KAMS400013052023

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 02nd day of April, 2026

C.C. No.344/2023

Complainant : **Sri. Ramesha H.K.,**
S/o Late Karigowda,
Aged about 55 years,
R/at: Hosuru Villge,
Chunchanakatte Hobli,
Saligrama Taluk.

(By Sri. J.G., Advocate)

Vs.

Accused : **Sri. Sunilkumara D.M.,**
S/o Mahadeva(Diddahalli),
Aged about 42 years,
R/at: Chandagalu village,
Hebbalu Hobli,
K.R.Nagar Taluk.

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

J U D G M E N T

The complainant has filed this 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 is as under:-**

It is the case of the complainant is that, the complainant and accused are well known to each other from past several years. Based on the said acquaintance, the accused has approached the complainant on 20.03.2023 for financial assistance and borrowed sum of Rs.1,50,000/- (Rupees One Lakh And Fifty Thousand Only) and agreed to repay the same within a month. When the accused has failed to repay the said sum, the complainant demanded and insisted the accused to repay the said amount. At that time, towards repayment of amount, the accused had issued a cheque bearing No.608041 dated: 20.04.2023 for Rs.1,50,000/- in favour of complainant drawn on Canara Bank, K.R.Nagar Branch.

3. Further, as per the assurance of the accused, the complainant has presented the said cheque for

encashment, the said cheque was dis-honoured with an endorsement "**Funds Insufficient**" on 01.06.2023. Thereafter, the complainant issued legal notice on 21.06.2023 calling upon the accused to pay the amount covered under the cheque in question. The said legal notice has been duly served to the accused on 26.06.2023. In spite of it, the accused has not repay the said amount. In view of the same, the complainant has constrained this complaint.

4. That, on complaint being lodged by the complainant, this court registered the case in concerned register and took the cognizance for the offence punishable Under Section 138 of the Negotiable Instrument Act and thereafter, recorded the sworn statement of the complainant and after satisfying with the materials placed on record, registered the case against the Accused in Register No.III and issued summons to him.

5. That, the Accused in pursuance of said summons appeared before this court through his counsel and he was

enlarged on bail. The substance of accusation of the Accused has recorded and read over to him in the language known to him and he has not pleaded guilty and claimed to be tried.

6. That, to substantiate the allegation made in the complaint, the complainant has examined himself as PW.1 and he has produced as many as 8 documents, which are marked at Exs.P1 to P8.

7. At the time of appearance of the accused, the statement of the Accused as contemplated Under Section 313 of the Code of Criminal Procedure has recorded and read over to him and he denied all incriminating evidence appearing against him and chosen to led defence evidence. During the trial both the parties reported settlement.

8. Heard arguments from the counsels appeared on behalf of the parties.

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

> ***1) Whether the complainant proves beyond all reasonable doubt that, the accused issued cheque in question dated 20.04.2023 for Rs.1,50,000/- drawn on Canara Bank, K.R.Nagar Branch in favour of complainant towards discharge of legally enforceable 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 Negotiable Instrument Act ?***
>
> ***2) What order ?***

10. 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

11. **Point No.1:-** The specific case of the complainant is that, the accused has approached to him for financial assistance to meet his urgent needs and received a sum of Rs.1,50,000/- on 20.03.2023 and towards repayment of said amount, the accused issued a post dated cheque bearing No.608041 for a sum of Rs.1,50,000/- dated 20.04.2023 drawn on Canara Bank, K.R.Nagar Branch. As per request of the accused, the complainant presented the said cheque for en-cashment through State Bank of India, Haleyur Branch which was dis-honoured on 01.06.2023 for the reason "**Funds Insufficient"**. Thereafter, the Complainant got issued a legal notice on 21.06.2023 through registered post with acknowledgment. In spite of repeated requests, demand and legal notice, the accused did not pay the cheque amount to the complainant and therefore he committed an offence publishable under section 138 of N.I. Act.

12. As stated above, in order to establish his case, the complainant got himself examined as PW-1 by filing affidavit in lieu of his examination-in-chief and in the said

affidavit, he reiterated the averments made in the complaint and through him, the cheque in question is got marked as Ex.P1 and the endorsement issued by the State Bank of India, Haleyur Branch is got marked as Ex.P-2, copy of the legal notice, endorsement issued by the post office, postal receipt, unserved postal cover, postal receipts and postal acknowledgment are marked at Ex.P3 to P8 respectively.

13. In the present case, the cheque is dated 20.04.2023. The Ex.P.2 is the bank endorsement which shows that cheque in question was dishonored on 01.06.2023. As per Ex.P.2 the cheque was presented within three months from the date of issuance of cheque. The legal notice was issued on 21.06.2023, which is within the statutory period. After the service of notice, accused has not repaid the cheque amount to the complainant. Therefore, the complainant filed this complaint within the period of limitation.

14. On the other hand the accused neither cross-examined the PW.1 nor stepped into witness box, in order to disprove the case of the complainant or to prove his defense. Therefore, the oral evidence of PW.1 coupled with the documentary evidence produced by PW.1 at Ex.P1 to P.8 are remained un-rebutted.

15. Admittedly, the cheque is bearing the signature of the accused and it is not disputed by the accused it is not issued by him. There is nothing on record to disbelieve the transaction as pleaded by the complainant. Under Section 139 of the N.I. Act, once a cheque has been signed and issued in favor of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan and the onus is on the accused to raise a probable defense with regard to the facts of the case. Further,

once issuance of cheque is established, presumption under Section 118 and Section 139 of the Negotiable Instruments Act come into play and it is for the accused to rebut the said presumption by leading positive evidence. In this case, the accused has failed to lead rebuttal evidence, to rebut the said legal presumption before the court.

