

KAUK410017002023



Presented on : 16-12-2023
Registered on : 16-12-2023
Decided on : 13-03-2026
Duration : 02 years, 02 months, 28 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.1018/2023

Complainant: Smt. Kusuma W/o. Krishna Sadekar,

Age: 46 years, Occ: Teacher,

R/o: Opposite Head Post Office,

Barchi Road, Dandeli,

Tq: Dandel, District: Uttara Kannada.

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

-V/s-

Accused: Mr. Arun S/o. Jeeva Gaikwad,

Aged about: 56 Years, Occ: Business,

R/o: IB/428, Near Touheed School,

Township, Dandeli, Tq: Dandeli,

District: Uttara Kannada.

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

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1. Date of Complaint : 01-12-2023
2. Date of dishonour of cheque : 04-09-2023 &
21-10-2023
3. Date of Service of notice : 27-10-2023
4. Date of Institution of the case : 04-12-2023
5. Offence alleged of : U/S.138 of N.I. Act
6. Date of arrest of accused : No.
7. Date of release of accused : 04-07-2024 on bail
8. No. of days in JC : NA
9. Date of commencement of trial : 05-08-2025
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, the accused is the owner of the residential building bearing No.IB/428, situate near Touheed School, Township, Dandeli. The complainant approached the accused in the last week of September 2022 and requested him to give the first floor left side residential house to the complainant for the period of five years from 24-09-2022. The rent agreement was executed between complainant and the accused at Dandeli with regard to above said building.
- ii)** As per the terms of the agreement dated 24-09-2022, the complainant has deposited with the accused an amount of Rs.2,00,000/- in cash on 24-09-2022 at the time of execution of agreement and requested the accused to handover the possession of the rented premise to the complainant under the lease. The accused agreed with the complainant that the interest comes on the said amount shall be considered as lease amount for the leased out rented



premise and accused agreed to return the said deposit amount of Rs.2,00,000/- to the complainant at the time of vacating the building. The original agreement is with the accused and he has given the Xerox copy of the agreement to the complainant.

- iii)** The complainant expressed intention that it is not possible her to reside in the rented premise and hence she vacated the premise and requested the accused to return the deposited amount of Rs. 2,00,000/- to her in the first week of October 2022. The accused has agreed to return the deposited money within one month and he post-phoned to return the security deposit money to the complainant one or the other reasons and finally on 04-09-2023. Thereafter, on several requests made by the complainant, the accused has issued a cheque bearing No.278076 for ₹.2,00,000/- dated 04.09.2023 drawn on Karnataka Bank Ltd., Dandeli Branch towards repayment of the said amount.



- iv)** The complainant presented the said cheque through Canara Bank, Dandeli Branch for encashment, the same was returned dishonoured due to “Insufficient Funds”, as per the memo dated 04-09-2023. When this fact was orally intimated to the accused the accused has requested with complainant to present cheque once again after one month. According to the instructions of the accused, the complainant again presented that cheque for encashment on 20-10-2023 through Canara Bank of Dandeli. But the said cheque is returned from the Bank on 21-10-2023 for the reason “Drawers signature differs”.
- v)** Thereafter, the complainant has issued Legal Notices dated 27.10.2023 to the accused through his Advocate and the said notice was duly served upon accused on 28.10.2023. Even then the accused did not repay the said amount. Therefore, the complainant realised that the accused knowingly with dishonest intention did not repay the loan and gave cheque without having sufficient balance in her



account with dishonest intention. 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.90/2023 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 5 documents in support of his case which were marked at Ex.P-1 to Ex.P-5.
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 only on 04.07.2024, the accused appeared before this Court and he was enlarged on bail. Later, on 09.07.2025, 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 did pleaded 'not guilty' and claims to be tried.

