KABC020290272019

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU CITY.
(SCCH-6)

Present: Smt. Chetana S.F.
B.A., L.L.B.,
IV Addl., Small Cause Judge & ACJM,
Court of Small Causes,
Bengaluru.

CC. No.6370/2019

DATED THIS THE 02nd DAY OF JULY, 2026

COMPLAINANT/S	**Sri R.R. Hiremath** S/o. Rudrayya Hiremath, Aged about 44 years, R/at No.1369, 12th cross, 6th Main, Nagapura Circle, Mahalakshmipuram, Bengaluru-560 001 **(By Sri. Chandrashekhar C. Chanarpur Advocate)**
ACCUSED	**Smt. C. Shilpa Rani** W/o. Kumar, R/o NO.13, I Main, I Cross, Kumaraswamy Layout, II Stage, Bengaluru-560 078. **(By Sri V. Nagaraj, Advocate)**

-: J U D G M E N T :-

This is a complaint filed by the complainant U/Sec. 200 of Cr.P.C. for the offences punishable under Secs.138 of N.I. Act as against the accused praying to punish the accused for the said offence.

2. The case of the complainant is that, the complainant and accused are friends. The accused has requested complainant to give a hand loan of Rs.2,50,000/- and complainant considering accused friendship with him agreed to help accused and accordingly accused had borrowed hand loan of Rs.2,50,000/- from the complainant on 02.11.2016. The accused had agreed to repay the hand loan within six months along with 18% interest p.a. and accordingly accused had executed the bond and also promissory note in favor of the complainant. The complainant had requested accused to repay the entire hand loan amount along with the interest after expiry of six months and accused had postponed to pay the amount on the ground of demonetization. Finally towards the discharge of

the loan liability, accused issued a cheque bearing No.583459 dated 21.06.2019 for an amount of Rs.2,50,000/- drawn on Karnataka Bank, City Civil Court branch, E.C. K.G. Road, Bengaluru-560 009 in favor of the complainant.

3. The complainant presented the said cheque through his banker namely State Bank of India, Rajajinagar Branch, Bengaluru and same has been returned through his bank with endorsement that **"Funds Insufficient"** dated 26.06.2019 and 05.08.2019. Hence, the complainant issued legal notice dated 03.09.2019 to the accused through RPAD. Inspite of service of notice, the accused has not paid the cheque amount and hence, he has committed an offence punishable u/s 138 of NI Act. Hence, this complaint.

4. After recording the sworn statement of the complainant by way of affidavit and also verifying the documents, cognizance was taken against the accused for the offence punishable under Sec.138 of N.I. Act. The accused appeared before this Court through his counsel and enlarged on bail and her plea was recorded. The accused pleaded not guilty

and claimed to be tried. Hence, the case was posted for evidence of the complainant.

5. The complainant got examined herself as PW.1 and got marked 6 documents as Exs.P.1 to Ex.P.6. Thereafter, the case was posted for recording the statement of accused under Sec.313 of Cr.P.C. In the statement U/s. 313 Cr.P.C., the accused has denied all the incriminating evidence appearing against her. On the other hand, the accused examined herself as DW.1 and got marked Ex.D1 and Ex.D2 on her behalf.

6. Heard the arguments of both side and Perused the records.

7. The following points arise for my consideration:

1. Whether the complainant proves that the cheque bearing No.583459 dated 21.06.2019 for an amount of Rs.2,50,000/- drawn on Karnataka Bank, City Civil Court branch, E.C. K.G. Road, Bengaluru-560 009, issued by the accused has been dishonored for the reason "Funds Insufficient" dated 26.06.2019 and 05.08.2019. and even after receiving the intimation regarding the dishonor of cheque failed to pay the cheque amount within the

stipulated period and thereby the accused has committed an offence punishable under Sec.138 of N.I. Act?

2. What order?

8. My findings 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:-** In view of the present legal position as held by our **Hon'ble High Court as well as Apex Court of India in a catena of decisions as well as relevant provisions of the Act, this court has to see whether the complainant has complied all the requirements as contained in Sec.138 of NI Act so as to bring home the guilt of the accused for the alleged offence. If so, whether the accused is able to rebut the legal presumption available to the complainant under Sec.139 of the Act by adducing probable defense or not. However, it is held by**

the full bench of our Apex Court in the case of Rangappa Vs. Mohan reported in 2010 (1) DCR 706 that;

> **"The Statutory presumption mandated by sec.139 of the Act, does indeed include the existence of a legally enforceable debt or liability. However, the presumption U/S 139 of the Act is in the nature of a rebuttable presumption and it is open for the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested".**

10. Therefore, in view of the above decision, once the cheque is admitted, the statutory presumption would automatically fall in favour of the complainant the complainant that, the alleged cheque was issued for discharge of an existing legally enforceable debt or liability against the accused and the burden will shift on to the accused to rebut the same.

