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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 6th day of March, 2026

Crl. Appeal. No.228/2025

Appellant : Sri. Amith Ananth Devadiga,
Aged about 37 years,
R/at Sharada Nivasa, NH-66,
Maruthi Nagar, Bhatkal Taluk,
Uttara Kannada District.

(By Shri Darshan V. Gouda Advocate)

// Vs. //

Respondent : The Gurukrupa Credit Co-Operative Society Ltd.
Represented by its Chief Executive,
Sri. Vasudev Malla Naik,
Aged about 48 years,
R/o Bhatkal Taluk.

(By Shri N.S. Bhat Advocate)

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J U D G M E N T

This Criminal Appeal under Section 374 (3) of Cr.P.C./Section 415 of BNSS, 2023 is filed by the

appellant/accused against the Judgment dated 03-04-2025 passed by the learned Additional Civil Judge & JMFC, Bhatkal in CC.No.1392/2021, 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.4,76,000/-, out of which Rs.4,74,000/- has been ordered to be paid as compensation to the complainant and balance of Rs.2,000/- has been ordered to be paid to the State exchequer. Further, in default of payment of compensation and fine amount, the accused/appellant has been sentenced by trial Court to undergo simple imprisonment for a period of six months.

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 filed private complaint under Section 200 of Cr.P.C against the accused/appellant before the trial Court in PC No. 462/2021 before the learned Additional Civil Judge and JMFC., Bhatkal for the offence punishable under Section 138 of N.I. Act.

4. The sum and substance of the complaint is that, the complainant society is the Co-Operative Credit Society, registered under the Karnataka Co-Operative Societies Act, which has been carrying business of money lending. That on 03-11-2018 the accused availed mortgage loan of Rupees 10 lakhs from the complainant society by promising to repay the same with interest at the rate of 15% p.a. under loan A/c No.ML275. The accused executed the loan agreement and DP note in favour of the complainant at the time of borrowing of loan. Subsequently the accused defaulted to repay the loan amount and as on 22-03-2021 there was an over due amount of Rs.4,74,995/-. After repeated demand and request by the complainant society, the accused in order to discharge the

said legally enforceable debt, issued a cheque bearing number 013805 dated 22-03-2021 for Rs.4,74,995/- drawn on Syndicate Bank, Nehru Road Branch, Bhatkal in favour of the complainant society. When the complainant society presented the said cheque for encashment through Syndicate Bank (now Canara Bank), Nehru Road Branch, Bhatkal, the aforesaid cheque returned dishonoured with the bank endorsement funds insufficient dated 23-03-2021. Thereafter, the complainant society got issued the legal notice dated 19-04-2021 through its counsel by calling upon the accused to repay the cheque amount within 15 days from the date of receipt of the said notice. The said notice was duly served to the accused on 22-04-2021. Despite of service of notice, the accused neither replied nor paid the cheque amount to the complainant society and thereby according to the complainant, the accused has committed the offence punishable under Section 138 of N.I. Act for which the complainant society has been constrained to file the complaint.

5. That on filing of the complaint, the learned Addl. Civil Judge & JMFC, Bhatkal took the cognizance against the accused for the offence punishable under Section 138 of N.I. Act. Thereafter, trial court recorded the sworn statement of Mr. Vasudev Malla Naik, Manager of the complainant society 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.1392/2021.

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 trial Court, he pleaded not guilty and claims to be tried.

7. When the case was posted for the evidence of the complainant, the trial Court as per the Judgment of Hon'ble Apex Court in the case of **Indian Bank and others**

Vs. Union of India and others reported in ***(2014) 5 SCC 590*** treated the sworn statement of Mr. Vasudev Malla Naik, Manager of the complainant society as his examination in chief. The Manager of the complainant society Mr. Vasudev Malla Naik, who got examined as PW.1 got marked 15 documents as Ex.P.1 to P.15. PW.1 was cross examined by the counsel for the accused.

8. After closure of the complainant's evidence, the statement of accused was recorded under Section 313 of Cr.P.C. The accused when examined under Section 313 of Cr.P.C., denied the incriminating circumstances appearing in evidence against him. The accused has not led any defence evidence.

