

KAUK310041022025



**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. 3136/2025

Dated: 4th day of April, 2026

Complainant:

Gurukrupa Credit Co-operative Society Ltd.,
Bhatkal, Bailur Branch, Represented by its
Assistant Executive Officer,
Sri.Pandu S/o Narayan Naik,
Aged about: 52 years,
R/o: Talagod, Bhatkal Taluk.

[By Sri. R.I.N., Advocate]

- Vs -

Accused :

Ganesh S/o Kumar Naik,
Major,
R/o: Shankarana Mane, Madikeri,
Bailur, Bhatkal Taluk.

[By Sri.P.S.G., Advocate]

Offence complained : Under section
138 of N.I Act

Plea of Accused : Pleded not guilty
Date of Judgment : 04.04.2026

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

The Assistant Executive Officer of the complainant sangha has filed this private complaint against the accused under Section 223 of BNSS., 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:-**

On 23-05-2022, the accused had borrowed a Personal loan amount of Rs.1,00,000/- (Rupees One lakh only) under loan account No.PL-728 from the complainant upon executing certain documents by promising to repay the said loan amount with interest. But accused have not repaid the said loan amount has agreed and promised by accused at the time of obtaining the said loan. After repeated demand by complainant to repay the said laon amount the accused have issued a cheque of State Bank of India, Murdeshwar Branch bearing No.704076 dated: 28-07-2025 for an amount of Rs.1,09,246/- (Rupees One Lakh Nine Thousand Two Hundred Forty Six Only) in favour of the complainant for the discharge of the above said loan amount. The accused lead the complainant to

believe that, there is sufficient balance in his account to honour the cheque. The complainant believed the accused in good faith and presented the same through the Bhatkal Urban Co-operative Bank Ltd., Bhatkal Main Branch for collection. But the said cheque is returned unpaid with an endorsement "Funds Insufficient" as per memo dated: 30-07-2025. Then the complainant got issued notice dated 20-08-2025 calling upon the accused to pay the amount covered under the said cheque and the said notice was duly served on the accused on 26-08-2025. But, neither the accused paid the amount nor he replied the same. Hence, this complaint.

3. Since, the mandatory requirements of section 138 of the Act, were complied, hence, the court took the cognizance of the offence, and issued summons to the accused. The accused 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 Assistant Chief executive Officer of the complainant society by name Pandu Narayan Naik is treated as P.W.1 and he affidavit filed in lieu of sworn statement is treated as his chief examination and got marked 11 documents at Ex.P-1 to P-11. The learned counsel for the accused fully cross examined the PW-1. After completion of complainant's side evidence, this court has recorded the statement of the accused

under Sec.351 of BNSS. The accused denied the incriminating evidence against him and submitted he has defence evidence. But later the accused counsel submits no defence evidence. Hence case posted for argument.

5. Heard the arguments of both side. On the basis of the materials on record, the following points arise for determination:

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** : 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 for an amount is issued by the drawer to the payee/complainant on a bank account being maintained by him.

- ii) The said cheque is issued for the discharge, in whole or in part of any debt or liability.
- iii) The cheque is returned by the bank unpaid on account of insufficient amount to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with the bank.
- iv) The cheque is presented within 3 months from the date on which it is drawn or within the period of its validity.
- v) Within 30 days a legal demand notice is issued by the payee or the holder in due course to the drawer of the cheque on receipt of information by him from the bank regarding the dishonour of the cheque.
- vi) The drawer of the said cheque fails to make payment of the said amount of the money as demanded in the legal demand notice to the payee or the holder in due course within 15 days of the receipt of said notice.
- vii) The debt or other liability against which the cheque was issued is legally enforceable.

