



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

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

**CRIMINAL APPEAL NO: 165/2024**

**: PRESENT :**

**SRI. MAYANNA. B.L.,**

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

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

**APPELLANT:**

Sri. Mahesh S/o Krishna Motekar,  
Aged about 44 years, Contractor,  
R/o. Ambigarakeri,  
Post: Hosapattana,  
Tq: Honnavar (U.K.)

(By Sri. M.L.N., Advocate)

Vs.

**RESPONDENT:**

The Janata Co-operative Society  
Ltd., Honnavar Branch,  
Rep. by its Branch Manager,  
Smt. Krupa Naik,  
Taluk: Honnavar. (U.K.)

(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, challenging the judgment, order of conviction and sentence, passed by the Addl. Civil Judge & JMFC, Honnavar in C.C.No.624/2021 dated

02/05/2024 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 brief facts of the case before the Trial Court that the accused borrowed a mortgage loan from the Complainant Society and issued a cheque bearing No.691272 dated: 16.12.2020 for Rs.30,76,809/- drawn on Syndicate Bank, for repayment of the loan amount along with interest. The Complainant Society presented the said cheque for encashment through its banker, but same is returned for "Funds Insufficient". Therefore, the complainant society got issued a legal notice to the accused through RPAD by demanding a payment of cheque amount. 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 to take legal action against the accused in accordance with law.

4. After filing of the Complaint, the learned Magistrate has recorded the sworn statement of the Complainant Society through its Branch Manager 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 the learned Magistrate has summoned the accused. In pursuance of issuance of the summons, the accused appeared before the Trial Court and he was enlarged on bail. Thereafter, 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. In order to prove the case, the Manager of the complainant society got examined as P.W.1 and got marked the five documents as Ex.P.1 to P.5. 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 upon perusal of evidence, the learned Magistrate has convicted the accused for the offence punishable under Section 138 of N.I. Act. The learned Magistrate has sentenced the accused to pay a fine of Rs.32,76,809/- and in default of payment of fine amount, the accused shall undergo simple imprisonment for a period of one year and out of the said

fine amount, Rs.32,70,809/- shall be paid to the Complainant as compensation and remaining Rs.6,000/- shall be paid to the State, towards expenses.

7. Being aggrieved by the said judgment of conviction and order of sentence, the accused has preferred this Appeal on the grounds that *the Trial Court has failed to note that the complainant has not produced any document or oral evidence to prove how much amount he has paid to the accused. The Trial Court has failed to note that the amount mentioned in the cheque is not at all due from the accused and it was not a legally recoverable debt. The Trial Court has failed to note that Section-138 of Negotiable Instruments Act is not at all applicable to the fact of the present case. The Trial Court has failed to note that the cheque relied by the complainant is without consideration and obtained by the complainant bank as a security while advancing the loan. The Trial Court has failed to note that the accused has rebutted the presumption available U/Sec. 139 of N.I. Act. The appreciation of evidence by the Trial Court is perverse and against the principles of Criminal Jurisprudence. The way in which cognizance is taken and process issued itself is illegal and contrary to law as such entire conviction is vitiated. In the absence of legal debt being proved and established, the conviction cannot be sustained. The admission made by the complainant orally and documentaries are not considered from proper*

*perceptive. The proposition of law touching the matter in issue is not examined from a proper perceptive. Hence, prayed to set aside the Judgment of the Trial Court by allowing the Appeal.*

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

9. The records of the Trial Court are secured.

10. The Counsel for the Appellant has argued that the PW.1 clearly admits in the cross-examination that after filing of the complaint, the appellant/accused has deposited Rs.8,00,000/- into the loan account. However, the trial court has not considered the said admission and also not deducted the said amount, while imposing the fine amount and thereby, the trial court has committed grave error and same is required to be modified. He further argued that since the appellant/accused has deposited Rs.8,00,000/-, he is liable only for the remaining amount and not for the entire cheque amount. The Trial Court has not considered the defence raised by the accused while cross-examination of PW.1. There is no liability as on the date of issuance of Cheque by the Appellant. The defence raised that there is no legally recoverable debt has been proved by the Complainant and the Trial Court has wrongly come to the conclusion that

the Appellant was liable to pay the debt. The Complainant Society has filed the false complaint against Appellant and thereby, though the Complainant has not proved the existence of legal debt and though the ingredients of Section 138 of N.I Act are not established, the Trial Court proceeded to convict the Accused/Appellant and thereby, the Appellant has suffers injustice and the same should be set right by setting aside the judgment of conviction and therefore, he has prayed to allow the Appeal.

