KAMS210002272024

IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC., H.D.KOTE
:PRESENT :

SRI. SANTHOSHA KOTARI, B.A.L.,LL.B.,

PRL.CIVIL JUDGE AND JMFC.,

H.D.KOTE

DATED THIS THE 22ND DAY OF JUNE 2026

C.C. No. 57/2024

Complainant: Sri.P.Nagarajappa
S/o. Late. Papanna
Aged about 62 years,
R/at Housing Board Colony,
H.D.Kote Town and H.D.Kote Taluk.

(By Sri.B.S.Sanghameshwar, Advocate)

-V/s-

Accused: Sri.Ramakrishna
S/o. Late. Venkataramanaiah
Aged about 45 years,
R/at Bovi Colony, H.D.Kote Town,
H.D.Kote Taluk,
Mysuru District.

(By Sri.H.R.Hanumesha, Advocate)

* * * * *

1. Nature of Offence/s	:	138 of Negotiable Instruments Act
2. Date of FIR/Private Complaint	:	03.01.2024

3. Accused arrested on	:	Appeared on 27.09.2024 and released on bail
4. Date on which the recording of evidence commenced	:	13.11.2025
5. Date of Judgment	:	22-06-2026
6. Opinion of Judge	:	Convicted

Prl. Civil Judge and J.M.F.C.,
H.D.Kote

-:o0o:-

JUDGMENT

This case emanates from the private complaint filed by the complainant under Section 200 of the Code of Criminal Procedure against the accused for the offence punishable under Section 138 of Negotiable Instruments Act 1881.

2. The case of the complainant in brief is as follows:-

The complainant and accused are known to each other for many years. On 16.05.2023 the accused had approached the complainant and borrowed a hand loan of Rs.2,50,000/- to meet his legal necessities and accused had promised to repay the same within 04 months from the date of borrowing the said loan amount. After lapse of 04 months, the complainant had approached accused and requested to repay the loan amount. Towards discharge of the said loan amount, the accused had issued a cheque bearing No.283251 dated 20.09.2023 for sum of

Rs.2,50,000/- drawn on State Bank of India Kuvempunagar Branch, Mysuru. It is further averred that on 02.11.2023 the complainant had presented the said cheque bearing No.283251 for realization through his banker State Bank of India, Kuvempunagar Branch, Mysuru wherein the said cheque was dishonored for the reasons “Funds Insufficient” vide endorsement dated 22.11.2023. Thereafter, on 23.11.2023 the complainant had issued legal notice to the accused calling upon him to make proper arrangement for the repayment of the said amount. It is further averred that even after issuance of said notice the accused had not chosen to repay the loan amount. The accused has intentionally issued a cheque only to cheat the complainant without maintaining sufficient funds in account and thereby the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act.

3. Thereafter, cognizance was taken for the offence punishable under Section 138 of Negotiable Instruments Act and sworn statement of the complainant was recorded. Since there was sufficient grounds for presuming that the accused has committed an offence as alleged, this court has issued process against the accused. The accused appeared before the court and got enlarged on bail. The accused was supplied with the prosecution materials in compliance of Section 207 of Cr.P.C. The substance

accusation was read over and explained to the accused in the language known to him. The accused has not pleaded guilty of the said offence and stated that he has defense to make.

4. In order to bring home the guilt of the accused, the complainant examined himself as PW-1 and he filed affidavit in lieu of his examination in chief and produced as many as 5 documents and they are marked as Ex.P1 to 5 and closed his side.

5. It is pertinent to mention here that after registering the above C.C, summons was issued against the accused, however despite of service of summons he remained absent and accordingly NBW was issued against him. Despite of repeated issuance of NBW he remained absent. Thereafter on 27.09.2024 the accused had filed advancement application through his counsel and voluntarily appeared before the Court and got enlarged on bail and thereafter plea of the accused was recorded and matter was posted for complainant evidence. Thereafter on 13.11.2025 the complainant examined himself as PW-1 and he filed affidavit in lieu of his examination in chief and Ex.P1 to P5 got marked and accordingly matter was posted for cross examination. However, despite of giving sufficient time, the accused has not cross examined the PW-1. Accordingly, as per the order dated 09.03.2026 cross of PW-1 was taken as nil and matter was posted for recording statement of the

