

KAVN040040882017



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,  
VIJAYANAGARA DISTRICT, HOSAPETE.**

**PRESENT:** SRI PRASHANTH NAGALAPUR,  
B.B.A.,LL.B.,(Hons)  
Prl. Civil Judge & JMFC.,  
Vijayanagara District, Hosapete.

**THIS 23<sup>rd</sup> DAY OF MARCH, 2026**

**C.C. No.1974/2017**

**Complainant:**

Nava Karnataka Souharda Credit Co-operative Limited, Head Office,  
Patel Nagar, Opposite Taluk Office Road, Hosapete by its  
Superintendent Sri K.Rudrappa son of Andanapa, Aged 65 years,  
resident of Hosapete.

**(By Sri B.A.P., Advocate)**

**// V e r s u s //**

**Accused:**

Faruque Ahmad son of Abdul Sattar Saheb, Aged 45 yeas, Riyaz  
Manzil, Mudubettu, PO:Kodavur, Udupi.

**(By Sri S.R.S.J., Advocate)**

**:: JUDGMENT ::**

The complainant has filed this complaint against the accused alleging that there has been commission of the offence punishable under Section 138 of Negotiable Instrument Act, 1881.

**2. The case of the complainant is that :-**

The complainant i.e., Nava Karnataka Souharda Credit Co-operative Limited, Head Office, Patel Nagar, Opposite Taluk Office Road, Hosapete by its Superintendent Sri K.Rudrappa, later represented by Yelubhavi Ningappa. The accused had borrowed a sum of Rs.25,000/- from the complainant Branch at Udupi on 18.11.2013 along with Muneer Ahamad son of Sayyad Saheb, Madwa Nagar, Post Kodavur, Udupi and Anwar Hussain, son of Hyder Saheb, Rifabaith, Padmanabha Nagara, Kukkikatte, nea Diana, Udupi and agreed to repay the same with interest at 18% per annum and further agree to repay within due date i.e., within 12 months, failing which, he also agreed to pay Rs.2% per annum as interest on the arrears of installments from the date of due till the date of payment. Accordingly, all have executed the on demand promissory note in favour of

complainant Branch at Udupi. The accused failed to make payment of the loan amount within agreed time. In order to discharge the outstanding loan amount, the accused issued cheque bearing No.920146 dated 20.05.2017 for Rs.40,840/- drawn on Syndicate Bank, Udupi Branch. On presentation to the Syndicate Bank, Hosapete, the said cheque was returned with endorsement 'funds insufficient' on 26.05.2017. The complainant issued notice dated 08.06.2017 calling the accused upon to repay the cheque amount. The said notice was returned unclaimed. The accused has failed to repay the cheque amount. Hence, the present complaint.

3. On presentation of the complaint by the complainant, the cognizance of the offence p/u/sec. 138 of N.I. Act, was taken by the learned predecessor. The statement on oath of the complainant was recorded and process was issued against the accused since prima facie material was available to proceed against the accused. On appearance of the accused, he was enlarged on bail. Substance of accusation was read over and explained to the accused. The accused pleaded not guilty and stated to have defence to make.

4. The authorized person of complainant is examined as PW.1. The authorization letter, cheque bearing No. “920146” dated 20.05.2017, the return memo dated 26.05.2017, the demand notice dated 08.06.2017, postal receipt, track consignment are marked as Ex.P.1 to 7 respectively. The accused did not cross examine the PW 1 inspite of sufficient opportunity. Hence the cross examination of PW 1 was taken as Nil on 16.11.2023. The accused was permanently exempted from personal attendance as per the order dated 19.07.2025 and therefore, the examination of accused under Section 313 of Code of Criminal Procedure was dispensed with as per the said Order. The accused has not led any evidence on his behalf.

5. Heard the arguments advanced by the counsel for complainant. The accused did not address his arguments despite availing plenty of adjourments.

