



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

***Present:***

**SRI. PARAMESHWARA PRASANNA.B., B.A. LL.B.**  
Principal District & Sessions Judge,  
Uttara Kannada, Karwar.

***Dated this the 2<sup>nd</sup> day of June, 2026.***

**Crl. Appeal. No.17/2018**

**Appellant** : Gururaj Maruti Tandel,  
Age 31 years, Occ: Sea-Bird Employee,  
R/o: Mudaga Colony,  
Mudga, Karwar, U.K.  
(By Smt. R.V. Naik, LADC, Karwar)

Vs.

**Respondent** : Ramchandra Ganapati Gunagi,  
Age: 40 years, Occ: Private Service,  
R/o: Arga, Karwar,  
Uttara Kannada District.  
(By Shri V.G. Argekar Advocate)

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

The present Criminal Appeal under Section 374 of Cr.P.C., is filed by the appellant/accused against the Judgment dated 14-02-2018 passed by the learned Prl. Civil Judge & JMFC-2 Court, Karwar in CC.No.171/2014, wherein the said trial Court has convicted the appellant/accused for the offence

punishable under Section 138 of Negotiable Instrument Act and sentenced him to pay fine of Rs.2,50,000/-, out of which Rs.2,45,000/- has been ordered to be paid as compensation to the complainant and balance of Rs.5,000/- has been ordered to be paid to the State exchequer. Further, in default of payment of fine amount, the accused/appellant has been sentenced by trial Court to undergo simple imprisonment for a period of one year.

**2.** For the sake of convenience, the parties herein are referred to as per their litigative status/rank before the trial Court. The appellant is the accused and the respondent is the complainant as per their original ranks before the trial Court.

**3.** The respondent/complainant initially filed private complaint under Section 200 of Cr.P.C against the accused/appellant before the learned Prl. Civil Judge & JMFC-2 Court Karwar in PC No.185/2013 for the offence punishable under Section 138 of N.I. Act.

**4.** The sum and substance of the complaint is that, the accused is one of the best friend of the complainant. That on 10-06-2012 the accused approached the complainant and availed hand loan of Rs.1,80,000/- from the complainant by

assuring to repay the same within six months. But subsequently the accused failed to repay the loan amount within the time promised by him. On 08-03-2013 when the complainant met the accused in his house and demanded for return of the loan amount, the accused in discharge of said legally enforceable debt issued the cheque bearing No.937186 dated 08-03-2013 for Rs.1,80,000/- drawn on State Bank of India, Naval Base Branch, Arga, Karwar in favour of the complainant by assuring that aforesaid cheque will be honoured on presentation. Thereafter, when the complainant presented the said cheque for encashment through his banker Vijaya Bank, Karwar Branch, the aforesaid cheque came to be returned unpaid with bank endorsement "Funds Insufficient" dated 06-06-2013 and the said cheque and Bank endorsement were handed over to the complainant by Vijaya Bank, Karwar Branch on 07-06-2013. Thereafter the complainant got issued legal notice dated 11-06-2013 through his counsel by calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the said notice. The accused not claimed said notice insptie of intimation about the same and hence the said notice was returned to the sender with the

postal shara 'unclaimed', which is deemed service as per law. Thereafter, the accused failed to pay the cheque amount within the statutory period and thereby according to the complainant accused has committed the offence punishable under Section 138 of NI Act for which he has been constrained to file the complaint.

**5.** That on receipt of the complaint, the learned Prl. Civil Judge & JMFC-2 Court Karwar took the cognizance against the accused for the offence punishable under Section 138 of N.I. Act. Thereafter, the said Court recorded the sworn statement of complainant and the said Court being satisfied that the ingredients of the offence punishable under Section 138 of N.I. Act, prima-facie case has been made out ordered for issuance of the summons to the accused and the case came to be registered against the accused in C.C.No.171/2014.

