KAUK720002652023

IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL. JMFC., KUMTA, AT; KUMTA, UTTARA KANNADA

Dated this the 20th day of July, 2026

PRESENT
Smt.B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta

C.C.No. 52/2023

Complainant: Matoshree Souhardha Credit
Co-operative Society Ltd., Kumta,
Represented by
Chief executive officer,
Sri. Naveen Kumar R. Naik,
Aged about 40 years,
R/o: Kumta, Kumta Taluk.

(By Sri. P.G.H. advocate)

V/s

Accused: Praveen Shankar Malagi,
Major,
Occ: Service at B.E.O. Office,
Kumta, Kumta Taluk.

(By Sri. R.G.N., advocate)

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JUDGMENT

That the complainant has filed this complaint under Section 200 of the Code of Criminal Procedure against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. Originally this complaint was filed before the learned Principal Civil Judge and J.M.F.C., Kumta and the same was numbered as C.C.No.1267/2022 and as per the Order No.81/2023 dated 28.06.2023 of the Hon'ble Principal District and Sessions Judge, Uttara Kannada, Karwar this case was transferred to this Court.

2. That the case of the complainant in brief is as follows:

That the accused and one Vinod Babu Shetty and N.S. Amar approached the complainant bank and accused borrowed a loan of Rs.3,98,000/- from the complainant bank on 31-03-2021 through his loan account No. 1010000090, Vinod Babu Shetty and N.S. Amar stood sureties for the said loan and executed all the necessary documents. But they did not repaid the said loan as agreed by them. When the complainant bank asked the accused to repay the due amount on 26-04-2022 the accused came to the said bank and agreed to repay the amount i.e. loan amount of Rs.3,98,000/-, interest of Rs. 81,007/-, visiting charges of Rs.2,000/-, note charge of Rs.1,000/-and other charge of Rs. 1,000/- in total Rs.4,84,000/-. On 26-04-2022 towards the repayment of above said loan amount of Rs.4,84,007/- the accused issued cheque bearing No.857849 drawn on K.D.C.C. Bank Ltd., Kumta Branch and when the complainant presented the said cheque through I.C.I.C.I. Bank, Kumta Branch for encashment, the same was returned unpaid on 30.05.2022 with an endorsement "Funds Insufficient". Thereafter, on 08.06.2022, the complainant got issued legal notice to the accused calling upon him to pay the said cheque amount within 15 days, the said notice was served to the accused on 13-06-2022. Inspite of issuance of said notice, the accused neither gave reply to the said notice nor paid cheque amount to the complainant. Hence, the accused has committed an offence punishable U/Sec.138 of Negotiable Instruments Act. Hence the complainant constrained to file this complaint.

3. After filing complaint, the court has taken cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act. Sworn statement of complaint was recorded. Since there were sufficient grounds to proceed against the accused for the alleged offence, hence this case was registered against the accused. On appearance of the accused, he was got enlarged on bail. Thereafter, the substance of accusation was recorded and read over to the accused and he did not plead guilty and submitted that he has got defence in this case. Hence, the matter was posted for trial.

4. In order to bring home the guilt of the accused, the branch manager of the complainant bank has been examined as PW.1 and got marked documents at Ex.P1 to Ex.P14 and complainant bank closed their side of evidence.

5. In this case the loan transaction took place in the year 2021. When the case is posted for statement of accused,

accused not appeared before the court and he remained absent, inspite of issuance of NBW accued not present. Accused evaded issuance of NBW. hence this court relying the decision of Hon'ble High Court of Karnataka in case of Dakshina Murthy V/s Kulkarni and a decision in Criminal Rev. Petition No. 664/2020 Sunil Yadav V/s Smt Y.C.Manju statement of accused U/s. 313 of Cr.P.C. is hereby dispensed with and defence evidence taken as nil.

6. Heard argument by learned counsel for complainant. Accused and his counsel called out absent. No representation made. Hence argument taken as nil.

7. Upon hearing the arguments and on perusal of the materials placed on record, the following points arise for my consideration.

1. Whether complainant proves that accused in discharge of legally recoverable debt has issued the Cheque bearing No.857849 dated 26.04.2022 for Rs.4,84,007/- drawn on The Kanara District Central Co-Op Bank Ltd., Kumta Branch which came to be dishonoured with an endorsement "Funds Insufficient" on

30.05.2022. Inspite of due service of notice accused has failed to pay the Cheque amount and thereby committed an offence under Section 138 of N.I.Act?

