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**IN THE COURT OF THE HONOURABLE I ADDITIONAL CIVIL  
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

**PRESENT: SMT.ASRINA., B.A, LLB.  
I ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.**

**DATED THIS 4<sup>TH</sup> DAY OF APRIL, 2026.**

**C.C NO.1027/2025**

**BETWEEN:**

<b>COMPLAINANT</b>	Shri.C.K.Mahesh S/o Kantharajegowda, Aged:46 years, R/at:Hosa Agrahara Village & Hobli, K.R.Nagara Taluk, Mysore District.  <b>(By Shri.H.K.H. Advocate)</b>
<b>ACCUSED</b>	Shri.K.N.Annayya, Head Master, Babu Rajendra Prasad Smaraka High School, Beeruvalli Village & Post, Akki Hebbalu Hobli, K.R.Pete Taluk.  <b>(By: Shri.D.R.R. Advocate)</b>

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

Complainant has filed the present complaint U/Sec.223 of B.N.S.S. as against the accused for the offence punishable under Sec.138 of Negotiable Instrument Act. For the sake of brevity the same will be herein after referred to as N.I.Act.

**KAMS410021332025****2. The Brief facts of the complainant case is as under:**

It is the case of complainant that himself and the accused are known to each other from past several years. It is the case of the complainant that on the basis of the said relationship, on 23.02.2025 the accused approached the complainant and requested him to lend the hand loan of Rs.7,00,000/- (Rupees Seven Lakhs only) to the accused for the purpose of his family necessity and also to clear his debts. It is the case of the complainant that at the request of the accused, on 01.04.2025 he has lent a sum of Rs.7,00,000/- to the accused as a hand loan. It is the case of the complainant that at the time of borrowing loan from him, the accused had assured the complainant that he will repay the said amount shortly and accordingly, for repayment of the aforesaid loan amount on the very same day the accused has also issued a post dated cheque dated as 23.05.2025 bearing No.396162 drawn on State Bank of India, Krishnarajapete Branch in favour of the complainant. It is the case of the complainant that at the time of issuing the aforesaid cheque, the accused had assured the complainant that he will arrange sufficient funds in his account to honour the cheque and the aforesaid cheque will be honoured immediately upon its presentation to the bank. It is the case of the complainant that believing the assurance made by the accused, he has received the aforesaid cheque in good faith and as per the instruction of the accused, the complainant has presented the aforesaid cheque for collection through his banker namely the

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Kaveri Gramin Bank, Bherya Branch. It is the case of the complainant that for his utter shock and surprise, the aforesaid cheque issued by the accused when presented for collection, the same was returned dishonoured for the reason “Exceeds Arrangement” as per the bankers memo dated 29.05.2025. It is the case of the complainant that thereafter he issued a legal notice dated 20.06.2025 to the accused intimating him about the dishonour of the aforesaid cheque issued by him and also calling upon the accused to pay the cheque amount. It is the case of the complainant that the said legal notice sent to the accused was duly served on him. It is the case of the complainant that in spite of service of notice, the accused did not repay the proceeds of the cheque to the complainant nor has he replied the legal notice. It is the case of the complainant that the accused had issued the above cheque towards repayment of legally recoverable debt which he owed to the complainant. It is the case of the complainant that the accused has issued the aforesaid cheque towards discharge of his liability which he owed to the complainant. It is the case of the complainant that he has received the aforesaid cheque in a good faith and as per the assurance of the accused, he presented the aforesaid cheque before his banker for encashment. It is the case of the complainant that since for the repayment of legally recoverable debt the accused has issued the aforesaid cheque in favour of the complainant, it was the duty of the accused to keep sufficient funds in his account so as to honour the cheque and to

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maintain his promise. It is the case of the complainant that by issuing the aforesaid cheque for the repayment of and discharge of legally enforceable debt without arranging sufficient funds in his account, the accused has committed the offence punishable under Sec.138 of N.I.Act. Therefore, the complainant has filed the present complaint as against the accused for the above offence.

**3.** Upon receipt of the complaint, this court has recorded the sworn statement of the complainant. Since there were sufficient materials found to proceed against the accused, this court took cognizance of the aforesaid offence and issued process to the accused for his appearance before this court.

**4.** Subsequently on receipt of summons issued by this court the accused has appeared before this court through his counsel and the accused was enlarged on regular bail by this court. Since there were sufficient materials found against the accused, this court has recorded the plea of the accused for the offence punishable U/Sec.138 of N.I.Act. Accusation was read over and explained to the accused. Accused did not plead guilty and he claimed to be tried. Adopted the mode of trial as summons trial instead of trying the case summarily.

**5.** In order to prove the guilt of the accused, the complainant has entered witness box and examined himself as Pw.1 and got marked Ex.P-1 to Ex.P-13 documents. In view of the guidelines issued by Hon'ble Apex Court in the case of *Indian Bank*

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*Association Vs Union of India and others*, the sworn statement of the complainant was treated as his examination in chief. The accused has cross-examined the complainant in order to rebut the presumption and to disprove the claim of the complainant. However, the accused did not lead any evidence. Thereafter the trial was concluded and the case was posted for arguments on merits.