11. The learned Counsel for the Respondent has vehemently argued that the Appellant/accused has obtained loan from the Complainant Society by executing necessary documents and thereafter, he has failed to repay the loan amount and when the Complainant Society insisted the accused to pay the outstanding loan amount, the accused has issued the Cheque in question in order to repay the loan amount due to the Complainant. Thereafter, on the presentation of the said cheque for encashment, the same was dishonoured for the reason "Funds Insufficient" and hence, the Complainant Society issued a legal notice to accused, calling upon him to pay the cheque amount within 15 days from the receipt of the notice. In spite of receipt of the notice, the accused has not paid the Cheque amount and hence, the Complainant Society has filed the complaint. The Trial Court, after appreciating the evidence produced by the Complainant

and defence raised by the accused, has come to the right conclusion that the Complainant has proved the legally recoverable debt and issuance of cheque and also dishonour of the cheque for “Funds Insufficient” and also non-compliance of demand notice and thereby convicted the accused for the offence under Section 138 of the N.I. Act. Therefore, there is no error committed by the Trial Court in convicting the Appellant and hence, the Respondent/Complainant 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 and also the counsel for Respondent, the following points arise for consideration:

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 Addl. Civil Judge and JMFC, Honnavar, against the accused for the offence punishable under Section 138 of the N.I. Act. It is the case of the Complainant that the the accused has borrowed a mortgage loan from the Complainant Society under M.L.No.34. Thereafter, the accused issued a cheque bearing No.691272 dated 16.12.2020 for Rs.30,76,809/- drawn on Syndicate Bank, Honnavar Branch, in favour of the Complainant Society towards repayment of outstanding loan amount along with interest. The Complainant Society presented the said cheque for encashment through its banker i.e., State Bank of India, Honnavar Branch. However, the said cheque is returned on 19.12.2020 with an endorsement as “Funds Insufficient”. After the receipt of the said endorsement, the complainant got issued a legal notice to the accused on 04.01.2021 through RPAD by demanding a payment of cheque amount. The said notice was served to accused on 08.01.2021. In spite of receipt of notice, the accused has not paid the cheque amount to the Complainant Society within stipulated period. Further sated that, the accused has issued the above said cheque to the Complainant Society without maintaining sufficient amount in his bank account. Therefore, the Complainant Society has filed the

complaint to take action against the accused for the offence under Section 138 of N.I. Act.

15. In order to substantiate the same, the Manager of the Complainant Society files examination-in-chief affidavit and got examined as P.W.1. It is further asserted in the affidavit that the accused has issued the Cheque in question towards the repayment of due amount towards loan transaction and on presentation of the said cheque for encashment, the same was dishonoured for the reason “Funds Insufficient” and in spite of receipt of notice, the accused has not paid the cheque amount and therefore, she prayed to take action against the accused and in this regard, she has produced the Cheque issued by the accused, Memo issued by the Bank, copy of Legal Notice, Postal Acknowledgment, Authorization Letter and got them marked as Ex.P.1 to P.5.

