KAMD310026662023

IN THE COURT OF I ADDL. CIVIL JUDGE AND JMFC., MADDUR

Present
Sri K GOPALA KRISHNA, B.A.L., L.L.B.,
I Addl. Civil Judge and JMFC., Maddur.

Dated this the 4th day of August 2026

C.C. No.1451/2023

Complainant : Thilak Raj.G.S.
S/o Shivananju,
Aged about 33 years
R/at Gejjalagere village
Kasaba Hobli, Maddur Taluk
Mandya District

[Represented by Sri. M.C.K Adv.]

V/s

Accused : Vasanth Kumar.S.C.S/o G.Chandra,
Aged about 30 years
R/at Somanahalli village
Maddur Taluk, Mandya District

[Represented By S.K., Adv.]

JUDGMENT

This case arises out of a private complaint filed by the complainant against the accused under section 200 of Cr.P.C., for the offence punishable under section 138 of Negotiable Instruments Act, 1881.

2. <u>The case of the complainant in brief is as under ;</u>

It is the case of the complainant, the complainant and accused are well known to each other. The accused had borrowed loan sum of Rs.3,50,000/- (Three lakhs fifty Thousand Rupees only) from complainant for his legal necessities viz. for discharge of hand loans and domestic expenses on 01-03-2023. The accused had assured to complainant that the said amount will be repaid within one month. Thereafter, the complainant has approached the accused to repay the said loan amount. But at that time, the accused issued cheque bearing No.286264 dated 01-04-2023 for a sum of Rs.3,50,000/- (Three lakhs fifty Thousand Rupees only) drawn on Canara Bank, Somanahalli Branch for discharge the hand loan amount received from the complainant and the accused requested present the said cheque and received the amount. The complainant has present the said cheque through bank at Bank of Baroda, Gejjalagere Branch for encasement, but said cheque returned with shara “Funds Insufficient” on 11-04-2023. Thereafter, the complainant contacted the accused and remembered about the dishonor of the cheque, but the accused is not responses properly. The complainant has got issued legal notice to the accused as per provision of law through RPAD on 03-05-2023. The notice issued through RPAD, the said notice served with shara not claimed. The accused intentionally avoid the service of summons with the help of postal official. As per postal shara the “Not claimed RTS” RPAD cover returned on 15-05-2023. The accused has not return the hand loan amount within 15 days, nor replied the said notice. Hence, the complainant has filed present complaint.

3. After the complainant cognizance was taken for the offence punishable under section 138 of NI Act against the accused. After issuance of summons, the accused has appeared before the court and got enlarged on bail and substance of accusation was read over and explained to accused, he pleaded not guilty and claimed to be tried. Hence the case is posted for trial.

4. In order to prove the guilt of the accused, the complainant himself examined as PW.1 by filing affidavit in lieu of examination in chief and got marked the documents at Ex.P1 to Ex.P6. After closer of the complainant evidence the statement of accused under section 313 of Cr.P.C. was recorded and the incriminating evidence forth coming against the accused has been duly read over and explained to him in the complaint and the accused denied the incriminating circumstances found against him and in order to disprove the accused, he did not appear before the court to give evidence. Finally the court ordered the defence evidence taken as nil and case was posted for arguments on main merits.

5. Heard arguments on both the sides and perused the materials a valuable on record.

6. On basis of the materials a valuable on record the following points would arise for determination ;

POINTS

Point No.1: Whether the complainant proved that all reasonable doubt that the accused had borrowed loan sum of Rs.3,50,000/- (Three lakhs fifty Thousand Rupees only) from complainant for his legal necessities. Thereafter, the accused issued cheque bearing No.286264 dated 01-04-2023 for a sum of Rs.3,50,000/- (Three lakhs fifty Thousand Rupees only) drawn on Canara Bank, Somanahalli Branch. The complainant has presented the said cheque through Bank of Baroda, Gejjalagere Branch for encasement, but said cheque returned with shara “Funds Insufficient” on 11-04-2023. Inspite of notice the accused has failed to repay the cheque amount within statutory period and thereby committed on offence punishable under section 138 of NI Act?

Point No.2: what order?

7. My answered to the above points are as under

Point No.1 : In the Affirmative.
Point No.2: As per final order for the following ;

REASONS

8. **Points No.1:** It is the case of the complainant, the complainant and accused are well known to each other. The accused had borrowed loan sum of Rs.3,50,000/- (Three lakhs fifty Thousand Rupees only) from complainant for his legal necessities viz. for discharge of hand loans and domestic expenses on 01-03-2023. The accused had assured to complainant that the said amount will be repaid within one month. Thereafter, the complainant has approached the accused to repay the said loan amount. But at that

time, the accused issued cheque bearing No.286264 dated 01-04-2023 for a sum of Rs.3,50,000/- (Three lakhs fifty Thousand Rupees only) drawn on Canara Bank, Somanahalli Branch for discharge the hand loan amount received from the complainant and the accused requested present the said cheque and received the amount. The complainant has present the said cheque through bank at Bank of Baroda, Gejjalagere Branch for encasement, but said cheque returned with shara “Funds Insufficient” on 11-04-2023. Thereafter, the complainant contacted the accused and remembered about the dishonor of the cheque, but the accused is not responses properly. The complainant has got issued legal notice to the accused as per provision of law through RPAD on 03-05-2023. The notice issued through RPAD, the said notice served shara not claimed. The accused intentionally avoid the service of summons with the help of postal official. As per postal shara the “Not claimed RTS” RPAD cover returned on 15-05-2023. The accused has not return the hand loan amount within 15 days, nor replied the said notice. Hence, the complainant has filed present complaint.