**6.** Subsequently, upon service of the summons, the accused appeared before the trial Court through his counsel and he got enlarged on bail. Thereafter when the accusation was read over and explained to the accused by the said Court, he pleaded not guilty and claims to be tried.

**7.** In order to prove his case, the complainant got examined himself as PW.1 and he got examined postman Mr. Vittal Mota Naik and Mr. Kostanv Ravut, Branch Manager of State Bank of India, Naval Base Branch, Arga, Karwar as PWs.2 & 3 and got marked 5 documents as Ex.P.1 to P.5.

**8.** After closure of the complainant's evidence, the statement of the accused was recorded under Section 313 of Cr.P.C. The accused in his statement recorded under Section 313 of Cr.P.C., has denied all the incriminating circumstances appearing in evidence against him. The accused has not chosen to lead any defence evidence.

**9.** The trial Court after hearing arguments of both the sides as per impugned Judgment dated 14-02-2018 passed in CC.No.171/2014 convicted the accused/appellant for the offence punishable under Section 138 of N.I. Act and sentenced him as aforesaid.

**10.** Being aggrieved by the said Judgment of conviction passed by the trial Court in C.C.No.171/2014 dated 14-02-2018, the appellant/accused has filed this criminal appeal by challenging the impugned judgment on the following grounds:-

1. The impugned judgment of conviction and sentence passed by the trial Court is quite contrary to law and true facts of the case and hence same is liable to be set aside;
2. The trial Court failed to consider the bristling inconsistencies in the evidence given by the complainant and PWs.2 & 3.
3. The trial Court failed to appreciate that there is no corroboration in the evidence of PW.1 to PW.3. The serious discrepancies and contradictions in the evidence of PW.1 to PW.3 are not considered by the trial Court.
4. The trial Court failed to appreciate that the complainant during the cross-examination failed to disclose the source of income from which he has given the amount to the accused. The complainant in his complaint has not mentioned the date, time and place where he paid the amount to the accused.
5. The trial Court erred to note that the complainant failed to produce the income tax returns.
6. The trial Court erred to note that the complainant miserably failed to establish his friendly relationship with the accused. In cross examination admitted that the complainant is BPL card holder.

7. The trial Court ought to have held that the complainant had no financial capacity to lend the huge amount of Rs.1,80,000/-at one stretch.
8. The trial Court failed to appreciate that the complainant has not produced any document to show that he was doing labour contract work and he was having financial capacity to lend Rs.1,80,000/-
9. The trial Court failed to note that the accused has not admitted his signature on the cheque.
10. The fine amount imposed by the trial Court is very exorbitant and excessive.
11. The trial Court erred to consider that, the complainant failed to prove that the amount mentioned in the cheque is legally recoverable debt.

Inter-allia on these grounds, the appellant prays for allowing of this appeal and to acquit the appellant/accused by setting aside the impugned judgment passed by the trial Court.

**11.** After admitting of this criminal appeal, notice was issued to the respondent/complainant. The respondent appeared through his counsel. The trial Court record is secured.

**12.** Heard the arguments of counsel for the appellant and counsel for the respondent. Perused the entire material on record and impugned judgment on the basis of the material on record, the following points arise for consideration of this Court:-

1. Whether the trial Court is justified in convicting the appellant/accused for the offence punishable under Section 138 of N. I. Act?
2. What Order?

**13.** My findings to the above points are as under:

**Point No.1:** In the ***Affirmative***

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

### **REASONS**

**14. POINT NO.1:-** In order to prove his case, the complainant got examined himself as PW.1 and he got examined postman Mr. Vittal Mota Naik as PW.2 and Mr. Kostanv Ravut, Branch Manager of State Bank of India, Naval Base Branch, Arga, Karwar as PW.3 and got marked 5 documents as Ex.P.1 to P.5. PW.1 in his affidavit filed towards examination-in-chief has reiterated the averments made in the complaint.

**15.** Now by analyzing the oral testimony of PW.1 and documentary evidence on record, let me first consider whether the complainant has complied with the mandatory requirements envisaged under Section 138 of N.I. Act?

