KARC400000812019

IN THE COURT OF THE CIVIL JUDGE AND JMFC., AT MANVI

Present: Sri. ANAND.H.KONNUR. B.Com., LL.B.,
Civil Judge & JMFC,
Manvi

C.C.No.48/2019

Dated this 01st day of August-2026

COMPLAINANT:

Mr Basavaraj H S/o Gourish Haldal,
Age: 29 years, R/o House No.11-4-336 Basava Nilaya, Pampa Housing Colony, Manvi, Dist: Raichur.

(By Sri.S.S.H., Adv)

-Versus-

ACCUSED:

Mr.S.Arumugham Advocate,
1. R/o: 878, 13th Main, Vinayaka Layout,
Nagarbhavi, Bangalore-560072,

2. R/o #65, 1st Floor, Gold Tower, No.50,
Residency Road, Bangalore-560025.

(By Sri.A.M.D., Adv.)

: J U D G M E N T :

This is a private complaint filed udder Sec.200 of Criminal Procedure Code, 1973 for the offence punishable under Sec.138 of Negotiable Instrument Act, 1881.

2. Brief facts of the complainant's case are as under:

It is the case of the complainant that the complainant and accused are well known to each other for several years on that basis accused approached the complainant and his father to request for financial assistance of a sum of Rs.20,00,000/- in the month of August 2016 for his family necessities. The complainant had paid Rs.5,00,000/- and complainant father Mr.Gourish has paid Rs.15,00,000/- together paid Rs.20,00,000/- to the accused by way of cash. The accused has agreed and under taken to repay the same within one year from the date of borrowed. On several requests of the complainant, the accused has made payment of Rs.5,00,000/- to the complainant father out of Rs.20,00,000/- and not made the balance payment to complainant. After the expiry of time taken by the accused, he has not made the payment to the complainant.

3. In order to discharge the debt the accused has issued Cheque in his favor bearing No.083865 dated:01.08.2018 for sum of Rs.5,00,000/- drawn on Syndicate Bank, BWSSB Branch, Bangalore-560002. As per the instruction he has presented the said Cheque through his banker on

05.10.2018 at State Bank of India, Sindhanoor, for encashment. But the said Cheque has been dishonored to him with an endorsement as “Insufficient Funds” on 06.10.2018. Therefore, he has issued the legal notice dated:22.10.2018 to the accused calling upon him to pay the Cheque amount. But the said notice came to be returned with Door Locked-Intimation Dropped and also accused has not repaid the Cheque amount. Hence, the accused has committed an offence punishable under Sec.138 of Negotiable Instrument Act, 1881. Hence, this complaint.

4. After perusing the complaint and other documents produced with it, my predecessor in the office has taken the cognizance of the offence punishable under Sec.138 of N.I. Act, and registered this private complaint as PCR. Thereafter, complainant has examined himself as Cw.1 and he has filed affidavit in lieu of his sworn statement. Thereafter, this PCR has been registered as Criminal Case in Register No.III. After registering the Criminal Case, summons has been issued to the accused. In pursuance of the summons the accused has appeared before this Court and got enlarged on bail.

5. On the subsequent date of hearing sum and substance of accusation under Sec.138 of N.I. Act, has been read over and explained to the accused in the Kannada language known to him. But he has pleaded not guilty and he has submitted that he has defense to make on his behalf.

6. The complainant examined as Cw.1 and in support of the case got marked the documents at Ex.P.1 to 8. The defense has not been cross-examined the complainant, the statement of the accused under Section 313 of Cr.P.C has not been recorded as accused has not availed repeatedly absent this court has issued NBW not lead any defence evidence in his favour.

The Hon'ble High Court of Karnataka in Crl. Petition No.664 in between Sunil Yadav V/s Smt.Y.C.Manju. it is observed that the accused has not cross-examined the complainant nor lead any defense evidence and court proceeded to dispense the 313 statement. Even inspite of opportunity has been given to lead defense evidence also did not avail the opportunity and hence, now the counsel can not contend for remand the matter only on the ground that 313 statement was not recorded.

7. Heard the argument of counsel for complainant. Counsel for accused not canvased his arguments. Perused the material on record.

8. The following Points arises for my consideration:

1. **Whether the complainant proves beyond reasonable doubt that, the accused has issued the cheque bearing No.083865 dated 01.08.2018 for a sum of Rs.5,00,000/- drawn on Syndicate Bank, BWSSB Branch, Bangalore in discharging legally enforceable debt and the same was dishonored on presentation and thereby committed an offence punishable under Section 138 of Negotiable Instruments Act?**

2. **What order?**

9. My findings to the above Points are as under:

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

: R E A S O N S :

10. Point No.1:- The complainant has filed the present complaint against the accused U/sec. 200 of Cr.P.C alleging that, the accused has committed offence punishable U/sec.138 of Negotiable Instruments Act. Therefore, it is incumbent on the complainant to a proof that, the complainant has complied the requirements of proviso (a) to (c) of Section 138 of Negotiable Instruments Act. On this aspect the complainant has come up with the specific allegation in the complaint alleging that, the accused had issued the cheque at Ex.P.1 dated 01.08.2018 towards repayment of dues. Further, it is alleged that, the complainant presented the said cheque for encasement in Karnataka Bank Ltd Manvi, but same has been came to be dishonored as **“FUNDS INSUFFICIENT**” wherein the memo was issued on 06.10.2018. After receipt of dishonor intimation, the complainant has issued notice to the accused on 22.10.2018 as per Section 138 proviso (b) of the Negotiable Instruments Act.