16. The Counsel for the Accused has cross examined the P.W.1 and in her cross examination P.W.1 has stated that mortgage loan was given to accused on 04.10.2017. She further stated that Rs.25,00,000/- has been given on loan under the loan account No.ML 34. She further stated that the complainant has given loan on the Mortgaged property Sy.No.115 area measuring 25 guntas, which is situated at Kasarakod village. She further stated that the duration of the loan was 10 years, and monthly installments was Rs.50,000/-. She admits that the accused has deposited

Rs.8,00,000/- . She further stated that while sanctioning the loan they will not collect the cheque for security purpose. She further admits that the accused has deposited Rs.8,00,000/- in his loan account. She further stated that in the month of June 2020, they have gone to the house of the accused for recovery of loan and lastly, in the month of December 2020, they have gone to the house of the accused. She further stated that they met the accused in his house on 16<sup>th</sup> December and on the same day, the accused has issued cheque in question. She denied that they have obtained the cheque from the accused forcefully. It was suggested that no documents have been produced before the court for lending loan and witness stated that she will produce the documents if it is necessary. She further stated that one Ullas Krishna Naik and Geeta Manjayya Naik were the guarantors to the loan and they have not collected any cheque from the said guarantors and they used to take property documents. She further stated that the cheque in question was filled by the friend of the accused, who accompanied the accused and same was signed by the accused. She further denied that they have collected the cheque from the accused prior to sanctioning the loan and same was obtained while submitting the application. She denied that accused is not liable to pay any cheque amount.

17. After completion of the evidence of the complainant, the learned Magistrate has recorded the statement of the accused as required under section 313 of Cr.P.C, to enable the accused to explain the incriminating evidence appearing against him. While recording the statement under Section 313 of Cr.P.C., the accused has denied the incriminating evidence appearing against him and the accused 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 Cheque in question at Ex.P.1 is belonging to the accused, which bears the signature of the accused and when the Cheque was presented by the Complainant Society for encashment, the same was dishonoured for the reason "Funds Insufficient" as per Ex.P.2. It is also clear as per Ex.P.3 that a notice of dishonour has been issued to accused and as per Ex.P.4 the notice was served on the accused on 08.01.2021 and the Complainant has deposed the evidence on oath that the accused has obtained Mortgage loan from the complainant society and thereafter, he has not repaid the loan amount.

19. According to the complainant, the accused has obtained the mortgage loan by pledging his property bearing Sy.No.115 measuring 25 guntas. However

thereafter, he has not paid the said loan amount and as such, he was due to the complainant society. The PW.1 further stated that in the month of December 2020, when they went to house of the accused to recover the loan, the accused has issued the cheque in question towards outstanding loan amount. The PW.1 further stated that when the complainant society presented the said cheque for encashment through its banker, same is returned for the reason "Funds Insufficient" and same is evident from the Ex.P.2. The notice at Ex.P.3 discloses that after dishonour of the cheque, the complainant society issued the said notice to the accused calling upon him to pay the cheque amount and since, the accused has not paid the cheque amount, the complainant has filed the complaint. Further, even though the accused has received the notice at Ex.P.4, he has not paid the cheque amount and also not denied the claim of the complainant society. Therefore, the accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act.

20. Apart from the above evidence on record, on perusal of Section 118 of N.I. Act wherein, it reads thus:

***Presumptions as to negotiable instruments -***

*Until the contrary is proved, the following presumption shall be made:-*

*a) of consideration – the every negotiable instrument was made or drawn for consideration,*

*and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;*

*b) as to date.- that every negotiable instrument bearing a date was made or drawn on such date;*

*c) as to time of acceptance.- that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

*d) as to time of transfer.- that every transfer of a negotiable instrument was made before its maturity;*

*e) as to order of indorsements.- that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

*f) as to stamp.- that a lost promissory note, bill of exchange or cheque.*

21. Therefore, in view of the above, the Complainant has proved that the accused has obtained mortgage loan from the complainant society and issued the cheque in question towards clear the debt and the accused has not disputed the signature on the cheque at Ex.P.1. Therefore, when the cheque is belongs to the accused and the accused has failed to disprove the signature on cheque in question at Ex.P.1, it is presumed that the cheque has

been issued towards legally recoverable debt and further, on perusal of Section 139 of N.I. Act wherein, it reads thus:

***“Section 139 presumption in favour of the 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 Sec.138 for the discharge, in whole or in part, of any debt or other liability.”***

22. Therefore, 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 existence of legally recoverable debt, it is the bounden duty of the accused to bring admission in his favour in the cross examination of P.W.1 or by leading defence evidence, so as to rebut the presumption available to the Complainant. But, though the accused has cross examined the P.W.1, he has failed to bring admission in his favour in the cross of PW.1 and on the other hand, he has not adduced any defence evidence, so as to rebut the presumption available to the Complainant as per Section 139 of N.I. Act.

