KAUP320027112023

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 1st day of July- 2026

C. C. No. 1025/2023

(Old C.C. No. 2140/2015)

(Old C.C. No. 1618/2016)

Complainant: Smt. Saroja G Patwal, 63 years,
W/o Late. Govinda Patwal,
R/o "Mangesh", (Salian view),
Indrali Temple Road,
Behind Jupiter Industries,
Post Kunjibettu, Udupi-2.

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

//Vs//

Accused: Dr. Ananthu. S, 36 years,
S/o Srinivasa Rao,
Tsepal Tob Keyd Hospital,
Golden Temple,
Nyingamapa Monastery,
Old Camp No.4
Post: Bylakuppe,
Mysore District

(By Sri. J.K.A, Advocate)

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Case instituted Hon'ble XV Additional Chief Metropolitan Magistrate Bangalore, at Bangalore 1st Additional Civil Judge and JMFC Kundapura at Kundapura Prl. Civil Judge and JMFC Kundapura at Kundapura	24/11/2014 06/01/2016 21/10/2023
Offence complained of	Section 138 of N.I. Act,1881
Date of recording of plea	06/01/2024
Date of recording of evidence	10/10/2024
Judgment pronounced Date	01/07/2026
Opinion of Presiding Officer	Acquitted

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.07.01 16:12:26 +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 before the Hon'ble XV Additional Chief Metropolitan Magistrate Bangalore, at Bangalore on 24/11/2014 against the accused alleging that the accused has committed an offence punishable Under Section 138 of Negotiable

Instrument Act, 1881 in C.C. No.2140/2015. In view of the order dated: 16/12/2015 passed by the Hon'ble XV ACMM Court, Bangalore at Bangalore the complainant presented this complaint before the 1st Additional Civil Judge and JMFC Kundapura at Kundapura on 06/01/2016 in C.C. No.1618/2016. Further as per the notification No.7/2023 dated: 11/09/2023 and Letter No. ADMN/3154/2023 dated:12/09/2023 of Hon'ble Principal Senior Civil Judge and C.J.M., Udupi, the above criminal case is transferred to this Court and numbered as C.C. No. 1025/2023.

2) It is the case of the complainant that, the accused and her/complainant are well known to each other and the accused is a family friend of the complainant. Taking advantage of the same the accused approached the complainant for a hand loan of Rs.6,00,000/- in the month of March 2008 by pleading his difficulties to meet legal

necessities and to discharge his bad debts and agreed to return the same within two years. Believing the words of the accused the complainant had paid an amount of Rs.6,00,000/- by way of cash during fourth week of March 2008 and the accused has acknowledged the same. The complainant kept quite for two years and requested the accused to return the said hand loan amount. The accused by pleading his family difficulties has requested the complainant to give further hand loan of Rs.4,00,000/- and agreed to return entire hand loan amount within two years. The complainant believing the words of the accused and in order to help the accused has paid the said hand loan amount of Rs. 4,00,000/- to the accused by way of cash in different occasions during the year 2010 and the accused has acknowledged the same. In all the complainant has paid a sum of Rs.10,00,000/- by way of cash to the accused.

3) The complainant kept quite for two years i.e., upto February 2013. In February 2013 Complainant requested the accused to return entire hand loan amount. The accused has requested the complainant to give some more time of one year since he has not arranged funds. Believing the words of the accused the Complainant given one year time and in the month of April 2014 the complainant requested and demanded the accused to return the said hand loan amount. The accused was postponing the same by one pretext or the other till October 2014 and in the month of October 2014 the accused in order to discharge his liability has got issued two cheque bearing Nos. 28579 and 28580 dated:10/10/2014 for Rs.5,00,000/- each drawn on Canara Bank, Sheshadripuram Branch assuring about due encashment of two cheque on its presentation to the banker. When the complainant presented the said two cheque for encashment to her banker Syndicate Bank, MMY, Kundapura Branch, the said

two cheque returned with an endorsement “Funds insufficient” on 15/10/2014. As such, the complainant issued legal notice to accused on 15/10/2014 by RPAD., the same is duly served upon him on 25/10/2014, but inspite of receipt of said legal notice, accused failed to comply with the legal demands made by the complainant. Hence this complaint.

4) 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 warrant, 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.

