



Final Order	Accused is convicted
Date of Order	07-03-2026

### **J U D G M E N T**

The present complaint is filed under section 200 of Code of Criminal Procedure against the accused seeking to punish him for the offence punishable under section 138 of the Negotiable Instruments Act (in short referred as “N.I. Act”).

02. Brief facts of the case of the complainant are that the complainant Co-operative Society is an institution registered under Karnataka Co-operative Credit Society Act and its head office situated at Karwar and its one of the branch is situated at Honnavar represented by its Manager the complainant society.

03. The accused is the customer of complainant bank and he took loan of Rs.1,00,000/- on 13-02-2019 for the purpose of business. Similarly one Mahammad Ali Sahed has also availed loan of Rs.1,00,000/- on 18-03-2019 and one Hussain Abdul Rehman Sab has availed loan of Rs.85,000/-

on 30-03-2019 and one Arif Fakir Saheb has availed a loan of Rs.1,00,000/- on 07-08-2021 from the complainant society. The accused is the guarantor for the said three loan and signed the documents as a guarantor. The accused as well as others have not cleared the loan as agreed by them and they became the defaulter. The complainant society has approached the accused and asked him to repay his loan and since he is the guarantor they have asked him to clear the loan of other three persons. Since he is the responsible person of the said 03 loans as well as his loan, he has issued a cheque bearing No.114673 dated 29-01-2022 drawn on Canara Bank, Honnavar Branch for Rs.3,65,000/- and assured that his account has sufficient amount to clear the loan. By believing the wordings of the accused the complainant society has received the cheque and they have presented it through their bank Indian Overseas Bank, Honnavar Branch for collection, it returned with shara that "accused account has no sufficient funds". The Indian Overseas Bank, Honnavar Branch has issued a memo on 01-02-2022. Hence the complainant society has issued the demand notice on 08-02-2022 through their counsel and it has duly served on the accused on 10-02-2022. The accused neither repay the amount nor issued any reply notice. Thus with an intention to cheat the complainant society, accused has issued the cheque though his account has no sufficient funds. Thereby the accused has committed an offence

punishable under section 138 of NI Act. Accordingly the complainant society has prayed to punish the accused for the offence under section 138 of NI Act and sought the directions to accused to pay compensation.

04. On presentation of the complaint this court has verified the complaint averments with documents and took the cognizance for the offence under section 138 of NI Act. The Authorized Officer of the complainant society present and submitted the affidavit and recorded the sworn statement and examined as PW-1 and 04 documents are marked as Ex.P-1 to 4. Having been made out the prima-facie case this complaint has been registered in Register No.III and issued the process against the accused.

05. In response of the summons issued by this court the accused has appeared through his counsel and filed the bail application under section 436 of Cr.P.C. and enlarged on bail. The substance of accusation has been recorded and read over to the accused and he has not pleaded guilty and intends to put forth his defense. As per the dictum of Hon'ble Supreme Court reported in ***AIR 2014 SC 1983 in between Indian Bank Association and Others V/s Union of India and Others***, the sworn statement of the complainant has treated as complainant evidence. Since the accused wanted to cross examine the PW-1 he filed necessary application. However

later on, the present Manager of complainant society has filed his affidavit and examined as PW-1 and 08 documents produced and marked as Ex.P-1 to 8. The PW-1 has cross-examined by the counsel for the accused.

06. On completion of the trial the accused has examined under section 313 of Cr.P.C. and recorded the statement. The accused has denied the evidence of complainant as false. But he did not enter into the witness box and submits any defence evidence.

07. Heard the arguments of counsel for complainant society and accused. Perused the materials available on record.

08. On the basis of the above the following points are arise for my consideration:

01. Whether the complainant-Akshay Cooperative Credit Society proves beyond reasonable doubt that the accused has issued a Cheque bearing No.114673 dated 29-01-2022 drawn on Canara Bank, Honnavar Branch for Rs.3,65,000/- towards discharge of his lawful liability of the complainant and when the said cheque was presented for encashment it returned unpaid due to “accused account has no sufficient funds” as per the banker’s memo and in spite of issuance of demand notice, the

accused has failed to repay the cheque amount, thereby the accused has committed the offence punishable under section 138 of NI Act?

02. What order or sentence?

09. The above points are answered as under:

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

### **REASONS**

**10. Point No.1:** The specific contention of the complainant society is that the accused has issued the disputed cheque in his favour to clear his liability and when they have presented it for encashment it returned unpaid due to insufficient funds and in spite of demand notice the accused has failed to pay the cheque amount. In order to prove the allegation of the accused the complainant has submits the sworn statement and it considered as a evidence as per the decision of *Hon'ble Supreme Court in 'Indian Bank Association'* case. However later on the present Manager of the complainant bank has examined as PW-1 and re-iterated all the complaint averments in his affidavit and 08 documents produced and marked as Ex.P-1 to 8.

