

KAMS300000782020



**IN THE COURT OF I ADDITIONAL SENIOR CIVIL JUDGE AND
JMFC, HUNSUR**

Dated this the 7th day of March 2026

**Presided Over by Smt. Bhagyamma
B.Com. L.L.B.,**

CC./23/2020

COMPLAINANT:

Sri Manukumar,
S/o Siddaraju,
Aged about 32 years,
Nanjapura Village,
Dharmapura Post,
Kasaba Hobli,
Hunsur Taluk,
Mysuru District.

(By Sri MEM, Adv.)

//Vs//

ACCUSED:

Sri T. Mahadeva,
S/o Thammegowda,
Aged about 36 years,
Assistant Teacher,
Government Primary School,
Saraswathipuram,
Hunsur City, Hunsur.

(By Sri MEP, Adv.)

JUDGMENT

The complainant has filed this complaint under section 200 of Cr.P.C for the offence punishable under section 138 of N.I.Act.

2. The brief facts of the complaint case is as under:

That the accused and complainant are well known to each other from several years. That on the end of July 2019 the accused for his legal necessity i.e., for the purpose of discharge of his antecedent loans, he had borrowed a sum of Rs.4,00,000/- from the complainant agreeing to repay the same within 45 days and on the same day accused has issued a post dated cheque bearing No.576991 dated 19.09.2019 for Rs.4,00,000/- drawn on State Bank of Mysore, Hunsur Branch, Hunsur. The complainant presented the cheque bearing No.576991 through his banker The Karnataka Bank Ltd., Hunsur Branch, Hunsur, but the same was returned with a shara "Funds Insufficient" on 20-09-2019. As such, the complainant got issued legal notice dated 26-09-2019 to the accused through RLAD and also ordinary post calling upon the accused to pay cheque amount. The ordinary post was duly served on the accused. The notice sent through RLAD has returned with a shara "un-claimed and hence returned to sender" on 05.10.2019. The accused knowing the contents of the notice served through ordinary post, maneuvered to return the notice sent through RLAD. The RLAD is deemed to be served on the accused on 05.10.2019. The accused knowing fully well and being aware that there is no sufficient fund in his account to cover the cheque issued by him to defraud the complainant, he issued the cheque. Thereby, the accused committed an offence punishable under section 138 of N.I.Act. With these reasons, filed this complaint.

3. Based on the averments of complaint and documents placed on record, the court took cognizance of the offence punishable under Section 138 of N.I.Act. The complainant has filed his affidavit in lieu of sworn statement and initially got marked 5 documents at Ex.P1 to 5 and closed the complainant side sworn statement.

4. After hearing the learned counsel for complainant and on perusal of the material, the case was ordered to be registered in Register No.III for the offence punishable under Section 138 of N.I.Act and summons was ordered to be issued against accused.

5. That after service of summons, the accused immediately has not appeared, but he has appeared subsequently through the counsel and enlarged on bail. Then the substance of accusation has been recorded, read over and explained to the accused in the language known to him. He has understood the same, he has pleaded not guilty and claimed to be tried. The sworn statement of complainant has been treated as chief examination and he has been cross examined by the learned counsel for accused and closed complainant side evidence.

6. The statement of the accused under section 313 Cr.P.C has been recorded. The accused has denied the incriminating materials as false and submitted that he would adduce defence evidence. Therefore, the matter stood posted for defence evidence. The accused got examined himself as D.W.1 and but not produced any documents in support of his case. The accused in order to prove his case has also examined two supporting witnesses as DW.2 and DW.3.

7. Heard the argument of learned counsel for both side.

8. This court has perused the complaint, oral and documentary evidence placed on record.

9. The following points that would arise for my consideration;

POINTS

1. Whether the complainant proves that the accused issued cheque bearing No.576991 dated 19.09.2019 for Rs.4,00,000/- drawn on State Bank of Mysore, Hunsur Branch in his favour,

which came to be dishonoured for the reason 'Funds Insufficient', issuance of legal notice and its service, thereby the accused has committed an offence punishable under section 138 of N.I.Act?