accused under section 313 of the Code of Criminal Procedure. Thereafter, the accused remained absent and accordingly NBW was issued against the accused. However, despite of repeated issuance of NBW, he remained absent and absconding. Thereafter, on 12.062026, the counsel for complainant has filed memo seeking to proceed with the matter in the absence of the accused by dispensing recording of statement under Section 313 of the Code of Criminal Procedure stating after recording his plea, the accused remained absent with an intention to protract the proceedings. The Complainant in support of his Memo and submission has relied on the decision of the Hon'ble High Court of Karnataka in the matter of **Sunil Yadav V/s. Smt. Y.C. Manju, in Criminal Revision Petition No.664/2020, dated 07.02.2025**, wherein the Hon'ble High Court has observed that *"It is not the duty of the Court to issue non-bailable warrant and secure the accused once already taken recourse to secure him by issuing NBW, each and every stage the Court cannot issue NBW and secure him and once he claims the trail without pleading guilty and he shall co-operate and take the opportunity to cross examine the witness and inspite of several opportunity was given for cross-examination and lead his defense evidence, but he did not do so. He did not avail the said benefit and in view of the discussions of the Judgments which have been referred above by the different High Courts as well as the Apex Court* *judgment, I do not find any error committed by the Trial Court in dispensing the 313 statement since he did not avail any opportunity for cross examine the witness and lead any defense evidence and then only Court was proceeded to dispense the 313 statement. Even inspite of opportunity was given to lead defense evidence also, did not avail the opportunity and hence, now the counsel cannot contend for remand the matter only on the ground that 313 statement was not recorded. Both the Bombay High Courts discussed in detail in both the orders referred supra and this Court also discussed in R.V.Kulkarni's case for dispense of non-examination of 313 statement as the opportunity was not availed inspite of sufficient time was given. Having considered the factual aspects of this case is concerned, not a case for remanding the matter only on the ground that 313 statement was not recorded and the same is a discretion of the Magistrate to dispense the same having considered the factual aspects of the case and hence I do not find any error committed by the Trial Court in dispensing the same and proceeded against the petitioner and the same cannot be a whims and fancy of the accused to seek for remand the matter when the opportunity was given to him and not utilized the same and no grounds to set-aside the order and remand the matter for fresh consideration*". Thus, this Court by applying the principles of law held in the above said decision as per order dated 12.06.2026 has dispensed the recording of statement of the accused under section 313 of Cr.PC holding the accused has not utilized/availed the said opportunity. Further, the offence alleged against the accused is punishable under section 138 of N.I.Act and proceedings adopted is summary in nature, as such, recording of statement under section 313 of Cr.PC is not required. At this stage it would be relevant to refer to the decision of the Hon'ble High Court of Karnataka in the matter of ***B N Ashwath Narayan V/S Shankar, dated 02-02-2023***, wherein it has held that *"the contention of the learned counsel for the petitioner that presence of the petition must have been secured by the trail court at the time of recording the statement of the petitioner / accused under Section 313 of CrPC and at the time of pronouncing judgment and imposing sentence, is liable to be cursorily rejected, as there is no requirement of recording the statement of the accused under Section 313 CrPC or under the Negotiable Instruments Act, 1881 or in chapter XXI of CrPC. As the matter of fact, the record of a summary trail under Section 263 of CrPC does not provide for recording the statement of the accused under Section 313 CrPC".*

6. Heard the arguments of learned counsel for the complainant. However, inspite of giving sufficient time the accused and his counsel remained absent and not canvased his argument on merits. I have meticulously perused entire materials on record.

7. The following points would arise for my consideration:-

1. *Whether the complainant proves that the accused has issued cheque bearing No.283251 dated 20.09.2023 drawn on State Bank of India, Kuvempunagar branch, Mysuru for a sum of Rs.2,50,000/- in discharge of his legally enforceable debt and same was dishonored on the ground of "Funds Insufficient"?*

2. *Whether the complainant proves that he has complied all the mandatory requirements of Section 138 of N.I.Act?*

3. *Whether the complainant proves that the accused has committed an offence punishable under Section 138 N.I Act?*

4. *What order or sentence?*

8. My findings for the above points are as follow:-

Point No.1	:	**In the Affirmative**
Point No.2	:	**In the Affirmative**
Point No.3	:	**In the Affirmative**
Point No.4	:	As per final order, for the following;

R E A S O N S

9. **Point No.1 to 3**:- These points are taken up together for discussion for brevity and to avoid repetition of facts and reasoning.

