IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS AT TIPTUR

PRESENT: SMT. DEEPA V. B.AL., LL.B.,
JUDICIAL MAGISTRATE FIRST CLASS
TIPTUR

DATED: 07TH DAY OF JULY, 2023

C.C.No.2352/2015

Sri. T. J. Honnappa,
Aged about : 46 years,
S/o Sri Javarappa,
R/o. 2nd Cross, Vidyanagar,
Tiptur Town. … **Complainant**
(By Sri. M. C. Nataraj, Advocate)

-Vs-

Sri. Lingaraju T. J.,
Aged about : 32 years,
S/o Sri Javarappa,
R/o. Bhumika Chicken Centre,
Opposite Head Post Office,
Tiptur Town. … **Accused**
(By Sri. M. Dakshinamurthy Advocate)

OFFENCES COMPLAINED OF :	U/Sec 138 of Negotiable Instrument Act.
PLEA :	Pleaded not guilty

FINAL ORDER	**:**	Convicted
DATE OF ORDER	**:**	07.07.2023

J U D G M E N T

The complainant filed this complaint U/Sec. 200 of Cr.P.C against the accused for the offence punishable under Section 138 of Negotiable instrument Act (for short "N.I. Act.").

2. CASE OF THE COMPLAINANT:

i. The accused has borrowed a sum of Rs.2,50,000/- Two Laksh Fifty Thousand only) from the complainant on 05.07.2015 for legal necessity and family benefit agreeing to repay the same within one month thereon and on the same day, the accused has issued a post dated cheque in favour of the complainant towards the discharge of legally liable debt bearing cheque No. 536314 dated 03.08.2015drawn on Karnataka Bank Ltd., K. R. Extension Branch, Tiptur for Rs.2,50,000/-.

ii. The complainant has presented the above said cheque for realization through their banker – State Bank of Mysore, Tiptur Branch, but, it was returned unpaid with an endorsement of drawee bank dated 04.08.2015 stating "Funds Insufficient"

iii. The accused has issued the said cheque without making any arrangements for encashment of the said cheque amount and the said cheque is returned due to insufficiency of funds. Thereafter, the complainant got issued a legal notice to the accused on 13.08.2015 through his advocate demanding the accused to pay the amount due under the said cheque through RPAD. The notice sent through RPAD has duly served on the accused on 18.08.2015. In spite of service of legal notice, the accused has not paid any cheque amount thereby, the accused committed an offence punishable U/Sec. 138 of Negotiable Instrument Act.

3. Pre-trial stage: After recording of sworn statement of the complainant, cognizance was taken against the accused.

4. This criminal case came to be registered against the accused and issued summons for appearance. In response to the service of summons, the accused appeared before the Court through his counsel and he was released on bail. As per the procedure provided under section 207 of Cr.P.C, the copies of complaint case papers were furnished to the accused.

5. A substance of accusation by way of plea was recorded and read over to the accused in the language known him, who, in turn, pleaded not guilty and claimed to be tried. Therefore, the matter was posted for evidence of complainant.

6. Complainant Evidence: In order to substantiate his case, the sworn statement of the complainant recorded at the pre-trial stage were treated as complainant's evidence and the exhibits are treated as Ex.P1 to Ex.P. 5 as per the decision of **INDIAN BANK ASSOCIATION AND OTHERS VS UNION OF INDIA REPORTED IN (2014) 5 SCC 590**

by the order of this court dated 20/07/2017. The description of documents is as follows;

Ex.P1 & Ex.P1(a)	Cheque dated 03.08.2015 *vide* bearing No. 536314 drawn on Karnataka Bank Ltd., K. R. Extension Branch, Tiptur for a sum of Rs.2,50,000/- and signature of the accused.
Ex.P.2	Bank Memorandum dated 04/08/2015 issued by the Karnataka Bank Ltd., Tiptur Main to the State Bank of Mysore, SBM, BH Road stating that : "FUNDS INSUFFICIENT".
Ex.P.3	The complainant has caused legal notice dated 13.08.2015 to the accused calling upon him to repay the amount of Rs.2,50,000/-.
Ex.P4 & 5	The Ex. P. 3 was sent through registered post and the same was duly served upon the accused as per Postal receipt and acknowledgment

7. Accused Statement under section 313 of CRPC: The case was posted for statement of accused as contemplated under Section 313 of Cr.P.C and no incriminating evidence found from the answers given by the accused and was one of total denial by complainant's case.

