KAUK910005752025

IN THE COURT OF THE CIVIL JUDGE AND JMFC AT SIDDAPUR.

Dated this 20th day of August, 2026.

Present : Sri HARISHKUMAR. M, B.Com. LL.B.
Civil Judge and JMFC, Siddapur.

C.C.NO. 308/2025

COMPLAINANT:-
Manager, Janatha Co-operative
Credit Society Ltd., Bhatkal
Siddapur Branch, Siddapur Taluk,
Uttara Kannada,
(By Sri. G.S.H., Advocate)

V/s.

ACCUSED/S:-
Smt. Bharati W/o Shivaram Gouda,
Major in Age,
R/o H.No.677, Maribail,
Kondli, Kondli Post,
Siddapur Taluk,
Uttara Kannada District,
(By Sri. K.M.N., Advocate)

Date of Presentation of the Complaint	01.08.2025
Date of Registration of the Complaint	01.08.2025
Date on which the Sworn Statement was recorded	01.08.2025
Name of the Complainant	The Manager, Janatha Co-operative Credit Society Ltd.,

Date on which the plea of the accused was recorded	13.11.2025
Plea of the accused	Accused Pleaded not guilty
Date on which the statement of accused U/Sec.351 of BNSS recorded	he s 13.11.2025
Date of recording evidence	01.08.2025
Date of closing evidence	01.08.2025
Offence complained of	U/Sec.138 of N.I.Act
Opinion of the Judge	As per final Order.
Date on which the judgment was pronounced	20.08.2026

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CIVIL JUDGE AND JMFC, SIDDAPUR
Date: 2026.08.20 15:22:35 +0530

20.08.2026
Civil Judge and JMFC.,
Siddapur.

J U D G M E N T

1. The Manager of the complainant society has filed this private complaint under Section 223 of BNSS, against the accused alleging the commission of an offence punishable under Section 138 of Negotiable Instrument Act.

2. **Brief facts of the case leading to filing of this complaint is as hereunder:**

It is stated that, the accused had borrowed cash credit loan of Rs.1,00,000/- (Rupees One Lakh only) from the complainant's society on 08.11.2021 and the accused had paid part of the loan amount and leaving the balance of Rs.1,41,000/- (Rupees One Lakh Forty One Thousand only) and the accused gave a cheque bearing No.827781 dated: 20.05.2025 for a sum of Rs.1,41,000/- (Rupees One Lakh Fourty One Thousand only) drawn on the State Bank of India, Siddapur Branch. It is further stated that, the manager of the complainant society has presented the said cheque through his banker for collection. But, to the utter surprise of the manager of the complainant society, the said cheque came to be returned to him along with return memo of Canara Bank, Siddapur Branch dated: 23.05.2025 with reason "**Funds Insufficient**". Thereafter, the manager of the complainant society has got issued a legal notice to the accused through his counsel by RPAD on 21.06.2025 calling upon the accused to make the payment of the above said cheque amount within 15 days from the date of receipt of the said notice. The said notice was served on the accused on 27.06.2025. But, the accused neither made payment of the said cheque amount nor replied to the said legal notice. Thus, the accused has committed an offence punishable U/Sec.138 of N.I.Act. Hence, the manager of the complainant society constrained to file the case. Therefore, the accused is liable to be punished under the provisions of the Negotiable Instruments Act.,1881.

3. After filing the private complaint before this Court, cognizance was taken for the offence punishable U/Sec.138

of N.I.Act and the case was ordered to be registered as Private Complaint and accordingly, it was registered as PCR No.83/2025. Sworn statement of the manager of the Complainant society was recorded as per Sec.223 of BNSS., and after hearing the learned counsel for the complainant society and on perusal of the documents placed before this Court, it was held that, the manager of the complainant society has made out sufficient grounds to proceed with the case for the offence alleged and accordingly, the private complaint was ordered to be registered as criminal case and accordingly, the summons was issued against the accused.

4. After receipt of summons, the accused appeared before the Court through her counsel and she was enlarged herself on bail vide order dated: 13.11.2025. The copy of the complaint and documents have been supplied to the accused. Plea for the offence punishable U/Sec.138 of NI Act recorded and substance of accusation has been read over and explained to the accused in Kannada Language known to her. The accused pleaded not guilty and she claimed to be tried by this Court.

