Presented on : 12-08-2025
Registered on : 12-08-2025
Decided on : 10-06-2026
Duration: 0 years, 9 months, 29 days

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C, LINGASUGUR.

Dated this 10th day of June, 2026.

Present: Sri. AMBANNA. K.
B.Com, L.L.B. [Spl]
Civil Judge & J.M.F.C,
Lingasugur.

CC.No.1471/2025

Complainant :

Siddaramesh S/o Basanagouda Malipatil,
Age: 28 years, Occ: Agricultural.
R/o Adapur Village,
Taluka:Lingasugur. Dist: Raichur.

(By Sri A.C.P., advocate)

-Vs-

Accused

Ramesh S/o Jalaleppa,
Age: 33 years, Occ: Business,
R/o Utaganuru Village,
Manvi Taluka, Dist: Raichur.

(By Shri V.D., advocate)

Offence complained of	Section 138 of N.I.Act
Plea of the accused	Pleaded not guilty
Opinion of the Judge	Accused found guilty

JUDGMENT

The complainant has filed this private complaint U/s 200 of Cr.P.C alleging that the accused has committed the offence punishable u/s 138 of Negotiable Instrument Act 1881.

2. **The case of the complainant in brief is as under:**

It is submitted that, the complainant is the permanent residence of Adapur Village, now residing at Lingasugur. The complainant is the private employee in private bank. It is stated that, the accused is the good friend of the complainant. The accused has requested for hand loan for his family and legal necessity to the tune of Rs.15,00,000/- by agreeing to repay the same, whenever the complainant is demanded. On 15-12-2022 as per request of the accused, the complainant had given hand loan of Rs.15,00,000/- to the accused. Thereafter, the complainant has requested for making repayment of the amount for his personal urgency, but the accused submitted his inability to make repayment of the same. Thereafter the accused has not responded to the complainant and postponed the same. It is further stated that the accused did not keep his promise to repay the borrowed hand loan amount within stipulated period. Upon several request made by the complainant the accused has issued a cheque bearing No.092015 dated 31-01-2025 for Rs.2,50,000/- drawn on Axis Bank of Manvi branch. On 24-03-2025 complainant has presented the said cheque for collection through his banker Axis Bank, Br. Lingasugur. But, the said cheque was not encashed and returned dishonored for the reasons **" FUNDS INSUFFICIENT "** along with memo dated 25-03-2025. Further the complainant intimated the same to the accused, but he did not respond the same.

3. On dishonor of the cheque, the complainant got issued a legal notice to the accused through his counsel on 19-04-2025. the said notice was duly served. In spite of service of legal notice, accused neither paid the amount nor replied to the said notice and thereby the accused has committed offence punishable under section 138 of Negotiable Instrument Act. Hence, this complaint.

4. On filing of the complaint, cognizance was taken for the offense punishable under Section 138 of Negotiable Instrument Act and sworn statement was recorded. As there was sufficient ground to proceed further, a criminal case has been registered against the accused and he was summoned. The accused appeared through his counsel and got enlarged on bail. The substance of accusation is stated to the accused and his plea was recorded and for which he pleaded not guilty and stated defense to make.

5. In support of the complainant’s case, the complainant examined as PW.1 and got marked Ex.P.1 to Ex.P5. After the evidence of the complainant side, the statement as required U/Sec.313 of Cr.P.C was recorded. For which the accused denied the incriminating circumstances appeared in the complainant's evidence. Further, the accused has not chosen to lead defense evidence. But, during the course of cross-examination of PW.1 the accused has confronted document and got marked at Ex.D.1 to 11. Thereafter, the case has been posted for arguments.

6. Heard the arguments on both sides. Perused the materials available on record.

7. The points that arise for my determination are:-

1. Whether the complainant proves that the cheque bearing No.092015 dated 31-01-2025 for Rs.2,50,000/- drawn on Axis Bank of Manvi branch has been issued by the accused towards discharge of legally enforceable debt ?

2. Whether the complainant further proves that the cheque at Ex.P.1 when presented for payment returned dishonored for 'funds insufficient' in the account of the accused and 'Founds Insufficient' and the accused failed to make payment of the cheque amount even after receipt of notice of dishonor and thereby committed the offence punishable U/s 138 of N.I.Act ?

