KAMS310006482019

IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC, HUNSUR

-:PRESENT:-

SMT. NAMRATA S HOSMATH, B.A., LL.B.,
I ADDL. CIVIL JUDGE & JMFC,
HUNSUR.

DATED THIS THE 01st DAY OF AUGUST, 2026

C.C. No.149/2019

COMPLAINANT: **Madegowda,**
S/o Siddalingegowda,
Aged about 53 years,
R/at Challahalli Grama & Post,
Bilikere Hobli,
Hunsur Taluk,
Mysuru District.

(By Sri. M.D., Advocate.,)

// Versus //

ACCUSED : **Suma S.**
W/o Revanna M.
Aged about 40 years,
R/at Benkipura Grama,
Aswalu Post,
Hunsur Taluk,
Mysuru District.

(By Sri. C.C.N., Adv.)

Arrest of the accused	:	Released on bail
Name of the complainant	:	Madegowda
Date of recording evidence	:	22.05.2018
Date of closing evidence	:	07.05.2026
Date of Judgment	:	01.08.2026
Offence complained of	:	Under Section 138 of NI Act
Opinion of the Judge	:	Accused found guilty

(Namrata S Hosmath)
I Addl. Civil Judge & JMFC.,
Hunsur.

-:: J U D G M E N T::-

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

2. **The brief facts of the case are as under:-**

It is the case of the complainant that, he and the accused have been well known to each other, the accused borrowed a hand loan of Rs.2,00,000/- from the complainant for legal necessities and household expenses. On the very same day, the accused issued a post-dated cheque bearing No.166126 dated 07.10.2017 for a sum of Rs.2,00,000/-, drawn on

State Bank of Mysuru, Challahalli Branch, Hunsur. At the time of issuing the cheque, the accused assured that the cheque would be honoured upon its presentation. The complainant thereafter presented the said cheque, as per the instructions of the accused, through his banker, namely State Bank of Mysuru, Challahalli Branch, Hunsur. However, the said cheque came to be dishonoured for the reason "Funds Insufficient." The bank endorsement regarding the dishonour of the cheque was received by the complainant on 07.10.2017. Thereafter, the complainant requested the accused for payment of the amount even after that the accused has not complied with the request made by complainant. Accordingly, in compliance with the statutory requirement, on 19.10.2017, the complainant caused to issue a legal demand notice to the accused, and the same was served on 21.10.2017. Despite the service of the said notice, the accused failed to repay the cheque amount and also failed to send any reply to the legal notice. Hence, the complainant has filed the present complaint under Section 200 of the Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. After the filing of the complaint, the Court took cognizance of the offence punishable under

Section 138 of the Negotiable Instruments Act, and the sworn statement of the complainant was recorded. On finding prima-facie material and reasonable grounds to proceed against the accused, the case was registered for the offence punishable under Section 138 of the Negotiable Instruments Act, and summons was issued to the accused. The accused was brought before the Court and was enlarged on bail. Thereafter, the substance of accusation/plea of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act was recorded. The accused pleaded not guilty and claimed to be tried.

4. As per the guidelines issued by the Hon'ble Supreme Court of India in the decision reported in (2014) 5 SCC 590 in the case of Indian Bank Association and Others vs. Union of India and Others, the sworn statement affidavit filed by the complainant was treated as his chief-examination affidavit. The complainant got marked a total of 6 documents as Ex.P1 to Ex.P6 & Ex.P.6(a). After the completion of the complainant's evidence, the accused was examined under Section 313 of the Cr.P.C. The accused denied all the incriminating circumstances appearing against him in the evidence of the complainant and opted to lead defence evidence. In order to substantiate his defence, the accused stepped into the witness box and

examined herself as DW-1. She has also got examined one witness as DW.2, who got marked Ex.D.2 & D.3.