2. What order or sentence?

10. My findings to the above points are as follows:

Point No.1 : In the affirmative

**Point No.2 : As per final order
for the following;**

REASONS

11. Point No.1:- The Learned counsel for complainant argued that, the complainant complied the terms of Section 138 of N.I. Act. The accused availed hand loan of Rs.4,00,000/- to meet his legal necessities at the end of July 2019 and he issued cheque bearing No.576991 dated 19.09.2019 for an amount of Rs.4,00,000/- in order to repay the said loan. But the said cheque in question came to be dishonoured on its presentation as 'Funds Insufficient', hence the legal notice dated 26-09-2019 was issued by the complainant. In spite of it, he has not repaid the cheque amount, nor replied and prayed to punish the accused for the offence punishable u/s 138 of N.I. Act by awarding compensation.

12.The learned counsel for the accused contended that the accused does not know the complainant and that no financial transaction took place between them. It is argued that the cheque at Ex.P1 was given to one Ole Ravi as security in connection with a loan of Rs.1,00,000/- taken in the year 2012 through Heggandur Shivakumar and not to the complainant. According to the defence, the accused repaid the principal amount of Rs.1,00,000/- along with Rs.22,000/- as interest, leaving a balance interest of Rs.8,500/-. Due to an accident and illness, the accused could not

immediately pay the remaining amount and during this time the cheques were allegedly misused and two cases were filed, one of which was later dismissed. It is further contended that though a compromise was attempted at Hunsur Town Police Station, Ole Ravi later demanded an excessive amount of Rs.52,000/- with further interest. The defence also questioned the financial capacity of the complainant to lend Rs.4,00,000/- and stated that the statutory notice was not served on the accused. On these grounds, the learned counsel prayed for acquittal of the accused.

13. After recording of plea, the sworn statement of complainant has been treated as Chief examination of PW.1. In support of oral evidence, he produced cheque issued by the accused which got marked at Ex.P1 and the signature of accused as per Ex.P1(a). He has also relied on Bank Endorsement, the copy of Legal Notice, Postal receipt, unserved postal cover and the copy of notice in it which got marked at Ex.P2 to Ex.P5 and Ex.P5(a) respectively.

14. Before adverting to the facts of the case, it is very much necessary to point out the mandatory presumptions to be raised in respect of Negotiable Instruments as contemplated U/s.138 of Negotiable Instrument Act. Indisputably the obligatory presumption is required to be raised in respect of Negotiable Instruments in terms of Sec.118(b) and Sec.139 of the Act. Sec.138 of the Act has three ingredients namely;

- i) that there is a legal enforceable debt;
- ii) that the cheque was drawn from the account of bank for discharge in whole or in part of a debt or other liability, which pre-supposes a legal enforceable debt; &

- iii) that the cheque issued, had been returned due to insufficiency of funds.

15. Here the Sec.139 of the Act merely raised presumption with regard to the second aspect of the matter. The existence of legally recoverable debt is not a matter of presumption u/s 139 of the Act, it merely raises a presumption in favour of holder of the cheque that, the same has been issued for discharge of any debt or other liability. Under Criminal jurisprudence the complainant/prosecution has required to establish the guilty of the accused beyond reasonable doubt. However, the proceedings U/s 138 of Negotiable Instrument Act is quasi criminal and quasi civil in nature. In these proceedings to prove reasonable doubt is subject to presumptions as envisaged U/s 118, 139 and 146 of Negotiable Instrument Act. An offence U/s 138 of Negotiable Instrument Act is committed not on dishonor of cheque, but on failure of drawer of cheque to make payment within 15 days from the date of receipt of notice of dishonor. The essential ingredients of Sec.138 of Negotiable Instrument Act, the cheque in question must have been issued towards legally recoverable debt. Sec.118 and 139 of the Act envisages certain presumptions. Under section 118 of the Act, the presumption shall be raised regarding consideration, debt, transfer, endorsement and regarding holder in the case of Negotiable Instruments. Even U/s 139, a rebuttal presumption shall be raised that the cheque in question was issued regarding discharge of legally recoverable debt. These presumptions are mandatory provisions that are required to prove in case of Negotiable Instruments.

