

KAMS710016932023



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND
JMFC AT T.NARASIPURA**

Dated this the day of 9th day of April 2026

**Present: Smt.Niveditha N., B.A.L., LL.B, LL.M.,
I Additional Civil Judge & JMFC., T.Narasipura.**

C.C./655/2023

1. Complainant Ramegowda,
S/o Late Govindgowda,
Aged about 62 years,
R/at Halebeedi, Talakadu Village,
Talakadu Hobli, T.Narasipura Taluk,
Mysuru District.
(By Sri.V.K., Advocate)
2. Accused Prasannamurthy.K,
S/o Kempanna,
R/at Ummathuru Village,
Chamarajanagara Taluk,
Chamarajanagara District.
(By Sri.M.N., Advocate)
3. Offences U/s 138 of Negotiable Instruments Act

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|----|---------------|----------------------|
| 5. | Final Order | Accused is Acquitted |
| 6. | Date of Order | 09/04/2026 |

JUDGMENT

The complainant has filed complaint U/s 200 of Cr.P.C against the accused for the offence punishable U/s 138 of Negotiable Instruments Act.

2. The brief facts of the complainant case are as follows:-

a. The complainant submits that, the complainant and accused are known to each other. On that acquaintance, on 04/03/2023 the accused borrowed hand loan of Rs.25,000/- for family necessities and agreed to repay the same within 3 months. After completion of the said period, when the complainant demanded to repay the said amount, the accused had issued a post dated cheque bearing No.424362 dated 07/06/2023 drawn on State Bank of India, Car Street Branch, Chamarajangara Town.

b. Further, as per the assurance of the accused, on 07/06/2023 the complainant has presented the above said cheque for clearance / collection of the above said cheque amount through his banker Mysuru-Chamarajanagara District Co-operative Central Bank Ltd., Mysuru, Talakadu Branch. But the said cheque was bounced for the reason of 'Funds Insufficient' and returned on 15/06/2023.

c. Further, thereafter the complainant has issued a legal notice dated 05/07/2023 through RPAD. The said notice served on the accused on 11/07/2023. On 11/07/2023 the accused replied for the said notice but not not paid the above said cheque amount of Rs.25,000/-. Hence, the accused has committed an offence U/s 138 of Negotiable Instruments Act, Hence, this complaint.

d. The said cheque transaction took place at T.Narasipura Taluk and the above said cheque bounced in Mysuru-Chamarajanagara District Co-operative Central Bank Ltd., Mysuru, Talakadu Branch. Hence, this Hon'ble Court has got jurisdiction to try the matter.

3. After filing the complaint, the sworn statement of complainant was recorded and cognizance of offence punishable U/s 138 of Negotiable Instruments Act was taken against accused. The presence of accused was secured. Thereafter, he was enlarged on bail. The plea for the offence punishable U/s 138 of Negotiable Instruments Act was framed. Accused has pleaded not guilty.

4. In order to bring home the guilt of the accused, the complainant examined herself as P.W.1 and adopted the sworn statement as her evidence and got marked 6 documents as Ex.P1 to 6. After closure of complainant side evidence, the accused was examined U/s 313 of Cr.P.C., wherein he denied all the incriminating circumstances that exists against him in the evidence of the complainant and the

accused has given oral defence evidence as D.W.1 and got marked 9 documents as Ex.D1 to 9.

5. I have heard the arguments of counsel for the complainant and accused and I have perused the documents on record.

6. The following points arose for my consideration:-

1. Whether the complainant proves that, the accused had issued the cheque in question in discharge of a legally recoverable debt as contended by him?
2. Whether the complainant further proves that, the accused has committed the offence punishable under Section 138 Negotiable Instruments Act?
3. Whether the complainant is entitled for the relief/s as prayed for in the complaint?
4. What order?

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

Point No.1 to 3: In the Negative.

