

KAUK020034362024



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

**DATED THIS 6<sup>th</sup> DAY OF MARCH, 2026.**

Present : **Sri. Ganesha Padiyar U.,**  
*B.Com. LL.B.*

**Addl. Senior Civil Judge & JMFC.,  
KARWAR.**

**C.C.No.2312/2024**

<b>Complainant</b>	:	St. Milagries Credit Souharda Co-Operative Ltd., Head Office Karwar, Represented by its Senior Assistant And duly authorized Person, Mr. Nitesh Taranath Kotharkar, Age: 26 years, R/o Majali, Karwar.  <b>(By Sri R V Bhat Advocate)</b>
V/s		
<b>Accused</b>	:	Suheb S. Mukadam R/o. Shingewadi, Kadra, Karwar U.K. 581396.  <b>(By Sri P G Polekar Advocate)</b>
Cognizance taken on		28-06-2024
Plea recorded on		05-03-2025
Offence alleged		Section 138 of N.I. Act

Evidence commenced on	20-03-2025
Evidence closed on	27-02-2026
Judgment pronounced on	06-03-2026
Final order	<b>Convicted</b>

### **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 having availed loan from the complainant society to the tune of Rs.2,75,000/- in the year 2022 and the loan became overdue and the outstanding loan liability was Rs.2,98,405/- as on 22-04-2024 and when the complainant has requested the accused to repay the loan liability the accused has issued a cheque bearing No.948161 dated 23-04-2024 for Rs.2,98,405/- drawn on State Bank of India,

Kadra Branch, towards discharge of loan liability. The complainant has presented the said cheque through Canara Bank, Karwar Branch on 23-04-2024. The said cheque returned unpaid and dishnoured for the reason "Funds insufficient" as per cheque return memo dated 29-04-2024. Hence the complainant has got issued legal notice dated 24-05-2024 calling upon the accused to pay the cheque amount. The said legal notice returned with postal endorsement 'Left without Instructions Returned to sender'. 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.142 of 2024 dated 18-09-2024 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. Nitesh Taranath Kotharkar has examined himself as PW.1. Documents are marked as Ex.P.1 to Ex.P.14 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 R.V. Bhat and the learned counsel for the accused Sri P G Polekar 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**

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

11. My findings are as under :

<b>Points</b>	<b>Answer</b>
<i>Point No.1</i>	<b><i>Affirmative</i></b>
<i>Point No.2</i>	<b><i>Affirmative</i></b>
<i>Point No.3</i>	<i>As per final order for the following:</i>

**REASONS**

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 23-04-2024 for Rs.2,98,405/- 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 which has been intimated to the drawer 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. Nitesh Taranath Kotharkar 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 Senior Assistant 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.14.

15. Ex.P.1 is the cheque dated 23-04-2024 stated to be issued by the accused in favour of the complainant which has been drawn on State Bank of India, Kadra Branch. Ex.P.2 is the cheque return memo dated 29-04-2024 issued by the Canara Bank, Karwar Branch 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.

16. 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'.

17. Ex.P.3 is the office copy of legal notice dated 24-05-2024 got issued by the complainant to the accused. Ex.P.4 is the returned legal notice. Ex.P.4(a) is the returned postal envelop. A perusal of Ex.P.4 and Ex.P.4(a) would clearly go to show that the said legal notice has been returned to the complainant's Advocate with postal endorsement 'Left without Instructions Returned to sender'.

18. Notably, in the case on hand, the accused has not at all disputed his address shown in the legal notice as well as the postal envelop.

19. The Hon'ble Apex Court in the case of **N. Parameswaran Unni Vs. G. Kannan and Another** reported in **(2017) 5 SCC 737**, has observed and held that "it is clear

from Section 114 of the Evidence Act, 1872 that once notice is sent by registered post correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected, then requirements under proviso (b) of Section 138 of N.I. Act, stands complied, if notice is sent in the prescribed manner. However the drawer is at liberty to rebut this presumption.”

20. The Hon’ble Apex Court in **AIR 2014 SC 3057-- M/s Ajeet Seeds Ltd Vs. K. Gopala Krishnaiah**, has held as under :

“Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”

21. Notably, the accused has failed to rebut the presumption as envisaged under Section 27 of the General Clauses Act. No contrary is proved by the accused.

