KAMS300013662021

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC AT HUNSUR

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 22nd day of August, 2026.

CC No.774/2021

Complainant:	Rekha P., D/o Puttegowda, Aged about 44 years, R/at: C/o Lavakumar.P., Hanagodu Village, Hanagodu Hobli, Hunsur Taluk, Mysuru District. **(By: Smt.R.S.Pavithra., Advocate)**
	-Vs-
Accused:	Shankar., S/o Venkategowda, Aged 42 years, R/at Indlagudlu village, Hangodu Post, Hunsur Taluk, Mysore District. **(By: Sri.N.Nagendra., Advocate)**

JUDGMENT

The complainant has presented the complaint under Section 200 of Cr.P.C. against the accused for the commission of offence punishable under Section 138 of Negotiable Instruments Act.

2. It is the case of the complainant that, herself and the accused are relatives and in that connection in the month of February 2016 the accused borrowed Rs.5,00,000/- from the complainant towards his legal necessity for the purpose of clearing old hand loans and towards household expenses with an assurance to repay the same within four months. Even after lapse of four months, the accused not repaid the amount and on the demand made by the complainant, the accused on 10.12.2020 issued a cheque drawn on State Bank of India, Hunsur Branch bearing cheque No.269606 for the value of Rs.5,00,000/- with an assurance that on presentation the cheque will be honored. Believing the words of the accused, the complainant presented the said cheque on 29.12.2020 through her banker Bank of Baroda, Hunsur Branch and the cheque came to be dishonored for the reason "Exceeds Arrangement" as per bank endorsement dated 20.01.2021. The complainant informed the accused about dishonor of the cheque over phone and the accused requested the complainant to present the cheque again on 20.01.2021. The complainant believing the words of the accused presented the cheque once again on 22.01.2021 through his banker Bank of Baroda, Hunsur Branch and the cheque came to be dishonored for the reason "Exceeds Arrangement" as per bank endorsement dated 29.01.2021. Thereafter as per procedure the complainant issued demand notice calling upon the accused to repay the cheque amount through registered post dated

12.02.2021which came to be unserved as refused by the accused on 24.02.2021. Inspite of the same, the accused not chosen to repay the cheque amount. Hence, the complainant presented the complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act.

3. After filing of the complaint, the court took cognizance for the offence punishable under Section 138 of Negotiable Instruments Act and the sworn statement of the complainant also recorded. On finding prima-facie materials and reasonable grounds to proceed against the accused, the criminal case came to be registered for the offence punishable under Section 138 of Negotiable Instruments Act. Thereafter, summons was issued to the accused and in pursuance of service of summons the accused appeared before the court and released on bail. His plea for the offence punishable under Section 138 of N.I Act has been recorded. He pleaded not guilty and claimed to be tried.

4. Thereafter, as per the guidelines issued by Hon'ble Supreme Court of India in the decision reported in **(2014) 5 SCC 590 Between: Indian Bank Association and others V/s Union of India and others** the sworn statement affidavit of the complainant came to be treated as her chief-examination affidavit. The complainant got marked totally eight documents including the complaint as per Ex.P1 to Ex.P8. After completion of the complainant evidence, the accused has been

examined under Section 313 of Cr.P.C and the accused denied all the incriminating circumstances appeared against him in the complainant evidence and opted to lead defence evidence. The accused towards his defence examined himself as DW1. The accused not got marked any documents on his behalf.

5. Thereafter, heard arguments addressed by learned counsels for the complainant and the accused and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the complainant proves that, the accused issued Ex.P1 cheque towards the discharge of legally enforceable debt?

2. Whether the complainant further proves that, the cheque has been dishonored for the reason "Exceeds arrangement"?

3. Whether the complainant further proves that, she has complied all the mandatory provisions as envisaged under Section 138 of N.I.Act?

4. Whether the complainant further proves that, the accused is liable for the offence punishable under Section 138 of N.I.Act?

