

KAUK310028452025



**IN THE COURT OF ADDITIONAL CIVIL JUDGE & J.M.F.C.  
AT BHATKAL**

**PRESENT**

**Smt.Dhanavathi.,** B.A.(Law), LL.B.,  
Addl. Civil Judge and JMFC, Bhatkal.

**CC.No.2049/2025**

**Dated: 8<sup>th</sup> day of April, 2026**

**Complainant:**

St. Milagres Credit Souhardha Co-operative  
Ltd., Karwar, Branch Murdeshwar,  
Represented by its Senior Assistant,  
Mr. Krishna Manjunath Naik  
Aged about 26 years,  
R/o: #75, Sabhati, Ternamakki, Kaikini,  
Bhatkal Taluk.

**[By Sri.S.L.D., Advocate]**

**- Vs -**

**Accused :**

Mr. Keshav Manjunath Naik  
Aged about: 36 years,  
R/o: Gundlokatta, Golikumbri,  
Koppa, Bhatkal Taluk-581320.

**[By Sri.M.T.N., Advocate]**

Offence complained : Under section  
138 of N.I Act  
Plea of Accused : Pleaded not  
guilty  
Date of Judgment : 08.04.2025

**:- J U D G M E N T :-**

The Senior Assistant of the complainant has filed this private complaint against the accused under Section 223 of BNSS-2023 for the offence punishable under Sec.138 of Negotiable Instruments Act,1881(herein after referred as “the Act”).

**2. Briefly, the complainant’s case is as follows:-**

The complainant is a financial institution. The accused has borrowed a Business Loan of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand Only) through loan account B.L.No. 1351 from the complainant society on 07-12-2021 and accused had promised to repay said loan with interest at the rate of 15% and 3.75% penal interest P.A. After taking above said loan the accused have paid some amount up to 07-12-2024. As on 30-05-2025 there was total balance of Rs. 84,995/- (Rupees Eighty Four Thousand Nine Hundred Ninety Five Only) in the said loan account. In discharge of the due balance of the loan account accused has issued a Cheque bearing No. 000009 for Rs. 84,995/- (Rupees Eighty Four Thousand Nine Hundred Ninety Five Only) of his account in Bank of Baroda, Murdeshwar Branch on 30-05-2025 in favour of complainant

society. At the time of issuing said cheque accused has assured that there is a sufficient fund in the said account. The complainant believed the accused in good faith and received the said cheque towards the balance due and presented the same cheque to the Federal Bank Ltd., Branch Bhatkal and same was returned unpaid on the ground "Account Blocked Situation Covered In 2125" as per returned memo of the Federal Bank Ltd., Branch Bhatkal dated: 31-05-2025. Then the complainant got issued notice dated 12-06-2025 to the accused calling upon his to repay the cheque amount within 15 days from the receipt of said notice and the accused has not received said notice and returned as Unclaimed on 26-06-2025. The accused also failed to pay the amount mentioned in the cheque. Hence, this complaint.

3. Since, the mandatory requirements of section 138 of the Act, were complied, took the cognizance of the offence, and issued summons to the accused. But inspite of service of summons, he failed to appear before the court, hence this court issued NBW to the accused. Then, he appeared through his counsel and got bail. A copy of the complaint was furnished to the accused. The substance of accusation was framed and explained to the accused for which he pleaded not guilty. Then case posted for evidence.

4. The Senior Assistant of the complainant by name Mr. Krishna Manjunath is treated as PW1 and his sworn statement is treated as his chief examination and 9 documents got marked at Ex.P-1 to P-9. The learned counsel for the accused fully cross examined the PW-1. After completion of complainant's side evidence, this court posted the case for recording of statement of the accused.

But in spite of sufficient opportunity, the accused failed to appear before the court, hence as per the ratio laid down by the Hon'ble High Court of Karnataka, Bengaluru in Crl. Revision Petition No. 664/2020, the statement of the accused U/Sec. 351 of BNSS is dispensed and posted the case for arguments.

