KAUP010003622026

IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, UDUPI.

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

II Additional District & Sessions Judge, Udupi.

Dated: 01st day of August 2026

Crl.A.No.24 of 2026

Between:

Smt.Udaya, Age; 55 years,
W/o Narayana Kanchan,
R/at Kanchana Compound,
Diana, Kukkikatte,
Udupi Taluk & District.

...... Appellant
(By Sri.PKB)

Versus

Smt.Nanda Shenoy,
Age; 60 years,
C/o Mathru Kripa,
R/at near Usha Hotel,
Hariyappa Shenoy Marga,
Udupi Taluk & District.

...... Respondent
(By Sri.GS)

J U D G M E N T

Appeal is filed under Section 415(3) of BNSS, 2023, (373 CrPC) by the appellant, who suffered judgment of conviction in CC.No.1252 of 2022 rendered by the IV Additional Civil Judge **&** JMFC, Udupi, on 29th January, 2026.

2. Parties shall be referred to by their original rank.

3. **Facts in brief;** the complainant and accused were known to each other. The accused borrowed a sum of ₹75,000 from the complainant for her necessity, and agreed to repay the same within a short period. However, the accused failed to repay the amount as agreed. After repeated requests, the accused issued a cheque bearing No.952435 dated 08.12.2021 for ₹75,000 drawn on State Bank of India, Malpe Branch, Udupi Taluk & District, in favour of the complainant.

On presentation of cheque through SCDCC Bank, Udupi, the same was returned unpaid with the endorsement 'Funds Insufficient' as per bank memo dated 09.12.2021. The said fact was brought to the notice of the accused by issuing a legal notice dated 28.12.2021 calling upon her to pay the cheque amount within 15 days from the date of receipt of notice. The said notice was served on the accused, despite she neither paid the cheque amount nor issued any reply. Thereby, the accused committed an offence punishable under Section 138 of Negotiable Instruments Act. Hence, the present complaint was filed on 18.02.2022 seeking to take suitable legal action against the accused.

4. Having received the complaint in PC.No.164/22 the Trial Court took cognizance of the offence and having satisfied with the *prima facie* allegations issued process to the accused, who appeared and obtained bail; denied the accusation and claimed to be tried. Hence, trial was conducted.

5. To prove the case, the complainant examined herself as Pw1 and documents Exhibits P1 to P5 were marked. After closure of complainant evidence; statement of accused under Section 313 CrPC was recorded; wherein, she denied the incriminating circumstances against her and did not offered defence evidence.

6. After hearing arguments; the Trial Court passed judgment dated 29.01.2026 convicting the accused and directing her to pay ₹80,000 and in default, she shall undergo simple imprisonment for six months and out of fine amount ₹75,000 is to be paid to the complainant as compensation under Section 357 of CrPC and ₹5,000 shall be remitted to the State towards litigation expenses.

7. Being aggrieved; accused filed this appeal on the following;

GROUNDS

i) The Trial Court has failed to consider the delay and the manner in which the complaint came to be filed. The Court below ought to have carefully examined whether the statutory requirements under Section 138 of the NI Act were strictly complied with. The failure to consider this aspect has resulted in serious miscarriage of justice.

ii) The complaint should have been dismissed *prima facie* as the statutory period for filing the alleged complaint had elapsed and no application was made for condonation of delay.

- Allegedly cheque issued on 08.12.2021.
- Allegedly cheque dishonored on 09.12.2021 as per memo.
- Lawyer notice dated 28.12.2021.
- Postal acknowledgment dated 30.12.2021.

After lapse of 49 days of service of legal notice the complaint is filed on 18.02.2022, which ought to have filed within 13.02.2022. There is delay of five days in filing the complaint. Delay condonation application is not filed. In the absence of any application to condone delay the said complaint is bound to be dismissed as per the provisions of the NI Act.

iii) The Trial Court has failed to properly appreciate the oral & documentary evidence on record and has mechanically recorded a finding of guilt.

iv) The complainant has failed to establish the existence of a legally enforceable debt. The Trial Court proceeded as though mere issuance of cheque is sufficient for conviction, which is contrary to settled law.

v) The learned Magistrate failed to scrutinize the financial capacity of the complainant to advance ₹75,000. The burden on the complainant to prove the transaction has not been satisfactorily discharged.

vi) The learned Magistrate has invoked the presumption under Section 139 of the NI Act in a routine manner without first establishing foundational facts beyond reasonable doubt.

vii) The findings recorded by the Trial Court are contrary to probabilities and hence the impugned judgment is liable to be set aside. Among these and other grounds she prayed to allow the appeal; consequently, to acquit her by setting aside the judgment and order of conviction.

8. After registration of appeal; notice was issued; respondent marks her appearance; Trial Court records were secured; heard arguments; perused records.

