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Presented on : 09-10-2020
Registered on : 09-10-2020
Decided on : 13-03-2026
Duration : 05 years, 05 months, 4 days

IN THE COURT OF
CIVIL JUDGE AND JMFC COURT, DANDELI
AT: DANDELI, UTTARA KANNADA

Presided Over by TEJASHWINI SOGALAD B.COM. LL.M
Civil Judge and JMFC.,
Dandeli.

Dated This The 13th Day of March, 2026

C.C.No.744/2020

Complainant: Shri. Chatrapati Shivaji Vividhoddeshagala
Sahakari Sangh Niyamit, Haliyal (U.K)
R/by its branch Manager of Dandeli
Branch, R/o. Dandeli, Tq: Dandeli,
Dist: Uttara Kannada.

(By Smt. R.M.K. Advocate)

-Vs-

Accused: Sri. Sudharshan Devadas Borkar,
Age: Major, Occ: Service,
R/o: Vanashree Nagar, Dandeli,
Tq: Dandeli, Dist: Uttara Kannada.

(By Sri. P.S.N. Advocate)

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1. Date of Complaint : 08.10.2020
2. Date of dishonour of cheque : 02.09.2020
3. Date of Service of notice : 12.09.2020



4. Date of Institution of the case : 09.10.2020
5. Offence alleged of : U/S.138 of N.I. Act
6. Date of arrest of accused : No.
7. Date of release of accused : 25.02.2021 on bail
8. No. of days in JC : NA
9. Date of commencement of trial : 25.02.2021
10. Date of Judgment : 13.03.2026
11. Opinion of the Judge : Found not guilty

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JUDGMENT

This case arises out of the private complaint filed U/Sec.200 of Cr.P.C. for the offence punishable U/Sec.138 of Negotiable Instruments Act, 1881 (hereinafter referred as **N.I. Act** for brevity) against the accused.

2 The case of the complainant in brief is as under:

- i.** It is the case of the complainant that, complainant society is the financial institution registered under the law and head office of the society is situated at



Haliyal. The complainant society has got a money lending business at Dandeli branch of Dandeli.

- ii.** It is the case of the complainant that, accused is one of the customer of complainant's society and he has requested with complainant society to grant loan of ₹1,80,000/- for personal purpose and on the loan application filed by him, complainant society sanctioned the loan of ₹1,80,000/- to the accused on 22-06-2016. The accused has obtained the sanctioned loan amount of ₹1,80,000/- from complainant society on 22.06.2016. The accused has agreed to repay the said loan amount in 36 monthly installments with interest at the rate of 15% per annum and also agreed to pay 3% penal interest in case of default. Before taking the loan amount, accused has executed the loan agreement and other documents in favour of complainant society.
- iii.** Though complainant society requested the accused to repay the loan dues on several times, accused has



not repaid the loan amount to complainant society as per the terms and conditions of loan agreement. As on 28-08-2020 the accused is liable to repay the total amount of ₹82,310/- towards the loan.

- iv)** In the second week of August 2020, the accused has issued a cheque bearing No.192423 dated 28-08-2020 drawn on Canara Bank, Dandeli Branch for a sum of ₹82,310/- towards the repayment of loan.
- v)** As per the instructions of the accused, the complainant society has presented the said cheque for collection to Kanara District Central Co-op. Bank Ltd., Dandeli branch, on 01.09.2020 and on 02-09-2020, the said cheque is returned with bank memo for reasons "Insufficient Funds". This fact was brought to the notice of accused, but the accused has not paid the amount of the cheque.
- vi)** After return of the said cheque from the society, the complainant got issued a legal notice to the accused on 12.09.2020 by way of registered post, calling upon the accused to make payment of ₹82,310/-



which is covered under the said cheque to the complainant society within fifteen days from the receipt of the said notice. The accused has received the said notice on 14.09.2020. However, accused has failed to pay the amount even after knowing the contents of legal notice of the complaint. The accused knowingly with dishonest intention did not repay the loan and also did not tender any reply to the said notice. Hence, the accused has committed an offence punishable U/Sec 138 of N.I. Act. As such the complainant got cause of action to file the complaint.

