KAMS320008632025

Presented on : 19-08-2025
Registered on : 19-08-2025
Decided on : 02-04-2026
Duration : 7 months, 15 days

IN THE COURT OF THE VIII ADDL. DISTRICT & SESSIONS JUDGE, MYSURU, SITTING AT HUNSUR

Dated this the 2nd day of April 2026

-: P R E S E N T :-

Sri.T.GOVINDAIAH,
B.Com. LL.B.
VIII ADDL. DISTRICT & SESSIONS JUDGE,
MYSURU, SITTING AT HUNSUR

Crl. Appeal No.5096/2025

APPELLANT **Accused in trial court**	:	**Lokesha H.B.** S/o Beeregowda Aged about 31 years **Occupation:** CPC-421, Periyapatna Police Station, Periyapatna Town, Mysuru District. **Presently working at** K.R.Nagar Police Station, K.R.Nagar Town, K.R.Nagar, Mysuru District. **(By Sri.K.R.Manjunatha, Advocate)**

V/s

<u>RESPONDENT</u> : **H.K.Kuchela**
Complainant in trial court
S/o Late H.M.Kullegowda
Aged about 49 years
R/at Hemmige Village,
Kandegala Post,
Ravandur Hobli,
Periyapatna Taluk,
Mysuru District.

(By Sri.H.K.Srinivasa., Advocate)

<u>: J U D G M E N T :</u>

This appeal is preferred by appellant/accused under Sec.415 of BNSS r/w Sec.374(3) of Cr.P.C. to set-aside the Judgment in C.C.No.2319/2022 dated 05.04.2025 passed by the Civil Judge and JMFC, Periyapatna.

2. Appellant is the accused and the respondent is complainant before the trial court and parties will be referred to as per their ranking before the trial court.

3. <u>The brief facts of the case are as follows:</u>

The accused and complainant are known to each other. The accused towards his legal necessities has borrowed a sum of Rs.1,50,000/- from the complainant on 22.03.2022. Towards discharge of the said loan, accused issued post dated cheque bearing No.488440 dated 22.04.2022 drawn on State Bank of India, Periyapatna Branch for sum of Rs.1,50,000/- in favour of complainant. When complainant presented the said cheque for encashment through his banker, the same was dishonoured as "Funds Insufficient" and issued endorsement dated 25.04.2022. Thereafter, the complainant issued legal notice on 05.05.2022 to the accused calling upon to pay the cheque amount within 15 days from the date of receipt of said notice. The said notice was duly served on 10.05.2022 to accused. But, the accused has not made any attempt to pay the cheque amount. Thus, complainant was constrained to initiate legal proceedings against the accused by presenting complaint U/S 200 of Cr.PC, alleging commission of offence punishable U/S 138 of N.I. Act.

4. During course of trial before trial court, complainant himself examined as PW.1 and 6 documents have been got marked at Ex's.P 1 and P 6. The accused has not lead any evidence. After hearing the argument on both the side, the trial court passed the Judgment. By aggrieving the same, the appellant filed this appeal.

5. Being aggrieved by the judgment, conviction and sentence imposed on the accused by the trial court, the accused has preferred this appeal on the following

<u>GROUNDS</u>

- The Learned trial court has erred in convicting and sentencing the appellant and sentenced to pay fine of Rs.1,52,000/- within one month from the date of this order. In default of payment of fine, accused shall undergo SI for a period of 6 months.

- The Learned trial court erred in taking cognizance against the appellant for the alleged offence punishable u/sec. 138 of N.I.Act.

- The Learned trial court has erred in not noticing that the complainant has not complied the mandatory requirements before lodging complaint u/sec.200 Cr.PC.

- The Learned trial court has erred in holding that the respondent has proved the guilt against the appellant beyond reasonable doubt.

- The Learned trial court has erred in not recording the plea against the appellant properly.

- The order is opposed to law and probabilities of the case and it is not based on sound principles of law and against the principles of natural justice and equity.

Hence sought for set-aside the Judgment passed by the Trial court and acquit the accused.

6. Heard the arguments of both the side. Perused the records.

7. <u>The following points arise for my consideration;</u>

1. Whether the appellant proves that the trial court erred in convicting the appellant for the offence punishable under Sec.138 of N.I.Act.?
2. Whether the appellant proves that the interference of this court is required with Impugned judgment of the Trial court?
3. Whether the appeal filed by the appellant is deserves to be allowed ?
4. What order?

8. <u>My answer to the above points are as follows:</u>

Point Nos.1 to 3 : In the **Negative**

Point No.4 : As per the final order, for the following:

:REASONS:

9. Point Nos.1 to 3 : Since these points are interconnected to each other they are taken together for discussion in order to avoid repetition of the facts.

