



**IN THE COURT OF THE I ADDITIONAL DISTRICT &
SESSIONS JUDGE AT MYSURU.**

Dated this the 9th day of March 2026

Present: Sri D.Puttaswamy, B.A., LL.B.
I Addl. Dist. & Sessions Judge
Mysuru

: CrI.A./303/2025:

Appellant : Smt.Vanitha A. W/o
Anandakumar M., Aged about
38 years, R/at No.5/2,
'Banashankari Nilaya',
Maratikyathanahalli, Bogadi,
Mysuru.

(By Sri K.R.Srinivas, Adv.)

V/s.

Respondent /s : Smt.Mahalakshmi M.P. W/o
Prashanth M.S., Aged about
43 years, R/at No.15, 'Shree
Nilaya', 2nd Main, 4th Cross,
Niveditha Nagara, Mysuru-22.

(By Sri Ashok Kumar B.S., Adv.)

JUDGMENT

The present Appeal is preferred by the Appellant/Accused U/sec.415 of Bharatiya Nagarik Suraksha Sanhita, 2023 being aggrieved by the impugned Judgment of conviction and order of sentence dated

05.08.2025 passed by the JMFC V Court, Mysuru in C.C.No.500/2024.

2. The Appellant was the accused and respondent was the complainant before the Trial Court. The parties will be hereinafter referred to as per their ranks assigned to them in the Trial Court.

3. The brief facts of the case are that, the accused and complainant are known to each other since several years. Based on said acquaintance, the accused availed loan of Rs.5,80,000/- from the complainant on 15.10.2021 for her family legal necessities to construct house stating that she would repay the same within six months. But, she did not repay the loan amount. When the complainant demanded the accused to repay the loan amount, on 17.02.2024 the accused issued a cheque bearing No.000023 dt:18.02.2024 for a sum of Rs.5,80,000/- in favour of the complainant drawn on HDFC Bank, Kuvempunagara Branch, Mysuru and asked the complainant to present the said cheque for encashment after 15 days. On 20.02.2024 the accused issued a notice to the complainant with false allegations stating that complainant

has misused the cheques. The complainant given reply through reply notice on 15.04.2024. When the complainant presented the said cheque for encashment through her banker State Bank of India, Vanivilasa Market Branch, Mysuru on 18.03.2024, it came to be dishonoured with an endorsement as 'Payment Stopped by Drawer' on 19.03.2024. Thereafter, the complainant got issued a legal notice on 15.04.2024 to the accused, which was returned as addressee not found and thereby, the accused has committed the offence punishable U/sec.138 of N.I Act. Therefore, the complainant filed the complaint.

4. On filing of the complaint, the Trial Court took cognizance of the offence, after recording the sworn statement of complainant, ordered to register the case against the accused and secured her presence. Substance of the accusation is orally stated to her, for which she pleaded not guilty and claimed to be tried.

5. The complainant got examined herself as PW1 and got marked Ex.P1 to P9. The statement of accused U/sec.313 of Cr.PC has been recorded. The accused has denied the incriminating evidence appearing against her.

The accused got examined herself as DW1 and got marked Ex.D1 to D15. On hearing the matter, the Trial Court passed the Judgment of conviction and sentenced the accused to pay fine of Rs.5,90,000/-, in default she shall undergo simple imprisonment for a period of six months. It is further ordered that out of the fine amount, the complainant is entitled for the compensation of Rs.5,80,000/- and remaining amount of Rs.10,000/- shall be remitted to the State. Further, it is ordered that serving on default sentence will not absolve the accused for payment of fine amount.

6. Being aggrieved by the impugned Judgment of conviction and sentence, the present appeal is preferred on the following grounds:

That the appellant is not due of any amount to the respondent, per contra, the respondent is in due of Rs.3,00,000/- to the appellant. The appellant has never borrowed any amount from the respondent and not issued any cheques to her to discharge any sorts of legally enforceable debt. The appellant had taken all steps to stop the illegal act and misuse of her cheques by the respondent prior to filing of this case. She got issued

legal notice to the respondent. The appellant is a housewife and not having any source of income, therefore, she is not having capacity to borrow the said amount from the complainant. The Trial Court erred in not noticing the contradictions, omissions and lacunas of the respondent and not appreciated the cross-examination of PW1. Therefore, the impugned Judgment is contrary to law.

Therefore, the appellant prays to set-aside the judgment of the Trial Court by allowing the appeal.

7. After admitting the appeal, notice was issued to the respondent. The respondent appeared through her counsel. The Trial Court records are secured.

8. Heard the arguments on both sides. I have perused the Trial Court records.

9. The following points that arise for my consideration are:

- 1) Whether the impugned Judgment of conviction and order of sentence dated 05.08.2025 passed by the JMFC V Court, Mysuru in C.C.No.500/2024 is erroneous and calls for interference by this Court?

2) What order?

10. My findings to the above points are as under;

Point No.1: **In the Negative.**

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

REASONS

11. **Point No.1:** It is settled law that, in the case of present nature, two important legal requirements are to be satisfied i.e., whether the cheque has been issued by the appellant or not, if issued, whether it is towards legally recoverable debt or liability or not. In this background, let us analyze the evidence on record.

