KAUK620021342024

IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC., AT HONNAVAR

-:PRESENT:-

SRI. IRANNA HUNASHIKATTI

B.COM., LL.B.,

Prl. Civil Judge & JMFC.,

Honnavar.

DATED: This 2nd day of July-2026

C.C. No. 671/2024

COMPLAINANT:-	**The Saint Milagries Credit Souharda Co-operative Society Ltd., Chandavar Branch,** Represented by its Branch Manager, Honnavar Taluk (U.K.).
	(Represented by Sri. V.R.N., Advocate)
	V/s
ACCUSED:-	**Rama Narayan Uppar,** Aged about: 30 years, R/o Siddanabhavi, Post : Kumta, Taluk: Kumta (U.K.).
	(Represented by Sri. G.C.D., Advocate)

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1.	Date of Complaint	16.07.2024
2.	Presence of accused 2a. Before the Court 2b. Released on bail	 14.11.2025 14.11.2025
3.	Name of the Complainant	**The Saint Milagries Credit Souharda Co-operative Society Ltd., Chandavar Branch,** Taluk: Honnavar (U.K.).
4.	Date of the commencement of evidence	16.07.2024
5.	Date of closure of evidence	17.06.2026
6.	Offence Charged	Under Section 138 of Negotiable Instruments Act
7.	Date on which the judgment is pronounced	**02-07-2026**
8.	Opinion of the Judge	Accused found guilty
9.	Complainant represented by	Sri. V.R.N., Advocate
10.	Accused represented by	Sri. G.C.D., Advocate

(IRANNA HUNASHIKATTI)
Prl. Civil Judge & J.M.F.C.,
Honnavar.

J U D G M E N T

This is a private complaint filed by the complainant society against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The brief facts of the complainant's case are as under:- It is stated that, the accused had obtained a business loan from the complainant society in BL No. 1356. Thereafter, the accused had issued a cheque its bearing No. 646394 dated 09-05-2024 for a sum of Rs. 82,224/- drawn on "Karnataka Bank, Kumta Branch" to the complainant society for the repayment of the loan amount along with interest due and also requested the complainant society to present the said cheque for encashment. As per the assurance of the accused, the complainant society has presented the said cheque for encashment through its bank account at "Canara Bank, Chandavar Branch", but surprisingly the said cheque is returned on 15-05-2024 with an endorsement as **"Drawers signature differs".** After the receipt of the said endorsement, the complainant got issued a legal notice to the accused on 30-05-2024 order by demanding a payment of cheque amount. The said notice was served to accused. In spite of service of notice, the accused neither replied to said notice nor made any payment to the complainant society within stipulated period. Therefore, the accused has committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence the complainant has filed the present complaint to take legal action against the accused in accordance with law.

3. After perusing the records, materials placed before the court, cognizance was taken for the offence punishable U/Sec 138 of Negotiable Instrument Act. Sworn statement of the complainant's authorized officer was recorded and process was issued against the accused since prima-facie material was available to proceed against the accused. Thereafter, accused released on bail. After admitted to bail, plea for the offence punishable under section 138 of Negotiable Instruments Act was recorded, read over and explained to the accused in the language best known to him. The accused pleaded not guilty and claims to be tried. For which the case was posted for trial. As per **Indian Bank Association and others vs Union of India and others, reported in (2014) 5 SCC 590,** the sworn statement of the complainant filed by him during pre-summoning stage was considered as the evidence of the complainant. Further the Hon'ble Supreme Court of India in the judgment noted supra, under its 4th direction it was held that, "the court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under section 251 of Cr.P.C to enable him to enter his plea of defence and fix a case for defence evidence unless an application is made by the accused under section 145(2) for recalling a witness for cross-examination."

4. In order to prove its case, the complainant society has examined its authorized officer as PW1. The PW1 has filed his affidavit evidence in lieu of examination-in-chief and deposed in consonance with the complaint averments. The PW1 in order substantiate his oral evidence also got marked the documents vide as Ex.P1 to Ex.P5 and closed his side evidence.

5. After completion of evidence of the complainant, the substance of the evidence was read over and explained to the accused and his answers were recorded. Accused denied the incriminating circumstances appeared against him in the complainant's evidence. Thereafter, the accused chose to lead defence evidence and filed an application under Section 145 of the Negotiable Instruments Act seeking permission to cross-examine PW1. The said application was allowed. However, despite sufficient opportunity, the learned counsel for the accused failed to cross-examine PW1. Accordingly, the cross-examination of PW1 was taken as 'Nil', and the case was thereafter posted for arguments.

6. Heard arguments by both side counsel and perused the materials placed before the court.

7. On the basis of the above said materials, the following points arose for the consideration of this court:-

1. Whether the complainant proves that Ex.P1 cheque has been issued by the accused towards discharge of legal liability i.e sum of Rs. 82,224/-?

