the copy of Information and Ex.P.12 is the Copy of Whatsapp chats.

37. In the cross examination of PW.1, it is tried to elicit that he is the Income Tax payee and same has not been appeared in Income Tax returns. The Agreement dated 25.07.2020 is unregistered and unstamped and it cannot be relied upon for any purpose. It is also tried to elicit the payment is

already made and same reflected at the Statement of account and there is no money due on the date of filing the complaint. It is also tried to elicit there is no legal liability since the taking over the Advika Hospital LLP over prior to 25.07.2020 and same submitted for approval before the concerned authority. It is also tried to elicit that cheque was issued for security purpose but it does not have posses statement of accounts. In this regard, it is suggested that the complainant has misused the cheque and also he had received a notices from the complainant. However, the complainant did not admit those suggestions and that no such amount was ever paid to him, but suggestion of the accused that his signature appear on cheque at Ex.P.1 does not belong to him, dishonour of the said cheque for "Account closed" and legal notice duly served on him. He has given reply to the said notice through E-Mail.

38. It is defence set up by the accused that the cheque in question is issued for security purpose. The complainant has misused the cheque. He has rebutted the presumption available under Section 118 and 139 of N.I.Act by adducing the documentary evidence and in the cross-examination also and he has successfully established his defence. The Agreement dated 25.07.2020 is not a legal document and no sanctity under the law. If the Appellant relied upon the same, he has to pay fine then only it can help to the Appellant. There was earlier agreement to take over the business, but not on 25.07.2020. The heavy reliance on the said agreement dated 25.07.2020 is not admissible. The signature on chueque in fabricated and it does not belong to appellant. Hence, he has not liable to pay the said cheque amount.

39. Keeping in view the rival contentions of both parties, I have carefully gone through the

evidence led in by both parties to answer the points in controversy.

40. Obviously, the burden is on the complainant to prove that cheque in question was issued towards the discharge of legally recoverable debt or liability. In this regard, complainant examined as PW.1 who in his evidence has reiterated the averments of the complaint and got marked the original cheque, the endorsement issued by the bank to the complainant, the legal notice said to have been sent to the accused, the postal receipt, acknowledgment etc., as per Ex.P.1 to Ex.P.12. CW.1 is also called in support of the complainant.

41. The accused has got marked 4 documents as Ex.D.1 to Ex.D.4 in support of his defence. The Ex.D1 is got marked during cross examination of PW1. The accused has suggested to PW.1 that there was previous transactions and it was Partnership Firm the transactions and Agreements in respect of

taking over the Advik Hospital Management. Complainant, accused and others were the partners as said in above relevant para in the facts and the cheques misused by complainant. He has not issued cheque on 10.08.2021 and this suggestion is denied. So, if analyzed, the accused has admitted that he has signed the cheque and given for business purpose and in other words it can be said that security purpose. Cheque is not dishonoured for not tallying of signature, but for " Account closed ". There is no whisper regarding how signed the cheque and same are with the complainant.

42. Keeping in view that rival contentions of the both the parties for careful appreciation with the evidence of both the parties for adjudication of necessary points in controversy. The complainant has to prove the cheque in question was issued towards discharge of legal recoverable debt or liability. In this regard, the complainant examined

himself as PW.1 and in his evidence has reiterated the averments of the complaint and got marked the original cheque, the endorsement issued by the bank to the complainant, the legal notice said to have been sent to the accused, the postal receipt, acknowledgment, etc.,

43. On careful observation and evolution of evidence of PW.1 coupled with contention of Ex.P.1 to Ex.P.12 make to clear that accused and complainant were known to each other. In this case, the accused has not seriously disputed cheque and his signature found on cheque in question, but it is his contention that the cheque in issue was misused by the complainant and there are no transactions on 25.07.2020 and he has not issued the cheque for legal liability. Accused has further contended that he was entered into Agreement prior to alleged date, Agreement as said by appellant is not acted upon and Trial Court completely relied on the unregistered

and unstamped Agreement dated 25.07.2020 and same have no evidentiary value under law. Hence, he is not liable to pay the amount but the contention of the accused has not substantiated by material on record.