***1. Whether the complainant proves that the accused issued post dated cheque bearing No.920146 dated 20.05.2017 for a sum of Rs.40,840/- drawn on the account maintained at Syndicate Bank, Udupi Branch, in order to discharge the legally recoverable debt or liability and***

*on presentation of the said cheque it was returned for the reason “funds insufficient” and despite of demand notice, the accused failed to make payment within the stipulated period of time and thereby the accused has committed an offence U/sec. 138 of N.I. Act?*

**2. What order?**

6. My answers to the above points are as under:

**Point-1: In the Affirmative.**

**Point-2: As per final order, for the following:**

**::REASONS::**

7. **Point No.1 :-** The case of the complainant is that the accused, availed financial assistance of Rs.25,000/-, issued cheque at Ex.P.2 for Rs.40,840/- for payment of the outstanding loan amount. The complainant produced authorization letter as per Ex.P.1. The accused has not disputed the authorization given to the PW 1 to proceed with the matter by cross examining him. The complainant has produced pay-in-slip as per Ex.P.3. The complainant has produced the return memo dated 26.05.2017 at Ex.P.4. The complainant has issued demand notice to the accused as per Ex.P.5. The postal receipt is

marked as Ex.P.6. The Track consignment is marked as Ex.P.7. Since, the accused has not repaid the loan amount, the complainant has filed this complaint. The complainant has been examined as PW.1.

**8.** Since, the complainant has alleged that the accused has committed an offense U/s 138.N.I. Act, it is necessary to examine whether the provisions under section 138.N.I Act are complied with or not. On perusal of the Ex.P.2 to Ex.P.5, it can be gathered that the cheque at Ex.P.2 was presented to the bank by the complainant within a period of 3 months from the date mentioned in it, the said cheque has been returned to the complainant with endorsement "funds insufficient " as per Ex.P.4. The complainant has issued demand notice at Ex.P.5. The complainant has filed this complaint on 13.07.2017. Therefore, it is clear from the documents that the complainant has fulfilled the requirements under the proviso (a) to (c) of section 138 Negotiable Instruments Act.

**9.** The burden of proving the case beyond reasonable doubts still remains on the complaint despite compliance of the mandatory

provisions of law. The complainant has deposed before the Court that accused has issued the Ex.P.2 cheque in order to discharge the liability of Rs.40,840/-. The complainant has alleged that the cheque was returned for the reason “funds insufficient”. The contents of the cheque at Ex.P.2 disclose that the same was issued on 20.05.2017 and the contents of the return memo disclose that the cheque was returned due to the reason funds insufficient. The complainant has produced documents and deposed before the Court in support of the allegations made in the complaint. The fact that the legal requirements contemplated under Section 138 of Negotiable Instruments Act, before initiating the prosecution, and giving evidence to that effect is sufficient to hold that the presumptions under Section 118 and 139 of Negotiable Instruments Act are available to the complainant. Therefore, unless the contrary is proved, the cheque shall be presumed to be issued in respect of legally recoverable debt or liability. However, the accused may rebut the presumptions by making use of the material placed on record by the complainant or by leading independent evidence on his behalf.

10. In the present case, the accused was given opportunity to cross examine PW 1 on 19.10.2023; 03.11.2023 and 16.11.2023. On all these days, the accused did not cross examine the PW 1. The accused deliberately avoided the cross examination of the PW 1 on those days. In fact, after the order dated 16.11.2023, the accused remained absent and insisted for settlement of the matter to the complainant as per the order sheet till 06.04.2024. The accused filed an application under Section 205 of Code of Criminal Procedure and sought exemption of his personal appearance permanently and also exemption of his examination under Section 313 of Code of Criminal Procedure. This act of the accused goes to show that he had foregone the cross examination of PW 1 intentionally. When the matter was posted for defence arguments, the accused filed frivolous application for recalling PW 1 to harass the complainant. The conduct of the accused has been very much noted in the order dated 09.01.2025 which has not been challenged by the accused till this day. The accused has not cross examined the PW 1 deliberately and caused delay in disposal of the matter unnecessarily citing one or the other reason and filing frivolous applications as per the material available on record.

11. The complainant has adduced oral and documentary evidence to show that the accused was liable to pay Rs.40,840/- to him in the present case. The contents of the documents at Ex.P.1 to 7 and the oral evidence of PW 1 are sufficient to hold that the accused was due to pay Rs.40,840/- to the complainant.

