KAUK020027402025

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

DATED THIS 23rd DAY OF APRIL, 2026.

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

C.C.No.2325/2025

Complainant	:	The Ashray Co-operative Credit Society Ltd., Sadashivgad, Karwar, Branch Sadashivgad, Represented by its Authorized Recovery Officer, Shri Narayan K. Naik, Age: 42 years, R/o: Sadashivgad, Karwar Taluk. **(By Sri P. B. Tandel Advocate)**
		V/s
Accused	:	Sri Pavankumar Govind Gosavi, Age: 34 years, Occ: Business, R/o: ##3307/D. Hireshitta, Baad, Nandangadda, Karwar, Uttar Kannada. **(By Sri N. M. Madiwal Advocate)**
Cognizance taken on		11-06-2024
Plea recorded on		15-10-2025
Offence alleged		Section 138 of N.I. Act

Evidence commenced on	18-10-2025
Evidence closed on	09-03-2026
Judgment pronounced on	23-04-2026
Final order	**Acquitted**

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. Case of the complainant in nutshell is as under:

Accused had borrowed a business loan of Rs.1,25,000/- from the complainant society which was sanctioned on 29.06.2020, agreeing to repay the same in 4 years with EMIs. After availing the loan, the accused became a chronic defaulter in its repayment. There was a balance of Rs.1,66,735/- in the loan account of the accused. When the complainant has requested the accused to repay the loan, the

accused has issued a cheque bearing No.041514 dated 15.04.2024 for Rs.1,66,735/- drawn on IDBI Bank, Karwar Branch towards discharge of loan liability. The complainant has presented the said cheque through State Bank of India, Chittakula-Sadashivgad Branch on 22.04.2024. The said cheque returned unpaid and dishnoured for the reason "INACTIVE ACCOUNT" as per cheque return memo dated 22-04-2024. Hence the complainant has got issued legal notice dated 04-05-2024 calling upon the accused to pay the cheque amount. The said legal notice was served to the accused on 09-05-2024. The accused has neither paid the cheque amount nor replied 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. Recovery Officer of the complainant society Mr. Narayan K. Naik has examined himself as PW.1. Documents are marked as Ex.P.1 to Ex.P.15 in his deposition.

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. The accused has not examined in defence.

8. The learned counsel for the complainant Sri P. B. Tandel and the learned counsel for the accused Sri N. M. Madiwal 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	***Negative***
Point No.2	***Negative***
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 15-04-2024 for Rs.1,66,735/- said to have been issued by the accused for discharging the loan lent by the complainant society to him was dishonoured for insufficiency of funds in his bank account and consequently the complainant has initiated action under Section 200 Cr.P.C. for the 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 its case, the complainant society has examined its Recovery Officer Mr. Narayan K. Naik 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 in lieu of sworn statement filed by the aforesaid recovery officer of the complainant society has been treated and taken as the evidence of the complainant as

PW.1. In his affidavit treated as his evidence 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.15.

15. If the evidence is assessed, the obtaining picture is this. The pleas found in the complaint are that the accused borrowed business loan of Rs.1,25,000/- from the complainant society on 29-06-2020 and when the complainant asked the accused of repayment, the latter issued cheque dated 15-04-2024 for Rs.1,66,735/- drawn on IDBI Bank, Karwar Branch. The complainant has also stated about the dishonour of above cheque for want of sufficient funds in the bank account of the accused, and the latter's failure to comply with the demand made in its notice after the cheque was dishonoured.

16. The recovery officer of the complainant society who adduced evidence as PW.1 reiterated the contents of the complaint in his affidavit filed in lieu of examination-in-chief.

17. In the case on hand, as could be seen from the cross-examination of PW.1, the borrowal of loan by the

accused to the tune of Rs.1,25,000/- on 29-06-2020 from the complainant society is not in dispute. Furthermore, the execution of loan documents by the accused marked Ex.P.8 to Ex.P.14 in favour of complainant society is also not in dispute. The accused has seriously disputed the amount due as claimed by the complainant. According to the accused, the amount shown in Ex.P.1 cheque i.e., Rs.1,66,735/- is not a legally enforceable debt since the accused is not due for such sum of money.

18. As could be seen from the cross-examination of PW.1, the accused has taken as a specific defence that the accused is not liable to pay the amount shown in Ex.P.1 cheque and the said amount is not a legally recoverable debt.

