

KAUK310039722024



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

**PRESENT**

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

**CC.No.2440/2024**

**Dated: 6<sup>th</sup> day of March, 2026**

**Complainant:**

Umesh S/o Manjunath Shiroorkar,  
Aged about: 53 years,  
R/o: Maruthi Nagar, Bhatkal.

**[By Sri.R.K.M/V.F.G, Advocates]**

**- Vs -**

**Accused :**

Usha W/o Uday Pai,  
Aged about: 50 years,  
R/o: C/o Lokesh Ramesh Naik,  
Kudri Beerappa Road, Chouthani,  
Bhatkal.

**[By Sri.P.G.N., Advocate]**

Offence complained : Under section  
138 of N.I Act

Plea of Accused : Pleded not  
guilty

Date of Judgment : 06.03.2026

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

The complainant has instituted this case under section 223 of BNSS against the accused for the offence punishable under section 138 of Negotiable Instruments Act (herein after referred as the Act).

**2. Brief facts of the case of the complainant are as under:**

The complainant and the accused are well known to each other. On 25-05-2023 the accused has borrowed sum of Rs.3,00,000/- (Rupees Three Lakh only) for setting up her business promised to repay the same within six months from the date of borrowing. On 03-08-2024, the accused got issued a cheque of Federal Bank, Bhatkal Branch, cheque bearing No. 083684 for Rs.3,00,000/- (Rupees Three Lakh only) in discharge of the said debt in favour of the complainant and while drawing the said cheque, the accused has assured the complainant about its due encashment on its presentation, accordingly, on 05-08-2024 the complainant presented the said cheque for encashment through his collecting banker, but the

said cheque was dishonored for the reason, 'Funds Insufficient in the account of the accused to meet the said cheque' as per memo dated:06-08-2024. Then the complainant got issued legal notice dated:03-09-2024 through his counsel demanding to repay the amount covered under the cheque. The notice was duly served on 04-09-2024, but the accused has not paid the cheque amount nor replied the same. 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 the accused evaded the service of summons, hence this court issued NBW to the accused. Then the accused appeared through her 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 she pleaded not guilty. Then case posted for evidence.

4. As per the prayer of the learned counsel for the complainant, the complainant is treated as PW-1 and his affidavit filed lieu of sworn statement as chief examination. Further, 5 documents got marked as Ex.P-1 to P-5. 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 under section 351 of BNSS. But inspite of sufficient opportunity, the accused

has not appeared 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. Heard the both side arguments.

5. Heard the arguments of complainant counsel. The accused counsel filed written arguments. 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 an offence punishable under section 138 of Negotiable Instrument 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** : In support of the case, the complainant examined himself as PW-1 and reiterated the complaint averments. He has also relied upon various documents such as Ex.P-1 is the cheque in question, Ex.P-1(a) is the signature of the accused found on the Ex.P-1, Ex.P.2 is the bank memo, Ex.P.3 is the legal notice, Ex.P4 is the postal receipt, Ex.P-5 is the postal acknowledgment.

9. In order to ascertain whether the accused has committed an offence under section 138 of the Act, the following ingredients constituting the offence have to be proved:-

(a) The drawer of the cheque should have issued the cheque for the discharge, in whole or in part of a legally enforceable debt or other liability.

(b) The cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

(c) The drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the notice from the payee or the holder in due course demanding the payment of the said amount of money.

10. It is only when all the above mentioned ingredients are satisfied that the person who has drawn the cheque can be set to have committed an offence under section 138 of the Act. In the instant case on hand, Ex.P1 cheque is issued by the accused in connection to the account maintained by him and the said cheque is returned due to reason of "Funds insufficient" as per memo at Ex.P-2, the demand notice vide Ex.P-3 was issued by the complainant on 03-09-2024, which is within 30 days from the receipt of information of dishonour of

cheque in question. This fact had remained un-controverted by defence during cross-examination of PW1. Thereafter, the complainant had instituted this complaint on 10-10-2024 which is within one month after the lapse of 15 days from the date of receipt of demand notice, hence the complaint is presented within the period of limitation.

