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IN THE COURT OF PRL. SENIOR CIVIL JUDGE AND J.M.F.C., AT SAGAR

Dated this the 27th day of June, 2026

PRESENT:

SRI. RAGHAVENDRA SHETTIGAR,
B.A., LL.M.,

PRL. SENIOR CIVIL JUDGE AND J.M.F.C., AT SAGAR.

C.C No.826/2025

COMPLAINANT	:	Sri. Praveen Kumara H. S/o Hucchappa, Aged about 34 years, R/o Iginabylu village, Hosuru post, Anandapura hobli, Sagar Taluk, Shivamogga District. **(By Sri. V.K.M., Advocate)**
		// Versus //
ACCUSED	:	Smt.Vaishali W/o Suresh, Aged about 55 years, R/o.Mankodu Badavane, Near Sigandureshwari Bar,

Soraba Road, Sagara town.

(By Sri. M.R.S., Advocate)

JUDGMENT

This complaint is filed by the complainant under Section 223 of BNSS for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The Case of the complainant as per complaint averments is as follows:

The case of the complainant is that, the accused borrowed hand loan of Rs.1,40,000/- from him for her urgent financial necessities and agreed to repay the same within one month. Towards discharge of the said liability, the accused issued cheque dated 01.02.2025 for Rs.1,40,000/- drawn on Bank of Baroda. On presentation, the cheque came to be dishonoured for the reason "Funds Insufficient". Thereafter, the complainant issued statutory notice which was served upon the accused. Despite service of notice, the accused failed to pay the cheque amount. Hence, the complaint.

3. After filing of the complaint, the cognizance of the offence was taken and registered criminal case against the accused and the summons was issued to her. The

accused has appeared before the Court through her counsel and was enlarged on bail. Subsequently, plea was recorded and the substance of the accusation was read over and explained to her. She pleaded not guilty and claimed to be tried.

4. To prove his case, the complainant examined himself as PW.1 and relied upon Ex.P1 to Ex.P5.

5. The accused examined herself as DW.1 and her son as DW.2.

6. Now the points that arise for my determination are as follows:-

> ***1) Whether the complainant proves that, the accused issued Ex.P1 cheque for discharge of legally enforceable debt or liability of Rs1,40,000/- and the cheque was dishonoured for "Funds Insufficient" and despite service of statutory notice the accused failed to make payment within the stipulated period and thereby***

committed an offence punishable under Section 138 of the Negotiable Instruments Act?

2) What order?

7. On the basis of the materials available on record, my finding to the above points are as follows:

POINT NO.1 : In the Affirmative.

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

<u>R E A S O N S</u>

8. <u>POINT NO.1</u>:

According to the complainant, the accused borrowed hand loan of Rs.1,40,000/- for her urgent financial necessities and agreed to repay the same within one month and towards discharge of the said liability, the accused issued cheque dated 01.02.2025 for Rs.1,40,000/- and the said cheque came to be dishonoured for the reason "Funds Insufficient" and despite service of statutory notice, the accused failed to pay the cheque amount.

9. PW.1 has reiterated the averments of the complaint in his sworn affidavit. The complainant has also relied upon documentary evidence marked as Ex.P.1 to Ex.P.5.

10. Let me scrutinize the documents relied by the complainant in order to examine the compliance of statutory requirements as envisaged under Section 138 of N.I. Act, Ex.P.1 is the Cheque, Ex.P1 (a) is the signature of the accused. Ex.P.2 is the bank endorsement. Ex.P.3 is the legal notice, Ex.P.4 is the postal receipt and Ex.P.5 is the postal acknowledgment. On careful scrutiny of the oral and documentary evidence, it is clear that the cheque in question was presented within its validity period and the same was dishonoured for want of sufficient funds. The complainant thereafter issued statutory notice within the prescribed period and filed the complaint within limitation.

11. Ex.P1 cheque admittedly belongs to the account of the accused. During cross-examination and in the evidence of DW.1, the accused has categorically admitted that, Ex.P1 cheque pertains to her account and Ex.P1(a) signature is her signature. Once execution of cheque

and signature are admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act arise in favour of the complainant that the cheque was issued towards discharge of legally enforceable debt or liability.