19. What is noticeable is that in the case at hand, though the accused in the cross-examination of PW.1 denied his signature on Ex.P.1 cheque and that the same was forged, there is nothing on record to indicate as such. The accused has not made any endeavour to prove the said allegation. However records disclose that the complainant has complied with the basic and procedural requirements as contemplated

in Section 138 of N.I. Act. Moreover, the receipt of legal notice by the accused is also not in dispute. Therefore presumption has to be drawn in favour of the complainant as provided under Section 139 of the N.I. Act. Therefore now the Court would have to examine whether the accused has been able to rebut or displace the statutory presumption.

20. As regards the existence of legally enforceable debt, it is relevant to note that in **Rangappa Vs. Mohan reported in (2010) 11 SCC 441**), the Hon'ble Apex Court held that "***presumption under Section 139 of the N.I. Act does not include the existence of legally enforceable debt or liability***."

21. Section 139 of N.I. Act provides that it is to be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, referred to in Section 138 for the discharge, in whole or in part of any debt or other liability. Thus what is presumed under Section 139 of N.I. Act is that the cheque is issued towards discharge of any debt or other liability. This is the extent of presumption that could be drawn.

22. Thus, it is clear that the existence of legally enforceable debt is not a matter of presumption. Therefore the existence of legally enforceable debt should be independently proved by the complainant. Furthermore, the rebuttal does not have to be conclusively established, but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exists or consider its existence to be reasonably probable, the standard of responsibility being that of prudent man. Thus necessary conclusion is that for rebutting such presumption, what is needed is to raise a probable defence. All the circumstances, including the evidence adduced on behalf of the complainant could be relied upon for that purpose.

23. In that light of the matter, I shall now examine the evidence led on behalf of the complainant.

24. PW.1 claims to be the recovery officer of the complainant society.

25. In the cross-examination of PW.1, the accused has seriously disputed the amount due as claimed by the complainant.

26. In the cross-examination, PW.1 has answered that he could produced the account statement pertaining to the loan of the accused for the period from 2020 to 2024.

27. Referring to Ex.P.15 which is stated to be a statement of account pertaining to the loan account of the accused, PW.1 has cross-examined on that statement. To a specific question by the defence as to whether the date of cheque i.e., 15.04.2024 is shown in Ex.P.15. PW.1 answers that the same is mentioned. He further states that the date 15.04.2024 is included from the date 29.06.2020 to 17.10.2025. He also admits that Ex.P.15 contains certain other entries excepting entry on 15.04.2024. He clarifies that as no transaction took place on 15.04.2024, the said date is not mentioned and no balance is shown on that date. PW.1 states that in Ex.P.15 there is an entry showing the balance of Rs.1,66,735/-. This answer is totally contrary to what is reflected in Ex.P.15 statement of account. Further as rightly pointed out and contended by the learned counsel for the accused, as on the date of issuance of cheque i.e., on 15.04.2024, Ex.P.15 statement of account does not disclose

outstanding balance to the tune of Rs.1,66,735/- as shown in Ex.P.1 cheque. Furthermore, the statement of account so produced by the accused which is marked as Ex.P.15 cannot be believed. Because it is not duly certified as it contains the true and correct entries that are generated from the computer system being maintained by the complainant society in the regular course of its business. It is not even duly certified and signed by the competent officer of the complainant society. It does not reveal the name of the manager or the person who signed it. It appears that the same is signed for the manager. The statement of account is also not accompanied by a certificate as required under Section 65B of the Evidence Act. In the absence of clear and cogent statement of account showing the outstanding balance to the tune of amount mentioned in cheque, it is not possible to say that the accused is due for such a sum just because the complainant has produced certain loan documents as Ex.P.8 to Ex.P.14. As already stated, the borrowal of loan by the accused is not in dispute. What is seriously disputed by the accused is the amount due as on the date of issuance of cheque. Therefore,

it is for the complainant to prove with clear and cogent evidence that the accused was due for the amount mentioned in Ex.P.1 cheque.

28. Moreover, Ex.P.15 statement of account reveals outstanding balance of Rs.1,19,956/- on a relevant date and therefore, it is not possible to say that there exists a legally enforceable debt as on the date of issuance of Ex.P.1 cheque. This difference and discrepancy found in Ex.P.15 remain unexplained by the complainant.

29. I have carefully scrutinized Ex.P.15 statement of account. At the outset it is to be noted that it is not forthcoming as to who has certified the said statement of account. It does not contain the name and designation of the Manager or Officer of the complainant society. It does not contain even any certification to the effect that the entries or contents of Ex.P.15 are all true and the copy of original.

30. When certain furious discrepancies and disparities in Ex.P.15 are pointed out in the cross-examination of PW.1 with respect to the amount due, it is incumbent upon him to

explain as to how the outstanding balance is mounted to such an extent as shown in Ex.P.1. But it remain unfathomed.

