KAMS010085742025

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

Dated this the **04th day of August 2026**

:: PRESENT ::

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

CRL.A/354/2025

APPELLANT	**:**	Sri.R.Rangaswamy, S/o Late Rangaiah, Aged about 65 years, R/at 5th Battalion, No.301, KSRP, Commandant Office, Lalith Mahal Road, Mysuru. (By **Sri.M.B.B. -** Adv.)

V/s

RESPONDENT	**:**	Sri.Nagalingu, S/o Late Shivanagalingaiah, Major, R/at No.1543, 3rd Cross, Ashokapuram, Mysuru. (By **Sri.R.K. -**Adv.)

JUDGMENT

This is the Appeal filed by the Appellant/ accused U/Sec.415 of BNSS., challenging the Judgment dated 11.09.2025 in C.C.No.776/2015 on the file of learned I 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.80,000/- and in default to undergo simple imprisonment for period of six months and out of fine amount Rs.75,000/- is ordered to be paid in favour of the Respondent/complainant as compensation and the remaining amount of Rs.5,000/- shall go to the State.

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 has filed the complaint U/Sec.200 of Cr.P.C., for the offence punishable U/Sec.138 of the Negotiable Instruments Act, contending that, the accused and complainant are

known to each other from five years, in the first week of December, 2010 the accused has approached the complainant for financial assistance and borrowed Rs.75,000/- from the complainant for the purpose of his legal necessities. At the time of borrowing the said loan amount the accused has agreed to repay the same with interest at the rate of 18% p.a., within three months. In the first week of February, when complainant demanded the accused to repay the said loan amount to discharge his liability the accused has issued a cheque bearing No.129943 for Rs.75,000/-, dated 25.02.2011 drawn on Oriental Bank of Commerce, Kuvempunagara Branch, Mysuru, for repayment of the amount borrowed from the complainant and the accused assured the complainant that, on presentation the cheque will be honored. But, when the complainant presented the cheque to bank for encashment, same was returned with the endorsement “Funds Insufficient” on 28.02.2011. Thereafter, the complainant got issued legal notice dated 07.03.2011 to accused requesting to pay the cheque amount with interest. The said notice sent through RPAD is not served on the accused. The notice sent through C.O.P is served on the accused. Inspite of service of notice the accused has not chosen to pay the cheque amount. Hence, the accused has committed the offence punishable U/Sec.138 of the Negotiable Instruments Act.

4. After taking the cognizance, the Trial Court recorded the sworn statement of the complainant and after registering the case as C.C.No.776/2015 on the file of I Addl. Civil Judge and 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.

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

6. 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.80,000/- as fine and in default to undergo simple imprisonment for six months.

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

The Judgment of the Trial Court is contrary to law and evidence. The Trial Court has erred in answering the point No.1 and 2 in Affirmative, it has erred in appreciating the chief examination of PW-1, Trial Judge has failed to appreciate the defence taken by the accused, it has failed to determine the sources of financial capacity of the complainant to lend the huge amount of Rs.75,000/-. The Trial Judge has erred in passing the impugned Judgment even if the respondent is not known to appellant. Further, complainant has not produced any single document to show that, he was running business of Provision Store. Even though the complainant has not produced sufficient evidence regarding his capacity for payment of Rs.75,000/- to accused, the Trial Judge has passed the impugned Judgment. In fact the alleged cheque was given by the accused to his brother Late Narayana for the purpose of purchasing materials for his business and the said cheque is misused by the said Narayana since because there was a quarrel between the appellant and respondent with respect to their family disputes. In fact the accused has not borrowed Rs.75,000/- from the complainant. The appellant is Police Officer, he is in good financial status. Hence, there is no requirement for borrowing the loan. The complainant completely failed to prove his case. Inspite of it the Trial Court has erred in coming to the conclusion that the accused has committed the offence under Section 138 of N.I Act. In fact mere fulfillment of presumption under Section 118 of N.I Act is not sufficient to convict the accused. Therefore, it is necessary to set aside the judgment of the Trial Court.

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

9. 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.129943 dated 25.02.2011 for Rs.75,000/- drawn on Oriental Bank of Commerce, Kuvempunagara Branch, Mysuru, on presentation of the cheque same has been dishonored with endorsement "Funds Insufficient",

thereafter the complainant got issued notice dated 07.03.2011 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?

10. Heard the arguments of the respondent's counsel.

11. 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:

R E A S O N S

12. **POINT NO.1 & 2:-** Since these points are inter-connected, they are discussed together to avoid repetition of the facts.

