

KAMS610029242019



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE  
AND JMFC, PERIYAPATNA.**

**PRESENT**

**Smt. SHWETHA.J, B.Com.,LLB.,**  
I Addl. Civil Judge & JMFC,  
Periyapatna.

Dated this the 11<sup>th</sup> Day of March 2026

**CC.No.1082/2019**

**COMPLAINANT:-**

Sri.D.K.Raju,  
S/o late Karigowda,  
Aged about 50 years,  
R/at Doddabelalu Village,  
Ravandur Hobli,  
Periyapatna Taluk,  
Mysuru District.

**(By Sri.JSN., Advocate)**

**V/s.,**

**ACCUSED:-**

Sri.S.Suresha,  
S/o Sannaputtegowda,  
Aged about 45 years,  
R/at Manjunatha Badavane,  
Sai Baba Temple Back side,  
Hunsur Town,  
Hunsur Taluk,  
Mysuru District.

**(By Sri.TNM., Advocate)**

Date of filing of private complaint	15.11.2017
Offences complained of	U/Sec.138 of N.I.Act

Evidence commenced on	29.01.2020
Evidence closed on	29.01.2020
Opinion of the Judge	Accused found guilty
Judgment pronounced on	11.03.2026

**(SHWETHA.J)**  
**I Addl. Civil Judge & JMFC,**  
**Periyapatna.**

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

The complainant has filed complaint under Sec.200 of Criminal Procedure Code against the accused for having committed the offence under Sec.138 of Negotiable Instrument Act (Herein after called as “the NI Act”).

**2. The brief facts of the Prosecution are that:-**

The Complainant and the accused are friends. The accused has borrowed the loan of Rs.1,50,000/- from the complainant for his legal necessities and to clear old debts on 01.08.2017 and assured to repay the said loan amount within a period of one month. The Complainant after one month approached the accused and asked him to repay the entire money, but the accused stated some reasons regarding financial problem and assured the Complainant that he would

repay the money within few days. The Complainant since then repeatedly approached the accused, but failed to evince any positive reply from the accused. The Complainant persistently approached the accused and insisted the accused to pay the entire amount as it was a hard earned money and the accused issued three cheques dated 09.09.2017, 10.09.2017 and 11.09.2017 for Rs.50,000/- each totally Rs.1,50,000/- to be drawn on Axis Bank Ltd., Mysuru (KT) Branch, bearing No.104164, 104165 and 104166 towards discharge of his legally recoverable debt. That the complainant presented the said cheques for encashment through his banker to Syndicate Bank, Periyapatna Branch, but the said cheques returned on 14.09.2017 as unpaid with a memorandum as 'Drawers's Signature Incomplete'. Thereafter, the complainant got issued a legal notice to the accused on 12.10.2017 through RPAD to the addressee of the accused. The said notice is returned on 20.10.2017 for the reason as unclaimed, which is a deemed service of notice. In spite of due service of notice, the accused failed to repay the loan amount.

Hence, the complainant was constrained to file the present complaint.

**3.** Since this is a complaint filed under Sec.200 of Cr.P.C., this Court after taking cognizance of the offence, has proceeded to record the sworn statement and thereafter issued process to the accused. The accused appeared through his counsel and got enlarged on bail and the substances of accusation was read over and explained to the accused which the accused pleaded not guilty and claimed to be tried.

**4.** In order to prove the case, the complainant examined himself as PW1 and got marked 7 documents as per Ex.P1 to P7. When the case posted for cross examination of PW1, accused remained absent. Therefore, NBW was issued against him. But the accused avoided service of NBW against him, hence cross of PW1 taken as nil. The examination of accused under Sec.313 of Cr.P.C., is dispensed with.

**5.** Heard the Counsel for the Complainant.

**6.** On perusal of the materials placed on record, the following points would arise for consideration by this court;

**POINTS**

(1) Whether the complainant proves that the accused has issued Ex.P1 to 3 cheques towards legally recoverable debt?

(2) Whether the complainant proves that the cheques were dishonored on its presentation through his banker?

(3) Whether the complainant proves that he has complied the mandatory provisions of Sec.138(a) to (c) of the Act?

