

KAUK410018232022



Presented on : 22-06-2022
Registered on : 22-06-2022
Decided on : 10-04-2026
Duration : 03 years, 09 months, 19 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 10th Day of – April, 2026

C.C.No.1387/2022

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

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

-V/s-

Accused: Smt. Sandhya Ramanath Choudhari,
Age: 40 years, Occ: Business,
R/o: H.N.50, 1st Cross, Maruti Galli,
Jagalbet, Tq: Joida, Dist: Uttara Kannada.

(By Sri. M.M.S. Advocate)



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1. Date of Complaint : 22-02-2022
2. Date of dishonour of cheque : 11-02-2022
3. Date of Service of notice : 02-03-2022
4. Date of Institution of the case : 23-03-2022
5. Offence alleged of : U/S.138 of N.I. Act
6. Date of arrest of accused : No.
7. Date of release of accused : 24-11-2022 on bail
8. No. of days in JC : NA
9. Date of commencement of trial : 22-12-2022
10. Date of Judgment : 10-04-2026
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 has got a money lending business at Gagalbet branch of Ramanagar.
- ii.** It is further case of the complainant that, one Shri. Ramanath Narayan Chowdari, is one of the customers of complainant's society and he has requested with complainant society sought for grant of loan of ₹60,000/- interest at the rate of 15% upto 3 years and on the loan application filed by him, complainant society sanctioned the loan of ₹60,000/- to him on 19.01.2017. The accused and Smt. Sandhya Ramanatha Choudhari, are the sureties to the said loan transaction.
- iii.** It is further stated that, the main borrower Smt. Ramanath Narayan Chowdari, and his surety has agreed to repay the said loan amount in installments with interest at the rate of 15% per annum and also agreed to pay penal interest in case of default. 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.

- iv.** when the complainant asked the accused to repay the loan amount with interest, the accused has issued a cheque of the KDCC Bank, Jagalbet branch bearing No.780351 dated 08-02-2022 for a sum of ₹96,498/- towards the repayment of loan.
- v.** As per the instructions of the accused, the complainant society has presented the said cheque for collection to K.D.C.C. Bank, Ramanagar branch, on 11-02-2022, 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.** Thereafter, the complainant has issued Legal Notice dated 24-02-2022 to the accused through his



advocate and the said notice is served on accused on 02-03-2022. But accused has not given any reply to the said notice and not repaid 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 his 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.57/2022 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, non bailable warrants were issued. But only on 24.11.2022, the accused appeared before this Court and he was enlarged on bail.
5. Later on 22.12.2022, the substance of accusation was framed, read over and explained to the accused in the language known to her and her plea was recorded. The accused pleaded 'not guilty' and claimed to be tried. On the same day counsel for accused failed to file an application U/s.145(2) of N.I.Act. Therefore, case got posted for defence evidence.
6. Later, only on 06.04.2024, the counsel for accused filed an application U/s.145(2) of N.I.Act. Therefore, the said application came to be allowed on the same day and case got posted for cross examination of P.W.1. From then till



23.07.2025 the accused was again given ample opportunities to cross examine P.W.1. But accused failed to cross examine P.W1. Hence, vide order dated 23.07.2025 cross examination of P.W.1 is taken as 'NIL'. Thereafter again accused remained absent.

7. Then only on 14.11.2025 presence of accused was secured and the statement of accused as per Sec.313 of Cr.P.C is recorded and accused submitted she has defence from his side. Hence, case got posted for defence evidence. However, from then till 17.12.2025 accused was not at all regular in prosecuting the present case. He avoided appearance before court. Finally on 17.12.2025, 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.
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.780351 for ₹96,498/- dated 08.02.2022 drawn on KDCC*



Bank, Jagalbet Branch towards repayment of the loan borrowed by Smt. Sandya Ramanath Chowdari from complainants bank, and when the main borrower failed to repay the said loan, therefore, the accused being surety of main borrower, issued alleged cheque, 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?*

9. Heard the arguments for counsel for complainant and since accused remained absent. 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 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 Cheque bearing No.780351 for ₹96,498/- dated 08.02.2022 drawn on KDCC Bank, Jagalbet 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 11.02.2022 in which reason of return is mentioned as 'Funds insufficient'. **Ex.P-3** is Legal Notice dated 24.02.2022. **Ex.P-4** is the Postal Acknowledgment. **Ex.P-5** is the copy of loan account statement of main borrower Smt. Sandhya Ramanath Choudhari. **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.



12. However, accused did not choose to cross examine PW-1 even after giving sufficient opportunities. The accused to prove his defence did not choose neither enter into witness box nor choose to examine any witness on his behalf.
13. Even after giving sufficient opportunities the accused did not choose to cross examine complainant but tried to drag on the proceedings, under the pretext of mutual settlement. But even after giving sufficient opportunities neither accused nor his counsel utilized those opportunities. Hence, after giving good time and various slots to accused, when he failed to make use and cross examine PW-1, the cross examination of PW-1 is taken 'Nil' and on closure of complainant's side evidence, the statement of accused U/Sec. 313 of Cr.P.C. was recorded, wherein he denied all incriminating evidence appearing against him, and submitted that he has defence to make, but after giving sufficient opportunities, he did not choose to adduce any evidence on his behalf. Later, heard the



arguments of counsels for complainant and as accused remained absent and posted the case for judgment.

14. 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.

15. The presumption as envisaged U/s.139 is a statutory and mandatory presumption and not he 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 created 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.

16. At this juncture, let me examine in the light of defence taken up by the accused, as to whether the complainant has proved that he is entitled to the presumption available U/Sec.139 of Negotiable Instruments Act. In the instant case the accused has not denied any of the above ingredients.
17. More particularly accused has not taken any defences at all. The accused has been given sufficient time and opportunities but accused kept on dragging on proceedings under one or the other pretext. 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.
18. 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. Further, it is also forthcoming that Ex.P-1 belongs to the account of accused and it bears his signature. More specifically accused has not denied it throughout trial of this case. 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. Such being the case, it is very clear that the complainant is entitled to the raising of presumption in his favour as provided u/s 139 of N.I.Act. Accordingly presumption in favour of complainant as provided U/s.139 is drawn.

- 19.** Now, that the presumption is drawn in favour of complainant as per Sec.139 of NI Act as aforesaid, the burden/onus is on the accused to rebut the said presumption by putting forth a probable theory which 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 U/S 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.

- 20.** “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 complainant, 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.

21. As held by *the Supreme Court* is ***Krishna Janardhan Bhat V Dattatraya G. Hegde reported in (2008) 4 SCC 54***, 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.”
22. At this juncture, let me examine 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 already discussed above that how 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.

23. 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/S 139 of N.I. Act. Therefore, I answer point No.1 in the **Affirmative.**

24. Point No.2: Ex.P-1 is cheque pertaining to the month of February, 2022 and the complainant was deprived of the money which was rightfully due to him for a period more than 4 years. Hence I deem it is fit case to impose fine of



₹1,25,000/- on the accused. Further, by looking 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 simple imprisonment along with 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/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 she is sentenced to simple imprisonment for a period of 06 months and to pay fine of ₹1,25,000/-.

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 ₹1,25,000/-, the amount of ₹1,20,000/- 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 ₹1,25,000/- 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 corrected and pronounced by me in open Court on this 10th day of April, 2026).

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: ANNEXURE :

List of witnesses examined on behalf of Complainant:

P.W.1 : Shri Channappa Anant Gurava

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

Ex.P-3 : Legal Notice

Ex.P-4 : Postal Acknowledgment

Ex.P-5 : Copy of Loan Account Statement

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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