- 3** Therefore, complainant filed the present private complaint against accused U/s.200 of Cr.P.C for the offence punishable U/s.138 N.I. Act. Hence, a case got registered against accused in PCR No.75/2020 by the Complainant. The complainant got himself examined as PW-1 and filed sworn affidavit in lieu of his sworn statement. The Complainant has produced 6 documents in support of his case which were marked at Ex.P-1 to Ex.P-6. After



recording the sworn statement of the complainant, cognizance of offence punishable U/Sec.138 of N.I Act is taken against the accused and summons were issued to the accused.

- 4 The accused appeared before this court and he was enlarged on bail on 25.02.2021 and the substance of accusation was framed, read over and explained to the accused in the language known to him and his plea was recorded. The accused pleaded 'not guilty' and claimed to be tried. However, accused failed to cross examine P.W.1 even after according several opportunities. Hence cross of P.W.1 is taken as Nil vide order dated 16.09.2025. Later, case got posted for recording statement of accused u/s.313 of Cr.P.C. Later the statement of accused recorded as per Sec.313 of Cr.P.C wherein he denied all incriminating evidence appearing in complainant's evidence and submitted that he has No defence to make. posted the case for arguments.
- 5 Heard arguments of counsel for complainant and Accused. Perused the entire materials on record.



6 At this point, the following points arise for my consideration:

Point No.1: *Whether the complainant proves beyond all reasonable doubt that, the accused had issued his cheque bearing No.192423, dated 28.08.2020, drawn on Canara Bank, Dandeli Branch infavour of complainant society, for an amount of ₹82,31/- towards the repayment of loan amount, which when presented for encashment by the complainant through his banker i.e. Kanara District Central Co-op. Bank, Dandeli Branch, on 02.09.2020 it came to be dishonored with an endorsement “Insufficient Funds” and despite of issuance of legal notice, the accused failed to pay amount covered under cheque and thereby the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act?*

Point No.2: *What Order or Sentence?*

7 My findings to the above mentioned points are as under:

Point No.1: In the **Negative**

Point No.2: As per the final order
for the following;

**REASONS**

8 **Point No. 1:** In order to prove his case, the complainant got himself examined as PW-1 and got marked as many as 6 documents which are exhibited at Ex.P-1 to Ex.P-6. **Ex.P-1** is the Original cheque bearing No.192423, dated 28.08.2020, drawn on Canara Bank, Dandeli Branch, wherein the payee name shown as the name of complainant. **Ex.P-1(a)** is the signature of accused appearing on Ex.P-1. **Ex.P.2** is the Return memo issued by Kanara District Central Co-op. Bank, Dandeli branch with the reason “Insufficient Funds ”, **Ex.P-3** is the Legal Notice dated: 12.09.2020, **Ex.P-4** is the Postal Acknowledgment. **Ex.P-5** is the copy of Statement of Account. **Ex.P.6** is the Authorization Letter. On perusal of documentary evidence and complaint, it is clearly forthcoming that the order of taking cognizance found to be correct. The accused to prove his defence did not choose neither to enter into witness box nor chose to examine any witness on his behalf.



- 9 Now let me ascertain whether the complainant is entitled to the presumption available U/Sec.139 of Negotiable Instruments Act. In order to raise a presumption U/Sec.139 of N.I. Act the following 3 ingredients have to be ascertained and established in view of decision of ***Hon'ble Apex Court in Rangappa V/s Shri Mohan reported in AIR 2010 SC 1898.***
- i) The cheque in question must relate to the account of the accused.
 - ii) The cheque in question must have been issued by the accused to the complainant.
 - iii) The accused must have admitted his signature on the cheque in question. To put it otherwise the accused must not have denied his signature on the cheque.
- 10 The presumption as envisaged U/Sec.139 is a statutory and mandatory presumption and not the discretionary presumption. It is an established position of law that under the scheme of Negotiable Instruments Act, especially under scheme of sections 118 and 139, the statutory presumption is raised in favour of the complainant and the Court has to presume and proceed



on the basis of this presumption unless it is dislodged by the accused on the strength of leading cogent and convincing evidence in support of his claim.