5) To prove the case against accused, the complainant

examined herself before this Court as PW1 and got marked Ex.P1 and P2/Two Cheque, Ex.P1(a) and 2(a)/signatures of accused, Ex.P3 and P4/Two Bank endorsements, Ex.P5 and P6/Two Office copy of legal notices, Ex.P7 and P8/postal acknowledgments, Ex.P9 to P12/ Bank Challen and closed her 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 examined himself as DW1. Ex.D1 to D3 got marked through PW1 by way of confrontation. In total the accused got marked 12 documents they are Ex.D1/Aadhar Card, Ex.D2/Certified copy of the order sheet in M.C.No. 94/2010, Ex.D3/Canara Bank statement from 01/05/2008 to 01/01/2015, Ex.D4/Memorandum of undertaking dated:24/04/2010, Ex.D5/service certificate issued by Vice President, Human Resource, Columbia Asia Hospitals Pvt. Limited, Ex.D6 to D12/I.T returns from the year

2011-2012, 2012-2013, 2014-2015, 2015-2016, 2022-2023 to 2025-2026 and closed his side evidence.

6) This Court heard the arguments of Counsel for complainant and the accused and perused the materials available on record.

7) 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 two cheque in question for discharge of legally recoverable dues of Rs. 10,00,000/-?

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 ?

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

Point No.1 : In the Negative

Point No.2 : In the Affirmative

Point No.3 : In the Negative

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

: : R E A S O N S : :

POINT NOS. 1 & 2:

9) 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 and P2/Cheque both dated: 10/10/2014 and Ex-P1(a) and P2(a)/Signatures of accused. The complainant presented the two cheque for encashment and the same came to be dishonored as per Ex-P3 and P4 dated: 11/10/2014. Further as could be evidenced from Ex-P5 to P8, complainant got issued legal notices on 15/10/2014 calling upon the accused to pay the amount covered under the said two cheque, the

said notices was duly served upon the accused on 25/10/2014 but accused failed to make payment of two cheque amount, within the stipulated period, she filed this complaint on 24/11/2014, 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.

10) According to complainant, accused issued Ex.P1 and P2/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 her chief evidence. On the other hand, accused cross-examined PW1 on various aspects denying the entire case of the complainant. However accused does not dispute his signature on Ex-P1 and P2/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".

11) From the above facts and circumstances involved in this case, it is clear that the complainant has established that the two cheque in question as well as the signature appearing on Ex.P1 and P2/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.

12) 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 her and has prima-facie proved her 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.

13) 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.

14) In the instant case, according to the accused, complainant was his ex-mother-in-law. He/accused and daughter of complainant filed divorce petition before the Mangalore

court in the year 2010 and at that time she/daughter of complainant executed memorandum of undertaking dated: 24/04/2010, undertook to return 2 Canara bank Cheque leafs of accused through speed post within a week, which she was in custody by mistake. However she/complainant took Ex.P1 & P2 from her daughter and filed this false case by furnishing false address with an intention to defraud and harass the accused as there is no loan transaction between the complainant and accused as stated in the complaint. In support of his defense accused relied on Ex.D1 to D12. On the otherhand though the complainant denied the defense of the accused has not disputed the relationship narrated by the accused during trial on contrary to complaint averments. BE THAT AS IT MAY, the complainant in the complaint and in her chief-examination stated that, accused is family friend and for his urgent needs he availed money from the complainant during forth week of march 2008 & during the year 2010. However, over all cross-examination of PW1 clearly discloses that at first time of lending money by the complainant to the accused as alleged in the complaint, accused was married complainant's daughter and at the second time both accused and daughter of complainant obtained divorce, which is evidence as per Ex.D2 dated: 24/04/2010. Since the date of lending money to the accused till divorce as stated by the complainant, her daughter stayed with her/complainant at Udupi. The said fact is admitted by the complainant as PW1 during her cross-examination. The said relevant portion of cross examination of PW1 dated: 06/11/2024 is extracted hereunder as follows:-

Cross-examination of PW1 dated: 06/11/2024

"ಮದುವೆ ಆದ ನಂತರ ನನ್ನ ಮಗಳು ಆರೋಪಿತನ ಜೊತೆಯಲ್ಲಿಯೇ ಬೆಂಗಳೂರಿನ ಮನೆಯಲ್ಲಿಯೇ ವಾಸವಿದ್ದಳು. ವಿಚ್ಛೇದನ ಆಗುವವರೆಗೂ ಆರೋಪಿತನ ಜೊತೆ ಆಕೆ ಬೆಂಗಳೂರಿನಲ್ಲಿ ಹಾಗೂ ಉಡುಪಿಯಲ್ಲೂ ಇದ್ದಳು. **ನನ್ನ ಮಗಳು ಎಂ ಡಿ., ಯೋಗ ಮಾಡಿದ್ದು ಉಡುಪಿಯಲ್ಲಿ ಎಂದರೆ ಸರಿ. ಅದು 02 ವರ್ಷದ ತರಬೇತಿ ಇರುತ್ತದೆ. 2010ರಲ್ಲಿ ತರಬೇತಿ ಮುಗಿದಿರುತ್ತದೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಇರಬಹುದು ಎಂದು ನುಡಿಯುತ್ತಾರೆ.**