8. Defence evidence: In order to rebut the case of the complainant, the accused did not lead any rebuttal evidence or mark any documents despite several opportunities provided.

9. Heard both sides and perused the case records.

10. The followings points would arise for the consideration of this Court:

: POINTS :

1. Whether the complainant proves beyond all shadow of doubt that the accused has committed an offence punishable U/Sec. 138 of N.I. Act ?
2. What order ?

11. The findings of this Court on 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:

12. POINT NO. 1 & 2: The accused did not plead guilty and claimed to be tried. As per the discussion reported in the case of **M/s Kusumk Ingots & alloys Limited Vs Pennar Peterson Securities Limited reported in 2000(2) SCC 745** and **Shivamurthy vs Amrutharaj reported in ILR 2008 Kar 4628**, wherein, it was held that, the complainant has to satisfy the three ingredients in order to attract Section 138 of Negotiable instrument Act, which are as follows ;

(a) There is a legally recoverably enforceable debt.

(b) The Ex.P.1 – cheque bearing No.536314 dated 03/08/2015 drawn on Karnataka Bnak Ltd., K. R Extension Branch, Tiptur Town, i.e, from bank account of accused for discharge of whole or part of any debt or other liability which pre-supposes to be legally enforceable debt.

(c) The Ex. P.1 so issued returned unpaid for insufficient of funds as per Ex.P2.

The Provision appended to the said section provides for compliance with legal requirement before a complaint petition can be acted upon a by court of law. Section 139 of N. I. Act is only to the extent that the cheque was drawn for discharge in full or in part of any liability and the said presumption extends to the existence of legally enforceable debt or liability unless it is rebutted by the accused with cogent and probable evidence. Therefore before drawing the presumption under section 139 of NI Act, it is the duty of the court to see whether or not the complainant has discharged its initial burden as to the existence of legally enforceable debt.

13. This Court reiterates Section 139 and Section 118(a) of N I Act here for the sake of understanding

> **139. PRESUMPTION IN FAVOUR OF HOLDER.—**It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.]

Section 118(a) of the Negotiable Instrument Act reads as follows; Presumption as to Negotiable Instruments:

Until contrary is proved, the following presumptions shall be made (a) of consideration that every negotiable instrument was made / drawn for consideration and when such instrument is accepted and that it has been accepted, endorsed, negotiated or transferred was accepted, endorsed / negotiated/ transferred for consideration.

Reading of both clauses (a) and (b) of Section 118 together makes it clear as per the presumption under these clauses, the consideration is supposed to have been received on the date of cheque. If in a given case from the apparent averment or from the evidence of drawn of the cheque, it can be inferred that on the apparent date of the cheque, no consideration was paid or in other words, if according to the specific case of the drawee or holder in due course of a cheque, the loan was taken on a particular day and for the discharge of the same, the loanee issued the cheque, the presumption under section 118(a) of NI stands rebutted. It has been held by the Hon'ble Supreme Court of India in the case of **K. S. Ranganathn Vs Vittal Shetty reported in 2022 (1) KCCR 1 (SC) by the three judges Bench**(emphasis supplied by the complainant counsel) and **Hiten P. Dalal Vs Bratindranath Banerjee reported in 2001(6) SCC 16** that the presumption mentioned in the section 139 of N I Act, is a presumption of law and not the presumption of fact and thus, this presumption has to be drawn in favour of drawee and burden to rebut the presumption with the probable defence is on the accused wherein in paragraph 21 held that

> 21. In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory presumption of law exist, no discretion is left with the court but to draw statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that exists as per section 3 of Indian Evidence Act. Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the prudent man.