5. Thereafter, the arguments addressed by the learned counsel for the complainant and the learned counsel for the accused were heard, and the case papers were perused. Upon hearing the arguments and on perusal of the case records, the following points arise for consideration:

<u>POINTS</u>

1. **Whether the complainant proves that the accused issued Ex.P.1 cheque towards the discharge of a legally enforceable debt or liability?**

2. **Whether the complainant further proves that, the cheque has been dishonored for the reason "Funds insufficient"?**

3. **Whether the complainant further proves that, he 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 of this court on the above points are as follows;

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 final order for the following;**

:: R E A S O N S ::

7. **Point No.1:-** The complainant has presented this complaint under Section 200 of the Cr.P.C. against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. It is the specific case of the complainant that, he and the accused have been well known to each other, for the purpose of legal necessities and household expenses, the accused borrowed a hand loan of Rs.2,00,000/- from the complainant. The accused issued a post-dated cheque bearing State Bank of Mysuru, Challahalli Branch, Hunsur. The complainant presented the said cheque through his banker, namely State Bank of Mysuru, Challahalli Branch, Hunsur, and the cheque came to be dishonoured for the reason "Funds Insufficient." Thereafter, on 19.10.2017, the complainant caused to issue a legal demand notice to

the accused, and the same was served on 21.10.2017. In the complaint as well as in the chief-examination affidavit, the complainant has specifically stated regarding the borrowing of a hand loan of Rs.2,00,000/- by the accused, issuance of the cheque towards discharge of the said amount, dishonour of the said cheque, issuance of legal notice, and service of the said notice upon the accused.

8. In order to substantiate his case, the complainant has relied upon documents marked as Ex.P1 to Ex.P6. Ex.P1 is the original cheque dated 07.10.2017 drawn in favour of the complainant for a sum of Rs.2,00,000/- bearing No.166126, drawn on State Bank of Mysuru, Challahalli Branch, Hunsur. Ex.P2 is the bank endorsement dated 07.10.2017, which shows that Ex.P1 cheque came to be dishonoured for the reason “Funds Insufficient”. Ex.P3 is the office copy of the legal notice dated 19.10.2017. In the said legal notice, the complainant has specifically stated about the borrowing of a hand loan of Rs.2,00,000/- by the accused, issuance of the cheque towards repayment of the said loan amount, dishonour of the cheque, and issuance of the legal notice. Ex.P4 is the postal receipt evidencing dispatch of Ex.P3 legal notice. Ex.P5 is the letter addressed to post master for knowing about the service of legal

notice which shows that, legal notice was served to accused on 21.10.2017 and Ex.P.6 is the complaint and Ex.P.6(a) is the signature of complainant. Even after service of notice to accused the accused has not given any reply notice. The complainant in the complaint as well as in his affidavit has specifically deposed that the accused has not issued any reply to the legal notice. In the absence of any reply notice, there is no material placed before the Court to ascertain the initial defence of the accused.

9. Before proceeding further, it is necessary for this Court to note that in a proceeding for the offence punishable under Section 138 of the Negotiable Instruments Act, the complainant is entitled to the benefit of the presumption as envisaged under Section 139 of the Negotiable Instruments Act. The presumption under the said provision is a statutory presumption available in favour of the complainant, since he is the holder of the cheque. The said presumption is rebuttable in nature.

> ***“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."

10. The presumption available to the complainant under Section 139 of the Negotiable Instruments Act is admittedly a rebuttable presumption, and the accused can rebut the said presumption even without entering into the witness box. In other words, by relying upon the evidence placed by the complainant himself, the accused can rebut the presumption available in favour of the complainant under Section 139 of the Negotiable Instruments Act regarding issuance of the cheque towards discharge of a legally enforceable debt or liability.

11. Further, Section 118 of the Negotiable Instruments Act provides for presumptions with regard to consideration, date, time of acceptance, and time of transfer of a negotiable instrument.

12. In the present case, since the cheque belongs to the account of the accused and the same was in the possession of the complainant at the time of its presentation before the banker, the complainant is entitled to raise the statutory presumption under Sections 118 and 139 of the N.I. Act. Thus, unless the

contrary is proved, it shall be presumed that Ex.P1 cheque was issued towards discharge of a legally recoverable debt or liability.