3. What order or sentence?

8. My answer on the above points is as under :

Point No.1:- In the Affirmative.
Point No.2:- In the Affirmative.
Point No.3:- In the As per final order for the following :

R E A S O N S

9. **POINT NO.1 & 2:** Both points are inter connected with each other. In order to avoid the repetition of facts and evidence, both the points are taken together for common discussion.

In order to constitute an offence U/Sec.138 of N.I Act, the cheque shall be presented to the bank within a period of 6 months from its date (Now it is 3 months). On its dishonor, the drawer or holder of the cheque as the case may be, shall cause demand notice within 30 days from the date of dishonor, demanding to repay within 15 days from the date of service of the notice. If the drawer of the cheque fails to repay the amount mentioned in the cheque within 15 days from the date of service of notice, cause of action arises for filing complaint.

10. To substantiate his case, the complainant has filed his affidavit in lieu of his chief examination and has reiterated the averments made in the Complaint. In support of his oral evidence he has got marked documents at Ex.P.1 to Ex.P.5. Let me discuss about the documents produced by the complainant. Ex.P1 is the cheque, Ex.P2 is the bank endorsements, Ex.P3 is the legal notice, Ex.P4 is the postal receipt, Ex.P.5 is the postal acknowledgment.

11. To rebut the presumption available in favour of the complainant, the accused did not stepped into witness box and did not lead any defence evidence. But, the counsel for the accused has extensively cross-examined the PW.1. Let me consider whether the accused has been able to rebut the

presumption during cross-examination of PW.1. In the cross-examination of PW.1, it is admitted that, he did not file list of witnesses in the private compliant. The notice was confronted and got marked at Ex.D.1. Further the bank endorsement also confronted and got marked at Ex.D.2. The stop payment mobile screenshots are confronted and got marked at Ex.D.3 to 7. Further the deposition in CC.No.80/2024 is confronted and got marked at Ex.D.8. Further the notice issued by the Chandrashekar.H advocate is confronted and marked at Ex.D.9. The reply notice is confronted and got marked at Ex.D.10. Further the deposition of the accused in CC.No.80/2024 is confronted and got marked at Ex.D.11. It is denied that, he has deposed about Rs.2,50,000/- in the previous case. It is admitted that, he did not say about Rs.15,00,000/- in CC.No.80/2024. The PW.1 is admitted that, he did not know about the stop payment upto bank endorsement was issued. It is admitted that, on 06-08-2025 he denied the suggestions of the accused about stop payment. It is admitted that, on 09-10-2021 there was a stop payment in respect of cheques leaves bearing No.092015, 092019, 092020, 092017, 092018. He denied that, he did not give any amount of Rs.2,50,000/-. It is denied that, he has misused the cheques which were given for security purpose. It is admitted that, he did not produced any documents to show the transaction.

12. After conclusion of the evidence, both the counsels have argued with regard to burden of proof. The counsel for the complainant has argued that, the accused has borrowed Rs.15,00,000/- for his family necessity. For which he has issued 5 cheques for the repayment. Ex.P.2 endorsement shows that, the

reasons for “ Funds Insufficient”, “ Payment stopped by the drawer” and “ A/c Frozen”. Further it is argued that the accused has admitted his signature at Ex.P.1. Moreover it is also argued that the accused has given post-dated cheques. Inspite of receipt of legal notice the accused has not given any reply notice. There is a legally enforceable debt. The complainant has complied all the mandatory ingredients of the Sec.138 of N.I.Act. Hence, they prayed to convict the accused.

13. In support of their arguments the counsel for the complainant has relied upon the decision reported in (**2002) 1 SC 234 in SLP (Crl) 289-290 of 2000 held between M/s MMTC Ltd and Another V/s M/s Medical chemicals and Pharma P Ltd & Another,** *wherein it is observed that, in* **1) 2001 Crl.L.J 4745 in the case of K.N.Beena V/s Muniyappa regarding burden of proving that :**

> *“ The burden of proving that the Cheque has not been issued for any debt or liability is on the accused. Mere denial of averment in the reply are not sufficient to shift the burden of proof on the complainant. Accused has to prove in the trial by leading cogent evidence that there was no debt or liability”.*
>
> ***2.*** **AIR 1998 SC 1056 Modi Cements Ltd V/s Kuchil Kumar Nandi** *wherein it is held that, if the cheque is issued towards an existing debt or liability, the drawer just cannot issue “stop payment” instruction to the bank, nor his penal liability be absolved by giving a notice to the payee not to present the cheque.*

14. Herein this case, the accused taken defence that, he had given stop payment to the bank. But, it doesn’t absolved the criminal liability of the accused. It must be noted that, the accused did not deny the issuance of cheques and signature on it. Hence, the above cited decisions are aptly applicable to the present facts and circumstances of the case.