23. It is further 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 absence of evidence 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. In the case on hand, though the accused has received the legal notice, he has failed to reply to legal notice and has failed to disprove the signature on Cheque at Ex.P.1.

24. In the matter of **APS Forex Services Pvt. Ltd. Vs. Shakti International Fashion Linkers and others**, reported in **(2020) 12 SCC 724**, the Hon'ble Supreme Court has held in paragraph 9 that;

*“Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. **As observed above, Section 139 of the Act is an example of reverse onus clause and therefore once the***

***issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence.”***

25. Further, in the case of ***Rangappa Vs. Mohan, reported in (2010) 11 SCC 441***, the Hon’ble Supreme Court has laid down the principles relating to presumption under Section 118 and 139 of the N.I. Act, as follows;

*“26. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the*

*existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.*

27. *Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard of proof.*

28. *In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."*

26. 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, though sufficient opportunity was given, the accused has not cross examined the P.W.1 and also not led his defence

evidence. Further, the accused has not denied the signature on Cheque at Ex.P.1.

27. The Appellant/Accused has taken defence while cross-examination of PW.1 that they have collected the Cheque in question for security purpose and same has been 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 complainant 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."*

28. 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. In the case on hand, the accused

has produced any documents to show that he has paid the amount before issuance of cheque in question.

29. Therefore, viewing from any angle, the Complainant Society has proved before the Court that the accused has issued the cheque towards repayment of outstanding loan amount and the same was dishonoured and in spite of receipt of the 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.1 to P.4 and all the requirement of Section 138 of N.I. Act, is complied with. Under these circumstances, there is no doubt that the accused, who has borrowed the mortgage loan, as pleaded by the Complainant and issued the cheque in question and same was bounced back and in spite of receipt 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.

30. From the perusal of the complaint and the notice, though the complainant has not stated about when the loan was lent and what was the loan amount, in the evidence, the PW.1 has stated that loan amount was Rs.25,00,000/- and same was given on 04.10.2017. The case of the complaint that the accused has issued cheque for Rs.30,76,809/- on 16.12.2020. It is relevant to

mention here that the PW.1 clearly admitted in her cross-examination that **“ಆರೋಪಿಯು ಪ್ರಕರಣ ದಾಖಲಾದ ನಂತರ ಅಂದಾಜು 8,00,000/- ಹಣವನ್ನು ತುಂಬಿದ್ದಾನೆ.”** She further admitted as **“ನಾನು ಮ್ಯಾನೇಜರ ಆದ ಮೇ ತಿಂಗಳಿನಲ್ಲಿ ಆರೋಪಿಯ ಸಾಲದ ದಾಖಲೆಗಳನ್ನು ಹಾಗೂ ಆರೋಪಿಯು ಎಷ್ಟು ಸಾಲವನ್ನು ಮರುಪಾವತಿಸಬೇಕೆಂದು ಪರಿಶೀಲಿಸಿ ನೋಡಿದ್ದೇನೆ. ಆ ಸಂದರ್ಭದಲ್ಲಿ ಆರೋಪಿಯ ಸಾಲ ಎಷ್ಟಿತ್ತು ಎಂಬುದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಮ್ಯಾನೇಜರ ಆದ ಮೇಲೆ ಆರೋಪಿಯು ಸಾಲವನ್ನು ಮರುಪಾವತಿ ಮಾಡಿದ್ದು ಇರುವುದಿಲ್ಲ. ಆರೋಪಿಯು ತಾನು ಪಡೆದ ಸಾಲದ ಖಾತೆಯಲ್ಲಿ 8,00,000/- ಹಣವನ್ನು ತುಂಬಿದ್ದಾನೆ.”** In view of the admission made by the PW.1, it is clear that loan amount was Rs.25,00,000/-, cheque was issued for Rs.30,76,809/-, and after filing of the complaint, the accused has deposited Rs.8,00,000/- to the complainant society. As such, the accused is liable to pay the remaining amount, after deducting the amount of Rs.8,00,000/-. However, the learned Magistrate, without considering the amount deposited by the accused, has sentenced the accused to pay fine of Rs.32,76,809/- and out of the said fine amount, Rs.32,70,809/- shall be paid to the complainant society and remaining Rs.6,000/- shall be paid to the state.