13. Once such presumption is drawn, the burden shifts upon the accused to rebut the presumption available under Sections 118 and 139 of the N.I. Act, either by adducing cogent evidence or by establishing a probable defence on the basis of the material available on record, in accordance with the principles of preponderance of probabilities.

14. It is a settled position of law that after the presumption under Sections 118 and 139 of the N.I. Act is raised, the burden shifts on the accused to rebut the same by establishing his defence on the touchstone of preponderance of probabilities. In the present case, the accused has denied the incriminating circumstances appearing against him and has also led defence evidence. In order to appreciate and evaluate the defence put forth by the accused, it is necessary to examine the cross-examination of PW-1.

15. In the cross-examination of PW.1, the witness deposed that he owns a petty shop, bakery, flour mill, and animal feed shop. His evidence

indicates that he possessed the financial capacity to advance the loan amount. He further stated that he has known the accused for a long time and that he came to know her through her husband. The witness was confronted with a document pertaining to Swayam Krushi Group of Companies, which he admitted, and the same was marked as Ex.D.1. Upon perusal of Ex.D.1, it is seen that the complainant's wife, Prema, was making deposits with the said company.

16. The principal defence put forth by the accused is that the wife of the complainant used to deposit money in the said company and that the husband of the accused was working as a pigmy collector for the said company. According to the accused, the company subsequently closed down, following which the customers started blaming the pigmy collectors. It is further contended that the complainant's wife also blamed the accused's husband, and a panchayat was convened. During the said panchayat, the cheque belonging to the accused was allegedly taken and retained by the complainant as security. It is the further case of the accused that although she paid a certain amount towards the alleged liability, when she demanded the return of the cheque, the complainant failed to return the same and

instead misused it by filing the present false complaint.

17. PW.1 has also admitted that he and his wife were depositing money through the husband of the accused in the said company. The witness denied the suggestion that several other persons were also making deposits with the company. He further stated that he had received his money back during the years 2014-15 in cash. A suggestion was also made that PW.1 had not actually received the amount and that several customers had instituted cases against the company, which are pending before various Courts in Mysuru. The witness denied the suggestion that the husband of the accused had paid a sum of Rs.28,000/- to the complainant's wife.

18. PW.1 further admitted that he and his wife were jointly making pigmy deposits with the said company. He pleaded ignorance regarding the allegation that the company was closed on account of fraud committed by its Manager. PW.1 also admitted that the company had issued a cheque for Rs.38,540/- in the name of his wife, Prema. However, he subsequently stated that no such cheque had been issued by the company and denied that the said cheque had been encashed. A suggestion was also put

to the witness that the accused had issued a cheque in favour of the complainant's wife for a sum of Rs.10,514/-, which suggestion was denied by him. However, the very nature of the suggestion indicates that there existed certain monetary transactions between the parties.

19. PW.1 denied the suggestion that he had misused the cheque in question. He stated that in the month of May 2017, he paid a sum of Rs.2,00,000/- in cash to the accused at her residence, and at the time of the transaction, the accused, her husband, and the complainant were present. A suggestion was also made that the complainant had not produced any documentary evidence to establish his financial capacity. However, the complainant has consistently asserted that the loan amount was paid in cash, and therefore, such transaction would not necessarily be reflected in any documentary record.

20. In the further cross-examination, a suggestion was put to the witness that the complainant had threatened the accused and forcibly obtained the cheque in question. This suggestion is completely inconsistent with the specific defence set up by the accused, namely, that the cheque was handed over during the panchayat as security. Such

mutually destructive and inconsistent defences materially weaken the credibility of the defence version. Therefore, this Court is unable to place reliance upon the said suggestion.

21. The accused stepped into the witness box and examined herself as DW.1. In her chief-examination, the accused deposed that she does not know the complainant. She further deposed that her husband was working as a pigmy agent and that, on one occasion, the complainant came to her house and demanded money, whereupon she paid a sum of Rs.20,000/- to the complainant. This admission itself indicates that there existed monetary transactions between the parties, thereby suggesting the existence of some liability towards the complainant. In the cross-examination, she stated that she had not lodged any complaint alleging that the complainant had created a galata and forcibly obtained Rs.20,000/- from her. She further admitted that there was no impediment preventing her from filing such a complaint. Apart from this, the accused denied the remaining suggestions put to her by the learned counsel for the complainant.

