

KAUK620034012024



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

-:PRESENT:-

SRI. IRANNA HUNASHIKATTI

B.COM., L.L.B.,
Prl. Civil Judge & JMFC.,
Honnavar.

DATED : This 10th day of July, 2026

C.C. No.1284/2024

<u>COMPLAINANT:-</u>	Dr. C. Fernandies Co-Operative Credit Society Ltd., Honnavar, Branch office at Kasarkod, Represented by its Branch Manager Taluk: Honnavar (U.K.).
	(Represented by Sri. M.N.S., Advocate)
	V/s
<u>ACCUSED:-</u>	Shankar S/o Sukrappa Naik, Aged about: 42 years, R/o: # 60, Katte, Konara, Kanoor, Tq: Bhatkal (U.K.).
	(Represented by Sri. V.G.N., Advocate)

1.	Date of Complaint	21-10-2024
2.	<u>Presence of accused</u> 2a. Before the Court 2b. Released on bail	29-10-2025 29-10-2025
3.	Name of the Complainant	Dr. C. Fernandies Co-Operative Credit Society Ltd., Honnavar, Branch office at Kasarkod, Taluk: Honnavar (U.K.).
4.	Date of the commencement of evidence	21-10-2024
5.	Date of closure of evidence	02-07-2026
6.	Offence Charged	Under Section 138 of Negotiable Instruments Act
7.	Date on which the judgment is pronounced	10-07-2026
8.	Opinion of the Judge	Accused found guilty
9.	Complainant represented by	Sri. M.N.S., Advocate
10.	Accused represented by	Sri. V.G.N., 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:-

The complainant-society has stated that, the accused had obtained a loan sum of Rs.35,000/- from the complainant-society. Thereafter, accused has failed to repay the said loan amount as per the agreement executed by him. Thereafter, the accused gave a cheque its bearing No. 615342 dated 27-08-2024 for a sum of Rs. 35,000/- drawn on "State Bank of India, Bhatkal Branch" to the complainant society for the repayment of the loan amount along with interest and also requested the complainant-society to present the said cheque for encashment. As per the assurance of the accused, the complainant-society presented the said cheque for encashment through its banker KDCC Bank., Honnavar Branch. But the said cheque is returned on 02-09-2024 with an endorsement as **"Funds Insufficient"**. After the receipt of the said endorsement, the complainant got issued a legal notice to the accused on 12-09-2024 through RPAD by demanding a payment of cheque amount. The said notice is served to accused on 18-09-2024. 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-society 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.” Therefore, in compliance of the direction of the Hon’ble Supreme Court of India, as the accused had submitted that he has defense evidence.

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 to substantiate his oral evidence also got marked the documents vide as Ex.P1 to Ex.P6 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 has chosen to lead his evidence, but later on he has failed to lead defence evidence. Hence, defence evidence taken as nil and case was posted for arguments.

6. Heard the arguments by learned counsel for complainant 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. 35,000/-?
2. Whether the complainant further proves that Ex.P1 cheque was dishonored on its presentation as **“Funds Insufficient”** 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 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 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:-

:-REASONS:-

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 examined its authorized officer as PW1. The PW1 filed 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.P6. Ex.P1 is the original cheque its bearing No. 615342 dated 27-08-2024 for a sum of Rs.35,000/- drawn on “State Bank of India, Bhatkal Branch”, Ex.P1(a) is the signature of the accused, Ex.P2 is the Banker’s endorsement bearing remark as “**Funds Insufficient**”, Ex.P3 is the office copy of legal notice dated 12-09-2024 issued to the accused, Ex.P4 is the Postal receipt, Ex.P5 is the Postal acknowledgment, Ex.P6 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. But in the present case in spite of the opportunities counsel for accused failed to lead defence evidence. Hence defence evidence 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 order to prove the said fact, the learned counsel for the complainant society vehemently argued before the Court that Ex.P1 cheque belongs to 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 neither replied nor repaid the cheque amount. 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.

17. In light of the arguments canvassed by the learned counsel for the complainant-society, this court has carefully perused the Ex.P1 to Ex.P6, which are the cheque, bank endorsement, legal notice issued to the accused, and the true copy of the resolution. 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-society. 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.P5. 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. Similarly the contention of the complainant-society made in the legal notice is not rebutted by the accused.

18. The oral evidence of PW1 is in conformity with the documentary evidence i.e., Ex.P1 to Ex.P6. On appreciation of the oral testimony of PW1 and as well as documentary evidence i.e., Ex.P1 to Ex.P6, 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.

19. Hence, the complainant has shown before this court that the accused had issued Ex.P1 in favour of complainant 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 society 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 year 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.5,000/- has to be awarded as fine amount in addition to the cheque amount of Rs. 35,000/- in these facts and circumstances of the case. In total the accused shall pay a sum of Rs.40,000/- as fine amount. Further out of the fine amount, an amount of Rs. 2,000/- shall be payable to the State. The remaining fine amount of Rs. 38,000/- has to be payable to the complainant as compensation U/Section 395 of BNSS. **With these observations, this Court has answered Point No.1 to 4 are in the Affirmative.**

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

ORDER

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.40,000/- and in that, a sum of Rs.38,000/- shall be paid to the complainant as compensation under section 395 of BNSS., and remaining

Rs.2,000/- 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 month.

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 **10th day of July, 2026.**)

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

:-ANNEXURE:-

I. LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:-

PW1	Sri. Joseph John Rodrigues.	21-10-2024.
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II. LIST OF DOCUMENTS EXHIBITED ON BEHALF OF COMPLAINANT:-

Sl.No.	Ex.No.	Nature of Documents
1.	Ex.P1	Cheque its bearing No. 615342.
2.	Ex.P1(a)	Signature of the accused.
3.	Ex.P2	Banker's endorsement.
4.	Ex.P3	Legal Notice.
5.	Ex.P4	Postal receipt.
6.	Ex.P5	Postal acknowledgment.
7.	Ex.P6	Authorization letter.

III. LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED:-

-NIL -

IV. LIST OF DOCUMENTS EXHIBITED ON BEHALF OF ACCUSED:-

-NIL -

**SD/-
(IRANNA HUNASHIKATTI)
Prl. Civil Judge & J.M.F.C.,
Honnavar.**
