

KAMS300038822022



**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./3195/2022

COMPLAINANT:

Sri Mahesha,
S/o late Doddegowda,
Aged 41 years,
R/at Kudineerumuddanahalli
Village, Rathnapuri Post,
Bilikere Hobli, Hunsur Taluk,
Mysuru District.

(By Sri HPL, Adv.)

//Vs//

ACCUSED:

Sri Kumara @ Janardhana,
S/o Beeregowda,
Aged about 35 years,
R/at Rajegowdanahundi Village,
Annuru Post, Kasaba Hobli,
H.D. Kote Taluk,
Mysuru District.

(By Sri PKR, Adv.)

JUDGMENT

The complainant has filed 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 complainant case is as under:

That the complainant and accused known to each other and on the said acquaintance the accused borrowed a sum of Rs.1,80,000/- from the complainant for his legal necessities i.e., for the purpose of discharging the agricultural loan and house hold expenses. Towards the discharge of above loan, the accused has issued a post dated cheque bearing No.296187 dated 02.06.2022 for Rs.1,80,000/- drawn on Indian Overseas Bank, Hunsur branch, Hunsur. When the complainant has presented the said cheque through his banker i.e., Canara Bank, Hunsur Branch, Hunsur, the same was returned with a shara "Funds Insufficient" on 03.06.2022. As such, the complainant got issued a legal notice to the accused on 17.06.2022 through RPAD and also ordinary post and the same was served on 20.06.2022 calling upon him to pay the cheque amount within 15 days. In spite of service of legal notice, the accused has not paid any cheque amount nor replied to the said legal notice. Thereby, the accused has committed an offence punishable under section 138 of N.I.Act. With these reasons, filed the complaint.

3. After registering the complaint as Private Complaint, the sworn statement of complainant as required under Sec.200 of Cr.P.C., was recorded and got marked documents at Ex.P1 to P6. Thereafter, the court has taken cognizance based on the materials produced by the complainant and summons issued to accused. The accused appeared through his counsel upon service of summons and enlarged on bail. The plea was recorded, when the substance of accusation read over to the accused person, he has pleaded not guilty and claimed to be tried.

4. As per the decision of Hon'ble Apex Court reported in **(2014) 5 SCC 590 (Indian Bank Association and others v/s Union of India and**

others), after recording of plea the sworn statement of complainant has been treated as examination in chief, i.e. PW1 and considered the documents in Ex.P1 to 6. The PW1 has not been cross examined by learned counsel for accused and closed complainant side evidence.

5. The statement of the accused under section 313 Cr.P.C has been recorded. The accused has denied the incriminating materials as false. Even though he stated that he would lead defence evidence at the time of recording statement, but he has failed to do so subsequently. As he remained absent, the defence evidence is taken as nil and proceeded further in this case.

6. Heard arguments of learned counsel for complainant and accused. Perused the materials available on record.

7. On the basis of averments of complaint and documents produced by the complainant, the following points have been framed by this Court:

1. *Whether the complainant proves that the accused issued cheque of Indian Overseas Bank, Hunsur branch, bearing No.296187 for Rs.1,80,000/-, on its presentation it was returned as "Funds Insufficient" on 03.06.2022, issue of registered legal notice on 17.06.2022 and served to the accused on 20.06.2022, thereby the accused has committed an offence punishable under Sec.138 of NI Act?*

2. *What order or sentence?*

8. My findings to the aforesaid points are as below:

Point No.1 : In the Affirmative

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

REASONS

9. POINT NO.1 : The Learned counsel for complainant argued that, the complainant has filed the complaint against accused for the offence punishable U/sec.138 of N.I act. The accused approached complainant for a loan and issued a cheque bearing No.296187 of Indian Overseas Bank, Hunsur branch as a security for his loan. But the accused became defaulter in making payment of loan. As such without any alternative, the complainant presented the cheque bearing No.296187 of Indian Overseas Bank, Hunsur branch dated 02.06.2022 for Rs.1,80,000/- through his banker Canara Bank, Hunsur branch, but the same was returned unpaid for the reason 'Funds Insufficient' on 03.06.2022. Then the complainant got issued legal notice on 17.06.2022, which was duly served to the accused on 20.06.2022. Despite of that, the accused has not returned any portion of the loan amount nor gave reply to the said notice. The complainant complied all the terms of Sec.138 of NI Act and prayed to convict accused as per law.