Point No.4 : As per final order, for the following;

REASONS

8. Point No.1 and 2:- Since these points are inter-linked and to avoid repetition, they are taken together for discussion.

9. In order to prove the complaint averments the complainant i.e., Ramegowda himself examined as P.W.1 and got marked Ex.P1 to 6. Ex.P1 is the Cheque. Ex.P2 is the Memo issued by Punjab National Bank, V.V.Market Branch, dated 15/06/2023, Ex.P3 is the legal notice issued by the complainant through his counsel dated 05/07/2023, Ex.P4 is the postal receipt dated 05/07/2023, Ex.P5 is the postal acknowledgment, Ex.P6 is the reply notice dated 11/07/2023.

10. In order to disprove the case of the complainant, the accused himself examined as D.W.1 by giving oral evidence and got marked Ex.D1 to 9. Ex.D1 and 2 are photos confronted through P.W.1. Ex.D3 is the certified copy of PCR.No.75/2022 filed by accused herein against Vasumuniraju and order sheet of PCR.No.75/2022. Ex.D4 is the certified copy of the sale deed dated 29/08/2022 executed by Prasannamurthy who is accused herein and his son Rajendra in favour of Vasumuniraju. Ex.D5 is the cancellation of sale agreement dated 03/04/2023 entered by Prasannamurthy and Harish.C.N, Nagaraju.H. Ex.D6 is the certified copy of the sale agreement dated 27/04/2022 entered by the accused herein and Harish.C.N and

Nagaraju.H in respect of property bearing Sy.No.33/4 measuring 2 acre 20 guntas and Sy.No.159 measuring 4 acres situated at Mudala Agrahara Village, Santhemaralli Hobli, Chamarajanagara Taluk. Ex.D7 is the certified copy of the unregistered sale agreement dated 27/04/2022 entered by the accused herein and Harish.C.N and Nagaraju.H in respect of property bearing Sy.No.33/4 measuring 2 acre 20 guntas and Sy.No.159 measuring 4 acres situated at Mudala Agrahara Village, Santhemaralli Hobli, Chamarajanagara Taluk. Ex.D8 is the legal notice dated 05/07/2023 issued by the counsel for the complainant to the accused. Ex.D9 is the reply notice dated 11/07/2023 issued by the counsel for the accused to the counsel for complainant.

11. First of all in order to prove an offence U/s 138 of Negotiable Instruments Act, it is necessary to examine whether the complainant complied with three ingredients of Section 138 of Negotiable Instruments Act i.e.,

a. Section 138(a)-cheque presented for encashment within 03 months.

The Ex.P1 is the cheque, which is alleged to have been issued by accused by mentioning date as i.e., 07/06/2023. The complainant presented Ex.P1 for encashment on 07/06/2023, hence within 03 months. Hence, section 138(a) of N.I. Act is complied with.

b. Section 138(b) of N.I Act.

After presentation of said cheque by complainant, the Punjab National Bank, issued Endorsement dated 15/06/2023 by stating the reason that “Funds Insufficient”. The complainant has issued legal notice as per Ex.P3 to the accused on 05/07/2023 within 30 days from the date of issuance of Ex.P2. Ex.P4 is the postal receipt and Ex.P5 is the postal acknowledgment.

c. Section 138(c) of N.I. Act.

After issuance of notice through RPAD to the accused, he failed to pay the amount within 15 days as mentioned in the notice and he has given reply to the said notice. The complainant has granted sufficient opportunity to the accused to repay the amount, but accused has not paid the same, therefore, the complainant has complied Sec. 138(c) of N.I. Act. This complaint has been preferred within 45 days from the date of service of legal notice to the accused. Hence, this complaint is within time.

12. In Ex.P2 memo issued by Punjab National Bank, it is mentioned the reason that “Funds Insufficient”, the shara made at Ex.P2 clearly shows that, the accused inspite of being aware of the fact that his account is not having any sufficient balance, has issued cheque/Ex.P1 to the complainant. Therefore, on presentation of said cheque, the concerned bank Manager had issued memo stating

“Funds Insufficient”. The said shara is clearly covered U/s 138 of Negotiable Instruments Act. Therefore, this Court is of the opinion that, the complainant has complied the ingredients of Sec.138 of NI Act.

