



**IN THE COURT OF THE DISTRICT & SESSIONS**  
**JUDGE, UTTARA KANNADA, KARWAR**

**DATED THIS THE 13<sup>th</sup> DAY OF MARCH, 2026**

**CRIMINAL APPEAL NO:45/2025**

**: PRESENT :**

**Sri MAYANNA. B. L.,**

***B.A., LL.B.,***

II Addl., District & Sessions Judge,  
Uttara Kannada, Karwar.

**APPELLANT:**

Sri. Ramesh Mastayya Naik,  
Aged about 47 years,  
R/o Chowkimane, Gorte,  
Post: Gorte, Bhatkal Taluk,  
Uttara Kannada District.

(By Sri. D.V.G./K.N.N., Advocates)

Vs.

**RESPONDENT:**

The Janata Co-operative Credit  
Society Ltd., Main Branch, Bhatkal  
Rep. by its Manager,  
Sri. Nagesh Madev Devadiga,  
Aged about 48 years,  
R/o. Shirali, Bhatkal Taluk.

(By Sri. N.S.B., Advocate)

**J U D G M E N T**

The Appellant/accused has filed this Appeal under  
Section 415 of BNSS., R/w Section 374 of Cr.P.C.,  
questioning the legality and correctness of the judgment,

order of conviction and sentence, passed by the learned Civil Judge and JMFC, Bhatkal in C.C.No.386/2022 dated 09.01.2025 and prayed to set aside the same by allowing the Appeal, in the interest of justice and equity.

2. For the sake of convenience, parties herein are referred to with their original ranks assigned to them before the Trial Court. The Appellant is the accused and the Respondent is the Complainant, before the Trial Court.

3. The case of the Complainant before the Trial Court that the accused has borrowed loan of Rs.50,000/- from the complainant society, agreeing to repay the said loan amount in installments and executed necessary documents. But thereafter, he utterly failed to repay the loan amount and as on 25.06.2021, the accused was in due to the complainant for Rs.51,700/-. After repeated request to repay the loan amount, the accused has issued a Cheque bearing No.791151 dated 25.06.2021 for Rs.51,700/- drawn on Corporation Bank. The Complainant Society presented the said cheque for encashment through its banker and the said cheque was dishonoured for "Funds Insufficient". Hence, the Complainant Society got issued a legal notice to the accused through RPAD, calling upon him to pay the cheque amount within 15 days from the date of receipt of

notice and the said notice was served on the accused and in spite of receipt of notice, the accused has not paid the Cheque amount. Hence, the Complainant society has filed the Complaint against the accused for the offence punishable under Section 138 of N.I. Act and prayed to punish the accused and also prayed to direct the accused to pay the Cheque amount.

4. After filing of the Complaint, the learned Magistrate has recorded the sworn statement affidavit of the Complainant and took cognizance for the offence alleged against the accused under Section 138 of N.I. Act and a Criminal Case has been registered and summons was issued to accused. Thereafter, the accused appeared before the Trial Court and he was enlarged on bail. The substance of accusation is formulated and explained to the accused and the accused who understood the accusation has pleaded not guilty but, claims to be tried.

5. The Manger of the Complainant Society examined as PW.1 and got marked 13 documents as per Ex.P.1 to P.13. After conclusion of evidence of the Complainant, the Statement of accused, as required under Section 313 of Cr.P.C., was recorded to enable the accused to explain the incriminating evidence appearing against him. However, the accused has denied the incriminating evidences appearing against him and he has not adduced any

defence evidence and also not produced any documents on his behalf.

6. After hearing the arguments and also upon perusal of evidence on record, the learned Magistrate has convicted the accused for the offence punishable under Section 138 of N.I. Act and sentenced to pay a fine of Rs.54,000/- and in default of payment of fine amount, the accused shall undergo simple imprisonment for a period of six months and out of the said fine amount, Rs.52,000/- shall be paid to the Complainant as compensation and remaining Rs.2,000/- shall be paid to the State, towards expenses.