5. What order?

6. The findings on the above points are as hereunder:

Point No.1: In the Affirmative
Point No.2: In the Affirmative
Point No.3: In the Affirmative
Point No.4: In the Affirmative
Point No.5: As per the final order
for the following:

REASONS

7. **Point No.1:** This is the complaint filed the complainant under Section 200 of Cr.P.C against the accused for the offence punishable under Section 138 of Negotiable Instruments Act. It is the specific case of the complainant that, herself and accused are relatives and in that connection in the month of February – 2016 the accused borrowed Rs.5,00,000/- as hand-loan from the complainant towards his legal necessity i.e., for the purpose of clearing old loans and towards household expenses with an assurance to repay the same within four months. The complainant further stated that, even after lapse of four months the accused not repaid the amount and upon demand made by the complainant, on 10.12.2020 the accused issued a cheque drawn on State Bank of India, Hunsur Branch bearing No.269606 for the value of Rs.5,00,000/- and assured that on presentation the cheque will be honored.

8. The complainant further stated that, believing the words of the accused, she presented the said cheque on 29.12.2020 through her banker i.e., Bank of Baroda, Hunsur

Branch and the cheque came to be dishonored for the reason “Exceeds Arrangement” and the complainant informed the same to the accused and the accused requested the complainant to represent the cheque and as such on 22.01.2021 the complainant again presented the cheque through her banker Bank of Baroda, Hunsur Branch, Hunsur and the cheque came to be dishonored for the reason “Exceeds Arrangement” as per bank endorsement dated 29.01.2021. Thereafter as per procedure the complainant issued demand notice calling upon the accused to repay the cheque amount through registered post dated 12.02.2021 and the said notice returned unserved as refused on 24.02.2021. Inspite of the same, the accused not chosen to repay the cheque amount. Hence, the complainant presented the complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act.

9. In order to substantiate the case the complainant got marked the original cheque as per Ex.P1. The signature of the accused came to be marked as per Ex.P1(a). This cheque is dated 29.12.2020 drawn in the name of the complainant for a sum of Rs.5,00,000/- bearing No.269606 drawn on State Bank of India, Hunsur Branch. The complainant also deposed about dishonor of the cheque, issuance of notice and its return as refused. The complainant in order to prove the dishonor of the cheque got marked the bank endorsements as per Ex.P2 and Ex.P3 which shows that, Ex.P1 cheque came to be dishonored

on two occasions for the reason “Exceeds arrangement”. As per procedure after receiving cheque return memo, within one month the complainant shall issue demand notice. In order to establish this fact the complainant got marked the office copy of the legal notice as per Ex.P4. This document is dated 12.02.2021. By way of issuing this notice the complainant called upon the accused to repay the entire cheque amount of Rs.5,00,000/- within 15 days from the date of receipt of the notice. In this legal notice the complainant narrated about the transaction took place between herself and the accused, issuance of the cheque by the accused and its dishonor.

10. In order to establish the fact that the complainant has issued the notice to the accused, she has got marked the postal receipt as per Ex.P5. As per the complainant Ex.P4 notice returned unserved as refused. In order to prove this fact that, the complainant got marked the returned postal cover as per Ex.P6. There is a postal endorsement upon this document as “Party refused, return to sender”. This document clearly shows that, the accused refused the notice. At the time of cross-examination of DW1, the complainant got marked the certified copy of complaint and deposition of the accused in CC No.439/2021 by way of confrontation as per Ex.P7 and Ex.P8. The complainant also marked the complaint as per Ex.P7 and the statement of the DW1 came to be marked as per Ex.P8. It is pertinent to note that, there is no reply notice in this case. In order to know the defence of the accused it is very much

necessary to look into the cross-examination of PW1 and the defence evidence.

