

KAMS300046982022



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

**Dated this the 29<sup>th</sup> day of May 2026**

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

**CC./3643/2022**

**COMPLAINANT:**

Sri Sheenashetty,  
S/o late Venkatappashetty,  
Aged about 68 years,  
R/at House No.57,  
Sheshadri Nilaya,  
H.D. Kote Road,  
In front of C.T.R.I.  
Jyothinagara,  
Hunsur City,  
Mysuru District.

**(By Sri MEP, Adv.)**

**//Vs//**

**ACCUSED:**

Sri Venkatapathy,  
S/o late P. Venkataiah,  
(First Class Contractor)  
Aged 58 years,  
R/at Vinobha Colony,  
Rathnapuri Road,  
Hunsur Taluk,  
Mysuru District.

**(By Sri SSG, 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 complainant and the accused are known to each other. That the accused had borrowed a sum of Rs.3,00,000/- on 13.06.2022 from the complainant for his legal necessities i.e., for house hold expenses and to clear his previous debts, he agreed to repay the same within three months and in this regard the accused issued a post dated cheque bearing No.0484546 dated 13.09.2022 for Rs.3,00,000/- drawn on Karnataka Contractors Sahakara Bank Niyamitha, Mysuru Branch. The complainant presented the cheque bearing No.0484546 before his banker State Bank of India, Hunsur Branch for encashment, but the same was returned with a shara "Refer to drawer" on 19-09-2022. As such, the complainant got issued legal notice dated 08-10-2022 to the accused through RPAD, but the said notice was returned with a shara "intimation delivered" on 19.10.2022 and hence the notice was served to the accused on 19.10.2022. Even then also the accused not repaid the amount nor replied to the notice. 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, contents of sworn statement affidavit 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 examined himself as PW.1 and

got marked 13 documents at Ex.P1 to 13.

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, he has also examined one more witness as PW.2 and closed his side evidence. and they have 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. Accordingly, the accused got examined himself as D.W.1 and also examined one supporting witness as DW.2.

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.0484546 dated 13.09.2022 for Rs.3,00,000/- drawn on Karnataka Contractors Sahakara Bank Niyamitha, Mysuru Branch in his favour, which came to be dishonoured for the reason 'Refer to drawer', issuance of legal notice and its deemed service, thereby the accused has committed an offence punishable under section 138 of N.I.Act?

2. What order?

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.3,00,000/- to meet his legal necessities on 13.06.2022 and he issued cheque bearing No.0484546 dated 13.09.2022 for an amount of Rs.3,00,000/- in order to repay the said loan. But the said cheque in question came to be dishonoured on its presentation as 'Refer to drawer', hence the legal notice dated 08-10-2022 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. Inter-alia, the learned counsel for accused vehemently argued that, the accused never known the complainant and he has not received any legal notice. He submits that one Swamyshtetty and accused had financial

transactions, in respect of said loan the accused had issued a cheque to Swamyshetty for about 8 years back, later the accused cleared the said loan and sought for returning of cheque, but he has not returned the same and stopped communicating. When he came to court only, he knows that the complainant and Swamyshetty are relatives and the complainant filed a false case against accused and prayed to acquit.

13. After recording of plea, the sworn statement of complainant has been treated as Chief examination of PW.1 and one more supporting witness is examined as PW.2. 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 cheque return memo, legal notice, postal receipt, postal cover, complaint, RTCs, MR, Bill, Letter issued by KEB, Delivery manifest of Rathnapuri colony and the Branch office daily register book which got marked at Ex.P2 to Ex.P13 respectively.

14. Before advertng 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 is the complainant and the principal witness examined in support of his case. In his examination-in-chief, PW-1 has deposed that the accused is

known to him and that on 13-06-2022, the accused approached him seeking financial assistance for his urgent necessities, accordingly he borrowed a sum of Rs.3,00,000/- from him. He further deposed that towards discharge of the said legally enforceable debt, the accused issued a cheque drawn on Karnataka Contractors Sahakara Bank Niyamitha, Mysuru Branch, assuring him that the cheque would be honoured on presentation. Acting upon such assurance, PW-1 presented the cheque through his banker. However, the cheque was returned with an endorsement indicating "Refer to drawer". PW-1 has further stated that after dishonour of the cheque, he caused issuance of a statutory legal notice to the accused calling upon him to repay the cheque amount within the stipulated period. Despite service of the said notice, the accused neither replied to the notice nor paid the cheque amount, thereby compelling him to initiate the present proceedings. In support of his oral testimony, PW-1 has produced the original cheque, bank return memo, legal notice, postal records, and other connected documents as I have already stated. He has specifically asserted that the cheque was issued voluntarily by the accused and that the accused is liable to pay the cheque amount. The veracity of witness extracted during cross-examination.

