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IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, KUMTA.
PRESENT **SMT. VARSHA SHREE.,** **B.A.(L), L.L.B** **ADDL. CIVIL JUDGE & JMFC, KUMTA.**
CRIMINAL CASE No.230/2025 **DATED THIS THE 11th DAY OF JUNE, 2026**

COMPLAINANT:	Janata Co-operative Credit Society Ltd., Hanehalli, Taluk: Kumta, Represented by its General Manager, Sri. Balakrishna Parameshwar Naik, Aged 48 years, R/o. Hanehalli, Taluk: Kumta. **(By Sri PGH, Advocate)**

- V/S -

ACCUSED:	Sri. Krishna Nagesh Patgar, Aged about 40 years, Occ: Agriculturist, R/o. Hittalmakki, Post: Torke, Taluk: Kumta. **(By Sri PSN, Advocate)**

1	Date of Institution of complaint:-	21-10-2024
2	Nature of complaint :-	U/Sec.138 of NI Act.
3	Name of the complainant	Sri. Balakrishna Parameshwar Naik
4	Date of commencement of evidence	21-11-2024

5	Date of which the Judgment was pronounced	11-06-2026
6	Total duration	01 year , 07 months, 20 days
8	Opinion of the Judge	Found guilty

Digitally signed by VARSHA SHREE , PRL. CIVIL JUDGE AND JMFC, KUMTA.

(SMT. VARSHA SHREE.)
Addl. Civil Judge & J.M.F.C,
Kumta

J U D G M E N T

This Complaint is filed by the Complainant Society against the Accused for the offence punishable under Section 138 of Negotiable Instruments Act (Hereinafter called as N.I. Act).

02. FACTS OF THE COMPLAINANT CASE IS AS FOLLOWS:

(i) It is the case of the Complainant that, the Accused approached the Complainant Society along with Laxmi Nagesh Patgar and Guru Narayan Gouda and availed loan of Rs.2,00,000/- from the Complainant Society on 26/07/2022 under Loan Account No.3200399 and Laxmi Nagesh Patgar and Guru Narayan Gouda stood as guarantors to the said loan. At the time of availing loan, borrower and guarantors have executed Loan Agreement, Demand Promissory Note and other necessary documents. However, the Accused and the guarantors have failed to repay the said loan amount as undertaken. When the officials of the Complainant Society insisted the Accused to repay loan amount, the Accused has issued a Cheque bearing

No.646121 dated 03/09/2024 for Rs.2,60,497/- drawn on S.B.I., Tadri Branch, Gokarna in favour of the Complainant Society, towards repayment of said loan amount. When the Complainant Society presented the said cheque for encashment through its Banker i.e., K.D.C.C. Bank Ltd., the said cheque was dishonoured for the reason “Funds insufficient” and an endorsement to that effect was issued to the Complainant Society on 05/09/2024.

(ii) On receipt of the said endorsement, the Complainant Society got issued a legal notice to the Accused on 25/09/2024, through RPAD, calling upon the Accused to pay the said cheque amount, within 15 days from the date of receipt of the said notice. The said notice was duly served on the Accused on 27/09/2024. In spite of service of the notice, the Accused has neither paid the said cheque amount nor issued any reply to the said notice. Therefore, the Complainant Society has constrained to file a Private Complaint in P.C.R.No.418/2024 against the Accused for the offence punishable under Section 138 of N.I. Act and prayed to take proper legal action against the Accused and also to direct the Accused to pay the cheque amount.

03. SWORN STATEMENT

After filing of the compliant, the General Manager of the Complainant Society by name Sri. Balakrishna Parameshwar Naik, filed an affidavit in lieu of his sworn statement on 21/11/2024.

04. COGNIZANCE OF THE OFFENCE PUNISHABLE U/Sec. 138 OF N.I ACT.

(I) After recording of the sworn statement of the Complainant, on perusal of the documents and the materials on record, the Court has taken the cognizance of the offence punishable U/Sec.138 of N.I. Act and registered a criminal case against the Accused and issued summons to the Accused.

05. ISSUANCE AND SERVICE OF PROCESS AGAINST THE ACCUSED U/Sec. 227 OF BNSS.

(i) After taking the cognizance U/Sec.138 of N.I Act, the summons has been duly served on the Accused.