13. It is necessary to discuss the oral evidence of P.W.1. In the cross-examination of P.W.1, he confronted Ex.D1 and 2. He admitted that Ex.P1 was issued by the accused on 10/10/2022 towards sale commission dated 29/08/2022 for the amount of Rs.25,000/- each to him and to Devaraju in the house of accused. He admitted the photo at Ex.D1 and 2 and he further admitted that the cheque shown in Ex.D2 was issued by the accused and the cheque shown in Ex.D2 and Ex.P1 are same cheque. Further admitted that the accused was working as Sub-Thanildar and getting the pension of Rs.45,000/- pm. Further admitted that the accused has owned the landed properties in Sy.No.33/4 measuring 2 acres 20 guntas and Sy.No.159 measuring 4 acres situated at Mudala Agrahara Village, Chamarajanagara Taluk. He admitted that on 27/04/2022 a sale agreement was executed in respect of said properties in between accused and Harish and the sale transaction was took place in his presence. To the said sale agreement, the Devaraju and Chandru are the signatories.

14. P.W.1 further has not denied specifically the amount given by the accused in favour of Chandru of amount of Rs.1,00,000/- towards

brokerage fee and it was withdrawn by the said Chandru and he further admitted that he and Devaraju were sitting in the house of accused as shown in Ex.D1 and he further admitted that Devaraju was holding two cheques as per Ex.D1 and the said two cheques were issued by accused in his house, in his favour and Devaraju.

15. D.W.1 in his cross examination has deposed that he was retired as Shirasthedar and he admitted the legal notice issued by the complainant and he has not given a complaint to the police.

16. The main contention of the complainant is that the accused had borrowed the amount of Rs.25,000/- on 04/03/2023 from the complainant and the accused agreed to repay the said amount within 3 months and the accused had issued the cheque on 07/06/2023 and when he presented the said cheque, it was bounced as 'Funds Insufficient'.

17. To rebut the evidence of complainant and to disprove the issuance of Ex.P1 for legally enforceable debt by the accused, the accused has relied upon Ex.D1 and 2 and these documents were confronted through PW-1 and it is evidenced that the complainant and Devaraju who is the complainant in CC.No.654/2023 were sitting in the house of accused and it was admitted by P.W.1 and the accused had issued Ex.P1 on 10/07/2022 towards brokerage fees to the complainant and to the said Devaraju. P.W.1 as stated above, has

admitted the cheque displayed in Ex.D2. The cheque shown in Ex.D2 and Ex.P1 are same. As per Ex.D2, the cheque was issued on 10/07/2022 but in Ex.P1 the date is mentioned as 07/06/2023. There is no explanation why the date was mentioned as 07/06/2023, when Ex.P1 was issued on 10/07/2022. Thus, the complainant failed to prove the date of issuance of ExP1 and to file this case the date is entered in Ex.P1. Here there is no dispute about issuance of Ex.P1 by the accused and also the signature of the accused. The main defence of the accused is that the complainant herein, Devaraju and Chandru were approached accused as brokers to sell the properties of accused. At their instance, the accused was entered into a agreement of sale as per Ex.D6 and 7 for the property bearing Sy.No.33/4 measuring 2 acres 20 guntas and Sy.No.159 measuring 4 acres for the amount of Rs.13,60,000/-. Thus, it is proved that the complainant was a land broker.