**16.** Ex.P.1 is the cheque bearing No.937186 dated 08-03-2013 issued in favour of the complainant for Rs.1,80,000/- drawn on State Bank of India, Naval Base Branch, Arga, Karwar. Ex.P.1(a) is the signature of the accused.

**17.** PW.3 Mr. Kostanv Ravut, Branch Manager of State Bank of India, Naval Base Branch, Arga, Karwar has deposed in his evidence that Ex.P.1 cheque pertains to State Bank of India, Naval Base Branch, Arga, Karwar. He produced a specimen signature of the accused and got it marked the same as Ex.P.6. No suggestion put to PW.3 by the counsel for the accused by denying that the Ex.P.1 cheque does not belong to the accused. PW.1 has clearly deposed that Ex.P.6 specimen signature is that of the accused and the same tallies with Ex.P.1(a) i.e., signature of the accused in Ex.P.1 cheque. Ex.P.2 is the bank endorsement dated 06-06-2013, wherein Ex.P.1 cheque has been dishonoured for the reason of insufficiency of funds in the account of the accused. Ex.P.3 is the office copy of legal notice

dated 11-06-2013. Ex.P.4 is the postal receipt regarding dispatch of aforesaid legal notice by RPAD to the accused on 12-06-2013. Ex.P.5 is the postal envelop containing the Ex.P.3 legal notice, which was returned to the sender with postal shara 'unclaimed' dated 14-06-2013.

**18.** The accused has taken contention that the complainant by managing the postman got entered false endorsement 'unclaimed' in the postal envelope and the legal notice is not properly served on the accused.

**19.** In order to prove the deemed service of legal notice, the complainant got examined Mr. Vittal Mota Naik, Postaman of Mudga Postoffice, Karwar. He deposed that he had went for serving of Ex.P.5 postal envelop, at that time the accused was not present in the house and hence he given the information regarding the same to the mother of the accused. Since despite of the said intimation, the accused has not turned up to receive the postal cover marked at Ex.P.5, he got it returned to the sender by endorsing the same as 'not claimed' and he affixed the signature marked as Ex.P.5(a) & 5(b).

**20.** The counsel for accused/appellant has argued that the legal notice was not served to the accused and as such the complainant has not complied the mandatory requirement envisaged under Section 138 of N.I. Act. It is pertinent to note that the address of the accused mentioned in Ex.P.5 Postal RPAD Cover and the address mentioned in the memorandum of appeal are one and the same and the summons was served to the very same address of the accused. PW.1 during the cross-examination denied the suggestion that the legal notice was not properly served on the accused. When the notice is sent to the correct address by registered post as per Section 27 of the General Clause Act, the notice deemed to have been served to the addressee.

**21.** The Hon'ble Supreme Court in the case of **C.C. Alvi Haji V/s. Palapetty Mohammed and Another** reported in **2007 (6) SC 555** held that :

**“Section 27 of General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, the service of notice is deemed to have been effected at the**

time at which the letter would have been delivered in the ordinary course of business. Since the complainant has proved that he has sent the legal notice to the correct address of the accused it is for the accused to lead rebuttal evidence to show that the complainant has deliberately and intentionally sent to the legal notice to the wrong address and the accused was not working in the address shown in the postal acknowledgment.

