KAMS410030022019

IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC, KRISHNARAJANAGAR

PRESENT

Sri. Chandan.S., B.Com., L.L.B.,
Principal Civil Judge & JFMC, Krishnarajanagar.

Dated 01st day of July 2026

C.C.No.1307/2019

Complainant :: Smt.Shantha W/o S.L.Mohan,
Aged about 55 years,
R/at Ballur Road, Saligrama Town,
Saligrama Hobli, K.R.Nagar Taluk.

[By: Sri. S.S.G., Advocate]

-V/s-

Accused :: Sri.Indirarama (Contractor)
S/o Late. Narayanagowda,
Aged about 50 years,
R/at Shabalu Village, Natanahalli Post,
Mirle Hobli, K.R.Nagar Taluk,

[By: Sri. M.S.U., Advocate]

J U D G M E N T

The present complaint has been instituted under Section 138 of the Negotiable Instruments Act, 1881, seeking to prosecute the accused for the dishonour of cheque.

2. The epitomized pleadings of the complainant in terse are infra.

The accused is well known to the complainant. On 08.05.2017, the accused borrowed a sum of Rs.7,25,000/- from the complainant and her husband, Sri S.L.Mohan, for the purpose of construction work and to discharge his agricultural land loan. On the very same day, in discharge of the said liability, the accused issued a cheque bearing No.423272 dated 08.05.2019 for a sum of Rs.3,50,000/- in favour of the complainant, drawn on Cauvery Kalpataru Gramina Bank, Natanahalli, K.R.Nagar Taluk. Another cheque was also issued in favour of the complainant's husband towards the remaining amount.

3. As per the instructions of the accused, the complainant presented the said cheque for encashment through her banker, Karnataka Bank Limited, Saligrama Branch, on 08.05.2019. However, the cheque was dishonoured and returned unpaid with an endorsement "Funds Insufficient". Thereafter, the complainant approached the accused and demanded repayment of the cheque amount, but the accused failed to honour the same. Hence, the complainant issued a statutory legal notice dated 12.06.2019 through her counsel by Registered Post Acknowledgment Due, calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the notice.

4. The said notice was duly served on the accused on 21.06.2019. However, the accused neither complied with the demand nor made payment within the stipulated period. Instead, he issued a reply notice dated 09.07.2019 with untenable and false contentions. Thus, despite service of statutory notice, the accused failed to make payment within the prescribed period and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, the present complaint is filed within the period of limitation seeking to punish the accused in accordance with law.

5. The complainant further submits that, the issuance of the cheque by the accused was with mala-fide intention and deliberate conduct to deceive. Being aggrieved by the acts of the accused, the complainant has filed the present complaint praying that the accused be summoned, tried and punished in accordance with Section 138 of the Negotiable Instruments Act, 1881. Upon presentation of the complaint, this Court on being satisfied that a prima-facie case is made out, has taken cognizance of the offence and registered the case. The complainant has filed his sworn statement in lieu of examination-in-chief at the stage of cognizance.

6. Later, the sworn statement of the complainant by way of affidavit was recorded and the complainant has led in all 5 documents which are exhibited and marked as Ex.P1 to Ex.P5. The statement of the accused is recorded under Section 313 of Cr.P.C and his answers were recorded.

7. Heard the counsel appearing for the complainant. Since there were sufficient materials and grounds found in the complaint and the documents, the cognizance was taken against the accused for the offence punishable U/s 138 of NI Act and ordered to register the case and issued summons to the accused. On receipt of summons the accused appeared before this court through his counsel and he was enlarged on bail.

8. Further the substance of the accusations are stated and explained to the accused in Kannada language known to him by recording the plea against the accused. For which upon understanding the substance of accusation explained against the accused in the complaint, he has pleaded not guilty and also claimed to try the case.

9. The points that arise for the consideration of this court are as under:

> **1. Whether complainant proves that accused has borrowed a sum of Rs.3,50,000/- and thereby issued a cheque bearing No.423272 drawn on Kavery Kalpatharu Grameen Bank, Natanahalli Branch, K.R.Nagar Taluk, dated 08.05.2019, towards discharge of his liability and the said cheque was returned unpaid with an endorsement of insufficient funds on 12.06.2019 and despite, the notice was duly served upon the accused, he has not replied to the said notice nor paid the cheque amount due to the complainant and thereby the accused committed an offence punishable U/s 138 of N.I Act?**
>
> **2. What order?**

10. This courts findings on the above points are as under:

Point No.1: In the Affirmative

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

REASONS

11. POINT NO.1:

In order to prove his case, the complainant examined himself as PW1 and reiterated the averments made in the complaint. In support of his oral evidence, the complainant has relied upon the following documents, which are marked as Exhibits P1 to P5. Ex.P1 is the original cheque bearing No.423272 dated 08.05.2019 for Rs.3,50,000/-, drawn on Cauvery Kalpataru Gramina Bank, Natanahalli Branch, K.R.Nagar Taluk, alleged to have been issued by the accused in favour of the complainant. Ex.P2 is the Bank endorsement/memo dated 08.05.2019 indicating that the cheque was dishonoured for “Funds Insufficient”. Ex.P3 is the copy of legal notice dated 12.06.2019 issued by the complainant to the accused demanding payment of the cheque amount. Ex.P4 is the Postal acknowledgment evidencing service of notice on the accused on 21.06.2019. Ex.P5 is the reply notice dated 09.07.2019 issued by the accused.

