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IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC., AT HONNAVAR.

-:PRESENT:-

SRI. ANIL JOHN SEQUEIRA
B.B.A., LL.B.,
Addl. Civil Judge & JMFC.,
Honnavar

Dated this 5th day of June, 2026

C.C.No.16/2025

Complainant:- **Saint Milagries Co-operative Society Ltd.,**
Branch: Manki,
Represented by its Branch Manager,
Sri. Annappa Manjunath Naik,
Aged about 37 years,
Tq: Honnavar, (U.K).

(Represented by Sri. V.R.N., Advocate)

V/s

Accused :- **Nagesh Hanumant Naik,**
Aged about 48 years,
R/o Keppanahittalu, Post: Manki,
Tq: Honnavar (U.K).

(Represented by Sri. U.B.N., Advocate)

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1.	Date of Complaint	06-01-2025
2.	<u>Presence of accused</u> 2a. Before the Court 2b. Released on bail	 23-06-2025 23-06-2025
3.	Name of the Complainant	**Saint Milagries Co-operative Society Ltd., Branch: Manki,**
4.	Date of the commencement of evidence	06-01-2025
5.	Date of closure of evidence	10-02-2026
6.	Offence Charged	Under Section 138 of Negotiable Instruments Act
7.	Date on which the judgment is pronounced	**05-06-2026**
8.	Opinion of the Judge	Accused found guilty

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Anil John Sequeira
(Additional Civil Judge
and JMFC Honnavar)

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: <u>J U D G M E N T</u> :

This is a Private Complaint filed by the complainant to prosecute and punish the accused for the offence punishable u/s 138 of N.I. Act.

02) The averments made in the complaint is as follows

The accused took a loan from the complainant society. For the repayment of the loan, the accused issued a cheque bearing No.531595 dated 02.12.2024 for Rs.2,61,385/- (Rupees Two Lakh Sixty One Thousand Three Hundred Eighty Five only) in favour of the complainant society drawn on State Bank of India., Manki Branch. The accused assured that the cheque would be honored upon presentation. However, when the complainant presented the cheque to Canara Bank, Manki Branch, it was returned with the memo "**Funds Insufficient**" on 03-12-2024. The accused intentionally deceived the complainant by issuing a cheque, knowingly without sufficient funds. The complainant sent a legal notice through their advocate on 06-12-2024 through registered post, which was served to the accused on 13-12-2024. Despite the notice, the accused has neither repaid the amount nor responded to the notice. Hence, the complainant came with the present complaint seeking to prosecute and punish the accused for the offence punishable u/s 138 of N.I. Act.

03. After presenting the complaint, this Court taken cognizance of the offence punishable u/s 138 of N.I. Act and recorded the sworn statement and registered a criminal case against the accused and summons was issued to the accused person. Pursuant to the service of the same, accused appeared before the Court through his Counsel and obtained bail. The plea of the accused was recorded and the accused pleaded not

guilty and claimed to be tried. Hence, the matter was set down for trial.

04. In order to prove the offence alleged against the accused, the branch manger of the complainant bank examined as PW-1 and got marked documents at Ex.P-1 to Ex.P-6 and closed his side evidence. After closing the evidence of the complainant, statement of the accused was recorded as required U/sec.351 of BNSS, the accused denied the incriminating evidence appearing against him. The accused has not lead defence evidence.

05. After closing the evidence, I have heard the arguments of both sides and perused the entire records.

06. Based on the substance of the accusation, evidence and materials, the following points arose for the consideration of this court:-

-:**POINTS:-**

1) Whether the Complainant proves beyond reasonable doubt that, the accused has issued a cheque bearing No.531595 dated 02.12.2024 for Rs.2,61,385/- and is drawn on State Bank of India., Manki Branch towards the discharge of his lawful liability of the complainant and the said cheque was presented for encashment, it was returned unpaid due to **“funds insufficient”** in the account of the drawer as per banker’s memo and inspite of issuance of demand notice, the accused has failed to pay the cheque amount, thereby committed the offence punishable under section 138 of NI Act?

2) What order?

07. My findings to the above points are as follows:-

Point No.1: In the affirmative.
Point No.2: As per the final order for the following.

-:R E A S O N S:-

08. Point No.1:- As could be seen from the averments made in the complaint, it is the specific case of the complainant that the accused had taken loan amount and he issued the cheque for the purpose of repayment of loan and upon presentation of the said cheque for encashment, the same was dishonored with an endorsement, **"Funds Insufficient"** and the complainant issued a legal notice to the accused on 06.12.2024. The accused has not replied to the notice nor he paid the amount. On the other hand the accused denied the allegation of the complainant.

09. In order to prove their case, the Branch Manager of complainant society examined as PW-1 by submitting his affidavit in lieu of examination in chief, wherein he reiterated the averments made in the complaint and in support of the evidence, he got marked 06 documents at Ex.P-1 to Ex.P-6. Ex.P-1 is the cheque bearing No.531595 dated 02.12.2024, Ex.P-1(a) is the signature of the accused, Ex.P-2 is the bank endorsement, Ex.P-3 is the copy of legal notice, Ex.P-4 is the postal receipt, Ex.P-5 is the postal acknowledgment, Ex.P-6 is the Authorization letter. On the other hand the accused has not led defence evidence.

10. Ex.P-1 is the Cheque dated 02-12-2024 bearing No.531595, where it can be seen that the accused has issued the cheque for the amount of Rs.2,61,385/-.

11. Ex.P-2 is the Return Memo dated 03.12.2024, where it can be seen that Canara Bank., Manki branch, has issued this Memorandum of Cheque Unpaid, citing the reason that “Funds Insufficient”.

