

KAVN010005662025



**IN THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE,
VIJAYANAGARA DISTRICT, HOSAPETE.**

PRESENT: **SRI D. P. KUMARA SWAMY**

B.Com., LL.M.,
Addl. District & Sessions Judge,
Vijayanagara District, Hosapete.

DATED THIS **7th** DAY OF **MARCH, 2026.**

CRIMINAL APPEAL NO.5025/2025

Appellant : H.Durugappa S/o Tagalu Durugappa,
aged about 35 years,
R/ Tarihalli Oni, 9th Ward,
Hanumanahalliu Village,
Hosapete Tq., Vijayanagara District.

(By Sri. B.C.Mahantesh, Adv.)

V/s

Respondent: B.Hanumanthappa S/o Dsappa,
aged about 65 years,
R/o Danapura village,
Hosapete Tq., Vijayanagara District.

(By Sri. L.S.Ananda, Advocate)

JUDGMENT

This is an appeal under Section 374 of Code of Criminal Procedure, 1973 (Central Act No.2 of 1974) (for short, "**Cr.P.C.**") preferred by the accused to assail the judgment of conviction passed by the III Addl. Civil Judge and JMFC Court, Hosapete, (for short, "**the Trial Court**") in CC No.2066/2023, DD on 12.02.2025 (for short, "**the impugned judgment**").

2. The parties would be referred to as per the ranks held by them before the Trial Court for the sake of brevity.

3. The facts of the case of the complainant may, briefly, be stated to the following effect :

3.1. The complainant and the accused are well known to each other.

3.2. The accused requested the complainant for financial help for his urgent needs.

3.3. The complainant agreed to extent financial help to the accused.

3.4. On 23.01.2023, the complainant has given loan of Rs.80,000/- to the accused.

3.5. The accused promised to repay the said loan to the complainant within 3 months.

3.6. At the time of availing the loan, the accused has issued a post dated cheque bearing No.224918 drawn on State Bank of India, M.M.Halli Branch, for a sum of Rs.80,000/-. The date mentioned on the said cheque is 31.03.2023.

3.7. The complainant presented the said cheque for encashment on 31.03.2023 through SBI, M.M.Halli Branch.

3.8. On 03.04.2023, the said cheque returned dishonoured with an endorsement 'funds insufficient'.

3.9. The complainant informed the accused about the dishonour of cheque orally. The accused said that the

accused would pay the cheque amount within 2 or 3 days. But, so far, the accused has not paid the cheque amount.

3.10. On 24.04.2023, the complainant got issued notice through RPAD against the accused through learned Advocate of the complainant. The notice was served on 24.04.2023.

3.11. In the said notice, the complainant has called upon the accused to pay the cheque amount to the complainant within 15 days from the date of receipt of the said notice.

3.12. In spite of service of said notice, the accused has not paid the cheque amount within 15 days from the service of said notice on him.

3.13. Hence, the accused has committed the alleged offence punishable under Section 138 of Negotiable Instrument Act, 1881 (for short, "**N.I. Act**"). The above are the

facts constituting cause of action for this complaint. Hence, this complaint.

4. After appearance before the Trial Court, the accused has not pleaded guilty of the alleged offence and claimed to be tried.

5. During trial, the complainant got himself examined as PW1 and got marked Ex.P1 to Ex.P5 in order to prove the guilt of the accused in connection with the alleged offence. In order to rebut the presumption under Section 118 and 139 of the N.I. Act, the accused has not led his evidence and not got marked any document on his behalf.

6. After the completion of the trial, the Trial Court has pronounced the impugned judgment and convicted the accused for the alleged offence punishable under Section 138 of N.I. Act and directed the accused to pay fine of Rs.1,01,600/- for the alleged offence under Section 138 of N.I.

Act; and to undergo simple imprisonment for 5 months in default of payment of said fine. The Trial Court has directed that out of the fine amount, a sum of Rs.98,600/- shall be paid to the complainant as compensation; and that remaining sum of Rs.3,000/- shall be deposited to the State Government.