**6.** Since there were incriminating evidence found against the accused, on 17.12.2025 the statement of the accused under Section 313 of Cr.P.C was recorded wherein the accused has denied all the incriminating evidence appearing against him. After the cross-examination of the complainant, the accused did not come forward to examine himself under Section 313 of Cr.P.C. In spite of giving sufficient opportunities from 06.03.2026 to 24.03.2026, the accused did not availed the opportunities given to him to explain the incriminating circumstances deposed by the complainant in his cross-examination as against the accused. Therefore, due to the non-appearance of the accused to examine himself under Section 313 of Cr.P.C and also in view of the ratio laid down by the **Hon'ble High Court of Karnataka in its judgment dated 07/02/2025 in CrI.R.P.No.664/2020 in the case of Sunil Yadav Vs. Smt.Y.C.Manju**, the examination of the accused under Sec.313 of Cr.P.C was dispensed with.

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7. Heard arguments of learned counsel for complainant. In spite of giving sufficient opportunities, no arguments were canvassed on behalf of the accused. Perused the records. Following points arise for my consideration:

- i. Whether the complainant proves that the accused had issued the cheque dated 23.05.2025 bearing No.396162 drawn on State Bank of India, Krishnarajapete Branch in favour of the complainant towards discharge of legally enforceable debt or liability and the said cheque when presented, the same was returned dishonoured with the endorsement "Exceeds Arrangement" on 29.05.2025 and even after issuance of demand notice dated 20.06.2025 the accused failed to repay the said cheque amount to the complainant within the statutory period and thereby the accused has committed the offence punishable U/Sec.138 of N.I. Act?
- ii. What Order?

**8. My findings to the above points are as hereunder:**

**Point No.1:** In the Affirmative.

**Point No.2:** As per the final order for the following:

**REASONS**

**9. POINT NO.1:** Complainant has filed the present complaint U/Sec.223 of B.N.S.S as against the accused for the offence

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punishable under Sec.138 of N.I.Act. In a decision reported in **(2009) 14 SCC 683 in the case of Jugesh Sehgal Vs. Shamsheer Singh Gogi** the honourable Apex court has held that in order to constitute an offence U/Sec.138 of N.I. Act, the complainant must fulfill the following ingredients:

- (i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account.
- (ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability.
- (iii) That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.
- (iv) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank.
- (v) The payee or holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

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(vi) The drawer of said cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

**10.** Therefore in order to maintain a complainant and to constitute the offence punishable U/Sec.138 of N.I.Act, the complainant must establish before this court that he has complied the aforesaid statutory requirements as envisaged U/Sec.138 of N.I.Act.

**11.** For better appreciation of evidence placed on record, it is necessary to give a summary of the evidence in a nutshell. In support of his case the complainant has examined himself as PW.1 and the complainant has relied on Ex.P-1 to Ex.P-13 documents. Ex.P-1 is a cheque dated 23.05.2025 bearing No.396162 drawn on State Bank of India, Krishnarajapete Branch. Ex.P-2 is a bank memo dated 29.05.2025 issued by the Karnataka Gramin Bank, Bherya Branch. Ex.P-3 is a demand notice dated 20.06.2025 issued by the complainant to the accused herein. Ex.P-4 is a postal receipt. Ex.P-5 is a postal track consignment report duly attested by the post master, K.R.Nagar. Ex.P-6 to Ex.P-10 are the RTC's. Ex.P-11 is a general license. Ex.P-12 is a certificate of verification. Ex.P-13 is a bank statement of the complainant.

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**12.** Having noted down the evidence available on record, it is proper to evaluate the evidence so as to see whether the complainant has complied with the statutory requirements as mentioned above and thereby the ingredients of offence punishable U/Sec.138 of N.I.Act are made out as against the accused.

**13.** Ex.P-1 is a cheque dated 23.05.2025 bearing No.396162 drawn on State Bank of India, Krishnarajapete Branch and the same discloses that the Ex.P-1 cheque was drawn by the accused on an account maintained by him in State Bank of India, Krishnarajapete Branch as per account No.64178507748. Though the accused has cross-examined the complainant, but no cross-examination was made to the complainant by the accused by denying or disputing the signature of the accused appearing in the Ex.P-1 cheque. So also no cross-examination was made to the complainant by the accused by denying or disputing that the Ex.P-1 cheque does not belongs to the accused. Even the accused did not enter the witness box and the accused did not depose that the Ex.P-1 Cheque does not belongs to him nor did the accused deposed that the signature appearing in the Ex.P-1 Cheque is not his signature. The accused did not deny that the Ex.P-1 cheque was not drawn by him on an account maintained by him in State Bank of India, K.R.Pete Branch. Therefore, this court has no reason to disbelieve the claim of the complainant. Non denial on

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the part of the accused amounts to admission. Accordingly I conclude that it is proved that the Ex.P-1 cheque was drawn by the accused on an account maintained by him in the aforesaid bank.