The accused and complainant are known to each other. The accused towards his legal necessities has borrowed a sum of Rs.1,50,000/- from the complainant on 22.03.2022. Towards discharge of the said loan, accused issued post dated cheque bearing No.488440 dated 22.04.2022 drawn on State Bank of India, Periyapatna Branch for sum of Rs.1,50,000/- in favour of complainant. When complainant presented the said cheque for encashment through his banker, the same was dishonoured as "Funds Insufficient" and issued endorsement dated 25.04.2022. Thereafter, the complainant issued legal notice on 05.05.2022 to the accused calling upon to pay the cheque amount within 15 days from the date of receipt of said notice. The said notice was duly served on 10.05.2022 to accused. But, the accused has not made any attempt to pay the cheque amount. Thus, complainant was constrained to initiate legal proceedings against the accused by presenting complaint U/S

200 of Cr.PC, alleging commission of offence punishable U/S 138 of N.I. Act.

10. The complainant in order to prove the complaint, he himself examined as P.W.1 and 06 documents have been marked at Ex.P.1 to 6. In the evidence of P.W.1 he reiterated all the averments of the complaint. Further in support of say of P.W.1, he produced the cheque as per Ex.P.1, Bank endorsement as per Ex.P.2, Pay-in-Slip as per Ex.P3, postal receipt as per Ex.P4, postal acknowledgment as per Ex.P5 and Legal notice as per Ex.P.6.

11. On the other hand the accused has not lead any evidence and not produced any documents on his behalf.

12. On careful perusal of the trial court records and the Judgment, it is observed that, PW1 has been cross-examined by the accused, but nothing is elicited to disprove the transaction between them and also not elicited anything to disprove that Ex.P1 not belongs to him.

13. It is important to note that, the evidence of P.W.1 is clearly corroborated with Ex's.P 1 to P 6. Ex.P.1 is the cheque issued by the accused was dishonoured with an endorsement that "Funds Insufficient". In that regard P.W.1 produced the bank endorsement as per Ex.P.2 which shows that the complainant presented the said cheque, but cheque was dishonoured with an endorsement as "Funds Insufficient". Thereafter the complainant issued notice as per Ex.P.6 calling upon the accused to repay the loan amount covered under the cheque. The notice served on accused. In that regard complainant produced postal receipt and postal acknowledgment as per Ex.P.4 and 5 clearly goes to show that notice issued by the complainant to accused. But, accused has not repaid the loan amount.

14. On perusal of the bank endorsement i.e. Ex.P2 clearly goes to show that, after issuance of cheque to the complainant, the accused intentionally not deposited any amount to his bank account only with intention to avoid the payment of Ex.P.1/cheque. Therefore, the evidence of P.W.1 and Ex's.P 1 to P 6 are clearly establishes that accused being the borrower has not paid loan amount to the complainant. In spite of service of notice he fails to pay the cheque amount.

The accused being borrower, he has to pay the loan amount and issued cheque in favour of complainant. On the assurance of accused, the complainant presented the cheque for encashment, but the cheque was dishonoured. Therefore, the evidence of P.W.1 and Ex's.P 1 to P 6 would clearly establishes the case of the complainant.

15. Further, the accused failed to prove that Ex.P1/cheque is not issued to the complainant. Instead of payment of loan amount, the accused issued Ex.P1/cheque, but the said cheque was dishonored. In that regard, Bank authority have issued bank endorsement as per Ex.P2 by mentioning the reason "Funds Insufficient". After issuance of notice, accused fails to repay the cheque amount. If really complainant misused the cheque/Ex.P1, the accused has to take necessary steps against the complainant. But in this case, the accused has not taken any steps against the complainant before the competent forum. Therefore the contention of the accused is unbelievable. If really, the accused has not issued Ex.P1/cheque, he has to rebut his evidence by producing believable evidence. But, herein this case, except the contention of the accused he has not produced any materials to disbelieve the case of the complainant.

16. At this stage, it is relevant to note down the provisions of Sec.138 of N.I.Act.

Sec.138 of N.I.Act provides as follows:

> "Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for (a term which may be extended to two years), or with fine which may extend to twice the amount of the cheque, or with both".

17. Thus from reading the aforesaid section, it is clear that the complainant has to prove the following essential ingredients for holding the accused guilty of offences under the said section.

(a) The cheque has been drawn by the accused on Bank account which is maintained by him with a particular Banker.

