

KAMD500014522022

**Presented on : 04-08-2022****Registered on : 04-08-2022**

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND J.M.F.C AT NAGAMANGALA.**

PRESENT: *Sri. Felix Alphonse Anthony,
B.A. L. L.L.B.,
Prl Senior Civil Judge and J.M.F.C.,
Nagamangala.*

Dated: *This the 11th day of August 2026*

C.C.No.771/2022

COMPLAINANT: *Puttegowda, S/o Marigowda,
Aged about 41 Years,
R/o Sri Veerabhadreshwara Swamy
Temple Road, Nagamangala Town,
Nagamangala Taluk.*

(Represented by Sri.M.E.H., Advocate)

V/S

ACCUSED: *N.S.Lokesha, S/o Nagalingappa(Archaka)
Aged about 49 Years,
R/o Sri Veerabhadreshwara Swamy
Temple Road, Nagamangala Town,
Nagamangala Taluk.*

(Represented by Sri.T.N.C., Advocate)

JUDGMENT

1. *The Complainant filed the present Complaint against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.*
2. *The complainant in the complaint has stated that the accused is his friend and that on 10-10-2021 the accused for the purpose of his legal necessities and to discharge his hand loans had approached the Complainant for financial help and that the accused had received a sum of Rs.4,00,000/- from the Complainant agreeing and undertaking to repay the same within three months and on the same day the accused had issued post dated Cheque dated 10-01-2022 drawn on I.C.I.C.I., Bank, Jayanagara Branch, Bengaluru bearing Cheque No.077196 for Rs.4,00,000/- and had requested the complainant to present the said Cheque to the Bank for encashment.*
3. *The complainant further stated that as per the instructions of the accused, that on 10-01-2022 the complainant presented the said Cheque for encashment through his Banker the Canara Bank,*

Nagamangala Branch and that the said Cheque was dishonoured and the Manager, Canara Bank, Nagamangala Branch had returned the said Cheque with an endorsement dated 17-01-2022 “PAYMENT STOPPED BY THE DRAWER”.

- 4. The complainant further stated that on 04-02-2022 the complainant got issued a legal notice to the accused through R.L.A.D and that on 05-02-2022 the said Legal Notice was served on the accused and that inspite of the same the accused has not repaid the cheque amount and on the other hand had got issued Reply Notice dated 25-02-2022 denying the averments of the Notice and that the accused knowing fully well that he is having no amount in his account has issued the said Cheque only with an intention of deceiving and cheating the Complainant that the accused has committed the offence and thereby has committed the offence punishable under Section 138 of Negotiable Act.*
- 5. After filing of the Complaint, the cognizance was taken for the offence punishable under section 138 of Negotiable Act. The Sworn Statement of the*

Complainant was recorded and the criminal case was registered as against the accused in Register No.III for the offence punishable under Section 138 of Negotiable Instruments Act. Thereafter summons was issued to the accused and the accused had appeared before the Court through his counsel and later the accused was enlarged on bail. Thereafter the plea was read over and explained to the accused and that the accused had not pleaded guilty and claimed to face trial and hence the case was thereafter posted for recording the evidence of the Complainant.

6. *Further in order to prove the case of the Complainant, the Complainant got examined himself as P.W.1 and also got marked Ex.P.1 to P.6 and had closed the side. On perusal of Ex.P.1 to 6, it is clear that the Ex.P.1 is the Cheque, Ex.P.2 is the Bank Endorsement, Ex.P.3 is the Copy of the Legal Notice, Ex.P.4 is the R.P.A.D. Receipt and Ex.P.5 is the Postal Acknowledgment and Ex.P.6 is the Reply Notice.*
7. *After closure of the evidence of the Complainant, the statement of the accused under section 313 of*

Cr.P.C. was recorded wherein the accused had denied the incriminating evidence available against him and had chosen to lead evidence on his behalf. Further in order to rebut and disprove the case of the Complainant the accused got himself examined as D.W.1 and also produced and documents marked as Ex.D.1 to 11 and had closed his side. After closure of the evidence of the accused, the case was posted for hearing arguments.