**14.** The next ingredient which the complainant is required to prove is that the Ex.P-1 cheque was issued by the accused for discharge of the debt or other liability in whole or in part. In the case on hand it is the case of the complainant that he had lent the hand loan of Rs.7,00,000/- to the accused and towards discharge of his debt the accused had issued the Ex.P-1 cheque in favour of the complainant. As held above, inspite of his appearance before this court through his counsel the accused did not denied or disputed that the Ex.P-1 cheque does not belongs to him and so also the accused did not denied that the signature appearing in the Ex.P-1 is not his signature. Non denial on the part of the accused amounts to admission.

**15.** It is a settled preposition of law that suggestion is a case of adversary. During the course of cross-examination of the complainant/Pw.1 at para No.3, learned counsel for the accused has cross-examined the complainant/Pw.1 by admitting and acknowledging borrowal of loan by the accused from the complainant. The relevant portion of cross-examination of complainant/Pw.1 at para No.3 is extracted below:

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3. ಆರೋಪಿಯು ಸಾಲದ ಹಣವನ್ನು ನನ್ನ ಮನೆಯಲ್ಲಿ ಪಡೆದಿರುತ್ತಾರೆ. ಆರೋಪಿಯು ಬೀರುವಳ್ಳಿ ಗ್ರಾಮದ ಬಾಬು ರಾಜೇಂದ್ರ ಪ್ರಸಾದ್ ಶಾಲೆಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾರೆ. ಸದರಿ ಶಾಲೆಯಲ್ಲಿ ಕ್ಲರ್ಕ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುವ ಅನುಸೂಯ ಎನ್ನುವವರ ಪರಿಚಯ ನನಗೆ ಇಲ್ಲ. ಸದರಿ ಅನುಸೂಯ ಮತ್ತು ನನ್ನ ಹೆಂಡತಿ ನೇತ್ರಾವತಿ ಇವರಿಬ್ಬರೂ ಪರಿಚಯಸ್ಥರು ಎಂದರೆ ಸರಿ. ಸದರಿ ಅನುಸೂಯರವರ ಮೂಲಕ ಆರೋಪಿಯು ನನ್ನಿಂದ ಸಾಲದ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

**16.** Further, during his examination under Section 313 of Cr.P.C. dated 17.12.2025 the accused has given the following answers to the questions No.2 and 8. The same are extracted below:

ಪ್ರಶ್ನೆ2) ಪ್ರಾಸಾ-1 ತಮ್ಮ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಆರೋಪಿಯಾದ ನೀವು 01-04-2025 ರಂದು ದರದು ನಿಮಿತ್ತ ಮರುಪಾವತಿಗಾಗಿ ರೂ.7,00,000/- ಹಣವನ್ನು ಪಿಯಾರದಿದಾರರಿಂದ ಸಾಲದ ರೂಪದಲ್ಲಿ ಪಡೆದಿರುತ್ತೀರಿ ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ಇದಕ್ಕೆ ನಿಮ್ಮ ಹೇಳಿಕೆ ಏನು?

ಉಃ ನಾನು ಪಿಯಾರದಿದಾರರಿಂದ 7,00,000/- ಸಾಲ ಪಡೆದಿರುವುದಿಲ್ಲ. ಬದಲಾಗಿ ಕೇವಲ 3,50,000/- ರೂಪಾಯಿ ಮಾತ್ರ ಸಾಲ ಪಡೆದಿದ್ದು ಅದನ್ನು ಪಿಯಾರದಿದಾರಿಗೆ ಕೊಡಲು ಬಾಕಿ ಇರುತ್ತದೆ.

ಪ್ರಶ್ನೆ8) ನಿಮ್ಮ ಪರ ಸಾಕ್ಷಿ ವಿಚಾರಣೆ ಮಾಡಿಸುವಿರಾ?

ಉಃ ನಾನು ಸಾಕ್ಷಿ ವಿಚಾರಣೆ ಮಾಡುವುದಿಲ್ಲ. ರಾಜಿ ಮುಖಾಂತರ ಈ ಪ್ರಕರಣವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸುತ್ತೇನೆ.

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17. Not only in the cross-examination of complainant/Pw.1, even in his examination under Section 313 of Cr.P.C. also the accused has admitted that he has borrowed loan from the complainant.

18. Ex.P-1 is a Negotiable Instrument. Section 118 of Negotiable Instrument Act provides favourable presumption in favour of Negotiable Instruments as to consideration. Section 118 of N.I.Act reads as under:

**Section 118: Presumptions as to Negotiable Instruments.**—Until the contrary is proved, the following presumptions 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;

19. Section 139 of Negotiable Instruments Act provides favourable presumption in favour of the holder of the cheque that the holder of the cheque in question has received the said cheque for discharge of the debt or other liability. There is a presumption U/Sec.139 of N.I Act that the cheque in question was drawn for discharge of liability of the drawer. Section 139 of N.I.Act reads as under:

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**Section 139: Presumptions 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.