31. Moreover, it would be obvious that the total outstanding liability would be any sum less than the cheque amount. Thus, when any sum shown in the cheque is for higher amount than the outstanding liability and if that excess amount is stated to be towards interest, penal interest etc., remains unexplained, then Section 138 of the N.I. Act cannot be said to be attracted for the reason that the complainant could not prove the exact amount of outstanding liability. Mere admission regarding borrowal of loan would not be enough to show the subsisting legal liabilities to the extent of amount covered by the cheque.

32. Thus the conclusion is that the statement of account (Ex.P.15) in respect of the loan transaction does not match with the amount of cheque (Ex.P.1).

33. Unless the complainant proves by clear and cogent evidence that the liability to be cleared is actually to the tune

of cheque amount, the complainant could not have made use of that cheque for such liability.

34. The existence of legally enforceable debt or liability have to be proved in the first instance by the complainant, as held by the Hon'ble Apex Court in **(2009) 1 SCC 492 – P. Venugopal Vs. Madan P. Sarathi**.

35. Complainant herein is a Co-Operative Society. It must have records and documents to prove the loan liability of the accused as on a particular or relevant date, more particularly as on the date of cheque in the instant case. But the complainant did not produce the relevant records or books of account including the loan ledger (manually maintained) or an authenticated and clear statement of account either maintained manually or through computer. As already stated, Ex.P.15 statement of account creates serious doubt as a result of several discrepancies noticed herein above. There is inconsistency as regards the amount that was due in respect of which the cheque had been issued. There cannot be any discrepancies or disparities in Ex.P.15.

36. Therefore it cannot be said that the cheque (Ex.P.1) was issued in discharge of the liability to the tune of amount covered by it.

37. Our Hon'ble High Court in **2014 (4) KCCR 3204 – Vasavi Credit Co-operative Society Limited, Hospet Vs. H.L. Manjunath**, has held as under :

> "NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138 – Acquittal – Appeal against – Complaint by co-operative society – Entries in the records of complainant not tallying with cheque amount – Material on record also showing that matter had been settled before Lok Adalat – Appeal dismissed as devoid of merit."

38. Further the Hon'ble Gujarat High Court in the case of **Pramodkumar Chhotalal Vs. State of Gujarat** reported in **2024 (1) Crimes 329**, has held that "if the cheque was for an amount which was more than the amount of debt, Section 138 could not be attracted."

39. In the light of the discrepancies occurring in Ex.P.15 statement of account, the manual ledger account admittedly maintained by the complainant assume

significance and the same would be material evidence to prove the exact amount of loan outstanding on a relevant date. However the complainant has withheld the production of manual ledger account pertaining to the loan account of the accused. Therefore failure to produce such a material evidence enable this Court to draw adverse inference against the complainant as envisaged under Section 114(g) of the Indian Evidence Act, 1873.

40. Thus viewed from any angle, the above discrepancy brought out in the evidence of PW.1 leads to several suspicious circumstances. Thus the onus has now shifted to the complainant and it is obliged to prove the existence of debt or liability as a matter of fact. Therefore it is crystal clear the evidence led by the complainant in the matter of proving the existence of legally enforceable debt is also not credible due to many improbabilities discussed above.

41. Under these circumstances, it is difficult to believe that Ex.P.1 cheque was issued by the accused to clear debt as stated therein when he was not due to that extent ; that

creates serious doubts about issuance of Ex.P.1 cheque by the accused.

42. At the cost of repetition, it relevant to state that Ex.P.15 is the only document relied upon by the complainant to prove the existence of legally enforceable debt. Where the materials produced by the complainant itself disclose suspicious circumstances surrounding the transaction and especially when Ex.P.15 is dubious and if no satisfactory explanation is tendered by holder of instrument to that effect, no conviction is legally permissible solely banking upon statutory presumptions, notably, in the case on hand, the accused has successfully rebutted the statutory presumptions under Sections 118 and 139 of the N.I. Act by eliciting favourable answers in the cross-examination of PW.1. Therefore, the accused not examining himself in defence is not at all fatal to his case.

43. The Hon'ble Apex Court in **(2006) 6 SCC 39 – M.S. Narayana Menon Vs. State of Kerala**, has elaborately considered the question of the standard of proof for rebutting

the mandatory presumption drawn under Section 139 of N.I. Act. The Hon'ble Supreme Court held that if some material is brought on record consistent with the innocence of the accused, which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal. It is further held that it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and that the standard of proof evidently is preponderance of probabilities.

44. The Hon'ble Supreme Court in **Kumar Exports Vs. Sharma Carpets** reported in **(2009) 2 SCC 513** has observed and held as under :

> "In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exists-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of

> probabilities justifying a finding that there was 'no debt/liability'."