15. Keeping in view of Section 138 and the provisions of Section 139 and 118(a) of Negotiable Instrument Act, this court proceed to discuss the documents of case

i. Ex.P.1 is the cheque dated 03.08.2015 *vide* bearing No. 536314 for a sum of Rs.2,50,000/-.

According to the complainant, signature on Ex.P.1(a) is the signature of the accused.

ii. Ex.P.2 is Bank endorsement / Memorandum, which depicts that the Ex.P.1 was returned unpaid for reason of insufficient funds on 04.08.2015 and the same was communicated to the complainant.

iii. It must be noted as per clause (b) proviso to Section 138 of N. I. Act, the complainant was required to make a demand of payment of the said amount **within 30 days from the date of receipt of cheque as unpaid**. Ex.P.4 is the returned postal receipt which reflects the legal notice was sent on 13.08.2015 and the accused has received the legal notice on 18.08.2015 as per Ex. P.5. As per the clause (C) provisio to Section 138 of N. I. Act, the accused is entitle for 15 days time to make the payment of money covered under the Ex. P.1 i.e., till **04.09.2015** from the date of receipt of legal notice. Further, as per Section 142(b) of N I Act, the complaint has to be filed within 30 days from the date of which the cause of action arose. Accordingly, the complainant filed this complaint on **30.09.2015** and the complaint is well within the time.

Thus, the complainant has fulfilled all the ingredients which were required for completion of offence punishable under section 138 of Negotiable Instrument Act.

18. It is the defence of accused that he did not tender the cheque to the complainant rather the said cheque was given to the accused brother in law namely manjunath , and Sri Manjunath as per the defence taken up in page 5 of paragraph No. 2 of PW1 which has been reiterated

> ನನ್ನ ಮಾವನವರಿಗೆ ಒಟ್ಟು **6** ಜನ ಮಕ್ಕಳು ಅದರಲ್ಲಿ **3** ಜನ ಗಂಡು ಮಕ್ಕಳು ಮತ್ತು **3** ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳು**.** ಗಂಡು ಮಕ್ಕಳ ಹೆಸರು ಮಂಜುನಾಥ**,** ರಾಜು ಮೆತ್ತು ಪ್ರಕಾಶ**.**

Thus, from the above suggestion, it appears that the accused has given the cheque in question to the brother in law of PW1 namely Sri Manjunath. If the said cheque in question was given to his brother in law Sri Manjunath, why his brother in law did not present the cheque when he himself filed the criminal case under section 138 of Negotiable Instrument Act 1881 in CC No. 297/2019 and why he had to give the cheque to PW1 to present the cheque when the said Sri Manjunath is not in any government service. More so there is no single suggestion from the accused that there was an animosity between the PW1 and the accused. When such being the case, how the version of the accused i.e., suggestion put forth to the PW1 in the cross examination could be believed as a gospel truth.

19. Apart from which, the accused has not rebutted either in the cross examination or adduced his evidence that what was the transaction between the accused and the said Sri Manjuath and under what circumstances, the accused had given the Ex. P. 1 cheque in question to him and such being the case, no prudent man is hardly expected to believe the version of the accused that he has given the cheque to the brother in law of accused without any iota of evidence when he admitted the signature on Ex. P. 1(cheque) and the Ex. P1 belongs to him.

20. It is the defence of accused that he does not know the complainant but it is the version of the PW1 that he knows the accused. In this regard, it is relevant to extract the cross examination of PW1 in paragraph No. 5 that

> **1.** ನಾನು ಹೋಟೆಲ್ ವ್ಯವಹಾರವನ್ನು ಸುಮಾರು **20** ವರ್ಷದಿಂದ ಮಾಡುತ್ತಿದ್ದೇನೆ. ಆರೋಪಿ ಚಿಕನ್ ಅಂಗಡಿ ಇಟ್ಟಿದ್ದರು ನನ್ನದು ಹಾಸನ್ ಕಿಂಗ್ಸ ಪ್ರೋರ್ಟ್ ಎಂದು ಡಾಬಾವನ್ನು ಹಾಸನ ಸರ್ಕಲ್ ನಲ್ಲಿ ನಡೆಸುತ್ತಿದ್ದೆ ಅದನ್ನು ನಡಸುವಾಗ ಅಲ್ಲಿಂದ ಚಿಕನ್ ನನ್ನು ತರಿಸುತ್ತಿದ್ದೆ ಅದಿರ ಮೂಲಕ ಆರೋಪಿ ನನಗೆ ಪರಿಚಯಿ ಆಗಿರುತ್ತಾನೆ.