15. On the other hand, the counsel for the accused has vehemently argued that, there was no transaction in between the complainant and accused. It is argued that, on 09-10-2021 itself the accused has given stop payment notice to the bank. There is no legally enforceable debt. It is further argued that the legal notice was not duly served upon the accused. It is argued that the complainant has misused the security cheques and filed false case against the accused. Therefore, they prayed to acquit the accused.

16. Having gone through the above evidence and arguments of the both parties and on meticulous perusal of the materials placed before the court, it is the specific defense of the accused that, on 09-10-2021 itself the accused has given stop payment to the bank in respect of the cheques bearing No.092015, 092019, 092020, 092017, 092018. But, why he did give the cheques by mentioning the post-dates in the cheque bearing No.092015 which is not explained by the accused. It is another defence of the accused that, there was no transaction in between the complainant and accused. If there is no transaction in between the complainant and accused, how the Ex.P-1 cheque has been came into possession of the complainant which is not explained by the accused with cogent and convincing evidence. Though he

has contended that he issued cheques for security purpose, but which is not established. It is to be noted that, the Ex.P-1 cheque is belongs to the account of accused which is maintained by him which is not disputed. ***The provisions of Sec.138 of N.I.Act*** *is clearly says that where any cheque drawn a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or part, of debt or other liability. The aforesaid provision is very clear that the accused issued a cheque at Ex.P-1 towards discharge of other liability which attracted the offence under Sec.138 of N.I.Act.*

17. Though the accused has denied the transaction, but he did not explained how the Ex.P.1 cheque has been came into possession of the complainant, if he had not issued the same for the discharge of debt or liability. Simply the accused has stated that, there were talks in between one Siddramesh and Shivakumar Bangalore with respect to job for Rs.15 Lakhs. But the accused has not given any reply notice by mentioning the probable defence. What would prevented him to mention the same in the reply notice which is not explained by the accused. Therefore the defence set up by the accused is not so probable and acceptable.

18. In this regard this court relied upon the following decisions reported as follows :-

> **1.** ***In the decision reported in AIR 2019 SC 2446 (G)(H)(J) in between Beersingh v/s Mukeshkumar,*** *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 u/s 139 of N.I.Act.

2. AIR 2010 SC 1898 Rangappa V/s Mohan *wherein it is held that, the accused had issued stop payment instruction in respect of a post dated cheque, held section 138 applies irrespective of the fact that the funds were insufficient.*

3. AIR 2010 NOC 195(Madras) M.Murali Bajaj V/s Selvaraj. *Wherein it is observed that, it cannot be held that no prosecution can be lodged for an offence under Section 138 for the simple reason that the cheque was returned unpaid pursuant to the instruction of the drawer given to the bank to stop payment. The presumption that the cheque was dishonored for the reasons contemplated in section 138 is a rebuttable presumption and the accused will have a right to lead evidence to show that the cheque was dishonored not for the reasons contemplated under section 138 and that he had sufficient funds in his account to satisfy the cheque amount. Thus, by proving that he had sufficient funds on the relevant date, the accused can rebut the presumption. The proof required for such rebuttal is not proof beyond reasonable doubt and it can be on preponderance of probabilities.*

19. In the present case the complainant has presented the cheque for encashment. As per Ex.P.2 the cheque dishonored for the reasons "**Payment stopped by drawer", "Funds Insufficient" and " A/c frozen**". The accused has to establish he got sufficient balance in his account to honor the cheque amount. But, the accused has not maintained sufficient balance to satisfy the cheque amount. Hence, the offence Under Sec.138 of NI act would be attracted. Therefore, the complainant has complied the mandatory requirements of law.

20. On careful perusal of the oral and documentary evidence, which revealed that, the Ex.P.1 cheque is belongs to the account of the accused which is not disputed. Moreover, the accused has not denied the signature on the Ex.P.1 cheque. Moreover, on perusal of statement of the accused recorded u/s 313 of Cr.P.C. and substance of accusation the signatures of the accused appears to be same.