11 In the present case prima facie the complainant has produced documents to show that he is entitled for raising presumption provided U/Sec.139 in his favour. Accordingly presumption in favour of complainant as provided U/Sec.139 is drawn.

12 Now, that the presumption is drawn in favour of complainant as per Sec.139 of N.I. Act as aforesaid, the burden/onus is on the accused to rebut the said presumption by putting forth a probable theory which court make the case of the complainant to be improbable. This the accused can do, on a scale of preponderance of probability only. It is pertinent to note that once a presumption is drawn in favour of complainant under Section 139 of N.I. Act, the onus shifts on accused to rebut the said presumption by placing cogent evidence to show that the cheque was not issued towards discharge of any legally enforceable debt. It is only then the burden



would shift on the complainant to prove his case beyond all reasonable debts.

13 In the present case by examining himself as PW-1 the complainant has discharged the initial burden casted upon him that the cheque was issued by the accused towards repayment of hand loan. With the examination of PW-1, the statutory presumption U/Sec.139 arises and it is for the accused to adduce evidence to prove that cheque in question is not issued by him and there was no debt or liability to be discharge by him.

14 In the instant case the accused has to blame himself for the predicament in which he has landed with no evidence, as he neither stepped into witness box nor examined any one else on his behalf. He also failed to cross examine PW-1. Further, it is also forthcoming that Ex.P-1 belongs to the account of accused and it bears his signature. On perusal of documentary evidence produced by complainant, it is forthcoming that, complainant has produced all necessary documents which are marked at Ex.P-1 to 6, which clearly prove the case of the



complainant and there is nothing on record to disbelieve the version of complainant. Finally complainant's evidence remained unchallenged and accused ended with having no defence at all. Such being the case adverse inference has to be drawn in favour of complainant as his evidence remained unrebutted.

15 In other words the accused has not put any efforts to prove his defence. On the contrary, the complainant has proved beyond all reasonable doubt that the accused has issued cheque Ex.P-1 in discharge of legally enforceable debt in favour of complainant. Hence accused is utterly failed to rebut the presumption raised in favour of complainant U/Sec.139 of N.I. Act.

16 However, when the case was posted for judgment, on the next date of hearing i.e. on 13.03.2026, before pronouncing the judgment, the complainant filed memo, wherein it is stated that, accused has paid entire cheque amount to complainant and has settled the matter out of court and when the accused has cleared the liability, the



conviction of accused is not proper. Therefore, I answer Point No.1 in the **Negative**.

17 Point No.2:- Accordingly in the light of above discussions, I proceed to pass the following:

ORDER

Acting U/Sec.255(1) of Cr.P.C. accused is acquitted of the offence punishable under Section 138 of N.I.Act.

The bail bond and surety bond of the accused shall stand cancelled.

(Typed by me on Computer directly, printout taken by me, Judgment corrected and signed by me, then pronounced by me in the Open Court on this the 13th day of March, 2026).

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: ANNEXURE :

List of witnesses examined on behalf of Complainant:

P.W.1 : Shri. Sunil S/o. Arjun Mogri

List of documents marked on behalf of Complainant:

Ex.P-1 : Original Cheque

Ex.P-1(a) : Signature of Accused

Ex.P-2 : Return Memo

Ex.P-3 : Legal Notice



Ex.P-4 : Postal Acknowledgement

Ex.P-5 : Copy of Statement of Account

Ex.P-6 : Authorization Letter

List of witnesses examined on behalf of accused:

--Nil--

List of documents marked on behalf of accused:

--Nil-

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