The advocate for the accused with vehemence argued that the PW1 does not have any transaction with the accused but the accused did not prove the transaction with the said Manjunath. If the said Manjunath was examined before this court, this court could have had little light over the defence but the best known reasons to the accused why he had withdrawn the application by the order sheet dated 12/06/2023 filed for summoning the brother in law who had undertaken to withdraw this case on behalf of PW1 in C C No. 297/2019. Hence the defence of accused is unacceptable as he had no transaction with PW1.

21. It is the version of PW1 that the accused has approached PW1 for Rs. 2,50,000/- and the same was lent on 03/08/2015 by way of cash. In this regard, the PW1 deposed in page 5 that

> ಆ ಸಂಬಂಧವಾಗಿ ಈ ದೂರಿನಲ್ಲಿ ಹೇಳಿರುವಂತೆ ವ್ಯವಹಾರ ಆಗಿರುತ್ತದೆ. ನಾನು ಕೊಟ್ಟಿರುವ ತಿಳುವಳಿಕೆ ಪತ್ರದಲ್ಲಿ ಅಥವಾ ಕಂಪ್ಲೆಂಟ್ ನಲ್ಲಿ ಈ ವಿಚಾರವನ್ನು ನಾನು ತಿಳಿಸಿರುವುದಿಲ್ಲ. ನಾನು **2,50,000** ರೂ. ಹಣವನ್ನು ಒಂದೇ ಬಾರಿ ಆರೋಪಿಗೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಚೆಕ್‌ನ್ನು ಹೊರತು ಪಡಿಸಿ ಬೇರೆ ಯಾವುದಾದರೂ ಲಿಖಿತ ದಾಖಲಾತಿಗಳಲ್ಲಿ ಆರೋಪಿಗೆ ಹಣವನ್ನು ಕೊಟ್ಟಿರುವ ಬಗ್ಗೆ ಪಡೆದು ಕೊಂಡಿರುವುದಿಲ್ಲ. ನಾನು ಆರೋಪಿಗೆ ಯಾವುದೇ ಹಣವನ್ನು ಕೊಟ್ಟಿಲ್ಲ ಮತ್ತು ನನಗೂ ಆರೋಪಿಗೂ ಯಾವುದೇ ವ್ಯವಹಾರ ಆಗಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಆರೋಪಿಗೆ ನಾನು ನಗದು ರೂಪದಲ್ಲಿ ಹಣವನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ. **1000** ರೂ. ಮುಖಬೆಲೆಯ **250** ನೋಟುಗಳನ್ನು ನಾನು ಆರೋಪಿಗೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ನನ್ನ ಹತ್ತಿರ **2,50,000** ಇತ್ತು ಎಂದು ತೋರಿಸಲು ಮತ್ತು ಹೇಗೆ ಬಂತು ಎಂದು ತೋರಿಸಲು ಪ್ರಶ್ನಿಸಿದಾಗ ಸಾಕ್ಷಿ ನಾನು ಹೋಟೆಲ್ ವ್ಯವಹಾರ ಮಾಡಿರುತ್ತೇನೆ ಅದರಿಂದ ಬಂದಿರುತ್ತದೆ ಎನ್ನುತ್ತಾರೆ. ನಿಖರವಾಗಿ ಎಲ್ಲಿಂದ ಪಡೆದಿದ್ದೀನಿ ಅಥವಾ ಬ್ಯಾಂಕಿನಿಂದ ತೆಗೆದಿರುತ್ತೇನೆ ಎಂದು ತೋರಿಸಲು ಯಾವುದೇ ದಾಖಲಾತಿ ಇರುವುದಿಲ್ಲ.