9. The trial Court after hearing of both sides as per the Judgment dated 03-04-2025 passed in CC.No.1392/2021 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 impugned Judgment dated 03-04-2025 passed by the trial Court in C.C.No.1392/2021, the accused/appellant 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 llegal, arbitrary and same is not sustainable either at law or on facts of the case, hence same is liable to be set aside;

2. The trial Court failed to appreciate that in the case on hand, the respondent miserably failed to establish the transaction and relationship between the appellant and respondent.

3. The trial Court erred to consider that the appellant/accused has not borrowed any loan amount from the respondent and the accused is not liable to pay the cheque amount to the respondent and there was no transaction whatsoever between the accused and respondent;

4. The trial Court hurriedly proceeded with the case and passed impugned judgment of conviction without properly appreciating the oral and documentary evidence on record;

5. The impugned judgment passed by the trial Court is one-sided, arbitrary and same is against the principle of natural justice;

6. The trial Court has erroneously drawn presumption in favour of the complainant under Section 118 and 139 of N.I. Act;

7. The impugned judgment passed by the trial Court suffers from material illegalities and irregularities and the same has been resulted in grave miscarriage of justice to the appellant/accused;

8. The judgment of conviction and sentence passed by the trial Court is not in compliance with the provision of law and the reasons assigned by the trial Court to convict the appellant/accused are not correct;

9. The trial Court has seriously erred in convicting the appellant/accused relying on the uncorroborated, in-consistence, unnatural and artificial evidence of PW.1;

10. The trial Court has not appreciated the evidence of PW.1 with care and caution;

11. The trial Court seriously erred in brushing aside material omission that is favourable to the appellant without giving any plausible reasoning.

12. The trial Court overlooked the materials and other circumstances, which are consistent with the innocence of the appellant/accused.

Inter-alia 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 its 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:

R E A S O N S

14. **POINT NO.1:-** In order to prove its case, the complainant society got examined its Manager Mr. Vasudev Malla Naik as PW.1 and got marked 15 documents as Ex.P.1 to Ex.P.15. PW.1 in his affidavit filed in lieu of sworn statement/ 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 met first consider whether the complainant has complied with the mandatory requirements envisaged under Section 138 of NI Act?

16. Ex.P.1 is the true copy of summary of minute of resolution dated 30-08-2019 passed by the Chief Executive Officer of the respondent society, where under PW.1 has been authorized to represent the complainant society in the cheque bounce cases and to lead evidence on behalf of the complainant. Ex.P.15 is the true copy of minute of resolution passed by the Board of Directors of the complainant society dated 30-08-2019. Ex.P.2 is the

cheque bearing No.013805 for Rs.4,74,995/- dated 22-03-2021 drawn on Syndicate Bank, Nehru Road Branch, Bhatkal issued in favour of the complainant society. Ex.P.2(a) is the signature of the accused. Ex.P.3 is the bank endorsement dated 23-03-2021, wherein Ex.P.2 cheque has been returned dishonoured for the reasons of insufficiency of the funds in the account of the accused. Ex.P.4 is the office copy of legal notice addressed to the accused dated 19-04-2021. Ex.P.5 is the postal receipt regarding dispatch of aforesaid legal notice by RPAD to the accused on 19-04-2021. Ex.P.6 is the postal acknowledgment, which shows that the said legal notice was served to the accused through RPAD on 22-04-2021. It is pertinent to note that the accused has not disputed the service of legal notice and the complaint was filed by the complainant before the trial Court on 27-05-2021. Thus, the careful scrutiny of Ex.P-.1 to P.6 coupled with the oral testimony of PW.1 goes to show that the complainant has complied with all statutory requirements envisaged under Section 138 of N.I. Act.

17. Now the next question which arise for the consideration of this court is whether the complainant proves that the Ex.P.2 cheque has been issued by the accused in discharge of legally enforceable debt?