12. The case of the complainant is that, the accused having borrowed a sum of Rs.5,80,000/- from the complainant on 15.10.2021 for her legal necessities, issued a cheque bearing No.000023 dt:18.02.2024 for a sum of Rs.5,80,000/- in favour of the complainant drawn on HDFC Bank, Kuvempunagar Branch, Mysuru towards repayment of loan amount and thereafter, accused issued a legal notice dt:20.02.2024 to the complainant. On presentation of said

cheque for encashment by the complainant through her banker i.e., State Bank of India, Vanivilasala Market Branch, Mysuru on 18.03.2024, it came to be dishonoured with an endorsement as 'Payment Stopped by Drawer' on 19.03.2024, as such the accused committed the offence U/s.138 of N.I Act.

13. The complainant has adduced evidence as PW1 by reiterating the complaint averments and has produced cheque at Ex.P1 dt:18.02.2024, Bank Memo at Ex.P2 dt:19.03.2024, office copy of Legal Notice dt:15.04.2024 at Ex.P3, Postal receipt at Ex.P4, RPAD Cover & postal acknowledgment at Ex.P5, copy of legal notice dt:20.02.2024 issued by the accused/appellant at Ex.P6, copy of Notice at Ex.P7, postal receipt at Ex.P8 and Track consignment at Ex.P9. On the other hand, the accused adduced evidence as DW1 and got marked 15 documents as per Ex.D1 to D15. Ex.D1 is the complaint Acknowledgment dt:15.02.2024, Ex.D2 is the notice issued by the appellant, Ex.D3 is the postal receipt, Ex.D4 is the postal acknowledgment, Ex.D5 is the copy of notice issued to one Prashanth M.S., Ex.D6 is the postal receipt, Ex.D7 is the

postal acknowledgment, Ex.D8 is the complaint given by the appellant to Police Commissioner, Mysuru, Ex.D9 is the postal receipt, Ex.D10 is the complaint given by the appellant to Police Commissioner, Mysuru, Ex.D11 is the postal receipt, Ex.D12 is the Reply Notice dt:15.04.2024 given by the complainant, Ex.D13 is the amount calculated document, Ex.D14 & 15 are the Bank statements of HDFC Bank.

14. Admittedly, the accused and complainant are known to each other. Ex.P1-cheque is dt:18.02.2024, Bank Memo Ex.P2 shows that cheque was dishonoured for "Payment stopped by Drawer" and it is dt:19.03.2024. It shows that the complainant presented the cheque within time and it was dishonoured as "Payment stopped by Drawer". Thereafter, the complainant got issued a legal notice to the accused on 15.04.2024 as per Ex.P3, intimating the accused about dishonour of cheque and calling upon her to pay the amount within 15 days from the date of receipt of notice. The said notice was returned as addressee not found as per Ex.P5.

15. In so far as this aspect is concerned, nothing has been elicited in the cross-examination of PW1 to discredit her evidence. Therefore, it is clear from the evidence that the complainant has complied the mandatory provisions of Sec.138 (a) to (c) of N.I.Act, and thereby, it attracts the ingredients of Section. It is to be noted that, the presumption under NI Act is rebuttable presumption, whether the accused has rebutted the presumption or not is to be seen.

16. The defence of the accused is that there was chit fund transaction between the complainant and herself continuously from several years, by this acquaintance she has borrowed a sum of Rs.5,80,000/- on 05.01.2020 from the complainant and started repaying the amount from 10.02.2020 to 12.02.2024 and in all she has paid Rs.5,32,800/- through UPI to the Bank account of complainant and she has paid the remaining amount of Rs.47,200/- through cash. She has denied that she has approached the complainant in the last week of September-2021 seeking financial assistance of Rs.5,80,000/- and not borrowed the said amount in the

month of October-2021. After clearing the loan of the year 2020, there was no other financial transaction took place between the complainant and herself.

17. It is also the defence of accused that the husband of complainant was doing chit fund business, wherein she has subscribed for a sum of Rs.4,00,000/-. She has taken Rs.1,00,000/- from the said chit fund on 20.05.2019 and thereafter, the husband of complainant has not paid the remaining chit amount of Rs.3,00,000/- to her, instead both the complainant and her husband started trouble to her, as such she has issued a legal notice on 20.02.2024, for which the complainant has not given reply, but on 15.04.2024 the complainant issued reply/Notice alleging that the cheque has been issued on 18.02.2024, was dishonoured.

18. For the sake of arguments, the defence of the accused is considered to be true, a question arises as to when actually she has received the amount of Rs.1,00,000/- from the husband of complainant in the year 2019 and what was the necessity to her to borrow a sum of Rs.5,80,000/- again from the complainant on 05.01.2020,

when the husband of complainant himself was due to her a sum of Rs.3,00,000/-. That apart, no explanation is forthcoming from the accused as to when and to whom, she handed over her two cheques.