16. Before embarking upon the legal issue involved in this case, the deposition of PW-1 and documents marked through him are analyzed. PW-1 in his evidence deposed about the lending of hand loan of Rs.4,00,000/- to the accused to meet his legal necessities. Despite of request made by the

complainant, the accused failed to repay the hand loan amount, issuance of cheque No.576991 dated: 19-09-2019 for Rs.4,00,000/- drawn on State Bank of Mysore, Hunsur branch by the accused, its dishonor on its presentation and issuance of legal notice by complainant and its due service upon the accused. The veracity of witness extracted during cross-examination.

17. In this case, PW-1 was subjected to detailed cross-examination by the learned counsel for the accused. During the cross-examination, the defence attempted to challenge the financial capacity of PW-1 and also suggested that the cheque was not issued towards discharge of any legally enforceable debt. However, PW-1 has denied all such suggestions and stood firm on the material aspects of the transaction. Nothing worthwhile has been elicited in the cross-examination to discredit his testimony or to create any serious doubt regarding the transaction between the parties. The suggestions put to PW-1 remain mere suggestions without any supporting documentary evidence.

18. During the course of cross-examination, the learned counsel for accused suggested to PW-1 that the accused had no acquaintance with the complainant and that no financial transaction had taken place between them. It was suggested that the accused had not borrowed Rs.4,00,000/- from PW-1 and had not issued Cheque No.576991 towards discharge of any legally enforceable debt. The defence further suggested that the accused had earlier borrowed Rs.1,00,000/- from one Ole Ravi through Heggandur Shivakumar and at that time had issued two cheques as security. It was suggested that the said loan amount along with interest had already been repaid except a small balance of interest and that the cheques were not returned by Ole Ravi. The defence contended that one of those cheques had

been misused and that the present complainant, in collusion with Ole Ravi, had filed the present case by misusing the cheque belonging to the accused. It was also suggested that the complainant did not have the financial capacity to lend Rs.4,00,000/- and that he was neither a businessman nor engaged in any activity that would enable him to advance such amount as hand loan. The defence further suggested that the statutory legal notice had not been served on the accused and that the complainant had deliberately created a false case with the assistance of Ole Ravi. PW-1 denied all the above suggestions and maintained that the accused had personally borrowed the amount from him and had issued the cheque in question towards repayment of the said loan. He specifically denied that the cheque was issued to Ole Ravi or that the present complaint was filed at the instance of Ole Ravi. PW-1 also denied that the cheque in question had been misused. Thus, the entire cross-examination of PW-1 consists mainly of suggestions relating to the alleged loan transaction between the accused and Ole Ravi and the alleged misuse of cheque. However, PW-1 has denied all such suggestions and nothing material has been elicited in the cross-examination to discredit his testimony or to probabalize the defence set up by the accused. The testimony of PW-1 appears to be consistent, natural and trustworthy.

19. In order to disprove the case of complainant and also the evidence of PW.1, the accused stepped into the witness box and deposed on oath as DW1. The accused contends that he does not know the complainant and that no financial transaction took place between them. According to him, the cheque at Ex.P1 was not issued to the complainant but was given to Ole Ravi as security in connection with a loan of Rs.1,00,000/- taken in the year 2012 through Heggandur Shivakumar. The accused further states that in 2013 he repaid the principal amount of Rs.1,00,000/- along with

Rs.22,000/- as interest, leaving a balance interest of Rs.8,500/-. When he requested return of the cheques, Ole Ravi asked him to first pay the remaining interest. Due to an accident and illness, there was delay in paying the balance amount, during which time the cheques were allegedly misused and two cases were filed, one of which was later dismissed. He also states that a compromise was attempted at Hunsur Town Police Station, where Ole Ravi agreed to withdraw the case if the remaining Rs.8,500/- was paid. However, when the accused went with the money, the complainant allegedly demanded Rs.52,000/- with interest and therefore the accused contends that there was no financial or cheque transaction between him and the complainant.