31. This court has gone through the Judgment of the Trial Court wherein, the Trial Court has considered the evidence placed by the Complainant and also considered the arguments of parties and it has come to the right

conclusion by appreciating the evidence scrupulously in the right manner and the Accused has issued the cheque in question Ex.P.1 and on presentation of the said cheque, same is bounced back. On the other hand, the Accused has failed to disprove the case of the Complainant with clear and cogent evidence, in the cross-examination of PW.1 or by leading defence evidence. As such, the Trial court has rightly arrived at the conclusion that the Complainant has proved the case and also proved the legally recoverable debt and proceeded to convict the Accused for the offence punishable under Section 138 of N.I. Act.

32. However, the Appellant, who has challenged the judgment, order of conviction and sentence passed, on several grounds, has argued that the Trial Court has not appreciated the evidence on record in perspective manner and sentence awarded is too harsh and it is not in accordance with law and thereby, the Trial Court has wrongly convicted the Accused and thereby, the judgment of the Trial Court is liable to be set aside. In this aspect of the matter, as already discussed above, the Trial Court has rightly appreciated the evidence and rightly applied the presumption available in favour of the Complainant and therefore, in the absence of any contrary evidence produced by the Accused, the Trial Court has accepted the evidence of the Complainant and convicted the Accused

and therefore, Trial Court has not committed any error, irregularities and illegalities in coming into conclusion and convicting the Accused.

33. It is relevant to mention here that the PW.1 clearly admits in the cross-examination that after filing of the complaint, the accused has deposited Rs.8,00,000/- in the loan account of the accused. However, the trial court has failed to see the said admission given by the PW.1 with regard to deposit made by the accused. When the PW.1 herself has admitted that the accused has deposited Rs.8,00,000/-, the learned Magistrate ought to have passed the sentence directing the accused to pay fine of Rs.24,76,809/-, after deducting the deposit amount of Rs.8,00,000/-, instead of imposing fine of Rs.32,76,809/-.

34. Under these circumstances, as rightly argued by the Counsel for the Appellant that the part payment made by the appellant/accused should be required to be considered and the same should be modified to the effect that the Accused is liable to pay a fine of Rs.24,76,809/- and in default to pay the said fine amount, the accused shall undergo simple imprisonment for a period of one year and out of the fine recovered, an amount of Rs.24,70,809/- should be paid to the Complainant as compensation under Section 357(1) of Cr.P.C. and the remaining amount of Rs.6,000/- should be credited to the account of the State and same will meet the ends of

justice. Therefore, except this modification with regard to the sentence, the rest of the judgment passed by the Trial Court is stands confirmed. Hence, with these observations, this court proceeds to hold the above Point No.1 in the Negative in respect of conviction and Partly in the Affirmative in respect of sentence.

35. **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., in so far as conviction, is hereby dismissed.

The Judgment and Order of conviction passed by the learned Addl. Civil Judge and JMFC., Honnavar in C.C.No.624/2021 dated: 02.05.2024, is hereby confirmed.

However, the order of sentence passed by the learned Magistrate is hereby set aside and the same is modified as the Accused is sentenced to pay a fine of Rs.24,76,809/- and in default to pay the same, the Accused shall undergo simple imprisonment for a period of one year.

Further, out of the fine recovered, Rs.24,70,809/- shall be paid to the

Complainant as compensation under Section 357(1) of Cr.P.C., and the remaining amount of Rs.6,000/- should be credited to the State, towards expenses.

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.