(b) The amount of money mentioned in the cheque is for discharging the legal liability either wholly or partially and

(c) The cheque is dishonoured or it is returned unpaid due to insufficiency of funds etc.,

18. In the case before the Trial court, the complainant has proved the fact that Ex.P.1 is belongs to the accused and the said cheque was drawn by the accused on the bank account maintained by him. The complainant also proved the fact that the said cheque was presented by the complainant to his banker for collection and the same was dishonoured by the banker of the accused with endorsement "Funds Insufficient". The aforesaid facts are proved by the PW 1 by adducing his oral evidence and also by producing the original cheque issued by the accused to him and also by producing bank endorsement and legal notice. In the evidence of P.W.1 he clearly and unequivocally states that the accused has issued cheque for discharge of his legal liability i.e. towards repayment of cheque amount.

19. Since the P.W.1 has proved that Ex.P.1/cheque is belongs to the accused and since he has contended that the said cheque was issued by the accused for discharge of his legal liability, the complainant will become overdraft of the cheque within the meaning of Sec.8 of N.I.Act. Once a cheque is issued by the drawer, a presumption under Sec.118(a) R/w Sec.139 of N.I.Act as follows:-

Sec.118(a) of N.I.Act provides as follows:-

"Until the contrary is proved, the following presumptions shall be made"

(a) That every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

Sec.139 of N.I.Act provides as follows:-

"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 for the discharge, in whole or in part, of any debt or other liability".

20. Thus U/s 139 of N.I.Act, the initial presumption arises in favour of the complainant that the said cheque was issued for discharge of legally enforceable debt. Once the cheque is proved to be relating to the account of the accused and he admits his signature on the said cheque, then the initial presumption as contemplated under Sec.139 of N.I.Act has to be arised by the court in favour of the complainant. Presumption under Sec.139 of N.I.Act is a legal presumption and it is a mandatory presumption. The initial mandatory statutory presumption as provided under Sec.118 R/w Sec.139 of N.I.Act are in favour of the complainant.

21. The presumption under Sec.118 R/w Sec.139 of N.I.Act are rebuttable presumption. The Hon'ble Supreme Court of India in the decision are relied upon by the learned counsel for the accused reported in (2019) 5 SCC 418 Basalingappa V/s Mudi Basappa has settled the position that when an accused has to rebut the presumption under Sec.139 of N.I.Act. Hon'ble Supreme Court of India has also laid down the standard of proof required to be established for rebutting the presumption u/s.118 r/w. S.139 of N.I.Act. In Basalingappa's case, Hon'b1e Supreme Court of India has held that "when on accused has to rebut *the presumption under Sec. 139 of N.I.Act, the standard of proof for doing so is that of preponderance of probabilities."* It is further held that if the accused is able to raise a probable defence which creates doubts about existence of a legally enforceable debt or liability, the prosecution can fail. It is further held that 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 the accused relies. It is further held that if the accused by disputing the financial capacity of the complainant to pay amount and if the accused has lead his evidence to prove it, the accused lead probable defence. It is further held that under such conditions, the burden would be on complainant to establish his financial capacity.

22. In the recent decision of Hon'ble Supreme Court of India reported in *(2021) 5 Supreme Court cases 283: 2021 Online SC 75 (Kalamani Tex and another V/s P.Balasubramanian, rendered by Hon'ble three judges bench, the Hon'ble Supreme Court of India has* discussed about the provisions of Sec.139 and 118 of N.I.Act. In the said judgment, the Hon'b1e Supreme Court of India has held in Para No.13 while discussing the provisions of Sec.118 and 139 of N.1.Act, that the statute mandates that once the signature of accused on the cheque is established, then these "reverse onus" classes become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him.

23. Further in the aforesaid judgement, the Hon'ble Supreme Court of India in Para No.15 has observed that the presumption raised u/Sec. 118 and 139 of N.I.Act are rebuttable in nature. A probable defence needs to be raised, which must meet the standard of "preponderance of probabilities and not mere possibility. Further, a bare denial of passing of consideration would not aid the case of the accused. In para No.17 of the Judgment, the Hon'ble Supreme Court of India has held that even if the arguments raised by the appellants are taken at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated, because, legally, even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. In the aforesaid judgment, in Para No.14, the Hon'b1e Supreme Court of India has held that when the accused has admitted his signature on the cheque, the Trial court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. It is further observed that the trial court fell in error when it called upon the complainant to explain the circumstances under which the appellants were liable to pay. It is further observed that, such approach of the Trial court was directly in the teeth of the established legal position and amounts to a patent error of low.

24. Thus from the aforesaid decision Supreme Court of India in Kalamani Tex case, it is clear that once the accused admits his signature on the cheque, it can be presumed u/Sec.139 of N.I.Act that the cheque was issued for discharge of legally enforceable debt. The court cannot insist the complainant to explain the circumstances under which the accused is liable to pay the cheque amount.

25. Herein before appellate court accused contended that, the trial court not considered the materials on record and convicted him. The impugned judgment has been passed without any application of mind and without any proper appreciation of evidence on record. Further on perusal of the trial court records it is clear that PW 1 himself examined as P.W.1 and he produced 6 documents at Ex's.P.1 to P6 to prove his case.

