



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

Dated this the **20th day of June 2026**

:: PRESENT ::

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

CRL.A/323/2025

APPELLANT : Sri.Yogegowda.G,
S/o Savaregowda,
Aged about 51 years,
R/at No.96, B Company,
Jyothinagara, Mysuru.

(By **Sri.G.K.J.** - Adv.)

V/s

RESPONDENT : Sri.Ningaraju,
S/o Ninganayaka,
Aged about 42 years,
R/at No.276, Nayaka's Street,
Bodappa Gowda Road,
Hinkal, Mysuru

(By **Sri.M.M.** -Adv.)

J U D G M E N T

This is the Appeal filed by the Appellant/accused U/Sec.415(3)(a) of BNSS., challenging the Judgment dated 16.06.2025 in C.C.No.965/2020 on the file of learned V JMFC, Mysuru, under which the Trial Court has convicted the Appellant/accused for the offence U/Sec.138 of Negotiable Instrument Act, sentenced him to pay fine of Rs.2,35,000/- and in default to undergo simple imprisonment for period of six months and entire fine amount of Rs.2,35,000/- is ordered to be paid in favour of the Respondent/complainant as compensation.

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

3. The complainant had filed the complaint U/Sec.200 of Cr.P.C for the offence punishable U/Sec.138 of the Negotiable Instruments Act, in which he has contended as under:

4. The complainant and the accused are known to each other from several years and due to

the said acquaintance on 15.06.2016 accused has demanded the complainant for loan for the purpose of house hold expenses, repayment of the hand loans and other legal necessities. By considering the request of the accused on the same day the complainant has paid Rs.2,30,000/- to the accused. At the time of borrowing said money the accused has agreed to repay the same with interest 2% per month within six months. After six months when the complainant demanded for repayment of the money borrowed by him, the accused has issued a cheque bearing No.166578, dated 30.01.2017 for Rs.2,30,000/-, drawn on Syndicate Bank, J.P.Nagara Branch, Mysuru. But, when the complainant presented the said cheque to bank for encashment, same was returned with the endorsement "Account Closed" on 31.01.2017. After dishonor of cheque the complainant informed the accused about the same. But, the accused has not positively responded. Accordingly, the complainant got issued notice dated 10.02.2017 to the accused. But, accused has refused to receive the said notice. Hence, it was sent back with an endorsement "Addressee is not available at house". Since, as the accused has issued cheque in question knowingly well that his bank account is

closed, it shows that, with intention to cheat the complainant accused has issued the cheque. Hence, the accused has committed the offence punishable U/Sec.138 of the Negotiable Instruments Act.

5. After taking the cognizance, the Trial Court recorded the sworn statement of the complainant and after registering the case as C.C.No.965/2020 on the file of V JMFC, Mysuru, 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.

6. In support of his case the complainant examined himself as PW-1 and he got marked documents at Ex.P-1 to Ex.P-7 on his behalf. On the other hand, the accused has not produced any evidence on his behalf.

7. After hearing the arguments, the Trial Court has convicted the accused for the offence punishable U/Sec.138 of N.I.Act and ordered to pay Rs.2,35,000/- as fine and in default to undergo simple imprisonment for six months.

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

The Trial Court has grossly erred in passing the order of conviction for the alleged offence under Section 138 of N.I Act. After convicting the accused the Trial Court erred in directing the accused to pay compensation of Rs.2,35,000/- to the complainant towards loss and injury suffered by the complainant. It is further erred in passing the order that, the accused shall undergo simple imprisonment for a period of six months in case of failure to pay compensation. Trial Court has erred in not considering the fact that, there is no legally enforceable transaction between the appellant and respondent. The appellant came to know that, the respondent has misused the cheque of the appellant. But, the Trial Court has not considered the said fact and wrongly came to conclusion that, the accused has committed the offence under Section 138 of N.I Act. Trial Court has not considered material on record which shows that, there is no transaction between the appellant and respondent, appellant has cleared the loan amount, but the Trial Court has not

at all considered the same, instead passed erroneous judgment against the accused. Trial Court has grossly erred in coming to the conclusion that, though the complainant has misused the cheque and appellant asked him several times for return of the cheque and respondent told him that, cheque is misplaced in his house, the appellant has denied the transaction between the appellant and respondent and same is not issued for discharge of liability, on its own imagination Trial Court came to wrong conclusion and passed the erroneous judgment. The Trial Court has erred in coming to the conclusion that, the respondent has discharged his initial burden, though the burden of proof of transaction between the respondent and appellant which is denied by the appellant lies on the respondent and same is not proved by the respondent. The Trial Court has lightly taken into consideration about the important aspect of denial of transaction between the respondent and appellant. On its own imagination came to conclusion and passed the erroneous judgment. Further, the Trial Court has grossly erred in coming to the conclusion that, the evidence of PW-1 remained unchallenged, same has been strongly denied by the appellant. Trial Court has given much

importance to the evidence of PW-1 and neglected the accused. Therefore, the judgment of the Trial Court is erroneous and liable to be set-aside.

