

KAUK410013952022



Presented on : 22-04-2022
Registered on : 22-04-2022
Decided on : 13-03-2026
Duration : 03 years, 10 months, 21 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.1065/2022

Complainant: The Akshaya Co-Op. Credit Society Ltd.,
H.O. Karwar, Taluk: Karwar,
District: Uttara Kannada,
Rep. by its branch Manager of Dandeli branch,
R/o: Dandeli, Taluk: Dandeli,
District: Uttara Kannada.

(By Sri. M.C.H. Advocate)

V/s

Accused: Mr. Vishnu S/o. Anand Dabali,
Age: 45 years, Occ: Business,
R/o: H.No.562/B, Near Ishwar Temple,
Kulgi Road, Dandeli, Tq: Dandeli,
Dist: Uttara Kannada.

(By Sri. R.I.H. Advocate)

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1. Date of Complaint : 22.04.2022
2. Date of dishonour of cheque : 30.03.2022



3. Date of notice : 04.04.2022
4. Date of Institution of the case : 22.04.2022
5. Offence alleged of : U/S.138 of N.I. Act
6. Date of arrest of accused : No.
7. Date of release of accused : 26.07.2022 on bail
8. No. of days in JC : NA
9. Date of commencement of trial : 22.12.2022
10. Date of Judgment : 13.03.2026
11. Opinion of the Judge : Found 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 Karwar. The complainant society has got a money lending business at Dandeli branch of Dandeli.



- ii.** It is further case of the complainant that, one Smt. Sevanti Vishnu Dabali, R/o. H.No.562/B, Near Ishwar Temple, Kulgi Road, Dandeli is one of the customers of complainant's society and she has requested with complainant society to grant personal loan of ₹1,50,000/- and on the loan application filed by her, complainant society sanctioned the personal loan of ₹1,50,000/- under the personal loan account No.437 on 29.03.2021. The accused and Mr. Vinayak Madivalappa Barikar is the sureties to the said loan transaction.
- iii.** It is further stated that, the main borrower Smt. Sevanti Vishnu Dabali and her sureties have agreed to repay the said loan amount in 60 monthly installments with interest at the rate of 14% per annum and also agreed to pay 2% penal interest in case of default. Before taking the loan amount, the borrower and his sureties i.e. accused has executed the loan agreement and other documents in favour of complainant society. But the main borrower did not repay the loan amount



as agreed. Therefore, the complainant society requested the accused to repay the loan dues on several times. but accused has not repaid the loan amount to complainant society as per the terms and conditions of loan agreement. Hence the loan installments are due from 29-04-2021. As on 29-03-2022 the main borrower and the accused are jointly liable to repay the total amount of ₹1,75,000/- towards the loan.

- iv.** On 29-03-2022, when the complainant asked the accused to repay the loan amount with interest, the accused has issued a cheque of the Kanara District Central Co-Op. Bank Ltd., Bangur Nagar branch, Dandeli cheque bearing No.003748 dated 29-03-2022 for a sum of ₹1,75,000/- towards the repayment of loan.
- v.** As per the instructions of the accused, the complainant society has presented the said cheque for collection to State Bank of India, Lenin Road, Dandeli branch, Dandeli. But on 30-03-2022, the said cheque is returned with bank memo for reasons “Funds



Insufficient”. 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 04.04.2022 by way of registered post, calling upon the accused to make payment of ₹1,75,000/- which is covered under the said cheque to the complainant society within fifteen days from the receipt of the said notice. The accused received the notice on 05-04-2022 and not given any reply to the said notice, but, he has failed to pay the amount even after the receipt of the 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.81/2022 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.

4. 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. But accused even after due service of summons accused avoided appearing before this court. Therefore, in order to secure the presence of accused, nonailable warrants were issued. But only on 26.07.2022, the accused appeared before this Court and he was enlarged on bail.
5. Later, 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.W1. Thereafter the statement of accused as per Sec.313 of Cr.P.C is recorded and accused submitted she has defence



from her side. Hence, case got posted for defence evidence. However, from then till 25.07.2025 accused was not at all regular in prosecuting the present case. He avoided appearance before court. Finally on 30.01.2026, defence evidence is taken as NIL and heard arguments of complainant and by noting the absence of accused posted the case for judgment. Perused the records.

