

KAUK220004992024



Presented on : 21-06-2024
Registered on : 21-06-2024
Decided on : 13-03-2026
Duration : 1 years, 8 months, 22 days

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
ANKOLA, AT ANKOLA, UTTARA KANNADA.**

Dated this the 13th day of March, 2026.

Presided Over by:

Smt.Priya Ravi Joglekar., B.Com LL.M..
Sr. Civil Judge and JMFC, Ankola.

CRIMINAL CASE No.200/2024
(OLD C.C.No.66/2021)

COMPLAINANT: Suprabhata Credit Souharda
Sahakari Ltd., Ankola,
R/by its Recovery Officer:
Shri Ramamurti Pramod Nayak,
Age: 28 years,
R/o Adlur, Po: Agasur, Tal.Ankola,
Uttara Kannada District.

(By Sri D.N.N., Advocate)

V/s

ACCUSED: Ravikiran Mohan Naik,

Aged about 33 years, Fish Business,
R/o: At & Po: Tadri, Gokarna,
Taluka Kumta, U.K.District.

(By Smt. P.L.N., Advocate)

J U D G M E N T

The complainant has filed this private complaint U/s.200 of Cr.P.C., against the accused for the offence punishable U/s.138 of Negotiable Instruments Act.

2. The brief case of the complainant is that:-

The complainant is a registered financial institution engaging in financial transactions. The accused availed a loan of Rs.2,50,000/- from complainant society on 25.07.2018 for the purpose of his business under CCL A/c No.1619. Vinay Subray Tandel and Ranjan Mohan Naik voluntarily stood as guarantors to the said loan. The accused and the guarantors promised to repay the loan amount within the stipulated date with agreed interest at as per the terms and conditions of the loan agreement executed by them. However, the accused was irregular in the repayment of loan amount with interest amounting to Rs.3,14,150/- as on 12.06.2020. The complainant contacted the accused and insisted for repayment of loan

amount. The accused came to the complainant office and issued a cheque bearing No.076135 dated 12.06.2020 under his Bank Account No.026300101003502 drawn on the Corporation Bank, Branch: Tadri for Rs.3,14,150/- and assured that there is sufficient fund to honour the said cheque. The said cheque was presented for encashment through its banker KDCC Bank Ltd., Branch: Ankola which was returned with bank memo as 'Funds Insufficient' as per memo dated 18.06.2020. Thereafter, the complainant issued a registered legal notice dated 24.06.2020 to him calling upon him to pay the said cheque amount within 15 days. In spite of receipt of the said registered notice by the accused on 29.06.2020 as per the Article Tracking Details furnished by the P & T Department on 11.07.2020, the accused neither paid the cheque amount to the complainant nor replied to the said notice. Hence, this complaint is filed against the accused.

3. After filing of this complaint, cognizance of offence under Section 138 of NI Act was taken, and the sworn statement of the Loan Recovery Officer of complainant society by way of affidavit was recorded. As there was sufficient material to register a criminal case against accused, a criminal case was registered against accused. In response to the summons, accused appeared

before the Court and got released on bail. The substances of accusation for the offence punishable U/s.138 of N.I.Act were recorded. The accused pleaded not guilty and claimed that he has got defence.

4. In order to substantiate its case, the Loan Recovery Officer of the complainant society got himself examined by filing affidavit as P.W.1 and got marked the documents at Ex.P1 to P12 and closed the side of complainant.

5. The statements of accused under Section 313 of Cr.P.C. are recorded. He denied the incriminating circumstances appeared in the evidence. He has not adduced defense evidence.

6. Heard the arguments of both sides and perused the materials placed before the court.

7. From the above facts of the case, the following points arise for my consideration:-

1. Whether the complainant proves that, accused issued cheque dated 12.06.2020 in favour of complainant to discharge his legal recoverable debt knowing that he was not having sufficient amount to honor the cheque and has not paid amount of Rs.3,14,150/- mentioned in the

cheque within 15 days of the receipt of the demand notice and thereby committed an offence punishable under Section 138 of Negotiable Instruments Act?

2. What order?

8. My findings on the above points are:-

Point No.1:- In the **Affirmative.**

Point No.2:- As per final order

for the following:-

REASONS

9. **POINT NO.1**:- The PW1, being the Loan Recovery Officer of the complainant, is authorized to conduct this case by passing resolution. The Ex.P.6 is the certified copy of resolution which recites PW.1 was authorized to give evidence in respect of this case against accused as per the resolution dated 17.07.2020 passed by governing body of the complainant.