11. The section 118 (a) of the Act provides that until the contrary is proved, it shall be presumed that "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". Further, Section 139 of the Act lays down that "It shall be presumed, unless the contrary is provided, 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. In the case of Hiten P. Dayal Vs Bratindranath Bannerjee (2001) G SCC 16, the Hon'ble Supreme Court of India had observed that "Because both sections 138 and 139 the Act required that the court shall presume the liability of the drawer of the cheque for the amount for which the cheques are drawn as noted in State of Madras Vs A. Vaidhyanatha Iyer AIR 1958 SC 61, it is obligatory on the court that raise this presumption in every case where the factual basis for raising of the presumption has been established. It introduces an exception to the general rule as to

the burden of proof in criminal cases and shifts the onus on to the accused". The core issue that arises for consideration is whether the cheque in question was issued by the accused in discharge of his liability. The accused has admitted his signature on the cheque in question . Thus, unless the contrary is proved, it shall be presumed that the complainant received the cheque in discharge of the debt or liability from the accused. The standard of proof for rebuttal is on preponderance of probabilities. As held by the Hon'ble Supreme Court in decision cited as K.N. Beena vs Muniyappan And Another; (2001) 8 SCC 458, in order to rebut the presumption, mere denial by the accused will not suffice. The accused must prove by leading cogent evidence that there was no debt or liability.

12. In the present case, the main defence of the accused in the cross examination of the complainant/PW-1 is that, there is no transaction with the complainant. On 25-05-2023 the accused had borrowed amount of Rs.1,00,000/- (Rupees One Lakh only) from the complainant's wife. At the time of borrowing said amount the wife of the complainant had obtained Ex.P1 cheque and another cheque of Federal Bank bearing No.083685 as a security. Further, the said amount has been repaid by the son and daughter of the accused through phone-pay payment. But these defence of the accused clearly denied by the complainant/PW-1. Hence, onus to prove the same is on the accused. As per section 106 of Bharathiya Sakshya Adhinyam-

2023, the person who asserts a fact must prove the same unless the law otherwise provides. Further, it is the case of the accused that she has issued the Ex.P-1 cheque to the complainant's wife. But the accused inspite service of notice, she has not replied the same, by taking the above defence. There is no explanation from the accused that what prevented her to reply notice. Further, as noted by the Hon'ble Supreme Court of India in Kumar Exports Vs Sharma Carpets(2009) 2 SCC 513, the circumstantial evidence has to be seen from the point of a reasonable or prudent man. Hence, when the complainant presented the cheque to the bank for encashment, why did the accused not taken any legal action or in the least, issue a written notice to the complainant to return the said cheque but there is no explanation from the accused side. Further, the accused has not produced any documents in support of her above defence. Hence, defence of the accused appears to be doubtful and not probable.

13. Considering the totality of the aforementioned facts and circumstances, material on record, wherein the accused has failed to raise any probable defence or rebut the statutory presumptions in favour of the complainant. Accordingly, the accused is held guilty for committing the offence punishable under section 138 of the Act. Hence, for the above said reasons this court answered the point No.1 in the **Affirmative**.

14. **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 her 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 under section 138 of Negotiable Instruments Act.

The accused is sentenced to pay a fine of Rs.3,00,000/- (Rupees Three Lakh only) in default she shall under go simple imprisonment for a period of one year.

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

The Bail bond and surety bond stands cancelled.

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, transcript corrected by me and then pronounced in the open court on this the 6<sup>th</sup> day of March, 2026).

**ANNEXURES**

**WITNESS EXAMINED FOR COMPLAINANT**

P.W.1 : Mr. Umesh S/o Manjunath Shirookar

**WITNESS EXAMINED FOR DEFENCE**

-NIL-

**LIST OF DOCUMENTS MARKED FOR COMPLAINANT**

- Ex.P1 : Original cheque.  
Ex.P1(a) : Signature  
Ex.P2 : Bank Endorsement  
Ex.P3 : Legal notice.  
Ex.P4 : Postal receipt.  
Ex.P5 : Postal acknowledgment

**DOCUMENTS MARKED FOR DEFENCE**

-NIL-

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