



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

Dated this the 7th day of March 2026

:: PRESENT ::

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

CRL.A/330/2025

APPELLANT : Sri Ramesh V,
S/o Venkatesh,
Aged about 50 years,
R/at #1144, 7th Main,
2nd Cross, Sarvajanika Hostile
Road, Vidyaranyapuram,
Mysuru.

(By : Sri. N.C., - Adv.)

V/s

RESPONDENT : Smt. C. Pushpalatha,
W/o Shivalingaiah,
Aged about 52 years,
R/at #24, 17th Block,
4th Main Road, Shakthinagar,
Mysuru City.

(By : Sri. H.C.R., - 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 in C.C.No.3940/2022 on the file of learned

II Addl. Civil Judge and JMFC., Mysuru dated 17.09.2025, 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.3,00,000/- and in default to undergo simple imprisonment for the period of 3 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, Complainant and Accused are known to each other from many years and they are good friends. In July – 2021 Accused has borrowed Rs.3,00,000/- from Complainant agreeing to repay

the same within 5 months. After 5 months when Complainant demanded for repayment Accused has issued Cheque No.883418 dated 06.12.2021 for Rs.3,00,000/- drawn on Canara bank, Suburb, Mysuru. But when he presented the cheque to bank for encashment and same has been dishonored with endorsement as 'Funds Insufficient' dated 07.12.2021. After that when Complainant met the Accused and informed about dishonor of cheque, he refused to pay the cheque amount. Therefore Complainant got issued notice dated 29.12.2021. In spite of service of notice Accused has not replied to the said notice. Therefore, the Complainant has filed the complaint for the offence punishable U/Sec.138 of the Negotiable Instruments Act. Further as there is Covid-19 pandemic situation there is delay in filing complaint.

3. In support of her case Plaintiff examined herself as PW.1 and got marked document at Ex.P.1 to P.6 on her behalf.

4. On the other hand Accused has not produced any oral evidence on his behalf, but he got marked documents at Ex.D.1 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.

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

The Complainant has not proved her financial capacity. Complainant is Homemaker, she has no source of income and she has not produced documents to prove her financial capacity. Same is not considered by the Trial Court. Further there is

delay in filing the complaint for which Complainant has not filed application for condonation of delay. Therefore the Complaint is time barred. Further though it is necessary to presume that Accused has issued the cheque for payment of legally dischargeable debt, accused has right to rebut the presumption and Accused has produced sufficient material to rebut the said presumption. In fact wife of the Accused was the member of Self Help Group run by Complainant she has availed Rs.1,00,000/- loan in the Self Help Group, Accused has issued the cheque as security towards loan obtained by his wife, since because his wife was not having cheque facility in her bank Accused has issued his cheque. Now the Complainant has misused the cheque and filed false complaint. There is no evidence produced by the Complainant regarding the legally dischargeable debt. Hence by disputing existence legally dischargeable debt Accused has rebutted the presumption in favour of the Complainant. Further

except the cheque there is no other document collected by the Complainant from the borrower that is also sufficient to show that there is no any loan transaction taken place between Complainant and Accused. Further Complainant has filed case against other persons which shows that Complainant is doing money lending business. But in cross examination she deposed that she was not running money lending business which is not contrary to evidence available on record which shows that Complainant has not come before Court with clean hands. The Trial Court has given much importance to the presumption in favour of the Complainant, it has not considered the evidence available on record and passed wrong judgment. The evidence available on record is not sufficient to prove the Complainant's case beyond reasonable doubt. Learned Trial Court has not considered written arguments and citations, it has wrongly convicted the Accused. Hence

judgment of Trial Court is liable to be set aside and Accused is entitled for acquittal.

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 findings 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 in the month of July – 2021 Accused has borrowed Rs.3,00,000/- from her and to repay the said amount issued cheque bearing No.883418 dated 6.12.2021 for Rs.3,00,000/- drawn on Canara Bank, industrial Suburb, Mysuru. On presentation same has been dishonored for want of funds. After that she got issued notice to Accused, inspite of service of notice Accused has not paid the cheque amount, thereby he has committed offences under section 138 of NI act.