21. In so far as the service of legal notice is concerned, the Ex.P.5 is the postal acknowledgment which clearly goes to show that the legal notice was duly served upon the accused. Inspite of service of notice the accused neither paid cheque amount nor replied the notice. Therefore, the complainant had complied the mandatory ingredients of section 138(b) of N.I.Act. On careful perusal of the evidence, it appears that there was an existence of debt in between the accused and complainant. Therefore it can be said that the accused has issued Ex.P.1 cheque towards the discharge of existing debt or other liability.

22. Therefore, from the circumstances narrated above and on careful consideration of the evidence on record, it is abundantly clear that, the accused has issued the Cheque at Ex.P-1 towards discharge of debt or liability. Therefore, the accused has totally failed to bring out any circumstances rebutting the presumption against the complainant. On the other hand, the complainant through his affidavit evidence and the documents produced before the Court, has satisfactorily proved that the accused after obtaining hand loan from the complainant has issued cheque at Ex.P-1 towards discharge of the same. Thereafter the cheque was dishonored when presented for encashment and the accused has failed to make payment of the cheque amount even after receipt of demand notice and thereby she has committed the offence punishable u/s.138 of N.I.Act.

23. The Negotiable Instrument Act was enacted to bring credibility of the cheque. The very object behind incorporation of Sec.138 to 142 of the Act, is with a view to encourage the culture of use of cheque, enhancing the credibility of cheque, with the object of inculcating faith in the effectiveness of banking operations and giving credibility to Negotiable Instruments in daily transactions. These provisions were intending to discourage people from not honoring their commitments by way of payment through cheque. The court should lean in favour of an interpretation which serves the object of the statute. A Contrary view would render Sec.138(a) will provide a handle to persons trying to avoid payment and legal obligations undertaken by them through their own acts, which is other wards can be said to be taking advantage of one’s own wrong. Therefore, keeping the said provisions in mind, the sentence is to be passed. The complainant has been deprived of money, which is rightfully due to him. Thus, the complainant is entitled for the compensation as per Sec.80 and 117 of the Act. **Accordingly, this court answered the point No.1 and 2 are in the Affirmative.**

24. **Point No: 3** :- In view of the aforesaid findings given to points No.1 and 2, this court proceed to pass the following:-

O R D E R

In exercise of the powers conferred under Section 255(2) of Cr.P.C, the accused is hereby held guilty of committing offence punishable u/s.138 of N.I.Act.

The accused is hereby convicted and sentenced to pay a fine of Rs.2,55,000/- and in default to pay the fine, he shall undergo simple imprisonment for Six months.

Out of the fine amount deposited by the accused, Rs.2,50,000/- has to be paid to the complainant as compensation U/s.357(1)(b) of Cr.P.C. and Rs.5,000/- shall be confiscated to State towards expenses of the case.

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

(Dictated to the Stenographer directly on the computer, corrected by me and then signed and pronounced by me in the open court on this the 10th day of June, 2026.)

Digitally signed by K AMBANNA
Location: Prl.Civil Judge & JMFC., Lingasugur.

(AMBANNA.K)
Prl., Civil Judge & J.M.F.C.
Lingasugur.

A N N E X U R E

List of witnesses examined on behalf of complainant:

PW.1	:	Siddramesh.

List of documents exhibited on behalf of complainant:

Ex.P.1	:	Cheque.
Ex.P.2	:	Bank endorsements.
Ex.P.3	:	Legal notice
Ex.P4	:	Postal receipt.
Ex.P.5	:	Postal acknowledgment.

List of witnesses examined on behalf of accused:

- NIL -

List of documents exhibited on behalf of accused:

Ex.D-1	:	Notice.
Ex.D-2	:	Bank endorsement.
Ex.D-3 to 7	:	Stop payment mobile screenshots.
Ex.D-8	:	Deposition in CC.No.80/2024.
Ex.D-9	:	Notice issued by the Chandrashekar.H advocate.
Ex.D-10	:	The reply notice.

Ex.D-11	:	Deposition of the accused in CC.No.80/2024.

Digitally signed by K AMBANNA
Location: Prl.Civil Judge & JMFC., Lingasugur.

Prl., Civil Judge & J.M.F.C.
Lingasugur.