

KAMS320089892023



Presented on : 26-03-2021
Registered on : 26-03-2021
Decided on : 17-03-2026
Duration : 4 years, 11 months, 22 days

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

Dated this the 17th day of March 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.76/2021

APPELLANT :
**Accused in trial
court**

Krishnaiah

S/o Late Kuntaiah

Aged about 68 years

R/at Chittakyatanahalli Village,

Gavadagere Hobli,

Hunsur Taluk,

Mysuru District.

(By Sri.Lakshmi Kantha K.J., Advocate)

V/s

RESPONDENT :
**Complainant in
trial court**

N.Ravi

S/o Narasanayaka

Aged about 47 years

R/at Attimarada Beedi,

Kalkunike, Hunsur City,

Mysuru District.

(Absent)

: J U D G M E N T :

This appeal is preferred by appellant/accused under Sec.374 of Cr.P.C to set-aside the judgment in C.C.No.270/2018 dated 05.03.2021 passed by the Prl.Sr.Civil Judge and JMFC, Hunsur.

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. **The brief facts of the case are as follows:**

One Prakash S/o Jayaram introduced the accused to complainant long ago. In the month of April 2016, the accused had pressing financial necessities to meet fire wood for curing tobacco. Hence, he borrowed a hand loan of Rs.2,25,000/- from him and agreeing to repay the same with interest at rate of 24% p.a. Towards repayment of loan amount accused issued a post cheque bearing No.597183 dated 21.11.2017 for sum of Rs.2,25,000/- drawn on C.K.G.B. Hunsur in his favour in presence of Prakash. As per the instructions and

promise of the accused, the complainant presented the said cheque for encashment through his banker. But, the same was returned with an endorsement "Funds Insufficient". Accordingly, the complainant got issued legal notice dated 04.12.2017 to accused calling upon him to repay the amount. The same is served on accused on 21.12.2017. In spite of service of notice, the accused has neither reply nor complied with the notice. 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. Thereafter complainant filed the complaint against the accused before the trial court. Before the trial court the complainant examined as P.W.1 and one witness by name Prakash examined as PW.2 and got marked 5 documents as per Ex's.P-1 to P-5. The accused himself also examined as DW.1 and one witness by name Loksha examined as DW.2 and he also got marked one document i.e., Ex.D1.

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 grounds:

- The impugned Judgement dated 05.03.2021 in CC.No.270/2018 on the file of trial court is highly illegal, invalid, arbitrary, unreasonable, perverse, capricious, opposed to law and facts and probabilities of the case and contrary to materials and record, caused miscarriage of justice and necessary to interfere by this court.
- The Learned trial court erroneously passed the Judgment without appreciating the merits of the offences alleged against the appellant.
- The Learned trial court erred in convicting and sentencing the accused for the offence punishable u/sec. 138 of N.I.Act.
- 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 not noticing the failure of the complainant to establish that the transaction of Rs.2,25,000/- took place in between the accused and complainant and in that connection cheque was issued by accused in favour of the complainant.
- Unless and until the cheque issued by the appellant towards the discharge of the debt, the cheque in the name of the complainant is not a ground for the complainant to prosecute the appellant for an offence u/sec.138 of N.I.Act.
- 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. The following points arise for my consideration:

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. My answer to the above points are as follows:

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.

One Prakash S/o Jayaram introduced the accused to complainant long ago. In the month of April 2016, the accused had pressing financial necessities to meet fire wood for curing tobacco. Hence, he borrowed a hand loan of

Rs.2,25,000/- from him and agreeing to repay the same with interest at rate of 24% p.a. Towards repayment of loan amount accused issued a post cheque bearing No.597183 dated 21.11.2017 for sum of Rs.2,25,000/- drawn on C.K.G.B. Hunsur in his favour in presence of Prakash. As per the instructions and promise of the accused, the complainant presented the said cheque for encashment through his banker. But, the same was returned with an endorsement "Funds Insufficient". Accordingly, the complainant got issued legal notice dated 04.12.2017 to accused calling upon him to repay the amount. The same is served on accused on 21.12.2017. In spite of service of notice, the accused has neither reply nor complied with the notice. 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 one witness is examined as PW.2 and 5 documents have been marked at Ex's.P-1 to 5. 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, Copy of legal notice as per Ex.P.3, postal receipt as per Ex.P4, Postal acknowledgment as per Ex.P5.