It is the case of the complainant that, in the first week of December, 2010 the accused had approached the complainant seeking financial assistance and he has borrowed Rs.75,000/- agreeing to repay the same with interest at the rate of 18% p.a., within three months. Subsequently, when complainant demanded the accused for repayment, in the first week of February, the accused has issued cheque bearing No.129943 dated 25.02.2011 for Rs.75,000/-, drawn on Oriental Bank of Commerce, Kuvempunagara Branch, Mysuru. But, on presentation of the said cheque same is dishonored with an endorsement "Funds Insufficient". Thereafter, the complainant got issued a legal notice dated 07.03.2011 to the accused. Even after service 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.

13. On perusal of the Trial Court records it appears that, in support of his case the complainant himself examined as PW-1 and in his chief examination he has reiterated the facts alleged in the complaint as discussed above. In addition to his chief examination the complainant has produced documents marked as Ex.P-1 to 6, which are

Cheque, Bank Endorsement, Notice, Postal receipt, C.O.P and Un-served RPAD Cover.

14. Now during arguments, learned counsel for the accused/appellant has argued stating that, the complainant has not produced any evidence regarding his capacity to pay Rs.75,000/-. Even if he has contended that, he was running a shop there is no documents produced by the complainant regarding the said shop. Therefore, when complainant has not produced any evidence regarding his capacity to pay Rs.75,000/- and also about actual transaction between the complainant and accused, even though the cheque in question is admittedly belongs to accused, in the absence of evidence regarding existence of legally dischargeable debt, the Trial Court ought not to have convicted the accused, but it has wrongly convicted him. Therefore, accused is entitled for acquittal.

15. On the other hand, learned Counsel for the complainant/appellant has argued stating that, when cheque in question and signature on the cheque are admittedly belongs to accused, as per the provisions of Negotiable Instrument Act, it is necessary to presume that, the accused has issued

the cheque in question for payment of legally dischargeable debt and it is the burden lies on the accused to rebut the presumption available in favor of the complainant. But here in the present case the accused has not at all produced any evidence on his behalf to rebut the presumption available in favor of the complainant, at the same time the complainant has produced sufficient evidence to show that, the accused has borrowed Rs.75,000/- and to repay the amount borrowed by him the accused has issued cheque in question. Therefore, by considering all the material the Trial Court has rightly convicted the accused and there is no any valid reason to interfere with the Judgment of the Trial Court.

16. On perusal of the Trial Court records and arguments of both the counsels it appears to me that, as rightly argued by the learned counsel for the complainant that, when cheque in question is admittedly belonging to accused and signature in the cheque also belonging to accused, as per Section 118 and 138 of Negotiable Instrument Act, it is necessary to presume that, the accused has issued the cheque in question for payment of legally dischargeable debt and burden lies on the accused to rebut the said

presumption. Even though in all the cases it is not necessary to accused to enter into witness box for rebutting the presumption available in favor of the complainant and even the accused can rebut the presumption by bringing on record some material in cross-examination of complainant and his witnesses which insists the court to disbelieve the case of the complainant regarding existence of legally dischargeable debt, here in the present case with regard to capacity of the complainant is concerned, as the money involved in the case is only Rs.75,000/- and in his evidence the complainant has stated in detail about his sources of income. Further even if the accused has contended that, he handed over his cheque to his brother Narayana for the purpose of security when he purchases materials to his company, the accused has not at all produced any evidence regarding company which was being run by his brother Narayana. Further, the accused is admittedly working in Police Department. Therefore, he was supposed to know the consequences of issuing signed cheques in favour of some other person. Even though the accused has contended that, he has issued the cheque to his brother Narayana, the accused has not entered into the witness box to depose about the circumstances under which he has issued the cheque in favour of his brother and how the said cheque has reached to the hands of the complainant. Therefore, when the accused has failed to bring on record some material which insists the court to disbelieve the case of the complainant. By considering all the material available on record the Trial Court has thoroughly discussed the facts and evidence and also the law applicable to the case on hand and rightly convicted the accused for 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.

17. Further, with regard to the sentence imposed on the accused is concerned, the cheque is for Rs.75,000/- and the Trial Court has imposed fine of Rs.80,000/- only. In fact as the cheque is of the year 2011, the Trial Court ought to have imposed maximum fine permitted under law. However, as the present appeal is filed by the accused only and the complainant has not filed any appeal or revision challenging the quantum of fine imposed on the accused it is decided not to enhance the sentence.

Hence, it is decided to confirm the Judgment of the Trial Court and dismiss the appeal. 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 of B.N.S.S is hereby ***Dismissed***.

Judgment of conviction in CC.No.776/2015 dated 11.09.2025 on the file of I Addl. Civil Judge and 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 **04th day of August 2026**]

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

Digitally signed by MALLANAGOUDA
Location: III Addl.District and Sessions Judge,Mysuru