11. Before proceeding further it is necessary for this court to note that, in a proceeding for the offence punishable under Section 138 of Negotiable Instruments Act, the complainant has got the benefit of presumption as envisaged under Section 139 of Negotiable Instruments Act. The presumption under said provision is statutory presumption available to the complainant since he is the holder of the cheque. The said presumption is rebuttable in nature. Section 139 of Negotiable Instruments Act reads as hereunder:

> *"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of Negotiable Instruments Act for the discharge, in whole or in part, of any debt or other liability".*

12. The presumption available to the complainant under Section 139 of Negotiable Instruments Act is admittedly rebuttable presumption and it is statutory presumption also. In respect of presumption available to the complainant under Section 139 of Negotiable Instruments Act, this court would like to rely upon the decisions of Hon'ble Supreme Court of India reported in:

AIR 2010 SUPREME COURT 1898
Between: Rangappa Vs Mohan

Wherein Hon'ble Supreme Court of India has held that:

"That presumption mandated by section 139 of the act does indeed include the existence of a legally enforceable debt or liability. When an accused has to rebut the presumption u/s 139 of the Act, the standard of proof for doing so is that of 'preponderance of probability'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused need to adduce evidence of his/her own.

Further, the Honorable Supreme Court has observed that, Section 138 of the Act has three ingredients viz.: (i) that there is a legally enforceable debt (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and (iii) that the cheque so issued had been returned due to insufficiency of funds. The proviso appended to the said Section provides for compliance with legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability."It must be remembered that the offence made punishable under Section 138 can be better described as a regulatory *offence since the bouncing of a cheque is largely in nature of a civil wrong whose impact is usually confined to the private parties involved in the commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused cannot be expected to discharge an unduly high standard of proof."*

(2019) 5 SCC 418

Between: Basalingappa vs. Mudibasappa

Wherein Hon'ble Supreme court of India has held that,

"Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

It is not necessary for the accused to come in the witness box to support his defence."

13. In view of the ratio laid down in the above referred decisions it is clear that, the presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and the accused can rebut the presumption available to the complainant even without entering into the witness box. In other words, even by relying on the evidence of the complainant, the accused can rebut the presumption available to the complainant under Section 139 of Negotiable Instruments Act about issuance of the cheque towards the discharge of legally enforceable debt. Further, Section 118 of Negotiable Instruments Act gives presumption about the date, consideration, time of acceptance and time of transfer. Since the notice has been returned as unclaimed and the accused has not chosen to issue any reply notice, there is no material before the court to know about the defence of the accused at the initial stage itself. The defence of the accused could only be gathered by appreciating the cross-examination of PW1 and the entire evidence of the accused.

14. In the cross-examination PW1 deposed that, she studied upto SSLC and doing tailoring and not produced any documents to that effect. She has further deposed that, she has not produced her bank statement to show her financial capacity. It is her specific evidence that, in the month of February 2016 she has paid amount to the accused in cash and further deposed that she had no knowledge about bank transaction for more than Rs.20,000/-. She has further

deposed that, the accused is her far relative and she does not know since how many years the accused is residing at Mysuru and further deposed that, the accused borrowed money for his ginger business. She has further deposed that, the accused might have changed his address to Mysuru after two years of borrowing money from her. She has further deposed that the accused assured that he is going to repay the amount within 3-4 months and after 3-4 months she regularly demanded for repayment of the amount with the accused and he issued the cheque on 29.1.2020 by filling it himself.

15. In the further cross-examination PW1 deposed that, in the year 2021 she has issued the notice but not issued notice to the Mysur address of the accused. PW1 further deposed that, her brother Kushal Kumar has filed cheque case against the accused and again deposed that she does not know about the same. PW1 further denied the suggestion that, the accused issued Ex.P1 cheque and another cheque to her brother as security to the money transaction between them. She has further denied the suggestion that, herself and her brother have misused the cheques of the accused and filed two cases against him. She has further deposed that the cheque number is 269606 and she had presented it on 12.02.2021.

16. As already stated above the accused also stepped into the witness box in order to prove his defence. In the chief-examination DW1 deposed that, he does not know one Renuka and he had transaction with one Kushal who had obtained his

two cheques and Kushal has misused his cheques and filed this false case through his sister. He has not at all received any notice from the complainant and he came to know about the same only when the police called him and thereafter he came to know that the complainant has filed this case. In the cross-examination DW1 deposed that, his address is House No.97, 5th cross, Boghadi 2nd Stage, Mysore and his permanent address is Hindagudlu village, Doddahejjur post, Hanagodu Hobli, Hunsur Taluk. He has further deposed that he has got Aadhar card, PAN card, ration card and voter ID and in those documents his address is mentioned as Hindagodlu village.

