KAUP020012822025

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND CJM., UDUPI

<u>Present:</u> Sri.M.Purushothama,
B.B.M, M.S.W., L.L.M., P.G.D.H.R.M.

Prl. Senior Civil Judge & CJM., Udupi.

<u>C.C.No.804/2025</u>

Dated this the 1st day of August, 2026

Between:

Mahalakshmi Co-Operative
Bank Limited,
Malpe Branch,
Rep. By its Branch Manager,
Prathap U,
Aged about 33 years,
S/o. Upendra Salian,
R/at. Uppoor village,
Brahmavara taluk and
Udupi district. : Complainant

Vs.

Deepak D. Shenoy,
S/o. Devdas Shenoy,
Residing at Flat No.202,
2nd floor, Comfort Towers,
Opp: Kalpana Theatre,
Udupi taluk and district. : Accused

Date of Complaint filed	10.02.2025		
Date on which accused was released on bail by the Court	12.06.2025		
Date of commencement of Evidence	17.04.2025		
Date of completion of trial	02.03.2026		
The nature of offence alleged	138 of N. I. Act		
Opinion of the judge	Accused is convicted		
Date of pronouncement of judgment	01.08.2026		
Duration of the proceeding	Year	Months	Days
	01	05	22

<u>J U D G M E N T</u>

The Complainant has filed a private complaint under Sec.223 of B.N.S.S., alleging that the accused has committed an offence punishable under Sec.138 of N.I. Act.

2. The sum and substance of the complainant's case is as follows:

It is stated by the complainant that the accused approached the complainant and availed personal loan of **Rs.2,00,000/**- on **12.03.2021** from the complainant by promising to repay the same **with interest at 15.6%,** but failed to repay the same. Thereafter on several request you had issued a **cheque bearing No.000008 dated 10.10.2024 for Rs.2,72,275/- drawn on Bhandan Bank, Udupi branch, Udupi,** thereafter the accused requested not to present the cheque by saying that he would visit the branch and pay cash. But even after two months he had not paid any amount, hence the complainant presented the cheque through its banker i.e. **Canara Bank, Malpe Branch on 24.12.2024, but the said cheque was dishonoured for the reason 'Debit Restriction**'.

3. Thereafter the complainant got issued a registered legal notice dated 03.01.2025 to the accused mentioned in the cause title by RPAD calling upon the accused, to pay the amount within a period of 15 days, from the date of receipt of the legal notice and the accused received the Lawyer's notice but did not paid the cheque amount. Hence the accused has committed an offence punishable under Section 138 of NI Act.

4. After filing of the complaint, the court has taken cognizance and thereafter sworn statement of complainant was recorded. A criminal case was registered against the accused for the offence punishable under Section 138 of N.I. Act. The court has issued summons for the appearance of the accused. The accused appeared before the court and he was released on bail. The substance of accusation is read over to the accused. He pleaded not guilty of the offence and claimed to be tried.

5. In order to bring home guilt of the accused, the complainant examined himself as P.W.1 and produced 12 documents, which were marked as Ex.P1 to Ex.P12. On the side of accused, accused himself is examined as D.W.1 and produced 4 documents, which were marked as Ex.D1 to D4.

6. I have heard the Arguments.

7. The following points arise for my consideration:

1. Whether the complainant proves that the accused issued a cheque bearing No.000008 for a sum of Rs.2,72,275/- dated 10.10.2024 drawn on Bhandan Bank, Udupi branch, Udupi in favour of the complainant for discharge of liability/debt?

2. Whether the complainant proves that the cheque issued by the accused was dishonoured due to **“Debit Restriction”** in the account of accused?

3. Whether the complainant proves that the accused has committed an offence punishable under Sec. 138 of N.I. Act?

4. What order?

8. My findings on the above points are as under:

Point No.1	:	In the Affirmative
Point No.2	:	In the Affirmative
Point No.3	:	In the Affirmative
Point No.4	:	As per final Order for the following:

REASONS

Point No.1 to 3:

9. The case of the complainant is that the accused approached the complainant and availed personal loan of **Rs.2,00,000/**- on **12.03.2021** from the complainant by

promising to repay the same **with interest at 15.6%,** but failed to repay the same. Thereafter on several request he had issued a **cheque bearing No.000008 dated 10.10.2024 for Rs.2,72,275/- drawn on Bhandan Bank, Udupi branch, Udupi,** thereafter the accused requested not to present the cheque by saying that he would visit the branch and pay cash. But even after two months he had not paid any amount, hence the complainant presented the cheque through its banker i.e. **Canara Bank, Malpe Branch on 24.12.2024, but the said cheque was dishonoured for the reason 'Debit Restriction**'. The complainant further submits that, when the Complainant came to know regarding the dishonor of the cheque, he got issued a legal notice dated 03.01.2025 to the address of the accused mentioned in the cause title through RPAD calling upon the accused, demanding to pay the amount within a period of 15 days, from the date of receipt of the legal notice, the accused did not repaid the amount.

