



**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 07<sup>th</sup> day of March, 2026

**C.C. No.299/2024**

**Complainant :** **Navanagara Urban  
Cooperative Bank Limited,  
K.R.Nagar.**  
Represented by Suhas M.P.,  
Branch Manager,  
Navanagara Urban Cooperative  
Bank, K.R.Nagar Branch,  
K.R.Nagar Town.  
(By Sri. B.K.S., Advocate)

Vs.

**Accused :** **Sri. Vinay U.S.,**  
S/o Srinivas Gowda,  
Aged Major,  
R/at: Undavadi village,  
Mullur Post, Gavadagere Hobli,  
Hunsur Taluk.  
(By Smt. H.K.P., Advocate)

**J U D G M E N T**

The complainant's bank has filed complaint under Section 200 of the Code of Criminal Procedure, 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:**

The complainant's bank has submitted that, in the year 2020 the accused has approached the complainant's bank and availed a loan of Rs.50,000/- from its bank on 04.01.2020. Thereafter, the accused has failed to repay the aforesaid loan amount to the bank after the expiry of the due period. Hence, the complainant's bank has approached and demanded the accused to repayment of the said loan amount, by that time the accused has issued a post dated cheque bearing No.132576 on 28.12.2023 for Rs.77,567/- drawn on Vijaya Bank, K.R.Nagar Branch towards discharge of his existing legal liability.

3. Further it is submitted that, the complainant's bank has presented the said cheque for encashment, but the said cheque was dis-honoured with an endorsement "**Funds Insufficient**" on 15.12.2023. Thereafter, the



complainant got issued legal notice to the accused on 28.12.2023 calling upon him to pay the amount covered under the cheque in question. The said notice duly served to the accused. Despite service of it, the accused has not paid the cheque amount nor reply to the said notice. Hence, the complainant's bank has filed this complaint.

4. That on complaint being lodged by the complainant's bank, 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's bank 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 251 of Code of Criminal Procedure. 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. On the same day, the statement of the accused as contemplated Under Section 313 of the Code of Criminal Procedure as recorded and explained to him and he denied all incriminating evidence appearing against him and submitted that he has chosen to lead his evidence.

6. The sworn statement filed by the complainant's bank during pre-summoning stage is considered as the evidence of the complainant's bank as per the decision of the **Hon'ble Supreme Court rendered in the case of Indian Bank Association and others V/s Union of India and others reported in 2014(5) SCC 590 and also as per the observations made of Hon'ble High court of Karnataka in the case of M/s Mesh Trans Gears Private Limited V/s Dr. R.Parvathareddy.**

7. To substantiate its contention, the bank manager of the complainant's bank has examined himself as PW.1 and got marked the documents at Ex.P1 to P5. On the other



hand, the accused did not cross-examined to the PW-1 even after giving sufficient opportunity. Hence, the cross-examination of PW-1 is taken as nil.

8. After closure of the complainant's bank side evidence, the accused did not examined himself even after giving sufficient opportunity. Hence, the defence evidence taken as nil.

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

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

**1) Whether the complainant's bank proves beyond shadow of doubt that, the accused issued cheque bearing No.132576 dated: 07.09.2023 drawn on Vijaya Bank, K.R.Nagar Branch for Rs.77,567/- (Rupees Seventy Seven Thousand Five Hundred And Sixty Seven Only) to the complainant's bank in discharge of legally recoverable debt or liability and the same was dishonored 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 NI Act?**

**2) What order?**

11. 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;**

**REASONS**

12. **Point No.1:-** It is the case of the complainant's bank is that, the accused has availed a loan of Rs.50,000/- from the complainant's bank on 04.01.2020. Towards discharge of the loan amount, he had issued post dated cheque bearing No.132576 on 07.09.2023 for Rs.77,567/- drawn on Vijaya Bank, K.R.Nagar Branch. The said cheque was presented through its banker Navanagara Urban Cooperative Bank Limited, K.R.Nagar Branch. But, it was dishonoured with an endorsement "**Funds Insufficient**" in



the accused account. An intimation in this regard was received on 15.12.2023. Thereafter, the complainant's bank has issued demand notice 28.12.2023 calling upon the accused to pay the amount covered under the cheque in question. Despite service of legal notice, the accused has not come forward to pay over amount.