2. What Order?

8. My findings on the above points are as follows:-

Point No. 1 : In the Affirmative
Point No. 2 : As per final order
For the following:

REASONS

9. **Point No.1:-** It is the case of the complainant that, the accused approached the complainant bank and availed loan of Rs.3,98,000/-. Assured that he will repay the loan amount with interest, but has not repaid the amount and when the complainant bank asked the accused to repay the amount, the accused issued cheque which was bounced. Though complainant issued notice to accused through their counsel, though notice served, but the accused not paid the amount, hence complainant filed this case.

10. Existence of legally recoverable debt is a sine qua non for prosecuting the case under section 138 of Negotiable

Instruments Act. For convenient purpose the essential ingredients to constitute offence under section 138 of N.I.Act is summarized as below:

1. That there must be a legally enforceable debt.
2. That the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes the legally enforceable debt.
3. That the cheque so issued had been returned due to insufficiency of funds.

11. Now reverting to the factual matrix of the present case, according to the complainant the accused availed loan of Rs.3,98,000/- from the complainant bank. The accused not repaid the loan amount, hence when the complainant asked to pay the amount, the accused issued cheque for Rs.4,84,007/-. Now let us examine whether the complainant is able to prove existence of legally recoverable debt.

12. In order to establish legally recoverable debt the complainant has placed on record Ex.P.1 is the Resolution letter. Ex.P2 is the original cheque bearing No.857849 dated

26.04.2022 issued by accused infavour of complainant bank. Ex.P2(a) is the signature of accused. The complainant has also placed on record memo issued by I.C.I.C.I Bank, Kumta Branch, dated 30.05.2022 at Ex.P3. Office copy of legal notice issued to the accused at Ex.P.4. Postal receipt at Ex.P5. Postal Acknowledgment at Ex.P.6. True copy of Loan application at Ex.P.7. True copy of Loan security form at Ex.P.8. True copy of Loan agreement at Ex.P.9. True copy of agreement at Ex.P.10. True copy of Loan agreement at Ex.P.11. True copy of Demand promissory Note at Ex.P.12. True copy of Loan statement at Ex.P13 and Ex.P14 is certificate.

13. The documents produced by the complainant of course established that complainant meets out the procedural requirements of section 138 of Negotiable Instrument Act, but it is to be considered whether all these documents establish the offence committed by the accused.

14. In order to substantiate their case the complainant bank has got examined its branch Manager as PW.1. During

cross examination, PW.1 deposed that, he was working in the complainant bank as bank manager when this loan transaction took place. He is the manager of complainant bank, hence he certified and signed Ex.P.1 resolution. Admitted that there is hurdle to produce the authorization letter issued by directors while passing resolution. Admitted that they have filed panchayatdava against accused and the same is pending. Admitted that he has not produced the original loan application to the court, loan application obtained on 26.02.2021. One Vinod Babu Shetty and N.S.Amar stood sureties for the said loan, surety no.2 Amar also availed loan in their bank and the accused stood surety for Amar. It is denied suggestion that the accused not availed any loan, when he came to stood as surety except Ex.P7 they obtained signature of accused on documents.

15. Though accused denied loan transaction, but during cross examination nowhere it suggested that Ex.P2 cheque and Ex.P2(a) signature on cheque not denied by the accused.

On perusal of order sheet, accused taken several adjournments on the ground of payment. Hence it shows accused availed the loan from complainant bank. Accused not denied his signature on Ex.P.2 cheque. Hence in this case it is not in dispute that the cheque belongs to the accused, accused not denied his signature thereon. The accused not replied to the notice issued by complainant bank nor adduced his defense evidence. Document shows that the accused availed the loan from complainant bank and not repaid the loan amount. Hence the accused failed to rebut the evidence. Hence by perusal of evidence on record shows that the accused availed loan from the complainant bank and executed the loan documents.

