

KAUK720006392023



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

Dated this the 28th day of April, 2026

PRESENT

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

C.C.No.231/2023

Complainant: Sri. Ganesh Shekhar Naik,
Age: 35 years,
Occ: Railway Job,
R/o: Chittikambi, Hegade,
Kumta Taluk, (U.K.)

(By Sri. S.D.N. - Advocate)

V/s

Accused: Abheeda Begam Munvar
Aged about 45 years,
Occ: Business and Household,
R/o. Gopalagouda Nagar,
2nd Cross, Sagara,
Sagara Taluk, Shivamogga-577401

(By Sri.S.N.M./S.J.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.745/2019 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:

Accused and complainant are well known to each other, the accused availed hand loan of Rs.1,10,000/- from the complainant in the year 2019 January third week, for the purpose of her business and gave assurance that she will repay the said amount within 5-6 months. When the complainant repeatedly requested her to repay the said amount, on 25.07.2019, accused issued the cheque bearing

No.392883 for a sum of Rs.1,10,000/- drawn on Corporation Bank, Sagara Branch, as per the instruction of accused when the complainant presented the said cheque through State Bank of India Kumta for encashment, the same was returned unpaid on 26.07.2019 with an endorsement "funds insufficient". Thereafter, on 07.08.2019, the complainant 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 10.08.2019, but 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, she was got enlarged on bail. Thereafter, the substance of accusation was recorded and read over to the accused and she did not plead guilty and claims trial. Hence, the matter was posted for trial.

4. In order to bring home the guilt of the accused, the complainant himself has been examined as PW1 and got marked documents at Ex.P-1 to Ex.P-5. Accused examined under Section 313 of the Code of Criminal Procedure who denied incriminating evidence against her. To prove her defence, accused herself examined as DW1 and got marked documents at Ex.D1 to Ex.D6.

5. Heard argument by learned counsel for accused. In spite of opportunity learned counsel for complainant not submitted his argument, hence argument by complainant 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 issued the cheque bearing No.392883 dated 25.07.2019 for Rs.1,10,000/- drawn on Corporation bank, Sagara Branch for repayment of hand loan which came to be dishonoured with an endorsement "Funds Insufficient" on 26.07.2019. 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 are as follows:-

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, accused and complainant are well known to each other, the accused availed hand loan of Rs.1,10,000/- from the complainant in the year 2019 January third week, for the purpose of her business and gave assurance that she will repay the said amount within 5-6 months. When the

complainant repeatedly requested her to repay the said amount, on 25.07.2019, accused issued the cheque bearing No.392883 for a sum of Rs.1,10,000/- drawn on Corporation Bank, Sagara Branch, as per the instruction of accused when the complainant presented the said cheque through State Bank of India Kumta for encashment, the same was returned unpaid on 26.07.2019 with an endorsement "funds insufficient". Thereafter, on 07.08.2019, 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, the said notice was served to the accused on 10.08.2019, but 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 in the year 2019 January third week the accused availed hand loan of Rs.1,10,000/- for the purpose of her business. The accused not paid the said amount, hence when the complainant asked to pay the amount, the accused issued cheque for Rs.1,10,000/- 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 has placed on record Ex.P.1 the original

cheque bearing No.392883 dated 25.07.2019. The complainant has also placed on record memo issued by State Bank of India dated 26.07.2019 at Ex.P2. Office copy of legal notice issued to the accused at Ex.P.3, Postal receipt at Ex.P4, Postal Acknowledgement at Ex.P5.

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 his claim the complainant has examined himself as PW1 and filed his chief affidavit. PW1 subject to cross-examination wherein PW.1 deposed that he is working in Railway Department as Gate man at Sagar. He is the resident of Hegade, Kumta. PW.1 deposed that transaction held at Sagar. It is denied suggestion that the accused belongs to Muslim caste, and she is a paradanashin lady, and all the family transactions made by male members of the family. Accused is the

neighbor of complainant, she came and asked the accused for financial help for treatment of her husband. Complainant given his savings amount kept for his marriage to the accused, he given the amount to accused at Sagar and accused issued cheque at Sagar. It is denied suggestion that the signature on cheque and Ex.P.5 postal acknowledgment are not belongs to the accused. Accused given written cheque to him. It is denied suggestion the ink used in writing of the cheque and the signature there on are different. He given the documents to advocate at Sagar, but his advocate suggested him to file the case at Kumta Court. It is denied suggestion that the notice not served on accused. It is denied suggestion that the Ex.P.1 cheque and Ex.P.1(a) signature not belongs to the accused. The bank account also not belongs to the accused he filed false case against the accused. Further it is denied suggestion that this court is not having jurisdiction to try the case. Accused not liable to pay any amount to him.

14. To rebut the complaint's case the accused lead her defence evidence, got examined as DW.1 and deposed that she do not know the complainant, there is no transaction between her and the complainant. She has not issued any cheque infavour of accused. The account in Corporation Bank closed fourteen years back because of zero balance, hence Ex.P.1 cheque, Ex.p1(a) signature not belongs to her. The signature in Ex.P.5 postal acknowledgment also not belongs to her.