2. Whether the complainant further proves that Ex.P1 cheque was dishonored on its presentation as **Drawers signature differs** in the account maintained by the accused?

3. Whether the complainant has complied with the mandatory provisions of Section 138 (a) to (c) of Negotiable Instruments Act?

4. Whether the complainant further proves that the accused had issued Ex.P1 cheque towards discharge of his liability and after its dishonor accused has failed to repay the loan amount to the complainant within the stipulated period and thereby the accused has committed an offence punishable under Section 138 of N.I. Act?

5. What order?

8. On the contents of complaint, evidence adduced by the parties and arguments, the findings of this Court on to the order aforesaid points are as hereunder;-

Point No.1	:-	**In the Affirmative.**
Point No.2	:-	**In the Affirmative.**
Point No.3	:-	**In the Affirmative.**
Point No.4	:-	**In the Affirmative.**
Point No.5	:-	As per the final order

for the following:-

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-: **R E A S O N S** :-

9. **Point No. 1 to 4** :- Since these points are interconnected with each other and involve common discussion, they are taken up together for consideration in order to avoid repetition of facts.

Since the facts of this case have been narrated above, I refrain myself from re-narrating the facts to avoid repetition.

10. In order to prove its case, the complainant society examined its authorized officer as PW1. The PW1 has filed his affidavit evidence in lieu of examination-in-chief and deposed in consonance with the complaint averments. The PW1 in order to substantiate his oral evidence also got marked the documents vide Ex.P1 to Ex.P5. Ex.P1 is the original cheque its bearing No. 646394 dated 09-05-2024, for sum of Rs. 82,224/- drawn on "Canara Bank, Kumta Branch", Ex.P1(a) is the signature of the accused, Ex.P2 is the Banker's endorsement bearing remark as "Drawers signature differs", Ex.P3 is the office copy of legal notice dated 30-05-2024 issued to the accused, Ex.P4 is the Un-served poatal cover, Ex.P4(a) is the Notice copy, Ex.P5 is the true copy of the resolution passed by the complainant-society authorizing the PW1 to file the complaint and depose etc., before the court.

11. At this juncture, it is pertinent to note that Sections 118 and 139 of the Negotiable Instruments Act raise statutory presumptions in favour of the holder of the cheque. Under Section 118, a presumption arises regarding consideration and that the holder is a holder in due course. Section 139 further mandates that it shall be presumed, unless the contrary is proved, that the cheque was issued towards discharge, in whole or in part, of a legally enforceable debt or other liability.

12. Thus, once the accused admits the execution of the cheque and his/her signature thereon, a legal presumption arises in favour of the complainant regarding the existence of a legally enforceable debt or liability. The burden thereafter shifts upon the accused to rebut the said presumptions by raising a probable defence. The standard of proof required for rebutting the presumption is not proof beyond reasonable doubt, but that of preponderance of probabilities.

13. It is well settled that the presumptions under Sections 118 and 139 of the N.I. Act are rebuttable in nature. The accused may rebut the same either by adducing independent evidence or by relying upon the materials brought on record by the complainant and by pointing out circumstances which render the complainant's case improbable. Unless such burden is discharged, the statutory presumptions continue to operate in favour of the complainant.

14. In the present case, accused has not stepped into witness box to lead his defense. At this time it is important to note that, in this case the accused has not examined before the court, but no doubt that the accused can make his defense without entering to the witness box. However, in the present case, despite being afforded sufficient opportunities, the learned counsel for the accused failed to cross-examine PW1. Consequently, the cross-examination of PW1 was taken as 'Nil'.

15. In the instant case, accused has not denied the contents of the complaint & Ex.P1(cheque) & it was dishonored as per Ex.P2 endorsement.

16. In the present case, admittedly the notice was issued by the complainant on 30-05-2024 and it was served to the accused. The case of the complainant society is that, the accused has never replied to the demand notice.

Failure of accused in giving reply to legal notice issued by complainant is one of strong circumstances to draw an inference that accused had issued a cheque in favour of complainant towards payment of legally enforceable debt.

17. In order to prove the said fact, the learned counsel for the complainant vehemently argued before the court that Ex.P1 cheque belongs to the accused and the accused has not been disputed the cheque in question and his signature affixed on cheque, for which this court by applying Sec 118 and Sec 139 of Negotiable Instrument Act has to draw presumption that the accused in discharge of his legal liability has issued Ex.P1 cheque. It is further argued that the complainant has followed the formalities as contemplated U/Sec 138 of Negotiable Instrument Act. It is further argued that the legal notice was issued to the accused as per the law and the same was duly served, but the accused has not repaid the cheque amount within the stipulated period. Hence by considering all these aspects the accused has to be convicted for the offence punishable under Section 138 of Negotiable Instruments Act and direct the accused to pay the amount covered under the cheque to the complainant society.

