KAMS400012562023

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 01st day of June, 2026

C.C. No.330/2023

Complainant : **Navanagara Urban Cooperative Bank Limited,**
K.R.Nagar Branch,
Represented by its manager,
Sri. Suhas M.P.,
S/o Pandurangegowda,
Aged about 38 years,
K.R.Nagar Town.

(By Sri. B.S.M., Advocate)

Vs.

Accused : **Sri. Mahesha H.N.,**
S/o Narasimhegowda,
Aged Major,
R/at: Hampapura village & post,
Hosaagrahara Hobli,
K.R.Nagar Taluk,
Mysuru District.

(By Sri. D.K., Advocate)

JUDGMENT

That, the complainant's bank has filed the private complaint Under Section 200 of Code of Criminal Procedure against the accused for taking action against him for the offence punishable Under Section 138 of the Negotiable Instrument Act.

2. **The brief case of the complainant's bank is as under:-**

It is the case of the complainant's bank is that, the accused has approached the complainant's bank for financial assistance on 19.07.2018. The complainant's bank sanctioned loan of Rs.1,00,000/- to the accused. The accused has agreed to repay the said amount along with interest at the rate of 13.5% per annum. After availment of loan, the accused has failed to repay the balance loan amount of Rs.1,05,000/-. At that time point of time, the complainant's bank has demanded the accused to repay the balance loan amount of Rs.1,05,000/-. At that time point of time, the accused had issued a cheque bearing No.309415 dated: 14.06.2023 for Rs.1,05,000/- in favour of complainant's bank drawn on Corporation Bank, K.R.Nagar Branch. As per the assurance of the accused, the complainant's bank presented the said cheque for encashment, the said cheque was dis-honoured with an endorsement "**Funds Insufficient**" on 16.06.2023. Thereafter, the complainant's bank has issued legal notice on 22.06.2023 calling upon the accused to pay the amount covered under the cheque in question. Inspite of it, the accused not repay the said amount. In view of the same, the complainant's bank has constrained this complaint.

3. On presentation of the complaint, this court has took cognizance of the offence under Section 138 of N.I. Act. In pursuance of service of summons, the accused has put his appearance before this court and filed bail application under Section 436 of Code of Criminal

Procedure and the same was allowed and the accused was released on bail.

4. The copies of the prosecution paper was forwarded to the accused as per Section 207 of Code of Criminal Procedure. The plea was recorded under Section 251 of Code of Criminal Procedure. The substance of accusation was read over to the accused, to which, he pleaded not guilty and make a defence.

5. To substantiate its contention, the bank manager of the complainant's bank has examined himself as PW.1 and got marked 5 documents at Ex.P-1 to P-5. The complainant's bank side of the evidence was closed. The statement of the accused under section 313 of Code of Criminal Procedure has been recorded. The accused has denied the incriminating evidence appearing against him. But, he did not entered into the witness box in order to prove his defence taken by him in the cross-examination of PW-1.

6. Heard arguments from the counsel appear on behalf of the parties to the complaint.

7. 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.309415 dated: 14.06.2023 drawn on Corporation Bank, K.R.Nagar Branch for Rs.1,05,000/- (Rupees One Lakh And Five Thousand 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 N.I. Act ?***
2. ***What order ?***

8. 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

9. **Point No.1:-** It is the case of the complainant's bank is that, the accused has approached the complainant's bank for financial assistance on 19.07.2018. The complainant's bank sanctioned loan of Rs.1,00,000/- to the accused. The accused has agreed to repay the said amount along with interest at the rate of 13.5% per annum. After availment of loan, the accused has failed to repay the balance loan amount of Rs.1,05,000/-. At that time point of time, the complainant's bank has demanded the accused to repay the balance loan amount of Rs.1,05,000/-. At that time point of time, the accused had issued a cheque bearing No.309415 dated: 14.06.2023 for Rs.1,05,000/- in favour of complainant's bank drawn on Corporation Bank, K.R.Nagar Branch. As per the assurance of the accused, the complainant's bank has presented the said cheque for encashment, the said cheque was dis-honoured with an endorsement "**Funds**

Insufficient” on 16.06.2023. Thereafter, the complainant’s bank issued legal notice on 22.06.2023 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 any amount.

10. In order to prove the case of the complainant’s bank, the bank manager of the complainant’s bank has appeared before this court, filed affidavit in lieu of examination-in-chief and examined himself as PW.1 and reiterated the averments made in the complaint and got marked so many as 5 documents, which are marked as Ex.P1 to P5. Ex.P-1 is the original cheque bearing No.309415 dated: 14.06.2023, for sum of Rs.1,05,000/-, drawn at Corporation Bank, K.R.Nagar Branch. Ex.P-2 is the endorsement issued by the Navanagara Urban Cooperative Bank Limited, K.R.Nagar Branch on 16.01.2023. Ex.P-3 is the legal notice dated: 22.06.2023.

Ex.P-4 & P5 are the postal receipts and postal acknowledgment respectively.

