

KAUK310048752024



**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.3024/2024

Dated: 6th day of March, 2026

Complainant:

The Janata Co-operative Credit Society Ltd.,
Car Street, Bhatkal,
Represented by its Incharge Branch Manager,
Sri. Vinod S/o Manjunath Naik,
Aged about: 32 years,
R/o:Ganesh Nagar, Yalvadikavoor,
Bhatkal Taluk, Uttara Kannda District.

[By Sri.K.V.B., Advocate]

- Vs -

Accused :

Noorullamin Shabbir Rodda
S/o Busthane Kwaboos
Major,
R/o: Jamiyabad Road, Bhatkal Taluk,
Uttara Kannada District.

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

Offence complained : Under section
138 of N.I Act

Plea of Accused : Pleadged not guilty
Date of Judgment : 06.03.2026

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

The In-charge Branch Manager of the complainant 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 30-05-2022, the accused had borrowed a Cash credit loan amount of Rs.1,00,000/- (Rupees One Lakh only) under loan A/c No.1364 from the complainant society by promising to repay the same with interest at the rate of 15% p.a and Penal interest at the rate of 2% p.a. The accused had executed loan some document in favour of the complainant. But accused did not repay the said loan amount as agreed and promise by him at the time of obtaining the said loan amount. As on 15-10-2024 there was an overdue amount of Rs. 1,31,000/- (Rupees One lakh Thirty One thousand Only) in the loan account. After repeated demand and request by the complainant to repay the said loan amount, the accused has issued a cheque bearing No. 000038 of his Bank of Baroda, Bhatkal Branch for an amount of Rs. 1,31,000/- (Rupees One lakh Thirty One thousand Only) dated:15-10-2024 in favour of the complainant for the discharge of the above said loan amount. The complainant

believed the accused in good faith and presented the same through the Bhatkal Urban Co-operative Bank Ltd., Main Branch, Bhatkal for collection. But the said cheque is returned unpaid with an endorsement "Funds Insufficient" as per memo dated: 18-10-2024. Then the complainant got issued notice dated 08-11-2024 calling upon the accused to pay the amount covered under the said cheque and said notice was not received by the accused and same returned as Return to Sender on 13-11-2024. Accordingly, the accused failed to pay the cheque amount. 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 same was returned as unclaimed. Hence, summons to the accused held sufficient and issued NBW to the accused. After that, 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 In-charge Branch Manager of the complainant society by name Mr. Vinod Manjunath Naik is treated as PW1 and his affidavit filed in lieu of sworn statement is treated as his chief examination and got marked 12 documents at Ex.P-1 to P-12. 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, later the accused counsel submitted no defence evidence. Hence case posted for argument.

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** : In order to prove the case, the Incharge Branch Manager of the complainant society by name Mr.Vinod Manjunath Naik has been examined as P.W.1 and he has reiterated the complaint averments in his chief examination. The complainant society has relied upon various documents such as;

- 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 : Unclaimed Postal cover

- Ex.P6(a) : Copy of notice inside the postal cover
- Ex.P7 : True copy of loan application
- Ex.P8 : True copy of loan agreement
- Ex.P9 : True copy of Demand Promissory note
- Ex.P10 : Copy of Security Letter
- Ex.P11 : True copy of receipt for payment of loan amount
- Ex.P12 : Copy of loan statement

9. To bring home guilt against the accused, the Complainant must prove the following ingredients of section 138 of Negotiable Instruments Act.

- a) That, there is a legally enforceable debt
- b) That the cheque was drawn from account of bank for discharge in whole or in part of any debt or other liability which presuppose a legally enforceable debt;
- c) Cheque so issued had been returned due to insufficiency of funds.

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, the accused has not at all disputed about the cheque. Further, he also not disputed the dishonor of the said cheque as per Ex.P3. Further the accused has not disputed his address found on the Ex.P-4 notice and Ex.P-6 postal cover. 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. Hence, it can be taken that, there is deemed service of legal notice to the accused.

11. Since the accused has not disputed the cheque and the signature, the presumption section 139 of the Act has to be drawn. 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.

12. The accused has taken the defence in the cross-examination of the PW1 that, the complainant society had obtained Ex.P2 cheque as a loan document for the purpose filing the cheque case against him with other loan documents and he has repaid the entire loan amount. But now the complainant society has misused the said cheque and filed this false complaint. But, these suggestions were clearly denied by the PW-1. On the other hand, to prove the loan transaction, the complainant has produced Ex.P7 to Ex.P-12 Loan application, loan agreement as well as Demand Promissory Note, receipt for payment of loan amount and loan statement. On perusal of those documents it is clear that the accused has availed loan alleged in the complaint by executing necessary loan documents. The accused failed to produce any documents to prove his defence. In the absence of contra evidence, it is hard to believe the defence of the accused. It is well settled principles of law is that, when the accused admitted his cheque as well as signature on cheque it shall be presumed that the accused had issued cheque for repayment of legally recoverable debt. 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.

13. Further, the accused has taken another defence that, there is changes in the hand writing on the cheque in issue. Here I would like to rely the decision of Hon'ble Supreme Court in the case of **Bir Singh versus Mukesh Kumar, (2019) 4 SCC 197**. The Hon'ble court held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. The provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139 makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. Further, if a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. In the present case, the accused failed to prove his defence with cogent evidence.

14. It is the specific defence of the accused that, the complainant society has misused the cheque in issue which was issued as security for his loan. If really the cheque in question was misused by the complainant society 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 society , but no such efforts have been made by the accused. 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 society, 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.

15. 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. Hence, the materials placed by the Complainant corroborates with each other with respect to the involvement of legally recoverable debt. 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 points No.1 in the **Affirmative**.

16. **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 cheque amount as

compensation and expenses 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.1,31,000/-(Rupees One Lakh Thirty One Thousand 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 6th day of March 2026).

ANNEXURES

WITNESS EXAMINED FOR COMPLAINANT

P.W.1 : Sri. Vinod Manjunath 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
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Ex.P10 : Copy of Security Letter
Ex.P11 : Copy of receipt for payment of loan amount
Ex.P12 : Copy of loan statement

DOCUMENTS MARKED FOR DEFENCE

-NIL-

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