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

Present: Smt. Manjula .B.,
B.A.L., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Kundapura

Dated this the 8th day of July- 2026

C. C. No. 734/2024

Complainant: M/s Sri Seetharama Vividodesha
Seva Sahakari Sangha Niyamitha,
College Road, Kundapura
Rep. by its Secretary Mr. Shekar
Kotary, S/o Sanjeeva Kotary

(By Sri. B.P.H., Advocate)

//Vs//

Accused: Mr. S.G. Ganesha,
S/o Sheena
R/o H. No.3-27A,
Udayanagara, Gulvadi Village,
Kundapura Taluk, Udupi District.

(By Sri. Y.S.S., Advocate)

*****

Case instituted	02/08/2024
Offence complained of	Section 138 of N.I. Act,1881

Date of recording plea	21/11/2024
Date of recording of evidence	13/12/2024
Judgment pronounced Date	08/07/2026
Opinion of Presiding Officer	Convicted

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.07.08 16:14:51 +0530

(Manjula .B.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.

J U D G M E N T

This is a private complaint filed by the complainant alleging that the accused has committed an offence punishable Under Section 138 of Negotiable Instrument Act, 1881.

2) It is the case of the complainant that, complainant is the Registered Credit Co-Operative Society and involved in money lending business. The accused being the borrower have applied MTOP for Rs.50,000/- before complainant

Society and same was sanctioned to him under loan A/c MTOP No.15/23 dated: 28/07/2023 and the accused have availed the loan amount from the complainant on the same day for personal necessities. Further he has agreed to repay the said loan amount with interest as per the rules and regulations of Society. But the accused is failed to repay the loan installment in time and after repeated demands the accused have visited the complainant office on 20/06/2024 and towards the full settlement of loan account the accused issued a cheque bearing No. 000007 dated: 20/06/2024 for Rs.55,421/- drawn on Bank of Baroda, Gulvadi Branch. When the complainant presented the said cheque for encashment through its banker IDBI Bank, Kundapura Branch, the said cheque returned with an endorsement “Funds Insufficient”. As such, the complainant issued legal notice to the accused on 03/07/2024, the said notice duly served to accused on 05/07/2024. Inspite of service of notice, accused neither made the payment of cheque amount nor sent any reply. Hence the complainant filed 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, Complainant himself examined as PW1 and got marked Ex.P1/Cheque, Ex.P1(a)/Signature of accused, Ex.P2/Bank memo, Ex.P3/Office copy of legal notice, Ex.P4/postal acknowledgment, Ex.P5/Proceedings of meeting

dated:29/06/2024, Ex.P6/loan application, Ex.P7/promissory note, Ex.P8/agreement dated: 28/07/2023, Ex.P9/Page No.58 of saving Book Account's ledger, Ex.P10/ Page No.28 of Saving book Accounts' ledger, Ex.P11/certified copy of registration certificate and closed its 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 entered into defence evidence by examining himself before this Court on oath as DW1. However accused has not produced any document in support of his defense.

5) This Court heard the arguments of counsels for complainant and the accused. 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.55,421/-?

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 ?

6) 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:

REASONS

POINT NO.1:

7) This Court carefully gone through the facts and circumstances of the case, as well as oral and documentary

evidence available on record. Admittedly Ex-P1/Cheque dated: 20/06/2024 and Ex-P1(a)/Signature of accused. The complainant presented the cheque for encashment and the same came to be dishonored as per Ex-P2 dated: 21/06/2024. Further as could be evidenced from Ex-P3 and Ex-P4, complainant got issued legal notice on 03/07/2024 calling upon the accused to pay the amount covered under the said cheque, the said notice duly served to accused on 05/07/2024 and since accused failed to make payment of cheque amount, within the stipulated period, he filed this complaint on 02/08/2024, 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.

8) According to complainant, accused issued Ex.P1/Cheque, for discharge of debt due by the accused and the same

came to be dishonored when presented for encashment. PW1 reiterated the complainant averments in his chief evidence. On the other hand, accused cross-examined PW1 on various aspects denying entire case of complainant and his liability on Ex.P1 and maintainability of complaint. However, he/accused does not dispute his signature on Ex.P1/Cheque and it is drawn on his banker. Further, it is admitted facts that the said cheque came to be dishonoured for the reason 'Funds Insufficient'. As such in order to escape the liability it is for the accused to prove that he does not due any amount to complainant.

9) 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 Ex.P1/cheque belonged to accused. Therefore it is clear that the complainant has prima-facie proved that the

accused has committed the offence punishable U/s 138 of Negotiable Instrument Act. As such in order to escape the liability, it is for the accused to rebut the said presumption, by establishing that there is no any legally recoverable debt.

10) 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 in question and the signature on it belongs to the 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.

11) The mandate of Section 118(a), 138 and 139 of Negotiable Instrument Act 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 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.

