KAUP320013892023

IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA

Present: Smt. Manjula .B.,
B.A.L., LL.B.,
II Addl. Civil Judge & J.M.F.C.,
Kundapura. (C/c)

Dated this the 4th day of June- 2026

C. C. No. 399/2023
(Old C.C. No.1508/2022)

Complainant:

Pursene Boat Meenugaarara
Swa Sahaya
Sadasya Sangha, (Gumpu) Gangolli
Kundapura Taluk,
[Pursene Fishermen Primary Service
Co-Operative Society Kota,
Udupi District]
Represented by in charge Manager
Devadas Mestha, 48 years
S/o Venkappa Mestha
R/o 4-141, Bengere, Gujjadi Village,
Kundapura Taluk, Udupi District

(By Sri. B.R.N. Advocate)

//Vs//

Accused:

Mohan Kharvi, 54 years,
S/o Parameshwara,
R/o 9/66P Parameshwara Nilaya
Dodda Hithlu, Gangolli,
Kundapura Taluk, Udupi District.

(By Sri. R.K.M., Advocate)

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Case instituted	18/06/2022
Offence complained of	Section 138 of N.I. Act,1881
Date of recording of plea	30/09/2024
Date of recording of evidence	19/11/2024
Judgment pronounced Date	04/06/2026
Opinion of Presiding Officer	Convicted

MANJULA BETTASWAMY
Digitally signed by MANJULA BETTASWAMY
Date: 2026.06.04 15:05:28 +0530

(Manjula. B.)
II Addl. Civil Judge & J.M.F.C.,
Kundapura. **(C/c)**

J U D G M E N T

This is a private complaint filed by the complainant before the Hon'ble 1st Additional Civil Judge and J.M.F.C., Kundapura in C.C. No.1508/2022, against the accused alleging that the accused has committed an offence punishable Under Section 138 of Negotiable Instrument Act, 1881. As per the notification No.7/2023 dated: 11/09/2023 and Letter No.ADMN/3154/2023 dated: 12/09/2023 of Hon’ble Prl. Sr. Civil Judge and C.J.M., Udupi, the above criminal case is transferred to this Court and renumbered as C.C. No.399/2023.

2) It is the case of the complainant that, the complainant is a Registered Co-Operative Society. The complainant society is performing the activity of Fish catching and marketing the same to the members of the complainant Society which provided as per bye law of the Society. The accused being a 'C' class member of complainant Society, stood either by himself or by representation, in auction of raw fishes and brought fishes on credit base. The accused has executed necessary documents pertaining to the purchase of fishes in auction on credit basis as main borrower along with two other members. The accused also agreed to pay interest on the overdue balance. As the same, accused is in due of Rs. 9,52,246/- in total which includes the interest on agreed rate of interest. Inspite of reminding, accused failed to pay the same. After repeated demands accused had issued a cheque for Rs. 9,52,246/- bearing No. 740852 dated: 11/04/2022 drawn on Canara Bank, Gangulli Branch, assuring that he

will keep sufficient funds in his account. When the complainant presented the said cheque for encashment through his banker, the said cheque returned with an endorsement “FUNDS INSUFFICIENT” on 11/04/2022. As such, the complainant issued legal notice to accused on 04/05/2022 by RPAD., which came to be duly served to the accused on 06/05/2022, but inspite of receipt of said legal notice, accused failed to comply with the legal demands made by the complainant. Hence this complaint.

3) After complaint being registered, cognizance for the offence punishable U/s 138 of N.I. Act, 1881 was taken against accused. After recording the statement of complainant, a criminal case was registered against accused and summons was issued. After receipt of summons, accused appeared before this Court and got enlarged on bail. Thereafter plea of accused was recorded. Accused pleaded not guilty but

submitted that he has defense to make.

4) To prove the case against accused, the Complainant examined himself before this Court as CW1 and got marked Ex.C1/Cheque, Ex.C1(a)/signature of accused, Ex-C2/Bank endorsement, Ex-C3/Office copy of legal notice, Ex-C4/Postal receipt, Ex-C5/Postal acknowledgment, Ex-C6/Application form executed by accused to complainant to participate in an auction of raw fish and fish produces, Ex-C7/Agreement executed by accused and two sureties to the complainant, Ex-C8/Ledger account, Ex-C9/Proceedings of meeting dated: 01/05/2022 (while physical marking of proceedings of meeting and loan ledger account, it has been marked as Ex.C8 and C9 respectively, however in the deposition it is noted that Ex.C8 is ledger account and Ex.C9 is proceedings of meeting), Ex-C10/application form filed by the accused to the complainant to furnish security by depositing security

amount of Rs.1,00,000/-, Ex-C11/Authorization letter dated: 11/08/2017 executed by accused in favour of Complainant and closed his side evidence. Thereafter statement of accused U/s 313(b) of Cr.P.C., in the form of questionnaires were supplied to the accused. Accused denied the entire evidence led by the complainant and he has not chosen to lead the evidence.