9. In order to prove the case of the complainant, he got examined himself as PW.1 and filed affidavit in lieu of examination in chief, wherein he has reiterated the complainant averments. The complainant has produced Ex.P1, which is the cheque bearing No.286264 dt.01-04-2023 drawn on Canara Bank., Somanahalli, and the signature of the accused. Ex.P.2 is the Bank endorsement. Ex.P.3 is the legal notice. Ex.P.4 is postal receipt. Ex.P.5 & Ex.P6 are the Postal RPAD Covers and Ex.P5(a) & Ex.P6(a)

are copy of Legal notices.

10. In this case, after filing affidavit by way of examination-in-chief by the complainant, case was posted for cross-examination of the P.W.1. But, the accused remained absent and cross-examination of P.W.1 was taken as nil. Hence, case posted for defense evidence. But, remained absent in spite of sufficient opportunity was given. Hence, defense evidence was taken as nil.

11. At this stage, I would like to rely upon a decision reported in ***(2013) 8 SCC 71 Aparna A Shah V/s Sheth Developers (P) Ltd. Wherein the Hon'ble Supreme Court of India has held that "*** *In order to constitute an offence under Section 138 of the Negotiable Instruments Act, 1881 the following ingredients are required to be fulfilled:*

> *(i) a person must have drawn a cheque on a 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 the 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;

(vi) the drawer of such 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.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under section 138 of the NI Act".

12. The Hon'ble Supreme Court of India in a decision reported in ***2021 SCC OnLine SC 75 (Kalamani Tex & anr V/s P.Balasubramanian) has held that:***

> ***"****Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated****"*** The Hon'ble Apex Court in the said judgment has referred a decision reported in ***(2019) 4 SCC 197 (Bir Singh V/s Mukesh Kumar) wherein it is held that "****Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act,*

in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

13. I have gone through the documents produced by the complainant so also the evidence adduced by the complainant. In this case, the accused has not been examined orally and documentary evidence. The accused in his 313 Cr.P.C Statement has stated that he has defense evidence, but failed to appear before the Court inspite of sufficient opportunities given to cross-examine the complainant. But, did not appear before the Court, failed to contest the case. Hence, defense evidence of the accused is taken as nil. In view of above decisions, if the present case on hand is discussed, it is clear that the accused has issued the cheque dated 01.04.2023 in favour of the complainant at Ex.P1. The cheque issued is for the discharge of debt liability. Accordingly, the holder of cheque has presented the same with his banker, the same returned as "Funds Insufficient" on 11.04.2023 at Ex.P2. Thereafter on 03-05-2023, the complainant has issued legal notice calling upon the accused to repay the said amount mentioned at Ex.P1, the notice not served to the accused and after the court taken cognizance against the accused court issued summons in the name address of the accused and the said summons duly served to the accused and he was appear before the court and enlarged bail. It is clearly shows that, the accused intentionally avoiding the service of legal notice against him. Till today the accused has not repaid the amount nor entered into witness box not challenged the case. Thus, it is clear that the complainant has succeeded to comply all the ingredients of section 138 of the NI Act.

14. Thus, considering the above facts and decisions, this court is of the opinion that the complainant has succeeded in proving his case with the cogent evidence, which has not been challenged by the accused by adducing oral evidence and producing documentary evidence. Thereafter, he failed to appear before the Court to rebut the presumption as provided under section 118 and 138 of NI Act. Accordingly, point No.1 is answered in the ***Affirmative***.

15. **Point No.2::** It is settled principles that the object of N.I. Act is not only punitive but also compensatory and restitutive and compensation to the complainant needs to be awarded., in view of the above discussion on Point No.1 the accused is liable to be convicted for the offence punishable under section 138 of NI Act. Hence, this court proceeds to pass the following;

ORDER

Acting under section 255(2) of Cr.PC., accused is hereby convicted for the offence punishable under section 138 of Negotiable Instruments Act.

He is sentenced to pay a fine of Rs.3,55,000/- within one month from this day.

In default to pay the fine, the accused shall undergo simple imprisonment for a period of one year. Even if, the accused undergo imprisonment in default to pay the fine amount, the fine is still recoverable in view of provision to section 421 of Cr.PC.

It is further ordered that out of the fine amount, a sum of Rs.3,50,000/- shall be paid to the complainant as compensation under section 357 of Cr.PC.

The rest of the amount Rs.5,000/- is ordered to be adjusted to the State Exchequer.

The bail bond of accused and surety shall stands canceled automatically on payment of the entire amount.

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

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 4th ***day of August 2026****]*

[K. Gopala Krishna]
I Addl. Civil Judge and JMFC,
Maddur.

ANNEXURE

List of witnesses examined for the complainant

PW.1: Thilak Raj.G.S.

List of documents exhibited for the complainant

Ex.P1:	Cheque
Ex.P1(a):	Signature
Ex.P2:	Bank endorsement
Ex.P3:	Legal Notice
Ex.P4:	Postal receipt
Ex.P5:	RPAD cover
Ex.P5(a):	Copy of legal notice
Ex.P6:	RPAD cover
Ex.P6(a):	Copy of legal notice

List of witnesses examined for the defense

-NIL-

List of documents exhibited for the defense

-NIL-

[K. Gopala Krishna]
I Addl. Civil Judge and JMFC,
Maddur.