

KAUK020032642024



C.C./2224/2024

IN THE COURT OF
PRL. SNR. CIVIL JUDGE AND CJM COURT, KARWAR AT
KARWAR, UTTARA KANNADA

PRESENT: Smt. Kavita S.Undodi,
B.A. LL.B(Spl)
Prl. Senior Civil Judge & CJM and
1st Addl. M.A.C.T., Karwar.

C.C.No.2224/2024

DATED THIS THE 22nd DAY OF APRIL -2026

Complainant : Akshaya Co-Operative Credit Society Ltd.,
Karwar,
Represented by its Branch Manager,
Anil Francis Britto,
Age: 43 years, R/o: Karwar.

(Represented by Sri. G.V.N., Advocate)

-V/s-

Accused: Stephan Louis Rego,
Age: 65 years, Occ: Business,
R/o: # 887, Khursawada,
Kajubag, Karwar.

(Represented by Sri. H.M.N., Advocate)

J U D G M E N T

This Criminal case arises out of private complaint filed by the complainant in P.C.R.No.231/2023. This case has been transferred from Prl. JMFC Karwar, vide proceedings order No.142/2024 dated 18-09-2024 by the Hon'ble Prl. District and Sessions Judge, U.K. Karwar.

2. The case of complainant is that:-

The accused was customer of the Complainant Society and approached the Complainant Society for grant of house loan and accordingly the Complainant Society had sanctioned and paid sum of Rs.40,00,000/- as a house loan on 24-02-2020. The said loan has to be paid in 240 equal monthly installments. The accused has not paid loan amount as per the promise. The accused was a chronic defaulter in payment of installment. The loan amount of Rs.51,68,000/- was pending. The complainant requested for repayment of loan amount. The accused has issued a cheque bearing No.688482 dated 29-08-2023 for sum of Rs.51,68,000/- drawn on Canara Bank, Karwar Branch for repayment of loan amount. The complainant presented the cheque for encashment to the South Indian Bank Ltd. Branch Karwar on 30-08-2023 and on 31-08-2023 the said cheque returned unpaid to the complainant with a reason that funds insufficient in account of account holder.

3. It is further averred in the complaint that the accused has issued the cheque to the complainant to discharge his legal debt and liability incurred

by him under legal obligation. The accused has issued cheque deliberately knowing fully well that he had no sufficient fund in his account, hence the accused has committed an offence punishable under section 138 of Negotiable Instrument Act. The complainant has issued legal notice to the accused through his counsel on 18-09-2023 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of notice. The legal notice served on accused on 22-09-2023. The accused has not paid the cheque amount. Hence this complaint.

4. The court has recorded sworn statement of complainant. Since the mandatory requirements of the section 138 of the Act were complied the Prl. JMFC Court, Karwar, has taken the cognizance of the offence and issued summons to the accused. In pursuance of the summons issued by the JMFC Court, the accused appeared through his counsel and got released on bail. The copy of the complaint was furnished to the accused and recorded the plea and explained to the accused for which he pleaded not guilty and claimed to be tried. Then case is posted for evidence.

5. After transfer of the case to this court the learned counsel for the complainant filed memo to adopt the affidavit filed along with complaint as a chief examination and recorded further chief examination and got marked Ex.P-1 to Ex.P-9. Though sufficient time has been granted accused has not cross examined PW-1. After completion of complainant's side evidence, the statement of accused under section 313 of Cr.P.C., recorded, he denied the

incriminating circumstances appeared in the evidence. The accused not stepped into witness box.

6. Heard the arguments of the learned counsel for complainant and learned counsel for accused submitted arguments may be taken as heard.

7. On the basis of the material on record, the following points arise for my consideration.

: POINTS :

1. Whether complainant Society proves beyond reasonable doubts that accused in discharge of legally recoverable debt, has issued a cheque bearing No.688482 dated 29-08-2023 for Rs.51,68,000/-, thereby the accused has committed an offence punishable under section 138 of Negotiable Instruments Act?

2. What Order?

8. My answer to the above points are as under:-

Point No.1 :- In Affirmative

Point No.2 :- Is as per the final order

for the following:

REASONS

9. **Point No.1** :- It is burden on the complainant to prove that i) The cheque for an amount is issued by the drawer to the payee / complainant on a bank account being maintained by him ii) The said cheque is issued for the

discharge, in whole or in part of any debt or liability iii) The cheque is returned by the bank unpaid on account of insufficient amount to honor the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with the bank. iv) The cheque is presented within 3 months from the date on which it is drawn or within the period of its validity. v) Within 30 days a legal demand notice is issued by the payee or the holder in due course to the drawer of the cheque on receipt of information by him from the bank regarding the dishonor of the cheque. vi) The drawer of the said cheque fails to make payment of the said amount of the money as demand in the legal demand notice to the payee or the holder in due course within 15 days of the receipt of the said notice vii) The debt or other liability against which the cheque was issued is legally enforceable.

10. During the course of arguments, the learned counsel for complainant submitted that the accused has obtained house loan of Rs.40,00,000/- but not paid the said amount with interest and issued cheque and on presentation of the cheque for collection, the said cheque returned with shara that "Funds Insufficient" and complainant issued legal notice to the accused calling upon him to repay the amount within 15 days from the date of receipt of notice, but accused has not paid the amount.

On the other hand learned counsel for the accused submitted that arguments may be taken as heard.