5) This Court heard the arguments of counsel for complainant and the accused.

6) Perused the materials placed on record. The following points would arise for consideration of this Court:

POINTS

1) Whether the complainant prima-facie proves that accused has issued cheque in question for discharge of legally recoverable dues of Rs.9,52,246/-?

2) Whether the accused proves that he is not due any amount to complainant?

3) Whether the accused has committed the offence punishable U/s 138 of N.I. Act ?

4) What order ?

7) This Court findings on the above points are as follows;

Point No.1 : In the Affirmative

Point No.2 : In the Negative

Point No.3 : In the Affirmative

Point No.4 : As per the final order
For the following:

R E A S O N S

POINT NOS.1 AND 2:

8) This Court carefully gone through the facts and circumstances of the case, as well as oral and documentary evidence available on record. Admittedly Ex-C1/Cheque is dated: 11/04/2022. The complainant presented the cheque and the same came to be dishonored as per Ex-C2. Further as could be evidenced from Ex-C3 to Ex-C5, the complainant got issued legal notice on 04/05/2022 calling upon the

accused to pay the amount covered under the said cheque which was duly served on the accused on 06/05/2022 and since accused failed to make payment of cheque amount within stipulated period the Complainant filed this complaint on 18/06/2022, within the period prescribed U/s 138 of N.I. Act, 1881. As such the complainant has complied all the mandatory requirements of law to present this complaint U/s 138 of N.I. Act, 1881.

9) According to complainant, accused issued Ex-C1/Cheque, to discharge the debt towards purchase of raw fishes and fish products due from the accused and the same came to be dishonored when presented for encashment. He reiterated the complaint averments in his chief-evidence. On the other hand, accused cross-examined CW1 on various aspects denying the entire case of the complainant. However accused does not dispute his signature on Ex-C1/cheque and

it is drawn on his banker. **Further, it is an admitted fact that said cheque came to be dishonored for the reason “Insufficient Funds” and “Dormant Account”.**

10) From the above facts and circumstances involved in this case, it is clear that the complainant has established that, the cheque in question as well as the signature appearing on it belongs to accused. Therefore, it is clear that complainant has prima-facie proved that accused has committed the offence punishable under Section 138 of Negotiable Instrument Act. As such, in order to escape the liability, it is for the accused to rebut said presumption, by establishing that there is no any legally recoverable debt.

11) In this regard a careful reading of the provisions of Section 138 and 139 of Negotiable Instrument Act, 1881, it is clear that, in these type of cases, initial burden lies on the

complainant to prove that the cheque as well signature appearing on the cheque in question belongs to accused. In addition to this, complainant is expected to prove that the cheque is dishonored for the reasons of insufficient funds and he has issued the legal notice as contemplated under Section 138 of the Negotiable Instrument Act, 1881. If these things are proved by the complainant, then it can be said that the complainant has discharged the initial burden lies upon him and has prima-facie proved his case against the accused. In such circumstances, heavy burden cast upon the accused to show that there exists no legally recoverable debt to be discharged by him.

12) The mandate of Section 118(a), 138 and 139 of Negotiable Instrument Act, 1881 is that, unless and until, accused is able to prove that he had not issued cheque for discharge of legally recoverable debt, Court can presume that the

accused has issued the cheque for discharge of legally recoverable debt. **The presumption referred to in Section 139 is a mandatory presumption and not a general presumption.** Of-course, it is a rebuttable presumption and it is for the accused to rebut it. What is required to be established by the accused in order to rebut the presumption is different from each case under the given circumstances. **The defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court**. Mere plausible explanation is not enough. It is not enough to take a bald contention that there was no transaction between accused and complainant. In order to establish this fact, accused has to prove by reliable oral and documentary evidence. Accused cannot be allowed to be silent like in other criminal cases.

13) In the instant case, strangely accused though not denied the

issuance of cheque to the complainant, disputed the capacity and designation of CW1 to give evidence before the court on behalf of complainant and further alleged that CW1 misused the cheque which was issued by him/accused to some other society. However accused fails to prove the defense by leading supportive, cogent and corroborative evidence. On the other hand scrutiny of Ex.C6 to C11 clearly discloses that the complainant issued direction to CW1/in-charge manager to proceed the case before the court through it's counsel against the accused. Moreover, accused executed Ex.C6 to C8, C10 and C11 by undertaken to pay the loan amount to the complainant as well as president and secretary of Pursene fisheries Swa Sahaya Sadasya sangha (Gumpu) Gangolli for purchase of raw fish and fish products by furnishing securities. The documents placed on record by the complainant clearly establishes that the accused in discharge of liability issued an cheque CW1 to the complainant. Accused to fails to rebutted the presumption drawn in favour of complainant by leading supportive and cogent evidence.