13. In order to prove its case, the bank manager of the complainant's bank 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.132576, dated: 07.09.2023 for sum of Rs.77,567/- drawn on Vijaya Bank, K.R.Nagar Branch. Ex.P-2 is the endorsement issued by the Navanagara Urban Cooperative Bank Limited, K.R.Nagar Branch Branch on 15.12.2023. Ex.P-3 is the legal notice dated 28.12.2023. Ex.P4 and P5 are the postal receipt and Postal acknowledgment respectively.



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

15. As stated above, the bank manager of the complainant's bank got examined himself as PW.1 by reiterating the averments made in the complaint. He deposed that, the accused borrowed amount of Rs.50,000/- and towards discharge of the said 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 not paid the said amount. On the other hand, the oral and documentary evidence of the complainant's bank is not challenged by the accused. 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.



16. 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 dishonour of such cheque, unless and until such fact is disproved.

17. 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.

18. Further, it is seen from the records that Ex.P1 cheque was drawn on 07.09.2023 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 15.12.2023 as per Ex.P2. The complainant's bank demanded for payment of said amount by issuing notice as per Ex.P3 on 28.12.2023 to the accused within 30 days from the date of return of said cheque. Despite service 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.

19. It is also necessary to refer 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 rebuttable 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”.***

20. 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.

21. 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.

22. One more aspect to be considered is that, notice issued after dishonour of cheque was duly served upon the accused. The accused not chosen to reply the notice. No prudent man would keep quiet when stranger issued the notice claiming the amount and stating that, the cheque issued by him was dishonoured. Therefore, this court is of the opinion that, the cheque was issued by the accused towards discharge of the said sum.

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

24. Therefore, in view of the facts and circumstances of the case, 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.87,567/- out of which Rs.82,567/- is ordered to paid to the complainant's bank as compensation under Section 357(1) of Cr.P.C. in default of said amount six months simple imprisonment would suffice.

25. 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 421 of Cr.P.C. according to which when compensation is ordered to be paid out of fine amount under Section 357(1) of Cr.P.C., 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.**

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

### **ORDER**

***By exercising the powers conferred under Section 255(2) of code of criminal procedure 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.87,567/-. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 1 month.***

***Out of fine amount, a sum of Rs.82,567/- is awarded to the complainant's bank as compensation as per Section 357(3) of Cr.P.C. The remaining amount of Rs.5,000/- shall deposited to the state. In default to payment of said***



***fine, the accused shall undergo simple imprisonment for another one month.***

***In the event of accused failed to pay the compensation amount of Rs.82,567/- to the complainant's bank 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 421 of Cr.P.C.***

***The bail bond of the accused shall stand canceled.***

***Office is directed to furnish free copy of this judgment to the accused in compliance under section 362(1) of Cr.P.C 1973.***

*(Dictated to the Stenographer on computer, revised and corrected by me and then pronounced in the open court this the 07<sup>th</sup> day of March, 2026)*

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

### **ANNEXURE**

#### **Witnesses examined on behalf of the Complainant :**

PW.1 : Sri. Suhas M.P.



**Documents exhibited on behalf of the Complainant :**

- Ex.P1 : Cheque bearing No.132576 for sum of Rs.77,567/- dated: 07.09.2023 drawn on Vijaya Bank, K.R.Nagar Branch.
- Ex.P1(a) : Signature of the accused
- Ex.P2 : Bank endorsement dated: 15.12.2023
- Ex.P3 : Legal notice dated: 28.12.2023
- Ex.P4 : Postal receipt
- Ex.P5 : Postal Acknowledgment

**Witnesses examined on behalf of the accused :-**

-NIL-

**Documents exhibited on behalf of the accused:-**

-NIL-

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