17. He has further deposed that since 15 to 20 years he is residing at Mysore and he has casted his vote at Hindagodlu Village and he has got BPL ration card. His father's village is Hindagodlu and there are properties standing in the name of his mother and in the said house his aged mother is residing and his mother will inform him if any letter through post comes to him. He studied PUC and he is doing agriculture and Fast Food business. He has got property at Duddagere Village of Varuna Hobli, Mysur Taluk wherein he is raising ginger and he has also running the fast food shop opposite Sapna Book, Devaraj Mohalla, Deewan Road, Mysur and he has got no objection to produce the documents pertaining to his address. It is his further evidence that, his wife is Pavithra who is working as Lab Technician and she has never worked at

Hunsur. He has further deposed that he has got 3 bank accounts and one account is at SBI, Hunsur.

18. In the further cross-examination DW1 admitted that Ex.P1 cheque belongs to him and the bank account also belongs to him. He has further admitted that Ex.P1(a) signature belongs to him and other writings does not belong to him. He has also deposed that he does not know the complainant and he knows one Kushal who is brother of the complainant. DW1 denied the suggestion that the complainant and himself belongs to same caste and in the complaint the complainant has mentioned her name as Rekha. He has further admitted his Aadhar card number and denied the suggestion that, the complainant sold her property situated at Mysuru and from the sale consideration she had paid him Rs.5,00,000/- and he borrowed the said amount towards his ginger cultivation. He has also denied the suggestion that intentionally he has not received the notice and refused it. In the further cross-examination dated 18.06.2026, the accused has deposed that his counsel has not asked him to bring his Aadhar card, voter ID, PAN card and ration card and as such he has not produced those documents. He has denied the suggestion that he has borrowed amount from several persons. He has admitted the suggestion that, cheque bounce case is pending against him before learned Addl. Senior Civil Judge and JMFC, Hunsur and he cannot say the number of the said case.

19. In the cross-examination DW1 admitted that one Kushakumar had filed case against him in CC No. 439/ 2021 before I Additional Senior Civil Judge Hunsur and also admitted that, the father's name of complainant Kusha Kumar of said case is Puttegowda and the certified copy of the complaint in CC No.439/2021 came to be marked as per Ex.P7 and he has also admitted that the amount involved in the said case is Rs.4,50,000/- and voluntarily deposed that Kushakumar written the said amount. DW1 further deposed that at the time of availing bail in the said case he has mentioned his Mysore address in the bail bond and in the said case his address is mentioned as Bogaadi Extension. In Ex.P7 his address is mentioned as Hindagodlu Village, Hanagodu Hobli, Hunsur Taluk and he has deposed that he is residing at Mysore. He has further deposed that in the said case he has mentioned his Mysore address. He has been confronted with one certified copy of his evidence in CC No.439/2021 and he has admitted that in the said case, his address is mentioned as Hindagodlu Village, Hanagodu Hobli, Hunsur Taluk and presently he is residing at Mysore and the said document came to be marked as per Ex.P8.

20. In the further cross-examination DW1 admitted that the name of the complainant in this case is one Rekha P D/o Late Puttegowda and he has specifically deposed that he knows Kusha Kumar. However, he has deposed that he does not know the complainant who is the own sister of

Kushakumar. He has denied the suggestion that in order to avoid from repaying the amount to Kushakumar and his sister complainant he is deposing false evidence. He has also deposed that he has got no objection to examine Kusha Kumar. He has also deposed that in the bail bond given before this court, his address is mentioned as Hindagodlu Village, Hanagodu Hobli, Hunsur Taluk. It is his evidence that, he has borrowed money from Kushakumar for agriculture and he has specifically deposed that he does not know the complainant and denied the suggestions about the case of the complainant.