9. Following points arise for consideration:

1) Whether accused shows that judgment impugned suffers from legal and factual infirmity requiring interference in the hands of this Court?
2) What order?

10. Answer to the above points is as follows;

Point-1: Affirmative.
Point-2: As per final order for the following;

R E A S O N S

11. **Point-1:** It is a well-settled principle of law that when a complaint is instituted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and the accused admits the execution of the cheque as well as the signature thereon, a statutory presumption arises in favour of the complainant under Section 139 read with Section

118 of the Act that the cheque was issued towards the discharge, in whole or in part, of a legally enforceable debt or liability.

However, this presumption is rebuttable in nature. The onus rests upon the accused to displace this presumption by adducing cogent rebuttal evidence, which may be established either through cross-examination of the complainant or by leading independent defense evidence.

12. The learned counsel for the accused contended that the accused has categorically denied the underlying transaction, the existence of any legally enforceable debt, as well as the execution and issunace of the cheque. It was submitted that the complainant failed to establish the existence of a legally recoverable debt, and that the defence set up by the accused is probable, thereby successfully rebutting the statutory presumption. Consequently, the onus shifted back to the compalinant, which they failed to discharge. Furthermore, it was argued that there was an unexcused delay of five days in filing the complaint, and on this threshold ground alone, the complaint is liable to be dismissed.

13. ***Conversely,*** the learned counsel for the complainant submitted that all statutory ingrediants necessary to constitute an offence under Section 138 of NI Act, stand fully satisfied. It was contended that the cheque in question belongs to her account, an initial statutory presumption automatically arises in favour of the complainant, which the accused has failed to displace or rebut through any cogent evidence.

14. At the outset, it is pertinent to note that the accused has challenged the maintainability of the complaint, alleging a non-compliance with the statutory timeline prescribed under Section 138 of the NI Act, on account of a five day delay in instituting the complaint. In view of this threshold legal challenge, it is imperative to record a finding on this point before adverting to the merits of the case. It is a well-settled proposition of law that where a complaint is filed beyond the prescribed period of limitation without seeking condonation of delay under the proviso to Section 142(1)(b) of the Act, the complaint itself is non-maintainable and liable to be dismissed at the very threshold.

15. In the case at hand, the disputed cheque was issued on 08.12.2021 and was subsequently returned unpaid on 09.12.2021. The complainant brought the fact of dishonour to the notice of the accused by issuing a legal demand notice dated 28.12.2021, which was duly served upon the accused on 30.12.2021. Thereafter, the complaint came to be instituted before the trial Court on 18.12.2022.

16. On a simple mathematical calculation the complaint has to be filed on or before 14.02.2022. Whereas the present complaint is filed on 18.02.2022. There is a delay of 4 days in filing the complaint.

17. It is pertinent to note that the cause of action to file the present complaint arose on 15.01.2022, and the complaint was instituted on 18.02.2022. During this period, the order of the Hon'ble Apex Court in In Re: Cognizance for Extension of Limitation ***(Suo Motu Writ Petition (c) No.3 of 2020)*** was in operation, whereby the Period from 15.03.2020 to 28.02.2022 stood excluded for the purpose of computing limitation in all proceedings.

Consequently, the institution of the complaint on 18.02.2022 is well within the prescribed period of limitation, and the technical objection raised by the accused regarding delay is hereby rejected.

18. Adverting to the merits of the case, the preliminary question that falls for determination is whether the initial statutory presumption under Section 139 of the NI Act arises in favour of the complainant.

19. In her cross-examination, it was suggested to Pw1 that she had misused a cheque which the accused had retained for his personal use, as well as taking advantage of her status as a relative of the accused to misuse the said instrument. Though Pw1 denied these suggestions, it is vital to observe that the defense at no point disputed the ownership of the cheque or the signature appended thereon. On the contrary, by advancing a specific plea of misuse of a cheque belonging to the accused, the execution and signature on the disputed instrument stand implidely admitted. Consequently, it is established beyond doubt that the cheque in question belongs to the account of the accused and bears her signature.

20. Since the ownership of the cheque and the signature thereon are admitted by the accused, a statutory presumption arises in favour of the complainant that the cheque was issued for a legally enforceable debt. The burden, therefore, shifts to the accused to rebut this initial presumption.

21. The next point that falls for consideration is whether the accused has successfully raised a probable defence to rebut the initial statutory presumption operating in favour of the complainant. To displace this statutory presumption, the accused has primarily relied upon the admissions elicited during the cross-examination of Pw1.

22. In her cross-examination, the complainant initially stated that apart from the present case, she had not filed any cheque bounce complaint against any other person. However, upon further cross-examination, the complainant resiled from her previous statement and admitted to having instituted a cheque bounce case against one Kasthuri for an amount of ₹3,35,000.

a) Under Section 155 of the Evidence Act, the credibility of a witness may be impeached by showing that she has made statements contradictory to her earlier testimony.

b) Making a false assertion under oath on a material fact casts a serious doubt on the complainant's truthfulness.

c) A material lie by the complainant regarding her litigation background or lending activity creates a reasonable doubt in the mind of the Court.