> **2010ರಿಂದ 2014ರವರೆಗೆ ನನ್ನ ಮಗಳು ಉಡುಪಿಯಲ್ಲಿ ಕ್ಲಿನಿಕ್ ಹಾಕಿಕೊಂಡು ಇದ್ದಳು. ಸಾಯಿಗ್ರೂಪ್ ಪೀಯೂಷ ಎಂದು ಕ್ಲಿನಿಕ್ ನ ಹೆಸರು, ಅದು ಇದ್ದಿದ್ದು ಉಡುಪಿಯ ಇಂದ್ರಾಣಿಯಲ್ಲಿ. ನಾನು ಆಕೆ ಉಡುಪಿಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾಗ ನಾನು ಸಹ ಆಕೆಯ ಜೊತೆ ಉಡುಪಿಯಲ್ಲಿ ಇದ್ದೆ. ಒಂದೇ ಮನೆಯಲ್ಲಿ ಇದ್ದೆ ಎಂದರೆ ಸರಿ.”**

15) When there is a lack of cordial relationship between the accused and complainant’s daughter, from the very beginning of marriage as admitted by the parties at Ex.D2 in M.C. No.94/2010, complainant who was stayed with her daughter at Udupi does she advance money to the accused for his bad legal necessity is created serious doubt about the case of the complainant.

16) Interestingly it is the specific case of the complainant that accused issued Ex.P1 & P2 in the year 2014. On contrary during her cross-examination dated: 06/11/2024 she voluntarily deposed before the court that, as the cheque issued by the accused were with her/complainant from 2008

to 2014 she had not visited the accused in person for asking repayment of money. Cross-examination of PW1 dated: 06/11/2024 is extracted hereunder as follows for ready reference:-

Cross-examination of PW1 dated: 06/11/2024

> "ಮುಖತಃ ಹೋಗಿ ಹಣ ಕೊಡಬೇಕು ಎಂದು ಕೇಳಿಲ್ಲ. ಸಾಕ್ಷಿ ನನಗೆ ಆತ ಚೆಕ್ಕು ಕೊಟ್ಟಿದ್ದ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. 2008 ರಿಂದ 2014 ರವರೆಗೆ ನನ್ನ ಬಳಿ ಚೆಕ್ಕು ಇದ್ದ ಕಾರಣ ನಾನು ಆತನನ್ನು ಹಣ ಮುಖತಃ ಹೋಗಿ ಕೇಳಿರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ."

17) The above admission itself falsify the case of the complainant that, accused issued Ex.P1 & P2 in the year 2014 for discharge of debt. The complaint averments and cross-examination of PW1 are contrary to each other. On the otherhand Ex.D4/memorandum of undertaking dated:24/04/2010 clarifies that, Ex.P1 & P2 were in the custody of the daughter of complainant and she instead of compliance of Ex.D4, got filed this complaint through her

mother to harass the accused. Moreover if Ex.D4 is not genuine why complainant not examined her daughter before the Court to disprove the contents of Ex.D4 this will seriously create the doubt about the case of the complainant.

18) Finally, at last but not least, accused relied on Ex.D1 to D5 argued before the court that, complainant with an intention to defraud and harass the accused though she is fully aware that accused is neither resident nor worked at Mysore, issued notice Ex.P5 & P6 to the wrong address thereby not complied section 138(b) of N.I. Act. Hence complaint is not maintainable under law. Hence prays to dismiss the compliant.

19) No doubt, Ex.P5 to P8/postal receipts and acknowledgment discloses that Ex.P4/notice sent to accused through RPAD

served on the accused. Admittedly address shown in Ex.P4/notice, cause title of complaint and Ex.D1 to D5 are two different. Of-course PW1 mother-in-law of accused deposed that she had visited the house of the accused situated at Bangalore and according to her accused working at Bangalore. Further she deposed that she was not aware at what circumstances accused residing at Mysore. The said relevant portion of the cross-examination of PW1 dated: 06/11/2024 is extracted hereunder as follows:-