10. The complainant in order to prove his case, has examined himself as PW-1 and he filed affidavit in lieu of

his examination-in chief, wherein he reiterated the averments made in complaint, hence, repetition is not necessary. Further the PW-1 in support of his oral evidence has produced as many as 5 documents and they are marked as Ex.P1 to P5. Ex.P1 is Cheque bearing No.283251 dated 20.09.2023 drawn on State Bank of India, Kuvempunagar branch, Mysuru. Signature of the accused is marked as Ex.P1(a), Ex.P2 is endorsement, wherein the cheque was unpaid for the reasons described as "Funds Insufficient", Ex.P3 is office copy of the legal notice dated 23.11.2023 issued after dishonor of the cheque, Ex.P4 is Postal receipt and Ex.P5 is Postal Acknowledgment.

11. First of all in order to prove an offence under Section 138 of Negotiable Instruments Act it is necessary to examine whether the complainant has complied with three ingredients of Section 138 of Negotiable Instruments Act i.e.,

1) <u>Section 138(a)–cheque presented for encashment within 03 months.</u>

The Ex.P1 is the cheque, which is alleged to have been issued by accused by mentioning date i.e., 20.09.2023. The complainant presented said cheque for encashment on 02.11.2023 and memo at Ex.P2 was issued by the Sate Bank of India, Kuvempunagar Branch, Mysuru on 22.11.2023. Hence this shows that, the complainant has presented the said cheque within 03 months. Hence, Section 138(a) of N.I. Act is complied.

2) **Section 138(b) of N.I. Act.**

After presentation of said cheque by complainant, the Sate Bank of India, Kuvempunagar Branch, Mysuru issued memo/endorsement dated 22.11.2023 as per Ex.P2 and stating "Funds Insufficient". The complainant has issued legal notice as per Ex.P3 to the accused on 23.11.2023 within 30 days from the date of issuance of Ex.P2 memo. Ex.P4 is the postal receipt for having sent the legal notice through RPAD to the accused two addresses. Therefore, it shows that the complainant has complied Section 138(b) of N.I. Act.

3) **Section 138(c) of N.I. Act.**

The notice issued to the accused was served on 24.11.2023. Ex.P5 is Postal acknowledgment card. On perusal of same it reveals that notice issued to accused was served on 24.11.2023. However, the accused has not paid the amount mentioned in the notice at Ex.P3 within 15 days from service of said notice. The complainant has granted sufficient opportunity to the accused to repay the amount due under Ex.P1, however, the accused has not paid the same. This complaint has been preferred within 45 days from the date of service of legal notice to the accused.

12. In Ex.P2 memo issued by the State Bank of India, Kuvempunagar Branch it is mentioned with shara that "Funds Insufficient". The shara made on Ex.P2 clearly shows that the accused inspite of being aware of the fact that his account does not have sufficient balance has issued cheque at Ex.P1 to the complainant. Therefore, on presentation of said cheque, the concerned bank Manager

had issued memo stating “Funds Insufficient”. The said shara is clearly covered under Section 138 of Negotiable Instruments Act. Therefore, this Court is of the opinion that the complainant has complied all the ingredients of Section 138 of Negotiable Instruments Act. The accused has not disputed that Ex.P1 cheque belongs to his bank account and he also not disputed his signature on the said cheque. Once the cheque and signature is admitted, the statuary presumption as per section 139 of N.I. Act comes into play in favour of complainant.

13. To rebut the presumption available to the complainant under law, the accused for the reasons best known to him has not made any attempt to cross examine the PW-1 and deny the averments made in the complaint and affidavit filed in lieu of oral evidence. Further, in order to disprove the case of the complainant and to rebut the presumption raised in his favour, the accused has not entered into witness box and led his defense evidence. Thus, from this, it is crystal clear that oral as well as documentary evidence produced by the complainant has remained unchallenged, uncontroverted and unrebutted and there is no reason to disbelieve the evidence of the complainant. Under the circumstances, an adverse inference ought to be drawn against the accused.