8. *I have heard the arguments of the learned counsel for the Complainant and the accused. Further the learned counsel for the accused even has filed the Written Arguments on behalf of the accused.*
9. *After hearing arguments of both the parties and on perusal of the Written Arguments and filed on behalf of the accused and on perusal of the materials placed on record, the points that arise for my consideration are:*

- 1. Whether the Complainant proves that Ex.P.1 Cheque was issued by the accused towards discharge of the liability of Rs.4,00,000/-?**

2. *Whether the complainant proves that he has complied all the essential ingredients under Section 138 of N.I. Act?*

3. *Whether the Complainant proves that the accused has committed the offence punishable under section 138 of N.I. Act?*

4. *What Order?*

10. *My findings to the above points are as hereunder:*

POINT NO.1: IN THE NEGATIVE

POINT NO.2: DOES NOT SURVIVE FOR CONSIDERATION

POINT NO.3: IN THE NEGATIVE

***POINT NO.4: As per the final Order
For the following....***

REASONS

POINT NO.1:

11. *The Complainant has contended that the accused for the purpose of his legal necessities and to discharge his hand loans had approached the Complainant for financial help of Rs.4,00,000/- and had received the said amount of Rs.4,00,000/- and had issued the Post dated Cheque towards*

discharge of his liability, hence the burden is on the Complainant to prove the same.

12. *In order to prove that the accused had received a sum of Rs.4,00,000/- from the Complainant and towards the repayment of the same had issued the post dated Cheque as per Ex.P.1, the Complainant has contended and deposed that the accused for the purpose of his legal necessities and to discharge his hand loans had approached the Complainant for financial help of Rs.4,00,000/- and had assured to return the same within 30 days and hence the Complainant had agreed to lend money to the accused and the accused had received a sum of Rs.4,00,000/- from the Complainant and towards repayment of the said amount the accused had issued a post dated Cheque dated 10-01-2022 drawn on I.C.I.C.I., Bank Jayanagara Branch, Bengaluru bearing Cheque No.077196 for Rs.4,00,000/- and had requested the Complainant to present the said Cheque to the Bank for encashment.*

13. *In order to substantiate his contention the Complainant has produced **the Cheque bearing***

No.077196 as per Ex.P.1. Further the Complainant had contended that the accused had received the money and assured that he would repay the same within 30 days and towards the payment of the amount had issued the post Dated Cheque which is marked as Ex.P.1 and an further contended that from the same it is clear that the accused had received a sum of Rs.4,00,000/- from the Complainant and had issued the post Cheque as per Ex.P.1 towards discharge of her liability.

14. *On the other hand the accused in order to rebut the contention of the Complainant had issued Reply Notice dated 23-02-2022 denying the contentions of the Complainant and further contended that **he was travelling in the bus and that he had lost the Cheque Book numbering 77191 to 77220 while travelling and that he had made Complaint to the concerned Bank with regard to the same.** Further during the course of evidence the accused has contended that **the accused had not at all borrowed any money from the Complainant nor issued the Cheque in question to the Complainant and that there was matrimonial dispute between the accused and his***

wife and that the Complainant illegally took the Cheque from his wife and that in M.C.No.3280/2023 his wife has agreed with regard to the same and that the Complainant had no financial capacity to advance the amount to the accused. The accused has also contended that there was matrimonial dispute between himself and his wife and that the Cheques belonging to him were in possession of his wife and when enquired she admitted that he had given the Cheque in question to the Complainant and that the accused has not received any money from the Complainant and that the accused is not liable to pay any amount to the Complainant and that the Complainant has filed false Complaint and hence the Complaint is not maintainable and the same is liable to be dismissed.

15. *It should be noted that when the Complainant has produced the Cheque before the Court, the presumption is that he is in possession of the same for the purpose of recovering the debt which he is legally entitled to recover. Thus when the accused had denied the same and has taken up contention that he was travelling in the bus and that he had*

lost the Cheque Book numbering 77191 to 77220 while travelling and that he had made Complaint to the concerned Bank with regard to the same and that the accused had not at all borrowed any money from the Complainant nor issued the Cheque in question to the Complainant and that there was matrimonial dispute between the accused and his wife and that the Complainant illegally took the Cheque from his wife and that in M.C.No.3280/2023 his wife has agreed with regard to the same and that the Complainant had no financial capacity to advance the amount to the accused and that there was matrimonial dispute between himself and his wife and that the Cheques belonging to him were in possession of his wife and when enquired she admitted that he had given the Cheque in question to the Complainant and that the accused has not received any money from the Complainant, the burden of proving the same is on the accused.