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 cheque bearing No.003748 for ₹1,75,000/- dated 29.03.2022 drawn on Kanara District Central Co-Op. Bank Ltd., Bangur Nagar Branch, Dandeli towards repayment of the amount borrowed by accused from complainant, which when presented for encashment by the complainant through his banker came to be dishonored with an endorsement "Funds Insufficient" 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 U/Sec.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 Affirmative**

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 P.W.1 and reiterated the contents of complaint in his sworn affidavit filed in lieu of his examination in chief and got marked as many as 6 documents as Ex.P-1 to Ex.P-6. **Ex.P-1** is the Original Cheque bearing No.003748 for ₹.1,75,000/- dated 29.03.2022 drawn on Kanara District Central Co-Op. Bank Ltd., Bangur Nagar Branch, Dandeli, wherein payee name stands in the name of complainant. **Ex.P-2** is the Cheque return memo dated 30.03.2022 in which reason of return is mentioned as 'Funds insufficient'. **Ex.P-3** is the Legal Notice dated 04.04.2022. **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.



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 she is entitled for raising presumption provided U/Sec.139 in her favour. Accordingly presumption in favour of complainant as provided U/Sec.139 is drawn. 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.



12. “Presumption that arises in favour of the holder of the cheque that it is for the discharge of any debt or other liability, as per Section 139 of the Act, is subject to contrary proof. Law is well settled that standard of proof for rebutting the presumption is not the same as is for proof of a criminal charge. For rebuttal of presumption arising in favour of prosecution, principle of preponderance of probability applies, while for proving a criminal charge, principle of strict proof is applicable. If the evidence on record, irrespective of the fact whether the said evidence is led by the accused or complaint, probalilises the accused's plea that the cheque was not for the discharge of any debt or other liability, the presumption under Section 139 of the Negotiable Instruments Act would not arise.
13. As held by ***the Supreme Court is Krishna Janardhan Bhat V Dattatraya G. Hegde reported in AIR 2008 SUPREME COURT 1325***, an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has



constitutional right to maintain silence. Inference of 'preponderance of probabilities' can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies.”

14. 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 her and there was no debt or liability to be discharged by her. But in the instant case, the accused failed to cross examine P.W.1 and also did not utilise the opportunities to lead his evidence, and thereby he ended with no evidence from her side. 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 her evidence remained un rebutted.



15. In the instant case the accused has to blame herself for the predicament in which she has landed with no evidence, as she neither stepped into witness box nor examined any one else on her behalf. She 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. When prima-facie complainant has proved the ingredients in order to invoke presumption as provided Sec.139 of N.I. Act, the burden is heavy on accused to prove her defence.
16. In other words the accused has not put any efforts to prove her 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. Therefore, I answer **Point No.1 in the Affirmative.**

17. **Point No.2:-** Ex.P-1 is cheque pertaining to the month of March, 2022 and the complainant was deprived of the money which was rightfully due to his for a period for about 4 years. Hence, I deem it is fit case to impose double the cheque amount as fine i.e. **₹2,40,000/-** on the accused. Further, by looking at the way the accused has conducted the present case and by considering the abuse of process of law by the acts of accused, I deem it fit case to sentence accused to imprisonment alongwith imposing fine. Accordingly in the light of above discussions, I proceed to pass the following:

ORDER

The accused is found guilty of offence punishable U/Sec.138 of Negotiable Instrument Act.

Acting under Section 255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instrument Act and he is sentenced to pay fine of ₹2,40,000/- and sentenced to undergo simple imprisonment for a period of 6 months.



In default of payment of aforesaid amount of fine, the accused shall undergo simple imprisonment for a period of 6 months.

Out of the fine amount ₹2,40,000/-, the amount of ₹2,30,000/- shall be paid to the complainant as compensation U/Sec.357 of Cr.P.C and ₹10,000/- shall be remitted to the state.

Further, it is made clear that in view of proviso to section 421(1) of Cr.P.C the accused shall not be absolved of his liability to pay compensation amount of ₹2,40,000/- awarded U/Sec.357 of Cr.P.C even if he undergoes the default sentence.

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

Office is directed to supply copy of the Judgment to the accused free of cost forthwith.

(Dictated to Stenographer directly on computer, printout taken by her, and then corrected and pronounced by me in open Court on this 13th day of March, 2026).



: ANNEXURE :

List of witnesses examined on behalf of Complainant:

P.W.1 : Shri. Channabasappa S/o. Jayasheela Gowda

C.W.1 : Shri. Richard S/o. Francis Golsalves

List of documents marked on behalf of Complainant:

Ex.P-1 : Original Cheque

Ex.P-2 : Cheque Return Memo

Ex.P-3 : Legal Notice

Ex.P-4 : Postal Acknowledgment

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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