12) In the instant case, according to the accused, at the time of availing 50,000/- loan amount, complainant obtained 2 signed blank cheque from him, though he had been paid the installments upto march 2025, complainant issued demand notice. When he asked the same, he/complainant was informed that, by mistake its was sent and assured to settlement the case. However instead of settle the case, has filed this false complaint by misusing cheque issued as security. Admittedly though the accused took the plea of

discharge to prove the same, accused has not produced even a single documents before the court. Absolutely there is no cogent and corroborative evidence in supportive of defense of the accused. However, there is no bar under law for receiving cheque as security at the time of advancing loan. There is also no bar to put such security cheque for encashment as and when the borrower fails to repay the loan. It is now well settled principle of law as held in Latha K. Nair V/s. M/s. Gold Mohar Foods and Feeds Ltd., **in ILR 2008 KAR 1883, that Cheque issued for repayment of loan or security makes no difference under Section 138 of the Negotiable Instruments Act. If the cheque is dishonored, then the accused is liable to pay the cheque amount.**

13) Further, in M/s. Lale Patel V/s. M/s. Sharanbasappa reported in 2015 (1) KCCR 235, rendered by Hon'ble High

Court of Karnataka, it is held that the plea of accused that he had given a blank cheque signed as security for a transaction and complainant filled up the contents and denied existence of any debt or loan, cannot be sustained.

14) BE THAT AS IT MAY, the learned counsel for the accused relied on Ex.P8 & P10 contended that documents relied on by the complainant are contrary to each other. The complainant fails to prove that the accused is liable to pay Rs. 55,421/- as on the date of filing the complaint. Hence prays to dismiss the complaint. This court perused Ex.P8 agreement dated: 28/07/2023 executed by accused and two co-obligators. Wherein accused and co-obligators agreed to pay Rs. 50,000/- loan amount with 16% interest. Under Ex.P8/agreement, **it is recited that 1st party has to receive the receipts by paying the installments detailed in the said agreement ie., 20 installment has to be paid**

by the accused. Even at Ex.P10, it discloses that accused had paid only one installment. The column written under Ex.P10 shows the number of installment has to be paid by the accused and not paid. Interestingly, accused has not produced receipts regarding payment made by him towards loan amount in support of his defence and has not been disputed Ex.P6 and P7.

15) Admittedly accused is not denying Ex.P1/Cheque and the signature on it. It is further not in dispute that the said cheque came to be returned un-cashed for the reason 'Funds Insufficient'. Moreover as soon as receipt to Ex.P3, if accused paid the amount what-else prohibited him to issue reply notice. This will create serious doubts regarding the defense of the accused and the accused failed to prove his defense before the Court and the same appears to be an after thought put-forth by accused just to defeat the claim

of complainant. The accused failed to create any doubt in the case of complainant. The accused failed to rebut the presumption available in favour of complainant.

16) It is pertinent to note herein that accused is not a lay man and he is a employee at panchayath, having all worldly knowledge and he must know the consequences of issuing signed 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. 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.**

17) The evidence adduced by the complainant clearly establishes that due to liability, accused has issued Ex.P1/Cheque for repayment of debt. Hence **POINT NO.1** is answered in the **AFFIRMATIVE.**

POINT NO.3 :

18) In view of the aforesaid reasons and this Court answer to point No.1 and 2, it is clear that the complainant has proved, that the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act, 1881. Hence, **POINT NO.3** is answered in the **AFFIRMATIVE.**

POINT NO.4 :

19) In view of my findings on points 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. 60,421=00 (Rupees Sixty Thousand Four Hundred Twenty One Only). In the event of failure of the accused to pay the fine amount of Rs. Rs. 60,421=00 (Rupees Sixty Thousand Four Hundred Twenty One 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. 60,421=00 (Rupees Sixty Thousand Four Hundred Twenty One Only), a sum of Rs. 58,421=00 (Rupees Fifty Eight Thousand Four Hundred Twenty One 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 and typed by him, corrected and then pronounced by me in the Open Court on this the 8th day of July, 2026)

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.07.08 16:15:06 +0530

(Manjula .B.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.

A N N E X U R E

List of Witnesses examined on behalf of the Complainant

PW1- Shekar Kotary

List of Documents exhibited on behalf of the Complainant

Ex-P1	:	Cheque
Ex-P1(a)	:	Signature of accused
Ex-P2	:	Bank Memo
Ex-P3	:	Office copy of legal notice
Ex-P4	:	Postal acknowledgment
Ex-P5	:	Proceedings of meeting dated:29/06/2024
Ex-P6	:	Loan application
Ex-P7	:	Promissory note
Ex-P8	:	Agreement dated: 28/07/2023
Ex-P9	:	Page No.58 of saving Book Account's ledger
Ex-P10	:	Page No.28 of Saving book Accounts' ledger
Ex-P11	:	Certified copy of registration certificate

List of Witnesses examined on behalf of the Accused

DW1- Ganesh

List of Documents exhibited on behalf of the Accused :

NIL

MANJULA BETTASWAMY
Digitally signed by MANJULA BETTASWAMY
Date: 2026.07.08 16:14:59 +0530

(Manjula .B.)
Prl. Civil Judge & J.M.F.C.,
Kundapura.