INGREDIENTS OF OFFENCE AND DISCUSSION:-

11. Before dwelling into the facts of the present case, it would be apposite to discuss the legal standards required to be met by both sides. In order to establish the offence under

Section 138 of NI Act, the prosecution must fulfill all the essential ingredients of the offence. Perusal of the bare provision reveals the following necessary ingredients of the offence:-

> **First Ingredient: The cheques were drawn by a person on an account maintained by him for payment of money and the same is presented for payment within a period of 3 months from the date on which it is drawn or within the period of its validity;**
>
> **Second Ingredient: The cheques were drawn by the drawer for discharge of any legally enforceable debt or other liability;**
>
> **Third Ingredient: The cheques were returned unpaid by the bank due to either insufficiency of funds in the account to honour the cheque or that it exceeds the amount arranged to be paid from that account on an agreement made with that bank;**
>
> **Fourth Ingredient: A demand of the said amount has been made by the payee or holder in due course of the cheque by a notice in writing given to the drawer within thirty days of the receipt of information of the dishonour of cheque from the bank;**

Fifth Ingredient: The drawer fails to make payment of the said amount of money within fifteen days from the date of receipt of notice.

APPRECIATION OF EVIDENCE-

12. The accused can only be held guilty of the offence under Section 138 NI Act if the above-mentioned ingredients are proved by the complainant co-extensively. Additionally, the conditions stipulated under Section 142 NI Act have to be fulfilled. Notably, there is no dispute at bar about the proof of only first, third, and fifth ingredient. The complainant had proved the original cheque vide Ex.P.1 which the accused person had not disputed as being drawn on the account of the accused. It was not disputed that the cheque in question was presented within its validity period. The cheque in question was returned unpaid vide return memo vide Ex.P.2 and 3 due to the reason, “Funds Insufficient” dated 26.06.2019 and 05.08.2019. The complainant had proved the service of legal demand notice dated 03.09.2019 vide Ex.P.4. Postal receipt vide Ex.P5. Postal acknowledgment vide Ex.P6. Thus, there is a dispute only with regard to the second ingredient to the

offence. As such, the 1st,3rd,4th& 5th ingredient of the offence under section 138 of the NI Act stands proved.

13. As far as the proof of second ingredient is concerned, the complainant has to prove that the cheque in question was drawn by the drawer for discharging a legally enforceable debtor any liability. In the present case, the issuance of the cheque in question is not denied. As per the scheme of the NI Act, once the accused admits signature on the cheque in question, certain presumption are drawn, which result in shifting of onus. Section 118(a) of the NI Act lays down the presumption that every negotiable instrument was made or drawn for consideration. Another presumption is enumerated in Section 139 of NI Act. The provision lays down the presumption that the holder of the cheque received it for the discharge, in whole or part, of any debt or other liability.

14. The combined effect of these two provisions is a presumption that the cheque is drawn for consideration and given by the accused for the discharge of debt or other liability. Both the sections use the expression "shall", which makes it

imperative for the court to raise the presumptions once the foundational facts required for the same are proved. Reliance is placed upon the judgment of the Hon'ble Supreme Court, **Hiten P. Dalal vs. Bratindranath Banerjee (2001) 6 SCC 16**.

15. Further, it has been held by a three-judge bench of the Hon'ble Apex Court in the case of **Rangappa vs. Sri Mohan (2010) 11 SCC 441** that the presumption contemplated under Section 139 of NI Act includes the presumption of existence of a legally enforceable debt. Once the presumption is raised, it is for the accused to rebut the same by establishing a probable defence.

