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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.428/2025

Complainant :

The Janatha Co-operative Credit Society Ltd.,
Circle Branch, Bhatkal

Represented by its Present Branch Manager,
Sri. Manjunath S/o Timma Naik
Aged about: 53 years,

(By Sri. M.L.N., Advocate)

Vs.

Accused :

Mohammed Saifan S/o Mohammed Nathar
Aged about: Major,
R/o: Saifan Manzil, Hanifabad, Nallesar,
Heble, Bhatkal Taluk, Uttara Kannada District.

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

Date of filing complaint	:	10-01-2025
Date of Commencement of evidence	:	31-01-2025
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 02-08-2018 the accused has availed a CDL loan of Rs.50,000/- under loan account No.1270 on interest at the rate of 16% p.a. for his urgent need from complainant society and promised to repay the same on installment basis with interest. Later the accused has become irregular and committed default in the repayment of the said loan amount obtained by him as per the agreed terms. The accused has issued cheque bearing No.000264 dated 20-11-2024 for Rs.1,10,438/- drawn on Axis Bank Ltd., Bhatkal Branch. When the complainant presented the said cheque through Canara Bank, Bhatkal Branch for encashment, he was informed through his collecting bank that the cheque is dishonored for the reasons **"Account Closed"** vide endorsement dated 21-11-2024 accordingly, the complainant issued a legal notice dated 02-12-2024, to the accused by registered post on his address demanding repayment of the cheque amount, the said notice was returned as Unclaimed on 11-12-2024. 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 a Manager as PW-1 and got marked at Ex.P-1 to Ex.P-11 and he closed his side evidence and posted for cross examination of PW-1. After giving sufficient opportunities also the counsel for the accused not cross examined the PW.1. Hence, cross examination of PW.1 taken as nil. Hence, 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;

R E A S O N S

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 02-08-2018 the accused has availed a CDL loan of Rs.50,000/- under loan account No.1270 on interest at the rate of 16% p.a. for his urgent need from complainant society and promised to repay the same on installment basis with interest. Later the accused has become irregular and committed default in the repayment of the said loan amount obtained by him as per the agreed terms. The accused has issued cheque bearing No.000264 dated 20-11-2024 for Rs.1,10,438/- drawn on Axis Bank Ltd., Bhatkal Branch. When the complainant presented the said cheque through Canara Bank, Bhatkal Branch for encashment, he was informed through his collecting bank that the cheque is dishonored for the reasons **“Account Closed”** vide endorsement dated 21-11-2024 accordingly, the complainant issued a legal notice dated 02-12-2024, to the accused by registered post on his address demanding repayment of the cheque amount, the said notice was returned as Unclaimed on 11-12-2024. 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-11, Ex.P1-(a) and he closed his side evidence and posted for cross examination of PW-1 After giving sufficient opportunities also the counsel for the accused not cross examined the PW.1. Hence, cross examination of PW.1 taken as nil. 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), Return Memo is marked as Ex.P-2. Office copy of legal notice is marked as Ex.P.3. Postal receipt is marked as Ex.P4, Unclaimed postal cover is marked as Ex.P.5. Copy of notice is marked as Ex.P5(a). True copy of Board Meeting Resolution is marked as Ex.P6. Certified copy of loan application is marked as Ex.P7. Certified copy of loan agreement is marked as Ex.P8. Certified copy of Demand promissory note is marked as Ex.P9. Certified copy of Security letter of guarantor as Ex.P10 and Certified copy of bank receipt is marked as Ex.P11.

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: 20-11-2024 was presented for encashment, which was bounced with an endorsement of **“Account Closed”** on 21-11-2024. The complainant got issued legal notice to the accused on 02-12-2024. The said Notice was returned as Unclaimed on 11-12-2024. The accused has to comply the demand notice within 15 days from 12-12-2024 and after the expiry of 15^{th} day, the cause of action accrues to the complainant for presenting the complaint. In this case, 15^{th} days expires on 26-12-2024 and the cause of action commences from 27-12-2024 and the complaint has to be presented within one month from that date. In this case, the complainant has presented the complaint on 10-01-2025 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 dishonoured 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. However, in this case, it is to be noted that the signature of the accused on Ex.P1 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.

14. Arguments have been advanced at length. It has been argued by the learned counsel for the complainant that from evidence, he has proved that the cheque in question was signed by accused which was dishonored and despite service of legal notice, accused did not make payment.

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 this case, after giving the several opportunities also counsel for accused not cross examined the PW1. Hence, cross examination of PW-1 taken as nil. Further, the accused has not come forward to lead his defence evidence and not produced any documents to prove his case and he has not stepped in to witness box and not given chance to cross examine him.

18. **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 rebut the presumption but mere denial regarding existence of debt shall not serve any purpose.

19. 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 bearing No.000264 dated 20-11-2024 for Rs.1,10,438/- drawn on Axis Bank Ltd.,, Bhatkal Branch, in favour of the complainant and it came to be dishonored on 21-11-2024 when it was presented for encashment and even after receipt of notice the accused has failed to pay the amount of cheque.

20. 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. 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.

21. **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 legally recoverable debt by the accused persons. 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.1,12,438/- (Rupees One Lakh Twelve Thousand Four Hundred Thirty Eight only), for punishment of offence punishable Under section 138 of Negotiable Instrument Act. Incase 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.1,12,438/- a sum of Rs.1,10,438/- 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. Manjunath Timma 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	: Return Memo
Ex.P3	: Copy of legal notice
Ex.P4	: Postal receipt
Ex.P5	: Unclaimed Postal cover
Ex.P5(a)	: Copy of notice
Ex.P6	: True copy of Board Meeting Resolution
Ex.P7	: Certified copy of loan application
Ex.P8	: Certified copy of loan agreement
Ex.P9	: Certified copy of Demand promissory note
Ex.P10	: Certified copy of Security letter of guarantor
Ex.P11	: Certified copy of bank receipt

List of documents marked for defense:

-NIL-

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