21. It is to be noted that, in the cross-examination of PW1 the accused has not at all disputed Ex.P1 cheque and Ex.P1(a) signature. However, the accused has put one suggestion to PW1 saying that, she has not produced her bank statement to show her financial capacity to lend money to the accused. Except this suggestion there is no denial from the accused about the financial capacity of the complainant. In the cross-examination of DW1, the complainant specifically stated that, she has lend Rs.5,00,000/- to the accused which was derived by her through sale consideration in respect of sale of her property. This suggestion has been denied. In the entire chief-examination of DW1 he has not at all disputed the financial capacity of the complainant. Such being the case mere suggestion to PW1 about non-production of document regarding financial capacity of the complainant is not sufficient to dispute her financial capacity. The complainant specifically

stated that, she had paid Rs.5,00,000/- to the accused in the month of February – 2016 and this fact also not been denied by the accused and there is no suggestion to that effect.

22. In the chief-examination the accused specifically deposed that, he does not know the complainant. However, in this regard it is very much necessary to look into the cross-examination of PW1 wherein the same accused put forth suggestions to PW1 saying that,

> *ಕುಶಾಲ್ ಕುಮಾರ್ ನನ್ನ ತಮ್ಮ, ಅವರು ಸರ್ಕಾರಿ ನೌಕರರು, ಆರೋಪಿಯ ವಿರುದ್ಧ ನನ್ನ ತಮ್ಮ ಕುಶಾಲ್ ಕುಮಾರ್ ರವರು ಹುಣಸೂರು ಒಂದನೇ ಅಪರ ಹಿರಿಯ ಸಿವಿಲ್ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಿಸಿ ನಂ.439/2021ರಂತೆ ಚೆಕ್ಕಿನ ಪ್ರಕರಣ ದಾಖಲಿಸಿದ್ದಾರೆ, ನನ್ನ ತಮ್ಮ ಕುಶಾಲ್ ಕುಮಾರ್ ಮತ್ತು ಆರೋಪಿಯ ಮಧ್ಯೆ ಹಣಕಾಸಿನ ವ್ಯವಹಾರ ಇತ್ತು, ಆರೋಪಿ ನನ್ನ ತಮ್ಮನೊಂದಿಗೆ ಮಾಡಿದ ಹಣದ ವ್ಯವಹಾರದ ಭದ್ರತೆಗಾಗಿ ನಿಪಿ.1 ಮತ್ತು ಇತರ ಚೆಕ್ ನ್ನು ಆರೋಪಿ ನನ್ನ ತಮ್ಮನಿಗೆ ಕೊಟ್ಟಿದ್ದಾರೆ, ಆರೋಪಿ ನನ್ನ ತಮ್ಮನೊಂದಿಗೆ ಹಣದ ವ್ಯವಹಾರವನ್ನು ತೀರಿಸಿದರೂ ಸಹ ನನ್ನ ತಮ್ಮ ಆರೋಪಿಗೆ ಚೆಕ್ ನ್ನು ವಾಪಾಸ್ಸು ಕೊಡಲಿಲ್ಲ, ಸದರಿ ಚೆಕ್ ಗಳನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ನಾನು ಮತ್ತು ನನ್ನ ತಮ್ಮ ಆರೋಪಿಯ ವಿರುದ್ಧ ಅನ್ಯತಾ ಫಾಯಿದೆ ಪಡೆಯುವ ಸಲುವಾಗಿ ಸುಳ್ಳು ಕೇಸುಗಳನ್ನು ದಾಖಲಿಸಿದ್ದೇವೆ.*

23. These suggestions admittedly denied by the accused, but it clearly shows that, the accused knows the complainant as well as her brother very well. Such being the case the accused by putting aforesaid suggestions himself admitted that, he knows the complainant. The next defence taken up by the accused that, the notice has not been duly served upon him. In this regard this court would like discuss in point No.3. As per the accused he has issued Ex.P1 cheque

to the brother of the complainant by name Kushakumar towards transactions between himself and Kushakumar. The accused has not at all stated about what is the amount of transaction between himself and Kushakumar and when the said transaction was taken place. It is his specific defence that, inspite of clearing the loan with Kushakumar, he has not returned his cheque. The accused nowhere stated that, when he has cleared the loan with the brother of the complainant. As such it cannot be believed that the accused issued Ex.P1 cheque to the brother of the complainant. The accused has failed to take up any specific defence about non-existence of legally enforceable debt between himself and the complainant.

