KAUK310055502025

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC,

AT: BHATKAL

PRESENT: Smt. Deepa Aralagundi.
B.Com., LL.B.,
Prl. Civil Judge & JMFC, Bhatkal.

Dated 1st day of August, 2026

CRIMINAL CASE No.4171/2025

Complainant :

St. Milagres Credit Souhardha Co-Operative Ltd., Karwar Branch Manki, Represented by its Branch Manager,

Sri. Annappa Manjunath Naik
Aged about: 40 years,
R/o: Bansale, Manki, Honnavar Taluk,

(By Sri. S.L.D., Advocate)

Vs.

Accused :

Sri. Nagesh Hanumanth Naik
Aged about: 48 years,
R/o: Banasale, Post: Manki,
Honnavar Taluk.

(By Sri. K.V.B., Advocate)

Date of filing complaint	:	21-11-2025
Date of Registration	:	21-11-2025
Date of Commencement of evidence	:	24-11-2025
Offence Charged	:	Section 138 of N. I. Act
Date of Judgment	:	01-08-2026
Opinion of the Judge	:	Accused found guilty

J U D G M E N T

This complaint is filed under Section 200 of Code of Criminal Procedure against the accused alleging commission of offence punishable Under Section 138 of Negotiable Instrument Act.

2. It is the case of the complainant that, on 18-07-2019 the one Maruti Madev Naik has borrowed a Business loan of Rs.60,000/- as per the loan A/c No.B.L.1014 from the complainant society and promised to repay the same with interest at the rate of 15.50% and 3.75% penal interest p.a. and accused is the one of the surety of said loan. The accused has become irregular and committed default in the repayment of the said loan amount obtained by him as per the agreed terms. As a matter stood thus, the accused has issued cheque bearing No.531594 dated 10-10-2025 drawn on State Bank of India, Manki Branch for Rs.63,837/-. When the complainant presented the said cheque through The Fedral Bank Ltd., Bhatkal Branch for encashment, he was informed through The Fedral Bank Ltd., Bhatkal Branch that the cheque is dishonored for the reasons **"FUNDS INSUFFICIENT"** vide endorsement dated 28-10-2025 accordingly, the complainant issued a legal notice dated 29-10-2025 calling upon the accused to pay the amount covered by the said cheque. The said notice was served to accused on 03-11-2025. Despite receipt of the legal notice no payment is made by the accused, the present complaint was filed U/s.138 of N. I. Act against the accused.

3. This court took cognizance of the offence punishable Under Section 138 of Negotiable Instrument Act and recorded sworn statement of the complainant. After that this court ordered to register the criminal case, as there was prima-facie material to proceed against the accused and issued summons to the accused.

4. In pursuance of the summons, the accused appeared before this court through his counsel and he was enlarged on bail. Accusation for the offence U/Sec 138 of Negotiable Instrument Act is framed, read over and explained to the accused. He was pleaded not guilty and claimed to be tried. After hearing the both parties adopted summons trial procedure for disposal of the case. The complainant in support of his case examined Manager as PW-1 and got marked at Ex.P-1 to Ex.P-9 and he closed his side evidence and posted for cross examination of PW-1. PW-1 has fully cross examined. Posted for 313 statement. The statement of the accused was recorded U/Sec. 313 of Cr.P.C. Wherein the accused has denied the incriminating evidence adduced against him as false and accused submits that he has no defence evidence. Hence posted for argument. Both counsels have argued the matter.

5. On the basis of the contentions raised in the complaint, the following points would arise for my consideration:

1) Whether the complainant proves that, the accused issued the cheque Ex.P-1 towards discharge of legally enforceable debt ?
2) Whether the complainant proves the guilt of the Accused punishable under section 138 of N.I. Act ?
3) What order or sentence ?

6. My findings to the above points are:

Point No. 1**:** In the affirmative
Point No. 2: In the affirmative
Point No. 3**:** As per the final order for the following;

REASONS

7. **Point No.1 & 2:-** Since these points are interrelating with each other. Hence, they are taken up together for discussion to avoid repetition of facts. The complainant has approached this

court by alleging that the accused has committed an offence punishable U/S 138 of Negotiable Instrument Act.

8. It is the case of the complainant that, on 18-07-2019 the one Maruti Madev Naik has borrowed a Business loan of Rs.60,000/- as per the loan A/c No.B.L.1014 from the complainant society and promised to repay the same with interest at the rate of 15.50% and 3.75% penal interest p.a. and accused is the one of the surety of said loan. The accused has become irregular and committed default in the repayment of the said loan amount obtained by him as per the agreed terms. As a matter stood thus, the accused has issued cheque bearing No.531594 dated 10-10-2025 drawn on State Bank of India, Manki Branch for Rs.63,837/-. When the complainant presented the said cheque through The Fedral Bank Ltd., Bhatkal Branch for encashment, he was informed through The Fedral Bank Ltd., Bhatkal Branch that the cheque is dishonored for the reasons **"FUNDS INSUFFICIENT"** vide endorsement dated 28-10-2025 accordingly, the complainant issued a legal notice dated 29-10-2025 calling upon the accused to pay the amount covered by the said cheque. The said notice was served to accused on 03-11-2025. Despite receipt of the legal notice no payment is made by the accused, the present complaint was filed U/s.138 of N. I. Act against the accused.