7. Challenging the said judgment, order of conviction and sentence, the accused has preferred this Appeal on the ground that *the Respondent miserably fails to establish the transaction and relationship between the appellant and Respondent. The Trial Court has not properly appreciated the evidence. The Trial Court ought to have give one more opportunities to the accused for the cross-examination of the PW.1, to prove his case. The Trial Court failed to see that the appellant/accused had not borrowed any loan amount from the Respondent under the alleged cheque and he has no liability to pay any amount to the Respondent. There was no transaction whatsoever between the appellant and the Respondent. The appellant*

*had not given the said cheque as alleged in the complaint but said cheque has been misused by the Respondent to defraud the appellant. The Trial Court hurriedly proceeded with the case and passed the impugned judgment and conviction order without proper appreciation of facts and circumstances of the case. The learned Magistrate has proceeded to pass the judgment and order of conviction on the presumption under section 118 read with 139 of N.I. Act and the same is not based on the facts and materials on record. That the judgment and order of the Trial Court is not in compliance with the provisions of the law and the finding/reasons assigned to convict the appellant are not based on the material facts. The learned judge has seriously erred in convicting the appellant relying on the uncorroborated, in-consistence, unnatural and artificial evidence. The trial court has seriously erred in brushing aside material omission that is favourable to the appellant without giving any plausible reasoning. The trial court has seriously erred in not appreciating the circumstances, what are favourable to the defence. Hence, prayed to set aside the Judgment of the Trial Court by allowing the Appeal.*

8. After registration of the Appeal, notice was issued to Respondent/complainant. In response to the notice, the Respondent appeared before this Court through its Counsel and contested the same.

9. The records of the Trial Court are secured.

10. The Counsel for the Appellant has argued that the Trial Court has not properly appreciated the evidence on record properly and also approached the matter in vindictive manner, thus the appreciation of evidence is not proper according to law. There was no any legally recoverable debt and hence, finding recorded is perverse. The Trial Court has not considered the defence raised by the accused and the Trial Court has wrongly come to the conclusion that the Appellant was liable to pay the debt. The Complainant Society has not complied, the statutory provisions of N.I. Act and ingredients of Section 138 of N.I Act are absent. However, the Trial Court proceeded to convict the Appellant/accused and thereby, the Appellant has suffers injustice and the same should be set right by setting aside the judgment of conviction and also the sentence passed which are too harsh and therefore, he prayed to allow the Appeal.

11. The Counsel for the Respondent argued that advancement of loan is proved and established by the Complainant through evidence and documents are produced. The issuance of cheque by the accused towards legal debt is also proved and established. The dishonour of cheque is also proved and Issuance of cheque as well as signature on it, by the accused is admitted. On the

other hand, no rebuttal evidence is produced by the accused. Thus, after considering the oral and documentary evidence on record, the learned Magistrate was pleased to record conviction, sentence, fine and compensation awarded, which is challenged before the Court. In view of the oral and documentary evidence on record and perusing the reasoning of the learned Magistrate, there is absolutely no ground to interfere with the judgment of the Trial Court. Hence, Respondent prayed to dismiss the Appeal and to confirm the judgment of the Trial Court.

12. After hearing the argument of the counsel for the Appellant, the following points arise for consideration of this court:

1. Whether the Appellant / accused establishes that the judgment, order of conviction and sentence passed by the learned Magistrate is illegal, perverse and capricious and it has to be set aside ?
2. What Order?

13. The findings to the above points are as follows:

Point No.1: In the Negative,

Point No.2: As per final order, for the following:

**REASONS**

14. **Point No.1:** Perused the records. The Complainant Society has filed the Complaint under Section 200 of Cr.P.C., before the Civil Judge and JMFC, Bhatkal, against the accused for the offence punishable under Section 138 of the N.I. Act. It is the case of the Complainant that on 24.01.2020, the accused borrowed a Consumer Durable Loan of Rs.50,000/- at the rate of interest 16% per annum, from the complainant society under C.D.L A/c No.3543 and promising to repay the said loan amount in installments and in this regard, they have executed necessary documents i.e., agreement, demand promissory note and other loan documents. But thereafter, the accused has failed to repay the loan amount with interest. As on 25.06.2021, outstanding balance was Rs.51,700/- in the said loan account. After repeated request by complainant to repay the said loan amount, the accused has issued a cheque bearing No.791151 dated 25.06.2021 for Rs.51,700/- drawn on Corporation Bank, Bhatkal Branch, in favour of the Complainant Society. On 08.07.2021, the Complainant Society presented the said cheque for encashment through its banker, the said cheque was dishonoured for "Funds Insufficient" on dated 08.07.2021. Hence, the Complainant Society got issued a legal notice to the accused on 24.07.2021 through RPAD, calling upon him

