

**KAMS610037592021**



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

**AT PERIYAPATNA.**

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

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

*Dated this the **06<sup>th</sup> day of APRIL, 2026.***

**CC.No.2352/2021**

COMPLAINANT : Swamygowda, 60 yrs  
S/o late Karigowda,  
R/at N.Shettahalli Village,  
Bettadapura Hobli,  
Periyapatna Taluk,  
Mysuru District.  
*(Rep., by Sri.CSM., Advocate)*

**V/s**

ACCUSED : Annegowda, 50 yrs  
S/o late Subbegowda,  
R/at Bettadathunga  
Megalakoppalu (B.T.M.Koppalu)  
Village, Bettadathunga Post,  
Bettadapura Hobli,  
Periyapatna Taluk,  
Mysuru District.  
*(Rep., by Sri.CG., Advocate)*

Date of Complaint : 18.10.2021  
Offence alleged : Section 138 of NI Act.  
Evidence commenced on : 18.10.2021  
Judgment pronounced on : 06.04.2026  
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 has borrowed a sum of Rs.2,00,000/- from the complainant on 14.06.2021 for his legal necessities and towards discharge of his liability issued a cheque bearing No.393766 dated 14.07.2021 for a sum of Rs.2,00,000/- to the complainant drawn on State Bank of India, ADB Abburu, Periyapatna Branch.

**(b).** The said cheque was presented by the complainant to his banker for collection. But the same was returned on 30.07.2021 with a memo stating that “**Funds Insufficient**”. Thereafter, the complainant on 25.08.2021 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 returned unserved on

06.09.2021. *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 his counsel and got released on bail. The substance of accusation has been recorded, read over and explained to the accused in the language known to him. He has pleaded not guilty and claims to be tried.

**4.** In support of the compliant, the complainant examined himself as PW.1 and adduced as many as 6

documents as per Ex.P1 to Ex.P6. After completion of the evidence of complainant's side, the same was cross-examined by the accused side. Then statement of accused was recorded U/Sec.313 of Cr.P.C., and all the incriminating circumstances appeared against accused are put to him to offer an explanation. He denied the same as false and defence to make. In support of his defence, the accused examined himself as DW.1, but not adduced any documents from his side.

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

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

**:- POINTS :-**

1. *Whether the complainant proves, the accused in discharge of legally recoverable debt issued a cheque bearing No.393766, Dated 14.07.2021 for Rs.2,00,000/- 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 : **AFFIRMATIVE**

POINT NO.2 : As per final order,  
for the following;

**-: REASONS :-**

**POINT NO.1:-**

**8.** The complainant in support of his case, examined himself as PW.1 and reiterated the averments made in the complaint. The complainant adduced as many as 6 documents as per Ex.P1 to P6.

**9.** Ex.P1 Original Cheque Dated 14.07.2021 for ₹.2,00,000/-; Ex.P1(a) Signature of the accused; Ex.P2 Bank

Endorsement Dated 30.07.2021; Ex.P3 Legal Notice Dated 25.08.2021; Ex.P4 Postal receipt; Ex.P5 Unserved Postal cover; Ex.P6 Legal Notice Dated 25.08.2021.

**10.** According to complainant, the accused borrowed a sum of Rs.2,00,000/- for his legal necessities and towards the discharge of the said loan amount, the accused issued the aforesaid cheque. The accused in support of his defence examined himself as DW.1, but not adduced any documents 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 borrowed a sum of Rs.2,00,000/- and towards discharge of said debt the accused issued a cheque for Rs.2,00,000/- 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.** From the materials placed on record, the Ex.P1 being cheque drawn on the account of the accused at State Bank of India, Abbur Branch, Periyapatna Dated 14.07.2021 for a sum of Rs.2,00,000/- in favour of the complainant. The Ex.P2 is the Bank Endorsement Dated 30.07.2021 stating that, Funds Insufficient. Thereafter, the complainant issued the Legal Notice Dated 25.08.2021(Ex.P3 & 6) to the accused calling upon him to repay the aforesaid loan amount. The Ex.P4 and 5 are the postal receipts and Unserved RPAD Cover.

**16.** The accused in his plea stated that "ನಾನು ಯಾವುದೇ ಹಣ ಪಡೆದಿಲ್ಲ ಮತ್ತು ಚೆಕ್ ನನ್ನದಲ್ಲ" The accused in his 313 statement stated that "ನಾನು ಹಣ ಪಡೆದಿಲ್ಲ, ಚೆಕ್ ನೀಡಿಲ್ಲ".