10. The complainant himself examined as P.W.1 and produced 12 documents marked as Ex.P1 to P12. Ex.P1 is the Notarized copy of Registration Certificate goes to show that the complainant bank has been registered under Sec.7 of the Karnataka Co-operative Societies Act 1959, Ex.P2 is the Proceedings of Mahalaxmi Co -operative Bank Ltd., wherein the Managing Director appointed the Manager by name Prathap U to file the complaint and to give evidence before the court. Ex.P3 is the Cheque bearing No.000008, Ex.P4 is the Return memo issued by the bank along with cheque and the said cheque was dishonored for the reason debit restriction, Ex.P5 is the copy of

Lawyer's notice, Ex.P6 is the Postal receipt, Ex.P7 is the Postal acknowledgment, Ex.P8 is the Loan account statement, Ex.P8(a) is the Certificate under Sec.63 of BNS 2023, Ex.P9 is the Loan application, Ex.P10 and P11 are the Loan applications, Ex.P12 is the Bank statement, Ex.P12(a) is the Certificate under Sec.65(B) of Indian Evidence Act.

11. The accused himself examined as D.W.1 and produced 4 documents which are marked as Ex.D1 to D4. Ex.D1 is the Notice, Ex.D2 is the Letter addressed to Joint Registrar of Co-operative Bank, Bengaluru, Ex.D3 is the Complaint given to Malpe Police Station, Ex.D4 is the portion of newspaper.

12. The complainant filed the complaint against the accused alleging that the accused committed an offence punishable under section 138 of N.I. Act. There is a presumption under Sec.139 of N.I. Act. Hence Section 138 and 139 of the Negotiable Instrument Act are set out herein below for convenience:

> **138- Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged**

to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

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.

13. The object of section 138 of the Negotiable Instruments Act is to infuse credibility to negotiable instruments including cheque and to encourage and promote the use of negotiable instruments including cheque in financial transactions. The penal provision of Section 138 of the Negotiable instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheque without serious intention to honour the promise implicit in the issuance of the same.

14. The date of cheque is 10.10.2024. The complainant presented the said cheque on 24.12.2024 which is within the time on which it was drawn. The said cheque was returned on 26.12.2024. Thereafter the complainant issued Lawyers notice on 03.01.2025 within prescribed period as contemplated under the provisions of 138 of N.I. Act. The same notice served on the accused as per Ex.P7. Thereafter complaint was filed on 10.02.2025 which is within time.

15. The next question is, whether the amount mentioned in the cheque is for a legally recoverable debt or for other liability. The interpretation of the expression for discharge of any debt or other liability occurring in section 138 of N.I. Act is significant and decisive in matter. The explanation appended to section 138 express the meaning of the expression debt or other liability for the purpose of

section 138. This expression means a legally enforceable or other liability. Section 138 treats dishonour of cheque as an offence if the cheque has been issued in discharge of debt or any other liability. The explanation leaves no manner of doubt that to attract an offence under section 138 there should be legally enforceable debt or other liability.

16. The accused during the course of his examination deposed that he availed a loan of Rs.20,000/- from the complainant bank and obtained cheques as security. He had repaid the amount of Rs.20,000/- to Subbanna who was the Manager at the relevant point of time. According to this witness the said Subbanna committed suicide. During course of cross-examination he deposed that he obtained loan from complainant bank, he has not put his signature to the documents without reading the same. He further deposed that he was very well aware that after filling of the loan application and pigmi collection application, he obtained signature. He further deposed that he received receipts in case if he paid any amount. He also admits the application given by him to the complainant bank which is marked as Ex.P9. On perusal of Ex.P9 the accused obtained loan of Rs.2lakh. The accused is also a pigmi agent. So the say of accused that he obtained only Rs.20,000/- from the complainant bank cannot be accepted since he put his signature on the loan application after filled the form. According to the accused, he had repaid the amount, but he has not produced any receipt or document