9. As per Section 118 of the Act, it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of whole or part of any debt or liability. A

presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

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. Admittedly in the present case the alleged cheque and signature belong to accused. The accused has not at all disputed about the signature as well as the cheque. Since the accused has not disputed the cheque and the signature, the presumption section 139 of the Act has to be drawn as held by the Hon'ble Supreme Court in Rangappa Vs Mohan reported in AIR 2010(11) SCC 441. Once the cheque relates to the accused and his signature on the said cheque is proved, an initial presumption as contemplated section 139 of the Act has to be raised by the court in favor of the Complainant. Section 139 of the Act contemplates that the court shall be presumed unless contrary is proved that the holder of the cheque received the cheque of the nature referred to in the section 138 for the discharge of the whole or in part any debt or liability. On going through the rival contentions of both the parties one thing is clear that, the accused has admitted that, Ex.P2 cheque is belong to him. Once the cheque relates to the accused is proved an initial presumption as contemplated under section 139 of the Act has to be raised by the court in favor of the Complainant. Therefore the foremost ingredient of section 138 of the Act is established by the

Complainant Society. On perusal of Ex-P3 bankers memo, it clear that, on presentation of said cheque it was returned unpaid. The Complainant society was issued notice required under section 138 (b) & (c) of the Act. The complainant has sent notice to the accused through RPAD and same was received on 26-08-2025. It is important to note here that, the accused has not denied the address shown in the notice as well as in the Postal Acknowledgment at Ex.P6. Hence, it goes to prove the accused has intentionally evaded service of legal notice. Moreover, the accused has not summoned the postal authorities to prove otherwise. Hence, it is presumed that the notice is duly served on the accused.

11. During the course of cross examination of PW.1, the accused has taken a defence that, the complainant society has taken blank signed Ex.P2 cheque as a security for his previous loan and same has been misused in the present case. Further, he has repaid the entire loan amount mentioned in the complaint. But these suggestions have been clearly denied by the PW-1. Under such circumstances the burden shift on the accused to prove that, he has not issued Ex.P2 cheque for repayment of loan amount stated in the complaint. However, the accused has not produced relevant and cogent evidence before this court. On the other hand, the complainant society has produced Ex.P7 to 10 document relating to the loan stated in the complaint. On perusal of the same, it is clear that, the accused has availed loan stated in the complaint and also said

loan is due as stated in the complaint. If really the cheque in question was misused by the complainant and presented to the bank for its encashment, immediate after coming to know about the alleged act of the complainant, definitely the accused would have taken or initiated action against the complainant, but no such efforts have been made by the accused, therefore bare denial of the accused is not sufficient to hold that, he has rebutted the presumptions available to the complainant under section 118 and 139 of the Act.

12. Therefore, looking in to these all documents and facts and circumstances I am of the considerable opinion that, the complainant has successfully proved that, the accused had issued alleged cheque for repayment of due loan amount and it is a legally recoverable debt. On the other hand the accused has orally denied that, he has not issued Ex.P2 cheque for repayment of due amount, but she failed to prove the same by producing relevant and material documents before the Court. Accordingly I am of the considered opinion that the accused is liable to convict for the offense punishable under section 138 of Negotiable Instruments Act and I answered the point No.1 in the **Affirmative**.

13. **POINT NO.2** - In view of the findings on point No. 1 to compensate the holder in due course the accused who has issued cheque without having sufficient funds in his account has to be punished suitably. Therefore considering the facts

and circumstances, the accused is liable to pay the compensation to Complainant. Hence, I proceed 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. 1,09,246/- (Rupees One Lakh Nine Thousand Two Hundred Forty Six 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.

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.

(Directly dictated to the stenographer directly on computer, printout taken by her, verified, corrected and then pronounced by me in the open Court on this the 4th day of April 2026)

ANNEXURES

WITNESS EXAMINED FOR COMPLAINANT

P.W.1 : Sri. Pandu S/o Narayan Naik

WITNESS EXAMINED FOR DEFENCE

-Nil-

LIST OF DOCUMENTS MARKED FOR COMPLAINANT

- Ex.P1 : Copy of Resolution
Ex.P2 : Original cheque.
Ex.P2(a) : Signature on the original cheque.
Ex.P3 : Bank memo
Ex.P4 : Legal notice.
Ex.P5 : Postal receipt.
Ex.P6 : Postal Acknowledgment
Ex.P7 : Copy of Loan application
Ex.P8 : Copy of loan agreement
Ex.P9 : Copy of demand promissory note.
Ex.P10 : Copy of receipt for payment of loan amount.
Ex.P11 : Copy of loan account statement.

DOCUMENTS MARKED FOR DEFENCE

-NIL-

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