KAUK220007742022

Presented on : 13-12-2022
Registered on : 13-12-2022
Decided on : 13-03-2026
Duration : 3 years, 3 months, 0 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.299/2022
(OLD C.C.No.131/2020)

COMPLAINANT: Ambika Pattina Souharda Sahakari Niyamita, Ankola (U.K.Dist.)

R/by its Loan Recovery Officer,
Shri Bhavin Venkatesh Nayak,
Age: 25 years,
R/o: Belekeri, Tal. Ankola,
Uttara Kannada District.

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

V/s

ACCUSED: Suresh Hosabu Nayak,

Aged about 48 years, Driver,
R/o: Kachanabatti, Po: Hillur,
Taluka Ankola (U.K.District)

(By Sri N.S.P., 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 approached the complainant institution and availed a loan of Rs.3,00,000/- from complainant society on 10.01.2017 for the purpose of purchasing a vehicle under Vehicle Loan Account No.1048. Amar Suresh Nayak and Smt.Vidya Suresh Nayak stood as guarantors to the said loan. The accused and the guarantors promised to repay the loan amount with agreed interest within the stipulated date 10.01.2019 with interest at the rate of 16% p.a. as per the terms and conditions of the agreement. However, the accused was irregular in repayment of loan amount within the stipulated period and there was outstanding balance due to Rs.2,10,000/- as on 18.11.2019. 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.789563 dated 18.11.2019 under his A/c No.03122200078859 drawn on Syndicate Bank, Branch: Aversa, for sum of Rs.2,10,000/- stating that there is sufficient funds in his account. The said cheque was presented for encashment through Vijaya Bank, Branch:Ankola. But, the Syndicate Bank returned the cheque with bank endorsement dated 21.11.2019 as '**Account Dormat'.** Thereafter, the complainant issued a registered legal notice dated 17.12.2019 to him through advocate calling upon him to pay the said cheque amount within 15 days. The said notice was served to the accused on 24.12.2019 as per the Track Consignment Report of the P & T Department. But, he neither repaid the said amount nor replied to the same. 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 complainant society got himself examined by filing affidavit as P.W.1 at the time of recording of sworn statement, and hence, the said evidence is considered as evidence of complainant, and got marked documents at Ex.P1 to P8 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. Perused the written argument.

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 18.11.2019 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.2,10,000/- 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:-

R E A S O N S

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 copy of resolution which recites PW.1 was authorized to give evidence in respect of this case against accused as per the resolution dated 27.11.2019 passed by governing body of the complainant.

10. The P.W.1 deposed that accused approached the complainant society and availed a loan of Rs.3,00,000/- from complainant society on 10.01.2017 for the purpose of

purchasing vehicle under Vehicle Loan Account No.1048. Amar Suresh Nayak and Smt.Vidya Suresh Nayak stood as guarantors to the said loan. The accused and the guarantors promised to repay the loan amount with agreed interest within the stipulated date 10.01.2019 with interest at the rate of 16% p.a. as per the terms and conditions of the agreement.

11. During the cross-examination, PW 1 deposed about that accused availed loan amount for the purpose of purchasing of vehicle. It is mentioned the number of the vehicle in the loan application. The complainant institution had verified the documents relating to purchasing the vehicle. They had sanctioned the loan amount after receiving the vehicle documents from the accused and the documents of the vehicle pledged into the complainant institution. If there is any necessary for production of the documents relating to vehicle, then, he would produce the documents relating to purchasing of vehicle. The above said private complaint was filed against the accused with respect to accused had dishonoured the cheque.

12. Thereafter, the PW 1 denied that the accused had obtained loan amount from the complainant

institution and also filed false case against the accused. There were two cases pending against the accused. One is above said case relating to cheque bounce case and another one is Civil case is pending against the accused. The accused availed one lumpsum of amount of Rs.3,00,000/- from the complainant institution. He further deposed about that the civil case filed against the accused before the Prl.Civil Judge Court, Ankola. He did not remember about that actual amount of the civil case. They had enquired the accused (borrower) relating to how many members are residing in the house of the accused and how many family members of the accused were earning income.

13. He did not remember about that the wife of the accused is suffering from ailment. Therefore, accused is spending amount for treatment of his wife. He specifically denied that in the loan application, the complainant institution staff members had filled up the loan application. In this regard, the PW 1 deposed about that the accused himself filled up the loan application. He did not remember about that in which employee of the complainant institution had filled up the loan agreement. He further denied that there is similarity of

the hand writing appearing in the loan agreement and loan application. They are obtaining guarantors at the time of sanctioning loan amount to the customers. If any person in default of repayment of loan amount, then, the sureties are responsible to pay the loan amount. In this regard, the PW 1 deposed that he has not read over the conditions of the loan agreement and loan application. The loan amount sanctioned to the accused on 10.1.2017. The accused filed loan application before the complainant institution on 26.12.2016.