17. During cross-examination, PW-1 was subjected to detailed questioning regarding the source of funds and the circumstances under which the cheque was issued. Thus, PW.1 was subjected to lengthy questioning by the learned counsel for the accused regarding his financial capacity, acquaintance with the accused and alleged relationship with one Swamyshetty. However, nothing worthwhile has been elicited to disbelieve his testimony. Though suggestions were made that the cheque was not issued to the complainant and that it was earlier given to Swamyshetty as security in some other transaction, PW.1 has categorically denied the same. The accused has taken specific defence and attempted to dispute the

financial capacity of the complainant. In that regard, PW.1 has produced RTC extracts, mutation records, bills and KEB documents at Ex.P6 to Ex.P11 to show that he owns agricultural properties and had sufficient means to lend the amount. The accused has not produced any material to disprove the said documents. Mere suggestions in the cross-examination are not sufficient to rebut the statutory presumption available in favour of the complainant.

18. The complainant has also examined one post master by name Sandeep Kumar as PW.2, wherein he deposed that he works as Post Man in CBT Colony from 2016 to June 2024. He deposed that he knows the address mentioned on the postal cover at Ex.P5(a), that on 08.10.2022 the registered post received in his CBT colony office and he personally visited the address of the accused for service of registered post. He has stated that though the accused was not found in the house, intimation was delivered to the family members and he continuously visited the address for seven days. He also identified the endorsement made on the postal cover. He further told that he only writes the date on the postal cover in his hand writing. The certified copy of delivery manifest of Rathnapuri post and the Branch office daily register got marked as Ex.P12 and Ex.P13 respectively. Thus, the complainant has examined PW.2 the Postman in order to establish deemed service of legal notice. During cross-examination of PW.2, the defence could not elicit anything to discredit his evidence. PW.2 consistently stated that intimation was duly delivered at the address of the accused. Therefore, the contention of the accused that notice was not served cannot be accepted. When notice is sent to the correct address by RPAD and intimation is delivered, there arises a presumption of due service under Sec.27 of the General Clauses Act.

19. In order to disprove the case of complainant and also the evidence of PW.1 & PW.2, the accused himself stepped into the witness box and deposed on oath as DW.1. It is the defense of accused that, he has not known the complainant and he has not received any legal notice. He deposed that one Swamyshetty and himself had financial transactions and for about 8 years back he had issued a cheque to Swamyshetty in respect of loan and also cleared the said loan, at that time he sought for returning of cheque but he has not returned the same and stopped communicating with him. When he came to court only, he knows that the complainant and Swamyshetty are relatives and the complainant has filed a false case against him, hence he prayed to acquit.

20. Thus, it is the defence of the accused that he had earlier borrowed some amount from one Swamyshetty about eight years prior and at that time issued the cheque in question as security. According to him, even after repayment of the said amount, the cheque was not returned and subsequently misused by the complainant, who is allegedly related to Swamyshetty. However, except the bare oral assertion of DW.1, no convincing material is produced to substantiate the said defence. The accused has not produced any document to show the alleged earlier loan transaction with Swamyshetty, repayment thereof or any effort made by him for return of the cheque. If really the cheque had been misused, nothing prevented the accused from initiating legal action against Swamyshetty or issuing stop payment instructions to the bank. No such steps have been taken.

21. DW.2 – Lakshmana, who has sworn to in lieu of his chief-examination and stated that he knows the accused person and no transaction had taken place between the complainant and the accused. But he deposed

that a person by name Swamyshetty working in police department is a relative to the complainant and that the accused had availed a loan of Rs.30,000/- from said Swamyshetty in the year 2021 and as a matter of security he gave a cheque and the accused had cleared the loan in the month of December and asked to return the said cheque, but said Swamyshetty postponed the same and through this complainant filed this case against the accused. Hence, he swear that accused has no dues towards the complainant and accused used to do financial transaction in his presence. However, the testimony of DW.2 is only hearsay in nature and not supported by any documentary evidence. His evidence does not inspire confidence.

22. The accused has taken a specific defence that he has not received the statutory notice issued by the complainant. Hence, it is necessary to appreciate whether there was proper and deemed service of notice upon the accused. In the present case, the complainant has produced copy of legal notice at Ex.P3, postal receipt at Ex.P4 and returned postal cover at Ex.P5. The address mentioned in the legal notice and postal cover is the admitted address of the accused. The postal cover bears the shara "Intimation Delivered". Therefore, the notice was sent to the correct and proper address of the accused through RPAD. In order to substantiate the service of notice, the complainant examined the concerned Postman as PW.2. PW.2 has categorically deposed that on 08.10.2022 the registered post was received in the post office concerned to the locality of the accused and he personally visited the address of the accused for service of notice. He further deposed that the accused was not available in the house and therefore intimation was delivered to the family members. PW.2 has also stated that he repeatedly visited the house for about seven days, but the accused was not found and thereafter necessary endorsement was made. During cross-examination of PW.2, nothing worthwhile has been elicited to discredit his testimony. The