14) Further it is interesting to mention here that at the earliest when complainant issued demand notice to the accused as per Ex.C3, the accused has not replied to it. However, before this Court the accused has taken bald defense that complainant misused the cheuqe and documents given by the accused to other society. Be that as it may, if the complainant misused the documents given by the accused to other society, what-else prohibited him/accused to take such defence as soon as service of Ex.C3 is not explained by the accused and failed to prove the same before the Court and the same is appears to be after though put-forth by the accused just to defeat the claim of complainant. Except, bare denial and oral evidence of accused there is no material

forthcoming to prove the defence version of accused. Unless the presumption is rebutted by proof, the defence version of accused cannot be accepted. Thus, it can only infer that it is a story built up by the accused. Accordingly, the accused has failed to create any doubt in the case of complainant and has failed to prove his defence. Hence, **POINT NO.2** is answered in the **NEGATIVE.**

15) It is pertinent to note herein that accused is not a lay man and having all worldly knowledge and he must know the consequences of giving a cheque as security. Further, even after coming to know of the alleged misuse of the cheque by complainant, the accused has not initiated any action either criminal or civil against him.

16) The evidence adduced by the complainant clearly establishes the averment of liability by the accused and issue of

cheque/Ex-C1 for repayment of debt. Hence **POINT NO.1** is answered in the **AFFIRMATIVE.**

POINT NO.3

17) In view of the aforesaid reasons and this Court answer to Point Nos. 1 and 2, it is clear that the complainant has proved that the accused has committed an offence punishable U/s 138 of N.I. Act, 1881. Hence **POINT NO. 3** answered in the **AFFIRMATIVE.**

POINT NO.4:

18) In view of above findings on point Nos. 1 to 3, this Court proceed to pass the following:

ORDER

The complaint filed by the complainant under section 200 of Cr.P.C., for an offence punishable under section 138 Negotiable Instruments Act, 1881 against the Accused is hereby allowed.

Acting under section 255(2) Cr.P.C,,

read with section 138, 143 Negotiable Instruments Act, 1881 the accused is convicted for an offence punishable under section 138 of Negotiable Instruments Act, 1881 and is sentenced pay fine of Rs.9,57,246=00 (Rupees Nine Lakhs fifty-Seven Thousand Two Hundred Forty-Six Only). In the event of failure of the accused to pay the fine amount of Rs.9,57,246=00 (Rupees Nine Lakhs fifty-Seven Thousand Two Hundred Forty-Six Only). he shall undergo imprisonment for a period of Six months without prejudice to other usual modes of recovery of fine.

Acting under Section 357(1)(a) Cr.P.C., it is ordered that when the whole or any part of the fine is recovered a sum of Rs.2,000=00 (Two Thousand Only) shall be applied towards defraying the expenses properly incurred in the prosecution i.e., payable to the State;

Acting under Section 357(1)(b) Cr.P.C., it is ordered that out of the whole amount of fine of Rs.9,57,246=00 (Rupees Nine Lakhs fifty-Seven Thousand Two Hundred Forty-Six Only)., recovered a sum of Rs.9,55,246=00 (Rupees Nine Lakhs fifty-Five Thousand Two Hundred Forty-Six

Only) shall be paid to the complainant as compensation for the loss occasioned to him on account of dishonour of the cheque issued by the accused.

(Dictated to the Stenographer directly on the Computer, corrected and then pronounced by me in the Open Court on this the 4th day of June, 2026)

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.06.04 15:05:49 +0530

(Manjula .B.)
II Addl. Civil Judge & J.M.F.C.,
Kundapura.(C/c)

ANNEXURE

List of Witnesses examined on behalf of the Complainant

CW1- Devadas Mestha

List of Documents exhibited on behalf of the Complainant

Ex-C1 : Cheque
Ex-C1(a) : Signatures of accused

Ex-C2 : Bank endorsement

Ex-C3 : Office copy of legal notice

Ex-C4 : Postal receipt

Ex-C5 : Postal acknowledgment

Ex-C6 : Application form executed by accused to complainant to participate in an auction of raw fish and fish produces

Ex-C7 : Agreement executed by accused and two sureties to the complainant

Ex-C8 : Ledger account

Ex-C9 : Proceedings of meeting dated: 01/05/2022

Ex-C10 : Application form filed by the accused to the complainant to furnish security by depositing security amount of Rs.1,00,000/-

Ex-C11 : Authorization letter dated: 11/08/2017 executed by accused in favour of Complainant

List of Witnesses examined on behalf of the Accused

-NIL-

List of Documents exhibited on behalf of the Accused

-NIL-

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.06.04 15:05:35 +0530

(Manjula .B.)
II Addl. Civil Judge & J.M.F.C.,
Kundapura.(C/c)