22. In the case of **Fakkirappa V/s. Siddalingappa** reported in **2002 Crl.L.J. 1926 Karnataka** it was held that,

**“The only requirement for the service of demand notice is that, the notice should have been sent to the correct address of the drawer. Since the mode of service is not prescribed by the law it can be sent either by registered post or under certificate of posting or otherwise. The expressions left, not known, not available in the house, house locked, shop closed, etc. are all synonyms. Therefore if the address of the drawer is proved by correct even if the notice is returned with the above remarks then the notice is deemed to have been served on the drawer.”**

23. In the case of **Subodh S. Salaskar V/s. Jayprakash M. Shah and Another**, the Hon'ble Apex Court has held that,

**“Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of the summons from the Court in respect of the complaint under Section 138 of N.I. Act, make the payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of the summons.”**

24. In the case on hand, admittedly the accused has not paid the cheque amount to the complainant within 15 days from the date of receipt of the summons. It is pertinent to note that the accused has not denied his address mentioned in Ex.P.5 - RPAD envelop and he has not led any evidence to establish that his address mentioned in Ex.P.5 is false. In view of the precedents referred above, the legal notice which has been sent to the correct address of the accused is deemed to have been served to the accused on 14-06-2013 and the complaint was filed by the complainant before the trial Court on 26-07-2013. Thus, the careful scrutiny of Ex.P.1 to P.5 coupled with the oral testimony of PW.1 to PW.3 goes to show that the complainant has complied with all statutory requirements envisaged under Section 138 of N.I. Act.

**25.** Now the next question which arise for the consideration of this Court is whether the complainant proves that accused availed hand loan of Rs.1,80,000/- from him on 10-06-2012 and in discharge of said legally recoverable debt, he issued Ex.P.1 cheque?

**26.** PW.1 in his examination-in-chief clearly deposed that on 10-06-2012 the accused availed hand loan of Rs.1,80,000/- from him and in discharge of said legally recoverable debt, he issued Ex.P.1 cheque.

**27.** As culled out from the cross-examination of PW.1, it is the defence of the accused that he lost Ex.P.1 cheque and the complainant has misused the same by forging the signature of the accused and it is further defence of the accused that the complainant had no financial capacity to lend the loan in question.

**28.** PW.1 in his cross-examination specifically stated that the accused himself handed over Ex.P.1 cheque to him. The accused has denied his signature in the cheque marked on Ex.P.1(a). The accused who contends that the complainant misused his lost cheque to file the false complaint has not entered into witness box. The accused not explained as to on

which date and where he lost his cheque and no material has been produced by the accused to show that he lost the cheque in question. If at all the accused lost his cheque, he would have given the complaint to the police or intimation to his banker. But no such steps are taken by the accused. If a prudent man lost his cheque, he would have taken all the precautions to avoid misuse of his cheque. But the accused has not taken any such steps. Hence the said defence of accused is not probable.

**29.** PW.3 Mr. Kostanv Ravut, Branch Manager of State Bank of India, Naval Base Branch, Arga, Karwar during the cross-examination clearly stated that the signature in Ex.P.6 is that of the accused. When the Bank Manager has produced the specimen signature of the accused and when that tallies with the signature of the accused in the disputed cheque, the evidence of the Bank Manager is to be accepted.

**30.** The complainant has proved that the signature Ex.P.1(a) in Ex.P.1 cheque is of the accused. Once the complainant has proved that the signature in the cheque is that of the accused, then the burden shifts on the accused to prove that the complainant has forged his signature in the cheque. To prove the said contention, the accused has not led

any evidence. No police complaint or any private complaint before the Court is filed by the accused by alleging the forging of his signature on the cheque by the accused. Hence the defence of the accused that the complainant by misusing the lost cheque of the accused filed false complaint cannot be accepted.

**31.** The counsel for the accused/appellant has argued that the accused has no financial capacity to lend any loan in question. On careful perusal of the cross-examination of PW.1, it is noticed that no specific suggestion was put to PW.1 by denying his financial capacity to lend loan of Rs.1,80,000/-. PW.1 in the cross-examination stated that he is working as labour contractor in Sea-Bird and no suggestion was put to PW.1 stating that he is not working as a labour contractor in Sea-Bird. The material elicited in the cross-examination of PW.1 shows that he is working as a labour contractor in Sea-Bird and he is having financial capacity to lend loan in question. Merely because the PW.1 in his cross-examination admitted that he is having BPL card, it cannot be presumed that he has no financial capacity to lend the loan of Rs.1,80,000/-

**32.** The complainant by examining the Bank Manager as PW.3 has established that the signature found in Ex.P.1(a) tallies with the specimen signature of the accused marked at Ex.P.6. The complainant through oral and documentary evidence proved that Ex.P.1 cheque belongs to the accused and it contains his signature and the accused failed to disprove the same.

