



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

Dated this the 21st day of April 2026

:: PRESENT ::

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

CRL.A/308/2025

APPELLANT : Sri. Erappa K.C,
S/o. Chikkaramappa,
Aged about 50 years,
R/at. No.4805, 4th Stage,
2nd Phase, Near Teju Corner,
Vijayanagar, Mysuru-570 017.

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

V/s

RESPONDENT : Sree Gokulam Chits & Finance,
Co., Pvt., Ltd.,
R/by its Legal Assistant,
No.49, Mutgramani Street,
Mylapur, Chennai,
Having its branch office at
Maharaja Complex,
B.N.Road, Mysuru.

(By : Sri. H.B.G., - Adv.,)

J U D G M E N T

This is the Appeal filed by the Appellant/accused U/Sec.415 of BNSS, challenging the Judgment dated 18.07.2025 in C.C.No.10097/2021 on the file of learned VI Addl. Civil Judge and 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.2,16,700/- and in default to undergo simple imprisonment for the period of 6 months.

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.

The complainant has filed the complaint U/Sec.200 Cr.P.C. for the offence punishable U/Sec.138 of the Negotiable Instruments Act

contending that, the complainant is a Company engaged in chit business. Accused is the member of 2 chits with the complainant's company. Accused became successful bidder for the said 2 chits and received prize money from the complainant company. But subsequently accused became chronic defaulter in payment of monthly installments. In spite of repeated demands and requests the accused has failed to pay the chit amount, finally in the month of February 2021 accused has issued cheque bearing No.007280 dated 11.02.2021 drawn on ING Vysya Bank Ltd., M.G.Halli Branch, Mysuru for Rs.2,16,700/-. But when complainant presented the said cheque for encashment same has been dishonored for the reasons " Funds Insufficient " and returned with endorsement dated 15.02.2021. After dishonor of the cheque complainant's company has got issued notice dated 09.03.2021 to accused. But the said notice is returned with endorsement " Unclaimed, hence returned to sender. " Even after

issuance of notice the accused has not paid the amount involved in the cheque. Therefore, the accused has committed the offence punishable U/Sec.138 of the Negotiable Instruments 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.10097/2021, 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 its case the complainant company examined one witness as PW-1 and got marked documents at Ex.P-1 to Ex.P-6 on its behalf. On the other hand, the accused himself examined as DW.1 and he got marked documents at Ex.D-1 to 8 on his behalf.

5. 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.2,16,700/- as fine and in default to undergo simple imprisonment for 6 months.

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

The impugned judgment is contrary to law and evidence. The Trial Court has wrongly come to the conclusion that the complainant has proved his case and accused has given the cheque to complainant for discharge of legally recoverable debt. The Trial Court has not appreciated the fact that, the complainant's duty is to prove the case by examining witnesses. The Trial Court has convicted the accused only on the basis that accused has not disputed the existence of chit transaction and his signature on the cheque in question and dishonor of the cheque for

want of funds. The Trial Court has not considered the fact of liability and claims that, cheque was issued as security during the chit transaction and it has been misused by the complainant. The Trial Court has not considered the fact that, demand notice is not served on the Appellant. Even the witness examined by the complainant has admitted that accused has changed his residence in January 2021. Infact, the cheque of the accused was given in blank as security at the time of chit disbursement. The Trial Court has not considered the fact that cheque amount is not legally recoverable debt, as interest rate at 18% pa., as per Ex.D.5, but complainant has calculated interest at 2% pm., i.e., 24% pa., The Trial Court has wrongly appreciated that complainant has proved the case against the accused. It has passed the impugned judgment without appreciation of the facts and documents. Hence, impugned judgment of the Trial Court is illegal and incorrect it has resulted in miscarriage of

justice. Hence, Appellant has requested this Court to allow the appeal and set-aside the judgment of the Trial Court.

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

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

1. Whether the complainant/respondent has produced sufficient material to show that the appellant/accused has committed offence punishable under Section 138 of N.I.Act ?
2. Whether the impugned judgment of the Trial Court calls for interference by this Court ?
3. What order?
9. Heard the arguments.

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

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

:: R E A S O N S ::

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

12. It is the case of the complainant that, complainant is running chit business, accused is the subscriber of 2 chits, accused has received prize money of the 2 chits and for repayment of the amount due by him towards monthly installments of the chits accused has issued cheque bearing No.007280 dated 11.02.2021 drawn on ING Vysya Bank Ltd., M.G.Halli Branch, Mysuru for Rs.2,16,700/-. But on presentation said cheque has been dishonored with endorsement "Funds Insufficient," Thereafter, complainant got issued notice to accused, same is returned with endorsement " Unclaimed, hence returned to sender." Even after issuance of notice the accused has not paid the amount involved in the cheque.

Therefore, the accused has committed the offence punishable U/Sec.138 of the Negotiable Instruments Act.