11. The complainant bank has produced the documentary evidence as Ex.P-1 to 8 such as the original cheque dated 29-01-2022 for Rs.3,65,000/- marked as Ex.P-1. Ex.P-2 is the return memo issued by Indian Overseas Bank Ltd., Honnavar Branch. Ex.P-3 is the demand notice dated 08-02-2022. Ex.P-4 is the postal acknowledgement. Ex.P-5 to 7 are the statement of accounts of accused and other accounts to whom the accused has stand surety. Ex.P-8 is the authorization letter issued by General Manager of complainant society in favour of PW-1 to proceed with the matter and to give evidence. After completion of complainant evidence PW-1 has been cross-examined by the counsel for the accused. But nothing has come out from his mouth to suspect his veracity. In order to rebut the presumption the accused has not submits any defence evidence.

12. Before appreciating the oral and documentary evidence it is necessary to know as to whether the present complaint is filed in consonance with the provision of section 138 of NI Act or not? The cheque is dated 29-01-2022. As per banker's memo Ex.P-2 the cheque has presented for encashment on 31-01-2022 within the period of its validity. It has been bounced for want of funds as per the banker's memo dated 01-02-2022. The complainant society has caused the legal notice on 08-02-2022 and it discloses that within one month from the banker's endorsement the complainant society

has issued the demand notice. As per Ex.P-4 the postal acknowledgement the demand notice has been duly served on the accused on 10-02-2022. The accused has not given any reply notice. The present complaint has been filed on 19-03-2022. By considering the materials on records, it appears that the present complaint has filed in compliance of section 138 of NI Act.

13. As per the verdicts of the *Hon'ble Apex Court* reported in *AIR 2019 SC 1983* in between *Basalingappa Vs. Mudibasappa* it is held in para 19 as here under:

**“Applying the rule of the word ‘Proved’ under section 3 of Evidence Act, it became evident that in a trial under section 138, a prosecution will have to be made out every negotiable instrument was made or drawn for consideration and that it was extended for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted As soon as the complainant discharges burden to prove that instrument was executed by the accused, the rules of presumptions under section 118 & 139 help him to shift the burden on the accused.**

**The presumptions will live, exists & survive & shall and only when the contrary is proved by the accused, that is consideration and in discharge of any debt or liability. A presumption itself is not evidence, but only makes a prima-facie case for a party to whose benefits it exists.**

**The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated, but bare denial of the passing of consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is possible has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration & debt did not exist or their non-existence was so probable, that a prudent man would under the circumstances of the case act upon the plea that they did not exist."**

In the light of the precedent of the above judgment, it is settled law that in a trial under section 138 of NI Act the complainant is required to prove that every negotiable instrument was made or drawn for consideration and it has been extended for the discharge of debt or liability, once the execution of negotiable instrument is either proved or admitted, as soon as the complainant discharges the burden to prove that instrument has been executed by the accused the rule of presumption under section 118 and 139 of NI Act helps the complainant to shift the burden on the accused in

order to rebut the statutory presumption under section 118(a) and 139 of NI Act which fall in favour of the complainant it is not mandatory for the accused to enter into witness box and deposes in support of his defence.

14. By keeping the dictum of Hon'ble Supreme Court, I carefully gone through the entire evidence placed by the complainant. Ex.P-1 is the alleged cheque issued by the accused and on perusal of the same it discloses that accused has issued it in favour of the complainant society on 29-01-2022 for Rs.3,65,000/-. As per Ex.P-2 banker's memo the cheque has been presented for encashment it has dishonored for want of sufficient funds. As per Ex.P-3 the complainant society have caused the notice to the accused and demanded to pay cheque amount. As per Ex.P-4 postal acknowledgement in spite of service of notice the accused has not repay the same. Ex.P-5 is the loan account extract of the accused and it discloses that he has availed the loan of Rs.1,00,000/-, but he has not repaid the amount periodically and become the defaulter. Ex.P-6 and 7 are the loan account extracts of Mahammad Ali Sahed and Hussain Abdul Rehman Sab which discloses that they have also availed the loan of Rs.1,00,000/- and Rs.85,000/- from the complainant society. The accused has admits that he stood as a guarantor for their loan along with loan of another one Arif Fakir Sab. But they have also failed to clear the loan amount and become defaulter. Thus

the accused being the borrower became defaulter liable to clear his loan. Similarly he is having the responsibility as a guarantor of loan availed by the above persons. Thus the documents placed by the complainant society are discloses that the accused has availed a loan of Rs.1,00,000/- and he is the guarantor for other 03 persons as above and having the liability to clear all the dues. In order to clear the said loans the accused has issued Ex.P-1 cheque. When it presented for encashment it bounced for funds insufficient. In spite of demand made by the complainant society through the demand notice the accused has not paid the amount. Thus it became an offence under section 138 of NI Act.

15. On careful verification of entire evidence placed by the complainant society the accused has not seriously disputes his signature found in Ex.P-1. But he has totally denied the allegation of the complainant society. At the time of examination under section 313 of Cr.P.C he has admits that he was the guarantor of the loan availed by Mahammad Ali Sahed, Hussain Abdul Rehman Sab and Arif Fakir Saheb and also stated that he has availed a loan of Rs.60,000/-. He further submits at the time of availment of loan the society has took a cheque for security and misused the same. Thus the accused has admits the issuance of cheque and he has not denied his signature found in the said cheque.

