

KAMS010065972025



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

Dated this the 15th day of April 2026

:: PRESENT ::

Sri Mallanagouda, B.Com., LL.M.,
II Addl. District & Sessions Judge,
Mysuru.

CRL.A/298/2025

APPELLANT : Ramesh,
S/o. Mayigowda,
Aged about 51 years,
R/at. Basavanna Street,
Belavadi, Yelawala Hobli,
Mysuru.

(By : Sri. B.S.S., - Adv.,)

V/s

RESPONDENT : Smt. Nagamma,
W/o. Late Puttaraju,
Aged about 52 years,
R/at. No.102, 'C' Type,
NHB, KHB Colony,
Hootagalli, Mysuru.

(By : Sri. R.R.B., - Adv.)

J U D G M E N T

This is the Appeal filed by the
Appellant/complainant U/Sec.378 of Cr.P.C.,

challenging the Judgment dated 15.07.2025 in C.C.No.3034/2021 on the file of learned V JMFC., Mysuru, under which the Trial Court has acquitted the accused for the offence U/Sec.138 of N.I. Act.

2. The Appellant was the complainant before the Trial Court and the Respondent was the accused. The parties are herein after referred as per their status before the Trial Court for the sake of the convenience.

The complainant has filed the complaint U/Sec.200 Cr.P.C. for the offence punishable U/Sec.138 of the N.I.Act contending that, complainant and accused are known to each other from many years, on account of relationship accused requested the complainant for loan of Rs.10,00,000 for her legal necessities. Accordingly, complainant has paid Rs.10,00,000 by way of cash on 11.07.2021. Accused has agreed to repay the said amount within 3 months. But after borrowing the loan whenever complainant

approached the accused for repayment accused has not repaid the same as agreed upon. After repeated requests by the complainant on 02.11.2021 accused has issued two cheques bearing No.179693 and 179696 dated 09.11.2021 for Rs.5,00,000 each drawn on State Bank of India, Balavadi Branch, Mysuru. When complainant presented the said cheques to his bank for encashment, same have been dishonored with endorsement " Account closed ". After that complainant again approached the accused and informed her about the dishonor of the cheque. But accused did not respond to the complainant. Accordingly, complainant got issued notice dated 17.11.2021 to accused. But accused has sent untenable reply dated 26.11.2021. Thereby, accused has committed the offence punishable under Section 138 of N.I. Act.

3. After taking the cognizance, the Trial Court recorded the sworn statement of the complainant and after registering the case as

C.C.No.3034/2021. Trial Court has issued summons to the accused and after appearance of the accused, the Trial Court has recorded substance of the accusation for which the accused has pleaded not guilty, hence, the Trial Court has conducted the trial.

4. In support of his case the complainant examined himself as PW-1 and he got marked documents at Ex.P-1 to Ex.P-11 on his behalf. On the other hand, the accused examined herself as DW.1 and she got marked documents at Ex.D-1 to 10 on her behalf.

5. After hearing the arguments, the Trial Court has acquitted the accused for the offence punishable U/Sec.138 of N.I.Act.

6. Now being aggrieved by the Judgment of the Trial Court, the complainant has filed the present appeal on the following grounds:-

The trial Court has erred in dismissing the complaint without considering the cogent, oral and documentary evidence produced by the complainant, said judgment is against the settled principles of law and the probabilities of the case. The trial court has lost its sight in considering that accused has admitted that cheque issued to complainant belongs to her and she has admitted her signature in the cheque also. The trial Court has gravely erred in dismissing the complaint filed under Section 138 of N.I. Act.

7. The finding of the trial Court is contrary to the settled principles of law, once execution of the cheque and signature of the accused is admitted, it is necessary to presume that the accused has issued the cheque for payment of legally dischargeable debt and burden lies on the accused to rebut the said presumption. The trial Court has failed to appreciate that in a prosecution under Section 138 of N.I.Act, complainant is not required to prove availability of

sufficient funds. Trial Court has not considered the point that accused is in the habit of taking loan by issuing cheque and getting the same compromised which has been clearly established in the cross-examination of the accused and also from the documentary evidence produced. The trial Court has failed to draw presumption as per Section 138 of N.I. Act.

8. The accused has taken contention that her sister-in-law one Smt.Manjula due to grudge against her handed over the cheques to complainant. But in order to prove the same accused has not produced any documents and she has not filed any complaint against her sister-in-law. Trial Court has dismissed the complaint on the ground that complainant has not produced any document regarding his source of income and to prove that he is having sufficient income. But in cross-examination the complainant has clearly stated that he is having agricultural land and he is cultivating

the same. Trial Court has wrongly come to the presumption that if complainant himself is under debt, then he cannot lend any money to any person. Trial court has wrongly come to the conclusion that if the accused is having properties in her name, then the presumption under Negotiable Instruments Act is rebutted and there is no any legally enforceable debt. Trial Court has failed to consider that in a matter relating to alleged offence under Section 138 of N.I Act, complainant has to establish only the fact that cheque was genuine, presented within time and dishonour and issued notice seeking repayment. Therefore, judgment of the Trial Court calls for interference and accused is liable for conviction.