18. In the instant case, the learned counsel for the complainant society further argued that, accused has clearly admitted that he has issued the Ex.P1 cheque to the complainant society and it was dishonored as per Ex.P2 endorsement. Therefore, it shows that as on the date of issuance of the cheque, the accused owe loan amount to the complainant society.

19. In light of the arguments canvassed by the learned counsel for the complainant society, this court has carefully perused the Ex.P1 to Ex.P5, which are the cheque, bank endorsement, and legal notice issued to the accused. It is noticed that the accused has not disputed that the cheque does not belong to his account and at the same time, he has not disputed the signature on the cheque. This goes to show that the accused has issued the cheque towards the complainant. Ex.P3 is the legal notice shows that the complainant society has narrated its contentions and given the notice to the accused by giving him sufficient opportunity to pay the loan amount. The same was duly served on the accused as stated in Ex.P4. When the accused has not complied the said legal notice an adverse inference can be drawn against the accused to the effect that impliedly the accused admits the contents of the legal notice. Thus, from the above documentary evidence placed on record, this court is of the opinion that the cheque, which is issued by the accused has remained unencashed.

20. The oral evidence of PW1 is in conformity with the documentary evidence i.e., Ex.P1 to Ex.P5. On appreciation of the oral testimony of PW1 and as well as documentary evidence i.e., Ex.P1 to Ex.P5, it is crystal clear that there is a sufficient material grounds to presume that the accused has issued Ex.P1 cheque to the complainant voluntarily. The PW1 presented the Ex.P1 cheque within its validity whichever earlier for realization. Soon after receiving the information from the bank, the PW1 got issued a demand statutory notice vide Ex.P3 to the accused and the same has duly served on the accused.

21. Hence, the complainant society has shown before this court that, the accused had issued Ex.P1 in favour of complainant society for discharge of debt due to him and there is no positive evidence to disprove the contents of complaint, therefore it cannot be held that the cheque in question was not issued for discharge of existing debt or liability due by the accused to the complainant. Therefore, the complainant has proved that the said cheque was issued for legally recoverable debt. This case has filed in the year 2024. It shows that, since 2 years this case has been pending before this court. Further, this Court is of the opinion that as per the amended provision of the Section 138 of the N.I Act, though this Court has the power to award double the cheque amount as fine amount, this court is of the opinion that Rs. 10,000/- has to be awarded as fine amount in addition to the cheque amount of Rs. 82,224/- in these facts and circumstances of the case. In total the accused shall pay a sum of Rs. 92,224/- as fine amount. Further out of the fine amount, an amount of Rs. 5,000/- shall be payable to the State. The remaining fine amount of Rs. 87.224/- has to be payable to the complainant as compensation under Section 395 of BNSS. **With these observations, this Court has answered Point No.1 to 4 are in the Affirmative.**

22. **Point No. 5 :-** For the aforesaid discussion on Point No.1 to 4, this court proceeds to pass the following:-

O R D E R

Acting under Section 278(2) of BNSS., the accused is hereby convicted for the offence punishable under Section 138 of N.I. Act.

Accused shall pay a sum of Rs. 92,224/- and in that, a sum of Rs. 87,224/- shall be paid to the complainant as compensation under section 395 of BNSS., and remaining Rs.5,000/- shall be paid to the state as fine.

The accused is directed to pay the compensation amount to the complainant within two months from the date of this judgment.

In default to pay the compensation amount and fine amount, the accused shall undergo SI for a period of 6 months.

Office is hereby directed to furnish the copy of this judgment to the accused forthwith.

Put up after 2 months.

(Typed by me in my laptop, revised, corrected and then pronounced by me in the open Court, on this the **2nd day of July, 2026**)

(IRANNA HUNASHIKATTI)
Prl. Civil Judge & JMFC.,
Honnavar.

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-:<u>ANNEXURE</u>:-

I. <u>LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:</u>-

PW1	Sri. Vinayak Ramdas Madiwal.	16-07-2024.

II. <u>LIST OF DOCUMENTS EXHIBITED ON BEHALF OF COMPLAINANT</u>:-

Sl.No.	**Ex.No.**	**Nature of Documents**
1.	Ex.P1	Cheque its bearing No. 646394.
2.	Ex.P1(a)	Signature of the accused.
3.	Ex.P2	Bank Endorsement.
4.	Ex.P3	Legal Notice.
5.	Ex.P4	Un-served postal cover.
6.	Ex.P4(a)	Notice copy.
7.	Ex.P5	Authorization Letter.

III. <u>LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED:</u>-

-NIL -

IV. <u>LIST OF DOCUMENTS EXHIBITED ON BEHALF OF ACCUSED:</u>-

-NIL -

SD/-

(IRANNA HUNASHIKATTI)
Prl. Civil Judge & JMFC.,
Honnavar.

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