11. Keeping in mind aforesaid allegations of the complaint, the compliance of the proviso (a) to (c) of the Section 138 of Negotiable Instruments Act. I have extract the provision of Section 138 of Negotiable Instruments Act along with its proviso (a) to (c), which reads as under,

“Dishonour of cheque for insufficiency, etc., of funds in the account- Where any cheque drawn by a person on account maintained by him/her with a banker for payment of any amount of money to another person from out of that, account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that, account is insufficient to honour the cheque or that, it exceeds the amount arranged to be paid from that, account by an agreement made with that, bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for (a term which may be extended to two years), or with fine which may extend to twice the amount of the cheque, or with both:

Provided that, nothing contained in this section shall apply unless-

1. the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

2. the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

3. the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation- For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

12. From the aforesaid provisions of section 138 of Negotiable Instruments Act, mandates the compliance of proviso (a) to (c) so as to launch prosecution against the accused for the offence punishable U/sec. 138 of Negotiable Instruments Act. Herein, the case also, the complainant complied all mandatory requirements stated supra i.e. presentation of cheque within time, after endorsement of bank authority issuance of notice to the accused is within time and presentation of the present complaint is within time.

13. In order to prove the case, the complainant has been examined as CW.1. The CW.1 filed affidavit evidence in lieu of examination-in-chief and deposed in consonance with the complaint averments. The CW.1 in order to substantiate his oral evidence also got marked the documents Ex.P.1 to 8. Ex.P.1 is the cheque bearing No.083865 dated 01.08.2018 drawn on Syndicate Bank, BWSSB Branch Bangalore. Ex.P.2 is the endorsement issued by the Syndicate Bank with a remark that **"FUNDS INSUFFICIENT"**. Ex.P.3 is the Legal notice issued to the accused dated 22.10.2018. Ex.P.4 is the legal notice issued to the accused through e-mail on 18.11.2018, Ex.P-5 & 6 are the Postal Receipts, Ex.P-7 & 8 are the postal covers.

14. The burden is on the complainant to prove that, there is legally recoverable debt. Existence of legally recoverable debt is a sine qua non for prosecuting the case U/sec.138 of N.I Act. For convenient purpose the essential ingredients to constitute offence U/sec. 138 of N.I Act, are summarised as below:

i) a cheque was issued

ii) the same was presented

iii) but, it was dishonored

iv) Despite service of notice, neither any payment was made no other obligations, if any, wee complied with within fifteen days from the date of receipt of the notice.

15. Herein the case, on perusal of cheque Ex.P.1, it is very much clear that, the accused had issued the cheque for Rs.5,00,000/- dated 01.08.2018 in favour of complainant. Ex.P.2 shows that the said cheque has been dishonored by way of **"FUNDS INSUFFICIENT"**. The said endorsement has been issued by the Syndicate Bank Manvi branch, Raichur. Ex.P-1 and Ex.P-2 are concerned, initially goes to show that, the accused had issued Ex.P.1 Cheque of Rs.2,30,000/- in favour of complainant and same has been dishonored by way of **FUNDS INSUFFICIENT.** As per these two documents and oral evidence of Pw.1 is concerned and as per section 118(a) of N.I Act is concerned, the presumption regarding date, consideration, name mentioned in the Negotiable instrument, which are Under Section 138 of NI Act, regarding burden of proof Sec.118 of NI Act lays down until the contrary is proved, it shall be presumed that every Negotiable Instrument was made or drawn for consideration. Sec.139 of NI Act contemplates that unless the contrary is proved it shall be presumed that the holder of the Cheque received the Cheque of the nature referred to in Sec.138 for the discharge, in whole of any debt or liability. In a decision reported in **2001 Crl. Law Journal, page 4647 (SC) (Hiten P.Dalal V/s Bratindrananth Banerjee),** it is observed that, **" In the proceeding under Sec.138 of NI Act, the complainant is not required to establish either the legality or the enforceability of the debt or liability since he can avail the benefit of presumption under Sec.118 of 139 of NI Act, in his favour".** By virtue of these presumptions, accused has to establish that the Cheque in question was not issued towards any legally enforceable debt or liability. Again in **Krishna Janardhan Bhat V/s Dattatreya G. Hegde (2008 Vol. 2 SCC Crl. 166) the Hon'ble Supreme Court** has held that, **"Existence of legally recoverable debt is not a presumption under Sec.138 of NI Act, and the accused has a constitutional right to maintain silence and therefore it was argued later that the presumption under Sec.139 of NI Act, should be delicately balanced".**