45. In view of all these, in the present case, this Court is of the considered opinion that the complainant has failed to prove the existence of legally enforceable debt. The complainant is obliged to prove the existence of legally enforceable debt or liability as a matter of fact. The presumption under Section 139 of N.I. Act does not again help the complainant. Further, I am of the considered view that the accused has satisfied the Court that there is a reasonable possibility of the non-existence of the consideration. The necessary conclusion is that the accused has successfully rebutted the presumptions drawn in favour of the complainant.

46. Taking into consideration all the above and also in view of the decisions supra, this Court is of the considered opinion that the accused has properly and satisfactorily rebutted the presumption available to the complainant under Section 118 and 139 of N.I. Act by the admission of PW.1.

47. In addition to the above, it is also pertinent to note that the accused has seriously questioned the authority and competence of PW.1 to represent on behalf of the complainant and also give evidence in this matter.

48. The only documents relied upon by PW.1 in that regard are Ex.P.6 and Ex.P.7. Ex.P.6 is stated to be the extract of resolution passed in the Managing Committee of the complainant society on 30.03.2024. This document does not stand the scrutiny of the Court even for a minute. Admittedly, Ex.P.6 is not the true extract of the resolution stated to be passed in the meeting held by the Managing Committee.

49. At the outset, it is to be noted that in the cross-examination, PW.1 has answered that he has not produced the resolution book containing the resolution referred to in Ex.P.6. No proper explanation is offered by PW.1 in his cross-examination which prevented him from producing the original resolution book maintained by the society. Despite specific cross-examination on that point, the complainant has not at

all bothered either to produce the original resolution book or to produce a true copy of the extract of such resolution. The extract of resolution produced by the complainant as per Ex.P.6 cannot be termed as an extract of resolution because it is prepared a letter head of the complainant society and the same partakes the character of a mere statement but not the true extract of the resolution stated to have been passed in the meeting of the Managing Committee. Furthermore, PW.1 has clearly admitted that at that point of time no such Managing Committee was in existence and for a period of eight months Administrative Officer was in-charge of the entire affairs of the complainant society. Therefore, Ex.P.6 relied upon by the complainant cannot be held to be valid in the eye of law to say that PW.1 has been duly authorized to give evidence in this matter. Ex.P.7 which is stated to be an authorization letter also cannot be held to be valid for more reasons than one. At the outset, Ex.P.7 does not refer to any resolution passed by the Managing Committee of the complainant society. Nextly, Ex.P.7 is not properly signed and certified by the competent officer of the complainant society.

It also does not contain specific case number and other particulars of the case. In the cross-examination PW.1 states that Ex.P.7 does not contain the signature of the Chairman or any of the members of the Managing Committee. All these clearly shows that PW.1 has not been duly authorized to give evidence in this matter. In the absence of proper resolution being validly passed in the meeting of the Managing Committee authorizing him to give evidence in this matter, it is not possible to say that PW.1 is competent to give evidence based on Ex.P.6 and Ex.P.7. Therefore, the evidence tendered by PW.1 would not help the complainant to prove its case.

50. Considering all the above, this Court is of the considered view that the complainant has failed to prove its case. It has also failed to establish the actual amount due as shown in Ex.P.1 cheque. At the cost of repetition it is to be noted that PW.1 has not been duly authorized to give evidence in this matter. The accused has satisfactorily dislodged the statutory presumption in favour of the complainant by impeaching the credit of PW.1 during cross-examination and due to the absence of clear documentary

proof for establishing the actual amount due covered under Ex.P.1 cheque. Therefore it is not possible to hold that the offence under Section 138 of N.I. Act is proved against the accused. Hence, in this view of the matter the accused is entitled to an acquittal. Hence I answer Points No.1 and 2 in the '***Negative***'.

51. **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(1) of Cr.P.C., the accused is acquitted of the offence punishable under Section 138 of N.I. Act and he is set at liberty forthwith.

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

(Dictated to the Stenographer directly on computer, typed by her, corrected and then initialed by me and pronounced in the Open Court on the 23rd day of April, 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 : Mr. Narayan K. 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 Acknowledgment
Ex.P.6	: Copy of Extract of Resolution
Ex.P.7	: Authorization Letter
Ex.P.8	: Loan Application
Ex.P.9	: Loan Agreement
Ex.P.10	: Letter of Installment
Ex.P.11	: Loan Bond and Promissory Note
Exs.P.12 to 14	: Receipts
Ex.P.15	: Statement of Account

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

- NIL -

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

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