13. On the other hand, it is the defence of the accused that, he has not issued the cheque in question for payment of amount mentioned in the cheque. Infact, he is not liable to pay the amount to the extent of the amount mentioned in the cheque, he has issued the cheque in question towards security at the time of receiving the prize money. Now complainant has misused the said cheque and filed the false complaint.

14. During the arguments the learned counsel for the accused/Appellant has argued stating that, even though cheque in question is belonging to accused the complainant has not produced any evidence to show that, accused is liable to pay the amount mentioned in the cheque. Infact, as admitted by PW.1 accused is liable to pay interest at 18% pa.,

but complainant has charged interest at 24% pa., which shows that, as on the date of alleged cheque accused was not liable to pay the amount mentioned in the cheque. In spite of it the Trial Court has wrongly convicted the accused for the offence punishable under Section 138 of N.I.Act. Therefore, it is necessary to allow the appeal and set-aside the judgment of the Trial Court.

15. On the other hand, the learned counsel for Complainant/Respondent has argued stating that, admittedly cheque in question is belonging to accused and accused is the member of the chit group. He received the prize money. Therefore, there is sufficient evidence to show that, accused being the chit member is liable to pay amount mentioned in the cheque. Therefore, there is sufficient evidence to show that, accused has issued cheque for payment of legally dischargeable debt. Therefore, Trial Court has rightly convicted the accused. Hence, there is no

necessity to interfere with the judgment of the Trial Court.

16. On perusal of the evidence produced by both the parties and judgment of the Trial Court it appears that, it is true that admittedly the accused is the member of 2 chits being run by the complainant and he has received prize money of the 2 chits. Further, admittedly cheque in question is belonging to accused and even signature in cheque also admittedly belongs to accused. Therefore, as per the provisions of N.I.Act it is necessary to presume that, accused has issued the cheque in question for payment of legally dischargeable debt and burden lies on the accused to rebut the said presumption. However, to rebut the presumption in all the cases it is not necessary to the accused to produce probable evidence, but accused can rebut the presumption by bringing on record some material in the cross-examination of the complainant's witness, which

probabalises the case of the accused. Herein the present case it is the case of the complainant that, as on the date of cheque accused was liable to pay Rs.2,16,700/- to complainant. However, except the documents like cheque, Bank endorsement, legal notice, postal receipt, undelivered postal cover the complainant has not at all produced any documents like ledger account extract which is the proper document to show about exact amount due from the accused. Further, from the documents marked at Ex.D.1 and 2 it appears that, as mentioned in those documents accused is liable to pay Rs.16,350/- and Rs.99,880/- in respect of the prize money received by him, which shows that though accused is due some money to complainant same is not equivalent to amount mentioned in the cheque. Further as rightly, pointed out by Appellant's counsel in Ex.D.5 rate of interest is mentioned as 18% pa., at the same time as admitted by PW.1 in cross-examination in Ex.D.6 interest is calculated at the rate of 2% pm., i.e., 24%

pa., which shows that, complainant has calculated more than the agreed interest rate. Therefore, there is no material available on record to show that, as on the date of cheque marked at Ex.P.2 accused was liable to pay Rs.2,16,700/-. Therefore, by questioning the entitlement of the complainant to recover the amount mentioned in the cheque the accused has rebutted the presumption available in favour of the complainant in respect of issuance of cheque for payment of legally dischargeable debt. Accordingly, as the complainant has failed to produce the evidence to show that, as on the date of cheque accused was liable to pay the amount mentioned in the cheque, the complainant has failed to produce sufficient evidence to show that, accused has issued cheque in question for payment of legally dischargeable debt. Therefore, accused is not liable for conviction for the offence punishable under Section 138 of N.I.Act. Hence, it is proper and necessary to set-aside the judgment of the Trial

Court and acquit the accused. Hence, **Point No.1 and 2 are answered as above.**

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

O R D E R

The appeal filed by the Appellant/accused under Section U/Sec.415 of BNSS is **allowed.**

Judgment of conviction in CC.No.10097/2021 dated 18.07.2025 on the file of VI Addl. Civil Judge and JMFC., Mysuru is hereby **set-aside.**

The Appellant/accused is hereby **Acquitted** under Sec.255(1) Cr.P.C. for the offence punishable U/Sec.138 of the N.I.Act.

The Appellant/accused shall execute bond for a sum of Rs.1,00,000/- with one surety for the likesum to the satisfaction of this Court, to appear before the Higher Court as and when such Court Issues Notice in respect of any Appeal or Petition filed against this

Judgment and such bail bonds shall be in force for a period of 6 months as mandated under Sec.437-A of Cr.P.C.

The amount if any, deposited by the Appellant/accused before the Trial Court is ordered to be refunded to the Appellant/accused.

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

File be consigned to the Record-Room.

[Dictated to the Stenographer, transcribed & computerized by her, transcript revised, corrected and then pronounced by me in the open Court on this the **21st day of April 2026**]

(MALLANAGOUDA)

II Addl. District & Sessions Judge,
Mysuru.