to pay the cheque amount within 15 days from the date of receipt of notice and the said notice was served on the accused on 24.07.2021 and in spite of receipt of notice, the accused has not paid the Cheque amount. Hence, the Complainant has filed the Complaint against the accused for the offence punishable under Section 138 of N.I. Act and prayed to punish the accused and also to direct the accused to pay the cheque amount.

15. In order to prove the case, the Manager of Complainant Society, was examined as PW.1 and in the examination-in-chief affidavit, the PW.1 has reiterated the averments made in the complaint and further asserted that the accused has availed loan from the complainant society and has issued the Cheque in question towards repayment of outstanding loan amount and on presentation of the said cheque for encashment, same was dishonoured for the reason "funds insufficient" and hence, the Complainant Society got issued legal notice to accused and the said notice was received by him, but he has not paid the Cheque amount. Hence, the Complainant has filed the complaint to take action against the accused for the offence under Section 138 of N.I. Act and in support of its case, the Complainant has also produced the copy of Resolution, Cheque issued by the accused, Memo issued by the Bank, copy of Legal Notice issued to the accused, Postal receipt, Postal

acknowledgment, copy of Loan Application, copy of Loan Agreement, copy of Demand Promissory Note, copy of security letters, copy of receipt for payment of loan amount, copy of loan statement and got them marked as Ex.P.1 to P.13.

16. The counsel for the accused has cross examine the PW.1 and in the cross examination, the PW.1 has stated that the accused has borrowed a loan of Rs.50,000/- and the loan was given to the accused on 24.01.2020. The accused has not paid any loan installment amount. A notice has been issued to the accused for non-payment of loan amount. He denied that the complainant society has obtained a signed blank cheque from the accused. He also denied that Complainant Society giving false testimony that the accused handed over this cheque for the repayment of the said loan. He denied that the handwriting on Ex.P.2 does not belong to the accused and accused has no connection to this case.

17. On the other hand, while recording statement under Section 313 of Cr.P.C., the accused has denied the incriminating evidence appearing against him and he submitted that he has defence evidence. However, he has not adduced any defence evidence and also not produced any documents on his behalf.

18. Therefore, on careful consideration of the evidence produced by the Complainant both oral as well as documentary, makes it very clear that the accused has applied for loan of Rs.50,000/- and has obtained loan from the Complainant Society on 24.01.2020 and in this regard, the accused and guarantors have executed the necessary documents and same is evident from the Ex.P.7 to P.11. The Ex.P.12 confirms the transfer of loan amount to the Account of the accused and loan ledger extract also supports the same at Ex.P.13. As such, all these documents concurs the loan transaction between the Complainant Society and accused. Though the accused has cross examined the PW.1, he has not disputed the loan documents and also signatures on the said documents.

19. In the cross of PW.1, the accused has taken defence that the complainant society have obtained signed blank cheque from the accused while sanctioning the loan and the said cheque has been misused by the complainant society and the signature on cheque and signatures on loan documents are different. However, the PW.1 has denied the defence of the accused. It is relevant to mention here that the cheque in question i.e., Ex.P.2 is belonging to the accused, which bears the signature of the accused. From bare perusal of the documents, it can be said that the signature on the cheque and signatures

on loan documents are one and the same. Further, when the Cheque was presented by the Complainant Society for clearance, the same was dishonoured for the reason “Funds Insufficient” as per Ex.P.3. It is also clear as per Ex.P.4 and P.5 that the Complainant society has issued a legal notice calling upon the accused to pay the Cheque amount and as per Ex.P.6, the notice was served on the accused. The loan documents at Ex.P.7 to P.13 concurs the loan transaction between complainant society and accused.

