

KAUK720001652023



**In the Court of the Senior Civil Judge & Principal JMFC,  
Kumta, At: Kumta, Uttara Kannada**

**Dated this the 21<sup>st</sup> day of April, 2026.**

**PRESENT**

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

**C.C.No.132/2023**

**Complainant:**

St. Milagrees Credit Souhardha  
Co-operative Limited, Karawar,  
Branch: Kumta, Represented by  
Branch Manager  
Sri. Rohit Suresh Mogera,  
Aged about 28 years,  
R/o: Kumta, Kumta Taluk.

(By Sri/Smt.. P.G.H. - Advocate)

**V/s**

**Accused:**

Shantabayi Shridhar Bhat,  
Aged about 52 years,  
Occ: Clark, DIET Training College,  
Kumta.  
R/o. Koojalli, Koojalli Post,  
Kumta Taluk.

(By Sri/Smt. V.S.H./V.S.S.- 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.2208/2021 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:

On 11.02.2019 one Sunil Ganapati Naik approached the complainant bank and borrowed a loan sum of Rs.3,00,000/- from the complainant bank, through his loan account No. BL-1076 for his business purpose, for the said loan accused and Ganapati Narayan Naik stood as surety, they are agreed to repay the said loan with interest, the debtor nor the guarantor's repaid the said loan as agreed

by them. When complainant society asked the accused to repay the loan amount on 18.10.2021 towards the repayment of a sum of Rs.3,75,861/- the accused issued cheque bearing No.968230 drawn on S.B.I, Kumta Branch and when the complainant presented the said cheque for encashment, the same was returned unpaid on 25.10.2021 with an endorsement "Funds Insufficient" (Exceed Arrangement). Thereafter, on 15.11.2021, the complainant bank got issued legal notice to the accused calling upon her to pay the said cheque amount within 15 days from the date of receipt of said notice, the said notice was served to the accused on 16.11.2021, the accused given evasive reply to the said notice and not paid the cheque amount. Hence, the accused has committed an offence punishable u/s 138 of Negotiable Instruments Act. Hence the complainant constrained to file this complaint.

3. After issuance of summons accused appeared before the court and got enlarged herself on bail. Plea was

recorded, read over and explained to the accused, who pleads not guilty and claims to be tried. Hence, the case is posted for complainant's evidence. The Manager of complainant bank himself got examined as PW1 and got marked documents Ex.P1 to Ex.P18 and closed his side of evidence.

4. Accused was examined U/S. 313 of Cr.P.C. Incriminating evidence appearing in the complainant's evidence was read over and explained to the accused who denies the same. In spite of sufficient opportunity accused not adduced her defence evidence.

5. Heard argument by learned counsel for complainant counsel for accused called out absent and hence accused side argument 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 beyond all reasonable doubt proves that accused in discharge of legally recoverable debt has issued the Cheque bearing No.968230 dated 18.10.2021 for Rs.3,75,861/- drawn on State Bank of India, Kumta Branch, which came to be dishonoured with an endorsement "FUNDS INSUFFICIENT (Exceed Arrangement)" on 25.10.2021. 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, On 11.02.2019 one Sunil Ganapati Naik approached the complainant bank and borrowed a loan sum of Rs.3,00,000/- from the complainant bank, through his loan account No. BL-1076 for his business purpose, for the said loan accused and Ganapati Narayan Naik stood as

guarantor, they are agreed to repay the said loan with interest, the debtor nor the surety's not repaid the said loan as agreed by them. After obtaining the loan Sunil Ganapati Naik not repaid the loan amount, when complainant society asked to repay the loan amount, the accused to repay the loan amount on 18.10.2021 towards the repayment of a sum of Rs.3,75,861/- the accused issued cheque bearing No.968230 drawn on S.B.I, Kumta Branch and when the complainant presented the said cheque for encashment, the same was returned unpaid on 25.10.2021 with an endorsement "Funds Insufficient" (Exceed Arrangement). Thereafter, on 15.11.2021, the complainant bank got issued legal notice to the accused calling upon her to pay the said cheque amount within 15 days from the date of receipt of said notice, the said notice was served to the accused on 16.11.2021, but the accused given evasive reply to the notice but accused not paid the cheque amount. Hence, the accused has committed an offence punishable u/s 138 of Negotiable Instruments Act.

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 one Sunil Ganapati Naik has availed loan of Rs.3,00,000/- and the accused stood as surety for the said loan. The debtor and the accused who is surety not repaid the loan amount, hence when the complainant asked to repay the amount, the accused issued cheque for Rs.3,75,861/-. 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 Authority letter, Ex.P.2 is the original cheque bearing No.968230 dated 18.10.2021. Ex.P2(a) is signature of the accused. The complainant has also placed on record memo issued by Union Bank of India, dated 25.10.2021 at Ex.P3. Office copy of legal notice issued to the accused at Ex.P.4. Postal receipt at Ex.P.5 and Ex.P6. Postal acknowledgment at Ex.P7 and Ex.P8. Reply notice at Ex.P9. Ex.P10 is the true copy of loan application. Ex.P11 is true copy of loan agreement. Ex.P12 is the true copy of demand promissory note. Ex.P13 is the certified copy of undertaking letter. Ex.P14 is true copy of Hypothecation agreement, Ex.P15 is loan Account extract. Ex.P16 is Certificate (under section 2(A) (a) and (b) of Bankers books of Evidence Act. Ex.P17 is Resolution letter, Ex.P18 is Authorization letter.

