



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C. AT
MAGADI**

Present: Smt. Nagarathnamma, B.A.L., L.L.B.,
Civil Judge & JMFC,
Magadi.

Dated this the 07th day of July, 2026.

CRIMINAL CASE No. 778/2019

BETWEEN:

Harish Kumar S/o Venkatesh.N,
Age: 33 years,
R/at: Someshwara Extension,
Magadi Town, Ramanagara District. **Complainant**

(Represented by Sri.B.G., Advocate)

AND:

Mahendra S/o Dasu,
Age: 35 years,
R/at: Devipura Village,
Malavalli Taluk,
Mandya District-571430.
And also residing at
No.156, 5th main,
Kempegowdanagara,
Byadarahalli,
Magadi Main road,
Vishwaneedam Post,
Bengalore-91.
And also residing at No.156,



Sri.Venkateshwar Nilaya,
40 feet road, 2nd main road,
Kempegowdanagara,
Byadarahalli,
Magadi main road,
Vishwaneedam Post,
Bangalore-91.

..... **Accused**

(Represented by Sri.M.S.M., Advocate)

Date of presenting complaint	: 29.07.2019
Name of the complainant	: Harish Kumar S/o Venkatesh.N
Date of commencement of evidence	: 22.01.2020
Date of closing of evidence	: 22.01.2020
Offences complained of	: 138 of N.I. Act.

: J U D G M E N T :

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

2. The brief facts of the Complainant's case are as follows;

The complainant and accused are known persons with each other and accused due an amount of Rs.1,00,000/- to the complainant. In order to repayment of said amount, accused



issued cheque bearing No.01137 for Rs.1,00,000/- dated 17.06.2019 to be drawn on Axis Bank, Devaraj urs road Branch, Mysore in favour of complainant. Thereafter, the complainant was presented said cheque through his banker on 19.06.2019. But, it was dishonor for the reason “**Account Closed**” and returned with memo dated on 19.06.2019. Thereafter the complainant had issued legal notice to accused on 04.07.2019 and it was duly served upon the accused. Inspite of it, the accused neither made any payment nor replied to said notice. Hence, accused has committed offence punishable U/s. 138 of N.I Act.

3. After filing of the complaint. Perused, this Court has taken the cognizance for offence punishable under section 138 of N.I. Act and registered a Private complaint. The Sworn Statement of Complainant was record and upon hearing the Arguments, a Criminal case was registered against the accused and issued summons to the accused.

4. Upon being service of summons, the Accused appeared before the Court through his counsel and released on bail. A plea of the Accused was recorded by explaining the substance of Accusation. But, he pleaded not guilty and claimed to be tried.



5. In order to prove its case, when the matter was posted for complainant evidence, this Court has taken the sworn statement of the complainant as a examination-in-chief of complainant and Ex.C1 to Ex.C9 documents have been treated as a Ex.P1 to Ex.P9 in view of case of **Indian Bank Association Vs. Union of India**. Ex.P.1 is cheque in question. Ex.P2 is Bank Memo. Ex.P3 is Office Copy of Legal Notice. Ex.P4 to 6 are postal receipts and Ex.P.7 and 8 are postal acknowledgment and Ex.P.9 is RPAD.

6. Thereafter, statement of accused has required U/s. 313 of Cr.P.C. has been dispensed due to non-appearance of accused. Even inspite of sufficient opportunity given to the accused, he have not come forward for defence evidence and he remains absent.

7. Heard the arguments advanced by learned counsel for the complainant. Though, sufficient opportunity has been given to accused, he failed to addressed his arguments and he did not appear before the Court. Accordingly, arguments of the accused was taken as nil. Perused the materials placed on record.

8. The following Points arise for my consideration:



1. Whether the complainant has made out the ingredients of section 138 of N.I. Act. To prove the guilt of the accused?

2. What order?

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

R E A S O N S

10. **Point No. 1 :-** I have perused Complaint, evidence and documents placed on record. It is specific case of the complainant that, the complainant and accused are known persons with each other and accused due an amount of Rs.1,00,000/- to the complainant. In order to repayment of said amount, accused issued cheque bearing No.01137 for Rs.1,00,000/- dated 17.06.2019 to be drawn on Axis Bank, Devaraj urs road Branch, Mysore in favour of complainant. Thereafter, the complainant was presented said cheque through his banker on 19.06.2019. But, it was dishonor for the reason “**Account Closed**” and returned with memo dated on 19.06.2019. Thereafter the complainant had issued legal notice to accused on 04.07.2019 and it was duly served upon the accused. In spite of it, the accused neither made any payment nor replied to said notice. Hence, this present complaint.



11. In support of his case, the complainant has filed affidavit by retreating the complaint averments and he has produced documents, which have been marked as Ex.P1 to Ex.P9, Ex.P1 is Cheque in question said to have been issued by the accused. Ex.P2 is the Bank endorsement, on perusal of same, it reveals that Ex.P1 cheque was dishonored for the reason **“Account Closed”**. Ex.P3 is office copy of the legal notice dated 04.07.2019. Ex.P.4 to 6 are postal receipts, Ex.P.7 and 8 postal acknowledgment and Ex.P.9 is Envelope cover, which unclaimed by the accused. All these documents are clearly goes to show that after dishonor of the Cheque. After receiving the bank endorsement, the complainant had issued the demand notice to accused within stipulated time, as required under section 138(b) of N.I. Act. Thereafter, completion of 15 days from the date of service of notice, complainant came to be filed this complaint, with in time.