11. Herein this case the accused has not cross examined the PW-1, hence evidence of PW-1 became unchallenged. Further there is no dispute in respect of cheque and signature appearing on the cheque in question. The proposition has been duly observed by the Hon'ble Supreme Court in the case of **Bir Singh V/s Mukesh Kumar, (2019) 4 SCC page -197**. The relevant paras are reproduced herewith;

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 N.I. Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

37. 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 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 filed in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the panel provisions of section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards on 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 alleging evidence”.

In present case accused has not denied the cheque or signature appearing on the cheque in question.

12. It is specific case of the complainant that cheque is issued for the repayment of house loan obtained by the accused and on presentation of the said cheque for encasement, same has been dishonored as per Ex.P-3 endorsement. This fact is not denied by the accused. Further the accused has not denied the service of notice as per Ex.P-6. On perusal of Ex.P-6 postal acknowledgment it shows that the notice served on the accused. The signature appearing on the acknowledgment is not disputed by the accused. Hence the ingredients of (iii), (iv) and (vi) is also stands proved.

13. Section 139 of Negotiable Instrument Act, which mandates that unless is contrary is to proved, it is to be presumed that the holder of the 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. Section 118(a) and 139 of the N.I. Act are being reproduced herewith.

14. Section 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;**
- 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 acceptable 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 the a negotiable instrument were made in the order in which the appeared thereon;**
- f) as to stamps – that a lost promissory note, bill of exchange or cheque was duly stamped;**
- g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course;**

Provided that, where the instrument has been obtained from its lawful owner, or any person in law custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or unlawful consideration, the burden of proving that the holder is holder in due course lies upon him.

15. Section 139 - Presumption in favour of holder – It shall be presumed, unless the contrary is proved, that the holder of cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. Under Sec. 139 of N.I. Act presumption has to be raised by the court in favour of complainant. The presumption referred in section 139 of N.I. Act is a mandatory presumption and not a general presumption.

16. The presumption contemplated under section 139 of N.I. Act, is a rebuttable presumption. However the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque. In the present case the accused has not denied the cheque and signature appearing on the cheque in question and he has not rebutted the presumption of law in favour of the complainant. On the aspects of preponderance of probabilities, the accused has to bring on record such facts and circumstances which may lead the court to conclude either that the 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 exist. In present case the accused has only denied the liability in the plea and failed to prove the same either by rebutting the testimony of the PW-1 by cross examination, which led this court to believe that the non existence of the consideration for which cheque in question is alleged to have been issued to the complainant by the accused, is so probable that any prudent man would consider the same in

the facts and circumstances similar to the case in hand or by leading any cogent and believable evidence. Hence in present case the burden of proving the fact of the issuance of cheque in question in discharge of legally enforceable debt stands discharged and the accused has miserably failed to discharge his reverse onus.

17. On perusal of the oral and documentary evidence on record it is opinion of the court that the complainant has successfully proved beyond all reasonable doubt that, the accused has obtained home loan of Rs.40,00,000/- and issued Ex.P-2 cheque in question for sum of Rs.51,68,000/- (Rupees Fifty-One Lakhs Sixty-Eight Thousand only) infavour of complainant, thereafter complainant has presented the said cheque through his bank and same was returned dishonored with an endorsement of "Funds Insufficient" and thereafter he got issued the legal notice to the accused and said notice served upon him, inspite of it the accused did not paid the cheque amount, hence the complainant has filed present complaint against the accused. On the other hand the accused has failed to rebut the presumption available in favour of the complainant in respect of existence of legally recoverable debt under Ex.P-2 cheque. Therefore accused has committed an offence punishable under section 138 of N.I. Act., accordingly **Point No.1 answered in Affirmative.**

18. Point No.2:- The Negotiable Instruments Act was enacted to bring credibility to the cheque and the very purpose of enactment is to be

promote the use of the negotiable instrument, while to discharge the issuance of cheque without having sufficient funds in their accounts. Such being the case, the intention of the legislature is that, complainant be suitable compensated while accused be punished for his act. Hence while awarding the compensation the said fact is to be kept in mind and suitable compensation is awarded to the complainant certainly it will not cause injustice to the accused, accordingly the complainant is entitled for the compensation, hence I proceed to pass the following:

ORDER

Acting under section 255 (2) of Cr.P.C. accused is hereby convicted for the offence punishable under section 138 of N.I. Act.

Accused is hereby sentenced to pay a fine of Rs.51,68,000/- (Rupees Fifty-One Lakhs Sixty-Eight Thousand only) in default he shall undergo simple imprisonment for period of 6 month for the offence punishable under section 138 of N.I. Act.

Further acting under section 357 (1) of CR.P.C. out of the fine amount on recovery a sum of Rs.51,68,000/- shall be paid as compensation to the complainant.

The bail bond and surety bond stands cancelled.

Office is directed to furnish free copy of judgment to the accused.

(Dictated to stenographer on Lap-tap, print out taken by her, corrected and then pronounced by me in Open-Court this the **22nd day of April 2026**).

(Kavita S. Undodi)
Prl. Senior Civil Judge & C.J.M.
Karwar.

ANNEXURE

List of witnesses examined on behalf of complainant :-

PW-1 : Anil Francis Britto

List of documents marked on behalf of complainant:-

Ex-P-1 : Authorization Letter

Ex-P-2 : Cheque

Ex-P-3 : Memo issued by bank

Ex-P-4 : Legal notice dated 18-09-2023

Ex-P-5 : Postal Receipt

Ex-P-6 : Acknowledgment

Ex-P-7 : True copy of Loan Application

Ex-P-8 : Resolution

Ex-P-9 : Account Statement from 11-03-2020 to 29-08-2023

List of witness examined on behalf of accused:-

-NIL-

List of documents got marked on behalf of accused:-

-NIL-