18. The complainant in order to prove the borrowal of loan and the liability of the accused to the tune of cheque amount relies upon Ex.P.7 to Ex.P.14. Ex.P.7 is the true copy of loan application dated 17-10-2018, wherein accused applied for the mortgage loan of Rs.10,00,000/- and installment made by the complainant society shows that Rs.10,00,000/- loan was sanctioned to the accused on 26-10-2018 subject to payment of the same with interest at 15%. Ex.P.8 is the true copy of loan agreement executed by the accused in favour of the complainant society. Ex.P.9 is the true copy of mortgage loan agreement executed by the accused in favour of the complainant society in respect of the aforesaid loan of Rs.10,00,000/-. Ex.P.10 is the true copy of short term loan agreement executed by the accused in favour of the complainant. Ex.P.11 is the on demand

promissory note executed by the accused and his surety by agreeing to repay the loan of Rs.10,00,000/- with interest at the rate of 15% per annum. Ex.P.12 is a true copy of receipt issued by the accused by acknowledging the receipt of Rs.10,00,000/- by cash from the complainant society. Ex.P.13 & P.14 are the true copy of loan account ledger pertaining to the aforesaid loan account of the accused, which shows that there was over due amount of Rs.4,74,995/- from the accused in the month of March, 2021.

19. In the cross-examination of PW.1 recorded on 11-02-2025, it is elicited as under;

> "ಆರೋಪಿಗೆ ಯಾವುದೇ ಆರ್ಥಿಕ ಸಾಮರ್ಥ್ಯ ಇಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಆರ್ಥಿಕ ಸಾಮರ್ಥ್ಯ ಇಲ್ಲದ ಆರೋಪಿಗೆ ರೂಪಾಯಿ ಹತ್ತು ಲಕ್ಷ ಸಾಲ ನೀಡಿದ್ದೇವೆ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ-7 ರಿಂದ 12 ಖಾಲಿ ದಾಖಲಾತಿಗಳ ಮೇಲೆ ಆರೋಪಿ ಸಹಿ ಮಾಡಿದ್ದು ಅದರಲ್ಲಿರುವ ಬರವಣಿಗೆಗಳನ್ನು ನಾವೇ ತುಂಬಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಆರೋಪಿಯು ಕೇವಲ ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳನ್ನು ಮಾತ್ರ ಸಾಲ ಪಡೆದಿರುತ್ತಾನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದ್ರಿ ಸಾಲವನ್ನು ಆರೋಪಿಯು ಬಡ್ಡಿ ಅಸಲು ಸಮೇತ ಮರುಪಾವತಿ ಮಾಡಿರುತ್ತಾನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಆರೋಪಿಗೆ ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿ ಸಾಲ ನೀಡಿದ ಸಂದರ್ಭದಲ್ಲಿ ನಾವು ಸದ್ರಿ ಸಾಲದ ಭದ್ರತೆಗಾಗಿ ಸಹಿ ಮಾಡಿದ ಖಾಲಿ ನಿಪಿ-2 ಚೆಕ್ಕನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದ್ರಿ ಚೆಕ್ಕನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ಈ ಸುಳ್ಳು ಕೇಸನ್ನು ದಾಖಲಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

2. ನಿಪಿ-2 ಚೆಕ್ಕಿನಲ್ಲಿರುವ ಸಹಿಯನ್ನು ಹಾಕಿದ ಪೆನ್ನಿನ ಶಾಹಿ ಮತ್ತು ಇತರ ಬರವಣಿಗೆಗಳನ್ನು ಬರೆದ ಪೆನ್ನಿನ ಶಾಹಿಯನ್ನು ವ್ಯತ್ಯಾಸ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪೆನ್ನಿನ ಶಾಹಿಯಲ್ಲಿ ವ್ಯತ್ಯಾಸ ಇದ್ದರೂ ಸಹ ನಾನು ಇಲ್ಲ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಹೇಳುವಂತೆ ಚೆಕ್ಕನ್ನು ಆರೋಪಿಯು ಸಾಲದ ಮರುಪಾವತಿಗೆ ನೀಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ."

20. As culled out from the above cross-examination of PW.1, it is the defence of the accused that the loan borrowed by him from the complainant society is only Rs.50,000/-. At that time, the complainant society has obtained his two signed blank cheque and signature on some blank papers as security and thereafter even after repayment of the loan with interest, the complainant by misusing one of the cheque and signature obtained in the blank papers created the false documents marked at Ex.P.2 and 7 to 12 and filed false complaint. PW.1 who has withstood during the cross-examination of accused has denied aforesaid defence taken by the accused.