20. The Learned counsel for the complainant has subjected DW.1 for cross-examination. During cross-examination, DW-1 admitted that the cheque in question belongs to his bank account and that the signature appearing on the cheque is his own. However, he reiterated that the said cheque was not issued to the complainant towards any legally enforceable debt. He stated that the cheque had been given earlier to one Ole Ravi as security in connection with a loan transaction. DW-1 categorically admitted that he had not lodged any complaint before the police regarding the alleged misuse or loss of the cheque. He consented that he had not issued any stop-payment instructions to his bank with respect to the cheque in question. The complainant's further counsel suggested that the accused had borrowed Rs.4,00,000/- from the complainant and issued the cheque bearing No.576991 towards discharge of the said liability, which suggestion was denied by DW-1. The suggestions that the defence story was false and that the cheque was issued towards repayment of the loan were also denied.

21. DW.2 – S. Govindgowda, deposed that he is the President of Government Employees Association and deposed that he knows the accused and Ole Ravi. He states that accused had a warrant in the cheque case, so he told the accused to go to police station and to call, there Ole Ravi also came, conciliation was done by PSI and at that time one Press Reporter by name N.K. Mahadeva was there and on conciliation it was concluded to give Rs.8,500/-. At that time Mahadeva told the accused to pay the said amount and to collect cheque, then accused went to Ole Ravi house to pay Rs.8,500/-, but Ole Ravi insisted to give compound interest of Rs.50,000/- and hence accused returned without paying.

22. During the cross-examination, DW-2 admitted that he had no direct knowledge regarding the alleged loan transaction between the complainant and the accused. He further admitted that he was not present at the time of issuance of the cheque and that he had no personal knowledge regarding the alleged misuse of the cheque by the complainant. DW-2 denied the suggestion that he was deposing only at the instance of accused in order to support the defence version. His evidence was found to be based mainly on what was told to him by the accused and not on his personal knowledge of the transaction.

23. Herein, DW-3 Shivakumara deposed that he knows the accused as well as Ole Ravi. He stated that the father of accused, who worked as a mason in the Zilla Panchayat, approached him in 2012 seeking financial help for the marriage of the accused's younger brother. Accordingly, DW-3 arranged a loan of Rs.1,00,000/- from Ole Ravi to the accused. At that time, the accused allegedly issued two SBI cheques to Ole Ravi as security with the understanding that they would be returned after repayment of loan. He further stated that the accused later paid Rs.1,22,000/- the principal and

interest, but the balance of Rs.8,500/- remained unpaid. According to him, Ole Ravi refused to return the cheques until the remaining amount was paid. One cheque was presented in DW-3's name and a case CC No.322/2013 was filed, which was later dismissed in December 2017 as he did not appear before the court. He further deposed that the another cheque was not returned to the accused and that Ole Ravi intended to present it through another person, which was later done through a person named Manukumar.

24. In the cross-examination, DW-3 also admitted that he was not a witness to the alleged loan transaction between the accused and the complainant. He stated that he had no personal knowledge regarding the issuance of the cheque or the alleged misuse of the same. DW-3 denied the suggestions that his testimony was given only to support the defence of accused and that he was not aware of the actual transaction between the parties. However, it became clear from his cross that he had no direct knowledge about the cheque transaction or the alleged liability of accused.

25. Thus, the cross-examination of DW-1 to DW-3 reveals that except making oral assertions regarding the alleged misuse of the cheque, the accused and his witnesses have not produced any convincing material to substantiate their defence. Their evidence does not probabalize the defence case nor does it rebut the statutory presumption available in favour of complainant under Section 139 of the Negotiable Instruments Act.

26. It is no doubt that the accused has also examined DW-2 and DW-3 in support of his defence. However, the evidence of these witnesses does not materially advance the case of accused. Their testimony is only in the nature of supporting the version of DW-1 regarding the alleged misuse of the cheque. They are not witnesses to the alleged loan transaction between

the complainant and the accused relating to Rs.4,00,000/-. During their cross-examination, it is evident that they do not possess personal knowledge about the alleged misuse of the cheque and their evidence appears to be based only on what was stated by the accused. Hence, their testimony does not carry much evidentiary value. Therefore, on careful appreciation of the entire oral evidence of PW-1, DW-1 to DW-3, this Court finds that the evidence of PW-1 is consistent and supported by documentary evidence at Ex.P1 to Ex.P6, whereas the defence evidence adduced by DW-1 to DW-3 is not supported by any convincing material. The defence witnesses have not been able to probabalize the defence of the accused nor rebut the statutory presumption available under Section 139 of the Negotiable Instruments Act. Consequently, the evidence on record clearly supports the case of the complainant.

