

KAUK720005132022



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

Dated this the 6th day of March, 2026

PRESENT

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

C.C.No.165/2022

Complainant:

Bhatkal Krushi and Grameena
Abhivradhi Sahakari Bank Ltd.,
Bhatkal, Branch Gokarna,
represented by its Branch Manager
Sri. Damodhar J. Naik,
Occ: Branch Manager,
R/o: Kumta, Kumta Taluk (U.K.).

(By Sri. K.R.N. Advocate)

V/s

Accused:

Sri. Rajesh Shantaram Naik,
S/o. Shantaram Naik,
R/o. No. 908, Tarivada,
Manjguni Post, Ankola Taluk,
PIN Code: 581353

(By Sri./Smt. R.G.N./V.S.P. -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.89/2021 and as per Order No.130/2022 dated 01.07.2022 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:

The accused borrowed a Mortgage Loan of Rs.10,00,000/- from the complainant bank on 09.05.2019 in the name of his mother and accused was stood as guarantor to the said loan and agreed to repay the said loan with interest, but the accused did not repay the said loan as agreed by him. On 09.12.2020 towards the repayment of a sum of Rs.2,65,000/- the accused issued cheque bearing No.466066

drawn on Syndicate Bank, Basagoda Branch, Ankola Taluk and when the complainant presented the said cheque through their K.D.C.C. Bank, Kumta Branch for encashment, the same was returned unpaid on 18-12-2020 with an endorsement "Funds Insufficient". Thereafter, on 23.12.2020, 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 the said notice was served to the accused on 28-12-2020. 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. On receipt of complaint, the Court has taken cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act and thereafter, the sworn statement of branch manager of the complainant was recorded. Since there were sufficient grounds to proceed

against the accused for the alleged offence and the complainant has made out a prima facie case, this case was registered against the accused and he was directed to appear before the Court. On appearance of the accused, he was 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 ten documents at Ex.P-1 to Ex.P-10. After the closure of evidence of the complainant, the accused was examined under Section 313 of the Code of Criminal Procedure to enable him to know the incriminating evidence adduced against him. Accused lead his defence evidence, got examined himself as DW.1 but not produced any document.

5. Heard argument by both learned counsel for complainant and accused.

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.466066 dated 09.12.2020 for Rs.2,65,000/- drawn on Syndicate Bank, Basgod Branch, which came to be dishonoured with an endorsement "FUNDS INSUFFICIENT" on 18.12.2020. 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 borrowed a Mortgage Loan of Rs.10,00,000/- from the complainant bank on 09.05.2019 in the name of his mother and accused was stood as guarantor to the said loan and agreed to repay the said loan with interest, but the

accused did not repay the said loan as agreed by him. On 09.12.2020 towards the repayment of a sum of Rs.2,65,000/- the accused issued cheque bearing No.466066 drawn on Syndicate Bank, Basagoda Branch, Ankola Taluk and when the complainant presented the said cheque through their K.D.C.C. Bank, Kumta Branch for encashment, the same was returned unpaid on 18-12-2020 with an endorsement "Funds Insufficient". Thereafter, on 23.12.2020, 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 the said notice was served to the accused on 28-12-2020. 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.

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 mother of accused availed loan of Rs.10,00,000/- 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.2,65,000/-. 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 bank has placed on record Ex.P.1 is the

Authorization letter, Ex.P.2 is the original cheque bearing No.466066 dated 09.12.2020. Ex.P2(a) is signature of the accused. The complainant has also placed on record memo issued by Syndicate Bank dated 18.12.2020 at Ex.P3. Office copy of legal notice issued to the accused at Ex.P.4. Postal receipt at Ex.P.5. Postal acknowledgment at Ex.P6. Ex.P7 is statement of account. Ex.P8 is the true copy of application for mortgage loan, Ex.P8(a) is signature of accused. Ex.P9 is true copy of Receipt for receiving loan amount. Ex.P10 is loan account extract.

12. In this case the availment of loan amount from the complainant bank by accused mother is not in dispute, it is also not in dispute that the accused stood surety for the loan amount availed by his mother. During his cross examination accused admitted he issued cheque for part payment of loan amount of Rs.265,000/-. Further it is the contention of accused that amount of Rs.1,94,000/- deducted from his salary and now he is ready to pay the remaining balance of Rs.71,000/-.

13. In this case the complainant also admitted that Rs.1,91,000/- deducted from the salary of accused, but the same is not towards the cheque amount but the same was deducted in execution case, and not in the present case.

24. Availing loan of rupees ten lakhs by the mother of the accused is not in dispute, issuance of cheque by the accused is also not in dispute. Accused not disputed his signature. Accused taken contention that amount of Rs.1,94,000/- deducted by his account. But it is the contention of complainant bank that the amount deducted in Execution case no.33/2024 pending before Ankola Court, and not in the present case. Accused not produced any document to show that the amount claiming to be paid is deducted in the present case. Hence as the accused admitted the loan amount and issuance of cheque to the complainant bank and admitted his signature there on. Hence complainant bank proved that accused issued Ex.P.2 cheque for payment of said loan amount. Complainant society issued notice to accused, but accused not given reply to the said notice.

15. To rebut the evidence of complainant the accused got examined himself as DW.1. In his evidence DW.1 admitted issuance of cheque and complainant bank proved that accused issued cheque for payment of loan amount. Accused failed to prove that the salary deduction amount paid in the present cheque case. Hence evidence shows that the accused issued cheque for discharge of loan.

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 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”.

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. In the present case, the complainant bank proved that the accused issued cheque for repayment of loan amount 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. 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.

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.2,68,000/- (Rupees two lakh sixty eight thousand 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.2,68,000/- (Rupees two lakh sixty eight thousand only), out of which

Rs.2,65,000/- 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 6th day of March, 2026)

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

ANNEXURES

Witnesses examined for the complainant:

PW1 : Sri. Damadar J. Naik

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 : Postal receipt
Ex.P6 : Postal acknowledgment
Ex.P7 : Statement of account
Ex.P8 : True copy of application for mortgage loan
Ex.P8(a) : Signature of accused
Ex.P9 : True copy of Receipt for receiving loan amount
Ex.P10 : Loan account extract.

Material object exhibited for the complainant:

--Nil--

Witnesses examined for the defence:

DW1 : Sri. Rajesh Shantaram Naik

Documents exhibited for the defence:

--Nil--

Material object exhibited for the accused:

--Nil--

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