11. On the other hand, the accused has taken the defence that, the complainant’s bank has claimed excess amount from the accused. Further, the accused has paid amount of Rs.1,30,000/- to the complainant’s bank.

12. Before appreciating the rival contentions of the parties, this court glance the statutory provision of under Section 138 of N.I. Act, which reads as under;

> ***Section 138:-*** ***Dishonour of cheque for insufficiency, etc., of funds in the account. - 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: Provided that nothing contained in this section shall apply unless—

[a] the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

[b] the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

[c] the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability"

means a legally enforceable debt or other liability.]

13. Thus, on plain reading of Section 138 of the Act, it is clear that where any cheque drawn by a person or 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 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 the account by an agreement made with the bank, such person shall be deemed to have committed an offence under this Section. So, the essential ingredients of Section 138 are that, there must be a debt or other liability legal enforceable that a cheque must be given by the debtor in favour of the creditor in discharge of the said debt or liability in whole or in part and that cheque should be

returned by the bank for insufficient of funds to the credit of the debtor to honor the cheque.

14. This court has carefully perused the Section 138 of N.I. Act and the law declared by the Hon’ble High Court of Karnataka in the decision reported in **ILR 2008 Karnataka page 4029** between **Shivamurthy V/s Amruthraj and Another**, decision rendered by the Hon’ble Apex court reported in **AIR 2008 SC 1325** between **Krishna Janardhan Bhat V/s Dattatraya G Hegde**: A careful reading of Section 138 of NI Act and the ratio laid down in the aforesaid decisions makes it clear that, the Section 138 of N.I. Act has three ingredients which are as follows:

1) That there is a legally enforceable debt

2) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which pre- supposes a legally enforceable debt; and

3) that the cheque so issued had been returned due to insufficiency of funds.

15. Keeping in view of the ingredients of Section 138 of N.I. Act, now, this court feels that, it is correct to reproduce the Section 139 and 118 of NI Act here itself.

Section 139 of N.I. Act reads as follows:

Presumption in favour of holder:- 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

The Section 118 (a) of N.I. Act reads as follows:- presumption has to negotiable instruments:- until the contrary is proved, the following presumption shall be made.

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

16. Keeping in view of the ingredients Section 138 and the provision of Sections 139 and 118 (a) of N.I. Act,

now this court proceed to discuss the documents of this case.

17. It must be noted that, to substantiate the contentions of the complainant's bank, the bank manager of the complainant's bank himself has examined as PW.1 and got marked 5 documents as per Ex.P1 to P5. In view of this, the court is correct to discuss about the documentary evidence here itself for the sake of convenient.

18. The Ex.P1 is the cheque bearing No.309415 for Rs.1,05,000/-, drawn on Corporation Bank, K.R.Nagar Branch Dated: 14.06.2023. The Ex.P1 presented for encashment on 14.06.2023. The Ex.P1 presented to the bank within three months from the date of receipt of cheque as per Section 138 of N.I. Act.

19. The Ex.P-2 is the endorsement, it shows that the complainant's bank had presented the aforesaid cheque for encashment at Navanagara Urban Cooperative Bank

Limited, K.R.Nagar Branch but. the same was returned unpaid on 16.06.2023 with remarks “Funds Insufficient”.

20. It must be noted that, **as per clause (b) of Proviso of Section 138 of N.I. Act,** the complainant’s bank was required to make a demand for payment of said amount within 30 days from the date of receipt of cheque as unpaid. The Ex.P3 is legal notice dated: 22.06.2023 shows that, the complainant’s bank made a demand in writing, calling upon the accused to make repayment of the said loan amount by issuing notice, which is within 30 days from the date of receipt of cheque as unpaid. The Ex.P5 is the postal acknowledgment shows that, the said legal notice got issued by the complainant’s bank was served to the accused. Therefore, the complainant’s bank has fulfilled all the ingredients which were required for the completion of the offence under section 138 of N.I. Act.

21. It is relevant to note that in the decision of Hon’ble Apex Court in **AIR 2010 SC 1898** between

Rangappa V/s Mohan, the Hon'ble Apex court has held that 'once the execution of Negotiable Instrument is either proved or admitted, then the court shall draw the presumption to the effect that, the said Negotiable Instrument has been drawn for valid consideration and the legally recoverable debt was existence'.

22. The learned counsel for the complainant's bank argued before this court that, issuance of the cheque and the signature on the cheque has been admitted by the accused, the initial presumption drawn as per Sections 118[a] and 139 of N.I. Act, in favour of the complainant's bank.

23. Keeping in view position of law rendered by the Hon'ble Apex court between **Rangappa V/s Mohan**, now this court has proceed to discuss that, whether the cheque in question is belonged to the accused and whether the signature of the accused herein is available in the cheque in question.