(4) Whether the complainant proves that the accused has issued Ex.P1 to P3 Cheques and failed to make good to the complainant on its dishonor within stipulated time and thereby, committed an offence Punishable U/Sec. 138 of Negotiable Instrument Act?

(5) To What order?

7. My findings to the above said points are as follows:

**Point No.1 to 4 : In the Affirmative**

**Point No.5** : As per the final order for the following ;

**REASONS**

8. **Point No.1**: The burden cast on the complainant to prove this point. It is the specific case of the complainant that the accused has committed an

offence punishable under Sec.138 of NI Act. The cardinal principle as enumerated under Sec.138 of NI Act incorporates strict liability. As it is a penal provision it has to be considered strictly and the complainant i.e., prosecution has to establish the ingredients for making of the case under Sec. 138 NI Act. The complainant has to prove his case beyond the reasonable doubt and the complainant cannot depend on the weakness of the case of the accused.

**9.** During the trial PW1 has deposed in consonance with the complainant averments and stated that the Complainant and the accused are friends. The accused has borrowed the loan of Rs.1,50,000/- from the complainant for his legal necessities and to clear old debts on 01.08.2017 and assured to repay the said loan amount within a period of one month. The Complainant after one month approached the accused and asked him to repay the entire money, but the accused stated some reasons regarding financial problem and assured the Complainant that he would repay the money within few days. The Complainant since then repeatedly approached the accused, but failed to evince any

positive reply from the accused. The Complainant persistently approached the accused and insisted the accused to pay the entire amount as it was a hard earned money and the accused issued three cheques dated 09.09.2017, 10.09.2017 and 11.09.2017 for Rs.50,000/- each totally Rs.1,50,000/- to be drawn on Axis Bank Ltd., Mysuru (KT) Branch, bearing No.104164, 104165 and 104166 towards discharge of his legally recoverable debt. That the complainant presented the said cheques for encashment through his banker to Syndicate Bank, Periyapatna Branch, but the said cheques returned on 14.09.2017 as unpaid with a memorandum as 'Drawers's Signature Incomplete'. Thereafter, the complainant got issued a legal notice to the accused on 12.10.2017 through RPAD to the addressee of the accused. The said notice is returned on 20.10.2017 for the reason as unclaimed, which is a deemed service of notice. In spite of due service of notice, the accused failed to repay the loan amount.

**10.** In order to prove the case against the accused, the complainant examined himself as PW1 and reiterated the contents of the complaint in his

examination-in-chief and he got marked the documents as Ex.P1 to P7. Ex.P1 is the cheque. Ex.P1(a) is the accused signature. Ex.P2 is the cheque. Ex.P2(a) is the accused signature. Ex.P3 is the cheque. Ex.P3(a) is the accused signature. Ex.P4 is the Bank endorsement. Ex.P5 is the legal notice. Ex.P6 is the postal receipt. Ex.P7 is the unclaimed postal cover.

**11. Arguments of the learned counsel for the**

**complainant**: The learned counsel for the complainant argued that the complainant has fulfilled all the ingredients u/s 138 of NI Act. The accused has not come forward to cross examine the PW1, therefore the evidence of PW1 remained unchallenged. Therefore, the accused did not rebut the presumption available U/Sec.118 and 139 of NI Act. Hence prayed to convict the accused.

**12. Arguments of the counsel for the accused:**

The accused and the Counsel for the accused have remained absent, hence, arguments taken as nil.

**13.** It is to be noted that the complainant has produced Ex.P1 to 3 cheques bearing No.104164, 104165 and 104166 for an amount of Rs.50,000/- each,

in total Rs.1,50,000/- and the same were presented before Syndicate Bank, Periyapatna Branch for encashment. As per Ex.P4, when the said cheques were presented to the bank, the same returned dishonored for "Drawer's Signature Incomplete". Ex.P5 reveals that the complainant has issued a legal notice on 12.10.2017 by calling upon the accused to pay the said due amount as per cheques. Ex.P6 is the postal receipt. Ex.P7 is the unclaimed postal cover.