16. The presumptions raised under Section 118(b) and Section 139 NI Act are rebuttable presumptions. A reverse onus is cast on the accused, who has to establish a probable defence on the standard of preponderance of probabilities to prove that either there was no legally enforceable debt or other liability. In this case, the arguments raised by the Ld. counsel for the accused to rebut the **presumption are discussed below:**

17. The accused has taken the defence that in July 2016, she has requested the loan of Rs.2,50,000/- from complainant. But, the complainant has given only Rs.42,500/- on 17.08.2016 and taken her signature to the blank bond paper and also received one signed blank cheque. Thereafter complainant has stated that after the payment of full amount, he will type the matter in the bond paper. Similarly, the complainant has taken another bond paper wherein he has mentioned the second party name as R.R. Hiremat and returned 1st bond paper wherein the 2nd party name mentioned as N/A. On 17.08.2016 complainant has given Rs.42,200/- by way of cheque and on the same day accused has encashed the said cheque. Thereafter accused used to deposit Rs.2,500/- to the account of the complainant in Nyaya Mitra Bank towards interest. Thereafter in October, the complainant himself personally collected the interest amount from the accused. Thereafter in November 2016, as it was demonetization, complainant has asked the accused to pay the interest amount in cash. The accused used to pay the interest amount

personally to the accused and some time used to pay the interest through Hidayath Ulla. Thereafter in November 2017, the accused has paid Rs.10,000/- per month towards loan amount of Rs.45,000/- through Hidayath Ulla in cash. Accordingly, he has paid a total of Rs.30,000 in cash through Hidayat Ullah, in monthly installments of Rs.10,000/- over a period of three months. Subsequently, for another month, he personally paid the sum of Rs.10,000/- to the complainant. After that, a balance of Rs.2,500/- remained to be paid, which he handed over with some delay. Thereafter accused asked for return of bond paper and cheque. But, complainant did not return the cheque and bond paper. Thereafter after receiving summons from the court, accused came to know about filing of the case.

18. In support of her contention, accused has produced Ex.D1 acknowledgment of lodging the complaint against the unknown person and also Ex.D2 blank bond paper dated 17.08.2016. In her defence evidence, accused stated that the complainant has taken signature to the blank bond paper

wherein the second party name was mentioned as N/A. Thereafter complainant has taken another signature to the another bond paper wherein second party name was mentioned as R.R. Hiremat. But, in Ex.D2 there is no signature of the accused.

19. From the defence of the accused, it is clear that as per accused hersefl she was in need of money in the year 2016 and admittedly, accused has borrowed the loan of Rs.2,50,000/- from the complainant and but PW.1 has given only Rs.45,000/- but, accused has not stated why PW.1 has not lent the loan of Rs.2,50,000/- to her and why she has accepted only Rs.45,000/- from the complainant. Apart from this, in the cross-examination of DW.1, DW.1 clearly admitted the Ex.P1 cheque and signature in Ex.P1 cheque. Though accused taken the contention that she has given the cheque Ex.P1 on 17.08.2016 as security at the time of borrowing the loan of Rs.42,500/-. But accused has not produced any relevant document to prove the same. Even though the accused contended that complainant has given the cheque for

Rs.42,500/- and she encashed the same. But, accused has not produced bank statement to prove that she has received only Rs.42,500/- from the complainant.

20. Apart from all these, though accused stated that she has paid Rs.42,500/- in the year 2017 itself and thereafter she asked for return of her cheque and bond paper from the complainant. But PW.1 has not returned the cheque and bond paper. Then why the accused has not taken any steps for return of her cheque and bond paper from the complainant till filing of this case. Admittedly, accused is a practicing advocate and she is well aware of the effect of signed blank cheque in the hands of the 3rd party and also singed blank bond paper. Under such circumstances, certainly, accused would have taken any steps for return of her cheque and bond paper, atleast accused would have issued notice to complainant or given stop payment notice or would have lodged the complaint before police station immediately in the year 2017 itself. The very conduct of the accused creates doubt about the defence taken by the accused that she has borrowed only Rs.45,000/-

from the complainant in the year 2016 and at that time, she has given Ex.P1 cheque and same has been misused by the PW.1 in the year 2019.

21. Moreover, ordinarily no prudent man would keep quite after giving the signed blank cheque and signed blank papers to a third person that too after receiving the notice. In this regard it is pertinent to note the principle held in **Sri. Prakash @ Jnana Prakash v/s Miss T.S. Susheela reported in ILR 2012 KAR 4815** our Hon'ble High Court has held that - If the documents had been illegally obtained by the complainant, it is inexplicable that the petitioner did not choose to give a complaint to the police or to take other measures insofar as that conduct of the complainant is concerned and hence has disbelieved the evidence set forth -

22. Applying the ratio laid down by the Hon'ble Court to the present case on hand, the accused in this case also has not taken up any legal measures against complainant regarding possession of cheque. From this an inference can be drawn that no prudent man will keep himself silent without taking any steps

to safeguard his interest when his document lies with the possession of other party.