7. Feeling aggrieved by the impugned judgment of conviction, the accused has preferred this appeal before this Court.

8. Secured the TCR.

9. In spite of repeated adjournments granted, the learned Advocates for the parties have failed to appear before this Court. Hence, arguments of learned Advocates for the parties is taken as NIL.

10. Perused the records.

11. In the facts and circumstances of the case on hand, the following points do arise for consideration of this Court:

1. Whether the accused has rebutted the presumption under Section 118 and 139 of N.I Act ?
2. Whether the impugned judgment suffers from any infirmity, irregularity or illegality ?
3. Whether the impugned judgment calls for interference ?
4. What order ?

12. My findings to the above points are as under:

Point No.1 : in the Negative

Point No.2 : in the negative

Point No.3 : in the Negative

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

REASONS

13. Point Nos.1 to 3: The PW1 (complainant) has reiterated the pleaded facts of his case (which are briefly noted supra) in his examination-in-chief by way of his affidavit.

14. The complainant has produced and got marked - (i) the said cheque as Ex.P1, (ii) the bank endorsement as Ex.P2, (iii) the said notice as Ex.P3, (iv) the said postal receipt as Ex.P4, and (v) the said postal acknowledgement as Ex.P5.

15. The complainant has discharged initial burden.

16. Now the question is as to whether the accused has rebutted the presumptions under Sections 118 and 139 of N.I. Act.

17. The learned defence counsel has not cross-examined the PW1.

18. No independent evidence is adduced by the accused.

19. During the course of examination under Section 313 of Cr.P.C., the accused has stated that the accused has borrowed a sum of Rs.20,000/- from the complainant; that he has paid Rs.9,000/- to the complainant; and he has to pay remaining amount with interest.

20. The accused has not disputed that the accused has issued the Ex.P1 cheque to the complainant.

21. The accused has not disputed the correctness of the address of the accused which is found in the cause title of the complaint, in Ex.P3 notice, in Ex.P5 postal acknowledgement.

22. The accused has not disputed that the Ex.P1 cheque is dishonoured for the reason of “insufficient funds in the account of the accused”.

23. The accused has not disputed that the accused has not paid the Ex.P1 cheque amount.

24. The accused has not disputed the financial capacity of the complainant.

25. The accused has not issued reply notice to the complainant.

26. Above all, so far, the accused has not initiated any sort of legal action against the complainant alleging that the complainant has misused Ex.P1 cheque.

27. To rebut the presumptions, the accused has to rely upon the materials brought on record by the complainant. I

have perused the entire case projected by the complainant. The accused has not been able to show that the case of the complainant himself shows that the said presumptions are rebutted. Hence, Point Nos.1 to 3 are held in the negative.

28. Point No.4: The appeal is devoid of merits. Hence, following;

ORDER

1. The appeal preferred by the accused/convicted person under Section 374 of Cr.P.C. is hereby dismissed.

2. The impugned judgment of conviction passed by the III Addl. Civil Judge and JMFC Court, Hosapete, in CC No.2066/2023, DD on 12.02.2025, is affirmed.

3. The accused/convicted person is directed to deposit the fine amount imposed by the Trial Court in the office of the Trial Court or to undergo default sentence as imposed by the Trial Court in the impugned judgment.

4. The Trial Court shall secure the presence of the accused for depositing the fine amount and in default to undergo imprisonment as imposed in the impugned judgment of the Trial Court.

5. The office is directed to send back the T.C.R. to the Trial Court alongwith the copy of this Judgment.

(Dictated to the Stenographer, corrected and pronounced in open court this the **7th day of MARCH, 2026.**)

**(D. P. KUMARA SWAMY),
ADDL. DISTRICT & SESSIONS JUDGE,
VIJAYANAGARA DISTRICT, HOSAPETE.**

(Judgment pronounced in the open Court
vide separate order)

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**(D. P. KUMARA SWAMY),
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