21. In the cross-examination of PW.1, accused has admitted his signature in Ex.P.2 and P.7 to P.12. The accused who contends that the complainant society has created false documents by misusing his signature taken

on blank papers and one of cheque while advancing loan of Rs.50,000/- has not led any defence evidence. No documents produced by the accused to show that loan amount is only Rs.50,000/-. Ex.P.7 to P.12 clearly shows that loan amount is Rs.10,00,000/- and not Rs.50,000/- as contended by the accused.

22. Accused has admitted his signature in Ex.P.2 cheque. The Hon'ble Supreme Court in the case of **P.K Manmadhan Kartha Vs. Sanjeev Raj And Another** reported in ***(2002) 7 SCC 150***, has held that "when the signature on the cheque is admitted, whether the ink with which other particulars are filled up is different or that the handwriting is not that of the drawer, it does not matter, until and unless the presumption that the cheque was issued for consideration exists."

23. In the case on hand the accused has admitted his signature on cheue and hence in view of the above dictum laid down by Hon'ble Supreme Court the contention of accused that the other content of cheque are

not in hand writing of the accused does not matter as the presumption available to complainant under section 139 of N.I.Act not rebutted by the accused.

24. It is pertinent to note that as per Ex.P.6, legal notice was served to the accused on 22-04-2021. The accused has not denied the service of said legal notice. Admittedly the accused has not given any reply to Ex.P.4 legal notice.

25. The Hon'ble Apex Court in the case of **Rangappa Vs. Mohan** reported in ***AIR SCW 2946*** in Para 15 observed and held as under:-

> "A perusal of the trial Court record also shows that the accused appeared to be aware of the fact that cheque was with the complainant. Further more the very fact that accused had failed to reply to the statutory notice under Sec.138 of N.I Act leads to inference that there was merit with the complainants version."

26. Further in the case of **Yogendra Bhagatram Sachdev v/s State of Maharashtra and Another** reported

in ***III(2003) CCR 216***, wherein it was observed and held that:-

> "The failure of the accused to reply to this 138 notice not being explained would rise a presumption that the accused had in fact no defence whatsoever."

27. Since the accused has not given any reply to the legal notice, in view of the dictum laid down in the above said precedents the averment made in the legal notice deemed to have been admitted.

28. No prudent man will keep quite if his cheque is misused. In the case on hand, no action has been taken by the accused regarding misuse of cheque and no documents has been produced by the accused to show that he has repaid the alleged loan amount of Rs.50,000/- claimed by him with interest to the complainant society. Hence, the defence taken by the accused is not probable and reliable.

29. Since the accused has admitted that Ex.P.3 cheque belongs to him and it contains his signature, it is obligatory on the part of the Court to draw presumption under Sec.118 and 139 of N.I. Act.

30. 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."**

31. The Hon'ble Supreme Court 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."

32. 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.

33. In the case of **Bir Singh Vs. Mukesh Kumar,** reported in ***(2019) 4 SCC 197***, it was held that,

"32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill

> up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
>
> 36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

34. Under the above fact and circumstances and precedents referred above, the accused has failed to rebut the presumption available to the complainant under Section 118 and 139 of N.I. Act. The evidence of PW.1 and Ex.P.2 to P.14 coupled with the presumption under law establishes that Ex.P.2 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 under Section 138 of N.I. Act and considering the oral and documentary evidence lead by the PW.1 the trial Court has rightly convicted the accused/ appellant for the offence punishable under Section 138 of

N.I. Act and sentenced him to pay fine of Rs.4,76,000/-. The sentence imposed on 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***'.

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

O R D E R

The Criminal Appeal filed by the appellant/accused under Section 374(3) of Cr.P.C/Section 415 of BNSS is hereby ***dismissed***.

Consequently, the impugned judgment of conviction and sentence dated 03-04-2025 passed by the learned Additional Civil Judge and JMFC, Bhatkal, in C.C. No.1392/2021 is hereby confirmed.

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

In view of this judgment, IA.No.II does not survive for consideration and hence the same stands disposed off.

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, computerized by him, corrected and signed and pronounced by me in the open court on this the 6th day of March, 2026).

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

Digitally signed by
PARAMESHWARA PRASANNA B,
PRL. DISTRICT & SESSIONS
JUDGE, U.K-KARWAR