27. It is well settled principle of law that once the execution of the cheque and the signature of accused on the cheque are admitted or proved, the Court is bound to raise the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act. Section 118 of the Act raises a presumption that every negotiable instrument was made or drawn for consideration, while Section 139 mandates that the Court shall presume that the holder of cheque received the same for the discharge in whole or in part, of any debt or other liability. These presumptions are rebuttable in nature, but until the contrary is proved, the presumption shall operate in favour of the complainant. Therefore, once the complainant establishes that the cheque belongs to the account of the accused and that the same bears his signature, the burden shifts upon the accused to rebut the presumption by raising a probable defence.

28. In the present case, the accused has taken a defence that the cheque was allegedly lost and that the complainant misused the same. However, except making such oral assertions, the accused has not placed any material before the Court to substantiate the said defence. If really the cheque had been misused, the natural conduct expected from a prudent person would have been to lodge a complaint before the police or to immediately intimate the bank by issuing stop payment instructions. In the present case, the accused has admittedly has not lodged any police complaint regarding the alleged misusing of the cheque bearing No.576991, nor has he issued any stop-payment instructions to his banker. This conduct of the accused creates serious doubt regarding the genuineness of his defence.

29. Further, during the cross-examination of DW-1, the accused has admitted that the cheque in question belongs to his bank account and that the signature appearing on the cheque is his signature. This admission is very significant because once the accused admits the signature on the cheque, the statutory presumption under Section 139 of the Negotiable Instruments Act automatically comes into operation. The burden then shifts upon the accused to rebut the said presumption by producing cogent and convincing evidence. However, the accused has failed to produce any documentary evidence to support his contention that the cheque was misused. The defence remains a mere suggestion put to the complainant during cross-examination without any supporting evidence.

30. It is well settled that a mere denial of liability or allegation of misuse of cheque is not sufficient to rebut the statutory presumption. The accused must place before the Court such material which would render the complainant's case improbable or doubtful. In the case on hand, the accused

has not produced any independent evidence to probabalize his defence. On the other hand, the evidence of complainant remains consistent and trustworthy. Nothing substantial has been elicited in the cross-examination of PW-1 to discredit his testimony or to show that the cheque bearing No.576991 for Rs.4,00,000/- was not issued in discharge of a legally enforceable debt.

31. The defence set up by the accused also appears to be contrary to the normal course of human conduct. If really the cheque had been misused which was given to Ole Ravi as security, the accused would have taken immediate legal action against the complainant or said Ole Ravi or at least informed the bank to prevent misuse of the cheque. The failure on the part of accused to take any such steps, clearly indicates that the defence taken by him is only an afterthought devised to escape criminal liability. The conduct of the accused is therefore inconsistent with the normal course of human conduct. The Hon'ble Supreme Court in Kalamani Tex V/s P. Balasubramanian, (2021) 5 SCC 283 has held that a mere denial or bald allegation without supporting evidence cannot rebut the statutory presumption under Section 139 of the Negotiable Instruments Act.

32. The complainant in order to substantiate his case has examined himself as PW-1 and produced the cheque bearing No.576991 for Rs.4,00,000/-, which is marked at Ex.P1, and the signature of the accused is marked at Ex.P1(a). The complainant has also produced the bank endorsement, copy of legal notice, postal receipt and returned postal cover, which are marked as Ex.P2 to Ex.P5. The bank endorsement at Ex.P2 clearly reveals that the cheque was dishonoured for the reason "Funds Insufficient." The complainant has further proved issuance of statutory demand notice within the prescribed period. Thus, the complainant has

complied with all the mandatory requirements contemplated under Section 138(a), (b) and (c) of the Negotiable Instruments Act.

