

KAUK520007062024



Presented on : 04-07-2024
Registered on : 04-07-2024
Decided on : 02-06-2026

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC, HALIYAL.

Dated this the 02nd day of June, 2026

SMT SUJATA SIDAGOUDA PATIL,
B.Sc.,LL.B.
Senior Civil Judge & JMFC, Haliyal.

CC NO.182/2024

Complainant :	Sri. Nisar Ahammad S/o Mehaboobsab Bukitgar, Age: 29 years, Occ: Agriculture & Business, R/o. Belavatagi village, Tq: Haliyal. (By Sri. A.P.D.,-Advocate)
V/s	
Accused :	Smt. Salambi W/o Modinsab Halab, Age: Major, Occ: Agriculture, R/o: Agasalkatta Village, Tq: Haliyal, Dist: Karwar. (By Sri.A.F.K – Advocate)
Plea of accused:	Pleaded not guilty
Final Order:	Accused is convicted
Date of judgment :	02.06.2026

J U D G M E N T

The complainant filed the complaint under Sec.200 of Cr.P.C. against the accused for the offence punishable under Sec.138 Negotiable Instruments Act (For short N.I.Act).

2. The brief facts of the complainant case is as under:

The complainant knows accused and her husband since long and the husband of the accused offered him to sell his landed property on 22-09-2022 by receiving of earnest money of Rs.9,80,000/-. Thereafter they deviated from their assurance and not executed registered sale deed in favor of the complainant. At that time complainant insisted them to return the earnest money of Rs.9,80,000/- which was received by them. At that time finally accused issued a [cheque bearing No.091398 dt:19.04.2024 for a sum of Rs.9,80,000/- drawn on K.V.G Bank, Haliyal Branch](#) in favour of the complainant. [The complainant presented said cheque for realization through his banker ie State Bank of India, Haliyal Branch, same returned dishonored for the reason “Funds Insufficient” on 22-04-2024. Hence,](#) the complainant issued legal notice [dt.09.05.2024](#) to pay outstanding amount that has been served on him on 14-05-2024, in spite of service of notice, the accused failed to pay the amount to the complainant. Therefore, the complainant was constrained to file the complaint against the accused. Hence, this complaint.

3. After filing of the complaint, cognizance taken and recorded the sworn statement of the complainant. The complainant society has complied all the statutory requirements under Sec.138 of N.I.Act. Thereafter, the case is registered against the accused and summons issued. The **accused** appeared with the Advocate and released on bail. Copy of the complaint furnished to the accused. Plea recorded and read out to the accused. The accused pleaded not guilty and claimed to be tried.

4. In support of the complainant case, complainant himself got examined as PW1 got marked Ex.P.1 to **Ex.P5**. **After closure** of the evidence of the complainant, 313 Cr.P.C statement of the **accused has** been recorded. The accused denied the incriminating evidence placed by the complainant. In spite of sufficient opportunities, the **accused** not lead defense evidence nor rebutted initial legal presumption existed in favour of the complainant. **Hence, defense evidence taken as Nil.**

5. Heard arguments and perused the material on record.

6. On the basis of the contents of the complaint the following points arise for my consideration. :

1. *Whether the complainant proves beyond reasonable doubt that the accused issued cheque bearing No.091398 drawn on **K.V.G Bank, Haliyal Branch** for a sum of **Rs.9,80,000/-** in favour of the complainant towards discharge of legal liability ?*

2. *Whether the complainant proves beyond reasonable doubt that the accused has committed the offence punishable under Sec.138 of N.I.Act?*
3. *What order ?*
7. My findings to the above points are as follows:

Point No.1 & 2: In the Affirmative.

**Point.No.3 : As per final order
for the following:**

REASONS

8. **Point Nos.1 & 2:** Both these points are interconnected with each other. In order to avoid repetition of facts, both the points have been taken up together for consideration.