16. *In the light of the contentions taken by the accused, it is to be observed that **at one stretch** the accused has contended that he was travelling in the bus and that he had lost the Cheque Book*

*numbering 77191 to 77220 while travelling and that he had made Complaint to the concerned Bank with regard to the same and **on the other hand** the accused has contended that there was matrimonial dispute between the accused and his wife and that the Complainant illegally took the Cheque from his wife and that in M.C.No.3280/2023 his wife has agreed with regard to the same and that there was matrimonial dispute between himself and his wife and that the Cheques belonging to him were in possession of his wife and when enquired she admitted that he had given the Cheque in question to the Complainant.*

17. *In the light of the above on perusal, though the accused has contended that he was travelling in the bus and that he had lost the Cheque Book numbering 77191 to 77220 while travelling and that he had made Complaint to the concerned Bank with regard to the same, **on careful perusal the accused has not chosen to lodge any complaint before the Police with regard to such losing of Cheques. The accused has not explained as to why he has not lodged any***

Complaint to the Police. Further though the accused has contended that he had made Complaint to the concerned Bank with regard to the same, on careful perusal ***the accused has not produced the copy of such Complaint before the Court.*** Thus the mere oral contention of the accused that he had lost the Cheques while travelling and that he had lodged the Complaint before the concerned Authorities without there being any documents cannot be accepted. Further the accused has contended that there was matrimonial dispute between the accused and his wife and that the Complainant illegally took the Cheque from his wife and that in M.C.No.3280/2023 his wife has agreed with regard to the same and that there was matrimonial dispute between himself and his wife and that the Cheques belonging to him were in possession of his wife and when enquired she admitted that he had given the Cheque in question to the Complainant. It should be noted that ***the above said defence/contention of the accused itself falsifies the contention of the accused that he had lost the Cheques while travelling.*** Thus

the said contention of the accused cannot be accepted.

18. *On perusal, the accused has also contended that there was matrimonial dispute between the accused and his wife and that the Complainant illegally took the Cheque from his wife and that in M.C.No.3280/2023 his wife has agreed with regard to the same and that there was matrimonial dispute between himself and his wife and that the Cheques belonging to him were in possession of his wife and when enquired she admitted that he had given the Cheque in question to the Complainant and also agreed that she would instruct the Complaint to withdraw the Complaint and that later the Complainant had not received the telephone calls and hence the instructions were unable to be given to the Complainant and that the said aspects have been elicited in the Joint Compromise Petition filed in M.C.No.3280/2023 and that the accused has not at all received any amount from the Complainant and that he is not liable to pay any amount to the complainant. In order to substantiate the claim of the accused, the accused even has produced the*

Certified copy of the Order Sheet in M.C.No.3280/2023, Certified copy of the Decree in M.C.No.3280/2023 and the Certified copy of the Joint Compromise Petition in M.C.No.3280/2023 as per Ex.D.2 to 4.

19. *In the light of the above it should be noted that though the accused has contended that himself and his wife had filed Joint Compromise Petition as per Ex.D.4, on careful perusal, the present Complainant is not at all the party to the said Compromise Petition. Even there is no document to prove and establish that the Complainant was present before the Family Court when the said Compromise was entered into by and between the accused and his wife and there is no documents to prove and establish that the Complainant had the knowledge of the said Compromise. Thus in the absence of the same, certainly the Terms of the said Compromise Petition as per Ex.D.4 is **NOT BINDING ON THE COMPLAINANT**. Apart from the above, in order to prove the said contention of the accused, the accused has not chosen to examine his wife before this Court. The accused has not explained as to why he has not*

*examined his wife. Thus in the absence of the evidence of the wife of the accused, the mere oral contention of the accused that his wife had given the Cheque to the Complainant and that the Complainant had forcibly taken the Cheque from his wife cannot be accepted. **MOST IMPORTANTLY THE ACCUSED HAS NOT EXPLAINED THE RELATIONSHIP BETWEEN HIS WIFE AND THE COMPLAINANT SO AS TO HIS WIFE HANDOVER THE CHEQUE TO THE COMPLAINANT.** Thus from the above it is very clear that the accused has taken up false contention and hence there are no reasons to believe the same and hence the said contention of the accused also cannot be accepted.*

20. *It is the say of the accused that his wife had agreed with regard to handing over the Cheque to the Complainant and that she had agreed to instruct the Complainant to withdraw the Complaint and later the Complainant had not received the phone call so as to instruct him. Though the accused has taken up such a*

*contention, has not explained as to why **NO NOTICE WAS ISSUED BY HIS WIFE CALLING UPON THE COMPLAINANT TO WITHDRAW THE PRESENT COMPLAINT.***

Thus from the above also it is very clear that the accused has taken up false contention and hence the contentions taken by the accused cannot be believed or accepted.