5. During the course of trial, the manager of the complainant society examined himself as PW-1 and got marked documents ExP-1 to ExP-6, ExP-1(a) and closed his side.

6. Statement of accused U/Section 351 of BNSS, 2023, recorded and the incriminating evidence forth coming

against the accused has been read over and explained to the accused in Kannada language known to him. She totally denied the case of the PW-1. On the other hand, she did not chosen to adduce any evidence and not produced any documents on her behalf.

7. I have heard the arguments of learned counsel for the complainant society. In the meantime the learned counsel for the accused herein retired from the case. Hence, the arguments of accused side is taken as nil and the liberty is given to the accused to file written arguments within 15 days, but the accused has not filed any written arguments. Perused the oral and documentary evidence placed before this Court.

8. On the basis of the above facts, the following points arise for consideration of this Court:

1. **Whether the complainant society proves that, the accused in discharge of legally recoverable debt has issued the Cheque bearing No.827781, dated: 20.05.2025 for an amount of Rs.1,41,000/-, drawn on the State Bank of India., Siddapur branch, which is came to be dishonored with an endorsement "Funds Insufficient" on 23.05.2025. In spite of due service of**

notice accused has not paid the aforesaid Cheque amount and thereby committed an offence under section 138 of N.I.Act?

2. **What Order?**

9. Findings of this Court to the above Points are as hereunder:

Point No.1 : In the Affirmative.

Point No.2 : As per final order for the following reasons:-

<u>R E A S O N S</u>

10. **<u>POINT No.1</u>:** In order to prove the guilt of the accused, the manager of the complainant society was examined as PW-1 by way of an affidavit in lieu of his chief-examination. In his affidavit he has testified regarding lending of Rs.1,00,000/- (Rupees one Lakh only) to the accused and issuance of cheque by the accused, its dishounor, issuance of demand notice and also failure of the accused to pay the cheque amount. The manager of the complainant society has produced the cheque said to have been issued by the accused in favour of complainant society as Ex.P1. ExP-1(a) is the signature of the accused on ExP-1, ExP-2 is the bank endorsement dated: 23.05.2025 which reveals that, the ExP-1 was dishonored for the reason **"Funds Insufficient",** ExP-3 is the office copy of the legal notice dated: 21.06.2025, ExP-4 is the postal receipt, ExP-5 is the RPAD

acknowledgment and Ex.P6 is the copy of resolution dated 07.05.2025 issued by the complainant society to PW-1 to prosecute the present case. The said notice was served on the accused on 27.06.2025. But, the accused neither made payment of the said cheque amount nor replied to the said legal notice. These documents reveals that, after dishonor of the cheque, the manager of the complainant society had issued statutory notice to the accused within time.

11. In order to prosecute the drawer for the offence U/Sec.138 of N.I. Act, the following facts are required to be proved:-

1. That the cheque was drawn for payment of amount of money for discharging of a debt or liability,
2. The cheque was dishonored,
3. That the cheque was presented within the prescribed period,
4. The payee made a demand for payment of money by giving demand notice in writing to the drawer within stipulated period,
5. That the drawer failed to make the payment within days of the receipt of notice.

12. Learned counsel for the complainant society contended that, the cheque in question is dated: 20.05.2025 (i.e., ExP-1), the manager of the complainant society has presented within time from the date of the cheque as it could be seen

from ExP-2 endorsement. ExP-2 further show that, the cheque in question was dishonored for the reason **"Funds Insufficient"** and the demand notice was issued on 21.06.2025, the notice was issued within the statutory period of time. ExP-4 is the postal receipt, ExP-5 is the RPAD Acknowledgment and ExP-6 is the attested copy of resolution dated: 07.05.2025 issued by the complainant society to PW-1 to prosecute the present case. The said notice was served on the accused on 27.06.2025. But, the accused neither made payment of the said cheque amount nor replied to the said legal notice. It is further contended that, the manager of the complainant has filed this complaint well within time. In this way the manager of the complainant has complied all the mandatory requirement of sections 138 and 142 of NI Act.

13. Learned counsel for the complainant society further argued that, the manager of the complainant society has discharged his initial burden of proving the case by his oral evidence and also producing by the required documents. He has also contended that, benefit of presumption under section 118 and 139 of N.I.Act is in favour of the complainant society and therefore, the accused has failed to rebut the presumption. Hence, the accused is liable to be convicted and prays to convict the accused.