12. On careful perusal of the documents relied by the complainant goes to show that, statutory requirements of Section 138 of N.I. Act is complied with and this complaint is filed within time. Further, the complainant has discharged its initial burden by relying oral and documentary evidence. Thus, the complainant is entitled to rely on the statutory presumptions enshrined under Section 118 read with Section 139 of N.I. Act.

13. As far as proof of existence of legally enforceable debt is concerned, it is profitable to refer the decision of full bench of the Hon'ble Apex Court reported in **Rangappa Vs. Mohan reported in AIR 2010 SC 1898**, wherein their lordships pleased to observe that, the presumption mandated by Section 139 of the Act include the existence of the legally enforceable debt or liability.

14. In another decision reported in, **(2015) 8 SCC 378 in the case of Vasanthakumar Vs. Vijayakumari**, it is held that once the accused has admitted the issuance of Cheque as well as signature on it, the presumption under Section 139 would be attracted.

15. Hon'ble Apex Court in the case of **Bir Singh Vs Mukesh Kumar** reported **in (2019) 4 SCC 197** held that, when a signed blank cheque is voluntarily given to a payee towards some payment, the payee may fill up the amount and other particulars and that will not invalidate the cheque. The onus to rebut presumption under section 139 of N.I. Act that the cheque had been issued in discharge of a debt or liability, is on the accused.

16. In view of the law laid down by the Hon'ble Apex Court, the presumption enshrined under Section 139 of the N.I. Act is extendable to the existence of legally enforceable debt. The Hon'ble Apex Court has clearly laid down the ratio that, when the ingredients of Section 138 of NI Act are complied with, presumption shall be drawn in favour of the complainant. The burden is upon the accused to rebut the statutory presumptions.

17. It has been held by Hon'ble Supreme Court in the decision reported in ***2008(1) Crimes 227 (SC)*** between**:** ***Krishna Janardhan Bhat Vs. Dattatraya G.Hegde*** that, accused need not step into the witness box to prove his defence and the standard of proof is to prove the defence on part of an accused is *'preponderance of probabilities'*. Such preponderance of probabilities can be drawn not only from the materials brought on record by the parties, but also by reference to the circumstances upon which he relies.

18. Now let me see, whether the accused has rebutted the statutory presumption or not. In the present case, the defence of the accused is that she never borrowed any amount from the complainant and that her son Sumith had dealings with one Guru in connection with a car transaction. According to the accused, a signed blank cheque belonging to her was handed over to Guru as security and the same has been misused through the complainant. However, except the bare oral testimony of DW.1 and DW.2, no independent material is placed before the Court to substantiate this defence. The accused has not produced any document showing the alleged car transaction with Guru, any document

showing that Ex.P1 cheque was given as security, any complaint lodged against Guru or the complaint alleging misuse of cheque and any notice demanding return of the cheque. If really the cheque had been misused, a prudent person would have immediately initiated legal action. Admittedly, no such action has been taken.

19. DW.2 who is none other than the son of the accused has admitted during cross-examination that, he owes about Rs. 1,00,000/- to Guru and that he has not repaid the same. This admission lends support to the possibility of financial transactions involving the family of the accused.

20. The contention that, the complainant had no financial capacity to lend Rs.1,40,000/- is also not convincing. Mere absence of documentary proof regarding source of funds is not sufficient to rebut the statutory presumption when the execution of cheque is admitted. The accused has failed to elicit material admissions from PW.1 to demolish the presumption under Section 139 of the N.I. Act. The evidence of PW.1 remains consistent regarding lending of the amount, issuance of cheque, dishonour and issuance of legal notice.

21. Ex.P2 establishes that the cheque was dishonoured for "Funds Insufficient". Ex.P3 to Ex.P5 establish issuance and service of statutory notice. It is significant to note that, the accused has admitted her signature in the postal acknowledgment i.e Ex.P5. Despite receipt of notice, the accused neither replied to the notice nor paid the cheque amount.

