KAUK020022742025

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, KARWAR, UTTARA KANNADA

DATED THIS 26th DAY OF MARCH, 2026

Present : ***Sri. Ganesha Padiyar U.,***
B.Com. LL.B.
Addl. Senior Civil Judge & JMFC., KARWAR.

C.C.No.1939/2025

Complainant	:	Yeshvant Uday Naik Age: 31 years, Occ: Pvt. Service, Kalaswada, Baad, Karwar, Uttar Kannada. **(By Smt. Padma K. Tandel Advocate)**
V/s		
Accused	:	Krishnand Vajranath Kalas Age: 29 years, Occ: Business, R/o: #1753, Kalaswada, Baad, Nandangadda, Karwar. **(By Sri Harish M. Naik Advocate)**
Cognizance taken on		19-09-2024
Plea recorded on		13-02-2026
Offence alleged		Section 138 of N.I. Act
Evidence commenced on		25-02-2026

Evidence closed on	17-03-2026
Judgment pronounced on	26-03-2026
Final order	**Conviction**

J U D G M E N T

This case emanates from the complaint filed under Section 200 Cr.P.C. against the accused alleging the commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I. Act" for brevity).

2. The case of the complainant in brief, as per the complaint, is as follows:-

Complainant and accused are well known to each other. They are good friends for the last 20 years. On 07.02.2024 the accused approached the complainant and asked hand loan of Rs.8,00,000/- for business purpose to purchase Oil Lorry. The accused has promised the complainant to repay the loan within 4-5 months. Even after lapse of 4-5 months, the accused did not repay the amount. The accused has also

executed an agreement on 07.02.2024 towards repayment of the said loan. When the complainant has asked the repayment of the loan, the accused has issued a cheque bearing No.262131 dated 05.08.2024 for Rs.8,00,000/- drawn on Axis Bank Ltd., Karwar Branch towards repayment of the said hand loan. The complainant has presented the said cheque through Indian Overseas Bank, Karwar Branch. But the said cheque returned unpaid and dishnoured for the reason "Funds insufficient" as per cheque return memo dated 12.08.2024. Hence the complainant has got issued legal notice dated 27.08.2024 calling upon the accused to pay the cheque amount. The said legal notice was served to the accused on 29.08.2024. The accused has neither paid the cheque amount nor replied to the said legal notice. Thus he has committed an offence punishable under Section 138 of N.I. Act.

3. Initially, this complaint was presented before the Additional Civil Judge & JMFC II Court, Karwar. As per Notification/Order No.99 of 2025 dated 09-06-2025 of

Hon'ble District and Sessions Judge, U.K. Karwar, the case has been transferred to this Court.

4. On presentation of the complaint, cognizance was taken for the alleged offence. Accused was summoned. Pursuant to the summons, the accused has entered appearance through his Advocate. The accused is on bail throughout the trial.

5. On compliance of Section 207 Cr.P.C, substance of accusation was read over to the accused. He has pleaded not guilty and claimed defence.

6. The complainant has examined himself as PW.1 and got marked documents as Ex.P.1 to Ex.P.6.

7. The statement of the accused as required under Section 313 Cr.P.C. has been recorded. The accused has denied all the incriminating evidence appearing against him. No defence evidence was adduced by him. However, he got marked two documents as Ex.D.1 and Ex.D.2 in the cross-examination of PW.1.

8. The learned counsel for the complainant Smt. Padma K. Tandel and the learned counsel for the accused Sri Harish M. Naik have been heard.

9. I have given a careful consideration to the arguments advanced by the learned counsel appearing for both the parties. I have perused the case papers in detail.

10. The points that arise for Court's determination and consideration are as under:

POINTS FOR CONSIDERATION

Sl.No.	**Points**
1	***Is there any legally recoverable debt or liability?***
2	***Whether the complainant proves that the accused has committed the offence punishable under Section 138 of N.I. Act?***
3	***What Order?***

11. My findings are as under :

Points	**Answer**
Point No.1	***Affirmative***

Point No.2	***Affirmative***
Point No.3	*As per final order for the following:*

R E A S O N S

12. **POINTS NO.1 AND 2:-** These two points are taken together for discussion as the same can conveniently be considered together.