24. On the other-hand the complainant has placed sufficient oral and documentary evidence to prove her case. The accused has failed to rebut the presumption available to the complainant under Section 139 of NI Act. The defence taken up by the accused is not probable one. The accused has admitted Ex.P1 cheque as well as Ex.P1(a) signature. If at all the brother of the complainant has misused the cheque of the accused, then what prevented the accused from taking any legal action against the complainant, but it is not so. The accused has not all issued any legal notice to the complainant for having misused his cheque and not at all lodged any police complaint against the complainant. On the basis of above discussion this court comes to the conclusion that, the accused has failed to put-forth a probable defence and he has

failed to rebut the presumption available to the complainant under Section 138 of NI Act. Accordingly, point No.1 is answered in the affirmative.

25. **Point No.2:** It is the specific case of the complainant that, towards repayment of amount the accused got issued Ex.P1 cheque. The said cheque bears date 29.12.2020. In the complaint and in the chief-examination affidavit PW1 categorically stated that, the accused borrowed the money. It is the definite case of the complainant that, the cheque upon presentation came to be dishonored for the reason “Exceeds Arrangement”. This fact has been substantiated by the complainant by producing Ex.P2 and Ex.P3 bank endorsements which shows that, Ex.P1 cheque was dishonored for the reason “Exceeds Arrangement”. These Ex.P2 and Ex.P3 documents remained unchallenged. It is not the case of the accused that, at the time of presenting Ex.P1 cheque for encashment he had sufficient funds in his account. In the cross-examination of PW1, there is no dispute about Ex.P2 and Ex.P3 Bank endorsements. Therefore, the complainant has proved that the cheque has been dishonored for the reason “Exceeds Arrangement”. Accordingly, Point No.2 is answered in the Affirmative.

26. **Point No.3:** To proceed in a case for an offence punishable under Section 138 of Negotiable Instruments Act, the complainant has to comply certain statutory requirements. The complainant shall present the cheque within the statutory

period from the date on which it is drawn and thereafter, if the cheque is dishonored the complainant shall make demand through issuing a registered notice within one month from the date of receipt of the cheque return memo. Thereafter, the complainant shall wait for 15 days from the date of service of notice and thereafter within one month the complainant shall present the complaint.

27. In this case Ex.P1 cheque is dated 29.12.2020. Ex.P2 and Ex.P3 bank endorsements are dated 10.12.2020 and 29.01.2021. It is the specific case of the complainant that, after coming to know about dishonor of the cheque he got issued demand notice to the accused as per Ex.P4. This legal notice is dated 12.02.2021 and it is well within the period of limitation. In the cross-examination of PW1 the accused has tried to take up the defence that, the notice has been not served upon him. It is pertinent to note that, as per Ex.P6 returned postal cover the notice came to be returned as refused. In the cross-examination of PW1, the accused has put up the defence that, since 15 to 20 years he is residing at Mysuru. However the complainant has deposed that, recently the accused is residing at Mysuru. In the chief-examination the accused deposed that, he has not received any notice. In the cross-examination PW1 admitted that, his documents like aadhar card, PAN card, ration card and election ID card contains his address as Hindagodlu Village, Doddahejjuru Post, Hanagodu Hobli, Hunsur Taluk. He has further deposed

that, he is residing at Mysuru since 15 to 20 years. However, it is his specific evidence that, he has casted his vote at Hunsur. If at all the accused is residing at Mysuru since 15 to 20 years he should have produced any single document.