**20.** Further, in a decision reported in **(2010) 11 SCC 441 in the case of Rangappa Vs. Sri Mohan**, at para No.26 the Hon'ble Apex court has held as under:

**26.** In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in *Krishna Janardhan Bhat* may not be correct.

**21.** As held above, there lies a presumption U/Sec.118 of N.I. Act that all Negotiable Instruments are made or issued for a consideration. So also there lies a presumption U/Sec.139 of N.I. Act that the cheque in question was drawn for discharge of liability of the drawer. In the decision cited above, the Hon'ble Apex court has held that the presumption mandated U/Sec.139 of N.I. Act includes a presumption that there exist a legally enforceable debt or liability and that the cheque in question was

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issued for discharge of legally recoverable debt or liability. Therefore, the burden to prove the contrary was on the accused to prove that the cheque in question is not supported by consideration nor the same was issued by him for discharge of any debt or liability. Unless the contrary is proved, the court has to presume that the cheque in question was issued for discharge of liability of the accused and that the said cheque was issued for consideration.

**22.** Applying the above preposition of law to the case on hand, it is relevant to note here that, in the instant case the accused has admitted borrowing of loan from the complainant. The accused has not denied that the Ex.P-1 cheque does not belongs to him. So also the signature of the accused in the Ex.P-1 cheque was also not disputed by the accused. Non denial on the part of the accused amounts to admission. When the accused admits the borrowal of loan from the complainant, issuance of Ex.P-1 cheque as well as his signature in the Ex.P-1 cheque, the mandatory presumptions as envisaged under Section 118 and 139 of NI Act will operate in favour of the complainant and it has to be presumed that the Ex.P-1 cheque in question is supported by consideration and the same was issued for discharge of legally enforceable debt or liability.

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**23.** Further in a decision reported in (2019) 4 SCC 197 in the case of Bir sing Vs. Mukesh Kumar, at para No.18 the Honourable Apex court has held as under:

**18.** In passing the impugned judgment and order the High Court misconstrued Section 139 of the Negotiable Instruments Act, which mandates that unless the contrary is proved, it is to be presumed 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. Needless to mention that the presumption contemplated under Section 139 of the Negotiable Instruments Act, is a rebuttable presumption. However, the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque.

**24.** The ratio laid down by the Hon'ble Apex Court in the aforesaid decision squarely applies to the case on hand. In this case the accused has admitted borrowal of loan from the complainant, issuance of Ex.P-1 cheque as well as his signature in the Ex.P-1 cheque. Hence, it is to be held that the Ex.P-1 cheque in question was issued towards discharge of legally enforceable debt and liability. Having been admitted by the accused that the Ex.P-1 cheque is his cheque and the signature appearing in the Ex.P-1 cheque is his signature, the presumptions as envisaged under Sections 118 and 139 of N.I Act shall have to be raised in favour of the complainant. It is for

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the accused to rebut the said presumptions by probabilising his defence. The burden is on the accused to rebut the presumption by raising a probable defence which would create doubt in the mind of this court regarding existence of legal debt or liability as on the date of issuance of Ex.P-1 cheque.

**25.** Let us see whether the accused is successful in rebutting the presumption favouring the complainant. Under the criminal law the accused can lead rebuttal evidence either by way of cross-examination of the complainant or by leading his own evidence. In the case on hand, in order to rebut the presumption, the accused cross-examined the complainant as a rebuttal evidence. The accused did not choose to enter the witness box to lead the rebuttal evidence.

**26.** In the case on hand, the only defense which the accused has set up in the cross-examination of Pw.1 is that the complainant has no financial capacity to lend a sum of Rs.7,00,000/- as a hand loan to the accused. It is the case of the complainant that it is on 01.04.2025 he had lent a sum of Rs.7,00,000/- to the accused as a hand loan. Ex.P-13 is a bank account statement of the complainant and the last few entries in the bottom of column No.2 and column No.8 of the Ex.P-13 document proves and establishes that as on 01.04.2025 a sum of Rs.7,00,000/- was available with the complainant. Further, Ex.P-6 is a RTC of 5 guntas of land in survey No.21/5 of Hosa