10. As stated above after recording of plea and asper the decision of Hon'ble Apex Court reported in **(2014) 5 SCC 590 (Indian Bank Association and others v/s Union of India and others)**, after recording of plea the sworn statement of complainant has been treated as examination in chief, i.e. PW1 and considered the documents as Ex.P1 to P6. Wherein, PW1 deposed about the issuance of cheque as repayment of loan amount, its dishonor and issuance of lawyer's legal notice and service of notice. His examination-in-chief affidavit is nothing but the replica of complaint averments. As already adverted through the complainant, six documents got marked including Private Complaint. Of the documents Ex.P1 is the cheque, Ex.P1(a) is signature of the accused

found on the said cheque, Ex.P2 is the bank endorsement, Ex.P3 is copy of legal notice dated 17.06.2022, Ex.P4 is the postal receipt, Ex.P5 is the postal acknowledgment, which depicts the knowledge of legal notice prior to filing of this complaint. Finally, the private complaint also got marked as Ex.P6 and the signature of complainant as Ex.P6(a). The veracity of witness has been accepted subject to cross-examination by the accused side, in which the accused has not made endeavor to do so through his counsel despite of giving opportunities.

11. Before advertng to the facts of the case, it is very much necessary to point out the compulsory presumptions to be raised in respect of Negotiable Instruments as contemplated U/s.138 of Negotiable Instrument Act. Indisputably the mandatory 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.*

12. Herein 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 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 142 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 time stipulated 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. Then 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.

13. Before get down 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 availing of loan by the accused upon execution of a post dated cheque bearing No.296187. His evidence speaks that at the time of availing loan the accused had promised him that the cheque will be honored on its presentation. As such, the complainant presented the cheque bearing No.296187 of Indian Overseas Bank, Hunsur branch for Rs.1,80,000/-, which was returned for the reason 'Funds Insufficient'. That the complainant has also issued

notice on 17.06.2022. The veracity of witness can be extracted during cross-examination. But, the accused failed to cross-examine the complainant through his counsel. Therefore, the assertion made in the complaint as well as the evidence of PW-1 to the effect is remained unchallenged. Had accused any defense to make to rebut the presumption, nothing prevented him in order to cross-examine the witness and to deny the complaint averments. But, for the reasons best known to him, he has neither cross-examined PW-1, nor he stepped into witness box to depose. It is no doubt that the complainant has to prove the ingredients of Sec.138 of N.I. Act. In fact he stated that he would lead defence evidence at the time of recording statement, but he has failed to do so subsequently and he remained absent. In the absence of any challenge to testimony of PW-1, I have to hold that there is no denial by the accused with respect to issue of cheque. Thus there is no such defence and no documents relied by the accused to rebut the presumption which is availed to holder of cheque.

14. Going by the oral and documentary evidence of PW-1, it is crystal clear that, the accused had availed loan from the complainant as per his requirements and issued a cheque bearing No.296187 as a security for said loan, but he failed to repay the loan amount with interest, then the circumstance arose for the complainant to present the said cheque for encashment. It is pertinent to note that Ex.P2 endorsement issued by bank shows the dishonor of cheque for the reasons stated therein. It could be seen that, the accused intentionally avoided payment of amount by issuing cheque. If at all he had not issued Ex.P1-cheque in favour of complainant, nothing prevented him to take