18. Further defence of the accused is that after execution of the Ex.D6 and 7, the agreement holders have failed to pay the balance amount and hence they requested to cancel the said sale agreement and it was canceled and subsequently sale deed was executed in favour of Vasumuniraju and said purchaser was issued the cheque for balance consideration amount of Rs.7,00,000/- and it was bounced, hence he has filed private complaint as per Ex.D3. However, the said amount was paid by the purchaser as per the

admission of accused. The further defence of the accused is that when the agreement holders have failed to pay the balance consideration amount as stated above, the complainant and Devaraju were approached him and agreed to settle the amount by visiting the agreement holders. As per the assurance, the accused issued Ex.P1 in favour of complainant and another cheque in favour of Devaraju for the amount of Rs.25,000/- each as brokerage fee but the complainant and said Devaraju were failed to perform their duties. Hence, he requested the complainant to return the said cheque but without returning Ex.P1, the complainant has filed this case.

19. To prove the above defence, the accused has relied upon Ex.D3 which clearly shows that the accused herein has filed PCR.No.75/2022 against Vasumuniraju U/s 138 of NI Act. As per Ex.D5 the agreement holders by name Harish and Nagaraju have canceled the sale agreement of Ex.D6 and 7. Even in reply notice, the accused has narrated the said fact. Therefore, the above documents, clearly establishes that the accused is a retired government employee and has owned the lands and economically sound. Further proved that Ex.P1 was issued by accused for broker fee and not towards loan.

20. the accused by producing the aforesaid documents, proved that there is no legal enforceable debt against accused and no amount

was received by the accused from the complainant. As per the admission of P.W.1 and Ex.D1 and 2, the complainant had received Ex.P1 towards brokerage fees but he failed to perform his duties. The complainant, Devaraju and Chandru were received the amount from the accused while executing the sale agreement and they are signatories to the said sale agreement. The said fact was not disclosed in the complaint.

21. As discussed above, the accused was a government employee and retired as Sheristedar and getting pension and also owned the properties. Such being the case, the receiving the hand loan of Rs.25,000/- from the complainant by the accused will not arise.

22. It is pertinent to note that, clause (b) of Section 118 of NI Act raises a presumption as to the date of negotiable instrument. According to this presumption, every negotiable instrument bearing a date is presumed to have been made or drawn on such date. According to clause (a) of Section 118 of NI Act, every negotiable instrument is presumed to have been made for consideration. The Sec.139 of NI Act, raises a presumption that, unless the contrary is proved the holder of cheque received the cheque of the nature referred to U/s 138 of NI Act, for the discharge in whole or in part of any debt or other liability in Section 138 of Negotiable Instruments Act.

23. It is for the accused in this case to rebut the presumption on the basis of preponderance of probability with clear, cogent and convincing evidence though not beyond reasonable doubt. It is well settled principle that the accused need not step into the witness box to discharge the burden placed on him. He may very well discharge it on the basis of the material already brought on record, on the basis of the facts elicited in the cross-examination of the complainant and also on the basis of the presumption available under the Evidence Act.

24. If the accused is successful in placing any such evidence then the presumptions operating in favour of the complainant stand rebutted. But, in this case unfortunately the circumstances brought out in the cross-examination of P.W.1 are sufficient to indicate that the said presumption has been rebutted by the accused and there is positive evidence to disprove the contents of complaint. Therefore, it can be held that, the cheque in question was not issued for discharge of existing debt or liability due by the accused to the complainant.

25. The Hon'ble Apex Court in a decision reported in **2018 (8) SCC 469 between T.P.Murugan (Dead through legal representatives) -V/s- Bojan**, it is held that, “once a cheque has been signed and issued in favour of holder of cheque, there is a statutory presumption under Section 139 of N.I. Act, that the cheque is issued

in discharge of legally recoverable debt or liability”. However, said presumption is rebuttal one – issuance of cheque can be rebutted by adducing credible evidence.

26. In the present case, the accused has admitted his cheque and his signature, hence statutory presumption comes in favour of complainant. The accused has produced credible evidence to rebut the said presumption and he rebutted the presumption.