<u>Cross-examination of PW1 dated: 06/11/2024</u>

> "ನಾನು ಬೆಂಗಳೂರಿನಲ್ಲಿ ಅವರ ಮನೆಗೆ ಹೋಗಿರುತ್ತೇನೆ. ಮಲ್ಲೇಶ್ವರಂನಲ್ಲಿ ಆತನ ಮನೆ ಇರುತ್ತದೆ.
>
> ಮದುವೆ ಆದ ಸಂದರ್ಭದಲ್ಲಿ ಆರೋಪಿತ ವಾಸವಿದ್ದುದು ಹಾಗೂ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದುದು ಬೆಂಗಳೂರಿನಲ್ಲಿ ಎಂದು ಗೊತ್ತಿರುತ್ತದೆ. ಯಾವ ಸಂದರ್ಭದಲ್ಲಿ ಆರೋಪಿತ ಮೈಸೂರಿನಲ್ಲಿ ವಾಸವಿದ್ದ ಎಂದು ನನಗೆ ಗೊತ್ತಿರುವುದಿಲ್ಲ."

20) As admittedly the PW1, accused was the resident of Bangalore. When such being the case why the complainant issued notice to the accused by furnishing Mysore address.

Even Ex.D5 clearly discloses that since 2008 to till 2014 accused working at HAL 3rd Stage, Indira Nagara, Bangalore. If the accused working at Mysore whatelse prohibited her/complainant to produce the document before the court to show that she has issued notice to the correct address of the accused. Non furnishing of the document and non denial of Ex.D1 to D5 by the complainant during cross examination of DW1 creates doubt regarding the case of the Complainant. On perusal of the documents it appears that, the complainant to defraud the accused has filed this case. Mere admission of cheque and signature will not constitute offence under section 138 of N.I.Act, complainant has to prove due to liability, the said cheque issued by the accused. However in the case on hand the complainant fails to prove that the said cheque issued by the accused for the discharge of liability.

21) It is the settled law that an accused will be liable for prosecution for dishonor of cheque if the complainant proves all the ingredients of the offence punishable under section 138 N.I. Act. Of-course, in a prosecution for an offence punishable under section 138 N.I. Act, the complainant is armed with presumptions available under sections 118 and 139 N.I. Act. But, in the instant case, accused has been successful in rebutting the statutory presumption available to the complainant under Section 139 N.I. Act. The Complainant has failed in her attempt to establish the existence of legally recoverable liability, as on the date of the cheque for the reasons discussed supra. In view of the above discussion and conclusion, **POINT NO.1** is answered in the **NEGATIVE** and **POINT NO.2** in the **AFFIRMATIVE.**

POINT NO.3:

22) In view of the aforesaid reasons and answers to POINT

NOS.1 and 2, it is clear that the complainant has failed to prove that the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act, 1881. Hence, **POINT NO.3** is answered in the **NEGATIVE.**

POINT NO.4:

23) In view of my findings on **POINT NOS. 1 to 3**, this Court proceed to pass, the following;

ORDER

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

Acting under section 255(1)Cr.P.C,, read with section 138, 143 Negotiable Instruments Act., the accused is acquitted of an offence punishable under section 138 Negotiable Instruments Act.

The bail bond and surety bond furnished by the accused stand canceled.

(Dictated to the Stenographer directly on the Computer, corrected and then pronounced by me in the Open Court on this the 1st day of July, 2026)

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.07.01 16:12:42 +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- Saroja

List of Documents exhibited on behalf of the Complainant

Ex-P1 & 2 : Cheques

Ex-P1(a) & 2(a) : Signatures of accused
Ex-P3 & 4 : Bank endorsements

Ex-P5 & 6 : Office copy of legal notices

Ex-P7 & 8 : Postal acknowledgment

Ex-P9 to 12: Postal receipts

List of Witnesses examined on behalf of the Accused

DW1 - Dr. Ananth

List of Documents exhibited on behalf of the Accused

Ex-D1 : Adhaar card

Ex-D2 : Certified copy of the order sheet in M.C.No. 94/2010

Ex-D3 : Canara Bank statement from 01/05/2008 to 01/01/2015

Ex-D4 : Memorandum of undertaking dated:24/04/2010

Ex-D5 : Service certificate issued by Vice President, Human Resource, Columbia Asia Hospitals Pvt. Limited

Ex-D6 : IT returns for the year 2011-2012

Ex-D7 : IT returns for the year 2012-2013

Ex-D8 : IT returns for the year 2014-2015

Ex-D9 : IT returns for the year 2015-2016

Ex-D10 : IT returns for the year 2022-2023

Ex-D11 : IT returns for the year 2024-2025

Ex-D12 : IT returns for the year 2025-2026

MANJULA BETTASWAMY Digitally signed by MANJULA BETTASWAMY Date: 2026.07.01 16:12:32 +0530

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