44. The counsel for the accused contended that there is no transaction between PW.1 and accused. It is settled law that the cases under the Negotiable Instrument Act are Quasi Civil and Quasi Criminal. Complainant does not require to prove the transaction as if proof of rights in immovable properties.

45. The complainant has admitted that the money transaction between him and accused appeared in the Income Tax returns, same would produce to the Court. It is not produced and got marked. It is contended that, complainant has not mentioned same in the Income Tax returns. Hence, he did not submit. If filed, he would have produced

the same before the Court. The submission of the Income Tax return and non payment of Income Tax is not matter to be decided in this case. The concerned department has taken care of it. It is not sufficient ground to disbelieve that complainant does not pay the Income Tax. Even if it is not mentioned in the Income Tax returns, it is look after by the Income Tax Department and concerned department would take proper action for violation of laws in force. Hence, non mentioning of the transactions in Income Tax is not sufficient grounds to disbelieve the complainant does not disclose the details of money transactions. The accused has no rule or play in Income Tax Returns.

46. The counsel for the accused argued that the respondent has paid the money, but no Statement of Account is produced. The Accounts Statement is the best evidence to establish the payment and repayment. Such evidence has not

adduced by the accused even he has taken specific contention of payment of all the money.

47. It is argued that accused has not closed the Account since his bank migrated. Hence, the endorsement issued does not speak that 'account closed' but just 'closed'. It is worth to mention that the cheque in issue Ex.P.1 is of Kotak Mahindra Bank, an endorsement issued by the ICICI Bank Ltd., at Ex.P.2. No bank refuses a cheque belonging to the Amalgamated bank since previous and present bank are one bank after Amalgamation and the cheques of previous bank are honoured. The 'Account closed' does not mean that the cheque of previous bank are not honoured at all. An endorsement is 'Account closed' means there is no Account in force at Appellant's bank at time of issuing an endorsement. The memo or report issued by the bank has evidentiary value under the Bankers' Books Evidence Act. But no 'bank account

statement' or records of Appellant's bank have been brought on record. In such a case, there is no material in support version of the accused to establish appellant's version or his version is supported by the presumption avails under the Banker's Books Evidence Act.

48. No doubt, the complainant has contended that there was an Agreement dated 25.07.2020 and Supplementary Agreement for payment dated 25.07.2020 i.e, Ex.P.6 and 7 are unregistered document and not sufficiently stamped and notarized. The complainant has to prove the legal liability of issuance of cheque in question, but not Agreements dated 25.07.2020 taken place between complainant and accused beyond reasonable doubt under the law in this case. The careful perusal of the document even not registered would show that both documents have no evidentiary value and they cannot be looked into for any purpose. The validity,

genuineness or legality of Agreements and Supplementary Agreements dated 25.07.2020 cannot be decided in this case. It is known fact that there was business for taking over the 'Advika Hospitl LLP' and execution of documents relates such taking business is admitted by the accused but he has denied the legality of the said documents. This is not a forum to decide the legality and genuineness of the said documents. It is worth to say that the reason for the birth of litigation is Agreements dated 25.07.2022. It is specific contention that, the Supplementary Agreement for payment of schedule property. The Supplementary Agreement means it is supporting document. The said document is voidable Agreement. The said document is void or voidable document depends on the acts of both the parties. But said document is not 'void ab-initio'. So, the cheque issued for security purpose or guarantee for Supplementary Agreement are all the contracts and such contracts have create legal duty. The documents not stamped or unregistered is not a ground to disbelieve the transactions taken place between the parties in facts.

49. It is worth to mention that the Appellant has taken contention that the Agreement dated 25.07.2020 is unregistered and unstamped and cannot be considered. On the other hand, he has prayed to impose fine on the complainant since he has relied on the such documents. It is worth to say that if the complainant is fined and document has given a legal sanctity, then accused has more liability to honour the cheque. The law does not permit a person to take defence of approbate and reprobate. Such indefinite defence wound not help the accused.