14. Further, it is pertinent to mention here that in the present case, after dishonor of the chqeues at Ex.P1, the

complainant had issued notice as per Ex.P3 to the accused and the said notice was served to the accused. Inspite of which, the accused neither repaid amount due under the said cheque nor replied to the said legal notice. If he has not issued Ex.P1 cheque in discharge of his liability, certainly he would have received the notice and issued a reply to the legal notice at Ex.P3 issued by the complainant. When the notice containing such serious allegations and financial implications was issued, if the case of the complainant was false, no man of ordinary prudence sits back without controverting those allegations by issuing a reply. The silence of the accused shows that by knowingly he had issued the cheque in question to discharge his liability. Further, accused has not disputed that Ex.P1 cheque belongs to his account and his signature found on the said cheque. Once the accused admits his cheque and signature, statutory presumption come into play in favour of complainant, that includes the cheque is issued for legally recoverable debt or legal liability. All these aspects clearly establish that the accused has issued the cheque in question to discharge his liability.

15. It is pertinent to note that, clause (b) of Section 118 of Negotiable Instruments Act raises a presumption as to the date of negotiable instrument. According to this presumption, every negotiable instrument bearing a date is presumed to have been made or drawn on such date.

According to clause (a) of Section 118 of Negotiable Instruments Act, every negotiable instrument is presumed to have been made for consideration. The Section 139 of Negotiable Instruments Act, raises a presumption that, unless the contrary is proved the holder of cheque received the cheque of the nature referred to under Section 138 of Negotiable Instruments Act, for the discharge in whole or in part of any debt or other liability to in Section 138 of Negotiable Instruments Act. The complainant has complied with the ingredients of Section 138 of Negotiable Instruments Act. Hence, the presumptions available under Section 138 and 118 of Negotiable Instruments Act operate mandatorily in favour of the complainant. Hence, the complainant in this case has been able to shift the onus of proof onto the shoulder of the accused to rebut the presumptions available in favour of the complainant.

16. It is for the accused in this case to rebut the presumption with all preponderance of probability with clear cogent and convincing evidence though not beyond reasonable doubt. It is well settled principle that the accused need not step into the witness box to discharge the burden placed on him. He may very well discharge it on the basis of the material already brought on record, on the basis of the facts elicited in the cross-examination of the complainant and also on the basis of the presumption available under the Evidence Act. If the accused is

successful in placing any such evidence then the presumptions operating in favour of the complainant stand rebutted. But, in this case unfortunately the accused has not cross examined the PW-1 to rebut the presumption raised infavour of the complainant and there is no positive evidence to disprove the contents of complaint. Therefore, there is nothing in record to hold that, the cheque in question was not issued for discharge of existing debt or liability due by the accused to the complainant.

17. The Hon'ble Apex Court in the matter of **T.P.Murugan (Dead through legal representatives) V/s Bojan** reported in **2018 (8) SCC 469,** it has held that *"Once a cheque has been signed and issued in favour of holder of cheque, there is a statutory presumption under Section 139 of N.I. Act, that the cheque is issued in discharge of legally recoverable debt or liability. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan."* In the present case, the accused has admitted his cheque and signature, hence statutory presumption comes in favour of complainant. The accused has not produced any credible evidence to rebut the said presumption.

18. Further, at this stage, I intend to refer to the decision of the Hon'ble Apex Court in the matter of

Rangappa Vs. Mohan, reported in AIR 2010 SC 1898, wherein, the Hon'ble Apex court has held as under:

> *"The presumption mandated by Section139 of NI Act does indeed include the existence of legal enforceable debt or liability, this is of course in the nature of rebutable presumption and it is open to the accused to raise defense whether the existence of legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."*

19. Thus, based on the above principle of law laid down by the Hon'ble Supreme Court of India and in view of the discussion made above, the complainant has proved the existence of the loan transaction with the accused, the issuance of cheque by the accused to discharge the loan amount, which is legally enforceable debt, the dishonor of the said cheque, issuance of notice of dishonor of cheque to the accused within stipulated time and non-payment of the cheque amount in spite of issuance of legal notice. Further the accused has failed to rebut the presumption under Sec.118 and 139 of the Negotiable Instruments Act, either by eliciting favourable admissions in the cross-examination of the PW-1 or by establishing the same through his evidence. Hence, without much discussion on these points, I hold that the complainant has proved his case and accordingly, **Points No.1 to 3 are answered in the *'Affirmative*.'**