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Agrahara village, Ex.P-7 is a RTC of 18 guntas of land in survey No.20/3 of Hosa Agrahara village, Ex.P-8 is a RTC of 1 acre 32 guntas of land in survey No.269/3 of Hosa Agrahara village. Ex.P-6 to Ex.P-8 documents proves and establishes that nearly 2½ acres of land belongs to the complainant. Similarly, Ex.P-9 is a RTC of 6 guntas of land in survey No.21/7 of Hosa Agrahara village and Ex.P-10 is a RTC of 23 guntas of land in survey No.20/4 of Hosa Agrahara village. It is a undisputed fact that Smt.Netravathi W/o Mahesha C.K. named in the Ex.P-9 and Ex.P-10 documents is wife of the complainant herein. The Ex.P-9 and Ex.P-10 documents proves and establishes that an extent of 1 acre 1 gunta of land belongs to the wife of the complainant. Further, Ex.P-11 is a general license and Ex.P-12 is a certificate of verification dated 19.09.2025 issued by the concerned authorities in respect of the weigh bridge. In his cross-examination the complainant has categorically deposed that though the weigh bridge license stands in the name of his father, but it is him who is running the said weigh bridge. Hence, on combined reading of the Ex.P-6 to Ex.P-13 documents proves and establishes that the complainant has a sound financial capacity to lend a sum of Rs.7,00,000/- to the accused as a hand loan. Moreover, the Ex.P-13 document also establishes that as on 01.04.2025, a sum of Rs.7,00,000/- was available at the disposal of the complainant. Hence, the above being the case, the financial capacity of the complainant to lend loan of Rs.7,00,000/- cannot

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be doubted. Thereby, the complainant has successfully proved his financial capacity to lend loan of Rs.7,00,000/- to the accused.

**27.** Further, during his examination under Section 313 of Cr.P.C. on 17.12.2025, the accused has stated that he has not borrowed a sum of Rs.7,00,000/- from the complainant and rather he had borrowed only a sum of Rs.3,50,000/- from the complainant as a hand loan. But the Ex.P-1 cheque establishes that for the repayment of loan of Rs.7,00,000/-, the Ex.P-1 cheque was issued by the accused in favour of the complainant. Moreover, there lies a presumption under Section 118 of N.I. Act that all Negotiable Instruments are issued for a consideration which such negotiable instrument bears. Unless the contrary is proved, the court has to presume that every negotiable instrument was issued for consideration mentioned therein. In the case on hand, the Ex.P-1 being a Negotiable Instrument, there is a presumption in favor of the Ex.P-1 document that it is supported with consideration for the amount mentioned therein. Therefore, the burden to prove the contrary was on the accused. But, in order to rebut the presumption, the accused has not placed any contrary evidence before the court. Absolutely no evidence is placed before this court by the accused in order to prove that he had availed hand loan of Rs.3,50,000/-, for repayment of which the Ex.P-1 cheque was issued. Therefore,

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since the accused has failed to bring on record any contrary evidence to rebut the presumption, it has to be held that the Ex.P-1 cheque was issued by the accused to the complainant for repayment of hand loan of Rs.7,00,000/-.

**28.** Furthermore, in his examination under Section 313 of Cr.P.C. on 17.12.2025, the accused has also stated that he is not intending to contest this case and rather he is willing settle this case. But, inspite of giving such statement by the accused before the court, the accused has backed out from his own statement and thereby the accused has contested the case contrary to the statement made by him in questions No.2 and 8 of his examination under Section 313 of Cr.P.C. Therefore, this conduct of the accused is also a clear indication that though the accused has admitted his liability in his 313 statement, but the accused is making all the efforts to evade from his liability of repaying the loan amount to the complainant.

**29.** As held above, inspite of entering his appearance before this court through his counsel, the accused did not cross-examine the complainant denying that the Ex.P-1 cheque does not belongs to him nor did the accused cross-examined the complainant by denying his signature appearing in the Ex.P-1 Cheque. On the other hand, the accused has admitted borrowal of loan from the complainant. Further, the accused did not enter the witness box

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and the accused did not depose that the Ex.P-1 Cheque does not belongs to him nor did the accused deposed that the signature appearing in Ex.P-1 Cheque is not his signature. So also the accused did not explain the circumstance under which the Ex.P-1 cheque was reached to the hands of the complainant. The accused did not adduced any evidence to prove that the Ex.P-1 cheque was not issued by him in discharge of a debt or liability. Thereby the accused has failed to rebut the presumption with probable defence. Therefore this court is of the considered view that in the absence of anything contrary it has to be presumed that the Ex.P-1 cheque was issued by the accused towards discharge of legally enforceable debt due to the complainant and that the Ex.P-1 cheque is supported by consideration. In a decision reported in **(2019) 4 SCC 197 in the case of Bir sing Vs. Mukesh Kumar**, at para No.32 to 38 the Honourable Apex court has held as under:

**32.** The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

**33.** A meaningful reading of the provisions of the Negotiable Instruments Act including, in

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particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

**34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

**35.** It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

**38.** In the absence of any finding that the cheque in question was not signed by the

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respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant complainant, it may reasonably be presumed that the cheque was filled in by the appellant complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

**30.** Applying the above preposition of law to the case on hand, it is not the case of the accused that the Ex.P-1 cheque was obtained from him by the complainant under the threat. Nor it is the case of the accused that his signature was obtained on the Ex.P-1 cheque by playing fraud or under coercion. Such being the case, the presumption would be that the accused has issued the Ex.P-1 cheque towards discharge of legally enforceable debt due to the complainant and that the Ex.P-1 cheque is supported by consideration.