50. Further, the Agreement dated 25.07.2020 relied by the complainant and he has got marked and marking of the same is not disputed. They are nothing but Ex.P.6 and 7. DW.1 himself got marked Ex.D.1 LLP Agreement. Ex.D.1 itself shows the

Agreement between the complainant and accused prior to 25.07.2020. When he has denied an Agreement but relied on the LLP Agreement shows that there was thick relationship between them. So, the indefinite defence and approbate and reprobate defence of the accused would go to show the he admitted the execution of the Agreement but denied legality of the same to escape from the legal liability. Since this court has not considered the legality of the Ex.P.6 and 7, this court is not a authority to legalize the such documents. So, the Appellant has liberty to establish his right if aggrieved by the such documents before the proper forum, but he has to honour the cheques signed and issued by him.

51. No doubt, the complainant has not adduced the independent witness to prove Ex.P.1 to Ex.P.12. Moreover, the cases under the Negotiable Instrument Act are summary trials, it does not require the trial as if warrant trial in-detail. However,

the cheque in issue is admitted by detail cross-examination. So, the arguments of the accused has not substantiated by the cogent and reliable evidence.

52. The counsel for the accused has much relied on the admissions at the time of cross-examination and contended that, cheque in issue is not issued to the complainant and it is misused, but PW.1 categorically deposed that cheque in issue was issued for security purpose. It is settled law that even issuance of cheque for security purpose has also got attracted offences punishable under the N.I.Act. So, issuance of cheque in issue misused does not have water in support of the accused.

53. Further, the complainant has denied that the cheque issued was misused. The complainant is the businessman, the accused is also business man, they used to have a business with many persons. The alleged transaction is for expansion of the

business of the accused. So, there is chance of issuance of cheque for security purpose. Simply, the complainant has admitted some facts do not establish that the cheque in issue is not for security purpose. The cheque in issue bears the signature of accused, it is a signed cheque, handed over to the complainant. If PW.1 received the amount, he would have returned the cheque.

54. The accused is the graduate person known the prose and cons of the issuance of signed cheque. If really he paid entire amount, he would not kept quite. He would have taken civil or criminal action for misuse of the cheque. The silence of the accused would establish the criminal liability and he tries to escape from the clutches of criminal law.

55. In the instant case, the accused has given reply to the legal Notice through E-Mail he asked how many cheques with the complainant, but not complainant has kept the signed cheques. Ex.P.1 to

12 produced in support of the transaction between accused and complainant. The accused has established the signature appear at Ex.P.1 by producing the document issued by the bank stating that cheque in issue was dishonour because of Account closed, not because of signature not tallied. So, signature on Ex.P.1 is established by the complainant. Impliedly, accused has admitted signature on Ex.P.1.

56. Further, if really accused had not issued cheque and misused by complainant for ulterior motive by complainant, what was necessity to keep quiet even legal notice is issued and dishonoured. The complainant has issued a legal notice, it is duly served on him, he has not issued reply notice to the complainant. No material on record that the accused has taken a step for misusing the cheque in issue.

57. Moreover, it is specific defence that cheque in issue issued in support of the unregistered

Agreement. PW.1 has completely denied the defences of accused. Defences are not supported by cogent and reliable documents. Hence, the defences are not reliable one. Except the oral testimony and documents at Ex.D.1 to 4 for the accused, the defences have to be proved by the cogent and reliable evidences, not by the surmises and conjunctions. As such, the defence set up by the accused is not believable and natural. The signature is admitted, possession of cheque in issue by the complainant is not in dispute.

58. Moreover, when the accused admits his signature found in Ex.P.1 and handing over the same, the presumption under Section 139 of Negotiable Instruments Act would raise in favour of the complainant.