20. **Point No.4**:- As discussed under Point No.1 to 3 the complainant has proved his case as to commission of the offence under Section 138 of Negotiable Instruments Act by the accused. The punishment prescribed for the offence under Section 138 of Negotiable Instruments Act is imprisonment for a period which may extend to two years or with fine which may extend to twice the cheque amount or both. It is pertinent to mention here that considering the totality of the facts and circumstances of the case, I deem it appropriate to impose sentence of fine only on the accused. The transaction stated in the complaint is of the year 2023 and the accused availed financial help of Rs.2,50,000/- and till today he has not repaid any amount and he issued Ex.P1 cheque for Rs.2,50,000/- and allowed to dishonor the same. Therefore, if this Court imposes only the said cheque amount as fine, great injustice would cause to the complainant. At this juncture, it would be relevant to refer to the decision of Hon'ble High Court of Karnataka, in the matter of ***M/s.Banavathy & Company V/s Mahaveer Electro Mech (P) Lts and others., reported in 2025 LiveLaw(Kar)241,*** wherein the Hon'ble High Court at para No.21 of its judgment has held as under:-

"21. In the case lesser interest is awarded and only default sentence is imposed, the rigor of offence under Section 138 will be diluted and thereby the object of the Statute will be defeated. If recovery and compensatory part

is not taken care of while determining the quantum of sentence and appropriate interest is not awarded, until the date of recovery of the entire amount, the complainant will be forced to file civil suit on the same subject matter. In view of Section 143(3) the trial for offence under Secton 138 of N.I.Act has to be completed within six months. If the said provision is not adhered to and the trial for the offence under Section 138 of N.I.Act takes 4 to 5 years, in the mean time, the claim of the complainant for recovery of the cheque amount by fling civil suit becomes barred by limitation. Not only that the accused who is convicted for offence under Section 138 of N.I.Act challenges the same before the Sessions Court wherein the matter takes 2 to 3 years. The accused unsuccessful in the said appeal prefers revision petition before the High Court and it is seen that the disposal of revision takes more than 5 years. After all this if the complainant has to receive the fine/compensation as awarded by the trial Court, if it is cheque amount or little higher than the cheque amount, he will be at loss and put to injustice. Therefore, while passing the order of sentence after determining the fine/compensation, the Court shall also pass an order to pay future interest @ 9% p.a. on the compensation amount payable to the complainant by fixing time of one/two months to deposit compensation amount so that even if the matter is challenged before the Sessions Court in appeal and High Court in revision the interest of the *complainant will be protected".* The ratios held in the above decision is aptly applicable to the facts and circumstances of the present case on hand. Thus, keeping the aforesaid principles of law in mind and having regard to the relationship of the parties, nature of the transaction and facts and circumstances of the case, this court is of the opinion that it is just and proper to impose fine of Rs.2,70,000/- with an interest at the rate of 9% per annum on the cheque amount payable by the accused. Hence, I proceed to pass the following:-

-: O R D E R :-

Acting under Section 255(2) of the Code of Criminal Procedure the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act.

The accused is hereby sentenced to pay fine of Rs.2,70,000/- (Rupees Two Lakh Seventy Thousand Only) with an interest at the rate of 9% per annum on the cheque amount of Rs.2,50,000/- from the date of issuing the cheque till its realization. In default to pay the fine, the accused shall undergo simple imprisonment for a period of six months.

Further, acting under Section 357 of the Code of Criminal Procedure, out of the fine amount and interest, a sum of Rs.2,65,000/- (Rupees Two Lakh Sixty

Five Thousand Only) with accrued interest shall be paid to the complainant as compensation and remaining fine amount of Rs.5,000/- shall be defrayed as state expenses.

Bail bond and surety bond executed is hereby canceled.

Office is hereby directed to supply free copy of this judgment to accused.

(Dictated to the stenographer and typed by her on computer, corrected by me and then pronounced by me in the open court on this the **22nd day of June, 2026.)**

(SANTHOSHA KOTARI)
Prl. Civil Judge and J.M.F.C.,
H.D.Kote.

ANNEXURE

Witnesses examined on behalf of the complainant:-

PW-1	:	Sri.P.Nagarajappa

Exhibits marked on behalf of the complainant:-

Ex.P-1	:	Cheque,
Ex.P-1(a)	:	Signature,
Ex.P-2	:	Memo issued by State Bank of India Kuempunagara Branch.
Ex.P-3	:	Office copy of legal notice dated 23.11.2023
Ex.P-4	:	Postal receipt
Ex.P5	:	Postal acknowledgment

Witnesses examined on behalf of the accused:-

-Nil-

<u>Exhibits marked on behalf of the accused</u>:-

-Nil-

(SANTHOSHA KOTARI)
Prl. Civil Judge & J.M.F.C.,
H.D.Kote.