**14.** As per Sec.118 (A) of Negotiable Instrument Act until the contrary is proved, it shall be presumed that every Negotiable Instrument was made or drawn for consideration and that every such instrument, when it has been accepted, endorsed, negotiated or transferred for consideration. Further as per Sec.139 Negotiable Instrument Act, it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque for discharge, in whole or in part, or any debt or other liability. In the decision of, **Rangappa V/s Mohan (AIR) 2010 SC 1898 Hon'ble Supreme Court** has considered this issue and clarified that, existence of

legally recoverable debt or liability is a matter of presumption under Sec. 139 of NI Act. In para No. 14 of the Judgment the Hon'ble Supreme Court observes as follows :

In light of these extracts, we are in agreement with the respondent – claimant that the presumption mandated by Sec. 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observation in Krishna Janardhan Bhat (Supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case. Since it was based on the specific facts and circumstances therein. As noted in the citations, this is of-course in the nature of a rebuttable presumption and it is open to the accused to raise a defense wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption, which favors the complainant. Sec. 139 of the Act is an example of a revers anus clause that has been included in furtherance of the legislative objective of improving the credibility of the Negotiable Instruments. While Sec. 138 of the Act, specifies a strong criminal remedy in relation to the dishonor of the cheques, the rebuttable presumption U/Sec. 139 is a device to

prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Sec. 138 can be better described as a regulatory offence since the bouncing of cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the constructions and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard of proof. In the absence of, compelling justifications, reverse onus clauses usually imposed an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption U/ Sec. 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence, which creates doubts about the existence of a legally enforceable debt or liability, the presumption can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in sum cases the accused may not need to adduce evidence on his/her own."

**15.** With the help of the above decision, it is clear that the presumption mandated by Sec.139 of NI Act, does indeed include the existence of legally enforceable debt or liability. If the issuance of the cheque is admitted or proved the court is bound to raise presumption under Sec.139 of NI Act in favour of the complainant as held in the Judgment of Hon'ble Supreme Court in the case of **Kumar Exports V/s Sharma Carpets (2009) SC 513** and also **APS Forex Services Pvt. Ltd. v/s Shakthi international Fashion Linkers and others (2020) 12 SC 1724**. It is a rebuttable presumption and its open to the accused to raise the defense wherein the existence of legally enforceable debt or liability can be contested. For rebutting the presumption, the accused need not adduce evidence with unduly high standard of proof but, the standard of proof for doing so with that of preponderance of probabilities. If the accused has able to raise a probable defense, which creates doubt about the existence of legally enforceable debt or liability, the onus shifts back to the complainant. It is also clear that for rebutting the presumption, accused can rely on the

materials submitted by the complainant or his cross examination and he need not necessarily adduce his evidence in all the cases.

**16.** In view of the above decision the burden is on the accused to rebut the presumptions available U/Sec.118 and 139 of NI Act drawn in favour of complainant. As such the court drawn the presumption with respect to the existence of legally recoverable debt from accused from considering the above section 118 and 139 of NI Act. In the present case on hand, the complainant examined himself as PW-1. When the case posted for cross examination of PW.1, the accused remained absent. Therefore, cross of PW.1 taken as nil. Since the accused remained absent at the stage of cross examination and thereafter, his statement under Section 313 of Cr.P.C., could not be recorded. The ***Hon'ble High Court of Karnataka in Sunil Yadav Vs. Y.C.Manju, Crl.R.P.No.664/2020 decided on 07.02.2025*** has clearly held that in summary trials under Section 138 of the N.I.Act, if the accused persistently avoids the trial process despite multiple opportunities, the Court is justified in proceeding

further without recording his statement under Section 313 of Cr.P.C., It was also held that Principles of natural justice are not violated when the accused is given repeated opportunities, but he deliberately chooses not to co-operate. In the present case, the accused was given ample opportunity to appear and defend himself. He failed to cross examine the Complainant and also absented himself. Hence, this Court finds that the accused has deliberately avoided the legal process and misusing the procedural safeguards to delay the trial. Hence, in view of the above cited law, the recording of the statement of the accused under Section 313 of Cr.P.C., was dispensed and the defence evidence taken as nil. However, these presumptions are rebuttable in nature. For the aforesaid reasons, the accused has failed to rebut the said presumption. Thus this court comes to the conclusion that the complainant has proved his case in all preponderance of probabilities.

**17.** A careful scrutiny of the documents relied on by the complainant goes to show that, statutory requirements of Section 138 of N.I. Act is complied with

and this complaint is filed within time. Thus, complainant relied on the statutory presumptions enshrined under Section 118 read with Section 139 of NI Act.