12. It is pertinent to note that;

“Ordinarily in cheque bouncing cases, what the Court has consider is whether the ingredients of the offence enumerated in section 138 of N.I. Act have been met if so, whether the accused was able to rebut the



statutory presumption contemplated under section 139 of N.I. Act. Once the cheque relates to the account the accused and he accepts and admits the signature on the said cheque, then initial presumption as contemplated U/s 139 of N.I. Act. Act has to be raised by the Court in favour of the complainant. The presumption referred in section 139 of N.I. Act.”

13. Considering the facts of the case in hand, it is to be taken in to note that, the complainant has discharged his burden by producing the above said documents before the Court in order to get benefit of presumption as contemplated U/s. 118(A) and 139 of N.I. Act. At the same time, it is noted that even in-spite of sufficient opportunities and time have been given to accused to rebut the presumption as contemplated U/s. 118(A) and 139 of N.I. Act, he did not challenge the case of complainant.

14. Further on perusal of the order sheet maintained in this case, discloses that, after recording of the complainant evidence, the matter was posted for cross of PW1 dated 22.01.2020. Since accused has not chosen to cross examined



PW-1. After recording of evidence accused has not come forward before the court even inspite of knowing of existence of this case. Though this court issued NBW repeatedly accused has not prays time. Further it relevant to note that, accused taken bail and appeared before the court until recording of evidence. But, thereafter accused intentionally not come forward before the court.

15. Further it relevant to note that, after recording of evidence of PW-1 accused has not come forward and not disputed cheque and signature and every transaction held between him and complainant. Accused has never taken any specific defence stating that, he never issued Ex.P.1 cheque to complainant and signature is not to him by adducing defence evidence. Since the case of the complainant has not been challenged by accused. Once execution of cheque in question is proved the court draw presumption Under Section 139 of NI Act.

16. Further it relevant to note that, in this case though accused was very well aware about the existence of this case, he continuously absent before the court after obtaining the bail. It clearly shows that, accused is avoiding the trail and with an intention to drag the case of complainant. Hence, compliance of



recording the statement as required Under Section 313 of Cr.P.C., was dispensed due to non appearance of accused. In this regarding I have relied upon the judgment of **Hon'ble High Court of Karnataka in Revision Petition No.437/2010 in a case of Kulkarni.R.V vs. Dhakshinamurthy and Criminal Revision Petition No.664/2020 between Sunil Yadav vs. Smt.Y.C.Manju.** Wherein in a both cases it is held that,

If the court cannot record the statement of accused Under Section 313 of Cr.P.C. in cases Under Section 138 of NI Act, due to non appearance of accused, the court can dispense the recording the statement of accused Under Section 313 of Cr. P.C and proceed with the case. In view of the dictum of the above said decisions, here in this case also though this court has issued NBW repeatedly from the year of 2020 accused has not come forward. Hence, statement of accused is hereby dispensed with.

17. On the other hand, the evidence of complainant brought on record are remain unchallenged. Even though, the sufficient opportunity has been given to accused to rebut the presumption as contemplated U/s 139 of N.I. Act, the accused



did not come forward to challenge the case of complainant, these attitude of the accused clearly goes to shows that he was due to complainant. Hence, intentionally he tried escaping from his liability with complainant by drag the case. This case is pending from 2019. Since he has prolonging the case of complainant. In view of these observations, this Court is opinion that accused is liable to pay the amount of Rs. 1,00,000/- to complainant and the complainant has complied all ingredients of section 138 of N.I. act and proved the guilt against the accused beyond reasonable doubt, at the same time, there is no rebuttal evidence to disbelieve the case of complainant. Accordingly, I answer point No. 1 in the **Affirmative**.

18. POINT No.2: The cheque in question issued on 17.06.2019 since from the issuing of the cheque, the complainant is struggling for the recovery of the cheque amount by approaching the Court of law including litigation expenses. So, in this circumstance to demand for award suitable compensation for the complainant. Accordingly, in view of the above reasons and findings this Court proceeds to following ;

: O R D E R :



The accused is found guilty of the offence punishable under Section 138 of Negotiable Instruments Act.

In exercise of powers under Section 255 (2) of Cr.P.C, the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act 1881 and he is sentenced to pay a fine of Rs.1,80,000/- and in default of payment of fine, accused shall undergo simple imprisonment for a period of three months.

Out of the fine recovered, a sum of Rs.1,75,000/- shall be paid to complainant as compensation and remaining amount of Rs.5,000/- defrayed to the State for the expenses incurred in the prosecution.

The bail bond of the accused and that of surety stands cancelled and issue conviction warrant against accused.

(Dictated to the stenographer directly on the computer and typed by her, corrected by me and then pronounced in the open Court, this 07th day of July, 2026)

KARN420014552019



(Smt.Nagarathnamma)
Prl. Civil Judge & JMFC,
Magadi.



: ANNEXURE:

LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:-

PW.1 : Harish Kumar.

LIST OF DOCUMENTS MARKED ON BEHALF OF COMPLAINANT:-

Ex.P.1 : Cheque,
Ex.P.2 : Bank Memo,
Ex.P.3 : Office Copy of Legal Notice,
Ex.P.4-6 : Postal Receipts,
Ex.P.7-8 : Postal Acknowledgment,
Ex.P.9 : Envelope Cover.

LIST OF WITNESSES EXAMINED FOR DEFENCE :NIL

LIST OF DOCUMENTS MARKED FOR DEFENCE: NIL

**Prl. Civil Judge & JMFC,
Magadi.**