16. As per Section 118(a) of the Act, until the contrary is proved, it is the presumption of law that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred for consideration. Thus, in accordance with the law laid down it is to be presumed that when a cheque is drawn and delivered it is for consideration and irrespective of the truth as to its receipt or non-receipt, which is again a matter of evidence; it would be for the Accused to rebut the statutory presumption arising under Section 118. Section 139 of the Act incorporates a rule of presumption to the effect that

until the contrary is proved, it shall be presumed by the Court that the holder of the 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.

17. It is the legislative mandate that the court should proceed with the assumption that such cheque was received for the discharge of a legally enforceable debt or other liability until the drawer proves that it is not so. Ordinarily the presumption has to be rebutted by the accused-drawer only during the course of trial by proving that the cheque was not issued towards the discharge of the liability. As stated above the accused failed to rebut the above said presumption.

18. When the case was posted for arguments, the complainant and accused have filed a joint-memo stating that, they have settled the dues for a tune of Rs.60,000/- and the accused has made a part payment of Rs.10,000/- to the complainant before the court.

Further, the accused has agreed to pay remaining balance amount of Rs.50,000/- on or before 30.06.2026. Hence, the accused and complainant prayed to pass the judgment in terms of their joint memo. Accordingly, instead of proceeding with the case to disprove the allegations made against him, the accused settled the dues with the complainant. The accused has admitted the liability regarding the cheque presented by the complainant. Considering the joint memo submitted by both parties, it appears to this court that, it is a fit case to pass a sentence of fine in terms of joint memo. Otherwise, if the accused fails to pay the balance loan amount as agreed in the joint memo the complainant will be put to untold hardship and loss. Therefore, it is just and proper to convict the accused for the alleged offense with respect of the agreed money.

19. In the case on hand, the accused has not disputed the compliance of the mandatory provision as per section 138 of N.I. Act and the accused has

admitted the very transaction between him and the complainant and settled the dues and he has also made a part payment of Rs.10,000/- to the complainant since the accused has admitted the ingredients of the joint memo, it is just and necessary to bind the parties to comply the contents of joint memo filed by them. During the pendency of the proceedings, the accused has paid a part of the cheque amount, but mere payment of part of the cheque amount is not a ground to absolve the accused from the offense. At this juncture, it is relevant to refer to the ratio laid down in the **AIR 2001 SC 518 between Rajneesh Agarwal Vs. Ameet.J.Bhalla**, wherein, the Hon'ble Apex Court held that:-

> *(B).* ***N.I. Act (26 of 1881-Section 138- dishonor of cheque-offense of dishonor of cheque-disputed by accused drawer of the entire amount covered by cheque during trial does not absolve the accused drawer of the liability of offense and deposit can have some effect of sentence to be awarded. Cr.P.C.(2 of 1974) Section 482- Once***

the offense of dishonor of cheque is committed any payment made subsequent thereto will not absolve the accused drawer of the liability of the criminal offense, though in the matter of awarding of sentence, it may have some effect on the court during the evidence. But, by any stretch of imagination, a criminal proceedings could not be quashed on account of deposit of money in the court or that an order of quash of criminal proceeding which is otherwise unsustainable in law, can be sustained because of the deposit of money in the court."

20. The ratio laid down in the supra decision is aptly applicable to the present case on hand. Hence, in view of the supra judgment, this court is of the opinion that, though the accused has paid the part of the cheque amount to the complainant during the pendency of the present case, for the above said reasons and based on the circumstance of the case, the accused does not absolve from the criminal liability but, the payment of cheque amount during the

pendency of the proceedings can have some bearing upon sentence to be awarded.

21. As agreed in the joint memo, if the accused fails to repay the agreed amount of Rs.50,000/- on or before 30.06.2026, then the complainant is liberty to recover the said amount as per law. **Hence, this court is answered to Point No.1 in the Affirmative.**

22. **POINT No.2:-** In view of above reasons, this court proceed to pass the following:

O R D E R

Acting Under Section 265 of Cr.P.C, accused is found guilty for an offence punishable under Section 138 of N.I. Act and she is sentenced to pay a fine amount of Rs.50,000/- (Rupees Fifty Thousand only). In default to pay fine, the accused shall undergo simple imprisonment for a period of Six months.

Further, acting under Section 357(1) (B) of Cr.P.C. the fine amount, a sum of

Rs.50,000/- on recovery shall be paid as compensation to the complainant.

Further, even if the accused fails to pay the fine amount on or before 30.06.2026, the complainant is at liberty to take action for recovery of the fine amount against the accused as per Section 421(1) of Cr.P.C.

The joint memo filed by both the parties shall be part and parcel of this judgment.

The bail bond and surety bond of the accused shall stand cancelled.

Office is hereby directed to supply free copy of the judgment to the accused.

(*Dictated to the Stenographer on computer, revised and corrected by me and then pronounced in the open court this the* ***02nd day of April, 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. Ramesha H.K.

Documents exhibited on behalf of the Complainant :

Ex.P1 : Cheque bearing No.608041 dated 20.04.2023 for Rs.1,50,000/- drawn on Canara Bank K.R.Nagar Branch

Ex.P1(a)	:	Signature of the accused
Ex.P2	:	Bank endorsement dated: 01.06.2023
Ex.P3	:	Legal notice dated: 21.06.2023
Ex.P4	:	Postal endorsement
Ex.P5	:	Unserved postal cover
Ex.P6 & 7	:	Postal receipts
Ex.P8	:	Postal acknowledgment

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.