evidence of PW.2 coupled with Ex.P12-delivery manifest and Ex.P13-branch office daily register clearly establishes that intimation regarding the registered post was delivered at the address of the accused. When a notice is sent through registered post to the correct address of the accused, there arises a presumption under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act that the notice has been duly served. Even if the accused intentionally avoids service or does not claim the postal article, it amounts to deemed service of notice. The endorsement "Intimation Delivered" clearly indicates that information regarding arrival of registered post was conveyed to the addressee. If the accused had not deliberately avoided service, he could have collected the article from the post office. Therefore, the accused cannot take advantage of his own conduct and contend that notice was not served.

23. The Hon'ble Supreme Court in several decisions has held that when notice is dispatched to the correct address by registered post and intimation is delivered, it amounts to proper and sufficient service. The drawer cannot escape liability by merely avoiding service of notice. In the present case, the complainant has satisfactorily proved that statutory notice was issued within time and sent to the correct address of the accused. The evidence on record clearly establishes deemed service of notice upon the accused. Hence, the contention of the accused that he had no knowledge of the notice cannot be accepted.

24. It is pertinent to note that the accused has admitted that the cheque belongs to his account and also admitted the signature found on Ex.P1. Once issuance of cheque and signature are admitted, the statutory presumptions under Sections 118 and 139 of the N.I. Act arise in favour of the complainant that the cheque was issued towards legally enforceable

debt or liability. The Hon'ble Supreme Court in catena of decisions has held that the presumption under Section 139 of the N.I. Act is mandatory in nature and the burden lies upon the accused to rebut the same by producing probable defence. The accused is required to rebut the presumption by cogent and convincing evidence. In the present case, the defence set up by the accused is not probable and the same is not supported by acceptable evidence. The conduct of the accused is also relevant. Though according to him the cheque was misused, admittedly he has not issued any reply notice to the statutory notice issued by the complainant. Failure to reply to the notice is an important circumstance which strengthens the case of the complainant. The oral testimony of PW.1 is corroborated by documentary evidence produced at Ex.P1 to Ex.P13. The complainant has successfully established that the cheque in question was issued by the accused towards discharge of legally enforceable debt and the same came to be dishonoured for the reason "Refer to Drawer". The complainant has also complied with all mandatory requirements contemplated under Section 138 of the N.I. Act. Where as the defence taken by the accused appears to be a mere afterthought invented only for the purpose of escaping liability. The accused has failed to probalilise his defence and failed to rebut the statutory presumptions available in favour of the complainant. Therefore, this Court is of the considered opinion that the complainant has proved beyond reasonable doubt that the accused issued cheque bearing No.0484546 dated 13.09.2022 for Rs.3,00,000/- drawn on Karnataka Contractors Sahakara Bank Niyamitha, Mysuru Branch towards discharge of legally recoverable debt, and the same was dishonoured. Despite issuance and service of statutory notice, the accused failed to pay the cheque amount and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act. ***Therefore, the above point is answered in the***

***Affirmative.***

25. **Point No.2:** That the Negotiable Instrument Act has been 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, this court proceeds 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.3,10,000/-. In default to pay the fine amount, he shall undergo simple imprisonment for two months.

It is hereby ordered that out of the fine amount, Rs.3,05,000/- 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.3,05,000/-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.3,05,000/- 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 29<sup>th</sup> day of May 2026)*

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

### **ANNEXURE**

**List of witnesses examined on behalf of the Complainant:**

PW1 : Swamyshetty  
PW2 : Sandeep Kumar

**List of witnesses examined on behalf of the Accused:**

DW1 : V. Venkatapathy  
DW2 : Lakshmana

**List of documents marked on behalf of the Complainant:**

Ex.P1 : Cheque bearing No.0484546 dated 13.09.2022  
Ex.P1(a) : Signature of accused  
Ex.P2 : Cheque return memo  
Ex.P3 : Notice dated 08.10.2022  
Ex.P4 : Postal receipt  
Ex.P5 : Postal cover  
Ex.P5(a) : Notice in Ex.P5  
Ex.P6 : Complainant  
Ex.P6(a) : Signature of complainant  
Ex.P7 : RTC in r/o Sy.No.36  
Ex.P8 : RTC  
Ex.P9 : Copy of MR  
Ex.P10 : Bill issued by Manjunatha Borewells  
Ex.P11 : Letter by CHESCOM  
Ex.P12 : Delivery manifest document  
Ex.P13 : Branch office daily register book extract

**List of documents marked on behalf of the Accused:**

NIL

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