5. Heard the arguments of both side. Perused the materials available on record.

6. On the basis of the materials on record, the following points arise for determination:

1. Whether the complainant proves that the accused has committed the offence punishable under Sec.138 of Negotiable Instruments Act?

2. What order or sentence?

7. The above points are answered in the following manner:

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

Point No.2 : As per final order for the following:

### **REASONS**

8. **POINT NO.1** : To prove the case, the Senior Assistant of the complainant society by name Mr. Krishna Manjunath Naik has been examined as P.W.1. and reiterated the complaint averments in his chief examination. He also relied upon various documents such as

Ex.P1 : Authorization Letter

ExP2 : Original cheque.

Ex.P2(a) : Signature on the cheque

Ex.P3	:	Bank Memo
Ex.P4	:	Legal notice.
Ex.P5	:	Postal receipt.
Ex.P6	:	Unclaimed Postal cover
Ex.P6(a)	:	Copy of notice inside the Ex.P-6.
Ex.P7	:	Copy of Loan application
Ex.P8	:	Copy of loan sanction letter.
Ex.P9	:	Copy of loan statement.

9. The complainant in order to bring home the guilty of the accused under section 138 of the Act, has to prove the following ingredients are required to be fulfilled:

- i. The cheque is drawn by the accused on an account maintained by him with a banker.
- ii. The cheque amount is in discharge of legally recoverable debt or liability;
- iii. That drawer of the cheque issued to discharge in part or whole of the said legally enforceable debt or liability;
- iv. The cheque so issued was returned unpaid by the banker of the drawer;
- v. Legal demand notice was served upon the accused and the accused failed to make the payment within 15 days of the receipt of the said notice.

10. In a proceeding under section 138 of the Act, the first and foremost ingredient is that, the alleged cheque must be drawn on account maintained by the accused and signature on alleged cheque

belongs to him. In the present case, it is not in dispute regarding the alleged cheque and signature belong to accused. On perusal of Ex-P-2 cheque and bankers memo Ex-P-3 it is clear that, on presentation of said cheque it was returned as "Account Closed". The Complainant has issued notice through RPAD at Ex.P-6 Postal cover and Ex.P6(a) Copy of notice inside the Ex.P-6 as required under section 138(b) & (c) of the Act. . The said notice returned as unclaimed. In the present case, the accused has disputed the service of notice. As for as service of legal notice is concerned, I would like to perused the address of the accused as mentioned in the cause title of complaint as well as in the legal notice are one and the same. It is not the case of the accused that, the address shown in the notice as well as in the cause title of the complaint is not belong to him. Therefore the Complainant society has issued legal notice to the correct address of the accused. Thus, it is clear that, the legal notice sent by way of registered post to the proper and correct address of the accused. Further, the accused has not produced any contra evidence. Hence, it can be taken that, there is valid service of legal notice to the accused.

11. Now coming to the last and the remaining ingredient of section 138 of the Act is that whether the cheque in question was issued in discharge of any debt or liability, whole or in part. The presumption contemplated under section 139 of the Act, is a rebuttable presumption. However, the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused. On the aspects of preponderance of probabilities, the accused has to bring on record such facts and such circumstances

which may lead the court to conclude either that the consideration did not exist or that its non existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. In the cross examination of the PW1, the accused has taken a defence that, the accused had borrowed vehicle loan from the complainant society, at that time the complainant society had taken Ex.P2 signed blank cheque as a document. The accused has not borrowed loan as stated in the complainant. Further, after repayment of vehicle loan, the accused has asked to return the Ex.P2 cheque and other documents from then manager of the complainant society, but, he has not returned those documents. Hence, the accused has complained the same in the main branch of the complainant society against the said manager and then he has issued stop payment letter to his banker. Hence, for the said vengeance, the complainant society has misused the Ex.P2 cheque which has been issued as a document to his previous vehicle loan. But these defence of the accused has been clearly denied by the PW1. On the other hand, to prove the case, the complainant society has produced loan application and loan sanction details as per Ex.P7 to 9. On perusal of those documents it is clear that the accused has borrowed the loan as alleged in the complainant. Though these documents are denied by the accused, but he has not produced contra evidence. To prove the defence, the accused neither examined himself nor produced any documents . Be that as it may, even if it were to be assumed that the cheque was issued as document as stated in the defence, by this fact alone, the presumption under Section139 of the Act cannot be dislodged. It is the case of the accused that he has no liability towards the cheque in