10. The P.W.1 further deposed that accused approached the complainant society and availed a loan of Rs.2,50,000/- from complainant society on 25.07.2018 for the purpose of his business under CCL A/c No.1619. Vinay Subray Tandel and Ranjan Mohan Naik voluntarily stood as guarantors to the said loan. The accused and the

guarantors promised to repay the loan amount within the stipulated date and agreed interest as per the terms and conditions of the agreement executed by them.

11. During the cross-examination, he deposed that when any person came to the complainant institution for the purpose of availing loan, firstly they would verify the documents that whether he is the member of the complainant institution and thereafter they would verify the documents. The accuse obtained cash credit loan and for that loan, two sureties came with him. The loan application should be written by accused himself and thereafter, they obtained the signatures of borrower and sureties on some documents. At the time of sanctioning the loan to the accused, they obtained two Insurance Policy No.607025339 and 607025337 for the amount of Rs.2,50,000/- bond as a security. As per the request of the accused, the LIC premium amount has been deducted from the loan amount. He did not remember about that in which court the Execution case has been filed against the accused.

12. The learned counsel for the accused has taken the defense that the accused has repaid the entire loan amount, and though the accused has repaid the

entire loan amount and also adjusted from the insurance bond amount, the complainant filed false case against the accused in order to give trouble to the accused. Further, the legal notice has not been served to he accused. All these defense was taken by the accused at the time of cross-examination of PW1. But nothing elicited from the mouth of the PW 1 and he denied entire defense of the accused.

13. The Ex.P.7 is the loan application. It recites that the accused filed the said application to complainant for loan of Rs.2,50,000/- on 13.7.2018. It also says that Vinay Subray Tandel and Ranjan Mohan Naik agreed to stand as guarantors for the said loan and the Manager recommended to grant loan of Rs.2,50,000/-. The Ex.P.8 is the loan agreement. Ex.P.9 is the Demand Promissory Note. Ex.P10 and 11 are the security letters. Ex.P12 is the true copy of loan account statement. In this way, the evidence of P.W.1 coupled with above documents clearly establish that the accused borrowed loan of Rs.2,50,000/- with interest at the rate of 16% and Vinay Subray Tandel and Ranjan Mohan Naik stood as a guarantors to the said loan.

14. The PW 1 deposed that however the accused and guarantors never paid the loan amount and interest as agreed; on demand by the complainant to accused to repay the said loan amount with interest, the accused issued a cheque bearing No.076135 dated 12.06.2020 for Rs.3,14,150/- drawn on the Corporation Bank, Branch: Tadri in respect of due of loan and interest of said loan. In the said loan account stating that his bank account has sufficient amount. The Ex.P1 is the cheque dated 12.06.2020. It recites that the said cheque was issued in favour of complainant for Rs.3,14,150/-. The Ex.P1(a) is the signature of the accused.

15. Under Section 118(a) of N.I. Act, until the contrary is proved, the presumptions shall be made that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. Under Section 139 of N.I. Act, 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. Such presumptions are, no doubt, a rebuttable presumptions. The accused is to prove the non

existence of consideration by raising a probable defense to rebut said presumptions. If the accused is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, then only the onus would shift to the complainant who will be obliged to prove it, as a matter of fact and upon its failure to prove would dis-entitle him to grant of relief on the basis of negotiable instrument. Where the accused failed to prove the initial onus of proof of showing the non-existence of consideration, the complainant invariably be held entitled to the benefit of presumption arising under Section 118 (a) of N.I. Act in his favour.

16. It is the defence of accused that though the accused has repaid entire loan amount and also adjusted from the LIC Bond amount, the complainant institution filed false case against the accused. Further, it is noticed that as per Ex.P4 and 5, the legal notice was duly served to the accused as per the article tracking details of postal department. If the complainant society filed false case against the accused by misusing the cheque of the accused bearing No.076135, then definitely the accused could reply the above said legal notice by stating that the complainant society misused the cheque and also filed false case against the accused. The accused kept mum after receiving the legal notice and also after appearing before

this Court. Further, the accused never explained how did the possession of the Ex.P1 cheque handed over to the complainant institution. Therefore, the attitude of the accused shows that he had admitted the facts. Emerge viz., (1) admission regarding signature of accused on cheque and (2) its issuance to complainant i.e., lawful possession of cheque by complainant. These facts give rise to a presumption in favour of complainant as to existence of legally enforceable debt and issuance of cheque towards discharge of said debt by accused, as per decision of Hon'ble Supreme Court in Rangappa Vs. Sri Mohan reported in (2010) 11 SCC 441.