22. In view of the above decisions, in the case on hand, it is to be held that there is a proper and due service of legal notice upon the accused having regard to the presumption of due service as envisaged under Section 114 of the Evidence Act, 1872 and Section 27 of the General Clauses Act. Hence, the contention of the accused that no notice has been served upon the accused fails.

23. Hence, having regard to the provisions of Section 114 of the Evidence Act and Section 27 of the General Clauses Act and also in view of the decisions of Hon'ble Apex Court mentioned supra, this Court is of the considered opinion that there is a valid service of notice of demand upon the accused. On the other hand, the accused has failed to rebut the statutory presumption regarding service of notice through registered post. Hence I hold that there is a due

compliance of Section 138(b) of the N.I. Act. Then the argument of learned counsel for the accused does not sound acceptance.

24. Moreover in the case at hand, the accused has not at all denied or disputed the issuance or receipt of legal notice sent by the complainant.

25. Therefore, this Court is of the opinion that there is due service of notice of demand upon the accused as required under Section 138 of N.I. Act.

26. To prove the loan transaction, the complainant has produced documents which are marked through PW.1 as Ex.P.7 to Ex.P.14. They include loan application, loan sanction letter, letter of installment, demand promissory note, loan agreement, hypothecation agreement, undertaking by the guarantors and statement of account pertaining to the loan account of the accused. All these documents remain unchallenged despite cross-examination of PW.1.

27. Ex.P.5 is the extract of Resolution passed in the Board Meeting held on 28-03-2024 authorizing Mr. Nitesh Taranath Kotharkar to represent all the cases filed by the complainant society. Ex.P.6 is the authorization letter dated 27-06-2024 issued by the Managing Director of the complainant society in favour of the aforesaid Mr. Nitesh Taranath Kotharkar, Senior Assistant of the society authorizing him to give evidence etc., relating to the cheque dishonour criminal cases.

28. It is pertinent to note that the authorization so given to PW.1 and his competency to represent the case and to give evidence in this matter has not been seriously disputed by the accused. No doubt PW.1 has answered in the cross-examination that the managing committee of the complainant society had duly authorized him to file complaint and also to give evidence. Despite cross-examination, PW.1 stood the test of cross-examination. Thus, suffice it to state that PW.1 is competent to depose on behalf of the complainant society.

29. The only defence taken by the accused in the cross-examination of PW.1 is that the complainant has obtained Ex.P.1 cheque as security while obtaining KYC documents for disbursing the loan and the same has been misused and filed the present complaint.

30. Pertinently, in the case at hand, the accused has not at all disputed his signature on Ex.P.1 cheque.

31. On perusal of the entire materials on record, 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 27-06-2024 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.

32. 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; .....

33. 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.

34. 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.

35. 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.”

36. 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.”**

37. 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 exist.

38. 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.”

39. 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.”

40. 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.”

41. 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. Notably, in the instant case, the signature of the accused on Ex.P.1 cheque is proved to be that of accused and the accused has failed to prove that he had issued the said cheque as security while borrowing the loan. Thus obviously the onus would shift upon the accused to prove that cheque was not issued for discharge of any debt or other liability.

42. It is also not in dispute that the accused has borrowed loan of Rs.2,75,000/- from the complainant society as averred in the complaint. Because the accused himself as admitted that Ex.P.1 cheque was given at the time of disbursement of loan. However nothing is brought on record by the accused to show that he had issued the said cheque at the time of availment of loan.

43. Therefore, on careful appreciation of the averments made in the complaint-petition and the documents relied

upon by the complainant marked through PW.1 as discussed above clearly establish the existence of legally enforceable debt.

44. Taking into consideration all the above, the Court is inclined to draw presumptions under Section 118(a) and 139 of N.I. Act in favour of the complainant.

45. Having said this, now let me examine whether the accused has been able to rebut the above statutory presumptions. It is no doubt true that in order to rebut the said presumption, the accused can certainly rely upon the answers elicited in the cross-examination of PW.1 and he need not enter the witness box and lead evidence in defence. Keeping that in view let me proceed to discuss whether the accused has rebutted the statutory presumptions, by probalising his defence.

46. The accused has cross-examined PW.1.

47. In the cross-examination a suggestion is put to him to the effect that the complainant has misused the cheque

given by the accused as security while disbursement of loan. PW.1 has denied the said suggestion.