13. The cheque dated 05.08.2024 for Rs.8,00,000/- said to have been issued by the accused towards repayment of hand loan borrowed by him from the complainant, was dishonoured for insufficiency of funds in his bank account which has been intimated to drawer and consequently the complainant has initiated action under Section 200 Cr.P.C. for the commission of offence punishable under Section 138 of N.I. Act after issuing demand notice. This is the crux of the case as averred in the complaint.

14. To substantiate his case, the complainant has examined himself as PW.1. In view of the Hon'ble Apex

Court's Judgment in **INDIAN BANK ASSOCIATION VS. UNION OF INDIA** reported in **2014 (5) SCC 590**, the affidavit filed by the complainant in lieu of sworn statement has been treated and taken as the evidence of the complainant. In his affidavit, he has reiterated everything that is stated in the complaint. The documents relied upon by the complainant came to be marked as Ex.P.1 to Ex.P.6.

15. Ex.P.1 is the cheque dated 05.08.2024 stated to be issued by the accused in favour of the complainant which has been drawn on Axis Bank Ltd., Karwar Branch. It is not in dispute that Ex.P.1 has been drawn from the account maintained by the accused with Axis Bank Ltd., Karwar Branch.

16. Ex.P.2 is the cheque return memo dated 12.08.2024 mentioning the reason for dishonour of Ex.P.1 cheque. It shows that the cheque was returned unpaid for the reason '*Funds insufficient*'. The factum of dishonour of Ex.P.1 cheque is also not in dispute.

17. That apart, Section 146 of the N.I. Act provides that the Court shall presume the fact of dishonour of cheque on production of bank's slip or memo, unless and until such fact is disproved. Therefore, it is clear that the complainant has proved that Ex.P.1 cheque has been dishonoured for want of sufficient funds in the account maintained by the accused. Because the cheque came to be dishonoured for the reason 'Funds insufficient'.

18. Ex.P.3 is the office copy of legal notice dated 27.08.2024 calling upon the accused to pay the cheque amount. Ex.P.4 is the Postal Receipt. Ex.P.5 is the Postal Track consignment. A perusal of the Exs.P.4 & 5 clearly goes to show that legal notice has been duly served upon the accused.

19. A perusal of cross-examination of complainant-PW.1 indicates that the accused has not at all disputed or denied the fact that he has received the legal notice sent by the complainant.

20. In view of the above, suffice it to state that the complainant has issued notice of demand to the accused and same has been duly served upon him.

21. To prove the debt, the complainant has produced Agreement dated 07.02.2024 entered into between the complainant and the accused before Sri S. M. Durgekar, Notary, Karwar. The execution of the said Agreement by the accused in favour of the complainant is not in dispute. There is no cross-examination to PW.1 on the said agreement. As per the said Agreement, the accused has borrowed hand loan of Rs.8,00,000/- from the complainant on 07.02.2024 in cash and the accused has agreed to repay the same on or before 30.06.2024. The other terms of the said agreement is not relevant for the present discussion. Therefore, it is clear that the borrowal of hand loan by the accused is an undisputed fact.

22. Notably, in the case at hand, the accused has not at all disputed or denied his signature on Ex.P.1 cheque, which came to be marked as Ex.P.1(a).

23. On perusal of the entire materials on record, at the outset, it would clearly go to show that the complainant has complied with necessary legal requirements in terms of Section 138(a) to (c) of N.I. Act. It is evident that notice of demand has been issued by the complainant and the same has been duly served upon the accused. The complaint is filed on 18.09.2024 within a period of one month from the date of accrual of cause of action in terms of Section 142(1) (b) of N.I. Act. Therefore, statutory presumption as envisaged under Sections 118 and 139 of N.I. Act will have to be drawn in favour of the complainant.

24. Section 118(a) of the Negotiable Instruments Act, 1881 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; ……."

25. Section 139 of the Negotiable Instruments Act, 1881 reads as under :

> "**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.

26. In this context of the matter, it is also useful to refer few Judgments of Hon'ble Apex Court which deals with the statutory presumption mentioned supra and also the evidentiary burden in cheque bounce cases.