33. Once the issuance of cheque and signature of the accused on the cheque are admitted or proved, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act arise in favour of the complainant that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability. The Hon'ble Supreme Court in Rangappa V/s Sri Mohan, (2010) 11 SCC 441 has held that the presumption under Section 139 includes the presumption of legally enforceable debt and the burden lies upon the accused to rebut the same. Similarly, in Bir Singh V/s Mukesh Kumar, (2019) 4 SCC 197, the Hon'ble Apex Court has held that once the accused admits his signature on the cheque, the presumption under Section 139 must follow and the complainant is not required to prove the source of funds unless the presumption is rebutted by the accused. The accused has failed to rebut the said presumption even on the touchstone of preponderance of probabilities.

34. On the other hand, the testimony of PW-1 coupled with documentary evidence clearly establishes that the cheque bearing No.576991 for Rs.4,00,000/- was issued by the accused towards discharge of legally enforceable debt and the same was dishonoured due to insufficiency of funds. Hence, the complainant has established all the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act and the accused is liable to be held guilty for the said offence. Accordingly, this **Point No.1** is answered in the **affirmative**.

35. **Point No.2:-** The Negotiable Instrument Act was enacted to bring credibility of the cheque. The very object behind incorporation of Sec.138 to 142 of the Act, is with a view to encourage the culture of use of cheque, enhancing the credibility of cheque, with the object of inculcating faith in the efficacy of banking operations and giving credibility to Negotiable Instruments in business transactions. These provisions were intending to discourage people from not honoring their commitments by way of payment through cheque. The court should lean in favour of an interpretation which serves the object of the statute. A Contrary view would render Sec.138(a) will provide a handle to persons trying to avoid payment and legal obligations undertaken by them through their own acts, which is other wards can be said to be taking advantage of one's own wrong. Therefore, keeping the said provisions in mind, the sentence is to be passed. The complainant has been deprived of money, which is rightfully due to him. It is to be taken note that in a recent decision of Hon'ble High Court of Karnataka held that "Courts must impose a fine that is both punitive and compensatory, ensuring the complainant receives not only the cheque amount but also reasonable interest to account for the delay and loss incurred due to the commercial transaction and protracted litigation." Thus, the complainant is entitled for the compensation as per Sec.80, 117 of the Act and as per Sec.357 of Cr.P.C. In the light of above discussion, I proceed to pass the following:-

ORDER

Acting U/s.255(2) of Cr.P.C., the accused is convicted for the offence punishable U/s.138 of Negotiable Instrument Act.

The accused is hereby sentenced to pay fine amount of Rs.4,10,000/-. In default to pay the fine

amount, he shall undergo simple imprisonment for five months.

It is hereby ordered that out of the fine amount, Rs.4,05,000/- to the complainant being the compensation as per Sec.357 of Cr.P.C. and Rs.5,000/- to be paid to the State.

It is made clear that the default sentence shall not come in the way of paying compensation to Rs.4,05,000/-to the complainant, awarded as per Section 357(1) of Cr.P.C.

In the event, the accused failed to pay the fine amount as ordered above, the complainant is at liberty to recover the compensation of Rs.4,05,000/- from the accused in accordance with law.

The bail bond of surety and accused stand canceled.

Office is directed to supply free copy of the judgment to the accused forthwith.

(Dictated to the stenographer, directly on computer, typed by him, corrected, signed and then pronounced by me in the open court on this the 7th day of March 2026)

(BHAGYAMMA)
I Addl. Sr. Civil Judge & JMFC.,
Hunsur

ANNEXURE

List of witnesses examined on behalf of the Complainant:

PW1 : Manukumar

List of witnesses examined on behalf of the Accused:

DW1 : Mahadeva T.

DW2 : S. Govindgowda

DW3 : Shivakumara

List of documents marked on behalf of the Complainant:

- Ex.P1 : Cheque bearing No.576991 dated 19-09-2019
Ex.P1(a) : Signature of accused
Ex.P2 : Bank endorsement
Ex.P3 : Notice dated 26.09.2019
Ex.P4 : Postal receipt
Ex.P5 : Unserved postal cover
Ex.P5(a) : Copy of notice in Ex.P5.

List of documents marked on behalf of the Accused:

NIL

(BHAGYAMMA)
I Addl. Sr. Civil Judge & JMFC.,
Hunsur