

**KAMS610035532022**



**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC.,  
AT PERIYAPATNA.**

**-: P R E S E N T :-**

Sri.YOGESHA M.R.,<sup>BALLB.</sup>  
PRL.CIVIL JUDGE AND JMFC.,  
PERIYAPATNA.

*Dated this the **10<sup>th</sup> day of MARCH, 2026.***  
**CC.No.2570/2022**

COMPLAINANT : Minuguthare Chit Fund Pvt Ltd.,  
B.M.Road, Periyapatna Taluk,  
Represented by its  
General Power of Attorney Holder  
by name Raju K.B. S/o Basavaraju,  
Aged about 26 years,  
R/at Kaggundi Village,  
Ravanduru Hobli,Periyapatna Taluk,  
Mysuru District.

*( Rep., by Sri.**MCH.**, Advocate )*

**V/s**

ACCUSED : Asha, 35 yrs  
W/o Suresha B.K,  
R/at Mahadimane Thimmappa Nilaya,  
Near Aralikatte Temple, Gollarabeedhi,  
Periyapatna Taluk, Mysuru District.

*( Rep., by Sri.**LKD.**, Advocate )*

Date of Complaint : 09.05.2022  
Offence alleged : Section 138 of NI Act.  
Evidence commenced on : 21.06.2022  
Judgment pronounced on : 10.03.2026  
Opinion of Presiding Officer: Accused found guilty

**( YOGESHA M.R )**  
PRL.CIVIL JUDGE AND JMFC.,  
PERIYAPATNA.

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

*The complainant has filed the present private complaint against the accused U/Sec.200 of Cr.P.C., alleging that the accused has committed an offence punishable U/Sec.138 of Negotiable Instruments Act.*

**2. In brief, the facts in the complaint are as under;**

**(a).** The accused is being the subscriber for the ticket No.18 in chit group No.E01 Periyapatna branch promoted by the complainant for a total chit value of Rs.3,00,000/-. On 15.10.2020, the accused was successive bidder and she has received a sum of Rs.1,80,000/-(after deducting bidding amount) by way of cheque vide bearing No.526039 drawn on Karnataka Bank, B.M.Road, Periyapatna Branch.

**(b).** The accused was defaulter in payment of the chit installments. In spite of repeated demands, the accused has not repaid the same. Thereafter, the accused towards the discharge of the aforesaid loan amount issued a cheque bearing No.193583 Dated 28.02.2022 for a sum of Rs.1,34,000/- drawn on Karnataka Bank Ltd., Periyapatna Branch in favour of the complainant.

(c). The said cheque was presented by the complainant to his banker i.e., Karnataka Bank Ltd., B.M.Road, Periyapatna Branch for collection. But the same was returned on 11.03.2022 with a memo stating that **“Funds Insufficient”**. Thereafter, the complainant on 23.03.2022 issued a legal notice to the accused calling upon him to pay the cheque amount within 15 days from the date of receipt of the notice. The said notice was duly served to the accused on 24.03.2022. But she has failed to repay the cheque amount. *Hence, the accused has committed an offence punishable U/Sec.138 of Negotiable Instruments Act.*

3. After filing of complaint, this court has perused the documents and taken cognizance for the offence punishable U/Sec.138 of Negotiable Instruments Act., and recorded sworn statement of the complainant with

documentary evidence. After being satisfied that, there are prima-facie material to proceed against the accused, summons was issued. Thereafter, the accused has put appearance through her counsel and got released on bail. The substances of accusation has been recorded, read over and explained to the accused in the language known to her. She has pleaded not guilty and claims to be tried.

**4.** In support of the compliant, the General Power of Attorney Holder of the complainant by name Raju K.B examined himself as PW.1 and adduced as many as 5 documents as per Ex.P1 to Ex.P5. After completion of the evidence of complainant's side, the case was posted for cross of the PW.1. The learned counsel for the accused not cross examined the PW.1. Hence, the cross of PW.1 was taken as Nil. After completion of the evidence of complainant's side, the statement of accused was recorded

U/Sec.313 of Cr.P.C., and all the incriminating circumstances appeared against accused are put to her to enable the accused to offer an explanation. She denied the same as false and defence to make. In support of her defence, the accused has not adduced any oral or documentary evidence from her side.

5. Heard the arguments and perused the material available on record.

6. The points that arise for the consideration are under;

**:- P O I N T S :-**

1. *Whether the complainant proves, the accused in discharge of legally recoverable debt issued a cheque bearing No.193583, Dated 28.02.2022 for Rs.1,34,000/- and the same was dishonored. Despite demand notice, the accused has failed to repay cheque amount and thereby committed an offence punishable U/Sec.138 of Negotiable Instruments Act ?*
2. *What order ?*

**7.** This court findings to above raised points are as under;

POINT NO.1 : In the **AFFIRMATIVE**

POINT NO.2 : As per final order,

for the following;

**-: REASONS :-**

**POINT NO.1:-**

**8.** The General Power of Attorney holder of the complainant by name Raju K.B., examined himself as PW.1 and reiterated the averments made in the complaint and adduced as many as 5 documents as per Ex.P1 to P5.

**9.** Ex.P1 Original Cheque Dated 28.02.2022 for ₹.1,34,000/-; Ex.P1(a) Signature of the accused; Ex.P2 Bank Endorsement Dated 11.03.2022; Ex.P3 Postal Receipt; Ex.P4 Postal Acknowledgment Due Card; Ex.P5 Legal Notice Dated 23.03.2022.