The complainant knows accused and her husband since long and the husband of the accused offered him to sell his landed property on 22-09-2022 by receiving of earnest money of Rs.9,80,000/-. Thereafter they deviated from their assurance and not executed registered sale deed in favor of the complainant. At that time complainant insisted them to return the earnest money of Rs.9,80,000/- which was received by them. At that time finally accused issued a cheque bearing No.091398 dt:19.04.2024 for a sum of Rs.9,80,000/- drawn on K.V.G Bank, Haliyal Branch in favour of the complainant. The complainant presented said cheque for realization through his banker ie State Bank of India, Haliyal Branch, same returned dishonored for the reason "Funds

Insufficient” on 22-04-2024. Hence, the complainant issued legal notice dt.09.05.2024 to pay outstanding amount that has been served on him on 14-05-2024, in spite of service of notice the accused failed to pay the amount to the complainant nor replied to the legal notice by denying legal liability or objecting the alleged sale agreement. Therefore, the complainant was constrained to file the complaint against the accused.

9. In order to create the legal presumption as per Sec.139 of N.I. Act, the complainant got examined himself as PW1 by narrating entire complaint averments and got marked the documents as Ex.P.1 to Ex.P.5. Ex.P.1 is the cheque. Ex.P.2 is bank endorsement. Ex.P.3 is the office copy of legal notice. Ex.P.4 is the postal receipt & Ex.P.5 is postal acknowledgment.

10. When the matter was posted for cross of PW.1 at that time neither accused nor the counsel for the accused appeared and put better efforts to cross examine the PW1. In order to complete the Cross examination the defence counsel took more than 07 adjournments thereafter he approached with the application under Section 94 of BNS seeking direction to the complainant to produce original sale agreement executed by the husband of the accused the very application has been disposed of after hearing from both side, though the complainant has filed objection and after passing of order dated

20.08.2025 he produced original sale agreement but not get marked under Ex.P series. Thereafter also defense counsel took 5 adjournments but not Cross examine. Hence on 05.11.2025 Cross examination was taken as nil. Then defense counsel filed application get reopened the case for Cross examination of PW.1 even after he took 07 adjournments then finally Cross examination has been taken as nil and accused statement has been recorded. Accused chose to lead defense evidence but not led. Heard argument and posted this case for judgment after having 4-5 adjournments accused continuously remained absent no representation. But to disprove the complaint facts accused not placed any documentary reliable evidence to show that how the amount mentioned under the cheque is not legally recoverable debt. After having of sufficient opportunities accused failed to place defense evidence. Hence argument from accused side taken as heard and posted for judgment continuously even though accused remained absent, no representation. Therefore I have gone through the principles discussed by our **Honble High Court of Karnataka in Crl.R.P.No.664/2020** disposed on 07.02.2025. Therefore, recording of 313 statement has been dispensed with by invoking the Sec.145 of N.I. act, as accused not responded for the opportunity given by the court to cross examine the complainant

witness and to adduce defense evidence. Court can change the stage by noticing the absence of the counsel and the accused. The argument can also been taken as no argument. In absence of Cross examination of PW1, the oral and documentary evidence placed by the complainant remains intact. The legal presumption existing in favor of the complainant is not rebutted.

11. The cheque in dispute and the signature thereon is not disputed. The accused has neither produced any other relevant documents nor lead oral evidence to disprove the documents produced by the complainant. Despite defence counsel not took pain to cross examine the PW.1 completely. He has not disclosed his specific defense nor took better suggestions how and in what circumstance the disputed cheque comes under possession of the complainant. Even he has not denied alleged sale transaction nor highlighted its contents. As during trial as per his claim original sale agreement was produced by the complainant and not get marked but accused can get encash this opportunity by proving that the amount mentioned under sale agreement is megur one and not of cheque amount. Further it is observed that in absence of contra evidence, the accused towards discharge of legally enforceable debt, issued the disputed cheque to the complainant. Further it sis observed that accused not put effort initially to issue reply notice to the complainant by disclosing her defense.