14. The Ambika Co.op.Society is having his own committee. There are 10 Directors and President and Vice President constituted by Ambika Co.op.Society. They put up the loan application before the committee. Thereafter the committee will pass the resolution. Thereafter they would sanction the loan amount to the accused. The learned counsel for the accused had taken defense that documents relating to all these proceedings not produced before this Court. But, the PW 1 denied the suggestion was put up by the learned counsel for the accused. Thereafter the PW 1deposed that the President and Manager of Ambika Co.op. Society had put their signature in the loan application. Thereafter the learned

counsel for the accused shown the loan application (Ex.P7) to the PW 1 and contended that there is no signature of President and Manager found in the Ex.P7. In this regard, the Pw 1 narrated about that said President and Manager had put their signature in the Ex.P7 and he identified the signature of the President and Manager. These signatures are marked as Ex.P7(a) and Ex.P7(b). He admitted that on the basis of majority of the acceptance by the committee members, thereafter only they would sanction the loan amount to the borrower. Thereafter the PW 1 deposed that in the Ex.P7 the signatures of the members complainant institution not found. But, the President and Manager had put their signatures in the Ex.P7. The Manager and President are having different seal. Thereafter he admitted that there is no seal was found in the Ex.P7 of President and Manager.

15. Thereafter, the learned counsel for the accused further cross-examined the PW 1 on 12.08.2025. At that time, the PW 1 deposed that the accused availed vehicle loan amount prior to the above said loan transaction and also repaid the amount. The accused had availed 2 to 3 vehicle loan amount from their institution. He

remembered about that how much loan amount was availed by the accused in the earlier loan transaction and also he had repaid the earlier loan transaction amount. Thereafter, the PW 1 deposed that there is only one loan transaction is in balance in the complainant institution i.e., relating to this case. Further, the PW 1 deposed that in this case, the accused availed loan amount of Rs.3,00,000/- and he had repaid part of the loan amount of Rs.90,000/- and balance of payment is Rs.2,10,000/-. In this regard, the PW 1 also deposed that he had already produced the ledger extract. In this regard, the learned counsel for the accused has put the question to the PW 1 relating to how much amount was repaid by the accused and how much amount is mentioned in the ledger extract. In this regard, PW 1 deposed about that it is necessary to verify the documents. Thereafter it is possible to say about that how much amount was repaid by the accused. But, he knows about that how much amount was borrowed by the accused and how much amount was repaid by the accused. Thereafter he denied that the accused repaid entire loan amount to the complainant institution. But the complainant institution has not produced the documents relating to loan amount was repaid by the accused. He further deposed about

that they had filed case against Amar Suresh Naik who is the son of above said accused and this case and another execution case is pending against the accused. Thereafter he deposed about that they had filed two cases against the guarantors of the above loan transaction. Because the guarantors of the above said loan transaction have availed some other loan amount from the complainant institution. Therefore, they had filed case against the guarantors. Thereafter he denied that if the documents would be produced before this court, then only truth will be come before this court. Therefore, in order to escaping the real truth relating to loan transaction of the accused and complainant institution they had not produced sufficient documents before this Court. Thereafter the learned counsel for the accused had taken defense that accused had issued cheques relating to security purpose of earlier loan transaction and that was misused by the complainant institution and filed this false case against the accused.

16. Thereafter, the learned counsel for the accused had taken defense that at the time of filing loan application before the complainant institution, at that time the complainant institution had given some share

amount and that share amount is also available in the complainant institution. In this regard, PW 1 deposed that it is necessary to verify the documents. Thereafter the PW 1 deposed that the accused is having 3 to 4 RD account in their institution and also taken defense that RD amount was adjusted to the loan account of the accused. In this regard, the Pw 1 deposed that he did not remember the above said fact. Thereafter the PW 1 deposed that the accused had made one RD for one loan account. Further he deposed about that there is no relationship between RD account and above said loan transaction. Because that RD account are relating to some other loan transaction. But not relating to the above said loan transaction. Thereafter, he admitted that ಆರೋಪಿಯ ಹೆಸರಿನಲ್ಲಿ ಇದೊಂದು ಸಾಲ ಬಿಟ್ಟರೆ ಬೇರೆ ಯಾವ ಸಾಲ ನಿಮ್ಮ ಬ್ಯಾಂಕಿನಲ್ಲಿ ಇಲ್ಲ ಎಂದರೆ ಸರಿ. Then, the accused himself admitted that at the time of cross-examination of PW 1 by stating that above said only one loan transaction is pending in between the accused and complainant. Further, the complainant denied that the legal notice was not duly served to the accused. Thereafter, the learned counsel for the accused has taken defense that the complainant institution has not produced loan account statement of accused.