10. The accused in support of his defence neither cross-examined the PW.1 nor lead any evidence from his side.

11. At this juncture it is relevant to refer the below mentioned provisions.

**Section 114 of Indian Evidence Act.**

**Court may presume existence of certain facts:-** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

**Section 118 of Negotiable Instruments Act**

**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;

**(b) as to date :-** that every negotiable instrument bearing a date was made or drawn on such date;

**(c) as to time of acceptance :-** that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

**(d) as to time of transfer :-** that every transfer of a negotiable instrument was made before its maturity;

**(e) as to order of indorsements :-** that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;

**(f) as to stamp :-** that a lost promissory note, bill of exchange or cheque was duly stamped;

**(g) that holder is a holder in due course :-** that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or

for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

**Section 139 of Negotiable Instruments Act**

**Presumption 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.

**Section 146 of Negotiable Instruments Act**

**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.

**12.** The proceedings under section 138 of Negotiable Instruments Act being quasi criminal in nature, proof of beyond reasonable doubt is subject to presumptions envisaged under Negotiable Instruments Act sections 118, 139

and 146 and under section 114 of Indian Evidence Act. The offence punishable under section 138 of Negotiable Instruments Act is committed not on dishonor of cheque, but on failure of the drawer to make payment within 15 days of the receipt of demand notice. An essential ingredient of section 138 of Negotiable Instruments Act is that, the cheque in question must have been issued towards a legally enforceable debt or liability.

**13.** Under section 118 a presumption: of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of endorsement and that a holder is a holder in due course of Negotiable Instruments, shall be raised. Even under section 139, a rebuttal presumption shall be raised that, the cheque in question was issued towards discharge of a legally enforceable debt. These presumptions are mandatory presumptions that are required to be raised in

case of Negotiable Instruments. These presumptions are rebuttable. It is for the accused to rebut the presumption under section 139 of Negotiable Instruments Act to show that the cheque in question was not issued towards any legally enforceable debt or liability.

**14.** According to complainant, the accused towards discharge of debt issued a cheque for Rs.1,34,000/- and on presentation of the said cheque, the same came to be dishonored. The complainant who has been examined as PW.1 has stated these facts in his evidence.

**15.** The accused neither cross examined the PW.1 nor lead any evidence from his side to prove his contentions. From the materials placed on record, the Ex.P1 being cheque drawn on the account of the accused on Karnataka Bank Ltd, Periyapatna Branch Dated 28.02.2022 for a sum of Rs.1,34,000/- and Ex.P2 is Bank Endorsement Dated

11.03.2022 issued by the Karnataka Bank Ltd, Periyapatna Branch stating that, Funds Insufficient. The Ex.P5 is the Legal Notice Dated 23.03.2022 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the same. The Ex.P3 is the postal receipt and Ex.P4 Postal Acknowledgment Due Card for having served the legal notice to the accused.

**16.** It is pertinent to note that, after completion of the evidence of complainant's side, the case was posted for cross of the PW.1. However, the accused neither cross examined the PW.1 nor lead any evidence from her side to prove her contentions.

**17.** In the present case, the accused appeared through her counsel and the substance of accusation has been recorded and she has pleaded not guilty and claims to

be tried. But, the in this regard, the accused neither cross examined the PW.1 nor lead any evidence from her side.

**18.** As per the decision reported in **(2010) 11 SCC 441 in between Rangappa v/s Mohan, the Hon'ble Supreme Court held that** “the presumption mandated under Section 139 of N.I. Act includes a presumption that there exists a legally enforceable debt or liability and the cheque is presumed to be issued towards discharge of the said debt or liability. It has been further held by the Hon'ble Supreme Court that, the said presumption is a rebuttable presumption and it is open for the accused to rebut the same by bringing out circumstances in the complainant evidence or by leading any evidence on his behalf”.

**19.** Infact, the accused had all the opportunities to deny the contents of the notice and could have stated the real facts. But, the accused has not been able to bring out any

probable or acceptable circumstances to rebut the presumptions.

**20.** In view of the above discussions, this court is of the opinion that, the accused has failed to rebut the presumption available U/s 118 and 139 of N.I Act. Whereas the complainant has adduced cogent evidence to prove that the cheque i.e., Ex.P1 was issued by the accused towards the discharge of legally enforceable debt. *Hence, this court answered the point No.1 in the **Affirmative.***

**POINT NO.2 :-**

**21.** In view of above findings on point No.1, this court proceed to pass the following;

**ORDER**

*Acting under Section 255(2) of Cr.P.C., the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.*

*She is sentenced to pay fine of Rs.1,36,000/- with simple interest at the rate of six percent per annum from the date of cheque till realization within one month from the date of this order. In default to pay fine amount, the accused shall undergo simple imprisonment for a period of six months.*

*Out of fine amount Rs.2,000/- to be appropriated to the State towards prosecution expenses and the remaining amount shall be payable to the complainant as compensation.*

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

*(Dictated to the Stenographer directly in computer, revised, corrected by me and then pronounced in the open court on this the **10<sup>th</sup> day of MARCH, 2026.**)*

**( YOGESHA M.R )**  
PRL.CIVIL JUDGE AND JMFC.,  
PERIYAPATNA.

**:- ANNEXURES :-****List Of Witnesses Examined On Behalf Of Complainant:-**

PW.1 : RAJU K.B

**List Of Documents Got Exhibited On Behalf Of Complainant:-**

Ex.P1 : Original Cheque Dated 28.02.2022 for  
₹.1,34,000/-

Ex.P1(a) : Signature of the accused

Ex.P2 : Bank Endorsement Dated 11.03.2022

Ex.P3 : Postal Receipt

Ex.P4 : Postal Acknowledgment Due Card

Ex.P5 : Legal Notice Dated 23.03.2022

**List Of Witnesses Examined By The Accused: Nil**

**List Of Documents Got Exhibited By The Accused: Nil**

**( YOGESHA M.R )**  
PRL.CIVIL JUDGE AND JMFC.,  
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