13. Now during arguments learned counsel for the Accused has argued that though cheque in question is belonging to Accused and signature in

the cheque is also belonging to Accused, the Complainant has not produced reliable evidence regarding her source of income and her capacity to lend Rs.3,00,000/-, even the Accused is working as Auto Driver, Complainant has not at all stated any reason for which Accused has borrowed the loan, that too Complainant claims that she has lent the amount without charging any interests, therefore there is no evidence regarding existence of legally dischargable debt. Hence as Complainant has failed to produce evidence regarding her capacity and lending of Rs.3,00,00/- to Accused, the Trial Court ought to have acquitted the Accused but it has wrongly convicted him. Hence it is necessary to set-aside the judgment of the trial Court and acquit the Accused.

14. In support of his case he has relied upon the judgment of Hon'ble High Court of Karnataka in

CrI. Appeal No.12 to 15 of 2015 dated 27.05.2024

S.P.Bahubali vs., N.Narasimha Murthy.

Negotiable Instrument Act, 1881 – Section 138 and 139 – Dishonor of Cheque – Appeal against acquittal – Complainant has failed to plead and prove facts regarding advancing hand loan to Accused and he has also failed to prove his financial capacity – Taking into consideration oral and documentary evidence placed on record Trial Court has come to correct conclusion that charges against Accused are not proved and acquitted him findings of Trial Court is consistent with evidence brought on record by both parties. Appeals filed by the Complainant under Section 378(4) of Cr.PC dismissed.

15. On the other hand counsel for the Complainant has argued that the Complainant has produced sufficient evidence regarding Accused issuing cheque in question for payment of legally dischargable debt and also regarding capacity of the Complainant. Therefore there is sufficient evidence to show that Accused has issued cheque in question for payment legally dischargable debt and with regard to

delay is concerned. There is circular of Hon'ble High Court for exclusion of the Covid period for the purpose of limitation. Therefore if the said time is excluded definitely the complaint is within limitation, hence by considering all the aspects the Trial Court has rightly convicted the Accused and Accused is not entitled for acquittal.

16. On perusal of the material available on record and submission of the both the counsels it appears to me that as rightly argued by counsel for the Accused, in her cross examination PW.1 herself stated that she is a Homemaker and she has no any income. Therefore except the Lease Deed marked at Ex.P.6 there is no any other evidence with the Complainant regarding her capacity to pay Rs.3,00,000/-. Even with regard to Ex.P.6 is concerned the said document is unregistered document and none of the parties to the said document are examined as witnesses. Therefore

contents of Ex.P.6 cannot be looked into, hence Ex.P.6 is excluded from the evidence, there is no other evidence available on record to show that the Complainant has got financial capacity and she has lent Rs.3,00,000/- to Accused. Furthermore as rightly argued by the counsel for Accused though Complainant is claiming that she has lent Rs.3,00,000/- as per the Complainant herself she has not charged any interest to the said loan. In fact the Complainant being a Homemaker her contention that she lent Rs.3,00,000/- to Accused without interest is unbelievable. Furthermore Accused is Auto Driver and Complainant has not at all disclosed any specific reason for lending huge amount of Rs.3,00,000/- to Accused. Hence on that ground also case of the Accused about lending Rs.3,00,000/- is not believable. Even if learned judge of the Trial Court has discussed more about Accused not replying to the notice, when there is no evidence available on record to show that Complainant has got

capacity to lend Rs.3,00,000/- and she has actually lent said amount to Accused merely because reply is not sent to notice is not the good ground to convict the Accused. Therefore by disputing the capacity of the Complainant and Complainant lending Rs.3,00,000/- to Accused, accused has rebut the presumption available in favor of the Complainant. Therefore when Accused has rebutted the presumption available in favour of the Complainant the Trial Court ought to have acquitted the Accused but it has wrongly convicted him for offence under section 138 of NI act. Accordingly it is decided to set-aside 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;

ORDER

The appeal filed by the Appellant/
Accused U/Sec.415 of BNSS., is hereby
allowed.

Judgment of conviction in
CC.No.3940/2022 dated 17.09.2025 on
the file of II Addl. Civil Judge and
JMFC Court, 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 **7th day of March 2026**]

(MALLANAGOUDA)

II Addl. District & Sessions Judge,
Mysuru.