27. Our Hon'ble High Court in the case of **Sri. B.N. Ashwath Narayan Vs. Sri. Shankar** [Crl.Rev.Ptn.No.1333 of 2018, DD: 06-06-2020], has given directions and one such directions is reproduced here below :

> "xvi) The Magistrate shall in every case complaining the commission of an offence under Section 138 of N.I. Act, draw the presumption under Sections

118 and 139 of N.I. Act has held in ***RANGAPPA v. SRI MOHAN*** [(2010) 11 SCC 441)] and examine whether the defence of the accused is either plausible or moonshine and thereafter decide the case."

28. Hence in this view of the matter, I find it profitable to refer the judgment of Hon'ble Apex Court in the case of **Rangappa Vs. Mohan** reported in (2010) 11 SCC 441. In this judgment, the Hon'ble Apex Court has summarised the principles relating to presumptions under Section 118 and 139 of the N.I. Act and rebuttal thereof in the following :

"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 138 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 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 defendant/accused cannot be expected to discharge an unduly high standard or 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."

29. In the case on hand, since the accused has not denied or disputed his signature on the cheque in question and the complainant having established that he has followed

the procedural requirements under Section 138 of N.I. Act, the Court is inclined to draw the statutory presumptions in favour of the complainant as mandated under Section 118 (a) and 139 of the N.I. Act.

30. Thus on the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and circumstances which may lead the Court to conclude either that consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exists.

31. The Hon'ble Apex Court in the case of **Kumar Exports Vs. Sharma Carpets**, reported in **(2009) 2 SCC 513**, has stated the principles as under:

> "20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existence. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a

> criminal trial. The accused may adduce directed evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharge by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exists or there non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exists. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumption of facts, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."

32. In the case of **APS Forex Service Pvt. Ltd. Vs. Shakti International Fashion Linkers and Others** reported in **AIR 2020 SC 945**, the Hon'ble Apex Court has observed and held that "once the issuance of cheque with signature on cheque is admitted, there is always a presumption in favour of the

complainant that there exist legally enforceable debt or liability. Plea by accused that cheque was given by way of security and same has been misused by complainant is not tenable."

33. In **2022 SCC OnLine SC 1131 – P. Rasiya Vs. Abdul Nazer and Another**, the Hon'ble Apex Court has observed and held as under :

> "Once the initial burden is discharged by the complainant that the cheque was issued by the accused and signature of accused on the cheque is not disputed, then in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for discharge of any debt or other liability. The presumption under Section 139 of N.I. Act is a statutory presumption and thereafter, once it is presume that the cheque is issued in whole or in part of any debt or liability which is in favour of the complainant/holder of the cheque, in that case it is for the accused to prove the contrary."

34. Thus, in view of the principles enunciated in the aforesaid judgments of the Hon'ble Apex Court it becomes crystal clear that once issuance of cheque with signature of accused on the account maintained by him is admitted or proved, then statutory presumptions in terms of Sections 118 and 139 of N.I. Act will have to be drawn. Now, it is upto the

accused to lead rebuttal evidence to displace the statutory presumption available in favour of the complainant. Thus obviously the onus would shift upon the accused to prove that cheque was not issued for discharge of any debt or other liability.

35. The accused has cross examined PW.1.

36. In the cross-examination, certain answers have been elicited with respect to the lending of loan by the complainant. PW.1 has categorically answered that he had lent the loan to the accused on 07.02.2024 and he had arranged the said sum out of the amount retained by him for his mother's medical treatment by sale of gold ornaments. It is no doubt true that the complainant has not produced any documents to substantiate the sale of gold ornaments. PW.1 has clarified that he has lent hand loan of Rs.8,00,000/- by way of cash. He states that he is not paying Income Tax.

37. In the cross-examination it is elicited from the mouth of PW.1 that the accused had earlier borrowed loan of

Rs.1,00,000/- to Rs.1,50,000/- and the same has been repaid by the accused.

38. In the cross-examination, PW.1 has been suggested that the accused has made certain payments referring to the dates and amounts as reflected in Exs.D1 & 2. True, PW.1 admits all such payments made by the accused. There is not even a suggestion to PW.1 to the effect that all such payments reflected in Exs.D1 & 2 pertain to the transaction of hand loan as claimed in the complaint. What is suggested to PW.1 is that the accused had repaid in all a sum of Rs.2,65,700/- in respect of the earlier loan of Rs.1,50,000/-. PW.1 has denied the said suggestion.