question as the same was issued as document and he has not issued the same for repayment of the loan amount as stated in the complaint. In the present case, the accused has merely denied the liability and failed to prove the same either by rebutting the testimony of the complainant through cross examination which led this court to believe that the non-existence of the consideration for which cheque in question is allegedly issued to complainant by accused, is so probable that any prudent man would consider the same in the facts and circumstances similar to the case in hand or by leading any cogent and believable evidence. There is nothing coming out during the trial which would probablise the defence raised by the accused or falsify the case of the complainant. It is also relevant here to mention that, the conduct of the accused in not taking the action against the complainant for alleged misuse of the cheque in question by the complainant may leads to draw an adverse inference against him that, the accused has not initiated any action against the complainant since the cheque in question has been issued by the accused to the complainant towards discharge of the liability in question but not for any other purpose.

12. Therefore considering all these aspects of the case and totality of the circumstances and on careful and meticulous appreciation of evidence, the complainant has successfully established his case beyond all reasonable doubt. On the other hand, the accused has failed to rebut the presumption available in favour of the complainant with regard to the existence of legally recoverable debt under Ex.P.2 Cheque. Therefore accused has committed an offence punishable under section 138 of the Act,

accordingly for the above said reasons this point is answered in the **Affirmative.**

13. **Point No.2:** The Negotiable Instrument Act was enacted to bring credibility to the cheque and the very purpose of enactment is to promote the use of negotiable instrument, while to discourage the issuance of cheque without having sufficient funds in their accounts. Such being the case the intention of the legislature is that, complainant be suitable compensated while accused be punished for his act. Hence while awarding the compensation the said fact is to be kept in mind and suitable compensation is awarded to the complainant certainly it will not cause injustice to the accused, accordingly the complainant is entitled for the compensation as ordered by the court and for the said reasons, it is just and proper to pass the following :-

**ORDER**

Acting under section 278(2) of BNSS., 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.84,995/-(Rupees Eighty Four Thousand Nine Hundred Ninety Five only), in default he shall under go simple imprisonment for a period of six months for the offence punishable under section 138 of Negotiable Instruments Act.

Further acting under section 395(1) of BNSS on recovery of fine amount, same shall be paid as compensation to the complainant.

It is made it clear that in view of under section 461 of BNSS the liability of accused to pay the compensation will not be absolved even if he under go default sentence.

The bail bond executed by the accused and surety stand canceled.

Office is directed to furnish free certified copy of this judgment to the Accused in compliance of section 404(1) of BNSS.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open court on this the 8<sup>th</sup> day of April 2026).

### **ANNEXURES**

#### **WITNESS EXAMINED FOR COMPLAINANT**

P.W.1 : Mr. Krishna Manjunath Naik

#### **WITNESS EXAMINED FOR DEFENCE**

-NIL-

#### **LIST OF DOCUMENTS MARKED FOR COMPLAINANT**

Ex.P1	:	Authorization Letter
Exp2	:	Original cheque.
Ex.P2(a)	:	Signature on the cheque
Ex.P3	:	Bank Memo
Ex.P4	:	Legal notice.
Ex.P5	:	Postal receipt.
Ex.P6	:	Unclaimed Postal cover
Ex.P6(a)	:	Copy of notice inside the Ex.P-6.

- Ex.P7 : Copy of Loan application  
Ex.P8 : Copy of loan sanction letter.  
Ex.P9 : Copy of loan ledger.

**DOCUMENTS MARKED FOR DEFENCE**

-NIL-

**Sd/-  
Addl.Civil Judge & JMFC., Bhatkal.**