

KAUK720007562023



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

**Dated this the 5<sup>th</sup> day of May, 2026.**

**PRESENT**

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

**C.C.No.288/2023**

**Complainant:**

The St. Milagrees Credit Souhardha  
Co-operative Limited, Karawar,  
Branch: Kumta, Represented by  
Branch Manager  
Sri. Rohit Suresh Mogera,  
Aged about 29 years,  
R/o: Kumta.

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

**V/s**

**Accused:**

Sri. Ganapati Krishna Ambiga,  
Occ: Centering Work,  
R/o. Kalabavi, Masooru Post,  
Kumta Taluk.

(By Sri. G.G.G.- 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 Principal Civil Judge and J.M.F.C., Kumta and the same was numbered as C.C.No.1402/2022 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 08.01.2021 one Sulochana Ganapati Ambiga approached the complainant bank and borrowed a loan sum of Rs.80,000/- from the complainant bank, through her loan account No. BL-1481 for her business purpose, for the said loan accused and another person 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 16.05.2022 towards the repayment of a sum of Rs.98,000/- the accused issued cheque bearing No.145508 drawn on State Bank of India, Kumta Branch and when the complainant presented the said cheque through Karnataka Bank Ltd., Kumta Branch for encashment on 20-05-2022, the same was returned unpaid on 23.05.2022 with an endorsement "Funds Insufficient". Thereafter, on 14.06.2022, the complainant bank got issued legal notice to the accused calling upon him to pay the said cheque amount within 15 days, the notice served on 21.06.2022, 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 issuance of summons accused appeared before the court and got enlarged himself 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.P13 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 and submit no defence evidence.

5. Heard argument by learned counsel for both 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 beyond all reasonable doubt proves that accused in discharge of legally recoverable debt has issued the Cheque bearing No.145508 dated 16.05.2022 for Rs.98,000/- drawn on State Bank of India, Kumta Branch, which came to be dishonoured with an endorsement "FUNDS INSUFFICIENT" on 21.05.2022. 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?

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, 08.01.2021 one Sulochana Ganapati Ambiga approached the complainant bank and borrowed a loan sum of Rs.80,000/- from the complainant bank, through her loan account No. BL-1481 for her business purpose, for the said loan accused and another person 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 16.05.2022 towards the repayment of a sum of Rs.98,000/- the accused issued cheque bearing No.145508 drawn on State Bank of India, Kumta Branch and when the complainant presented the said cheque through Karnataka Bank Ltd., Kumta Branch for encashment on 20-05-2022, the same was returned unpaid on 23.05.2022 with an endorsement "Funds Insufficient". Thereafter, on 14.06.2022, the complainant bank got issued legal notice to the accused calling upon him to pay the said cheque amount within 15 days, the notice served on 21.06.2022, 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.

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 Sulochana Ganapati Ambiga has availed loan of Rs.80,000/- 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.98,000/-. 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 is the Authorization letter, Ex.P.2 is the original cheque bearing No.145508 dated 16.05.2022. Ex.P2(a) is signature of the accused. The complainant has also placed on record memo issued by Karnataka Bank Ltd., dated 21-05-2022 at Ex.P3. Office copy of legal notice issued to the accused at Ex.P.4. Postal acknowledgment at Ex.P5. Ex.P6 is the true copy of loan application. Ex.P7 is true copy of loan agreement. Ex.P8 is the true copy of demand promissory note. Ex.P9 is true copy of Guarantee letter. Ex.P10 is true copy of Hypothecation agreement, Ex.P11 and Ex.P12 are undertaking letters. Ex.P13 is loan account extract.

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 he was not working in complainant bank at the time of this loan transaction. Hence he had no personal knowledge, he is giving his evidence on the basis of documents. Admitted that accused not availed loan, but he is a guarantor to the said loan. They have obtained KYC documents at the time availment of loan. The debtor availed loan for her tailoring business, it is denied suggestion that they have not mentioned in Ex.P.7 that the guarantor is liable to repay the loan amount if the debtor failed to pay the loan amount. PW.1 deposed that they have issued notice to accused and also to the debtor. It is denied suggestion that accused not issued any cheque, when the accused came to their bank they have taken cheque of accused without his knowledge.

It is denied suggestion that the signature in Ex.P.2(a) and signature in Ex.P5 are different. Further it is denied suggestion that the ink used in signature and the written in words are different. It is denied suggestion that, Accused is a illiterate person do not know English language, it is denied suggestion that accused not issued any cheque in favour of complainant bank, they have misused the cheque of accused. It is denied suggestion that accused no where related to the above said loan transaction, hence there is no legally recoverable debt, and accused is not liable to pay any loan amount to complainant bank.

14. In this case the accused denied issuance of cheque. But the availment of loan amount from the complainant bank by Sulochana Ganapati Ambiga is not in dispute, complainant produced documents shows that the accused stood surety for the loan amount availed by Sulochana Ganapati Ambiga. Accused denied issuance of cheque for repayment of said loan amount also denied his

signature in Ex.P.2, but in this case the accused not given reply to the notice issued by complainant bank, when he disputed the signature on Ex.P.2 cheque, but the accused not taken any steps against the complainant bank for misusing his 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

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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”.

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. In the present case, the complainant bank proved that the accused issued cheque for repayment of loan amount, accused not adduce his evidence to rebut the same. Evidence on record shows that accused stood surety for loan of Rs.80,000/- availed from the complainant bank.

18. Hence, accused cogently failed to explain how did his 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.

19. 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.80,000/- to Sulochana Ganapati Ambiga 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.

20. **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.1,03,000/- (Rupees one lakh three 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.1,03,000/- (Rupees one lakh three thousand only), out of which Rs.98,000/- 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 5<sup>th</sup> day of May, 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 : Postal Acknowledgment card  
Ex.P6 : True copy of Loan application  
Ex.P7 : True copy of Loan agreement  
Ex.P8 : True copy of demand promissory note  
Ex.P9 : True copy of Guarantee letter  
Ex.P10 : True copy of hypothecation agreement  
Ex.P11 & 12 : True copy of undertaking letter  
Ex.P13 : Loan account extract.

#### **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.