16. As per the provision of section 118(a) and 139 of NI Act are two important provisions and they provides for raising mandatory presumptions in favour of the complainant until the contrary is proved by the accused. Even in the catena of decisions i.e., in the case of **Rangappa Vs. Mohan** reported in **2010(11) SCC 441**, in the case of **Bir Singh Vs. Mukesh Kumar** reported in **2019(4) SCC 197**, in the case of **APS Forex Services (P) Ltd. Vs. Shakthi International Fashion Linkers** reported in **2020(12) SCC 724**, in the case of **Rajeshbai Muljibhai Patel Vs. State of Gujarat**, reported in **2020(3) SCC 794**, in the case of **Triyambak S. Hegde Vs. Sripad** reported in **Live Law 2021 SC 492** and it is laid down that, “Once the issuance of cheque and the signature thereon is admitted by the accused, the court is required to raise presumption in favour of the complainant stating that, the accused has issued the cheque for some consideration towards discharge of his legal debt or liability of the complainant and that the complainant is the due holder of the said cheque. The burden shifts on the accused to rebut the statutory presumptions under sections 118(a) & 139 of NI Act.” Now, it is well established law that, the presumption mandated by section 139 of NI Act, thus indeed includes the existence of legally enforceable debt or liability and it is open for the accused to raise a probable defense wherein the existence of legally enforceable debt or liability can be contested and he shall prove before the court on

preponderance of probabilities, only thereupon a statutory presumption raised in favour of the complainant stands rebutted.

17. On perusal of the cross-examination of PW-1 no where the issuance of cheque Ex.P-1 and signature of the accused are not disputed. Hence as per the decision of Hon'ble Apex Court the statutory presumption under section 118(a) and 139 of NI Act shall be drawn in favour of the complainant. Thus it appears to this court that the accused has issued the Ex.P-1 cheque in favour of the complainant society. Hence statutory presumption under NI Act shall be drawn in favour of the complainant society. Under such circumstances the accused shall rebut the statutory presumption by raising the probable defence. But the accused has not submits any defence evidence. Even on careful verification of cross-examination of PW-1 nothing has come out from the complainant to suspect his veracity. Accordingly as per the evidence of PW-1 as well as documentary evidence it clearly discloses that Ex.P-1 cheque has been issued by the accused in favour of the complainant society to pay the legally recover debt of Rs.3,65,000/-, when it presented for encashment it returned for insufficient funds. Though his account has no sufficient funds the accused has issued the said cheque in favour of the complainant society. In spite of issuance of demand notice and though it duly served on the accused, but

he has not repaid the amount. Hence the complainant society has proved the guilt of the accused beyond all reasonable doubt. Hence, I answered the **Point No.1 in the affirmative.**

**18. Point No.2:** In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable under section 138 of NI Act. As per the provision of section 138 of NI Act if a person found guilty of the offence he shall be punished with imprisonment for a term which may extended to 02 years or with a fine which may extended to twice of the cheque amount or with both. It is worth to note that, the offence is of the nature of civil wrong. Hence, it is proper to award sentence of fine, instead of awarding sentence of imprisonment. The cheque amount is Rs.3,65,000/-. The cheque has been issued on 29-01-2022, almost 04 years has been elapsed. Hence the complainant society has been suffering since more than 04 years to recover their amount. By considering the facts and circumstances this court felt to award the sentence to the accused to pay the fine of Rs.5,00,000/-. Accordingly, this court proceed to pass the following:

### **ORDER**

Acting under section 255(2) of Code of Criminal Procedure, accused is hereby convicted for the offence punishable under section 138 of Negotiable Instrument Act and sentenced to pay fine of Rs.5,00,000/- (Rupees Five Lakhs only). In

default, he shall undergo simple imprisonment for 06 (six) months.

Acting under section 357(1) of Code of Criminal Procedure, it is ordered that an amount of Rs.4,95,000/- (Rupees Four Lakhs Ninety Five Thousand only), there from shall be paid to the complainant society as a compensation, remaining fine amount of Rs.5,000/- (Rupees Five Thousand only) is defrayed to the state for the expenses incurred in the prosecution.

The bail bond of accused and surety stands canceled.

Supply free copy of judgment to the accused.

**(Dictated to the stenographer directly on the computer, typed by her, corrected, then signed and pronounced in the open court on this 07<sup>th</sup> day of March, 2026)**

### **ANNEXURE**

#### **Witnesses examined for the Complainant:**

PW-1 : Sri Richard Francis Gonsalves

#### **Documents marked for the Complainant:**

Ex.P-1 : Original cheque

Ex.P-2 : Return memo

Ex.P-3 : Demand notice  
Ex.P-4 : Postal acknowledgement  
Ex.P-5 to 7 : Loan account extracts  
Ex.P-8 : Authorization letter

**Witnesses examined for the Accused:**

-NIL-

**Documents marked for the Accused:**

-NIL-