5. Later, again accused remained absent from trial. Therefore, againailable and non-bailable warrants were issued in order to secure the presence of accused was secured. However, accused and counsel for accused failed to file any application u/s 145(2) of N.I.Act. Hence, case got posted for defence evidence as per the directions issued by **Hon'ble Supreme Court in case of Indian Bank Association and others Vs Union of India and others reported in AIR 2014 SC 2528**.
6. **After that accused remained irregular to the court proceedings and there was no representation from his counsel also.** From then till 11.12.2025 ample opportunities are given to accused to lead defence evidence. However, accused failed to lead his evidence and failed to utilise all the opportunities accorded by this court. Hence, defence evidence is taken as nil. Then heard arguments of counsel for complainant and posted the case for judgment.



7. Heard arguments of counsel for complainant. Perused the entire materials on record.
8. 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.278076 for ₹2,00,000/- dated 04.09.2023 drawn on Karnataka Bank Ltd., Dandeli Branch towards repayment of the amount borrowed by accused from complainant, which when presented for encashment by the complainant through his banker i.e. Central Bank of India, Dandeli Branch, it came to be dishonored with an endorsement “Funds Insufficient” and “Drawers signature differs” 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?*

9. Heard both sides and perused the materials on record.



10. 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

11. **Point No. 1:** In order to prove her case, the complainant got herself examined as P.W.1 and reiterated the contents of complaint in her sworn affidavit filed in lieu of her examination in chief and got marked as many as 5 documents as Ex.P-1 to Ex.P-5. **Ex.P-1** is the Original Cheque bearing No.278076 for ₹.2,00,000/- dated 04.09.2023 drawn on Karnataka Bank Ltd., Dandeli Branch wherein payee name stands in the name of complainant. **Ex.P-1(a)** is the signature of accused appearing on Ex.P1. **Ex.P-2** is the Cheque return memo dated 04.09.2023 in which reason of return is mentioned as 'Funds Insufficient'. **Ex.P-3** is the Cheque return memo dated 21.10.2023 in which reason of return is mentioned as 'Drawers Signature differs'. **Ex.P-4** is Legal Notice dated 27.10.2023. **Ex.P-5** is the Postal Acknowledgment. On perusal of documentary evidence and complaint, it is



clearly forthcoming that the order of taking cognizance found to be correct.

12. 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.

13. 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.

14. 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.
15. 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.

16. “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, probabilises 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.

17. As held by the ***Supreme Court in 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.”
18. 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. 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.

19. 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 5, which clearly prove the case of the complainant and there is nothing on record to disbelieve the version of complainant.
20. At this juncture, if it is examined in the light of defence taken up by the accused, as to whether he has successfully rebutted the presumption drawn in favour of



the complainant as per Section 139 of Negotiable Instrument Act, it is found that accused has ended with no evidence from his side. The accused neither stepped into witness box nor elicited the fact worthy to believe his defense in cross examination of complainant. Once the presumption is raised in favour of complainant, the onus shifts on accused where in he has to rebut the presumption raised with corroborative and cogent evidence. 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 his defence.

- 21.** 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. Therefore, I answer Point No.1 in the **Affirmative.**



22. **Point No.2:-** Ex.P-1 is cheque pertaining to the month of September,2023 and the complainant was deprived of the money which was rightfully due to his for a period more than 2 years. Hence I deem it is fit case to impose fine of **₹2,40,000/-** on the accused. Accordingly in the light of above discussions, I proceed to pass the following:

ORDER

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

Acting under section 255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable U/S.138 of Negotiable Instrument Act and he is sentenced to pay fine of ₹2,40,000/-.

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 ₹2,40,000/- shall be paid to the complainant as compensation U/Sec.357 of Cr.P.C and ₹5,000/- 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/s 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.

(Dictated to Stenographer directly on computer, printout taken by her, and then Judgment 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 : Smt. Kusuma W/o. Krishna Sadekar

List of documents marked on behalf of Complainant:

Ex.P-1 : Original Cheque

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

Ex.P-2 : Cheque return memo dated: 04-09-2023

Ex.P-3 : Cheque return memo dated: 21-10-2023



Ex.P-4 : Legal Notice

Ex.P-5 : Postal Acknowledgment

List of witnesses examined on behalf of accused:

- Nil -

List of documents marked on behalf of accused:

- Nil -

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