22. The accused also examined her husband as DW.2. In his chief-examination, he stated that he was

working as an agent in Swayam Krushi Group of Companies and that the complainant and his wife used to pay Rs.100/- daily as pigmy deposits. He further stated that they continued making such deposits for about one year, amounting to approximately Rs.36,000/-, and therefore, the company issued a cheque for Rs.38,514/- in favour of the complainant's wife towards the deposit amount along with interest. It is further stated that the said cheque was dishonoured as the company had closed down. He further deposed that the complainant approached him demanding repayment of the said amount, whereupon a panchayat was convened, and during the said panchayat, a cheque belonging to the accused was handed over to the complainant as security.

23. It is further stated that thereafter he had been to Bengaluru, and during his absence, the complainant allegedly misused the cheque handed over to him and filed the present false case. He further deposed that he had paid Rs.6,000/- on 20.06.2016, Rs.5,000/- on 25.08.2016, Rs.6,000/- on 15.10.2016, Rs.6,000/- on 10.12.2016, and Rs.5,000/- on 10.03.2017 to the complainant. According to him, after receiving the said amounts, the complainant assured him that the cheque would

be returned, however, instead of returning the cheque, the complainant filed the present complaint. DW.2 further stated that, after making the above payments, he had obtained the signature of the complainant's wife on a blank paper. From the above deposition, the defence set up by the accused becomes apparent. However, both the accused and DW.2 have admitted that there existed certain monetary transactions and liability between the parties. Though DW.2 contended that he had paid a total sum of Rs.34,000/- on different occasions and obtained the signature of the complainant's wife, no documentary evidence has been produced before the Court to substantiate the said contention.

24. DW.2 has produced the cheque issued in favour of the complainant's wife, which has been marked as Ex.D.2. These assertions may indicate that there were independent financial transactions between the complainant, his wife, the accused, and the accused's husband. However, the accused has failed to produce cogent and convincing evidence to probabilise her defence or to rebut the statutory presumptions available in favour of the complainant.

25. In his cross-examination, DW.2 admitted that a person who regularly pays pigmy deposits would

ordinarily have sufficient income. He also admitted that the complainant is financially sound. DW.2 denied the other suggestions put to him by the learned counsel for the complainant. Significantly, DW.2 admitted that Ex.P.1 cheque belongs to the accused and that the signature appearing on Ex.P.1 is that of the accused. He further admitted that when Ex.P.1 was presented for encashment, it was dishonoured with the endorsement "Funds Insufficient."

26. The Court now proceeds to examine whether the defence raised by the accused is sufficient to rebut the statutory presumptions available in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act.

27. On careful perusal of the evidence on record, it is evident that, the complainant has proved the issuance of Ex.P1 cheque for the alleged loan amount of Rs.2,00,000/-, its presentation, and subsequent dishonour, as supported by the bank endorsement (Ex.P2) indicating “Funds Insufficient”. The complainant’s evidence, both in his complaint and chief-examination affidavit, is consistent regarding the borrowing of the amount, issuance of the cheque,

dishonour of the same, and service of the demand notice (Ex.P3 to Ex.P5).

28. The defence of the accused is that Ex.P.1 cheque was handed over as security during a panchayat relating to the transactions of Swayam Krushi Group of Companies and that the complainant has misused the same. However, the accused has failed to substantiate the said defence by producing any cogent documentary evidence. Though DW.1 and DW.2 have spoken about the alleged payments and the cheque being issued as security, their evidence itself discloses the existence of monetary transactions between the parties. Further, DW.2 has admitted that Ex.P.1 belongs to the accused, bears her signature, and was dishonoured for "Funds Insufficient". No satisfactory explanation has been offered as to why no action was initiated against the complainant if the cheque had really been misused.