12. On careful perusal of the material on record specially the cheque in question and the demand notice, they clearly go to reveal that the accused issued the cheque in question in favor of the complainant in order to comply with the contractual liability. On service of notice, the accused though appeared before this court, but not cross examined PW1 fully in order to rebut the burden casted upon her. Absolutely, there is nothing on the part of the accused in order to disprove the case of the complainant. The cheque in question belongs to the accused and issued the same towards discharge of legal liability. Therefore, the complainant has proved that the accused issued the cheque in question towards discharge of legal liability.

13. The complainant has presented said cheque for encashment within time and the same has been dishonored for the reason "Insufficient Fund". The complainant has issued legal notice well within time. In spite of service of notice, the accused has failed to pay the cheque amount and not replied to the legal notice. Therefore, the complainant has proved the necessary ingredients of Sec.138 of N.I.Act.

14. The complainant has proved the complaint averments by placing oral and documentary evidence. The oral evidence duly corroborates with the documentary evidence. The complainant has proved that the cheque in question is issued by the accused towards discharge of legal liability. Therefore, the court can raise

presumption mandated under Sec.139 of N.I.Act as per the ratio laid down by the **Hon'ble Apex Court in 2010(11) SCC 441 (Rangappa V/s Mohan)** wherein it is held that - Once the cheque relates to the account of accused and he accepts and admits the signature on said cheque, then initial presumption as contemplated under Sec.139 of N.I.Act has to be raised by the court in favour of the complainant. The accused has failed to rebut the statutory presumption.

15. In the light of the above discussion and the material placed on record, the court is of the opinion that the complainant has proved existence of legal liability and also proved that the accused has issued the cheque in question towards discharge of legal liability. The complainant has proved the ingredients of Sec.138 of N.I.Act. Therefore considering the entire facts and circumstances of the case and the available evidence on record, the court comes to the conclusion that the accused has committed the offence punishable under Sec.138 of N.I.Act. The complainant is entitled for compensation under Sec.357 Cr.P.C. Therefore, the complainant has proved point Nos.1&2 beyond all reasonable doubt. Hence, Point Nos.1 and 2 are answered in the [Affirmative](#).

16. Point No.3 : In the light of the above finding on point No.1, I proceed to pass the following:

ORDER

Acting u/s. 255(2) of Cr.P.C, the **accused is convicted** for the offence punishable under Sec.138 of N.I.Act.

The accused **is** sentenced to pay fine amount of **Rs.9,85,000/- (Rupees Nine Lakh Eighty Five Thousand only)**. In default of payment of fine, shall undergo SI for six months.

Acting under Sec.357(1)(b) of Cr.P.C, out of the fine amount, the complainant is entitled for **Rs.9,80,000/- (Rupees Nine Lakh Eighty Thousand only)** towards compensation.

Acting under Sec.357(1)(a) of Cr.P.C., the remaining fine amount of **Rs.5,000/- (Rupees Five Thousand only)** is to be remitted to the state.

Copy of the judgment shall be furnished to the accused free of cost.

(Dictated to the Stenographer , transcribed and typed by him, corrected and signed and then pronounced by me in the open court on this the 02nd day of June, 2026)

Sd/-

(SUJATA SIDAGOUDA PATIL)
Senior Civil Judge & JMFC,
Haliyal.

A N N E X U R E**LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:**

P.W.1 : Sri. Nisar Ahammad S/o Mehaboobsab Bukitgar.

LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P1 : Cheque
Ex.P2 : Bank Endorsement
Ex.P3 : Office copy of legal notice

Ex.P4 : Postal Receipt
Ex.P5 : Postal acknowledgment.

LIST OF WITNESSES EXAMINED FOR THE ACCUSED:-

-Nil-

LIST OF DOCUMENTS MARKED FOR THE ACCUSED:

-Nil-

Sd/-

(SUJATA SIDAGOUDA PATIL)
Senior Civil Judge & JMFC,
Haliyal.