27. On perusal of entire evidence of both parties it is crystal clear that the cheque in question was issued by the accused for not discharge of legally recoverable debt and the complainant failed to prove the legally enforceable debt against accused. Therefore, the complainant failed to prove that the accused has committed offence punishable U/s 138 of N.I. Act.

28. The complainant must prove the cheque was issued to discharge a specific and lawful liability. First ingredients of Sec.138 of NI Act is not proved by the complainant. Sec.138 of NI Act has three essential ingredients. Firstly that, there is legally enforceable debt, secondly that, the cheque was drawn from account of bank for discharge in whole or in part any debt or other liability which presupposes a legally enforceable debt. Thirdly, cheque so issued has been dishonoured. Fundamental burden is on complainant to prove existence of legally enforceable debt and only if it is so proved, then

presumption available under law i.e. U/s 118 and 139 of NI Act automatically comes into play.

29. The Hon'ble Apex Court in the case of Krishnajanardhan Bhat Vs Dattatreya Hegde, has clarified that existence of legally enforceable debt is not a matter of presumption. It merely raises presumption in favour of the holder of the cheque that, the same has been issued for discharge of any liability or debt. Only when accused fails to rebut the presumption, offence U/s 138 can be said to be brought home. Initial burden is on complainant to prove fundamental facts alleged by him regarding the transaction of loan. On reappreciating the entire evidence, it is noticed that Ex.P1 was not issued for loan transaction.

30. Hence, the complainant failed to prove that he has complied with the ingredients of Sec.138 of NI Act. Thus, the complainant utterly failed to prove that, the accused had issued the cheque in question in discharge of a legally recoverable debt and further failed to prove that the accused has committed the offence punishable U/s 138 of NI Act. **Hence, I answered Point No.1 and 2 are in Negative.**

31. Point No.3:- As discussed in Point No.1 and 2, the complainant has failed to prove that the accused had issued the cheque in question in discharge of a legally recoverable debt and further failed

to prove that the accused has committed the offence punishable U/s 138 NI Act. Hence, the complainant is not entitled for the reliefs as prayed for in the complaint. **Accordingly Point No.3 is answered in the Negative.**

32. Point No.4:- In view of the above findings on Point No.1 to 3, this Court proceed to pass the following:-

ORDER

The accused is hereby acquitted for the offence punishable U/s 138 of Negotiable Instruments Act.

Bail bond and surety bond of the accused continues until the completion of appeal period U/s 437A of Cr.P.C.

(Dictated to the stenographer and typed by his on computer, corrected by me and then pronounced by me in the open court this the 9th day of April 2026)

**I Addl.Civil Judge & J.M.F.C.,
T.Narasipura.**

ANNEXURE

Witnesses examined on behalf of the complainant:-

PW.1 : Ramegowda

Witnesses examined on behalf of the Accused:

DW.1 : Prasannamurthy

Exhibits marked on behalf of the complainant:

- Ex.P.1 : Cheque,
- Ex.P.2 : Endorsement
- Ex.P.3 : Legal Notice
- Ex.P.4 : Postal Receipt
- Ex.P.5 : Postal Acknowledgment
- Ex.P.6 : Reply Notice

Exhibits marked on behalf of the Accused:

- Ex.D.1 & 2 : Photos
- Ex.D.3 : Private complaint and order sheet of
PCR.No.75/2022
- Ex.D.4 : Sale Deed dated 29/08/2022
- Ex.D.5 : Cancellation Deed
- Ex.D.6 : Unregistered Sale Deed
- Ex.D.7 : Sale Agreement
- Ex.D.8 : Legal Notice
- Ex.D.9 : Reply Notice

**I Addl., Civil Judge & JMFC.,
T.Narasipura.**

(Judgment pronounced in open court vide separate order)

ORDER

The accused is hereby acquitted for the offence punishable U/s 138 of Negotiable Instruments Act.

Bail bond and surety bond of the accused continues until the completion of appeal period U/s 437A of Cr.P.C.

**I Addl.Civil Judge & JMFC.,
T.Narasipura.**