23. Apart from this, though DW.1 stated that notice has not been served to her but, PW.1 has not denied Ex.P6 Track consignment which shows that the notice has been duly served. Even the accused has not at all denied the address to which the notice has been sent. Apart from all these, summons from the court has been sent to the accused to the same address has been duly served on 04.01.2020 itself. Thereafter, in spite of service of summons and issuance of the warrant, accused did not appear for long period and accused appeared before the court on 24.02.2025 and obtained the bail.

24. *Moreover, in this regard, it has been held by the Hon'ble Apex Court in the case of **M/S Indo Automobiles Vs. M/S. Jaidurga Enterprises** reported **in 2008 (2) DCR 499** and also as provided under Sec.27 of the Mysore general clauses Act, 1897. When a notice is sent to the correct address of the addressee, even if the same is returned unserved due absence or non-claiming or refusal of the addressee, the same amounts to deemed service. Moreover, the very purpose of giving statutory notice to provide an opportunity to the*

accused/drawer to make payment of the cheque amount and escape from the criminal prosecution. The non-service of the notice would be ground only in the case of the accused admitting the liability under the cheque and pleading only exemption from the criminal prosecution for non payment of the cheque amount. Thus this defence of the accused is of no consequence in the present case as he is totally denying the liability under the said cheque.

25. In the present case the notice has been sent to the correct address of the accused as admitted by the accused herself and **even postal cover with the endorsemen**t is produced to show that the notice has been duly intimated to him and served on him. As such the statutory demand notice is held to have been duly served on the accused. Hence defence taken by the accused that notice not served him does not holds good. Thus it appears that accused only for the sake of the defence has taken the above said defence. Thus notice has been duly served to the accused.

26. In view of Ex.P6, the notice is deemed to be duly served to the accused. In spite of service of notice,

accused has not given any reply to the notice and taken the defence at an earlier opportunity.

27. Apart from this, if at all the defence of the accused is believed to be a gospel truth, then question arises in the minds of the court as to why even after service of the notice, accused has not taken the said defence at the earliest possible opportunity by giving reply to the notice issued by the PW-1. No explanation were forthcoming in this regard. In the absence of any such recourse being adopted by the accused, it is highly impossible to believe his defence. The Hon'ble Apex Court in the case of **Rangappa Vs. Mohan Reported in 2010 (1) DCR 706,** wherein it was held as follows:

> 24. "-Very fact that the accused had failed to reply to the statutory notice under Sec.138 of N.I.Act leads to inference that there was merit in the complainant's version".

28. In the present case also the accused inspite of the service of the notice has not replied to the notice and taken

the defence at the later stage only for the sake of the defence. That, being the true facts it can be held that, the accused has failed to establish his defence.

29. Apart from this, even DW.1 in her cross examination at para No.9 when specifically questioned that even after filing of the present case whether she has asked for return of her cheque from the complainant and whether she has taken any legal action against the complainant for not returning the cheque, DW.1 accused clearly stated that she has called the complainant and asked about the same, complainant stated that **by mistake he has filed the case and he would withdraw the case, but the said version of the DW.1 cannot be accepted** and accused being an advocate cannot be believable the said version of the PW.1 as PW.1 himself being an advocate cannot file the case by mistake even accused cannot believe that by mistake nobody would file the case. Ordinarily no prudent man that too accused being an advocate would have accept the said version of the PW.1.

30. Even apart from this, in the cross-examination of Dw.1 when it was specifically question by the learned counsel for complainant that accused during the pendency of the case has agreed to settle the matter and agreed to pay Rs.25,000/- p.m. and paid Rs.25,000/-. Dw.1 stated that she has paid Rs.25,000/- as the complainant agreed to withdraw the case and she has given Rs.25,000/-. If at all the accused has not borrowed Rs.2,50,000/- from the complainant and accused is not at all liable to pay any amount to the complainant and if at all the accused has repaid the entire amount of Rs.45,000/- to the complainant in the year 2017 itself, then why accused has paid Rs.25,000/- to the complainant during pendency of the case is not clear. Though accused contended that as the complainant agreed to withdrawn the case, she has paid Rs.25,000/-, the said version cannot be accepted for the reasons stated above. The very payment made by the accused to the complainant during the pendency of the case, i.e., on 22.11.2024 through the Google-pay clearly amounts to the admission of her liability towards complainant.