22. The learned counsel for the complainant has relied upon two judgments of Hon'ble Supreme court. The Hon'ble Supreme Court in **P. Rasiya v. Abdul Nazer** has categorically held that once the signature on the cheque is admitted, the presumption under Section 139 follows and the burden shifts upon the accused to rebut the same by raising a probable defence.

23. The Hon'ble Supreme Court in **Ashok Singh v. State of Uttar Pradesh & Another** reiterated that once issuance of cheque and signature are admitted, the burden lies heavily upon the accused to rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. The Court further observed that mere denial of liability, suggestions in cross-examination or unsubstantiated allegations regarding

financial incapacity of the complainant are not sufficient to rebut the statutory presumption. Unless the accused raises a credible and probable defence supported by material evidence, the complainant is entitled to rely upon the statutory presumptions available under law.

24. The learned counsel for the accused has vehemently argued that, the complainant has failed to establish his financial capacity to lend Rs.1,40,000/-. According to the accused, the cheque was a security cheque handed over in connection with a transaction between DW.2 and one Guru and the complainant has not produced any documentary evidence regarding advancement of the loan.

25. The learned counsel for the accused has relied upon the decisions reported in:

1. AIR Online 2013 SC 483.
2. 2022 (2) KCCR 1651.
3. 2024 (3) KCCR 2198.
4. 2024 (3) KCCR 2584.
5. 2023 (1) KCCR 83.
6. 2019 (3) KCCR 2473.
7. 2009 (2) DCR 610.

8. AIR 2011 NOC 75.
9. 2023 (3) DCR 540.
10. AIR Kar R 280.

26. I have carefully gone through the above decisions. The learned counsel for the accused has relied upon decisions concerning financial capacity of the complainant, security cheques and rebuttal of statutory presumptions. There cannot be any dispute regarding the legal propositions laid down therein. However, each case must be decided on its own facts.

27. In the present case, the principal defence of the accused is that she never borrowed any amount from the complainant and that her son Sumith had financial dealings with one Guru in connection with a car transaction. According to the accused, a signed blank cheque belonging to her was handed over to Guru as security and the same has subsequently been misused through the complainant. This defence does not inspire confidence for several reasons.

28. Firstly, though DW.1 and DW.2 have spoken about the alleged transaction with Guru, no documentary

evidence whatsoever has been produced to establish the said transaction. No agreement, receipt, account statement, vehicle transaction document or acknowledgment has been placed before the Court.

29. Secondly, though the accused alleges misuse of a signed blank cheque, admittedly she has not lodged any police complaint against Guru or the complainant. She has not issued any legal notice seeking return of the cheque. No stop-payment instructions are shown to have been issued to the bank. No civil or criminal proceedings have been initiated alleging misuse of the cheque. If really the cheque had been misused, a prudent person would have immediately taken legal action. The absence of any such action substantially weakens the defence version.

30. Thirdly, DW.2 has admitted during cross-examination that he is liable to pay about Rs.1,00,000/- to Guru and that the amount has not been repaid. This admission itself probabilises financial transactions involving the family of the accused and weakens the theory of complete fabrication.

31. The learned counsel for the accused has also contended that the complainant has failed to establish his financial capacity to advance Rs.1,40,000/-. It is true that, PW.1 has admitted that he has not maintained any written document regarding the hand loan transaction and has not withdrawn the amount from the bank immediately before advancing the loan. However, it is equally important to note that the amount involved is Rs.1,40,000/- and not an extraordinarily huge amount requiring strict documentary proof in every case. More importantly, in view of the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and the law laid down by the Hon'ble Supreme Court, the complainant is not initially required to independently prove his source of funds once execution of the cheque is admitted.