The version of PW1 is intact with the complaint case that he has given the money to the accused who in turn issued the Posted dated cheque as a document on the same day. The complaint version is that the accused has acknowledged the loan transaction and issued the post dated cheque dated 03/08/2015 and specifically averred and deposed that the accused has issued the cheque on the same day.

22. The learned counsel for the accused has relied upon the version of PW1 that no document has been executed at the time of lending the loan and the same has been extracted in paragraph No. 1 in page 1 line that

> ಚೆಕ್‌ನ್ನು ಹೊರತು ಪಡಿಸಿ ಬೇರೆ ಯಾವುದಾದರೂ ಲಿಖಿತ ದಾಖಲಾತಿಗಳಲ್ಲಿ ಆರೋಪಿಗೆ ಹಣವನ್ನು ಕೊಟ್ಟಿರುವ ಬಗ್ಗೆ ಪಡೆದು ಕೊಂಡಿರುವುದಿಲ್ಲ.

No doubt, the PW1 being a businessman could have taken all possible steps for securing the documents as a security as he has seen many cases under Negotiable Instrument Act but in the instant case on hand without any documents has lent a huge sum of Rs. 2,50,000/- to the accused **a doubt arises in the mind of this court as to the transaction** but how so ever, on the same day, the accused has acknowledged debt by issuance of Ex. P. 1 and such being the case, a presumption raises in favour of PW1.

23. It appears from the Ex. P. 5 that Ex. P. 3 legal notice sent by the PW1 served duly upon the accused on 18/08/2015 but what was the reason the accused was prevented from replying to the legal notice. There is no single suggestion from the accused to the PW1 about the non receipt of the legal notice.

24. It is seen from cross examination of PW1 that the accused has cross examined the PW1 on his financial capacity that he did not produce any document to substantiate that has the capacity to mobilize Rs. 2,50,000/- but he did not dispute the factum that the PW1 was having chicken shop. But the accused except denying the source of income has not produced any contra evidence that the PW1 does not have any source of income to lend the money to the accused. **Admittedly, the PW1 did not produce any document to substantiate he possessed Rs. 2,50,000/- but in this regard, it is relevant to mention here that** the Division Bench of Hon'ble Apex Court **in the case of TEDHI SINGH Vs NARAYAN DASS MAHANT reported in Crimes (SC)-2022-2-252** observed that onus lies upon the accused to raise a probable defence in order to rebut the presumptions in cheque bounce cases, the complainant is not expected to confirm the presumption of consideration by leading evidence as Section 138 of the Negotiable Instruments Act provides that Court shall presume that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. It added that this presumption, however, is expressly made subject to the position being proved to the contrary and thus it is open to the accused to establish that there is no consideration received and make a 'probable defence' to establish his case but the same should be initiated by him as the complainant need not confirm the presumption of consideration at his/her first instance during the proceedings under Sec.138 NI Act, 1881. Even added to which, the accused except cross examining the PW1 that there is no material furnished that the accused was not required Rs. 2,50,000/-. It has been held that accused has to rebut the presumption and mere denial of passing of consideration is no defence but the accused could have produced his bank statement or any financial source document to substantiate that he had sufficient source of money that it was not necessary for him to borrow the money from anyone including the PW1 and the said principle is appreciated in the case of **S N Raju Vs R Raju reported in 2022(3) KCCR 2053**.

25. More over when the accused has taken the plea of forgery, thus, in view of the provisions of section 8 of Indian Evidence Act, his conduct, subsequent to the alleged forgery is also a relevant fact to the matter in issue. It is to be seen as to whether the accused acted diligently after the factum of alleged forgery revealed to him or he remained dormant as per Ex. P. 3 after the service from 18/08/2015. It is clear from the record that the accused had come to know about the alleged forgery after service of summons in this case; however, it is clear from the record that he did not take any action against the PW1 for the alleged act of forgery. No prudent man would be silent when a serious offence of forgery is committed against the accused especially when the alleged offender also wants to misuse the forged documents in the legal proceedings i.e., in a criminal complaint. Thus, the accused had come to know about the alleged misdeeds on the part of the PW1, however, the accused has not taken any action against the complainant till date particularly when the accused person is a business man who knows about the consequences of cheque dishonor transactions. The inaction on the part of the accused speaks for itself that he borrowed the money from PW1 and thereby he issued the cheque. Furthermore, since, the accused has taken the defence of forgery, thus, in view of provisions of **section 101 of Indian Evidence Act**, the onus is upon the accused to prove his claim of forgery and the said principle is appreciated in the case of **Seetharama Gowda A vs Isubu Kunhammade reported in 2021 (2) KCCR SN 119 (DB)**.