26. If really complainant misused the blank cheque belongs to the accused, he has to take necessary action against the complainant before the competent court of law. But he fails to do so. Under such circumstances the contention of accused remained as only contentions, but not proved by producing believable documents. It is the contentions of the learned counsel for the accused that the trial court has not applied judicious mind and not properly appreciated the materials on record.

27. It is important to note that on perusal of the trial court records, it is clear that the complainant has proved that Ex.P.1 is the cheque issued by the accused and the same is belongs to the bank account of accused. Further the accused has not denied his signature on Ex.P.1. Further, complainant presented the said cheque for encashment, but the same was dishonoured as "Funds Insufficient". Thereafter, the complainant has also issued notice to the accused. The notice served on accused. Inspite of service of notice, accused fails to repay loan amount. Therefore, evidence of P.W.1 and Ex's.P.1 to P6 would clearly establishes the case of complainant. Further the accused had actively participated in the proceedings before trial court at all the stages. Under such circumstances the contentions of the accused remained only contentions, but not proved before the trial court, by producing, consistent, cogent and material evidence. Admittedly Ex.P.1/ cheque issued by the accused to comply the payment of advance amount. The act of the accused seems that he intentionally wanted to prolong the matter by one or other reason. When the accused fails to prove his contention before the trial court, there is no reasons to remand the case to the trial court. Therefore, the complainant already proved his case before trial court by producing oral and documentary evidence. As such this court is of the opinion that the accused is not entitled for any equity.

28. The oral and documentary evidence adduced on behalf of the complainant before the trial court are sufficient to prove the contention of the complainant that the accused has fails to repay the cheque amount to the complainant. The materials on record i.e. Ex.P.1 belongs to bank account of accused and the accused has not denied his signature on Ex.P.1. Further the complainant has complied the provisions by issuing the notice to the accused. Inspite of service of notice, the accused fails to pay the cheque amount. Therefore, the complainant already proved his case before trial court by producing oral and documentary evidence. The accused instead of payment of loan amount, he issued a cheque towards discharge his liability, but the same was came to be dishounored with an endorsement that "Funds Insufficient" only with intention to cause loss to the complainant. Under these facts and circumstances this court is of the opinion that, the trial court has rightly come to the conclusion that the complainant has proved all the essential ingredients of Sec.138

of N.I.Act and complainant has proved that the accused had committed the offence punishable under Sec.138 of N.I.Act. The accused has failed to rebut the presumption is provided under Sec.118 R/w Sec.139 of N.I.Act by adducing probable defence evidence.

29. The accused has also fails to prove that the complainant has created the documents produced by him before trial court.

30. If really the complainant had misused the blank cheque issued by the accused, the accused has to take necessary action against the complainant before the competent court of law. But accused failed to do so. Therefore, this court do not find any valid reason to disbelieve the oral and documentary evidence adduced on behalf of the complainant before the trial court. Hence this court finds no merits in the appeal filed by the accused. The accused has fails to prove that the trial court has erred in convicting the accused for the offence punishable under Sec.138 of N.I.Act. As such this court has no valid grounds to interfere with the impugned judgment passed by the trial court in convicting the accused for the offence punishable under Sec.138 of N.I.Act.

31. The trial court directed the accused to pay fine of Rs.1,52,000/- (Rupees One Lakh Fifty Two Thousand only) within one month from the date of this order. In default accused shall undergo simple imprisonment for a period of 6 months. The complainant has not preferred any appeal regarding sentence. As such this court do not find any grounds to interfere with the impugned judgment passed by the learned trial court, so far as imposing of sentence is concerned. As such this court is of the opinion that appeal filed by the appellant is deserves to be dismissed. **Accordingly point No.1 to 3 are answered in the 'Negative'.**

32. Point No.4: In view of the above findings on point Nos.1 to 3 above, this court proceed to pass the following:

ORDER

The appeal preferred by the appellant/accused under Section.415 of B.N.S.S. r/w Sec.374(3) of Cr.P.C. of is hereby dismissed.

The order passed by the learned Civil Judge and JMFC, Periyapatna in C.C.No.2319/2022 dated 05.04.2025 is hereby confirmed.

Send back the records to the trial court along with a copy of this Judgment.

(Dictated to the Stenographer directly on computer, then corrected and pronounced by me in the open Court on this the 2nd day of April, 2026)

(T.GOVINDAIAH),
VIII ADDL. DISTRICT & SESSIONS JUDGE,
MYSURU, SITTING AT HUNSUR

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Location: VIII ADDL DISTRICT AND SESSIONS JUDGE, MYSURU SITTING AT HUNSUR