

KAUK720006192022



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

**Dated this the 24<sup>th</sup> day of March, 2026**

**PRESENT**

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

**C.C.No. 218/2023**

**Complainant:**

Godavari Souharda Credit Sahakari  
Ltd., Gokarna, Branch: Kumta  
Kumta Taluk,  
Represented by Branch Manager  
Sri. Satyanand Nagappa Nayak  
R/o: Agasooru, Ankola Taluk (U.K.)

(By Sri/Smt. R.G.N. - Advocate)

**V/s**

**Accused:**

Sri. Gajanan Anup Naik  
Aged about 28 years,  
R/o.: Bastipete,  
Kumta Taluk, (U.K.)

(By Sri./Smt. P.S.N., advocate)

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**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 Addl. Civil Judge and J.M.F.C., Kumta and the same was numbered as C.C.No.856/2022 and as per the 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:

That the accused along with one Vaibhav Mahadev Gaoukar and Aditya Ramesh Achari approached the complainant bank and accused borrowed a loan of Rs.55,000/- from the complainant bank for his business purpose and to the said loan one Vaibhav Mahadev Gaoukar and Aditya Ramesh Achari were stood as guarantors, but later on they did not repay the said loan as agreed by them. When

complainant society repeatedly asked the accused to repay the loan amount on 09-02-2022 towards the repayment of a sum of Rs.80,176/- the accused issued cheque bearing No.003480 drawn on Axis Bank, Kumta Branch and when the complainant presented the said cheque through their K.D.C.C. bank, Kumta branch for encashment, the same was returned unpaid with an endorsement "Account Closed" on 03-03-2022. Thereafter, on 17-03-2022 the complainant got issued legal notice to the accused calling upon him to pay the said cheque amount, the accused intentionally not received the notice and the said notice returned on 30-03-2022. 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, 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.P13 and complainant bank closed their side of evidence.

5. When the case is posted for statement of accused, accused remained absent, hence this court relying the decision of Hon'ble High Court of Karnataka in case of Dakshina Murthy V/s Kularni 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. Though case is posted for defence evidence, but accused remained absent, hence defence evidence taken as nil.

6. Heard argument by learned counsel for complainant. Counsel for accused prays time for argument prayer rejected and argument by accused take 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.003480 dated 09.02.2022 for Rs.80,176/- drawn on Axis Bank, Kumta Branch which came to be dishonoured with an endorsement "Account closed" on 03.03.2022. 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?

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.55,000/-. 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, and it is returned with shara "Unclaimed", 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.55,000/- 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.80,176/-. 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 original cheque bearing No.003480 dated 09.02.2022 issued by accused infavour of complainant bank. Ex.P1(a) is the signature of accused. The complainant has also placed on record memo issued by K.D.C.C. Bank Ltd., dated 03.03.2022 at Ex.P2. Office copy of legal notice issued to the accused at Ex.P.3. Postal receipt at Ex.P.4. Unserved R.P.A.D cover at

Ex.P5. Notice inside the unserved cover at Ex.P6. True copy of Loan application at Ex.P.7. True copy of Loan agreement at Ex.P.8. True copy of Demand promissory Note at Ex.P.9. True copy of guarantee letter at Ex.P.10. True copy of Receipt at Ex.P.11. And Authorization letters at Ex.P.12 and Ex.P13.

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 by name Raghuraj Ganapati Naik as PW1 who filed his chief affidavit by reiterating the contents of complaint. But the accused not cross examined PW1, hence evidence of PW1 remained unchallenged. 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 defence 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. In the present case issuance of cheque not disputed by the accused, accused not denied his signature in Ex.P.1 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.55,000/- 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.1 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.55,000/- 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.

19. **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.85,176/- (Rupees Eighty five thousand one hundred and seventy 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.85,176/- (Rupees Eighty five thousand one hundred and seventy six only), out of which Rs.80,176/- 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 24<sup>th</sup> day of March, 2026)

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

### **ANNEXURES**

#### **Witnesses examined for the complainant:**

PW1 : Raghuraj Ganapati Naik

#### **Documents exhibited for the complainant:**

Ex.P1 : Cheque  
Ex.P1(a) : Signature of the accused  
Ex.P2 : Memo given by the bank  
Ex.P3 : Office copy of legal notice  
Ex.P4 : Postal Receipt  
Ex.P5 : Unserved R.P.A.D cover  
Ex.P6 : Notice inside the unseved RPAD cover  
Ex.P7 : True Copy of Loan application  
Ex.P8 : True Copy of Loan agreement  
Ex.P9 : True Copy of Demand promissory Note  
Ex.P10 : True Copy of guarantee agreement  
Ex.P11 : True Copy of Receipt

Ex.P12 & 13 : 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.