(ii) The Accused appeared before this Court through his Counsel on 02/06/2025 and he was enlarged on bail.

06. PLEA RECORDED

The substance of plea was recorded for the offence punishable U/Sec. 138 of N.I. Act and the same was read over and explained to the Accused in the language known to him. He pleaded not guilty and claimed to be tried.

07. EVIDENCE OF COMPLAINANT

(i) In order to prove the case of the Complainant Society, the sworn statement of the General Manager of the Complainant Society is treated as evidence of P.W.1 and got marked 9 documents as per Ex.P.1 to Ex.P.9.

(ii) The counsel for the Accused has cross examined the P.W.1 with regard to chief examination as on 12/02/2026, 27/02/2026, 16/04/2026 and on 07/05/2026.

08. RECORDING OF STATEMENT U/Sec. 351 OF BNSS.

Statement of the Accused under Section 351 of BNSS, was duly recorded on 02/06/2025. The Accused submits that, he has defence evidence on his behalf.

09. EVIDENCE BY THE DEFENSE SIDE

During recording of 351 of BNSS statement, the Accused submits that, he has defence evidence but he has not chosen to lead any defence evidence and also not produced any documents on his behalf.

10. POINTS FOR CONSIDERATION.

Heard both sides and perused the records. The following points arise for consideration:

POINT No.1: Whether the Complainant proves that the Accused has issued a Cheque bearing No. 646121 dated 03/09/2024 for a sum of Rs.2,60,497/- drawn on S.B.I. Tadri Branch, Gokarna towards relinquishment of the legally enforceable debt and on presentation of the said cheque it was returned for the reason **"Funds insufficient"** despite of demand notice, the Accused failed to make payment within the stipulated period and thereby the Accused has committed an offence under Section 138 of N.I. Act ?

POINT NO.2: What order?

11. Having heard the arguments and having perused the materials placed on record, my findings on the above Points are as below:-

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

-<u>REASONS</u>-

12. **<u>POINT No.1</u>:-** It is the case of the Complainant that the Accused availed loan of Rs.2,00,000/- from the Complainant Society on 26/07/2022 and Smt. Lakshmi Nagesh Patgar and Sri. Guru Narayan Gouda stood as guarantors to the said loan. Further for repayment of the said loan amount, the Accused has issued a Cheque bearing No.646121 dated 03/09/2024 for Rs.2,60,497/-. On presentation of the said cheque, the same was dishonoured for the reason "**Funds insufficient**". Hence, the Complainant Society got issued a legal notice to the Accused, which was served on the Accused. Despite of the service of legal notice, the Accused has not paid the cheque amount and thereby the Complainant Society has constrained to file the Complaint U/sec 138 of NI Act.

13. In order to prove its case, the General Manager of the Complainant Society, files sworn statement and reiterated the complaint averments and the same was treated as evidence of P.W.1. He has placed on record certified copy of Authorization Letter which is marked as Ex.P-1, the original Cheque bearing No. No.646121 dated 03/09/2024 for Rs.2,60,497/- drawn on S.B.I., Tadri Branch, Gokarna which is marked as Ex.P-2. According to the Complainant Ex.P-2(a) is the signature of the Accused. The Complainant has also placed on record Memo issued by Bank dated 05/09/2024 intimating dishonor of cheque on the ground of "**Funds insufficient"** which is marked as Ex.P-3. As per Section 138(b) of N.I. Act the Complainant was required to issue notice demanding for repayment of cheque amount within 30 days from the date of receipt of intimation of dishonor of cheque. Accordingly, in compliance of Sec.138(b) on 25/09/2024 the Complainant has issued legal notice demanding the Accused to pay the said cheque amount which is marked as Ex.P-4. Ex.P-5 is the Postal Receipt. Ex.P-6 is the Postal Acknowledgment and Ex.P.6(a) is the signature of the Accused. Ex.P-7 is the certified copy of Loan Application. Ex.P.8 is the certified copy of Loan Agreement and Ex.P.9 is the certified copy of Loan Account Statement. All these documents produced by the Complainant establish that the Complainant has complied the statutory requirements as contemplated under Section 138 of N.I. Act. Further the Accused, who has failed to make payment of the cheque amount, has committed an offence under Section 138 of N.I. Act.