17. The accused in his evidence deposed that;

"ನನಗೆ ಪಕೀಲರಿಂದ ಯಾವುದೇ ನೋಟೀಸು ಬಂದಿಲ್ಲ.  
ನಾನು ದೂರುದಾರರಿಗೆ ಯಾವುದೇ ಚೆಕ್ ನೀಡಿಲ್ಲ"  
"ಅವರ ಬಳಿ ನನ್ನ ಚೆಕ್ ಹೇಗೆ ಹೋಯಿತು ಎಂದು ನನಗೆ  
ಗೊತ್ತಿಲ್ಲ"

18. The accused in his cross examination deposed  
that ;

"ನಾನು ಪಿರಿಯಾಪಟ್ಟಣದ ಅಬ್ಬೂರು ಎಸ್.ಬಿ.ಐ  
ಬ್ಯಾಂಕಿನಲ್ಲಿ ವ್ಯವಹಾರ ಮಾಡುತ್ತೇನೆ. ಬ್ಯಾಂಕಿನಿಂದ  
ನಾನು ಚೆಕ್ ಪುಸ್ತಕ ಪಡೆದಿದ್ದೇನೆ "

19. The accused in his plea and as well in his 313  
statement, stated that, he has not borrowed any amount from  
the complainant and also not issued cheque to him. However,  
the accused in his evidence stated that, he does not know how  
the complainant possessing his cheque. The accused in his  
cross examination deposed that, he is having bank account in  
SBI, ADB Periyapatna Branch and also got cheque book.

**20.** Further, the accused/ DW.1 in his cross examination deposed that;

"ಸಾಕ್ಷಿಗೆ ಅವರ ವಕಾಲತ್ ತೋರಿಸಿದ್ದು, ಅದರಲ್ಲಿರುವ ಸಹಿ ತನ್ನದಲ್ಲ ಎಂದು ನಿರಾಕರಿಸಿರುತ್ತಾರೆ. ನಿಪಿ-1 ರ ಚೆಕ್ ಮೇಲಿರುವ ಸಹಿ ನನ್ನದು "

**21.** The accused admitted the signature found in the Ex.P1 is his signature. However, the accused denied the signature in the Vakalath Form, which itself shows that, in order to escape from the liability, the accused intentionally denying his signature. Further, the accused/ DW.1 in his cross examination deposed that;

"ನನ್ನದು ಬಿ.ಟಿ.ಎಂ ಕೊಪ್ಪಲು ಗ್ರಾಮ "

**22.** The complainant was duly mentioned the address of the accused in the cause title of the complaint and further, in the Legal Notice i.e., Ex.P3 was issued to the above

mentioned address. But, the same was returned unserved as per Ex.P5. The accused in his cross-examination admitted that, he is having account in the SBI, ADB Branch Periyapatna and also admitted that, the signature found in the Ex.P1 belongs to him.

**23.** The accused has not offered any explanation as to how the cheque at Ex.P1 was reached the hands of complainant and not offered any explanation as to how the complainant came in possession of Ex.P1. Hence, it is clear that, the Ex.P1 was belongs to the accused and the signature found in the Ex.P1 is the accused signature. Only to escape from the liability under section 138 of NI Act, the accused has taken contradictory defence which is not probable one. Therefore, it appears that only to escape from the liability under section 138 of NI Act, the accused has taken contradictory defence, which is not probable one.

**24.** 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”.

**25.** It is well settled law that, in order to rebut the presumption, the accused need not enter the witness box and he may discharge his burden on the basis of the materials already brought on record. The PW.1 has stated in his cross-examination that, he paid a sum of Rs.2,00,000/- to accused.

The accused from time to time changing his version for his needs. Therefore, it appears to the court that, the accused is not firm with his defence. The accused denied the transaction but, in this regard, the accused has not been able to bring out any probable or acceptable circumstances to rebut the presumptions.

**26.** 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:-**

**27.** 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.*

*He is sentenced to pay fine of Rs.2,05,000/- 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 total fine amount, a sum of Rs.2,00,000/- is awarded to the complainant as compensation u/s 357 of Cr.PC. Remaining fine amount of Rs.5,000/- shall be deposited to the state.*

*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 **06<sup>th</sup> day of APRIL, 2026**.)*

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

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

PW.1 : SWAMYGOWDA

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

Ex.P1 : Original Cheque Dated 14.07.2021 for  
₹.2,00,000/-

Ex.P1(a) : Signature of the accused

Ex.P2 : Bank Endorsement Dated 30.07.2021

Ex.P3 : Legal Notice Dated 25.08.2021

Ex.P4 : Postal receipt

Ex.P5 : Unserved Postal cover

Ex.P6 : Legal Notice Dated 25.08.2021

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

DW.1 : ANNEGOWDA

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

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