24. It is important to note that an answer lies to this question in the deposition of PW-1, it is well settled that, suggestion is the reflection of the case of the opponent. Keeping in view this well settled principle, this court has carefully perused the oral evidence of the PW-1, it could be seen that, the accused nowhere suggested that the cheque in question does not belongs to his bank account and signature found at Ex.P1 does not belongs to him. Therefore, this court came to conclusion that the cheque in question belongs to account maintained by the accused and bear its signature belongs to him. Once this court concludes that the execution of the cheque in question is proved, then this court shall draw a presumption available under Section 139 of N.I. Act.

25. It is relevant to mention that the position is very clear that, the presumption available under Section 139 of N.I. Act, is not conclusive proof, but that said presumption is rebuttal one. Therefore, in view of the aforesaid facts

and circumstances and position of law, the accused has to dispel or rebut the presumption which is available and favourable to the complainant herein with this presumption. Now this court has proceed to discuss the evidence available on record.

26. On careful perusal of the cross-examination, it is pertinent to note that, the accused has intended to prove that he has paid entire loan amount to the complainant’s bank. In this regard, the accused has not produced any documents. However, the complainant’s bank has produced the loan statement of the accused at the time of submitting the arguments. On perusal of the bank statement, it appears that on 19.07.2018 the complainant’s bank has sanctioned loan of Rs.1,00,000/- to the accused which debited to the account of the accused. Further, from 08.08.2018 to 06.02.2021 the accused has paid part payment to the complainant’s bank.

27. Further, the record shows that since 30.09.2021 till filing of the complaint, the accused has not paid the balance amount. As per case of the complainant's bank, on 12.05.2023 the accused has give sum of Rs.1,05,000/-. But, as per the statement of the accused, the accused due loan amount of Rs.71,062/-. Further, the oral evidence of the PW-1 taken into consideration the accused has paid amount of Rs.22,000/- on 29.02.2024. Therefore, the accused due sum of Rs.49,062/- with interest sum of Rs.6,732/-. Therefore, the accused due sum of Rs.55,794/-.

28. Now the question is arises before this court that, whether the accused could be held guilty for dishonour of the cheque when the legally enforceable debt due by him is less than the amount of dishonour of the cheque.

29. In order to answer to this question, this court has relied upon the decision in the case of **M.Ramesh Kumar Vs. Riyaz UR Rehman** in criminal appeal **No.1857/2019**

wherein, the Hon'ble High Court of Karnataka observed at para No.16 and 17 which reads as under;

> ***16. In order to answer this question, it may be worth to note that the object of Chapter XVII of the N.I. Act is both punitive as well as compensatory and restitutive. It provides for a single forum and single proceeding for enforcement of criminal liability on account of dishonour of the cheque and also for enforcement of the civil liability for realization of the amount due and payable by the drawer of the cheque thereby obviating the need for the creditor to move two different fora for relief.***
>
> ***17. Section 138 of the N.I. Act does not bar the conviction of the accused if the debt or liability due by him is found less than the amount reflected in the cheque as long as it is proved that the cheque in question was voluntarily issued in discharge of the whole or part of the debt. The difference in the amount shown in the cheque and the actual amount due by the drawer as on the date of presentation of the cheque may be relevant factor to determine the fine or compensation for the loss caused to the complainant, but the said discrepancy***

cannot absolve the accused of the consequence of dishonour of the cheque. If such a position is accepted, it would defeat the object of Chapter XVII of the N.I. Act as the drawer of the cheque could conveniently avert the prosecution under Section 138 of the N.I. Act by making payment of a part or fraction of the cheque amount thereby bringing about discrepancy and incongruity in the amount shown in the cheque and the actual amount due as on the date of presentation of the cheque.

30. The principles laid down in the above decision is aptly applicable to the present case on hand. Herein, the complainant’s bank has stated that towards discharging the outstanding amount of Rs.1,05,000/-, the accused has issued cheque in question to the complainant’s bank. But, as per bank statement the accused due sum of Rs.55,794/-. But, the complainant’s bank has claimed excess amount more than legally recoverable debt in the cheque. Hence, the accused is held 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.65,794/- out of which Rs.60,794/- 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.

31. 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 to Point No.1 is in the Affirmative.**

32. **Point No.2**:- Hence, this Court proceed to pass the following:

O R D E R

By exercising the powers conferred under section 265 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.65,764/-, in default to pay the said fine amount, 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 357(1)(b) of code of criminal procedure, the remaining fine amount of Rs.60,764/- 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.60,764/- 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 421 of Cr.P.C.

The bail bond of the accused shall stands 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 ***01st 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. Suhas M.P.

Documents exhibited on behalf of the Complainant :

Ex.P1	:	Cheque bearing No.309415 dated 14.06.2023 for Rs.1,05,000/- drawn on Navanagara Urban Cooperative Bank Limited, K.R.Nagar Branch.
Ex.P1(a)	:	Signature of the accused
Ex.P2	:	Bank endorsement dated: 16.06.2023

Ex.P3	:	Legal notice dated: 22.06.2023
Ex.P4	:	Postal receipt
Ex.P5	:	Postal acknowledgment
Ex.P5(a)	:	Signature of the accused

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.