31. Further accused has produced Ex.D1 the complaint lodged by her against the unknown person complaining that from unknown mobile number unknown persons sending obscene messages to her mobile and also from unknown mobile number unknown person calling her and threatening her and requested to find out the criminals and take legal action against him. But, nowhere accused stated why she has produced Ex.D1 acknowledgment of such complaint. Even what is the connection between Ex.D.1 and to the present case. Hence Ex.D1 appears to be irrelevant to the present case. Thus Ex.D1 is not helpful to the defence taken by the accused.

32. Further, the accused has taken the specific defence that complainant used to do the money lending business and complainant has given loan to the various persons and obtained the cheque from them and filed the criminal cases against various persons. It was argued by the learned cousnel for accused, PW.1 admitted that he has filed the various complaint against various persons. PW.1 admitted to have file

the CC No.1886/2020, PCR No.23660/2024, 23661/2024, 20700/2024 and hence it is clear that PW.1 was doing money lending business. But, PW.1 stated that he has given the loan to his uncle Shivashankar Swamy and he has filed the case against him and he has given the loan to his friend and relative and he is not doing money lending business. Admittedly, he has not obtained any licence also. Mere admission of filing of 3-4 cases against 3-4 persons, this court cannot come to the conclusion that complainant was doing any money lending business in the absence of any corroborative evidence. The accused has not produced any document to show that complainant is doing the money lending business. Hence accused has failed to prove that complainant was doing money lending business.

33. In view of the above said discussion, the defence taken by the accused appears to be more improbable and accused has failed to prove her defence. On the other hand, complainant has established passing of consideration and issuance of cheque and signature in cheque.

Conclusion:

34. In view of all the above discussions, it can be concluded that the complainant has established through cogent and convincing evidence the fact of issuance of the cheque for discharge of legality enforceable debt, which is dishonored for want of sufficient funds, Issuance of legal notice within stipulated time, failure on the part of accused to repay the amount within stipulated period. On the other hand, the accused has failed to rebut the presumption available to the complainant through probable evidences that would preponderate upon the evidence lead by the complainant. Therefore, the accused is held to have committed an offence punishable under Sec. 138 of N.I. Act. Accordingly, Point No.1 is answered in the Affirmative.

35. **POINT No.2**:- In view of my answer to point No.1, I proceed to pass the following:-

-: <u>O R D E R</u> :-

Acting U/Sec.278(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instruments Act.

Accused is sentenced to pay a fine of Rs.2,55,000/- for the offence punishable under section 138 of N.I.Act. The amount of Rs.2,50,000/- shall be paid to the complainant by way of compensation in accordance with Sec.395(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, within one month from today.

The remaining amount of Rs.5,000/- shall be confiscated to the state. In default of payment of fine, the accused shall undergo simple imprisonment for a period of six months.

It is made clear that in view of Sec.461 of BNSS, even if the accused shall undergo the default sentence imposed above, accused is not absolved of liability to pay the fine amount.

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

Office to furnish the copy of this judgment for free of cost to the accused.

(Dictated to the Stenographer, transcribed and computerized by her. After her typing, corrected, signed and then pronounced by me in open Court this the **2nd day of July 2026**).

(CHETANA S.F.)
IV Addl., Small Cause Judge & ACJM,
Court of Small Causes, Bengaluru.

ANNEXURE

List of witnesses examined for the Complainant:

PW.1 :- Sri R.R. Hiremath

List of witnesses examined for the accused:-

DW.1 :- Smt. Shilparani

List of documents marked for the Complainant:-

Ex.P.1	:	Cheque
Ex.P.1(a)	:	Signature of accused
Ex.P.2 & 3	:	Bank Endorsements
Ex.P.4	:	Office copy of Legal Notice dated 03.09.2019
Ex.P.5	:	Postal Receipt
Ex.P.6	:	Postal acknowledgment

List of documents marked for the accused:-

Ex.D.1	:	Acknowledgment given by the Kumaraswamy Layout Police
Ex.D.2	:	Blank bond paper dated 17.08.2016

(CHETANA S.F.)
IV Addl., Small Cause Judge &
ACJM, Court of Small Causes,
BENGALURU.