16. In a decision of the **Hon'ble Supreme Court** in the case of **Rangappa V/s Mohan reported in AIR 2010 SC page 1898, the Hon'ble Supreme Court** has reconsidered this issue and clarified that The existence of legally recoverable debt or liability is matter of presumption under Sec.139 of NI Act, para 14 of the judgment, the Hon'ble Supreme Court has observed that;

> **"Sec. 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While section 138 of the Act, specified a strong criminal remedy in relation to the dishounour of Cheques, the rebuttable presumption under Sec.139 is a device to prevent undue delay in the course of litigation, However, it must be remembered that the better described as a regulatory offence since the bouncing of a 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 construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under 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 doubt 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 some cases the accused may not need to adduce evidence on his/ her own."

17. Relying upon the citation referred above wherein the **Honb'le Supreme Court** has clarified regarding legally enforceable debt and the presumptions. Now it is clear that the presumption mandated by Sec.139 of NI Act does not include existence of legally enforceable debt or liability. It is rebuttable presumption. It is for the accused to prove his defense wherein he has to raise a probable defense which creates doubt about existence of legally enforceable debt or liability. Once he creates such doubt, then the burden shifts back to the complainant.

18. This Court has relied upon a decision reported in **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 or averment in rely 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"**

19. By keeping the above well settled principle of law now, I would refer to evidences of the parties adduced during trial. The learned counsel for the accused has not cross-examined Pw.1, inspite of issuance of sufficient time.

20. After conclusion of the complainant's evidence the statement of accused under Sec.313 of Criminal Procedure Code has been dispensed as they have not availed the opportunity to lead evidence and to cross-examine the PW.1. This piece of oral evidence of PW-1 shows that he has given cheque towards loan amount.

21. In this regard I would like to refer the decision of Hon'ble APEX courts**,** it is held that, Where the cheque is signed leaving blank all other particulars and handed over to the payee authorizing him to fill up the blanks as agreed upon, it is valid in law. Therefore, when such a cheque is dishonoured. Section 138 applies**. "ILR 2001 Kar 4127** in the case of **S.R. Muralidhar Vs G.Y. Ashok"** In this regard Section 20 of the Act may be perused.

22. Refer the latest decision in the case of **Kalamani Tex and another VS P. Balasubramanian,** reported in **(2021) 5 SCC 283.** It is held that if the accused voluntarily signed and handed over a cheque the presumption under sec. 118 and 139 is available

23. Therefore, the over all evidence of the accused and not sending cheque for expert examination clearly goes to show that he has utterly failed to rebut the presumption that the Ex.P1 Cheque has not been issued in favor of complainant for discharging debt or other liability. But on the other hand, the complainant has successfully proved that the accused issued Cheque as per Ex.P1 in his favour for sum of Rs.5,00,000/- for discharge of whole or part of legally enforceable debt/other liability. He has also successfully proved that the said Cheque has been returned to him by the Bank unpaid with an endorsement as "**FUNDS INSUFFICIENT**" and thereafter, he has issued statutory notice to the accused and the accused in spite of it has not paid Cheque amount. Accordingly, I answer Point No.1 in the Affirmative.

24. **Point No.2:** For the aforesaid reasons, I proceed to pass the following;

ORDER

Acting under Section 255(2) of Code of Criminal Procedure, 1973 the accused is found guilty of offence punishable under Section 138 of Negotiable Instrument Act, 1881.

The accused is hereby sentenced to pay fine of Rs.5,00,000/- and out of fine amount the Accused shall pay sum of Rs.4,90,000/- as a compensation to the complainant. In default the Accused shall undergo simple imprisonment for a period of 6 months.

The remaining fine of Rs.10,000/- shall go to State as fine amount.

The bail bond and surety bonds of the accused are hereby stands cancelled.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court, this 01st day of August-2026**)**

(ANAND.H.KONNUR)
Civil Judge & JMFC,
MANVI.

: ANNEXURE :

List of witnesses examined on behalf of Complainant side

PW.1 : Sri.Basavaraj H S/o Gourish Haldal

List of witnesses examined on behalf of Accused:

NIL

List of documents marked on behalf of Complainant:-

Ex.P.1 : Cheque
Ex.P.2 : Endorsement
Ex.P.3 & 4 : Legal notices
Ex.P.5 & 6 : Postal receipts
Ex.P.7 & 8 : Postal covers

List of documents marked on behalf of Accused:

NIL

Digitally signed by
ANAND HANAMANT
KONNUR
Location: CIVIL JUDGE
AND JMFC MANVI

(ANAND.H.KONNUR)
Civil Judge & JMFC,
MANVI.