14. It is necessary to note here that, the accused has not cross examined PW-1 and she has not adduced any evidence in

support of her defense. By considering facts and circumstances of the case on hand, it is clearly goes to show that the cheque in question is reached the hands of the complainant through the accused only. Moreover, the accused did not entered into the witness-box to substantiate her defence and not produced any documents. Added to this the accused has not chosen to enter into the witness box to prove that the cheque in question is not issued to complainant society in order to discharge any legally enforceable debt.

15. Because, initially the presumption U/Sec.139 of N.I.Act, is standing in favour of complainant society. It is the accused must rebut the initial presumption by leading cogent evidence or by relying upon the materials produced by the complainant society. The burden of proof is on the accused, she has to show the preponderance of the probabilities about the existence of debt in connection with the alleged cheque. Moreover, the accused did not entered into the witness-box to substantiate her defence and she has not produced any documents. Added to this the accused has not chosen to enter into the witness box to prove that the cheque in question is not issued to complainant in order to discharge any legally enforceable debt. Therefore the accused failed to rebut the initial presumption, which stands in favour of complainant society.

16. In this connection it is relevant to extract section 118 of N.I.Act:- Presumption as to negotiable instrument: Until the contrary is proved, the following presumption 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 endorsed, negotiated or transferred for consideration,

(b). **As to date:** That every negotiable Instrument bearing a date was made or drawn on such date,

(c). **As to time of acceptance:** that every accepted bill of exchange was accepted with in a reasonable time after its date and before its maturity,

(d). **As to time of transfer:** That every transfer of a negotiable Instrument was made before its maturity,

(e). **As to order of endorsement:** That the endorsements appearing upon a Negotiable Instrument were made in the order in which they appear thereon,

(f). **As to stamps:** That a lost promissory note, bill of exchange or cheque was duly stamped,

(g). **That holder is a holder in due course**: that the holder of a negotiable instrument is a holder in due course- that..... lies upon him.

17. So it is clear from the above provision of law that even negotiable instrument must made or drawn for consideration and the date on which it was drawn. There is

no say by the accused regarding this presumption. On the other hand the categorical case of the complainant society is that ExP-1- cheque was came to be issued by the accused in discharge of her above said loan amount and one thing is certain that ExP-1-cheque is issued for repayment of the above said loan amount.

18. Now come into section 139 of N.I. Act which reads as: **<u>Presumption in favour of holder:</u>** 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 of N.I.Act, for the discharge, in whole or in part, of any debt or other liability. When the presumption is available to the complainant society regarding the fact that, the ExP-1-cheque was issued towards discharge of legally enforceable debt, then it is on the accused to prove the contrary to show that how ExP-1-cheque came to be issued. There is no explanation by the accused. By considering facts and circumstances of the case on hand, it is clearly goes to show that the ExP-1-cheque in question is reached the hands of the complainant society through the accused only and the accused has not disputed the issuance of cheque in question belongs to the account maintained by her and her signature on the ExP-1-cheque. Moreover, the accused did not entered into the witness-box to substantiate her defence and not produced any documents.

19. As per Sec.118 and Sec.139 of Negotiable Instrument Act, until the contrary is proved, it shall presume the alleged cheque issued for repayment of debt or other liability. However, the said presumption is rebuttal presumption, the accused can rely upon the material on record to bring the preponderance of probabilities, which creates doubt about existence of legally recoverable debt.

20. Further, the accused has not cross-examined PW-1, in spite of sufficient opportunity is given to impeach the testimony of PW-1. Until the contrary is proved, it shall presume the alleged cheque in question was issued for recovery of any debt or other liability, in view of Sec. 118 and Sec.139 of NI Act. The evidence of PW-1 and document at ExP-1 to ExP-6 also remained unchallenged by the accused. There are no reasonable to disbelieve or to discard the evidence of PW-1 including document at ExP-1 to ExP-6. Even though accused has appeared before this court she has not adduced any evidence or at least cross-examine PW-1. The accused has not produced any documents on her behalf. Therefore, there is no credible evidence to rebut and dilute the initial presumption, which stands in favour of Complainant society U/Sec.118 and 139 of NI Act. Therefore, the benefit of presumption must be given to complainant society. From above a discussion it is shown that, the accused has committed an offence punishable under section 138 of NI

Act. Accordingly, this Court answers point No.1 in the affirmative.

