KAMS400001002026

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC, At K.R.NAGARA

PRESENT: Sri. Aravindra B.C., ***B.A., L.L.B.,***
Senior Civil Judge & JMFC,
K.R.Nagara.

Dated this the 08th day of June, 2026

C.C. No.37/2026

Complainant : **Sri. Srinivasa K.B.,**
S/o Late Basappa,
Aged about 60 years,
R/at: D.K.Koppal village,
Hebbal Hobli,
K.R.Nagar Taluk.

(By Sri. P.D., Advocate)

Vs.

Accused : **Sri. Shivamada S.M.,**
S/o Malleshaiah,
Aged about 40 years,
R/at: C/o Lalitha,
W/o Doreswamy,
Ward No.11, Bazar Road,
K.R.Nagar Town,
Mysuru District.

(By Sri. J.K.S., Advocate)

1.	Name of the Complainant	:-	Sri. Srinivasa K.B.
2.	Name of the Accused	:-	Sri. Shivamada S.M.
3.	Offence	:-	U/s 138 of Negotiable Instrument Act-1881

4.	Plea of Accused	:-	Pleaded not guilty and make defence
5.	Date of Institution	:-	13.01.2026
6.	Date of Judgment	:-	08.06.2026
7.	Final Order	:-	Convicted

(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC,
K.R.NAGAR.

J U D G M E N T

The complainant has filed the complaint under Section 223 of the Bharatiya Nagarik Suraksha Sanhita, alleging that the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act [herein after reference for short as N.I. Act].

2. **In briefs case of the complainant's bank are as under:-**

It is the case of the complainant is that, the accused is known to the complainant. In that acquaintance, the accused has approached the complainant and borrowed a sum of Rs.80,000/- from him on 20.08.2025 for his legal necessities and agreed to repay the same within short period. On the same day, he has issued cheque bearing No.000007 for Rs.80,000/- dated 21.11.2025 drawn on H.D.F.C. Bank, Mysuru Branch and requested the complainant to present the cheque on 21.11.2025 for enchashment.

3. Further it is submitted that, the complainant has presented the aforesaid cheque for encashment, but the said cheque was dis-honoured with an endorsement "**Funds Insufficient**" on 24.11.2025. Thereafter, the complainant got issued legal notice to the accused on 05.12.2025 calling upon him to pay the amount covered under the cheque in question. Inspite of it, the accused has not paid the cheque amount nor reply to the said notice. Hence, the complainant has filed this complaint.

4. That on complaint being lodged by the complainant, this court took the cognizance of the offence punishable under Section 138 of N.I. Act and registered the case as a P.C.R. and thereafter recorded sworn statement of the complainant and after satisfying with the materials placed

on record registered the case against the accused in Registered No.III & process was issued to him.

5. That, the accused in pursuance of the said summons appeared before this court through his counsel and he was enlarged on bail. The plea was recorded Under Section 274 of the Bharatiya Nagarik Suraksha Sanhita. The substance of the accusation was stated to him and asked whether he pleads guilty or has any defence to make. The accused not pleads guilty and he submits that he make defence. As per Section 145(2) N.I. Act, the accused has not filed application seeking permission to cross-examination to the PW-1. Hence, statement of the accused under Section 351 of the Bharatiya Nagarik Suraksha Sanhita is dispensed. Further, the record shows that the accused has not lead evidence. Hence, the evidence of the accused is taken as nil.

6. The sworn statement of the complainant treated as evidence and got marked the cheque and other documents as Ex.P1 to P5.

7. Heard arguments from the counsel appearing on behalf of the parties.

8. In view of the materials placed before this court, the points arise for consideration of this court as follows:

1) Whether the complainant proves beyond shadow of doubt that, the accused has issued cheque bearing No.000007 dated: 21.11.2025 drawn on HDFC Bank, Mysuru Branch for Rs.80,000/- (Rupees Eighty Thousand Only) to the complainant in discharge of legally recoverable debt or liability and the same was dishounored for 'Funds Insufficient' and even after demanded legal notice the accused has not paid debt covered under the above said cheque and thereby committed an offence punishable under section 138 of N.I. Act ?

2) What order ?