**31.** Further, in the case on hand, in his plea as well as during his examination under Sec.313 of Cr.P.C, the accused has merely denied the existence of debt of Rs.7,00,000/-. But mere denial of

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existence of debt is not sufficient to rebut the presumption available in favour of the complainant. Rather the accused has to bring on record cogent materials in support of the defence raised by him. This view of this court gets support from the decision of the Hon'ble Apex Court reported in **(2018) 8 SCC 165 in the case of Kishan Rao Vs Shankargouda** wherein at para No.20 the Hon'ble Apex Court has held as under:

20. This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. The following was held in para 20 of *Kumar Exports v. Sharma Carpets* (2009) 2 SCC 513:

“20. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist.”

**32.** Further, in a decision reported in **2006 SCC OnLine Kar 610 in the case of J. Ramaraj Vs. Iliyaz Khan**, at para No.10 it is held as under:

10. Mere denial of issuing cheques would not be sufficient as it is time and again noted

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that once the cheque is issued duly signed by the petitioner, the presumption goes against him as per Section 139 of the Negotiable Instruments Act.

**33.** As discussed above, the accused has not denied or disputed borrowal of loan from the complainant, issuance of Ex.P-1 cheque as well as his signature in the Ex.P-1 cheque. Non denial on the part of the accused amounts to admission. Once the issuance of Ex.P-1 cheque as well as his signature in the Ex.P-1 cheque is admitted by the accused, the mandatory presumptions as envisaged under Sections 118 and 139 of N.I Act will operate in favour of the complainant and it has to be presumed that the Ex.P-1 cheque in question is supported by consideration and the same was issued for discharge of legally enforceable debt or liability. On the other hand the accused has failed to rebut the presumption available under Section 118 and 139 of N.I.Act with probable defence. Therefore this court is of the considered view that in the absence of anything contrary it has to be presumed that the Ex.P-1 cheque was issued by the accused towards discharge of legally enforceable debt due to the complainant and that the Ex.P-1 cheque is supported by consideration. Thus I hold that the Ex.P-1 cheque was issued by the accused towards the discharge of legally recoverable debt due to the complainant.

**34.** The next ingredient which the complainant is required to prove is that the Ex.P-1 cheque has been presented to the bank

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within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier. Ex.P-1 cheque denotes the date as 23.05.2025. Ex.P-2 is a bank memo dated 29.05.2025 and the same depicts that on its presentation to the bank the Ex.P-1 cheque was returned dishonoured. Thereby the evidence placed on record proves and establishes that the Ex.P-1 cheque was presented to the bank for encashment within the period of its validity and within a period of six months from the date on which Ex.P-1 is drawn.

**35.** The next ingredient that is required to be proved by the complainant is that the cheque in question on presentation to the bank for encashment, the same was returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account. Ex.P-2 is a memo issued by the bank and the same is a undisputed document. Ex.P-2 being a undisputed document, the same proves and establishes that the Ex.P-1 cheque on its presentation to the bank for encashment, the same was returned by the bank unpaid for the reasons of insufficiency of funds. The said aspect has not been disputed by the accused. Even the accused has not contended that he had sufficient funds in his account, inspite of which the Ex.P-1 cheque was dishonored.

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That apart, there lies a presumption in favour of the memo issued by the bank U/Sec.146 of the N.I Act. The same reads as under:

**146. Bank's slip prima facie evidence of certain facts-** The court shall, in respect of every proceeding under this chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

**36.** Section 146 of N.I Act provides that the court shall presume the fact that the cheque was dishonoured if a bank slip or a memo is produced showing that the cheque was returned unpaid. This presumption can be rebutted by the accused by producing evidence to the contrary. Though the Ex.P-2 establishes the factum of dishonour of Ex.P-1 cheque for funds insufficiency, but the said fact was not denied or disputed by the accused. So also the accused has not made any attempt to rebut the presumption available to the Ex.P-2 memo. Therefore, the above being the preposition of law, in the absence of anything contrary, I conclude that the Ex.P-1 cheque was dishonored for the reason of insufficiency of funds in the account of the accused.

**37.** The next ingredient that is required to be proved by the complainant is that the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of

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money by giving a notice in writing to the drawer of the cheque within 30 days from the receipt of information by him from the bank regarding the return of the cheque as unpaid. Ex.P-1 cheque is dated 23.05.2025 and the Ex.P-2 bank memo is dated 29.05.2025. Similarly Ex.P-3 is a demand notice dated 20.06.2025 issued to the accused intimating him about the dishonour of Ex.P-1 cheque issued by him and also calling upon the accused to pay the cheque amount. Ex.P-4 is a postal receipt and the same discloses that the Ex.P-3 legal notice was sent to the accused on 21.06.2025 itself. On combined reading of the Ex.P-1 to Ex.P-4 documents, the same proves and establishes that the complainant herein has issued the Ex.P-3 demand notice to the accused within 30 days from the date of dishonour of cheque and thereby the complainant has complied with the mandatory requirements of issuance of the demand notice within the stipulated time as envisaged under section 138 (b) of N.I Act.