32. The burden first lies upon the accused to rebut the statutory presumption through cogent material. In the present case, except making suggestions regarding financial capacity, the accused has not produced any material showing that the complainant was incapable of advancing the amount. Mere suggestions in cross-examination cannot take the place of proof. The evidence

of PW.1 consistently establishes that, the accused borrowed Rs.1,40,000/-, Ex.P1 cheque was issued towards repayment, Ex.P1 was dishonoured under Ex.P2 for "Funds Insufficient", statutory notice Ex.P3 was issued within limitation, notice was duly served under Ex.P5 and despite service of notice, the accused failed to make payment.

33. The accused has not disputed receipt of the statutory notice and admittedly no reply notice has been issued. Failure to reply to the statutory notice is another circumstance which supports the case of the complainant.

34. Upon overall appreciation of the evidence on record, this Court is of the considered opinion that the accused has failed to rebut the presumptions available under Sections 118 and 139 of the Negotiable Instruments Act. The defence set up by the accused remains a mere explanation unsupported by independent evidence and does not attain the level of a probable defence.

35. Accordingly, the complainant has successfully proved that Ex.P1 cheque was issued towards discharge of a legally enforceable debt and that the accused

committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence, Point No.1 is answered in the **Affirmative.**

36. <u>POINT NO.2</u>:

In view of the reasons stated and discussed above, the complainant has proved that the accused has committed an offence punishable under Section 138 of N.I. Act.

37. Hon'ble Supreme Court in a decision reported in **(2015) 17 SCC 368, in a case of H.Pukhraj Vs. D.Parasmal**, observed that, having regard to the length of trial and date of issuance of the cheque, it is necessary to award reasonable interest on the cheque amount along with cost of litigation. Therefore, keeping in mind the time when the transaction has taken place and primary object of the provision, this court is of the opinion that, rather than imposing punitive sentence, if sentence of fine is imposed with a direction to compensate the complainant for his monitory loss, by awarding compensation U/Sec.395 of B.N.S.S., would meet the ends of justice. By keeping in mind Sec.143(1), Sec.80

and 117 of the Negotiable Instruments Act, the compensation has to be awarded.

38. As per the records, the cheque was dated 01.02.2025 and amount covered under said cheque is Rs.1,40,000/-. It appears that, the complainant has spent considerable time and money to prosecute the case. By considering all these aspects, this Court is of the opinion that, it is just and proper to impose fine amount of Rs.1,60,000/-, which includes interest and cost of litigation. Accordingly, this Court proceeds to pass the following;

ORDER

Acting under Section 278(2) of the BNSS, the accused is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

The accused is sentenced to pay a ***fine of Rs.1,60,000/- (Rupees One Lakh sixty Thousand only)****.*

In default of payment of fine, the accused shall undergo Simple Imprisonment for a period of three (3) months.

*Out of the fine amount, a sum of Rs.**1,55,000/-** shall be paid to the complainant as compensation.*

*The remaining amount of Rs.**5,000/-** shall be credited to the State.*

Supply free copy of this judgment to the accused forthwith.

(Dictated to the Stenographer directly on computer, typed by her and corrected by me and then pronounced in the open Court on 27th day of June 2026).

(RAGHAVENDRA SHETTIGAR)
Prl. Senior Civil Judge & JMFC,
Sagar.

::A N N E X U R E::

LIST OF WITNESSES EXAMINED ON BEHALF OF THE COMPLAINANT:-

P.W.1	:	Praveena Kumar H.

LIST OF DOCUMENTS MARKED ON BEHALF OF THE COMPLAINANT:-

Ex.P.1	:	Cheque
Ex.P.1(a)	:	Signature of the accused
Ex.P.2	:	Bank endorsement
Ex.P.3	:	Legal Notice

Ex.P.4	:	Postal receipt
Ex.P.5	:	Postal acknowledgment

LIST OF WITNESSES EXAMINED ON BEHALF OF THE ACCUSED:-

D.W.1	:	Vaishali
D.W.2	:	Sumeeth

LIST OF DOCUMENTS MARKED ON BEHALF OF THE ACCUSED:-

-NIL-

(RAGHAVENDRA SHETTIGAR)
Prl. Senior Civil Judge & JMFC,
Sagar.