16. The Negotiable Instruments Act raises two presumptions. One contained in Section. 118 and the other in Sec. 139 thereof. For the sake of convenience Sec. 118(1) of the N.I. Act is extracted here below:

118. Presumptions as to negotiable Instruments ---

Until the contrary is proved, the following presumptions shall be made ;--

> (a) of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.
>
> (b) To (g) . . . .
>
> Provided that where the instrument has been obtained from its lawful owner, or from an person in lawful custody thereof, by means of an offence of fraud, or has been obtained from the maker or acceptor thereof by means of an offence of fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him".

17. Further Section 139 of the Negotiable Instruments Act reads as under:

> "139, Presumption in favour of holder. It shall be presumed , unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability."

18. Evidence on record shows that accused availed loan of Rs.3,98,000/- from the complainant bank. Accused failed to explain how did his cheque in question came into the

possession of complainant. In this case issuance of cheque and the signature therein is not denied by the accused. Hence, it can be inferred that the accused has admitted the issuance cheque in favour of the complainant for discharge of loan. Hence it is clear that the complainant is the holder of the said cheque. As per Section 139 of the Negotiable Instruments Act, it shall be presumed that the holder of a cheque received the same for the discharge, in whole or in part, of any debt or other liability and the said presumption is a rebuttable presumption. Under such circumstances, the indisputable fact is that accused has issued the cheque at Ex.P.2 to the complainant. As already noticed, it carries presumption U/s. 118(a) and 139 of Negotiable Instruments Act. Hence the complainant is able to prove the existence of legally recoverable debt as accused has failed to rebut the presumption.

19. Considering all these aspects of the case and on perusal of evidence lead on behalf of complainant, it clearly

depicts that complainant has lent loan of Rs.3,98,000/- to the accused. Thus complainant bank has established existence of legally recoverable debt. Accused has failed to rebut the presumption under Section 139 of N.I. Act. Under these circumstances the imperative conclusion is that the accused has committed an offence punishable u/s. 138 of Negotiable Instrument Act. Therefore, **point No.1 answered in the Affirmative.**

20. **Point No.2 :-** For the discussion made above, I proceed to pass following:

O R D E R

Acting under Section 255(2) of the Code of Criminal Procedure, the accused is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act.

Accused is sentenced to pay fine of Rs.4,94,007/- (Rupees four lakh ninety four thousand and seven only) and in default for payment of fine amount, the accused shall under go simple imprisonment for a period of one year.

It is further directed that the accused shall pay fine of Rs.4,94,007/- (Rupees four lakh ninety four thousand and seven only), out of which Rs.4,84,007/- to be paid to the complainant as compensation.

The bail bond executed by the accused and his surety shall stand cancelled.

Office to furnish free certified copy of this judgment to the accused forthwith.

(Directly dictated to the stenographer to the computer, corrected by me and then pronounced in the open court on this 20th day of July, 2026)

BHARATI S RAYANNAWAR
Digitally signed by BHARATI S RAYANNAWAR
Date: 2026.07.21 13:55:45 +0530

(Smt.B.S.Rayannawar)
Senior Civil Judge and
Prl. JMFC, Kumta.

ANNEXURES

Witnesses examined for the complainant:

PW1 : Sri. Naveen Kumar R. Naik

Documents exhibited for the complainant:

Ex.P1	: Resolution Letter
Ex.P2	: Cheque
Ex.P2(a)	: Signature of the accused
Ex.P3	: Memo given by the bank
Ex.P4	: Office copy of legal notice
Ex.P5	: Postal Receipt
Ex.P6	: Postal Acknowledgment
Ex.P7	: True Copy of Loan application
Ex.P8	: True Copy of Loan security form
Ex.P9	: True Copy of Loan agreement
Ex.P10	: True Copy of agreement dt:31-03-2022
Ex.P11	: True Copy of Loan agreement
Ex.P12	: True Copy of Demand promissory Note
Ex.P13	: True Copy of Loan statement
Ex.P14	: Certificate

Material object exhibited for the complainant:

--Nil--

Witnesses examined for the defence:

--Nil--

Documents exhibited for the defence:

--Nil--

Material object exhibited for the accused:

--Nil--

BHARATI S RAYANNAWAR
Digitally signed by BHARATI S RAYANNAWAR
Date: 2026.07.21 13:55:35 +0530

(Smt.B.S.Rayannawar)
Senior Civil Judge and
Prl. JMFC, Kumta.