14. This Court has carefully gone through the facts and circumstances of the case, as well as oral and documentary evidence available on record. Admittedly Ex.P.2/Cheque is dated 03/09/2024. The Complainant presented the said cheque for encashment and the same was dishonored as per Ex.P.3. Further as could be evidenced from Ex.P.4 to Ex.P.6, the Complainant got issued a Legal Notice on 25/09/2024 calling upon the Accused to pay the cheque amount within 15 days from the date of receipt of notice. The said notice which was duly served on the Accused on 27/09/2024 and the Accused has failed to make payment of cheque amount within the stipulated period. Hence, Complainant has filed this complaint on 21/10/2024, within the period prescribed U/s 138 of N.I.Act 1881. As such the Complainant has complied all the mandatory requirements of law to present this Complaint U/s 138 of NI Act 1881.

15. According to the Complainant, Accused issued Ex.P.2/Cheque to discharge the debt and the same was dishonoured when presented for encashment. The P.W.1 has reiterated the complaint averments in his chief evidence. On the other hand, Accused has not disputed the signature on Ex.P.2/Cheque and it is drawn on his banker. Further it is an admitted fact that the said cheque came to be dishonoured for the reason "**Funds insufficient**".

16. From the above facts and circumstances involved in this case, it is clear that, the Complainant has established that, the Cheque in question as well as signature appearing on it belongs to the Accused. Therefore, it is clear that, the Complainant has proved that, the Accused has committed the offence punishable U/s 138 of N.I. Act. As such, in order to escape from the liability, it is for the Accused to rebut the said presumption by establishing that there is no any legally recoverable debt.

17. The Complainant has to establish the case against the Accused by complying with all mandatory requirements of the parameter of **Sec.138 of N.I. Act**. The essential ingredients of **Sec. 138 of N.I. Act** are as follows:

a) The cheque for an amount is issued by the drawer to the payee/complainant on a bank account maintained by him.

b) The said cheque is issued for the discharge, in whole or in part of any debt or other liability.

c) The cheque is returned by the bank unpaid on account of insufficient amount to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

d) The cheque is presented to the bank within 6 months from the date on which it is drawn or within the period of its validity.

e) 30 days demand notice is issued by the payee or the holder in due course on receipt of information by him from the bank regarding the dishonor of the cheque.

f) The drawer of said cheque fails to make the payment of the said amount of the money to the payee or the holder in due course within 15 days of the said notice.

g) The debt or liability against which the cheque was issued is legally enforceable.

18. In a trial under Section 138 of N.I. Act, firstly the Accused can put-forth his defence either by way of reply to statutory notice issued U/s 138(b) of the Act. Secondly, the Accused can put forth his defense by cross examination of Complainant and lastly by leading the defense evidence. In the present case, the Accused has not issued any reply to Ex.P.4.

19. Further by way of cross examination the Accused has also put forth his defence. In the cross examination, there is nothing worth suggested to P.W.1 to discredit his testimony or to falsify the case of Complainant. On appreciation of the cross examination of Complainant, it is evident that, the Accused has not denied the Ex.P.2 Cheque belong to his account. The Accused has also not denied that the signature at Ex.P.2(a) is not that of him. Therefore, the issuance of cheque by the Accused is not disputed.

20. In N.I. Act cases, the essential ingredients are to be fulfilled to prove the guilt of the Accused. As per the evidentiary admission of the Accused, he has issued the cheque. The burden is on the Accused to prove that, he has not issued a cheque in discharge of any legally enforceable debt.

21. It is important to rely upon decision of the **Hon'ble Apex Court in Rangappa V/S Shri Mohan reported in AIR 2010 SC 1898.** The relevant paragraph of the aforesaid decision is culled out here under:

> *" In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.*
>
> *Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory*

offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard of proof.

In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

22. The P.W.1 in his cross examination states that:-

> **" ನಿಪಿ-2 ನ್ನು ಆರೋಪಿತನು ನೀಡಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿಪಿ2 ರ ಬರಾವಣಿಯನ್ನು ಆರೋಪಿತನು ಮಾಡಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. "**

23. In the above said cross examination of learned counsel for Accused, it is clear that the Accused has denied issuance of cheque but in his statement under Section 351 of BNSS, he did not taken any contention regarding the same.