28. It is pertinent to note that, in the cross-examination the accused deposed that, he has got no impediment to produce the documents but not produced it. At the time of cross-examination PW1 confronted two documents which came to be marked as per Ex.P7 and Ex.P8. In the cross-examination the accused also deposed that, in the bail bond of this court his address is mentioned as Hindagodlu Village, Hanagodu Hobli, Hunsur Taluk. DW1 admitted his addresses in Ex.P7 and Ex.P8 documents. Those two documents pertains to the complaint filed by brother of the complainant against the accused in CC No.439/2021. In Ex.P7 and in the complaint of this case the same address has been mentioned. As per Ex.P8 on 24.03.2026 the accused has given his evidence before learned I Addl. Senior Civil Judge and JMFC, Hunsur wherein his address as mentioned as ಹಿಂಡಗೂಡ್ಲು, ಹನಗೋಡು ಹೋಬಳಿ, ಹುಣಸೂರು ತಾಲ್ಲೂಕು, ಹಾಲಿ ವಾಸಃ ಮೈಸೂರು. Therefore it is very much clear that, the accused is the permanent resident of Hindgodlu Village, Hanagodu Hobli, Hunsur Taluk. As already stated above as per Ex.P6 the notice has been returned as party refused. There is presumption about due service of notice. As per Section 27 of General Clauses Act there is presumption that if the address

mentioned in the notice is correct, then mere sending the notice is sufficient and there is presumption about due service of the notice and the accused has not rebutted the presumption available to the complainant under Section 27 of General Clauses Act.

29. The accused has categorically admitted about his permanent address as Hindagodlu Village, Hanagodu Hobli, Hunsur Taluk. It is his specific evidence that, in the said address his mother is residing and he will communicated by his mother about any postal letters addressed in his name. These evidence from the mouth of accused clearly establishes that, the presumption under Section 27 of General Clauses Act shall be raised infavour of complainant and accused failed to rebut the presumption. As such the defence of the accused has not been proved. Further, the complainant presented the complaint on 17.03.2021. Therefore, the complaint is also filed within the period of limitation. The complainant has complied all the mandatory requirements as envisaged under Section 138 of N.I Act. Accordingly, point No.3 is answered in the affirmative.

30. **Point No.4:** The complainant by leading cogent oral as well as documentary evidence has proved that, the accused got issued Ex.P1 cheque towards the discharge of legally enforceable debt. As per Ex.P2 and Ex.P3 bank endorsements the cheque has been dishonored for the reason “Exceeds Arrangement”. The complaint is also filed within the period of

limitation. The accused failed to rebut the presumption available to the complainant under Section 139 of Negotiable Instruments Act. As such the accused is liable for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, point No.4 is answered in the affirmative.

31. **Point No.5**: In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

Acting under Section 255(2) of Cr.P.C. 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.8,50,000/- to the complainant. In default to pay the fine, the accused shall undergo simple imprisonment for a period of one year.

Further, acting under Section 357(1) (a) of Criminal Procedure Code out of the fine amount on recovery a sum of Rs.5,000/- shall be defrayed as expenses to the State.

Further, acting under Section 357(1) (b) of Criminal Procedure Code out of the fine amount on recovery a sum of Rs.8,45,000/- shall be paid as compensation to the complainant.

Bail bond executed by the accused and surety bond executed by his surety shall stands canceled.

Supply free copy of the judgment to the accused.

(Dictated to the Stenographer directly on the computer, same is then corrected and pronounced by me in the open court on this the 22nd day of July, 2026)

ANITHA Digitally signed by ANITHA Date: 2026.08.22 17:39:19 +0530

Sd/-
(Anitha)
Prl. Senior Civil Judge and JMFC.,
Hunsur.

ANNEXURE

List of witnesses examined on behalf of the complainant:

PW1	:	Rekha.,

List of documents marked on behalf of the complainant:

Ex.P1	:	Original Cheque
Ex.P1(a)	:	Signature of the accused
Ex.P2 & P3	:	Bank endorsements
Ex.P4	:	Office copy of the legal notice
Ex.P5	:	Postal receipt
Ex.P6	:	Returned postal cover
Ex.P7	:	Certified copy of Complaint in CC No.439/2021
Ex.P8	:	Certified copy of deposition of accused in CC No.439/2021.

<u>Witnesses examined on behalf of the accused person:</u>

DW1 : Shankar.

<u>Documents marked on behalf of the accused person:</u> *-NIL-*

ANITHA Digitally signed by ANITHA Date: 2026.08.22 17:39:12 +0530

Sd/-
(Anitha)
Prl. Senior Civil Judge and JMFC.,
Hunsur.