9. The findings of this court on the above points are as under:

Point No.1	**:**	**In the Affirmative**
Point No.2	**:**	**As per final order**

For the following;

R E A S O N S

10. **Point No.1:-** The specific case of the complainant is that he and accused are well known to each others and out of the said acquaintance, the accused has approached the complainant for financial assistance and received a sum of Rs.80,000/- from the complainant on 20.08.2025 and towards discharge of the said amount, the accused has issued cheque in question to the complainant. On presentation the said cheque returned dishonoured as “Funds Insufficient”. An intimation in this regard was received on 24.11.2025. Thereafter, the complainant issued demand notice 05.12.2025 calling upon the accused to pay the amount covered under the cheque in question. Inspite of it, the accused has not come forward to pay over amount.

11. In order to prove his case, the complainant was appeared before the Court and sworn statement recorded, the same was treated as his evidence and got marked so

many as 5 documents which are marked as Ex.P-1 to P-5. Ex.P-1 is the original cheque bearing No.000007, dated: 21.11.2025 for sum of Rs.80,000/- drawn on HDFC Bank, Mysuru Branch. Ex.P-2 is the endorsement issued by the State Bank of India, K.R.Nagar Branch on 24.11.2025. Ex.P-3 is the legal notice dated 05.12.2025. Ex.P4 and P5 are the postal receipt and unserved postal cover respectively.

12. It is to be noted that in the case of this nature, the most essential ingredients, the complainant has to be established that the cheque in question pertains to an account held by the accused and it bears his signature.

13. As stated above, the complainant got examined himself as PW.1 by reiterating the averments made in the complaint. He deposed that, the accused borrowed amount of Rs.80,000/- and towards discharge of the loan amount, the accused has issued cheque in question. On presentation, it was dishonoured. Then, he make demand to repay the said sum by issuing notice. In spite of it, the

accused has not paid the said amount. On the other hand, the accused admits that the cheque in question belongs to him and signature found at Ex.P1 is also belongs to him at the time of recording substance of accusation. From the perusal of the aforesaid evidence, it becomes clear that Ex.P.1 cheque belongs to the account maintained by the accused and it also bears his signature.

14. Moreover, the Ex.P1 cheque has not been returned unpaid for the reason of any variation or difference in the signature of its drawer. Further, as per the provision contained in Section 146 of N.I. Act, the court shall, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume that the fact of dishonoured of such cheque, unless and until such fact is disproved.

15. In the case on hand, as stated above Ex.P1 cheque has not been dishonoured for any defect or difference in the signature of the drawer, but it has been returned with memo as Ex.P2 for '**Funds Insufficient**'. Hence, it has to

be concluded that the Ex.P1 cheque was returned unpaid for ‘insufficient funds’ in the account of the accused. Hence, there is no difficulty in holding that the Ex.P1 cheque belongs to the account maintained by the accused and it bears his signature.

16. Further, it is seen from the records that Ex.P1 cheque was drawn on 21.11.2025 and it was presented to the bank for encashment within the period of validity and the same was returned with shara as ‘**Funds Insufficient**’ on 24.11.2025 as per Ex.P2. The complainant demanded for payment of said amount by issuing notice as per Ex.P3 on 05.12.2025 to the accused within 30 days from the date of return of said cheque as unpaid. Despite issuance of said notice, the accused has not complied with demand made in the notice issued by the complainant within 15 days from the receipt of the said notice and therefore the complainant has filed the present complaint. These aspects are not at all disputed by the accused. Thus, the other ingredients

enumerated in the proviso appended to section 138 of N.I. Act, are fulfilled.

17. It is also necessary refer to the preposition of law for better understanding in respect of the Negotiable Instrument Act. At this stage it is relevant to refer the judgment of Hon’ble Apex Court in case of **Basalingappa V/s Mudibasappa** reported in **2019(5) SCC 418** at paragraph 25 reads thus;

> ***“25 we having noticed the ratio laid down by this court in above cases on Section 118(a) and 139, we now summarise the principles enumerated by this court in following manner.***
>
> ***25.1 once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.***
>
> ***25.2 The presumption under Section 139 is a rebutaable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.***
>
> ***25.3 To rebut the presumption, it is open for the accused to rely on evidence***

led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. 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 rely.

25.4 That is not necessary for the accused to come in the witness box in support of his defence. Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5 It is not necessary for the accused to come in the witness box to support his defence".