24. Hence it is now clear that the presumption that, cheque is drawn in favour of complainant is in respect of ***"legally enforceable debt" and not merely a "debt"***. The presumption that the holder of cheque that is Complainant received the cheque for discharge in whole or part, of legally enforceable debt. In other words, the Accused has issued the cheque in question for discharge of legally enforceable debt. Furthermore, **Section 118 of NI Act** provides as under:

SECTION 118 PRESUMPTION AS TO NEGOTIABLE INSTRUMENTS OF CONSIDERATION

> Until the contrary is proved the following presumption shall be made–of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted endorsed negotiated or transferred was accepted, endorsed negotiated or transferred for consideration.
>
> As to date that every negotiable instrument bearing a date was made or drawn on such date;

Hence in view of **Section 118 of NI Act,** the Ex.P-2 cheque is to be presumed to have been drawn for good consideration.

25. No doubt, above said presumptions are rebuttable in nature and once they are raised, the onus of proof lies upon the Accused to rebut the said presumptions. It is now fairly well settled that the Accused can displace the presumption on a scale of preponderance of probabilities. Simply put, the Accused has to make a fairly plausible hypothesis. Thus, the Accused can do either by leading own evidence in his defense or even by punching holes within the case of Complainant in testing or deal of cross examination. In the present case the Accused has cross examined the P.W.1 but not led his defense evidence. Hence the case of the Complainant stands unrebutted. The Accused has not stepped into the witness box to explain as to why he has issued Ex.P-2 / Cheque to the Complainant. The Accused in his examination under Section 351 of BNSS, has denied all the incriminating evidence appeared against him. In such case, the presumption under Section 118 and 139 of N.I. Act work in favour of the Complainant.

26. Therefore, on careful appreciation of entire materials on record and observations made above, this Court is of the considered view that the Complainant has proved the guilt of Accused for the offence punishable under Section 138 of NI Act. Hence **Point No.1 is answered in the Affirmative.**

27. **Point No:2** Accordingly, in the light of foregoing discussion and for the reasons stated above, this Court proceeds to pass the following;

ORDER

The Accused is found guilty of offence punishable under Section 138 of N.I. Act.

Acting under Section 278(2) of BNSS, the Accused is hereby convicted for the offence punishable under Section 138 of N.I. Act and he is sentenced to pay fine of Rs.2,70,497/-, in default of payment of aforesaid fine amount, the Accused shall undergo simple imprisonment for a period of 4 months.

Out of fine amount of Rs.2,70,497/-, an amount of Rs.2,65,497/- shall be paid to the Complainant as compensation under Section 395 of BNSS and Rs.5,000/- shall be paid as a fine to the State.

Further, it is made clear that in view of provision to Section 461(1) of BNSS, the Accused shall not be absolved of his liability to pay compensation amount of Rs.2,65,497/-awarded under Section 395 of BNSS, 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 forth with.

(Dictated to the stenographer directly on the computer, computerized by her, corrected and then pronounced by me in the open Court on this the **11th day of June, 2026**)

Digitally signed by VARSHA SHREE , PRL. CIVIL JUDGE AND JMFC, KUMTA.

(SMT. VARSHA SHREE.)
Addl. Civil Judge & J.M.F.C,
Kumta.

ANNEXURE

List of witnesses examined on behalf of Complainant :-

P.W.1	Sri. Balakrishna Parameshwar Naik.

List of exhibits marked on behalf of Complainant :-

Ex.P1	Certified copy of Authorization Letter.
Ex.P2 Ex.P2(a)	Cheque issued by the Accused. Signature of Accused.
Ex.P3	Return Memo given by the Bank.
Ex.P4	Office copy of the Legal Notice.
Ex.P5	Postal Receipt.
Ex.P6 Ex.P6(a)	Postal Acknowledgment. Signature of the Accused.
Ex.P7	Certified copy of Loan Application.
Ex.P.8	Certified copy of Loan Agreement.
Ex.P.9	Certified copy of Loan Account Statement.

List of witnesses examined on behalf of Defence :-

NIL

List of exhibits marked on behalf of Defence :-

NIL

Digitally signed by VARSHA SHREE , PRL. CIVIL JUDGE AND JMFC, KUMTA.

(SMT. VARSHA SHREE.)
Addl. Civil Judge & J.M.F.C,
Kumta.