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

Dated this the 12th day of May, 2026

PRESENT

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

C.C.No. 98/2023

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:

Maneesh Ashok Harikanth,
Aged about 38 years,
Occ: Agriculturist and Business,
R/o. Kurigadde, Bargi Post,
Kumta Taluk.

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

J U D G M E N T

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.1387/2021 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 one Keshav Subray Naik, Pramod Pandurang Harikant and the accused approached the complainant bank and accused borrowed a loan of Rs.35,000/- from the complainant bank on 31-03-2020 through his loan account No. 1010000748, Keshav Subray Naik and Pramod Pandurang Harikant stood sureties for the said loan and executed all the necessary documents, but they did not repay

the said loan as agreed by them. On 19.04.2021 towards the repayment of a sum of Rs.46,996/- the accused issued cheque bearing No.132111 drawn on S.B.I. Bank, Kumta Branch and when the complainant presented the said cheque to I.C.I.C.I Bank, Kumta Branch for encashment, the same was returned unpaid on 09.06.2021 with an endorsement "funds insufficient". Thereafter, on 21.06.2021, the complainant got issued legal notice to the accused calling upon him to pay the said cheque amount within 15 days from the date of receipt of said notice and on 22.06.2021, the said notice was served to the accused. In spite 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, this 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 has been examined as PW1 and got marked documents at Ex.P1 to Ex.P13. Accused examined under Section 313 of the Code of Criminal Procedure who denied incriminating evidence against him. In spite of sufficient opportunity accused not lead his defence evidence.

5. Heard argument by learned counsel for complainant. No representation made by accused side, hence argument by accused taken as nil.

6. 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.132111 dated 19.04.2021 for Rs.46,996/- drawn on State Bank of India, Kumta Branch, which came to be dishonoured with an endorsement "FUNDS INSUFFICIENT" on 09.06.2021. In spite 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?

7. My findings on the above points is :

Point No.1: In the Affirmative.

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

REASONS

8. **Point No.1:-** It is the case of the complainant that, the accused approached the complainant bank and availed loan of Rs.35,000/-. 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.

9. 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.

10. Now reverting to the factual matrix of the present case, according to the complainant the accused availed loan of Rs.35,000/- and accused not repaid the loan amount, hence

when the complainant asked to repay the amount, the accused issued cheque for Rs.46,996/-. Now let us examine whether the complainant is able to prove existence of legally recoverable debt.

11. In order to establish legally recoverable debt the complainant has placed on record Ex.P.1 is the Authorization letter. Ex.P2 is the original cheque bearing No.132111 dated 19.04.2021 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 Ltd., dated 09.06.2021 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.P6. True copy of Loan application at Ex.P7. True copy loan Surety loan application at Ex.P8. True copy of agreement at Ex.P9. True copy of Loan agreement at Ex.P10. True copy of demand promissory note at Ex.P11 and Ex.P12. True copy of Loan statement along with certificate.

12. 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.

13. 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 Ex.P.1 is authorization letter given to him. Further PW.1 admitted that in loan application date of submitting loan application mentioned as 31.03.2020, PW.1 deposed that there is some mistake in mentioning the date. Further admitted that in loan application date of loan mentioned as 31.03.2020 and date of sanction of loan mentioned 02.03.2020. It is denied suggestion that the loan was sanction before submitting loan application.

14. In this case the learned counsel for accused, found out some mistakes in mentioning the date in loan documents, but accused not denying availment of loan, accused not denied

his signature in loan documents. it is not in dispute that the cheque belongs to the accused, accused not denied the signature thereon. The accused not replied to the notice issued by complainant bank nor adduced his defense evidence. The complainant bank produced all necessary documents with respect to the same. 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. In the present case issuance of cheque not disputed by the accused, accused not denied his signature in Ex.P.2 cheque.

15. 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”.

16. 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.”

17. Evidence on record shows that accused availed loan of Rs.35,000/- 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.

18. 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.35,000/- 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. As per order sheet accused makes payment of Rs.6,000/- on 06.02.2026. Hence the same is deducted from cheque amount. 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.

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

ORDER

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.45,996/- (Rupees forty five thousand nine

hundred and ninety six 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.45,996/- (Rupees forty five thousand nine hundred and ninety six only), out of which Rs.40,996/- 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 12th day of May, 2026)

(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 : Copy of Authorization 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 loan Surety loan application
Ex.P9 : True Copy of agreement
Ex.P10 : True Copy of Loan agreement
Ex.P11 & 12: True Copy of Demand Promissory Note
Ex.P13 : Loan Statement with 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--

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