**33.** Since the accused has admitted that Ex.P.1 cheque belongs to him and it contains his signature, it is obligatory on the part of the Court to draw the presumption under Sec.118 and 139 of N.I. Act.

**34.** Section 118 and 139 of N.I. Act deals with the presumption regarding negotiable instrument. Section 118 reads as under :-

**"118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—**

**(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;"**

Section 139 of N.I.Act provides that:

**"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."**

**35.** The Hon'ble Supreme of India in the case of **Rangappa Vs. Mohan** reported in **AIR-2010 SC 1898** held that:

**"Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then the initial presumption as contemplated under Section 139 of N. I. Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of N. I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.**

**What is required to be established by the accused in order to rebut the presumption is different from each case under the given circumstances. But the fact remains that, a mere plausible explanation is not accepted from the accused and it must be more than plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court. The defence raised by the accused was that, the blank cheque was issued by**

**him which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered.”**

**36.** The Hon’ble High Court of Karnataka in the case of **J. Ramaraj Vs. Iliyaz Khan** reported in **ILR 2006 KAR 4672**, held that;

**“Mere denial of issuing cheques would not be sufficient as it is time and again noted that once the cheque is issued duly signed by the petitioner, the presumption goes against him as per Section 139 of N.I. Act.”**

**37.** In the case of **M/s Kalamani Textiles V/s. P. Balasubramanian** reported in **2021(1) KCCR 454 (SC)** it was held that,

***“The Negotiable Instrument Act mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these ‘reverse onus’ clauses become operative. In such situation, the obligation shifts upon the accused to discharge the presumption imposed upon him.***

**38.** Under the above fact and circumstances and precedents referred above, the accused has failed to rebut the presumption available to the complainant U/Sec. 118 and 139 of N.I. Act. The evidence of PW.1 to PW.3 and Ex.P.1 to P.5 coupled with the presumption under law establishes that Ex.P.1 cheque was issued towards discharge of legally recoverable debt and the appellant/accused has not rebutted the said presumption. The complainant has complied with all statutory requirements U/Sec.138 of N.I. Act and considering the oral and documentary evidence led by the PW.1, the trial Court has rightly convicted the accused/appellant for the offence punishable U/Sec.138 of N.I. Act and sentenced him to pay fine of Rs.2,50,000/-. The sentence imposed on appellant/accused by the trial Court is not exorbitant or excessive. Therefore on reconsidering the oral and documentary evidence on record the contentions taken in the memorandum of appeal cannot be accepted. Hence, I am of the considered view that, the order of conviction passed by the trial Court should be confirmed and hence I have answered Point No.1 in the **Affirmative.**

**39. POINT NO.2:-** In view of the above discussions and my findings on point No.1, I proceed to pass the following;

**ORDER**

The criminal appeal filed by the appellant/accused under Section 374 of Cr.P.C., is hereby ***dismissed***.

Consequently, the impugned judgment of conviction and sentence dated 14-02-2018 passed by the learned Prl. Civil Judge and JMFC-II, Karwar, in C.C.No.171/2014 is hereby confirmed.

The personal bond of the accused and the bond executed by his surety before the trial Court are hereby canceled.

The office is hereby directed to send back the TCR to the trial Court forthwith along with certified copy of this judgment.

*(Dictated to the Stenographer, transcribed by him, transcript revised by me, corrected, signed and then pronounced by me in the open court on this the 2<sup>nd</sup> day of June, 2026).*

**(PARAMESHWARA PRASANNA.B.)**  
Principal District & Sessions Judge,  
Uttara Kannada, Karwar.