39. Nothing is suggested to PW.1 as to how Ex.P1 cheque reached the hands of complainant.

40. In the absence of any nexus to the payments reflected in Exs.D1 & 2, the case of the accused cannot be believed. As already stated the entire cross-examination of PW.1 is silent on Ex.P.6 Hand Loan Agreement.

41. As could be seen from the deposition of PW.1 pertaining to his cross-examination, no dent could be made. At the outset, it is to be noted that except eliciting certain answers regarding the repayment of earlier loan, the accused has not taken the cross-examination to the logical end and therefore whatever the answers elicited in the cross-examination of PW.1 do not yield any benefit to the accused.

42. Mere denial of case put-forth by the complainant would not be enough to rebut the statutory presumptions. PW.1 has denied the material suggestions. Therefore the suggestions put to PW.1 in the cross-examination remain as suggestions only and nothing more than that. If anything favourable to accused is elicited from PW.1 to probabalise his defence, the situation would have been different.

43. It is also pertinent to note that the accused has not led any evidence in defence.

44. The Hon'ble High Court in the case of **S.K. Honnappa Vs. S.A. Murthy** [Crl.Rev.Petition No.768 of 2018], has observed as under:

> **"13. As a corollary to this, in order to hold the defence version probable, the drawer of the cheque must come out with his defence in his reply notice, and any defence introduced for the first time either at the time when complainant or his witnesses are cross examined or when he leads evidence does not carry as much weight as it carries if there was disclosure at the earliest point of time i.e., before the criminal action is initiated."**

45. Therefore in view of the above decision, the defence set up by the accused for the first time in the cross-examination without there being any reply notice, does not carry any weightage besides being no clear and cogent evidence to prove the same.

46. Thus it is clear that the accused has failed to substantiate his probable defence in the cross-examination of PW.1. Clearly enough, PW.1 has virtually stood to ground.

47. Above apart, it is also significant to note that when the accused was questioned while recording his statement under Section 313 of Cr.P.C., he has been asked whether anything to be stated in the matter. However he has not

stated anything regarding the defence set up by him. He would have explained the circumstances under which Ex.P.1 cheque reached the hands of the complainant. He would have stated with respect to his defence if any in his statement as what is suggested to PW.1 in the cross-examination. More importantly, the accused in his statement under Section 313 of Cr.P.C., did not whisper anything as to under what circumstances Ex.P.1 cheque came to be issued and how it has reached the complainant.

48. At this juncture, it is beneficial to refer a Division Bench Judgment of our Hon'ble High Court in the case of **Hosamanera Prakash @ Shivprakash and Others Vs. State of Karnataka, Nyamathi Town Police Station, Honnali Taluk** reported in **2015 (3) KCCR 2406 (DB)**. In that judgment, it is held that "the statement recorded under Section 313 of Cr.P.C., would server a dual purpose ; to falsify, to afford to the accused an opportunity to explain his conduct, and secondly to use denials of established facts as incriminating evidence against him."

49. Thus, in view of the above legal position, in the instant case, in the opinion of this Court, the accused has failed to make use of the valuable opportunity of his defence in his statement under Section 313 of Cr.P.C., without any justification. So, in my view, when no explanation is offered by the accused and while PW.1 has categorically denied the suggestions put to him in the cross-examination, absolutely there is no probability in the case setup by the accused.

50. Hence bearing the above legal position in view, I have once again gone through the entire materials on record. I have also carefully scrutinized the cross-examination of PW.1 in its entirety. However I do not find any convincing and strong defence to have been raised by the accused so as to rebut the statutory presumptions as discussed above and also to probabalise that Ex.P.1 cheque was not issued in discharge of legally enforceable debt or other liability. No circumstances are brought on record by the accused to disbelieve the version of PW.1. There is nothing to discredit the evidence of PW.1. Furthermore the defence taken by the

accused appears to be improbable and without any substance. Therefore, suffice it to state that the accused person has miserably failed to rebut the statutory presumption drawn in favour of the complainant as contemplated under Section 118(a) and Section 139 of the N.I. Act. When there is no satisfactory rebuttal evidence by the accused, then statutory presumption in terms of Section 118 and 139 of N.I. Act will continue to operate.