23. During cross-examination, the complainant admitted to earning a monthly income of merely ₹7000 from her cloth business, with no personal savings. She further conceded that from 2019 onwards, her earnings were limited solely to meeting her day-to-day living expenses.

i) An individual earning ₹7000 per month with no savings and an income barely sufficient for daily survival (since 2019) lacks financial capacity to advance substantial loans (such as the alleged ₹75,000 or the ₹3.35 lakhs to Kasthuri).

24. When it was suggested to the complainant in cross-examination that owing to her meager income, she lacked the financial capacity to advance any loan to the accused, she asserted that she had sold a vacant site/land belonging to her in the year 2018 and had advanced the loan amount to the accused out of the sale consideration so realized.

a) During cross-examination, the complainant specifically stated that she could produce the documents concerning the sale of her property. Despite this undertaking, no sale deed or relevant documentary evidence was ever produced before the Court. The non-production of such crucial documents, despite her readiness to produced them, severely weakens her claim of financial capacity.

b) Under Section 119(g) of the BSA *(Section 114(g) of the Evidence Act)*, the Court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it.

c) When a witness specifically claims on oath, *I can produce the documents*, and then fails to produce them without any explanation, the Court is entitled to infer that no such sale took place, or that the sale proceeds were not available as claimed.

d) The property was allegedly sold in 2018, but the transaction/cheque in question arose in December 2012. In her earlier statement, the complainant stated that she had no savings and her income was barely enough for daily survival since 2019. It is highly improbable for cash proceeds from a 2018 land sale to remain available for a loan in 2021 without being reflected in bank records or savings.

e) Though the complainant claimed to have mobilized funds from the sale of a vacant site in 2018, she failed to produce the sale deed or bank records to substantiate the sale or the availability of funds in 2021.

25. It is well-settled that once the accused raises a cogent challenge to the financial capacity of the complainant, the burden shifts entirely to the complainant to establish their source of funds. In the absence of any documentary proof showing the availability of funds in 2021 from a alleged 2018 sale, the complainant has failed to establish her financial standing to lend the amount.

26. It is a well-settled principle of law that the standard of proof required for the accused to rebut the statutory presumption under Section 139 of the NI Act is merely that of a preponderance of probabilities. The accused is not required to enter the witness box and can displace the presumption solely by eliciting material admissions during cross-examination of the complainant.

a) Through effective cross-examination, the accused successfully established a probable defense. Once the statutory presumption displaced by the accused, the burden shifted back to the complainant to prove the existence of a legally enforceable debt beyond a reasonable doubt, a burden which the complainant has miserably failed to discharge.

27. In addition to above it is significant to observe that neither in the statutory notice nor in the complaint has the complainant pleaded the specific details regarding the underlying loan transaction, such as date, time, mode of disbursement, or source of funds.

i) It is a well known principle of law that the foundational facts must be clearly pleaded in the initial demand notice & the complaint. The complete absence of basic material particulars in the pleadings creates a *fatal lacuna* in the complainant's case. Any subsequent attempts to plug these material omissions during cross-examination cannot be accepted and must be treated as a belated afterthought. This material omission severely compromises the trustworthiness of the complainant's version and strongly corroborates the probable defence raised by the accused that no legally enforceable debt or liability existed as alleged.

28. In the background of the discussion *supra,* it can be stated without hesitation that the accused successfully raised a probable defence, thereby casting significant doubt upon the very existence of a legally enforceable debt. Consequently, the onus shifted back to the complainant to establish her case beyond a reasonable doubt. However, the complainant has failed to adduce any further independent evidence beyond the testimony already evaluated herein. The learned trial Court committed error in failing to appreciate the admissions and material on record in their proper prospective, which *prima facie* probablize the defence version. Under these circumstances, judicial interference with the judgment of conviction is fully warranted. Accordingly, the above point is answered in the affirmative.

29. **Point-2:** By virtue of findings *supra* Court proceeds to pass the following;

O R D E R

Appeal is allowed.

Consequently, judgment of conviction passed in CC.No.1252/2022 dated 29.01.2026 is set aside.

Accused is acquitted of the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

Bail and surety bonds shall stand canceled.

Refund the fine amount deposited by the accused.

Accused is set at liberty forthwith.

Let the record of the Trial Court be transmitted back at the earliest accompanied by a copy of this judgment.

(Dictated to the Stenographer-III directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 01st day of August, 2026).

SAMIULLA Digitally signed by SAMIULLA Location: II Addl District and Sessions Judge Udupi Date: 2026.08.05 14:34:04 +0530

(A.Samiulla)
II Addl. District & Sessions Judge,
Udupi.