12. In the reply notice Ex.P5, the accused has denied the entire claim of the complainant as false and untenable. It is contended that there was no legally enforceable debt or financial transaction between the complainant and the accused. The accused has further stated that, both the complainant, her husband, and the accused were known to each other in the course of their work, and the cheque in question, along with another cheque, was issued only as a security measure in connection with certain internal arrangements and not towards discharge of any legally enforceable liability.

13. It is specifically contended by the accused that, he has not borrowed any amount from the complainant or her husband and that the cheques were misused. Therefore, according to the accused, he is not liable to pay any amount, and the complaint is based on false, concocted, and fabricated allegations. Despite sufficient and repeated opportunities being granted, the accused has failed to cross-examine PW1. Further, the accused has neither adduced any defence evidence nor produced any material to rebut the case of the complainant. Consequently, the evidence of the complainant remains unchallenged and unrebutted. Thereafter, the matter was posted for final arguments.

14. Learned counsel for the complainant argued that all the essential ingredients required to constitute an offence under Section 138 of the Negotiable Instruments Act, 1881, have been duly complied with and clearly established by the complainant. It was further contended that the accused has not disputed his signature on the cheque in question, even in the reply notice. Though the accused has taken a plea of misuse of cheque, the same is not supported by any cogent or convincing evidence and hence cannot be accepted.

15. Upon consideration of the pleadings, evidence, and arguments advanced, this Court proceeds to examine whether the complainant has established the necessary ingredients under

Section 138 of the NI Act. In order to constitute an offence under Section 138, the complainant is required to prove the following:

16. That the accused issued a cheque drawn on an account maintained by him with a bank. That the cheque was so issued in discharge, in whole or in part, of a legally enforceable debt or liability. That the cheque was presented within its period of validity. That the cheque so produced for its honor has been dishonoured upon presentation for the reason of insufficiency of funds or any other reason. That the complainant issued a statutory notice within 30 days from the date of receipt of information regarding dishonour of the cheque. That the accused failed to make payment of the cheque amount within 15 days from the date of receipt of the said notice.

17. Further, Sections 118(a) and 139 of the Negotiable Instruments Act raise statutory presumptions in favour of the holder of the cheque. Under Section 118(a), it shall be presumed that every negotiable instrument was made or drawn for consideration. Under Section 139, it shall be presumed, unless the contrary is proved, that the holder of the cheque received it for discharge of a debt or liability. These presumptions are mandatory in nature and arise once the execution of the cheque by the accused is either admitted or proved. Upon such admission or proof, the burden shifts upon the accused to rebut the presumptions by placing cogent evidence on record.

18. It is well settled that, the presumptions under Sections 118(a) and 139 are rebuttable and retrievable in nature. However, in the present case, the accused has failed to discharge this burden. No evidence has been adduced to show that the cheque was not issued towards a legally enforceable debt or liability. The mere plea of misuse of cheque, without any supporting material, is insufficient to rebut the statutory presumptions which has been raised in favour of the complainant which is mandatory and statutory one.

19. It is also pertinent to note that, a presumption is not substantive evidence by itself; however, it raises a prima-facie case in favour of the party for whose benefit it exists, unless rebutted by the opposite party. Accordingly, in a cheque dishonour case, the Court is required to examine whether all the essential ingredients of the offence under Section 138 of the Negotiable Instruments Act, 1881 have been fulfilled and whether the accused has successfully rebutted the statutory presumptions.

20. In the present case, it is an admitted fact that the cheque in question belongs to the account of the accused and bears his admitted signature. The accused, in his reply notice, has not denied the execution of the cheque. However, he has taken a specific, frantic and tempestuous defence that the cheque in question and controversy was issued as a security in the course of routine dealings and has been misused by the complainant. This defence, however, remains a mere assertion without any supporting material. The accused has failed to produce any cogent, convincing, or reliable evidence to substantiate his claim. Further, despite sufficient opportunities, the accused has neither cross-examined PW1 nor adduced any defence evidence. As such, the testimony of PW1 remains unshaken, unchanged, unchallenged and unrebutted.