**38.** Further, inspite of his appearance before this court through his counsel, the accused did not denied or disputed the service of Ex.P-3 demand notice on him. So also the accused has not disputed his address mentioned in the Ex.P-3 legal notice. Ex.P-5 is a postal track consignment report duly attested by the post master, K.R.Nagar and the same proves and establishes that the Ex.P-3 legal notice was duly served on the accused way back on 23.06.2025 itself. Inspite of his appearance before this court

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through his counsel, the accused did not denied or disputed the service of Ex.P-3 demand notice on him nor has the accused denied or disputed the Ex.P-5 document. Even no cross-examination is made by the accused to the complainant/Pw.1 by denying or disputing the service of Ex.P-3 demand notice. Thereby the evidence placed on record proves and establishes the service of Ex.P-3 demand notice on the accused. Accordingly I conclude that the Ex.P-3 demand notice is duly served on the accused. Thereby I hold that the complainant has complied with the mandatory requirement of issuance of the demand notice within the stipulated time as envisaged under Section 138 (b) of N.I Act.

**39.** Further, the records reveals that in this case the complainant has given the very same address of the accused as mentioned by him in the Ex.P-3 demand notice. The records reveals that the summons of this case was served on the accused to the very same address of the accused as mentioned in the Ex.P-3 demand notice. Thereby it is proved that the address mentioned in the Ex.P-3 demand notice is true and correct. When the demand notice is sent to the correct address of the accused, statutory presumption Under Section 27 of General Clauses Act and Section 114 of Indian Evidence Act operates and it has to be presumed that the Ex.P-3 demand notice sent to the correct address of the accused, the same is duly served on him. Section

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27 of General Clauses Act as well as Section 114 of the Indian Evidence Act states that the legal notice sent to the proper and correct address of the accused shall be deemed to have been effected on the addressee. Hence, it has to be held that the Ex.P-3 demand notice is sent to the correct address of the accused and the same is duly served on him. That apart, though the accused has entered his appearance in this case but the accused did not deny or dispute that the address mentioned in the Ex.P-3 demand notice is incorrect nor has the accused stated that he is not working in the said address. The accused has not placed any evidence to show that he is working at some other address nor has the accused placed any evidence before the court to prove that the address mentioned in the Ex.P-3 demand notice is incorrect. Accordingly I conclude that the Ex.P-3 demand notice is duly served on the accused. Thereby I hold that the complainant has complied with the mandatory requirement of issuance of the demand notice within the stipulated time as envisaged under Section 138 (b) of N.I Act.

**40.** As held above, it is proved that the Ex.P-3 demand notice was duly served on the accused. In spite of service of demand notice on him even before filing of this complaint, the accused did not reply to the Ex.P-3 legal notice. Non-replying to the demand notice by the accused at the earliest point of time is also one of the strong circumstances to draw an inference that the accused has

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borrowed the loan amount from complainant and that the Ex.P-1 cheque was issued towards repayment of legally enforceable debt. This view of this court receives support from the decision reported in, **2006 CRI.L.J.1, in a case of Gorantla Venkateswara Rao Vs. Kolla Veera Raghava Rao**, wherein at para No.42 it is held as under:

42. The mere loss of the demand promissory note or its non-production by itself would not be sufficient to hold that there was no legally enforceable debt. There are no other probable circumstances placed by the accused in the process of discharge of his burden. The failure of the accused in giving reply to the legal notice issued by PW 1 is one of the strong circumstances to draw an inference that the accused borrowed the amount from PW1 and the Cheque was issued towards part payment of the legally enforceable debt.

**41.** Further, in a decision reported in **2006 SCC OnLine Ker 356 in the case of Sajeev Vs. Thriveni Credit Corporation**, wherein it is held that:

**2.**In the nature of the contentions raised before me, it is not necessary for me to advert to facts in any detail. Signature in the cheque is admitted. Notice of demand though duly received and acknowledged, did not evoke any reply.

**3.**Though discharge was the plea urged, no evidence was adduced to prove that plea. The

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courts below concurrently came to the conclusion that the complainant has succeeded in proving all ingredients of the offence punishable under S. 138 of the N.I. Act.

**42.** Therefore, in view of non-replying the Ex.P-3 demand notice, inference is drawn against the accused that the accused has borrowed the loan amount from complainant and Ex.P-1 cheque was issued towards payment of legally enforceable debt.

**43.** The next ingredient that is required to be proved is that the accused being the drawer of Ex.P-1 cheque, he failed to make payment of the said amount of money to the complainant payee/the holder in due course of the Ex.P-1 cheque within 15 days of the receipt of the Ex.P-3 demand notice. As held above, it is proved that the Ex.P-3 demand notice was duly served on the accused. So also it is proved that the accused has received the intimation regarding dishonour of Ex.P-1 cheque through Ex.P-3 notice. It is not the case of the accused that he had repaid the amount due to the complaint under the Ex.P-1 cheque within the stipulated period. Thereby it is proved that the accused being the drawer of Ex.P-1 cheque, he has failed to make payment of the amount due to the complainant under the Ex.P-1 cheque within the stipulated period as prescribed under the Section 138(c) of N.I. Act.