to show that he had repaid the loan amount. The complainant issued notice to the accused. The said notice was served on the accused. Inspite of it, he has not replied to the said notice. An ordinary prudent man cannot kept quiet when he received notice from another person claiming Rs.2,00,000/-. The accused kept quiet since he was due to pay the said amount. The documents produced by the accused are only establishes that the accused and some other persons borrowed loan from the complainant bank and they complaint to the Joint Registrar but there is no document to show that he had repaid the loan amount. The complainant produced the statement marked as Ex.P8. On perusal of the said document on 28.02.2023 the outstanding balance is Rs.2,30,445/-. The Ex.P3 cheque was presented on 24.12.2024. So whatever the amount mentioned in the cheque is a legally recoverable debt. Even though the complainant has not produced the complete statement but the documents prima facie establishes that the amount claimed by the complainant bank is a legally recoverable debt. After some period, the bank adjusted some portion of the amount as uncollected revenue. In the statement, it is shown that an amount of Rs.46,898/- as uncollected amount. The learned counsel for accused cross-examined the P.W.1 at length about the complaint filed by the so many people against one Subbana who misused the amount of the complainant bank and 200 persons have given complaint to the police as well as Joint Registrar against the bank as well as said Subbanna which are admitted by the P.W.1 and those allegations are not in respect of the present complaint. The P.W.1 specifically deposed that on 10.10.2024, the accused issued a cheque. The P.W.1 clarified that as on 14.10.2024, the outstanding amount of Rs.1,83,547/- as per the statement but he continued to depose that due to NPA, the said amount was reversed.

17. During the course of cross-examination there is no defence that the accused obtained only Rs.20,000/- and repaid the said amount but when the accused lead evidence he deposed that he borrowed only Rs.20,000/- and which was repaid by him. The documents produced by the accused are the complaint given by the accused to the Joint Registrar and to the Police. Those documents are in no way rebut the presumption available to the complainant. The P.W.1 specifically deposed that he unable to produce the old statements. Though the burden is on the complainant is that on the date of cheque the outstanding amount is Rs.2,72,275/- but there is a presumption in favour of the complainant under Sec.118 and 139 of NI Act. Moreover, why the complainant has not produced the statement is also stated by the P.W.1. Even if the court take judicial notice on 28.02.2023, the total outstanding amount is Rs.2,30,251/-. It carries interest at the rate of 15% as stated in the complaint. The cheque was issued on 14.10.2024. So for a period of 20 months, the interest may come to approximately Rs.42,525/-. So the total amount is Rs.2,72,275/- approximately. So whatever the amount mentioned in the cheque is legally recoverable debt. No

cogent evidence is produced by the accused to establish that he had cleared the entire loan amount.

18. The accused admitted his signature on Ex.P3. Once the signature of the cheque is admitted, there is a presumption under Sec.118A and 139 of Act that the cheque was issued towards discharge of legally enforceable debt. As per section 118 of N.I. Act there is a presumption as to consideration, as to date, as to time of acceptance, as to time of transfer etc until the contrary is proved. As per section 139 of N.I. Act there is a presumption in favour of the complainant that the cheque was issued for discharge of debt or other liability. The said presumption is a legal presumption and it is in favour of the holder of cheque. It is open to the accused to rebut the said presumption. The accused though examined himself but failed to rebut the presumption. Mere evidence given before the court is not enough. But he should prove that the said cheque was issued for other purpose and not issued for discharge of liability.

19. It is the mandate of Section 139 that there is a presumption in favour of the holder of the cheque that the holder received the cheque of the nature referred to in section 138, for the discharge in whole or in part or other liability. Needless to mention that the presumption contemplated under section 139 of N.I. Act is a rebuttable presumption. However the onus of proving that the cheque was not in discharge of any debt or other liability is on the

drawer of the cheque/accused. In **Hiten P Dalal V/s Bratindranath Banerjee** reported in **2001 (6) SCC 16** the Hon'ble Supreme Court held that both section 138 and 139 require that the court shall presume the liability of the drawer of the cheque for the amounts for which the cheque are drawn.

20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under section 139 of N.I. Act is a presumption of law, as distinguished from presumption of facts.