15. It is the contention of accused that, she is not residing in the address shown in complaint, hence the notice issued by accused not served on her. Hence to prove the same accused produced Ex.D.1 notarized copy of her aadhar card, Ex.D.2 noterized copy of aadhar card of her husband. Ex.D.3 is Notarized copy of Election I.D Card, Ex.D.4 Notarized copy of PAN card, Ex.D5 is Notarized copy of Ration Card, Ex.D.6 is HDFC Bank Pass Book.

16. It is the contention of accused that the accused is not residing in the address shown in complaint and notice, hence no transaction held between her and complainant, and no notice was served. In all the above documents the address of accused shown as B.K Road, Gandhinagar, Sagar. But in Ex.D.2 the address of husband of accused shown as Gopalgouda Nagar, Sagar, Shivmogga. Hence it shows that the accused is resident of address shown in the complaint that is at post; Gopalgouda Nagar, Sagar. It is pertinent to note that the above said loan transaction held in the year 2019. Accused during her 313 statement stated that she is residing in rented house. Moreover the complainant produced Ex.P.5 the postal acknowledgment served on accused. The summons served on the accused on the same address. Hence complainant proved that he sent to legal notice to the address of the accused and the same was served on the accused.

17. Further the accused taken one more contention that, the Ex.P.1 cheque issued is not belongs to her. Accused deposed that her corporation account closed fourteen years back. But when the complainant produced the Ex.P.1 cheque to SBI, Kumta same was returned with endorsement Funds insufficient. If really as stated by the accused if her account was closed the bank officials would have given endorsement as Account Closed. And if the cheque was not belongs to accused the bank authorities would have given share that account not belongs to the accused. But in this case the Ex.P.1 cheque returned with shara Insufficient fund. Hence it shows that the cheque issued by the accused of her account. If really Ex.P.1 cheque not belongs to her and if the accused filed false case against her, she would have taken legal action against the complainant for filing false case against her. But the accused not taken any legal action against the accused.

18. Accused denied her signature in Ex.P.1(a) cheque, and signature in Ex.P.5 the postal authority, but the

accused not examined the bank officials, calling upon her specimen signature. Moreover the courts have the power to compare disputed signatures or handwriting with admitted once under Section 73 of the Indian Evidence Act, 1872. This allows judges to form an opinion, by perusal of signature of accused put by the accused before this court on plea, 313 statement, notices issued by court are tallied with signature in Ex.P5 postal acknowledgment and Ex.P.1(a) cheque, there is a similarity in all the signatures. Hence it shows that the notice served to the accused and signature belongs to the accused. As the SBI Kumta, not returned the cheque with endorsement signature differs, hence it shows that Ex.P.1 cheque belongs to the accused and the signature there on also belongs to the accused.

19. Further the accused disputed that this court has no territorial jurisdiction to try the case, as the complainant stated that transaction took place at Sagar. But in this case the complainant present the cheque at SBI Kumta branch. And jurisdiction lies only in the court within whose local

jurisdiction the branch of the bank where the payee maintains the account (home branch) is situated. (Jai Balaji Industries Ltd. v. Heg Ltd²⁰²⁵, INSC 1362 (SC)). Hence the complaint in cheque bounce case can be filed where payee maintains Bank Account,

20. Hence the documents produced by the complainant established that complainant meets out the procedural requirements of section 138 of Negotiable Instrument Act.

21. 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”.

22. 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.”

23. Since the accused failed to prove signature in Ex.P.1(a) not belongs to her, hence it shows that accused issued cheque to the complainant, 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. Hence, the complainant proved that the accused issued cheque for the payment of loan amount. 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.

24. Considering all these aspects of the case and on perusal of evidence lead on behalf of complainant, it clearly depicts that accused availed hand loan of Rs.1,10,000/- from the complainant and hence the accused issued cheque for Rs.1,10,000/- to repay the loan amount. Thus complainant 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/Sec.138 of Negotiable Instrument Act.

Therefore, I answered **point No.1 in the Affirmative.**

25. **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.1,15,000/- (Rupees one lakh fifteen 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.1,15,000/- (Rupees one lakh fifteen thousand only), out of which Rs.1,10,000/- is to be paid to the complainant as compensation.

The bail bond executed by the accused and 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 and then pronounced in the open court on this 28th day of April, 2026)

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

ANNEXURES

Witnesses examined for the complainant:

PW1 : Sri. Ganesh Shekhar 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 : Postal Acknowledgment

Material object exhibited for the complainant:

--Nil--

Witnesses examined for the defence:

DW1 : Smt. Abeeda Begam

Documents exhibited for the defence:

Ex.D1 : Noterized coy of Aadhaar card of DW1
Ex.D2 : Noterized coy of Aadhaar card of Syed Hussain
Ex.D3 : Noterized coy of Voter I.D of DW1
Ex.D4 : Noterized coy of PAN card of DW1

Ex.D5 : Noterized coy of Ration card
Ex.D6 : Pass book of DW1

Material object exhibited for the accused:

--Nil--

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