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**44.** The last aspect that needs to be looked into is whether the present complaint is filed within a period of one month from the date on which the cause of action arose under clause (c) of proviso appended to Section 138 of N.I.Act. As held above, it is proved that the complainant has presented the Ex.P-1 cheque within a period of its validity, which upon presentation, returned unpaid by the bank for funds insufficiency as per the bank memo dated 29.05.2025. So also it is proved that the complainant has issued the Ex.P-3 demand notice to the accused within a period of 30 days from the date of dishonour of Ex.P-1 cheque. It is also proved that the Ex.P-3 demand notice was duly served on the accused. Ex.P-4 being the postal receipt, the same discloses that the Ex.P-3 notice was sent to the accused on 21.06.2025 itself. Ex.P-5 being the postal track consignment report certified by the post master, K.R.Nagar, the same establishes that on 23.06.2025 itself the Ex.P-3 notice was duly served on the accused. Hence, the complainant ought to have filed the present complaint within a period of 1 month from 09.07.2025. The records reveals that the complainant has filed the present complaint on 18.07.2025. Thereby it is proved that the complainant has filed the present complaint well within the period of limitation as contemplated U/Sec.142(b) of N.I Act. Thereby the complainant has complied all the statutory requirements of Section 138 of N.I. Act.

**45.** Viewing from any angle the accused has miserably failed to rebut the presumptions as provided Under Sections 118 and 139

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of Negotiable Instruments Act. On the other hand the complainant has successfully proved that the accused had issued the Ex.P-1 cheque in question towards discharge of his liability and upon its presentation to the bank, the same was returned dishonored and even after issuance of demand notice, the accused did not pay the cheque amount, thereby the accused has committed the offence Punishable U/s 138 of NI Act. Therefore the accused is liable to be convicted for the offence punishable U/Section 138 of N.I. Act. Accordingly the **Point No.1 is answered in the Affirmative.**

**46.** Further by considering the period taken for prosecution of the case, by considering the totality of the circumstances of the case and also in view of the ratio laid down by the Hon'ble Apex court in the decision reported in **(2012) 1 SCC 260 in the case of R.Vijayan Vs. Baby and another**, this court is of the view that the complainant needs to be compensated adequately at the cost of the accused. Accordingly I hold that it is just and proper to grant compensation of Rs.7,05,000/-(Rupees Seven Lakhs Five Thousand Only) to the complainant to be paid by the accused, failing which the accused is liable to undergo simple imprisonment.

**47. POINT NO.2:** In view of my above discussions on point No.1, I proceed to pass the following:

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**ORDER**

Acting under section 278(2) of the Bharatiya Nagarik Suraksha Sanhita, the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act.

Further the accused is hereby sentenced to pay fine of Rs.7,05,000/- (Rupees Seven Lakhs Five Thousands Only). In default of payment of the same, the accused shall undergo simple imprisonment for a period of one year.

Further, acting U/s 395(1)(a) of BNSS out of the fine amount, a sum of Rs.5,000/- Shall be defrayed towards state expenses.

Further, acting U/s 395(1)(b) of BNSS, out of the fine amount, a sum of Rs.7,00,000/- (Rupees Seven Lakhs Only) has to be paid to the complainant as a compensation.

Bail Bond of the accused and his surety bond is hereby extended as per law.

Supply free copy of this judgment to the accused.

(Dictated to the Stenographer, typed by him, and the transcript revised and corrected by me and then pronounced in the open court on this **4<sup>th</sup> day of April 2026**)

**(SMT.ASRINA)**  
**I ADDL.CIVIL JUDGE & JMFC,**  
**KRISHNARAJANAGAR.**

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**ANNEXTURE****List of Witnesses examined on behalf of the Complainant**

P.W.1: Shri.C.K.Mahesh S/o Kantharajegowda

**List of Documents marked on behalf of the Complainant**

Ex.P-1: Original Cheque bearing No.396162 dated 23.05.2025.

Ex.P-2: Bank Memo dated 29.05.2025.

Ex.P-3: Legal notice dated 20.06.2025.

Ex.P-4: Postal Receipt.

Ex.P-5: Postal track consignment report.

Ex.P-6 to Ex.P-10: RTC's.

Ex.P-11: General license.

Ex.P-12: Certificate of verification.

Ex.P-13: Bank statement of the complainant.

**List of witnesses examined on behalf of the Accused**

-NIL-

**List of documents marked on behalf of the Accused**

-NIL-

(SMT.ASRINA)  
I ADDL.CIVIL JUDGE & JMFC,  
KRISHNARAJANAGAR.