29. PW1's cross-examination does not discredit the transaction, as he has explained the source of the amount and the cash payment, which, while not documented, does not negate the issuance of the cheque. Considering the above, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the

complainant. The accused has failed to rebut these presumptions either by producing credible evidence or through preponderance of probabilities. Therefore, it is concluded that the complainant has successfully established that Ex.P1 cheque was issued towards discharge of a legally enforceable debt. Accordingly, **Point No.1** is answered in the ***Affirmative***.

30. **Point No.2:** It is the specific case of the complainant that, towards repayment of the hand loan, the accused issued Ex.P1 cheque, which bears the date 07.10.2017. In the complaint and in his chief-examination affidavit, PW-1 categorically stated that, the accused borrowed the amount for legal necessities. It is the definite case of the complainant that upon presentation, the said cheque was dishonoured for the reasons “Funds Insufficient”. This fact has been substantiated by the complainant through the production of Ex.P2, the bank endorsement, which confirms that Ex.P1 cheque was dishonoured for the reasons “Funds Insufficient”. The complainant, by producing cogent oral and documentary evidence, has proved that on presentation, Ex.P1 cheque was dishonoured for the aforesaid reasons. Accordingly, **Point No.2** is answered in the ***Affirmative***.

31. **Point No.3:-** To initiate proceedings for an offence punishable under Section 138 of the Negotiable Instruments Act, the complainant is required to comply with certain statutory requirements. The complainant shall present the cheque within the statutory period from the date on which it is drawn and, if the cheque is dishonoured, shall make a demand by 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 the notice and subsequently, within one month, shall present the complaint before the Court.

32. In the present case, Ex.P1 cheque bears the date 07.10.2017, and Ex.P2, the bank endorsement, is dated 07.10.2017. It is the specific case of the complainant that upon coming to know about the dishonour of the cheque, he caused to issue a demand notice as per Ex.P3, dated 19.10.2017, which is well within the period of limitation. Ex.P5 shows that the notice was duly served upon the accused on 21.10.2017, and the complaint was presented on 23.11.2017. Therefore, the complaint has been filed within the prescribed period, and the complainant has complied with all the mandatory requirements as envisaged under Section 138 of the Negotiable

Instruments Act. Accordingly, **Point No.3** is answered in the ***Affirmative***.

33. **<u>Point No.4:-</u>** 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 bank endorsement the cheque has been dishonored for the reason "Funds insufficient". 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***.

34. **<u>Point No.5:-</u>** In view of the discussion made and conclusion arrived at Point Nos.1 to 4, this court proceeds to pass the following;

<u>O R D E R</u>

In exercise of powers 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.2,55,000/- to the complainant. In default to pay the fine, the accused shall undergo simple imprisonment for a period of six months.

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.2,50,000/- 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 on Computer, typed by her on Computer, revised, corrected and then pronounced by me in the open Court on this day, the **01st day of August, 2026**)

(NAMRATA S HOSMATH)
I Addl. Civil Judge & JMFC.,
Hunsur.

ANNEXURE

Witnesses examined for the Complainant:

CW-1	:	Madegowda

Documents exhibited for the Complainant:

Ex.P-1	:	Cheque
Ex.P-2	:	Bank endorsement
Ex.P-3	:	Legal notice
Ex.P-4	:	Postal Receipt
Ex.P-5	:	Application
Ex.P-6	:	Complaint
Ex.P-6(a)	:	Signature of complainant

Witnesses examined for the Accused:

DW-1	:	Suma
DW-2	:	Revanna M.

Documents exhibited for the Accused:

Ex.D-1	:	One document pertaining to Swayam Krushi Group of Companies
Ex.D-2	:	Cheque
Ex.D-2(a) & (b)	:	Signatures
Ex.D-3	:	Statement

(NAMRATA S HOSMATH)
I Addl. Civil Judge & JMFC.,
Hunsur.

Digitally signed by NAMRATA S HOSMATH
Location: I ADDL CIVIL JUDGE & JMFC., HUNSUR