21. **POINT NO.2:-** Before passing final order, it is just and necessary to discuss about the quantum of compensation to be award to the complainant society. As per section 357 of Cr.P.C(section 395(3) of BNSS), and as per the principles laid down in the decision reported in 2001 Crl. L. J 950(SC), (Pankaj Bai Nagibai Patel -V/s- State of Gujarath) the court can award compensation and there were no limits for the same. As such, the court has to consider how much compensation could be awarded in this case. On careful perusal on record at ExP-1- cheque clearly disclose that, there is a legally enforceable debt from the accused and he has not made any attempt to repay the said amount till to this day. Taking into consideration of these facts, a fine of Rs.10,000/- (Rupees Ten Thousand only) over the cheque amount is imposed would meet ends of justice. Because in case, said amount was deposited in any nationalized bank, it would have fetched minimum interest at rate of 6% p.a. Further according to the principal laid down in the decision reported in 2000 Crl. L. J-1793(SC) (State of Karnataka -V/s- Krishnappa), while imposing sentence, the courts are expected to properly operate sentence system, it should be imposed such sentence for code offence which serve as detention of commission of like offences by others-socio economic status, prestige, race, caste, or creed of the

accused or victim are irrelevant considerations in sentencing policy. Hence in this case also, if the accused is punished with simple imprisonment for six months and to pay compensation to the complainant society. As per the principles laid down in the decision reported in 2002 Crl. L. J-1003(SC) (Suginith Suresh Kumar -V/s- Jagadishan) wherein it is held at page No.1005, at para No.5 that "In the said decision this court reminded all concerned that is well to remember the emphasis laid on the need for making liberal use section 357(3) of the code. Hence in this case also, if the accused is punished with simple imprisonment for six months and to pay compensation to the complainant.

22. In view of the above findings to the above point, this Court proceed to pass the following:

<u>ORDER</u>

The Accused is hereby found guilty of the offence punishable under section 138 of Negotiable Instruments Act.

Accordingly acting under Section 278(2) of BNSS, the accused is hereby convicted for the offence punishable under section 138 of N.I.Act and the accused is sentenced to undergo simple imprisonment for the period of six months and she is sentenced to pay fine of

Rs.1,51,000/- (Rupees One Lakh Fifty One Thousand only) in default of payment of fine, she shall undergo simple imprisonment for three months.

Out of total amount of fine, Rs.1,46,000/- (Rupees One Lakh Forty Six Thousand only) is ordered to be paid to the Complainant Society as compensation U/Sec.395(3) of BNSS, and remaining amount of Rs.5,000/- (Five Thousand only) is ordered to be remitted to the state.

The bail bond of the accused and her surety bond shall be in force till appeal period is over.

Supply copy of this Judgment to the accused immediately, at free of cost.

(Dictated to Stenographer directly on Computer, transcript is corrected and signed by me and then pronounced by me in the open Court on this 20th day of August, 2026).

20.08.2026
Civil Judge and JMFC.,
Siddapur.

Digitally signed by
HARISHKUMAR.M CIVIL JUDGE
AND JMFC, SIDDAPUR
Date: 2026.08.20 15:22:53 +0530

:: ANNEXURE ::

List of witnesses examined on behalf of the Complainant:

PW-1 : Sri. Shantibushan Mahabaleshwar Naik
Manager of the complainant society,

List of documents marked on behalf of the Complainant:

1.	Ex.P1	Cheque No.827781
2.	Ex.P1(a)	Signature of the accused
3.	Ex.P2	Bank return Memo dated 23.05.2025
4.	Ex.P3	Notice dated 21.06.2025
5.	Ex.P4	Postal receipts
6.	Ex.P5	RPAD Acknowledgment
7.	Ex.P6	Resolution copy

List of witnesses examined on behalf of the Accused:

-Nil-

List of the documents marked on behalf accused:-

-Nil-

20.08.2026
Civil Judge and JMFC.,
Siddapur.

Digitally signed by HARISHKUMAR.M
CIVIL JUDGE AND JMFC, SIDDAPUR
Date: 2026.08.20 15:23:00 +0530