11. On the other hand, the accused himself has also examined as DW.1 and one witness is examined as DW.2 and one document has been got marked as per Ex.D1.

12. On careful perusal of the trial court records and the Judgment, it is observed that, PW-1 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.P-1 not belongs to him. Further, accused also examined as DW-1 and one document has been marked.

13. It is important to note that, the evidence of P.W.1 is clearly corroborated with Ex's.P-1 to P-5. Ex.P-1 is the cheque issued by the accused was dishonoured with an endorsement that "Funds Insufficient". In that regard PW-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.P3 calling upon the accused to repay the loan amount covered under the cheque. In that regard complainant produced postal receipt and postal acknowledgment as per Ex.P.4 and Ex.P.5 clearly goes to show that notice issued by the complainant was served on the accused and inspite of issuance of notice, accused has not repaid the said 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.P1 to P5 are clearly establishes that accused being the borrower has not paid loan amount to the complainant. In spite of issuance of notice he fails to pay the cheque amount. The accused being borrower, he has to pay the said 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-5 would clearly establishes the case of the complainant.

15. Though the accused himself examined as DW.1 and one document has been marked as per Ex.D1 is no way connected to the transaction between complainant and accused. Therefore, evidence of DW.1 and Ex.D1 is not helpful to the defence of the accused.

16. Further, the accused failed to prove that Ex.P1/cheque is not issued to the complainant. Instead of payment of said amount, the accused issued Ex.P1/cheque, but the said cheque was dishonored. In that regard, Bank authority have issued the 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 evidence of DW.1 and Ex.D1 he has not produced any materials to prove his defence. Therefore, the evidence of DW.1 and Ex.D1 is not helpful to the defence of the accused.

17. 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”.

18. 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.,

19. 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 PW1 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.

20. 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”.

21. 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.

22. 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'ble 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.

23. 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'ble Supreme Court of India has held in Para No.13 while discussing the provisions of Sec.118 and 139 of N.I.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.*

24. 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'ble 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 law.

25. 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.

26. 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 the perusal of the trial court records it is clear that PW1 himself examined as P.W.1 and he produced 5 documents at Ex.P.1 to Ex.P5 to prove his case.

27. On perusal of trial court records, accused himself has examined as DW.1 and one document has been marked to disprove the case of the complainant. But, the contention of the accused is no way helpful to disprove the case of complainant.

28. 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.

29. 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. In spite of issuance of notice, accused fails to repay loan amount. Therefore, evidence of P.W.1 and 2 and Ex.P.1 to Ex.P5 would clearly establishes the case of complainant. Further, the accused had actively participated in the proceedings before trial court at all the stages. Evidence of DW.1 and DW.2 and Ex.D1 is noway helpful to the defence of accused. 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.

30. 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. In spite of issuance 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 dishonoured 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.

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

32. 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.

33. The trial court directed the accused to pay fine of Rs.3,56,625/- (Rupees Three Lakhs Fifty Sixty Thousand Six Hundred Twenty Five only) and is sentenced to undergo SI for a period of 4 months. In default accused shall undergo simple imprisonment for a period of 30 days. 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, this court answered **Point Nos.1 to 3 in the 'Negative'**.

34. 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 374 of Cr.P.C. is hereby dismissed.

The order passed by the learned Prl.Sr.Civil Judge and JMFC, Hunsur in C.C.No.270/2018 dated 05.03.2021 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 17th day of March, 2026)

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