**18.** When the accused has not rebutted the presumption it is settled principle of law that the court must draw the presumption in favour of the complainant that the accused issued cheque towards repayment of loan for legally recoverable debt. In case on hand, the accused has not rebut the presumption by probable defense. However in this regard the decision reported in **AIR 2010 SC 1898 in the case of Rangappa V/s Mohan, wherein, the Hon'ble Apex Court** has held that the complainant can take advantage of presumption available under Sec. 139 of the Act and the accused has to rebut the presumption by raising a probable defense. In this regard, the accused has failed to raise such defense and therefore, I am of the view that the complainant by his evidence and documentary evidence has proved that the Ex.P1 to 3 cheques have been issued towards legally recoverable debt. **Hence, I answer Point No.1 in the Affirmative.**

**19. Point No.2:** Ex.P1 to 3 were presented for encashment through Syndicate Bank, Periyapatna Branch, which in term send it to the accused bankers, Ex.P4 endorsement discloses that it was dishonor for “Drawers Signature Incomplete”, no more discussion is necessary regarding this Ex.P1. ***Hence, I answer Point No.2 in the Affirmative.***

**20. Point No.3:** The cheques dated 09.09.2017, 10.09.2017 and 11.09.2017 and they were presented and it was dishonored on 14.09.2017 and from that day within one month the complainant got issued legal notice on 12.10.2017 through his counsel at Ex.P4. As per General Clauses Act, the said legal notice returned on 20.10.2017 for the reason as unclaimed and after giving 15 days time for payment, the present complaint came to be filed on 15.11.2017 which is within the time. The complainant is complied mandatory provision under Sec.138(a) to (c) of the Act. ***Hence, I answer Point No.3 in the Affirmative.***

**21. Point No.4:** The complainant by his evidence and documentary evidence at Ex.P1 to P7 has established that the accused towards legally recoverable

debt has issued Ex.P1 to 3 cheques which came to be dishonored as “Drawer’s Signature Incomplete”. In spite of issuance of legal notice and knowledge of the same, the accused has not made good to the complainant within time. Moreover, the accused has not issued any reply notice. Therefore, the accused is liable for the offence punishable under Sec.138 of NI Act. Learned counsel for the complainant has argued that the complainant may be given compensation in respect of cheques amount as inspite of knowledge of notice, the accused has not paid the amount. Hence, the complainant was deprived the lawful money due to the complainant for approximate **period of 8 years**. Since, it is an offence under Sec. 138 of the NI Act, by considering the facts and circumstances of the case, I am of the view that the complainant is entitled to compensation of **Rs.2,30,000/-** U/Sec. 357(3) of Cr.P.C. **Hence, I answer Point No.4 in the Affirmative.**

**22. Point No.5:** In view of the answered to the point No.1 to 4, I proceed to pass the following :

**ORDER**

Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act.

The accused is sentenced to pay fine of **Rs.2,35,000/- [Rupees Two Lakhs Thirty Five Thousand only]**. In default to pay the fine the accused shall undergo further simple imprisonment for a period of three months.

Further acting under section 357(1)(b) of Cr.P.C, a sum of Rs.2,30,000/- shall be paid to complainant as compensation and remaining amount of Rs.5,000/- shall go to the State.

The bail bond and surety bond of the accused is hereby stands canceled.

The office is directed to supply free copy of this judgment to accused forthwith.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me, in the open Court on this the 11<sup>th</sup> day of March, 2026)

**(SHWETHA.J)**

I Addl. Civil Judge & JMFC,  
Periyapatna.

**ANNEXURE****Witnesses examined on behalf of Complainant:**

PW1	D.K.Raju
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**Witnesses examined on behalf of Accused :**

	NIL
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**Documents marked on behalf of Complainant:**

Ex.P1 to 3	Cheques
Ex.P1(a) 2(a) 3(a)	Signature of accused
Ex.P4	Endorsement
Ex.P5	Legal notice
Ex.P6	Postal receipt
Ex.P7	Unclaimed Poster Cover

**Documents marked on behalf of Accused :**

	- NIL-
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**(SHWETHA.J)**I Addl. Civil Judge & JMFC,  
Periyapatna.