21. *Apart from the above the accused contended that the Complainant had no financial capacity to advance the amount of Rs.4,00,000/- to the accused and hence the complaint is liable to be dismissed. Since the accused has taken up the contention that the Complainant had not Financial Capacity to advance the amount of Rs.4,00,000/- certainly the burden is on the Complainant to prove his **FINANCIAL CAPACITY.***

22. *On the other hand though the Complainant has contended that he has advanced a sum of Rs.4,00,000/- to the accused, on careful perusal the Complainant has not produced any documents to prove and establish that he was in*

possession of the said Rs.4,00,000/- during the year 2022. Further the P.W.1 during the course of cross examination at Page 2 Para 2 Line 2 has also admitted that when the accused asked for financial assistance of Rs.4,00,000/- he had only Rs.2,50,000/- with him and that he had obtained the remaining Rs.1,50,000/- one Harish, S/o Somashekar and thereafter gave the same to the accused. Thus from the above it is very clear that the Complainant had no money with him at the time when the accused asked him for financial assistance. Further though the Complainant has contended that he had obtained the remaining Rs.1,50,000/- one Harish, S/o Somashekar and thereafter gave the same to the accused, on careful perusal the Complainant has not got examined the said Harish to prove the said transaction between himself and the said Harish. In the absence of the same the mere oral contention of the Complainant cannot be accepted.

23. *Apart from the above on perusal of the Cross examination of P.W.1 at Page 2, Para 1, line 2,*

*the P.W.1 has deposed that since 2019 he is running Travel Agency and that he is earning Rs.40,000/- to Rs.50,000/- per month from the said Agency. Further though the Complainant has deposed with regard to the above, on careful perusal the Complainant to prove his Financial Capacity has not produced any documents before the Court. On the other hand the Complainant/P.W.1 during the course of cross examination at Page 2 Para 1, Line 5 **ADMITTED THAT HE IS A B.P.L., CARD HOLDER.** Thus the above admission of the Complainant shows that the Complainant had no financial Capacity during the year 2022 to advance the said amount of Rs.4,00,000/- to the accused as contended.*

24. *Apart from the above on perusal of Ex.D.10 and 11 it is clear that the Complainant has not paid Rs.3,80,000/- to one J.Manjunath and that the said J.Manjunath has filed petition as per Ex.D.11 for the recovery of the said amount of Rs.3,80,000/-. When the Complainant is due a sum of Rs.3,80,000/- to one J.Manjunath, the contention*

of the Complainant that he had advanced a sum of Rs.4,00,000/- to the accused cannot be accepted. Thus on perusal of Ex.D.10 and 11 it is further clear that the Complainant had no Financial Capacity to advance the said amount of Rs.4,00,000/- to the accused as alleged.

25. *It should be noted that the Complainant has contended that he had advanced the alleged Rs.4,00,000/- to the accused without any security. It should be further noted that during the year 2022 the said amount of Rs.4,00,000/- is very huge and it is **VERY IMPROBABLE** to believe that a person would advance such a huge amount without any security. Thus on the above ground also the say of the complainant that he had advanced a sum of Rs.4,50,000/- to the accused 20-10-2020 cannot be accepted or believed.*
26. *Further though the complainant has stated that the accused had received the amount from him up to a tune of Rs.4,50,000/- and had issued the cheque for Rs.4,50,000/- as per Ex.P.1, the complainant has not produced any supporting documents to show, prove and establish that he*

has paid the said amount and thus the complainant failed to prove the payment of such amount of Rs.4,50,000/- to the accused.

27. *Thus from the above it is clear that the complainant had utterly failed to prove his contention. Thus on perusal of entire evidence and materials placed on record it is very clear that there was no transaction between the Complainant and the accused and that the Complainant had not advanced any amount to the accused and that the accused is not liable to pay the aforesaid cheque amount of Rs.4,00,000/- to the complainant and that he had not issued the Cheque as per Ex.P.1 towards repayment of the said amount. Thus on perusal of the entire materials placed on record it is very clear that the complainant has failed to prove the advancing of money and issuance of Cheque. Accordingly I answer the **POINT NO.1 IN THE NEGATIVE.***

POINT NO.2:

28. *As discussed above the Complainant has failed to prove the advancing of money and also issuance of Cheque as per Ex.P.1. Hence the question of as*

*to whether the complainant proves or complied all the essential ingredients under section 138 of N.I. Act does not arise at all. In view of the above discussion the **POINT NO.2 IS ANSWERED ACCORDINGLY.***

POINT NO.3:

29. *In the case on hand the alleged offence against the accused is under section 138 of N.I. Act. In order to prove that the accused has committed the offence punishable under section 138 of N.I. Act, the Complainant has to establish the following essential ingredients as required under section 138 of N.I. Act.*

- i. The cheque shall be drawn on the account to discharge the legally recoverable debt*
- ii. The said cheque has to be presented to the bank within the specified period for encashment, and the said cheque was dishonoured for the reason “Insufficient Funds”*
- iii. The payee should be demanded for payment of money by issuing the notice.*

30. *In the present case the Complainant has presented the Ex.P.1 Cheque for encashment to the Bank within the specified period and the same was dishonoured for the reasons **“PAYMENT STOPPED BY THE DRAWER”** as per Ex.P.2 and as per Ex.P.3 and the Complainant has got issued legal notice to the accused dated 04-02-2022 calling upon the accused to pay the Cheque amount. Thus in deed by producing sufficient materials before the Court the Complainant has established that Ex.P.1 was presented to Bank for encashment and that the same was returned un encashed for the reason **PAYMENT STOPPED BY THE DRAWER**. Though the Complainant had presented the Cheque for encashment, as discussed above **the Complainant has failed to prove and establish that the accused had issued the said cheque for the purpose of discharging the legally recoverable debt.***
31. *Considering all these aspects, I am of the opinion that the complainant has utterly failed to prove that the accused has committed the offence punishable under section 138 of N.I. Act and has also failed to prove that he has complied all the*

*ingredients of section 138 of N.I. Act. Accordingly
I answer the **POINT NO.3 IN THE NEGATIVE.***

POINT NO.4:

32. *For the fore going reasons and in view of the
above findings, I proceed to pass the following:*

ORDER

The accused found not Guilty.

***Acting under section 255(1) of
Cr.P.C., the accused is acquitted for the
offence punishable under section 138
of N.I. Act.***

***Accordingly the bail bond of the
accused person shall remain in force for
a period of 6 months and thereafter
automatically stands cancelled.***

*(Dictated to stenographer directly in laptop, corrected by
me and then pronounced in the open Court on this the 11th
day of August 2026)*

***(Felix Alphonse Anthony)
Prl Senior Civil Judge and J.M.F.C.,
Nagamangala***

ANNEXURE

**LIST OF WITNESSES EXAMINED ON BEHALF OF
THE COMPLAINANT:**

P.W.1: Puttegowda

**LIST OF DOCUMENTS MARKED ON BEHALF OF
THE COMPLAINANT:**

Ex.P.1: Cheque
Ex.P.2: Bank Endorsement
Ex.P.3: Office copy of the legal Notice
Ex.P.4: R.P.A.D., Receipt
Ex.P.5: Postal Acknowledgment
Ex.P.6: Reply Notice

**LIST OF WITNESSES EXAMINED ON BEHALF OF
THE ACCUSED:**

D.W.1: N.Lokesh

**LIST OF DOCUMENTS MARKED ON BEHALF OF
THE ACCUSED:**

Ex.D.1: Reply Notice
Ex.D.2: Certified copy of the Order Sheet
In M.C.No.3280/2023
Ex.D.3: Certified copy of the Decree
In M.C.No.3280/2023
Ex.D.4: Certified copy of the Memorandum of
Settlement filed in M.C.No.3280/2023
Ex.D.5 to 9: Pay Slips
Ex.D.10: Certified copy of the Order Sheet
In Ex.No.45/2019
Ex.D.11: Certified copy of the Petition
In Ex.No.45/2019

(Felix Alphonse Anthony)
Prl Senior Civil Judge and J.M.F.C.,
Nagamangala

(The judgment pronounced in the open Court)

O R D E R

The accused found not Guilty.

Acting under section 255(1) of Cr.P.C., the accused is acquitted for the offence punishable under section 138 of N.I. Act.

Accordingly the bail bond of the accused person shall remain in force for a period of 6 months and thereafter automatically stands cancelled.

(Vide separate Judgment)

*(Felix Alphonse Anthony)
Prl Senior Civil Judge and J.M.F.C.,
Nagamangala.*