20. Therefore, in view of the above, the Complainant Society has proved that the accused availed loan from the Complainant Society and issued the cheque in question towards clear the outstanding loan amount, which is legally recoverable debt and the accused has failed to disprove the issuance of cheque and also loan documents. Therefore, when the Cheque is belonging to the accused and the accused has failed to disprove the signature on Cheque in question at Ex.P.2 and also not denied the documents relating to loan transaction at Ex.P.7 to Ex.P.13, it is presumed that the Cheque has been issued towards legally recoverable debt.

21. Thereby, from the combined reading of Section 118 and Section 139 of N.I. Act, makes it clear that when the Cheque is belonging to the accused and the signature

found on the Cheque is also belonging to the accused and the Complainant has proved the loan transaction by producing documents and also existence of legally recoverable amount through loan account statement, it is the bounden duty of the accused to bring admission in his favour in the cross examination of PW.1 or by leading defence evidence, so as to rebut the presumption available to the Complainant, but no such attempts were made by the accused, so as to rebut the presumption available to the Complainant as per Section 139 of N.I. Act.

22. It is relevant to mention here that the presumption available under Section 139 of N.I.Act is a rebuttable presumption and the person, who disputes the legality of the Cheque and the presumption available to the Complainant or holder of the Cheque, he is duty bound to rebut the same with clear and cogent evidence and in the absence of a clear and cogent evidence produced by the accused so as to rebut the presumption, this Court has no option except to accept the case of the Complainant and to hold that the Cheque has been issued to discharge the debt. On the other hand, except mere denial, the accused has not produced any evidence to disprove the case of the Complainant. Further, mere denial will not be sufficient to disprove the case of the Complainant and same has to be proved with cogent evidence

23. It is relevant to mention here that, when a Cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards clear the loan, which is a legally recoverable debt and such presumption is rebuttable by proving to the contrary. The onus is on the accused to raise a probable defence and the standard of proof for rebutting the presumption is on preponderance of probabilities. On the other hand, the accused has received the legal notice, but neither paid the cheque amount nor issued any reply notice denying the claim of the complainant. Further, though he has cross examined the PW.1, he is unable to rebut the presumption, with cogent evidence and has failed to disprove the signature on Cheque at Ex.P.2 and signature on postal acknowledgment at Ex.P.6 and also not disputed the loan documents at Ex.P.7 to P.13 and signatures on them.

24. The Appellant/Accused has taken defence while cross-examination of PW.1 that the Cheque in question was issued for security purpose and same is misused by the Complainant Society. In this regard, in the matter of **R.Mohan Vs. A.K.Vijaya Kumar**, reported in **(2012) 8 SCC 721**, the Hon'ble Supreme Court has held as follows;

*“9. So far as the merits of the case are concerned, we have no hesitation in recording that the High Court*

*was perfectly justified in confirming the conviction and sentence.*

10. *Ex-P1 is the promissory note in the sum of Rs.5 lakhs executed by the accused and his wife in favour of the complainant. The accused has not led any evidence to prove that the promissory note (Ex- P1) is a got up document. In his reply, he has nowhere taken such a stand. The cheque (Ex-P2) is also on record. According to the accused, he had borrowed only Rs.3 lakhs from the complainant and a blank cheque was offered as security to the complainant. It is suggested in the notice that the said cheque was misused by the complainant. This story has to be rejected in view of the promissory note (Ex-P1).*

11. *The accused has relied on Xerox copy of some pages from a diary maintained by him (Ex-D1). There is an entry in Ex-D1 that as of April, 2002, an amount of Rs.90,101/- was payable by the accused to the complainant. The complainant has honestly admitted that the said acknowledgement is in his handwriting. It is contended by the accused that this disproves the complainant's case that an amount of Rs.5 lakhs was due from him to the complainant and in discharge of that debt cheque (Ex-P2) was given to him. It is not possible to accept this submission.*

12. *We have carefully examined Ex-D1. Several chit transactions are noted in Ex-D1. As stated by the com-*

*plainant in his evidence, he has been carrying on several businesses since 1990. The accused had borrowed various amounts from him on different occasions and he had repaid those amounts except the amount involved in the transaction in question. The complainant has stated that he finances people and collects interest at 18% per annum. The reference to 'chit' in Ex-D1 indicates that he was running a chit fund scheme. The entries in Ex-D1 appear to be entries in connection with the said chit fund scheme. The transaction reflected in Ex-D1 cannot be confused with the loan of Rs.5 lakhs given by the complainant to the accused evidenced by promissory note (Ex-P1) and cheque (Ex-P2).*