26. The accused has not led any cogent evidence to substantiate that the cheque has not been issued for any debt or liability as the heavy burden is upon the accused. Mere denial of issuing of cheque is not sufficient to disprove the complainant's case and the said principle is appreciated in the case of **Sri. K. S. Ranganatha Vs. Sri. Vittal Shetty reported in 2022 (1) KCCR 1 (SC).**

27. This court places reliance in the case o**f Rangappa Vs Mohan reported in AIR 2010 SC 1898 w**herein the lordships held that, "Once the execution of the Negotiable Instrument is either proved or admitted then the Court shall draw presumption available U/S. 139 of NI Act to the effect that, the Ex. P. 1 has been drawn for valid consideration. On reading of the evidence of both parties available on record, it discloses that there is no dispute so as to the fact that the Ex.P-1 belongs to the Bank account of the accused and the signature found on Ex.P-1 which is marked as Ex.P-1[a] is sufficient to prove the ingredients of Section 138 of Negotiable Instrument Act.

28. Hence, as aforesaid discussion, once the execution of Negotiable Instrument [Ex. P1] is admitted then, the Court shall draw presumption to the fact that the said

Negotiable Instrument has been drawn for valid consideration and it is issued for legally recoverable debt which was in existence. No doubt, the presumption which arose in favour of the complainant U/s. 139 of NI Act is not conclusive but it is rebuttable one and the accused has to dispel or rebut the presumption with probable evidence. To prove the said defence, the accused has denied the case of PW1 with suggestion that Ex.P-1 cheque was not issued to PW1 but the Ex. P. 1 belongs to him and the signature on Ex. P. 1 was his signature but has not led the cogent evidence to disprove the case of complainant. On the other hand, PW1 reiterated in his evidence of advancing the loan to the accused and about issuance of Ex.P1 cheque in his favour towards discharge of said loan.

29. Non production of material evidence as such his bank statement to substantiate that he was having sufficient income as on the date of transaction; non-examination of brother in law of PW1 naemly Sri Manjunath is fatal to the defence taken by the accused. Hence, the defence of the accused is not supported by any cogent evidence. Hence, the accused has not proved the defence taken by him and as such the said defence of the accused is not with probable defence to dispel the burden which arose in favour of complainant.

30. In the present case, the materials available on record are clearly goes to show that the accused has borrowed loan of Rs.2,50,000/- from complainant, issued a cheque in favour of the complainant for discharge of his legally enforceable debt, on presentation, cheque came to be dishonoured for insufficient funds and accused failed to pay the amount even after the endorsement being communicated to him by his banker. When the complainant has established aforesaid facts, the burden is upon the accused disprove the same as per U/Sec.139 of NI Act, the Court shall be presumed that the cheque was issued for discharge of debt unless the contrary is proved. As discussed supra, there is absolutely no contra evidence by the accused as against the evidence of complainant to prove that the cheque has been misused by the complainant. Therefore, it can be safely presumed that the accused has issued the cheque in favour of complainant for discharge of legally enforceable debt and failed to pay the amount despite the notice being sent to his permanent address. Under these circumstances, this court holds that the complainant has successfully proved that the accused has borrowed a sum of Rs.2,50,000/- (Rupees Two laksh Fifty thousand only) from him as loan and issued a cheque bearing cheque No. 536314 dated 03.08.2015drawn on Karnataka Bank Ltd., K. R. Extension Branch, Tiptur for Rs.2,50,000/- on the same day from the date of lending the loan. On presentation for encashment, it came to be returned unpaid for the reasons of “funds insufficient” as per endorsement and thereafter, the accused failed to pay the amount and thereby the accused has committed an offence punishable U/Sec.138 of NI Act and the said principle is appreciated in the case of **Kalamani Tex v. P. Balasubramaniyan, reported in (2021) 5 SCC 283** wherein the larger bench of Hon’ble Supreme Court held that “ U/s 118 & 139 of negotiable instrument act: Once issuance of cheque and signature admitted, it is required to presume that the cheque was issued as consideration for a legally enforceable debt.”