action against the complainant. But he has not done so and no legal action has been taken against the complainant. It is important to note that the accused has not disputed the issuance of cheque and signature found in the said cheque. But the defence kept intact as he would not lead his evidence as he remained absent. If the issuance of cheque and signature on the said cheque is accepted by the accused, an initial presumption is to be raised in favour of complainant that, the cheque in question was issued towards legally recoverable debt or liability. Of course, this presumption is rebuttal presumption, such rebuttal presumption has to be placed before the court by the accused. The accused failed to say how the Ex.P.1-cheque belonged to him kept with the complainant. As such, the proving of the burden lies on the accused as well, who has not made endeavor in that respect. It is certain that the burden of proving that cheque had not been issued for any obligation or liability, then the proving of burden definitely shifts on the shoulder of accused. But he has failed to rebut the presumption as contemplated under law. Therefore, it can be presumed that Ex.P.1-cheque has been issued for obligation of liability to be paid by the accused. Apparently, it shows that Ex.P.1-cheque issued by the accused for the obligation incurred by him from the complainant. In order to escape from that liability, he kept silent without doing anything. So it is justly say that Ex.P.1-cheque issued to the money transaction took place with the complainant as stated in the complaint. Even there is no defence by disputing the transaction said to have taken place between the complainant and the accused. So it can be presumed that, the accused was in obligation to make repayment of said loan to complainant. Accordingly, it can be said that he issued cheque in question to the complainant by believing him that he had sufficient

balance. But the same had been returned as unpaid for the reasons state above.

15. There can be no doubt that there is an initial presumption which is in favour of complainant. Sec.139 of the Act is an example of a reverse onus clause that has been included in furtherance of legislative objective or improving the credibility of Negotiable Instruments. While Sec.138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttal presumption U/s 139 is a devise to prevent undue delay in course of litigation. However, it must be remembered that the offence made punishable by section 138 can be better described as a regulatory offence, since the bouncing of a cheque largely in the nature of civil wrong whose impact is usually confined to the parties involved in so many transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused can not be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidential burden and not a persuasive burden. Keeping this view, it is a settled position that an accused has to rebut the presumption the accused u/s 139 of the Act, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence, which creates doubts about the existence of legally enforceable debt or liability, then complainant can fail.

16. In the present case the presumption enjoined by the Statute, the complainant has established that the cheque in question was issued for discharge of debt. He placed enough materials on record to prove that there is a legally enforceable debt and cheque in question was issued by

the accused in discharge of debt. Indisputably, the notice was issued well within the period of prescribed by the Statute after the cheque was dishonored, the same has been reached to the correct address of accused as per documents produced by the complainant. The accused instead of making payment, he denied the case of complainant at the time recording plea and statement under sec.313 of Cr.P.C. Therefore, the onus is on the accused to establish that the cheque was not issued in favour of the complainant as alleged in the complaint. The silence of accused is not come in the way to help him. The accused has failed in the attempt to make probable defence, which would falsify the case of complainant. Therefore, viewed from any angle the accused is not successful to make out any probable defence to exonerate him for the accusation of the offence punishable U/s.138 of the Negotiable Instruments Act. Under Section 139 of N.I. Act, once a cheque has been signed and issued in favour of holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability and accused has not successful to produce any credible evidence to rebut statutory presumption as I have already adverted. In the result, I am of considered opinion that the complainant has proved beyond all reasonable doubt that the accused has committed an offence punishable U/s.138 of Negotiable Instrument Act. **Accordingly, this court constrained to answer the above point No.1 is in the “Affirmative”.**

17. **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 words 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. 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. It is further to be noted that in a recent decision by the Hon'ble High Court of Karnataka, it has been 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." Hence, 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.1,90,000/-. In default to pay the fine amount, he shall undergo simple imprisonment for a month.

It is hereby ordered that out of the fine amount, Rs.1,85,000/- 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.1,85,000/- 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.1,85,000/- from the accused in accordance with law.

The 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 : Mahesha

List of witnesses examined on behalf of the Accused:

NIL

List of documents marked on behalf of the Complainant:

- Ex.P1 : Cheque bearing No.296187 dated 02.06.2022
Ex.P1(a) : Signature of accused
Ex.P2 : Bank endorsement
Ex.P3 : Legal notice issued to accused dated 17.06.2022
Ex.P4 : Postal receipt
Ex.P5 : Postal acknowledgment
Ex.P6 : Complaint
Ex.P6(a) : Signature of complainant

List of documents marked on behalf of the Accused:

NIL

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