13. *The complainant's evidence is wholly satisfactory. By admitting that entry in Ex-D1 is in his handwriting, he comes out as a truthful witness. If he had dishonest motive he would have never admitted that the said entry was in his handwriting. Moreover, if the case of the accused is that as of April, 2002, only an amount of Rs.90,101/- was due from him to the complainant, in his reply dated 24/5/2002, he should have said so. This statement is conspicuously absent in the said reply.*

14. *It is pertinent to note that in order to satisfy itself, the High Court, while hearing the revision, directed the complainant to produce his Income-tax Returns of the relevant period. The High Court wanted to*

*see whether the instant loan transaction is reflected in the complainant's Income-tax Returns. The complainant produced the Income-tax Returns. The High Court found that in the Assessment Year 2002- 2003 and also for the subsequent assessment years, there is an entry of a sum of Rs.5 lakhs as due from the accused to the complainant. The complainant could not have manufactured the Income-tax Returns.*

15. *Thus, the promissory note (Ex-P1), the cheque (Ex-P2), reply dated 24/5/2002 sent by the accused to the complainant (Ex-P8) and the Income-tax Returns to which a reference is made by the High Court lead us to concur with the High Court that the conviction and sentence awarded to the accused is perfectly justified and no interference is called for with the same.”*

25. In the matter of **Sripati Singh (Since deceased) through his son Gaurav Singh Vs. The State of Jharkhand**, reported in **(2022) 18 SCC 614**, the Hon'ble Supreme Court has held as follows;

*“21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfillment of an obligation to which the parties to the transaction are bound. If in a*

*transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act, would flow.”*

In view of the above decisions, even assuming that the cheque in question was issued for security purpose, the said cheque will get maturity when the Accused has failed to repay loan amount.

26. Therefore, viewing from any angle, the Complainant has proved before the Court that the accused, who has availed loan, issued the Cheque in question for repayment loan amount and the same was dishonoured and in spite of receipt of notice, the accused has not repaid the same and thereby, he has committed the offence under Section 138 of N.I. Act, which are evident from Ex.P.2 to Ex.P.13 and all the requirements of Section 138 of N.I. Act, is complied with. Under these circumstances, there is no

doubt that the accused issued the Cheque in question and same was bounced back and in spite of issuance of notice, the accused has not paid the Cheque amount. Thereby, he has committed the offence punishable under Section 138 of N.I. Act wherein, the Complainant has proved all ingredients of Section 138 of N.I. Act and thereby, the accused is liable to be convicted.

27. This Court has gone through the Judgment of the Trial Court wherein, the Trial Court has considered the evidence placed by the Complainant, both oral and documentary and also considered the arguments of parties and it has come to the right conclusion by appreciating the evidence in the right manner and the accused issued the Cheque in question Ex.P.2 and on the presentation of the said Cheque, same is bounced back for the reason "funds insufficient" from the account of the accused. On the other hand, the accused has failed to disprove the case of the Complainant. As such, the Trial Court has rightly convicted the accused for the offence punishable under Section 138 of N.I. Act. Therefore, this Court is of the considered opinion that the Appellant/accused has not made out any grounds, so as to interfere with the judgment of conviction and sentence passed by the Magistrate and thereby, the Appeal filed by the Appellant is liable to be dismissed and the Judgment of the Trial Court has to be confirmed. With these

observations, this Court proceeds to hold the above point No.1 in the **Negative**.

28. **Point No.2:** In view of my findings on point No.1, this Court proceeds to pass the following:

**: ORDER :**

The Appeal filed by the Appellant/  
Accused under Section 415 of BNSS.,  
R/w Section 374 of Cr.P.C., is hereby  
dismissed.

The Judgment, order of conviction  
and sentence, passed by the learned  
Civil Judge and JMFC, Bhatkal in  
C.C.No.386/2022 dated 09.01.2025 is  
hereby confirmed.

The office is directed to return the  
TCR with copy of this judgment.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the 13<sup>th</sup> day of March, 2026)

**(SRI. MAYANNA. B.L.)**  
II Addl. District & Sessions Judge,  
Uttara Kannada, Karwar.