31. If the complainant deposited this amount of Rs. 2,50,000/- in any nationalized bank, he could have earned some interest on monthly basis or could have invested the said amount on some site, could have owned the properties. Hence, it is appropriate to award Rs. 2,50,000/- as compensation amount in addition to cheque amount. The complainant has proved the guilt of the accused punishable under section 138 of Negotiable Instrument Act. The offence under Negotiable Instrument Act is of the nature of civil wrong. Hence, it is proper to award sentence of fine, instead of awarding sentence of imprisonment. The Hon'ble Supreme Court of India in the case of **H.Pukhraj Vs. D.Parasmal reported in (2015) 17 SCC 368** 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, having regards to the facts and circumstances of the case, this court is of the opinion that it is a fit case to award some compensation to the complainant and hence the complainant is entitled for compensation of Rs.2,50,000/- and out of which, complainant is entitled for Rs. 2,40,000/- and further directed to deposit the amount of Rs. 10,000/- from the compensation amount shall be paid to the government. The complainant is entitled for interest at 9% per annum on the amount of Rs. 2,40,000/- for length of trial involved from date of endorsement dated 04/08/2015. Accordingly, this Court answers the **point No.1 in the Affirmative**.

32. **Point No.2 :-** Since the present complaint is summary trial and quasi-criminal in nature, it is like a recovery proceedings and punishment is fine or in default of it simple imprisonment. In this context, this court places reliance in the matter of **Babu V/s. K.J. Joseph reported in AIR 2009 NOC 404 (Kerala) and Section 353(6) of Cr.P.C**., that, the judgment could be pronounced in the absence of accused in case of judgment is one of acquittal or fine only. It is not necessary for personal presence of the accused to receive the copy of the judgment. Hence, in this case also, in the absence of the accused, the Court will pass the judgment.

33. In view of findings on Point No.1 in the affirmative, this court proceeds to pas the following

ORDER

Acting U/Sec. 255(2) Cr.P.C., the accused is convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act as follows

i) It is ordered that the accused shall pay fine amount of Rs.2,50,000/- within 2 months. In default, accused shall undergo simple imprisonment for a term of 6 months.

ii) Acting under Sec.357 (1) of Cr.P.C. it is ordered that sum of Rs.2,40,000/- shall be paid to the complainant as compensation and remaining amount of Rs.10,000/- shall be paid to the government.

iii) The complainant is entitled for simple interest at 9% per annum on the amount of Rs. 2,40,000/- from the date of memorandum / endorsement dated 04/08/2015.

iv) The Judgment copy shall be supplied to the accused on free of cost.

(Dictated to the Stenographer directly on the computer, computerized by him and then judgment revised and corrected by me, print out taken by him, pronounced by me in the open Court on the 07th day of July, 2023).

Sd/-
[DEEPA V.]
JUDICIAL MAGISTRATE FIRST CLASS,
TIPTUR

A N N E X U R E

THE WITNESSES EXAMINED FOR THE COMPLAINANT:

PW1	:	Sri. T. J. Honnappa

THE DOCUMENTS EXHIBITED FOR THE COMPLAINANT :

Ex.P1	:	Cheque
Ex.P1(a)	:	Signature of the accused
Ex.P2	:	Bank Memorandum
Ex.P3	:	Legal notice dated 13.08.2015
Ex.P4&5	:	Postal receipt & acknowledgment

THE LIST OF WITNESSES EXAMINED AND DOCUMENTS EXHIBITED FOR THE ACCUSED : - NIL -

Sd/-

[DEEPA V.]
JUDICIAL MAGISTRATE FIRST CLASS,
TIPTUR