In **Laxmi Dyechem V/s State of Gujarat and others** reported in **2012 (13) SCC 375,** the Hon'ble Supreme court reiterated that in view of section 139 it has to be presumed that a cheque was issued in discharge of a debt or other liability but the presumption could be rebutted by adducing evidence. The burden of proof was however on the person who wanted to rebut the presumption.

In **K.N. Beena V/s Muniyappan and Anothers** reported in **2001(8) SCC 458,** the Hon'ble Supreme court held that in view of the provisions of section 139 of the N.I. Act read with section 118 thereof the court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the contrary. The accused had to prove by cogent evidence that there was no debt or liability. The accused neither produced the cogent evidence nor obtained favourable answer from the mouth of P.W.1 to rebut the presumptions.

21. Mere suggestions or explanations without cogent evidence do not amount to rebuttal of the presumption under the N.I. Act. Hence, the accused has failed to discharge the burden caste upon him. Hence, the amount mentioned in the cheque is a legally recoverable debt.

22. The accused has taken one more contention that the cheque was not filled by him and it was filled by the complainant. When the accused put his signature to the cheque, he authorized the complainant to fill the cheque as enumerated under Sec.20 of N.I. Act i.e. inchoate documents. In the present case, the accused failed to prove that he had issued a blank cheque even if it is filled by complainant then also if it is bounced, it attracts penal provision of 138 of N.I. Act. Viewed from any angle, the accused failed to prove the contention taken by him. The complainant by producing the documents able to establish that the accused issued a cheque towards discharge of legally recoverable debt. He also able to prove that the cheque issued by the accused was dishonored for the reason 'Insufficient funds' in the account of the accused by producing endorsement issued by the bank marked as Ex.P4. **Accordingly, I answered the point No.1 to 3 in the Affirmative.**

Point No.4:

23. In view of the foregoing reasons, the accused is found guilty for the offence punishable Under section 138 of N.I. Act. As per section 138 of N.I. Act the court may punish the accused with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of cheque or both. The N.I. Act is a special statute and as such section 29 of Cr.P.C does not come in the way to impose fine of more than Rs.10,000/- by the Magistrate. Accordingly, I proceed to pass the following:

ORDER

The accused is found guilty of the offence punishable Under section 138 of N.I. Act.

Acting under section 255(2) of Cr.P.C/ 278(2) of BNSS, the accused is hereby convicted for the offence punishable under section 138 of N.I. Act and sentenced to pay a fine of Rs.3,00,000/- and out of the said amount, the complainant is entitled to receive Rs.2,95,000/- as compensation, remaining amount of Rs.5,000/- fine is to be deposited to the court.

Bail and surety bonds of the accused stands cancelled.

Supply a copy of judgment to the accused at free of cost.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 1st day of August, 2026).

Purushothama M

Digitally signed by Purushothama M
Date: 2026.08.03 10:39:12 +0530

(M.Purushothama)
Prl. Sr. Civil Judge and CJM.,
Udupi.

ANNEXURE

WITNESSES EXAMINED BY COMPLAINANT:

P.W.1 : Prathap U

LIST OF DOCUMENTS MARKED BY COMPLAINANT

Ex.P1 : Notarized copy of Registration Certificate

Ex.P2 : Proceedings of Mahalaxmi Co -operative Bank Ltd.,

Ex.P3 : Cheque

Ex.P3(a) : Signature

Ex.P4 : Return memo

Ex.P5 : Lawyer’s notice

Ex.P6 : Postal receipt

Ex.P7 : Postal acknowledgment

Ex.P8 : Loan account statement

Ex.P8(a) : Certificate under Sec.63 of BNS 2023

Ex.P9 : Loan application

Ex.P9(a) : Signature of D.W.1

Ex.P10 and P11 : Loan applications

Ex.P12 : Bank statement

Ex.P12(a) : Certificate under Sec.65(B) of Indian Evidence Act.

LIST OF WITNESSES EXAMINED FOR DEFENCE:

D.W.1 : Deepak B. Shenoy

LIST OF DOCUMENTS EXHIBITED FOR DEFENCE:

Ex.D1 : Notice

Ex.D2 : Letter given by Joint Registrar to Co-operative Bank, Bengaluru

Ex.D3 : Complaint given to Malpe Police Station

Ex.D4 : Portion of newspaper.

Prl. Sr. Civil Judge and CJM.,
Udupi.