17. On careful perusal of the cross-examination by the learned counsel for the accused only he has taken defense that the complainant institution has not produced sufficient document relating to loan transaction was made by the accused and also taken defense that the accused entered loan transaction into the complainant institution earlier to the above said loan transaction. At that time, accused issued cheque to the complainant institution. Even though the accused repaid entire loan amount to the complainant institution, but, the complainant institution falsely filed above said case against the accused. Further, he has taken defense that there is only one loan transaction in between the complainant and accused relating to this case. Then the accused himself admitted the loan transaction in between the complainant institution and accused. Then, when the accused himself admitted that there is one loan transaction available between the complainant institution and accused, then definitely the complainant institution is having liberty to collect the legally recoverable debt from the accused. Further, it is sufficient to prove that the in order to repayment of the loan amount to the complainant institution the accused had issued above said cheque. Further, the accused has

taken defense that he had repaid entire loan amount and his wife is suffering from ailment. In this regard also, accused neither stepped into the witness box nor produced single voucher or iota of document before this court. Therefore, the attitude of the accused shows that he has indirectly admitted the case of the prosecution.

18. The Ex.P.7 is the vehicle loan application. It recites that the accused filed the said application to complainant for loan of Rs.3,00,000/- on 26.12.2016 for purchasing vehicle. It also says that Amar Suresh Nayak and Smt.Vidya Suresh Nayak agreed to stand as guarantors for the said loan and the Manager recommended to grant loan of Rs.3,00,000/-. The Ex.P.8 is the loan agreement. In this way, the evidence of P.W.1 coupled with above documents clearly establish that the accused borrowed vehicle loan of Rs.3,00,000/- with interest at the rate of 16% and Amar Suresh Nayak and Smt.Vidya Suresh Nayak stood as guarantors to the said loan.

19. 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.789563 dated 18.11.2019 for Rs.2,10,000/- drawn on the Syndicate Bank, Branch: Aversa 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 18.11.2019. It recites that the said cheque was issued in favour of complainant for Rs.2,10,000/-. The Ex.P1(a) is the signature of the accused.

20. 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.

21. It is the defence of accused that the complainant society misused the cheque which was given for old loan transaction and filed false case against the accused. On careful perusal of records, it is clearly noticed that as per Ex.P5 postal track consignment letter, the legal notice was duly served to the accused. If the complainant society filed false case against the accused by misusing the cheque of the accused bearing No.789563, 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. Even though the cheque was returned with the endorsement of Bank by stating the shara i.e., "**Account Dormant"**, in this regard also, the accused has not taken any proper defense before this court. Further, the accused kept mum after receiving the legal notice and also after appearing before this Court.

When the accused has failed to take the defense with respect to signature on the Ex.P1(a) is not relating to him, and he has not signed on the Ex.P1(a), then the accused has merely admitted his signature on the Ex.P1(a). 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.

22. 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.

23. 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 Vijaya Bank, Branch Ankola; but the same was returned to the complainant as per memo dated 21.11.2019 by Syndicate Bank stating that "**Account Dormant**". The Ex.P2, being the bank memo dated 21.11.2019 clearly says that Ex.P.1 cheque is dishonoured for "**Account Dormant**" in the account of accused. Hence, the dishonour of Ex.P.1 cheque shall be presumed under Section 146 of N.I. Act.

24. The P.W.1 deposed that thereafter the complainant got issued a registered legal notice to the accused on 17.12.2019 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 24.12.2019 as per the Track Consignment

Ex.P5. But, the accused neither replied nor paid the amount. The Ex.P.3 is the copy of legal notice. Ex.P4 is the postal receipt. The Ex.P.5 is the postal Track Consignment which shows that the said notice is served to accused.

25. From the conjoint reading of said documents with the above said evidence of PW 1 discloses that the cheque dated 789563 i,e., Ex.P.1 was presented within six months, and the said cheque at Ex. P1 was dis-honoured due to the reason "Account Dormant", and legal notice dated 17.12.2019 to the accused through registered post was issued demanding repayment of said amount within 15 days, and said notice was served to accused on 24.12.2019 as per the Track Consignment Letter 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.**

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

O R D E R

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.2,20,000/- (Two Lakh Twenty 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.2,18,000/- (Two Lakh Eighteen 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)**

Digitally signed by
Priya Ravidas Jogalekar
Location: Sr.Civil Judge
and JMFC., Ankola

(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 - Bhavin Venkatesh 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.P2	- Return memo
Ex.P3	- Office copy of Legal Notice
Ex.P.4	- Postal receipt
Ex.P5	- Track Consignment letter
Ex.P6	- Copy of resolution
Ex.P7	- Loan Application form
Ex.P7(a)(b)	- Signatures
Ex.P8	- Loan agreement

LIST OF DOCUMENTS EXHIBITED FOR ACCUSED:

-NIL -

Digitally signed by Priya Ravidas Jogalekar
Location: Sr.Civil Judge and JMFC., Ankola

sd/-

Sr.Civil Judge & JMFC., Ankola.