51. As an upshot of the above discussion, this Court arrives at the following conclusions :

i) The complainant has succeeded in establishing the existence of legally recoverable debt or liability ;

ii) The complainant has satisfactorily proved that the accused has issued the cheque in favour of the complainant towards discharge of the legally recoverable debt or liability as pleaded in the complaint ;

iii) On the other hand, the accused has miserably failed either to prove the non-existence of legally recoverable debt or liability or to probabilise his defence ;

iv) Resultantly, the accused has utterly failed to rebut or displace the presumption drawn in favour of the complainant under Sections 118 and 139 of N.I. Act ; and

v) The complainant has clinchingly proved all the essential ingredients to constitute an offence punishable under Section 138 of N.I. Act.

vi) The accused having failed to make payment of the cheque amount to the complainant as demanded in his legal notice, the accused has committed the offence punishable under Section 138 of N.I. Act.

52. On taking a holistic view of the afore-mentioned observations and the totality of circumstances of the case, in the considered opinion of this Court, the complainant having proved his case beyond reasonable doubt and on the other hand the accused having miserably failed in raising or proving a probable defence or creating a reasonable doubt in the case put-forth by the complainant, the accused Krishnand Vajranath Kalas is found guilty of the offence punishable under Section 138 of the Negotiable

Instruments Act, 1881. Hence he is liable to be convicted for the said offence.

53. The Hon'ble Apex Court in **DHAMODAR S. PRABHU VS. SAYED BABULAL H**. reported in **(2010) 5 SCC 663**, observed and held that "with respect to the offence of dishonour of cheques, it is the compensatory aspect of remedy which should be given priority over punitive aspect."

54. Thus, considered, this Court deem it appropriate to convict the accused imposing fine amount with default sentence. Taking into consideration the fact that the lis is between private parties, there shall be no order as to awarding any amount towards defraying expenses of the State. In view of all these, I answer Points No.1 and 2 in the '***Affirmative***'.

55. **POINT NO.3:** For the forgoing discussion and reasons, I make the following:

O R D E R

(i) In exercise of powers conferred under Section 255(2) of Cr.P.C, 1973, the accused is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

(ii) The accused is sentenced to pay fine of Rs.8,00,000/- (Rupees Eight Lakhs Only) and in default to pay the amount of fine, he shall undergo simple imprisonment for a period of two years.

(iii) In exercise of powers vested under Section 357 (1) (b) of Cr.P.C. 1973, the entire fine amount of Rs.8,00,000/- shall be paid to the complainant as compensation.

(iv) Since the lis is privy to the parties and no State machinery is involved, there shall be no order for awarding any amount out of the fine amount towards defraying expenses of the State, in view of our Hon'ble High Court's decision in D.B. Jatti Vs. Naraindas Bodaram [Crl.Rev.Petition No.932 of 2021].

(v) The personal bond executed by the accused stands cancelled.

(vi) A copy of this judgment shall be provided to the accused free of cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then initialed by me and pronounced in the Open Court on the 26th day of March, 2026)

(Ganesha Padiyar U)
Addl. Senior Civil Judge & JMFC,
Karwar.

Digitally signed by Ganesh Padiyar U (Addl Senior Civil Judge and JMFC Court Karwar)

A N N E X U R E

1. **List of witnesses examined for the complainant :**

P.W.1 : Yeshvant Uday Naik

2. **List of witnesses examined for the accused :**

- NIL -

3. **List of documents exhibited for the complainant :**

Ex.P.1 : Cheque

Ex.P.1(a) : Signature of the accused

Ex.P.2 : Cheque Return Memo

Ex.P.3 : Office copy of legal notice

Ex.P.4 : Postal Receipt

Ex.P.5 : Postal Track Consignment

Ex.P.6 : Agreement

4. **List of documents exhibited for the accused :**

Exs.D.1 & 2 : Statements of Account

(Ganesha Padiyar U)
Addl. Senior Civil Judge & JMFC,
Karwar.

Digitally signed by Ganesh Padiyar U (Addl Senior Civil Judge and JMFC Court Karwar)