21. It is well settled that, once the execution of the cheque is admitted, the presumption under Sections 118(a) and 139 of the Negotiable Instruments Act arises automatically in favour of the complainant, to the effect that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability. Though these presumptions are rebuttable in nature and feature, the burden lies on the accused to raise a probable defence.

22. In the present case, the accused has taken inconsistent and contradictory defences in the reply notice and has failed to substantiate the same by any acceptable evidence. Mere denial or a bald plea of misuse of cheque is not sufficient to rebut the statutory presumption. The accused is required to bring on record such facts and circumstances which would make the non-existence of liability probable. However, no such material is forthcoming in this case.

23. On the contrary, the complainant has consistently established her case through both oral and documentary evidence. The cheque dated 08.05.2019 has been presented within its validity period and was dishonoured for "Funds Insufficient". The statutory notice dated 12.06.2019 was issued within the prescribed time and duly served on the accused on 21.06.2019. Despite service of notice, the accused failed to make payment within 15 days, thereby completing the cause of action under Section 138 of the Act is stands assembled.

24. Thus, all the mandatory requirements of Section 138 of the Negotiable Instruments Act are stand satisfied in the present case. In view of the above discussion, this Court is of the considered opinion that the complainant has successfully proved that the cheque in question was issued by the accused towards discharge of a legally enforceable debt or liability. The accused thereafter he has failed to rebut the statutory presumptions and has not raised any probable defence. Accordingly, the case of the complainant deserves to be accepted.

25. It is an undisputed fact that, Ex.P1 cheque belongs to the account of the accused and bears his signature. The accused, in Ex.P5 reply notice, has not denied the execution of the cheque. Once the execution of the cheque is admitted, statutory presumptions under Sections 118(a) and 139 of the N.I. Act arise in favour of the complainant. As per Section 139 of the N.I. Act, it shall be presumed that the cheque was issued for discharge of a debt or liability, unless the contrary is proved.

26. In the present case, the accused has taken a defence that the cheque was issued as security and has been misused.

However, this contention remains a mere bald assertion. No material has been placed on record to substantiate the same.

27. Further, the accused has failed to cross-examine PW1. The evidence of PW1, therefore, remains unchallenged and unrebutted. It is a settled principle of law that failure to cross-examine a witness amounts to acceptance of his testimony. The accused has also not entered the witness box nor produced any documentary evidence to probabilise his defence so set out in the reply notice. Thus, the accused has failed to rebut the statutory presumptions even on the standard of preponderance of probabilities.

28. On the other hand, the complainant has successfully established, issuance of cheque Ex.P1, dishonour due to "Funds Insufficient" Ex.P2, issuance of statutory notice within time Ex.P3, service of notice Ex.P4, failure of accused to pay the cheque amount within 15 days. Thus, all the ingredients of Section 138 of the N.I. Act are duly satisfied. In view of the above discussion, this Court is of the considered opinion that the complainant has proved the case beyond reasonable doubt. The accused has failed to rebut the statutory presumptions and has not raised any probable defence. Hence for the reasons detailed and observed above, this court inclined to answer the **point No.1** in the **affirmative**.

29. POINT NO.2:

In view of above discussion and the reasons stated therein this court proceeds to pass the following:

ORDER

Acting U/s 265 of Criminal Procedure Code, accused is hereby convicted for the offence punishable U/s 138 of Negotiable Instruments Act, 1881.

The accused is sentenced to pay a fine of Rs.3,55,000/- (Rupees Three Lakhs and Fifty Thousand Only). In default to pay the said amount, the accused shall undergo simple imprisonment for a period of three months. Out of the fine amount received, Rs.5,000/- is to be appropriated and defrayed to the State and by way of compensation as per the provision U/Sec 357(1) of Cr.P.C the complainant is entitled for Rs.3,50,000 /-.

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

Office is directed to furnish a free copy of the judgment to the accused U/s 363(1) of Cr.P.C. Failing to pay the compensation the same shall be recovered as fine in terms of Section 421 R/W Section 431 of Cr.P.C.

[Dictated to the Stenographer, transcribed by her, corrected and initialed by me and then pronounced in the Open Court on this the 01st day of July 2026)

(Chandan.S)
Prl. Civil Judge & JMFC,
K.R.Nagar.

ANNEXURE

1. **List of witnesses examined for the Complainant:**

PW-1	Shantha

2. **List of documents exhibited for the Complainant:**

Ex.P-1	Cheque
Ex.P-2	Bank endorsement
Ex.P-3	Legal notice dated 12.06.2019

Ex.P-4	Postal acknowledgment
Ex.P-5	Reply notice dated 09.07.2019

3. <u>List of witnesses examined for the respondent witness:</u>-Nil

4. <u>List of documents exhibited for the accused:</u>- Nil

(Chandan.S)
Prl. Civil Judge & JMFC,
K.R.Nagar.