19. The defence of the accused creates doubt in the mind of Court, because according to accused she has subscribed in chit fund business with the husband of complainant for a sum of Rs.4,00,000/-, who has paid Rs.1,00,000/- in the year 2019 and thereafter, the husband of complainant has not paid the remaining amount of Rs.3,00,000/-. In the legal notice dt:20.02.2024 and in her chief affidavit, she has stated so. But, in her cross-examination she has admitted that the chit was for Rs.1,00,000/- and it was started in the year 2019 and ended in the year 2023 and she has taken 5th chit for a sum of Rs.1,00,000/-. Further, she denied that she has stated in her affidavit that the complainant has to give a sum of Rs.4,00,000/-. As such there is total inconsistency in the defence taken by the accused and therefore, such evidence has no trustworthiness.

20. It is the case of accused that she has availed loan of Rs.5,80,000/- from the complainant on 10.02.2020 and she has cleared the loan to the tune of Rs.5,32,800/- through UPI and the remaining amount of Rs.47,200/- has been paid in cash. The counsel for accused suggested this fact to the complainant in the cross-examination, but she states that it was a different transaction taken place between them. As per Ex.D14 the Bank statement of accused the amount of Rs.5,32,800/- transferred by the accused to the Bank account of complainant. However, as per Ex.D1, the acknowledgment issued upon the complaint, the accused herself has stated that she availed loan from the complainant in the year 2021. Therefore, the defence of accused that she has availed loan of Rs.5,80,000/- from the complainant on 10.02.2020 and she has cleared the loan to the tune of Rs.5,32,800/- through UPI and the remaining amount of Rs.47,200/- has been paid in cash cannot be believable.

21. One more ground urged in the appeal that the appellant is a housewife and not having any source of income, therefore, she is not having capacity to borrow the

said amount from the complainant. But, during her cross-examination the accused clearly admitted that she has availed loan of Rs.5,80,000/- from the complainant for her legal necessities. Further, in the cross-examination she admitted that in her Bank statement Ex.D15 in the year 2019, there was financial transaction of more than Rs.35 lakhs to 38 lakhs and she was working in Reliance B2B. Therefore, the contention of accused that she being housewife, has no capacity to borrow the said amount from the complainant cannot be accepted.

22. The counsel for appellant submitted that the complainant misused the cheques of accused, which were given towards security for chit fund transaction being run by the complainant and the husband of complainant himself is due of Rs.3,00,000/- to the accused. It is to be noted that the accused has not placed any evidence to show that either the complainant or her husband were running chit fund business, in which she was subscribed the amount nor examined any competent witness in this regard. Moreover, the complainant has denied the suggestion that she was running chit fund business. Though the accused filed the

complaint against the complainant and her husband, the police have issued NCR. But, the accused has not taken any steps against them thereafter. Such being the case, the contention that cheques were issued for security purpose in respect of chit fund transaction and the husband of complainant was due of Rs.3,00,000/- to the accused cannot be accepted.

23. It is therefore, clear from the ocular evidence of PW1 coupled with Ex.P1 to P9 that the complainant has discharged his initial burden, which constitute the offence against the accused U/sec.138 of N.I.Act. The very defence setup by the accused would suggest that Ex.P1 i.e., cheque belongs to her. Therefore, the presumption U/sec.118 & 139 of N.I Act, would arise in favour of complainant. Though the presumption has been rebutted by the accused by placing evidence before the Trial Court, but it is insufficient to prove her case. In the absence of such evidence, the Court has to presume that the cheque was issued by the accused in favour of the complainant towards discharge of legally recoverable debt.

24. Therefore, it is clear from the evidence on record that the accused in order to repay the loan amount to the complainant issued Ex.P1-Cheque in favour of complainant and further, the accused has failed to rebut the presumption or to create doubt in the mind of Court regarding case of complainant and cheque has been issued towards discharge of legally recoverable debt, knowingly well that she has given instructions to Bank to Stop Payment and thereby she has committed the offence punishable U/s.138 of N.I Act.

25. On re-appreciation of evidence and on going through the impugned Judgment and order, it is clear that the learned Trial Judge has appreciated the evidence on record in a right perspective manner and held the accused guilty for the offence punishable U/s.138 of N.I Act. So, the finding of Trial Court is in accordance with law and as such, it does not call for any interference by this Court. Therefore, I answer Point No.1 **in the Negative**.

26. **Point No.2:** In view of my answer on point No.1 and for the foregoing reasons, I proceed to pass the following:

ORDER

The Criminal appeal filed by the appellant is dismissed.

The Judgment of conviction and order of sentence dated 05.08.2025 passed by the JMFC V Court, Mysuru in C.C.No.500/2024 is confirmed.

The Appellant/Accused shall surrender before the Trial Court forthwith to receive the sentence.

Send the TCR along with copy of this Judgment to the Trial Court forthwith.

[Dictated to the Stenographer, transcribed by her, typed script corrected and pronounced by me in the open Court on this the 9th day of March, 2026]

[D.Puttaswamy]
I Addl. Dist. & Sessions Judge,
Mysuru