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 claim the complainant bank has examined its manager as PW.1 subject to cross examination PW.1 wherein he admitted that the Sunil Ganapati Naik availed the loan from their complainant bank, it is denied suggestion that, as per Ex.P.18 authorization letter he is not authorized to give evidence in the present case, PW.1 deposed that he has given single power of attorney to appear in all cases. Further admitted that there is no resolution number and date in Ex.P.18. Ex.P.18 signed by their managing director. Ex.P.1 and Ex.P.18 the resolutions signed by different managing directors. It is denied suggestion that in notice they have shown the name of institution and not mentioned

the name of managing director, hence the notice issued by them is not legal one. It is denied suggestion that the ink used in writing of Ex.P2(a) are different. It is denied that the notice sent by them is not served on accused.

14. In this case the accused taken defence that she has not stood surety for the loan availed by Sunil Ganapati Naik from complainant bank. But the bank documents that is Ex.P.11 the loan agreement, Ex.P.12 Demand notice, Ex.P.13 bond bears the signature of accused, shows that the accused stood surety for availment of loan by Sunil Ganapati Naik from the complainant bank. The accused stood surety for the loan amount availed by Sunil Ganapati Naik. Accused denied issuance of cheque for repayment of said loan amount, it is defence taken by the accused that the complainant bank misused her cheque, but the accused not taken any legal action against the complainant bank for misused of her cheque. When she disputed the signature

on Ex.P.2 cheque, but the accused not taken any steps against the complainant bank for misusing her cheque.

15. The accused questioned the legality of authorization letter issued by the complainant Ex.P.18 the authorization letter. PW.1 deposed that one authorization letter was given him to depose in all cases filed by the complainant bank.

16. Hence learned counsel for complainant relied on decision in **Cr.A. SCP No.8659/2023 - Hon'ble Supreme Court of India, in the case of M/s. Naresh Potteries Vs. M/s. Aarti Industries and another**, wherein it has held that,

*If the payee is a company, necessarily the complaint should be filed in the name of the company. Section 142 of the NI Act does not specify who should represent the company, if a company is the complainant. A company can be represented by an employee or even by a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney. In such cases, this Court held that a company can be represented by an*

*employee or even a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney.*

*As a consequence of the aforesaid discussion, this Court concluded that for the purposes of Section 142 of the NI Act, the company will be the complainant and for the purposes of Section 200 of the Cr.P.C., its employee who represents the company, will be the de facto complainant while the company will remain the de jure complainant, regardless of any change in the de facto complainant.*

17. In the present case on perusal of Ex.P.18 shows that the PW.1 is authorized to provide information to Advocate to attend the JMFC Court, Kumta, and file the complainant/s and execute the necessary documents and swear the affidavits, to lead evidence on behalf of complainant Co-operative. PW.1 is permitted to appear and represent in all the cases filed by their Co-operative and so to do defend the cases filed against their society. Hence under Ex.P.18 the complainant society given the permission to PW.1 to appear before the court and give evidence in the present case.

18. 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 a 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”.

19. 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.”

20. In the present case, the complainant bank proved that the accused issued cheque for repayment of loan amount, accused not adduce her evidence to rebut the same. Evidence on record shows that accused stood surety for loan of Rs.3,00,000/- availed from the complainant bank.

21. Hence, accused cogently failed to explain how did her cheque in question came into the possession of complainant. 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 bank. 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.

22. 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.3,00,000/- to Sunil Ganapati Naik and accused stood as surety. Thus complainant has established existence of legally recoverable debt. The 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, **I answered point No.1 in the Affirmative.**

23. **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.3,80,861/- (Rupees Three lakh eighty thousand eight hundred and sixty one 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.3,80,861/- (Rupees Three lakh eighty thousand eight hundred and sixty one only), out of which Rs.3,75,861/- 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 21<sup>st</sup> day of April, 2026)

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

**ANNEXURES****Witnesses examined for the complainant:**

PW1 : Gajanan Keshav Harikantra

**Documents exhibited for the complainant:**

Ex.P1 : 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 & 6 : Postal receipt  
Ex.P7 & 8 : Postal Acknowledgment card  
Ex.P9 : Reply to Notice  
Ex.P10 : True copy of Loan application  
Ex.P11 : True copy of Loan agreement  
Ex.P12 : Certified copy of demand promissory note  
Ex.P13 : Certified copy of undertaking letter  
Ex.P14 : Certified copy of hypothecation agreement  
Ex.P15 : Loan account extract  
Ex.P16 : Certificate  
Ex.P17 : Resolution letter  
Ex.P18 : Authorization Letter

**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.