17. In the instant case, as observed above, from the above evidence, it is proved that the accused availed loan from complainant society, and the Ex.P.1 cheque is belonged to accused, and it contains his signature, and the said cheque Ex.P.1 was issued to complainant for the legally recoverable debt. The accused failed to discharge his burden of proving the non-existence of consideration either by direct or by bringing on record the preponderance of probabilities of any reliable circumstances. The complainant is, invariably, entitled to the benefit of presumption arising under Section 118 (a) of N.I. Act in his favour. Hence, it shall be presumed U/s 139 of N.I. Act from the entire oral evidence as well as

documentary evidence of complainant that the Ex.P.1 cheque was issued by the accused for amount due to complainant society.

18. The P.W.1 also deposed that the accused assured that he has got sufficient funds in the bank; the complainant presented the said cheque for encashment through KDCC Bank, Branch Ankola; but the same was returned to the complainant with an endorsement dated 18.06.2020 stating that "Funds Insufficient". The Ex.P2, being the bank memo dated 18.06.2020, clearly says that Ex.P.1 cheque is dishonoured for "Funds Insufficient" in the account of accused. Hence, the dishonour of Ex.P.1 cheque shall be presumed under Section 146 of N.I. Act.

19. The P.W.1 deposed that thereafter the complainant got issued a registered legal notice to the accused on 24.06.2020 calling upon him to pay the cheque amount within 15 days of the receipt of the same, and the said registered notice was served to accused on 29.06.2020 as per the Article Tracking Details furnished by the P & T Department on 11.7.2020, accused neither replied nor paid the amount. The Ex.P.3 is the copy of legal notice dated 24.06.2020. The Ex.P.4 is

the Article Tracking Details by postal department which shows that the said notice is served to accused.

20. From the conjoint reading of said documents with the above said evidence of PW 1 discloses that the cheque dated 12.06.2020 i.e., Ex.P.1 was presented within six months, and the said cheque at Ex. P1 was dis-honoured due to the failure of accused to maintain sufficient amount in his account, and legal notice dated 24.06.2020 to the accused through registered post was issued demanding repayment of said amount within 15 days, and said notice was served to accused, and accused failed to pay the said cheque amount. In result, I am of the considered opinion that the accused committed the offence punishable under Section 138 of N.I. Act. Consequently, I answered **point No.1 in the affirmative.**

21. **POINT NO.2:-** In the result, I proceed to pass the following:-

ORDER

Acting U/s.255(2) of Cr.P.C, the accused is convicted for the offence punishable U/s.138 of Negotiable Instruments Act.

The accused is sentenced to pay a fine of Rs.3,22,000/- (Three Lakhs Twenty Two thousand Only). In default to make payment of fine amount, the accused shall undergo simple imprisonment for a period of six months.

Acting U/s 357(1)(b) of Cr.P.C, the complainant is entitled for Rs.3,20,000/- (Three Lakhs Twenty Thousand Only) as a compensation amount out of the said fine amount. Acting U/s 357(1) (a) of Cr.P.C, the remaining fine amount of Rs.2,000/- (Two Thousand only) is to be remitted to the state.

The copy of this judgment shall be furnished to accused free of cost forth with.

(Typed to my dictation by the stenographer directly, corrected and revised by me and then pronounced in open court on this the **13th day of March, 2026**)

**(Smt.Priya Ravi Joglekar)
Sr.Civil Judge & JMFC., Ankola.**

A N N E X U R E

LIST OF WITNESSES EXAMINED FOR COMPLAINANT:

P.W.1 - Ramamurti Pramod Nayak

LIST OF WITNESSES EXAMINED FOR ACCUSED:

- NIL-

LIST OF DOCUMENTS EXHIBITED FOR COMPLAINANT:

- Ex.P.1 - Cheque
- Ex.P.1(a) - Signature of accused
- Ex.P.2 - Return memo
- Ex.P.3 - Bank letter
- Ex.P.4 - Office copy of Legal Notice
- Ex.P.5 - Article Tracking Details
- Ex.P.6 - True copy of Resolution
- Ex.P.7 - Loan Application form
- Ex.P.8 - Loan agreement
- Ex.P.9 - Demand Promissory note
- Ex.P.10,11 - Security letters
- Ex.P.12 - Copy of loan account extract

LIST OF DOCUMENTS EXHIBITED FOR ACCUSED:

-NIL -

sd/-
Sr.Civil Judge & JMFC., Ankola.