12. Ex.P-3 is the legal notice dated 06.12.2024, wherein the complainant has requested the accused to repay the amount of Rs.2,61,385/-. Ex.P-4 is the postal receipt, where it can be seen that the complainant had posted the legal notice on 06.12.2024 through registered post. Ex.P-5 is the postal acknowledgment, where it shows that the legal notice was served to the accused on 13.12.2024. Ex.P-6 is the authorization letter, whereas the complainant society has given the authorization letter to its branch manager, Mr. Annappa Manjunath Naik.

13. The complainant was cross examined by the counsel for the accused. But nothing has been elicited from the mouth of complainant to disbelieve the version of the complainant.

14. After hearing the counsel appearing for complainant and materials available on record, I am of the opinion that the first and foremost factor that has to be considered is whether the present complaint attracts Section 138 of NI Act. In order to constitute an offence under Section 138 of NI Act, the complainant has to fulfil the following mandatory requirements:-

01. The cheque should have been issued for the discharge in whole or part of any debt or liability.

02. Cheque should have been presented before the bank within the period of its validity and the cheque should have returned dishonoured.

03. The payee should have issued a legal notice in writing to the drawer of the cheque within 30 days from the date of dishonour.

04. After the receipt of the notice, the drawer has failed to pay the cheque amount within 15 days

05. On non-payment of the amount due within 15 days from the date of the receipt of the notice, the complaint should have been filed by the complainant within one month.

15. By keeping these requirements in mind, in the present case, the subject matter of the cheque was dated 02.12.2024 the same was dishonoured on 03.12.2024. The legal notice should have been issued within 30 days from the date of dishonour. The said notice was issued on 06.12.2024. The legal notice sent to the accused was served to the accused on 13.12.2024. The accused after service of notice has to make the payment within 15 days from the date of receipt of notice. But the accused has failed to make any payment. Hence the complainant needs to file the complaint within one month and the present complaint was filed on 06.01.2025. Hence the complaint is in time and there is a due compliance of all the mandatory requirements of law in bringing the present complaint. With all the basic ingredients for constituting an offence under Section 138 of NI Act is complied with.

16. The complainant gets the benefit of presumption under Section 118 and Section 139 of NI Act. Section 118 speaks that unless the contrary is proved presumption regarding consideration, date, time of acceptance etc., shall be presumed in favour of the complainant. Further Section 139 of NI Act shall also presumes unless contrary is proved that the cheque received is for the discharge in whole or part of any debt or liability.

17. However the said presumption is subject to rebuttal and the said legal principle has been reiterated by the Hon'ble Supreme Court in Kamala S. v/s Vidhyadharan M.J. and Another reported in (2007) 5 SCC 264 wherein it was held as follows:-

> **“The Act contains provisions raising presumption as regards the negotiable instruments under Section 118(a) of the Act as also under Section 139 thereof. The said presumptions are rebuttable one. Whether presumption stood rebutted or not would depend upon the facts and circumstances of each case.**

18. As per section 118(a) and 139 of the Negotiable instrument act, the initial burden will always be on the complainant to prove the transaction taken place between the complainant and the accused. The complainant has proved the initial burden and successfully proved that the accused has issued a cheque for legally recoverable debt and when it was

presented to the bank it returned as “Funds Insufficient”. When the complainant proves the initial burden, then the burden shifts on the accused to prove his defence by rebuttal evidence. In this case the accused has not lead defence evidence on his side. The complainant was cross examined by the counsel for the accused. But nothing has been elicited from the mouth of the complainant to disbelieve the version of the complainant.

19. This court heard the arguments and perused the entire records, this court is of the opinion that, The complainant has proved the initial burden and successfully proved that the accused has issued a cheque for legally recoverable debt and when it was presented to the bank it returned as “Funds Insufficient”. All the basic ingredient of section 138 are made out and the accused has failed to rebut the evidence given by the complainant. Hence the accused has failed to rebut the presumption U/s 118 and 139 of NI act by adducing cogent evidence. Hence this court answers this point in the affirmative.

20. Point No.2:- For the discussions made in point No.1, this court proceeds to pass the following:-

-:O R D E R:-

By exercising the power conferred under Section 278(2) of BNSS., the accused is hereby convicted for the offence punishable under Section 138 of N.I. Act.

Accused shall sentenced to pay fine of Rs.2,71,385/- and in that, a sum of Rs.2,66,385/- shall be paid to complainant as compensation under section 395(1)(b) of BNSS and remaining Rs. 5,000/- shall be paid to the State as fine.

The accused is directed to pay the compensation amount to the complainant within three months from the date of this judgment.

In default to pay the compensation amount and fine amount, the accused shall undergo simple imprisonment for a period of 6 Months.

Office is hereby directed to supply free copy of this judgment to the accused.

(Dictated to the stenographer directly on computer, typed by him, corrected and then pronounced by me in the open court on this 5th day of June 2026.)

Digitally signed by
Anil John Sequeira
(Additional Civil Judge
and JMFC Honnavar)

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: A N N E X U R E :

I. LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:-

PW-1 : Sri. Annappa Manjunath Naik

II. LIST OF DOCUMENTS EXHIBITED ON BEHALF OF COMPLAINANT:-

Ex.P-1	:	Cheque bearing No.531595 dated 02.12.2024
Ex.P-1(a)	:	Signature of the accused
Ex.P-2	:	Bank endorsement
Ex.P-3	:	Copy of legal notice
Ex.P-4	:	Postal receipt

Ex.P-5 : Postal acknowledgment

Ex.P-6 : Authorization letter

III. <u>LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED:</u>-

-NIL -

IV. <u>LIST OF DOCUMENTS EXHIBITED ON BEHALF OF ACCUSED:</u>-

-NIL-

Digitally signed by
Anil John Sequeira
(Additional Civil Judge
and JMFC Honnavar)

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