9. The burden is casted on the complainant to prove that he has complied with the mandatory requirements of Sec.138 of Negotiable Instrument Act and also he has to prove the existence of legally recoverable debt under the disputed cheque. In order to prove the case of the complainant, the Manger of complainant society is examined as PW-1 and got marked Ex.P-1 to Ex.P-9, Ex.P1-(a) and he closed his side evidence and posted for cross examination of PW-1. PW1 fully cross-examined. The chief

examination of PW-1 is nothing but the reiteration of averments made in the complaint.

10. The PW-1 got marked the Disputed cheque is marked as Ex.P.1. Signature of the accused is marked as Ex.P1(a). Bank endorsement is marked as Ex.P-2. Office copy of legal notice is marked as Ex.P.3. Postal receipt is marked as Ex.P4. Postal acknowledgment is marked as Ex.P5. Authorization letter is marked as Ex.P6. True copy of Loan application is marked as Ex.P7. True Copy of Loan Recommendation Sheet is marked as Ex.P8 and True copy of Account statement is marked as Ex.P9.

11. In order to prove the case of the complainant, PW-1 has to satisfy the ingredients of Under Section 138 of Negotiable Instrument Act. In the present case, the cheque dated: 10-10-2025 was presented for encashment, which was bounced with an endorsement of **"FUNDS INSUFFICIENT"** on 28-10-2025. The complainant got issued legal notice to the accused on 29-10-2025. The said notice was served to accused on 03-11-2025. The accused has to comply the demand notice within 15 days from 04-11-2025 and after the expiry of 15th day, the cause of action accrues to the complainant for presenting the complaint. In this case, 15th days expires on 18-11-2025 and the cause of action commences from 19-11-2025 and the complaint has to be presented within one month from that date. In this case, the complainant has presented the complaint on 21-11-2025 which is well within the stipulated period and thereby the complainant has complied with the mandatory provisions of Under Section 138 of Negotiable Instrument Act.

12. In order to constitute an offence under section 138 of Negotiable Instrument Act, the complainant has to fulfill the following requirements which are as follows:

i) Cheque should have been issued for the discharge in whole or part of any debt or other liability.

ii) Cheque should have been presented before the bank within a period or within a period of its validity whichever is earlier.

iii) The payee should have issued a legal notice in writing to the drawer of the cheque within 30 days from the date of information by the bank.

iv) After the receipt of the notice, the drawer should have failed to pay the cheque amount within 15 days from the date of the receipt of the said notice.

v) On non payment of the amount due, on the dishonored cheque within 15 days from the date of the receipt of the notice by the drawer, the complaint should have been filed by the complainant within one month from the date of expiry of the grace time of 15 days before Metropolitan Magistrate or not below the rank of JMFC.

13. Now let me ascertain whether the complainant is entitled to the presumption available U/s. 139 and Section 118 of N.I. Act. Presumptions both under Sections 118 and 139 are mandatory presumptions but rebuttable in nature.

14. In order to raise a presumption U/s. 139 of N.I. Act, the following 3 ingredients have to be ascertained and established in view of decision of **Hon'ble Apex Court in Rangappa V/s Sri. Mohan Reported in AIR 2010 S.C. 1898.**

1) The cheque in question must relate to the account of the accused.
2) The cheque in question must have been issued by the accused to complainant.
3) The accused must not have denied his signature on the cheque.

15. Before entering into factual matrix of the present case I deem it fit to discuss certain statutory provisions of negotiable instrument act. Section 118(A) of NI Act provides for presumption regarding consideration for a negotiable instrument. It reads as under:

> ***"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"***

16. Section 139 of Negotiable Instrument Act provides for presumption in favour of a holder. It reads as under

> ***"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, or any debt or other liability."***

17. In order to draw presumption under section 118 R/w section 139 burden lies on complainant to show: 1) that he had the requisite funds for advancing the sum of money/loan in question to the accused, 2) that the issuance of cheque by accused in support of repayment of money advanced was true and 3) that the accused was bound to make payment as had been agreed while issuing cheque in favour of complainant.

18. ***(I) In a reported decision : case of Kishan Rao Vs Shankargowda (Criminal Appeal No.803 of 2018 - Supreme Court);" 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"

19. The use of the phrase "until the contrary is proved" in Section 118 of the act and use of the words "Unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in section 4 of the Evidence Act, makes it at once clear that presumption to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of the presumption is over .

This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. Following was held in paragraph 20:

20..... 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 fact and circumstances, upon consideration of which, the court may either believe that the *consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist....”*

The ratio laid down in the above case is very much applicable to the case on hand, because the accused may adduce evidence to rebutt the presumption but mere denial regarding existence of debt shall not serve any purpose.

(II) 2006 AIR (Kar)1730; B.V.Sapathkuar Vs. K.G.V. Lakshmi wherein the Hon'ble High Court of Karnataka has held that:

The accused has not let any evidence to rebut the said presumption. In that view, dismissal of the complaint is bad in law and the complainant has successfully prove the guilt and the accused is liable to be convicted under Section 138 of the act.