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 the complainant/respondent has produced sufficient evidence to show that to pay the legally dischargeable debt the appellant/accused has issued the cheque No.166578 for Rs.2,30,000/-, dated 30.01.2017 drawn on Syndicate Bank, J.P.Nagara Branch, on presentation of the cheque same has been dishonored with endorsement "Account Closed", thereafter the complainant got issued notice dated 10.02.2017 to the accused and even after the issuance of notice accused has not paid the cheque amount thereby he has committed offence punishable U/Sec.138 of Negotiable Instrument Act?

2. Whether the Trial Court judgment calls for interference by this Court ?

3. What order?

11. Heard the arguments.

12. My finding on the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Negative

Point No.3 : As per final order for
the following:

REASONS

13. **POINT NO.1 & 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, the complainant and accused are known to each other. Due to the said acquaintance on 15.06.2016 accused has borrowed Rs.2,30,000/- from the complainant agreeing to repay the same within six months with interest at 2% per month. Subsequently, after six months when the complainant demanded for repayment, the accused has issued a cheque bearing No.166578, dated 30.01.2017 for Rs.2,30,000/-, drawn on Syndicate Bank, J.P.Nagara Branch, Mysuru. On presentation of the said cheque for encashment, same was returned with the endorsement "Account Closed". After that,

complainant has got issued notice to accused. Even after issuance of notice also the accused has not repaid the amount mentioned in the cheque. Thereby, the accused has committed the offence punishable U/Sec.138 of the Negotiable Instruments Act.

15. When matter was posted for arguments, counsel for accused has failed to submit his arguments. On the other hand, counsel for the complainant/respondent has filed written arguments contending that, the complainant has produced sufficient material to show that, accused has issued the cheque for legally dischargeable debt and accused has failed to produce any evidence in support of his defence. By considering all the material available on record the Trial Court has rightly convicted the accused and there is no necessity to interfere with the judgment of the Trial Court.

16. On perusal of the Trial Court records and submissions of respondent's counsel it appears to me that, the complainant examined himself as PW-1 and he has produced documents like Cheque, Bank Endorsement, Legal notice, Postal receipts, Postal

acknowledgment etc., The accused has appeared before the Trial Court through his counsel. However, the accused has failed to cross-examine PW-1 and produce evidence on his behalf. Accordingly, there is no any material to show about the defence put forth by the accused.

17. As per Section 118 and 139 of Negotiable Instrument Act, when the complainant produces cheque belonging to the accused containing signature of the accused it is necessary to presume that, the accused has issued the cheque in question for payment of legally recoverable debt and burden lies on the accused to rebut the presumption by bringing on record from the mouth of the complainant or by producing his evidence which negatives the case of the complainant. But, here in the present case, when the accused has not at all cross-examined PW-1 and not produced his evidence, hence, there is no any material available to disbelieve the evidence of complainant. In fact the accused has not at all defended the case before the Trial Court and even in the appeal also the accused and his counsel have remained absent and they have not submitted any arguments on their behalf. Therefore, by failing to cross-examine PW-1 and produce his

evidence accused has failed to utilize the opportunity available to him to bring on record material to rebut the presumption available in favor of the complainant. Accordingly, by considering the material available on record and law applicable to the case the Trial Court has thoroughly discussed and rightly arrived to the conclusion that, the accused has committed the offence punishable under Section 138 of Negotiable Instrument Act. Therefore, I am unable to find any valid reason to interfere with the Judgment of the Trial Court. Therefore, it is decided to dismiss the appeal and confirm the Judgment of the Trial Court. Hence, **Points No.1 & 2 are answered as above.**

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

ORDER

The appeal filed by the appellant/
accused under Section 415(3(a) of
B.N.S.S is hereby ***Dismissed.***

Judgment of conviction in CC.No.965/2020 dated 16.06.2025 on the file of V JMFC., Court, Mysuru is hereby **confirmed**.

Amount if any deposited by the accused before the Trial Court is ordered to be released in favour of the complainant/respondent.

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

[Dictated to the Stenographer, transcribed & computerized by her, transcript revised, corrected and then pronounced by me in the open Court on this the **20th day of June 2026**]

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