18. On careful reading of the above said provision, it makes clear that, once the execution of the cheque is admitted, Section 139 of the N.I. Act mandates the presumption that cheque was issued for the discharge of any debt or other liability. The presumption is rebuttable presumption, the onus is on the accused to raise the probable defence. To rebut the presumption it is for the accused to rely on the evidence led by the complainant or the accused also rely on the materials submitted by the

complainant in order to raise the probable defence. It is not necessary for the accused to enter the witness box in support of his defence.

19. By keeping these aspects in mind, let me proceed to consider whether the accused has rebutted the presumption. In order to rebut the presumption available under Section 139 of N.I. Act in favour of complainant the accused has not cross examined to the complainant even the accused not entered into the witness box to rebut the presumption available under Section 118 and 139 of N.I. Act.

20. In the instant case, the complainant has complied with the basic mandatory requirements of Section 138 of the N.I. Act. Admittedly, the cheques in question were presented to the said bank and the same is returned unpaid. Despite issuance of notice, the accused neither complied with the notice nor repaid the amount covered under the cheque. Since, the complainant has complied with the mandatory requirement Section 138 of N.I. Act and

as the basic ingredients to constitute an offence under Section 138 of the N.I. Act has been established.

21. Therefore, in view of the facts and circumstances of the case, the accused is guilty of the offence punishable under Section 138 of N.I. Act. Therefore, this court came to conclusion that, the accused is liable to pay the fine amount of Rs.90,000/- out of which Rs.85,000/- is ordered to paid to the complainant as compensation under Section 395(1) of Bharatiya Nagarik Suraksha Sanhita in default of said amount six months simple imprisonment would suffice.

22. Whenever a sentence of fine is imposed, a default sentence is provided. If the accused undergo the default sentence the fine cannot be recovered. But, the proviso to sub Section 1 of Section 461 of Bharatiya Nagarik Suraksha Sanhita, according to which when compensation is ordered to be paid out of fine amount under Section 395(1) of Bharatiya Nagarik Suraksha Sanhita, then the fine can be recovered even if the accused undergoes the default sentence such clarification is required to be made in the

operative portion of the judgment. **With these observations this Court answered Point No.1 is in the Affirmative.**

23. **Point No.2**:- In view of above reasons, this Court proceed to pass the following:

ORDER

By exercising the powers conferred under Section 278(2) of Bharatiya Nagarik Suraksha Sanhita, the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act.

The Accused is sentenced to pay a fine of Rs.90,000/-, in default to pay, the accused shall undergo simple imprisonment for 6 months.

Out of fine amount Rs.5,000/- shall be payable towards the state and in default to pay it, the accused shall undergo simple imprisonment for another one month.

Further, acting under Section 395(1) (B) of Bharatiya Nagarik Suraksha Sanhita, the remaining fine amount of Rs.85,000/- is hereby ordered to pay as

compensation by the accused to the complainant.

In the event of accused failed to pay the compensation amount of Rs.85,000/- to the complainant is at liberty to recover the same in usual manner in accordance with law.

It is made clear that even if the accused undergoes the default sentence, he is not absolved of liability to pay the fine amount in view of the proviso to Sub Section 1 of Section 461 of Bharatiya Nagarik Suraksha Sanhita.

The bail bond of the accused shall stands canceled.

Office is directed to furnish free copy of this judgment to the accused.

(*Dictated to the Stenographer on computer, revised and corrected by me and then pronounced in the open court this the* ***08th day of June, 2026***)

(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC.,
K.R.NAGAR.

A N N E X U R E

Witnesses examined on behalf of the Complainant :

PW.1 : Sri. Srinivasa K.B.

Documents exhibited on behalf of the Complainant :

Ex.P1	:	Cheque bearing No.000007 for sum of Rs.80,000/- dated: 21.11.2025 drawn on HDFC Bank, Mysuru Branch.
Ex.P2	:	Bank endorsement dated: 24.11.2025
Ex.P3	:	Legal notice dated: 05.12.2025
Ex.P4	:	Postal receipt
Ex.P5	:	Unserved postal cover

Witnesses examined on behalf of the accused :-

-NIL-

Documents exhibited on behalf of the accused:-

-NIL-

Digitally signed by ARAVINDRA B C
Location: Senior Civil Judge and JMFC, K.R.Nagar

(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC,
K.R.NAGAR.