9. Perused the records and Judgment of the Trial Court.

10. On the basis of the above facts following points have arisen for my consideration:-

1. Whether complainant has produced sufficient material to show that accused has issued Cheque bearing No.179693 and 179696 dated 09.11.2021 for Rs.5,00,000 each drawn on State Bank of India, Belavadi Branch, Mysore for payment of legally dischargeable debt ?
2. Whether the impugned judgment of the Trial Court calls for interference by this Court ?
3. What order?
11. Heard the arguments.
12. My findings on the above points are as

under:

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

:: R E A S O N S ::

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

14. It is the case of the complainant that, accused is well known to him accordingly she approached him for loan of Rs.10,00,000/- agreeing to repay the same within 3 months. Accordingly, he paid Rs.10,00,000/- to accused on 11.07.2021. Thereafter, when complainant requested the accused for repayment she has not properly responded. After repeated demands made by the complainant Accused has issued two cheques bearing No.179693 and 179696 for Rs.5,00,000 each dated 09.11.2021, drawn on State Bank of India, Belavadi Branch, Mysuru. But when complainant presented the said cheques to bank for encashment, same have been dishonored with endorsement "Account closed". Thereafter, complainant got issued notice dated 17.11.2021. The accused has sent untenable reply to the said notice. Thereby, accused has committed offence under Section 138 of N.I. Act.

15. Now during arguments learned counsel for the complainant/appellant has argued stating that, Appellant has produced sufficient material to show that accused has borrowed Rs.10,00,000 from complainant and for repayment of the said money accused has issued the cheques in question to complainant. Even Ex.P.9 shows that accused has borrowed loan from other persons also. He further argued that, when accused has admitted that cheques in question belongs to her and signature in the cheques are also belonging to her, it is the burden lies on the accused to produce evidence to explain as to why and when said cheques have been handed over to complainant. But here in the present case the accused has contended that, in collusion with the sister-in-law of the accused, complainant has obtained the cheques in question and filed false case against the accused, which is not believable under normal circumstances. Therefore, when cheques in questions are belonging to accused, signature in the cheques are also belonging to accused

and accused has failed to produce proper evidence to explain about the circumstances under which cheques have reached the hands of the complainant. Therefore, the defence taken by the accused is not proved by the accused. Accordingly, by believing the defence of the accused the trial Court has wrongly acquitted the accused. Therefore, it is necessary to set-aside the judgment of the Trial Court and convict the accused for the offence under Section 138 of N.I. Act.

16. On the other hand respondent's counsel has filed written arguments in detail in which he has supported the judgment of the Trial Court and requested for dismissal of the appeal filed by the complainant.

17. On the perusal of the material available on record and submissions of both the counsels, it appears to me that, as rightly argued by the counsel for the complainant, as per Section 139 of N.I. Act, when accused has admitted that cheques in questions are

belonging to him or her and signature in the cheque also admittedly belongs to accused, then it is necessary to presume that accused has issued the cheques in favour of the complainant for payment of legally dischargeable debt and it is the burden lies on the accused to rebut the said presumption by producing probable evidence.

18. Herein the present case, though Trial Court has discussed much about capacity of the complainant and evidence regarding lending loan to accused, it appears that the trial Court's observation is to some extent appears to be true. The complainant has not produced any documentary evidence regarding his capacity to lend money of Rs.10,00,000/-. However, by looking to the defence of the accused it appears to me that the accused has contended that, in collusion with the sister-in-law of the accused, the complainant has taken away the cheques belonging to the accused, which were signed and kept by the accused. But,

nowhere in her evidence, the accused has not at all stated about where those cheques were kept and why they were signed by accused and kept blank. Therefore, defence taken by the accused appears to be improbable.

19. Further as per the accused only, in view of the dispute regarding property between herself and her brother the accused has not at all visited the house of her brother from many days. Therefore, the defence of the accused is that in collusion with the sister-in-law of the accused, the complainant has taken away the cheques and filed false complaint against the accused appears to be not proved by the accused. Therefore, when accused has admitted that cheque in question belonging to her and signatures in the cheque are also belonging to her and she failed to produce evidence about the circumstances under which she has handed over the cheques to complainant, it is necessary to presume that accused has issued the cheques in question to complainant for payment of legally

dischargeable debt and the accused has failed to rebut the said presumption. But trial Court has a wrongly acquitted the accused holding that, complainant has not produced evidence regarding his capacity because of which accused has rebutted the presumption available infavour of the complainant.

20. Furthermore, as rightly pointed out by counsel for the complainant from the documents marked at Ex.P.9 to 11 it appears that, the accused has issued some other cheques to some other persons namely Krishna .M and Manjunath, when those cheques were dishonoured cases were filed against the accused and in those cases accused has settled by paying certain money to complainant, which shows that, accused is in the habit of borrowing money and issuing cheques without maintaining sufficient balance in her account. Therefore, it is proper and necessary to allow the appeal and set-aside the judgment of the trial Court and convict the accused for offence under Section

138 of N.I. Act. As cheques in questions are of the year 2021, if 50% of the cheque amount is added to the cheque amount while imposing fine same appears to be proper. Hence, it is decided to impose fine of Rs.15,00,000 to accused. Hence, **Point No.1 and 2 are answered as above.**

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

ORDER

The appeal filed by the Appellant/ complainant under Section U/Sec.378 of Cr.P.C. is ***allowed.***

Judgment passed by learned V JMFC., Mysuru in C.C.No.3034/2021 dated 15.07.2025 is ***set-aside.***

Accused is thereby ***convicted*** for the offence punishable under Section 138 of N.I. Act.

Accused shall pay fine of Rs.15,00,000/- to complainant. Accused is hereby sentenced to pay Rs.15,00,000/- and in default accused

shall undergo simple imprisonment for 6 months.

An entire fine amount is ordered to be paid to the complainant as compensation.

Amount if any already deposited before the Trial Court is ordered to be released in favour of the complainant.

Send back the Trial Court Record along with the copy of this Judgment.

File be consigned to the Record-Room.

[Dictated to the Stenographer Gr-III directly on computer, corrected, and signed by me and then pronounced in the Open Court, on this the **15th day of April 2026**]

(MALLANAGOUDA)
II Addl. District & Sessions Judge,
Mysuru.