48. However, the accused has not led clear and cogent evidence or brought any circumstance to prove or probabalise his defence that he had issued Ex.P.1 cheque as security.

49. On careful appreciation of entire evidence of PW.1, it appears to the Court that the defence of the accused is not inspiring confidence. His story appears to be afterthought aimed at defeating valid claim of the complainant. Notably despite due service of legal notice upon the accused, he has not at all issued any reply to the said legal notice. Though the accused has contended that he has issued the said cheque as security at the time of availment of loan, there is no iota of evidence to believe the version of the accused.

50. 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.

51. A mere suggestion to PW.1 in the cross-examination to the effect that the complainant has obtained the cheque as security or otherwise would not be sufficient to rebut the statutory presumptions.

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

53. 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.

54. 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 complainant. He would have stated with respect to his defence if any in his statement. 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.

55. 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.”

56. 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.

57. 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. Furthermore the evidence led by the accused in defence also does not prove his contention that Ex.P.1 cheque was issued by him as security while borrowing the loan. 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 inconsistent and volatile. 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.

58. Yet another aspect of the matter is, the accused has contended that the cheque was issued by him as security towards the loan. However this contention cannot be countenanced for one more reason. In the case of **ICDS Limited Vs. Beena Shabbir and Another** reported in **AIR 2002 SC 3014**, the Hon'ble Supreme Court has observed that "even if the dishonoured cheque in question was issued as a security cheque it will still come under the ambit of Section 138 of N.I. Act."

59. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited** reported in (2016) 10 SCC 458, the Hon'ble Apex Court at paragraph 11 observed as under:

"11. The judgment in Indus Airways is clearly distinguishable. As already noted, it was held therein that liability arising out of claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself on a par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of cheque issued for discharge of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in praesenti in terms of the loan agreement, as against Indus Airways where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. Keeping in mind this fine but real distinction, the said judgment cannot be applied to a case of present nature where the cheque was for repayment of loan installments which had fallen due those such deposit of cheque towards repayment of installments was also

described as “security” in the loan agreement. In applying the judgment in *Indus Airways*, one cannot lose sight of the difference between a transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque.”

60. In addition to the above it is also relevant to note that the Hon’ble Apex Court in **(2019) 4 SCC 197 – Bir Singh Vs. Mukesh Kumar**, it has been observed that even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption under Section 139 of N.I. Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt, the presumption would hold good. Paragraphs 32, 33, 34 and 36 of the said judgment are extracted here below for ready reference :

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

consequences of Section 138 of the Negotiable Instruments Act.

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

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

61. Hence in view of the above decisions, this Court is of the view that in the case on hand, notwithstanding that

the accused has failed to establish that the cheque in question is issued towards security and the same has been misused by the complainant, it is evident that Ex.P.1 cheque given by the accused to the complainant towards the repayment of loan as is evident from the records and which is a legally enforceable debt and therefore it would clearly fall within the ambit of Section 138 of N.I. Act. Hence theory of security cheque as contended by the accused cannot be legally sustainable. Therefore the contention urged by the learned counsel for the accused in this regard does not hold any water and cannot be approved. Thus the theory of security cheque as projected by the accused falls to ground.

62. 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.

63. 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 its 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 Mr. Suheb S. Mukadam 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.

64. 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."

65. 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**'.

66. **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.2,98,405/- (Rupees Two Lakhs Ninety Eight Thousand Four Hundred Five 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.2,98,405/- 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 6<sup>th</sup> day of March, 2026)*

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

**A N N E X U R E**

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

P.W.1 : Mr. Nitesh Taranath Kotharkar

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 : Returned Legal Notice  
Ex.P.4(a) : Returned postal envelop  
Ex.P.5 : Resolution  
Ex.P.6 : Authorization Letter  
Ex.P.7 : Loan Application

- Ex.P.8 : Loan Sanction Letter  
Ex.P.9 : Letter of Installment  
Ex.P.10 : Demand Promissory Note  
Ex.P.11 : Loan Agreement  
Ex.P.12 : Hypothecation Agreement  
Ex.P.13 : Undertaking by the guarantors details  
Ex.P.14 : Savings statement of Account

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

- NIL -

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