59. In this regard, I rely on the decision of Hon'ble Apex Court between ***Kishna Rao V/s***

***Shankar Gowda, reported in 2018 (8) SCC 165*** that:

> *"Financial loss, Monetary loss - Negotiable Instruments Act 1981 -Section 139 – presumption under 139 does when may be fallen - ingredients and scope of Sec.139 - does not – probable summaries - accused liberty may adduce evidence to rebut the presumption u/Sec.139- but mere denial regarding existence of debt was not serve any purpose in the event accused is able to raise probable defense which creates doubt with regard to existence of debt or liability presumption may fall.*

60. Another decision between ***Rangappa Vs. Mohan reported in AIR 2010 SC 1898*** relied upon by complainant wherein it is held that,

> *"The presumption mandated by S.139 of the Act does indeed include the existence of legally enforceable debt or liability. This is of course in the nature of reputable presumption and it is open to the accused to raise a defense wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. S.139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the*

*Act specifies a strong criminal remedy in relation to the dishonor of the cheque, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by S.138 can be better described as regulatory offence since the bouncing of a cheque is largely in nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard justifications, or proof. Reverse In onus the absence clauses of usually compelling impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is settled position that when an accused has to rebut the presumption under Sec.139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise. Therefore, if the accused is able to raise a probable defense which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defense and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."*

61. Moreover, when the accused admits his signature found on Ex.P.1 and handing over the same, the presumption under Sec.118 and 139 of Negotiable Instruments Act would arise in favour of the complainant. But, the accused has not proved any defence by cogent reliable materials to rebut the said presumption. As such, material produced by the accused also appreciated, the defense set up by accused with regard. Therefore, the learned Magistrate has rightly appreciated and evaluated the evidence of PW.1 and documents and evidence of accused and documents of accused in right and proper perspective. As such there is no any illegality or error committed by the trial Court in appreciating the evidence available on record.

62. On careful appreciation of evidence of PW.1 and the defense taken by the accused, it can be said that though he states that the cheque in issue was misused, he has the business with the

complainant, but no registered and duly stamped documents with the complainant, so he has filed false case against the accused, this bald say itself cannot be relied upon. Because, if really complainant has misused the cheque, after clearing the said amount, accused would not have left the signed cheque in the hands of the complainant. Moreover, the accused has not offered any explanation as to why he left the cheque in the hands of complainant or comes to the hands of the complainant in 313 statement but claimed defence evidence and production of documents. So, this aspect of the case goes to show that defense set up by accused is not probable.

63. The cheque in issue is of Rs.2,50,000/- issued in the year 2021, the trial Court fined the accused for Rs.2,50,000/-. It shall be paid to the complainant as compensation and out of said amount, Rs.5,000/- is to be treated as expenses for

state and remaining amount shall be paid to the complainant. Though the transaction is a commercial, no commercial interest added in cheque amount. So, the trial Court properly awarded the compensation and the compensation is proper one. There are no materials made out by complainant that such amount can also be ordered to give to the complainant.

64. Having regard to all these facts and circumstances, I am of the considered view that the learned Magistrate has rightly appreciated the oral and documentary evidence available on record in proper perspective. The learned Magistrate committed no error or illegality in appreciating and evaluating the documents relied upon by both the parties. Herein this case, the accused failed to rebut the presumption available in favour of complainant under Section 139 of Negotiable Instruments Act.

65. Having regard to the facts and circumstances of the case, I am of the view that the impugned judgment of conviction and sentence passed by the learned Magistrate is in accordance with settled principle of law, facts and probabilities of the case. Absolutely, there are no grounds to interfere in the impugned judgment of conviction and sentence passed by the Trial Court. The impugned order passed by the Trial Court deserves to be confirmed with. Accordingly, **I answer Point Nos.1 and 2 in the Negative.**

66. **POINT No.3:** In the result, I proceed to pass the following;

**ORDER**

The appeal filed by appellant under Section 415 of BNSS is hereby dismissed.

The impugned judgment of conviction passed by VI Addl. Civil Judge and JMFC, Mysuru in C.C.No.11211/2021, dated 05.01.2026 for offence under Section 138 of Negotiable Instruments Act is hereby confirmed.

Send a copy of this judgment to the Trial Court along with TCR.

[Directly, dictated to the Stenographer on computer, corrected, and signed by me and then pronounced in the Open Court, on this the **30th day of June 2026**]

**(Mohan Badagandi)**
II Addl. District & Sessions Judge,
Mysuru.

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