19. In the present case accused has not come forward to lead his defence evidence and not produced any document to prove his case. Further, the accused has not explained that how the Ex.P1 cheque reaches the hands of the complainant. Further the counsel for accused has cross examined the PW1 but nothing was elicited from the mouth of PW1 which is favour to the accused. Further in the cross-examination of PW1 also the counsel for the accused has not taken any defence of the accused with regard to how the Ex.P1 accused cheque reaches the hand of the complainant.

20. Further counsel for accused submits that by misusing the said security cheque the complainant has filed this false complaint against accused. If that is so what prevented the accused to lodge police complaint with respect to misuse of blank cheque against the complainant. Further, he could have

approached the police station and could have issued notice to the complainant, but he did not do so. Furthermore, on perusal of record shows that the accused had belatedly taken up the defence of blank cheque. Prior to the filing of the complaint the accused had not even replied to the notice sent by the complainant. Since that would have an opportunity to raise the defence at an earlier stage. All these circumstances led this court that the accused had not raised a probable defence to rebut the statutory presumption. However, in this case, it is to be noted that the cheque of the accused is not disputed by the accused. Once this fact has been acknowledged, section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. Further the complainant produced Ex.P7 loan application, it clearly shows that accused stood as surety to the loan taken by one Maruti Madev Naik and complainant produced loan account statement, it clearly shows that Rs.63,837/- is due from principal borrower.

21. The accused has raised untenable defence to avoid consequence of dishonour of cheque. Since the presumption under Section 139 of Act does not stand rebutted by any legal evidence. Then it would be presumed that Ex.P1 issued for legally recoverable debt or liability. But the accused failed to rebut the same. The said presumption Under section 139 of N.I. Act has not been rebutted by the accused. For the above discussed reason, I am of the view that towards the discharge of amount due by the accused had issued cheque No.531594 dt:10-10-2025 for Rs.63,837/- drawn on State Bank of India, Manki Branch in favour of the complainant and it came to be dishonored for the reasons "Funds Insufficient" dt: 28-10-2025 when it was present for encashment and even after receipt of notice the accused has failed to pay the amount of cheque. Ex.P1 cheque dishonored with a reason that "Funds Insufficient". But the accused has not come

forward to lead evidence and not stepped in the witness box and not produced any single document to show that he has not issued Ex.P1 cheque to the complainant and there is no legally requirable debt from the accused to the complainant.

22. On the other hand in the cross-examination of the PW-1 nothing was elicited from the mouth of the PW-1. Complainant case is proved as correct and the case of the complainant falls under the presumption contemplated under section 118 of N.I. Act. So on forgoing reasons and discussions on the Point No.1, I am of the opinion that, complainant has clearly, cogently proved his case by oral and documentary evidence. Therefore, the presumption is to be drawn in favour of the holder of the cheque who has received it for discharge of liability. Therefore the accused has committed an offence punishable under section 138 of Negotiable Instrument Act. Hence, I answer Point No.1 and Point No.2 is in affirmative.

23. **Point No.3** :- In view of the findings given on above point, facts and circumstances of the case, the complainant has proved the guilt of the accused beyond all reasonable doubts and complainant has proved the cheque amount mentioned in Ex.P1 is a legally recoverable debt by the accused. Hence, I proceed to pass the following :

O R D E R

Acting under Section 255(2) of Cr.P.C. Accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act.

It is ordered that the accused shall pay fine of Rs.65,837/- (Rupees Sixty Five Thousand Eight hundred Thirty Seven only), for punishment of offence punishable Under section 138 of Negotiable Instrument Act. In case of default of payment of fine amount the accused shall undergo simple imprisonment for a period of 6 months.

Further, acting under Section 357(1) (a) of Cr.P.C. out of fine amount of Rs.65,837/- a sum of Rs.63,837/- shall be paid to the complainant as compensation and remaining amount of Rs.2,000/- defrayed as prosecution expenses to the State.

Bail bond and surety bond shall stand cancelled.

Issue free copy of this Judgment to the accused.

(Dictated to the Stenographer, revised and corrected by me and pronounced in the open Court, on this ***1st day of August, 2026.***)

Digitally signed by Deepa Aralagundi
Location: Prl. Civil Judge and JMFC Bhatkal

-: **A N N E X U R E S** :-

Number of witnesses examined for Complainant :-

PW1 : Sri. Annappa Manjunath Naik

Number of witnesses examined for defense:-

-Nil-

List of documents marked for complainant :-

Ex.P1	: Cheque
Ex.P1(a)	: Signature of the accused
Ex.P2	: Bank endorsement
Ex.P3	: Copy of legal notice
Ex.P4	: Postal receipt
Ex.P5	: Postal acknowledgment
Ex.P6	: Authorization letter
Ex.P7	: True Copy of Loan application
Ex.P8	: True Copy of Loan Recommendation Sheet
Ex.P9	: True Copy of Statement of loan account

List of documents marked for defense:

-NIL-

Digitally signed by Deepa Aralagundi
Location: Prl. Civil Judge and JMFC Bhatkal