12. The contents of the cheque disclose that the same was issued in favour of the complainant. The said cheque has been returned dishonoured for the reason 'funds insufficient'. When the accused is liable to pay Rs.40,840/- and issued the cheque at Ex.P.2, he should have made arrangements for honouring the same. Instead, the accused has not made the arrangements for honouring the cheque which resulted in issuance of endorsement at Ex.P.4. Even after knowing that the cheque is dishonoured, the accused has not made any efforts to either make the payment or to set up his defence in the present case. In the absence of evidence rebutting the facts established by the complainant, this Court cannot form an opinion which favours the accused in my opinion. The accused has neither cross examined the

PW 1 nor has he led the evidence to rebut the presumption available to the complainant under Section 139 of Negotiable Instruments Act .

13. As per the discussion made above, the complainant has established the fact that the accused was liable to pay Rs.40,840/- to him and issued the cheque at Ex.P.2 for payment of part of the said amount i.e., Rs.40,840/-. On the other hand, the accused has miserably failed to rebut the facts narrated by the complainant either by making use of the material available on record or by leading independent evidence. In other words, no contrary facts to the case of the complainant have been proved by the accused in the present case. The accused has failed to rebut the presumptions available to the complainant under Section 118 & 139 of Negotiable Instruments Act.

14. The complainant has proved successfully that the cheque at Ex.P.2 was issued in respect of the legally recoverable debt or liability by the accused. The complainant has also proved that the cheque was returned for the reasons of funds insufficient, which resulted in commission of offence. The cheque pertains to the account maintained by the accused and the cheque has been signed by the

accused as per the material available on record. The complainant has proved his case beyond all reasonable doubts in my opinion. The accused has committed the offence punishable under Section 138 of Negotiable Instruments Act in the present case. The accused is liable to be convicted for the said offence. The accused is liable to pay fine for the offence committed by him. In the facts and circumstances of the case, considering the fact that the accused was due to pay amount of Rs.40,840/- and the accused has also protracted the proceedings unnecessarily, I deem it proper to impose fine of Rs.50,000/-, in default of which, the accused shall undergo simple imprisonment for a period of 6 months. The complainant is entitled to receive compensation of Rs.50,000/- in the present case. **Hence, I answer Point No.1 in the affirmative.**

15. **Point No.2:-** As a result of my findings on point No.1, proceed to pass the following;-

**ORDER**

***Acting U/s 255(2) of Cr.P.C. the Accused is convicted for the offence P/U/s. 138 NI Act and he is sentenced to pay fine of Rs.50,000/-, in default of***

*payment of fine, he shall undergo simple imprisonment for a period of 6 months.*

*If the fine amount is realized, the compensation amount of Rs.50,000/- shall be paid to complainant as per Section 357 Code of Criminal Procedure*

*The bail bond executed by the accused and his surety on earlier occasion shall be in force for a period of six months for the appearance of the accused before the appellate court.*

*Supply copy of the judgment to the accused free of cost.*

*(Dictated to the Stenographer directly on computer, typed by him on computer and corrected by me, then pronounced in the open Court on this day 23<sup>rd</sup> day of March 2026)*

**(PRASHANTH NAGALAPUR)**  
Prl. Civil Judge & JMFC,  
Vijayanagara District, Hosapete.

**:: ANNEXURE ::**

**1. List of witnesses for the Complainant :-**

PW-1: Sri Ningappa Yelobhavi

**2. List of Documents for the Complainant :-**

Ex.P.1: Authorization letter

Ex.P.2: Cheque

Ex.P.3: Pay-in-slip

Ex.P.4: Bank endorsement

Ex.P.5: Legal notice dated 08.06.2017

Ex.P.6; Postal receipt

Ex.P.7: Track consignment

**3. List of witnesses for the accused:-**

- N I L -

**4. List of documents for accused:-**

- N I L -

**(PRASHANTH NAGALAPUR)**

Prl. Civil Judge & JMFC,  
Vijayanagara District, Hosapete.