

KAVN400003042021



**IN THE COURT OF CIVIL JUDGE AND JMFC,
HADAGALI.**

~ : PRESENT : ~

**CIVIL JUDGE AND JMFC.,
HADAGALI.**

C.C. No.137/2021

Date Of Judgment: 18th day of March, 2026

Sri. Shashidhar

S/o Rudrappa Ronada,
R/o Kombali village,
Hadagali Tq, Vijayanagara Dist.,

...COMPLAINANT

(By Shri. CJM., Advocate)

----//VERSUS//----

Sri. Samshuddin

S/o Rajasab, Malekoppa
R/o Hyathapur road,
Baradoor,
Mundaragi taluk,
Gadag Dist.,

...ACCUSED

(By Shri.M.V.R. Advocate)

:: J U D G M E N T ::

This case emanates from a private complaint filed by the complainant alleging that the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881, by issuing cheque for the amount of **Rs.2,00,000/-**

2. The brief case of the complainant is that:

The complainant owns a grocery shop and the accused runs a business regarding JCB. The complainant has acquaintance with the accused for many years. As the accused had asked for handloan of Rs.2,00,000/- in the month of June 2019 to meet his domestic expenditure and for developing his business and assuring to repay the same within 4 months, the complainant had advanced Rs.1,50,000/- in the last week of July and 50,000/- in the 1st week of August to the accused. And after 4 months i.e., in the month of December 2019 the accused has further requested the complainant to provide him 2 months of time to return the said hand loan and believing the same, when the complainant after 2 months have again asked the accused to return the loan of Rs.2,00,000/-, the accused has handed over a cheque of bank of Baroda bearing No.507795 of Rs.2,00,000/- dated 7.2.2020 to the complainant and has instructed the complainant to present the

cheque for its honour after he tells. And as per the words of the accused the complainant when presented the cheque on 11.2.2020 at Karnataka Gramin Bank, Kombali Branch, Hovinahadagali taluk, it was returned to the complainant as dishonored with the reasons stated on it “**Other reasons**”. The complainant have the issued the accused a legal notice dated 4.3.2020 and the same was returned as “unclaimed” and therefore the complainant is before the court alleging that the accused has committed offence under Sec.138 of N.I. Act. Hence, the present complaint.

3. On filing of the complaint, this Court has taken cognizance against accused for the offence punishable U/sec. 138 of N.I. Act after recording the sworn statement of the complainant. The summons was issued to the accused. In pursuance to the service of summons, the accused has put his appearance through his Counsel and was enlarged on bail.

4. The complaint copies were furnished to the accused as per Sec. 207 of Cr. P. C. The plea was recorded under Sec. 251 of Cr.P.C. The accusation was read over to the accused, to which he pleaded not guilty and claimed to be tried.

5. To substantiate the contentions, the complainant has examined himself as CW.1 and got marked documents as Ex.C.1 to 9. After completion of complainant evidence, the statement of the accused

U/Sec. 313 of Cr. P. C. was recorded. Accused has denied all incriminating circumstances appearing against him, has examined himself as DW1 to establish his defense however has not placed any documents on record.

6. Based on the above materials, the following:

POINTS FOR CONSIDERATION

1. *Whether the complainant proves that the accused has issued a cheque bearing No.507795 dated: 07-02-2020 in favour of complainant for sum of **Rs.2,00,000/-** in discharge of legally enforceable debt and the same is dishonored with an endorsement as '**Other Reasons**' and thereby committed an offence punishable U/Sec. 138 of N.I. Act ?*

2. *What order ?*

7. Heard the respective learned counsels for the complainant and the accused, and meticulously perused the available materials on record and written arguments filed on both sides .

8. The above points are answered as below:

Point No.1: In the Negative.

Point No.2: As per final order for the following:-

:REASONS:

9. **On Point No.1:**

Whenever complainant alleges that the accused has committed an offence punishable U/Sec. 138 of N.I. Act, the complainant has to establish that there was a "legally enforceable debt" and to discharge the

said legally enforceable debt the accused has issued the cheque and subsequently the said cheque has been dishonored, might be for the various reasons. ***The Hon'ble Apex Court in Rajesh Jain v. Ajay Singh reported in 2023 INSC 888*** has laid down that :

“34. The NI Act provides for two presumptions: Section 118 and

Section 139. Section 118 of the Act interalia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the 'presumed fact' directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

35. Section 139 of the NI Act, which takes the form of a 'shall presume' clause is illustrative of a presumption of law. Because Section 139 requires that the Court 'shall presume' the fact stated therein, it is

obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. The rules discussed herein below is common to both the presumptions under Section 139 and Section 118 and is hence, not repeated-Reference to one can be taken as reference to another. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase ‘unless the contrary is proved’.

36. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer.”

10. As per these guidelines laid down by the Apex Court and important ingredients of section 138 of N.I. Act, this Court proceeds to discuss the evidence available on record.

As already stated above, the complainant has examined himself as CW.1, he has filed affidavit in lieu of his examination in chief U/Sec.145 of N.I. Act and got marked Ex.C.1 to 9.

11. The Ex.C.1 is the cheque bearing No.507795 dated 07-02-2020 for amount of Rs.2,00,000/- drawn on the Bank of Baroda, Gadag branch. The complainant has to primarily establish there was a legally enforceable debt with respect to which the accused has advanced the cheque. On going through the complaint and chief examination affidavit which is marked as CW1 it is observed that-

i. In the complaint it is stated that “ಆರೋಪಿಯೂ ತುಂಬಾ ವರ್ಷಗಳಿಂದ ಪರಿಚಯದವರಾಗಿರುತ್ತಾರೆ” but in chief examination affidavit which is marked as CW1 it is stated “ಆರೋಪಿ ಪರಿಚಯವಿರುತ್ತದೆ”. How and by what means the complainant has acquaintance with the accused, how many years of acquaintance between them if not exactly at least approximately is not stated anywhere by the complainant, because the complainant is from Kombali village and the accused is from Baraduru village of Mundargi

taluk and as such the complainant himself in his cross examination states that the accused is not acquainted to him through his family nor during the time of his education, then how the complainant has the acquaintance of the accused from many years as stated by him has not been explained. A prudent man when he advances the money to someone in need in the form of loan, without he being acquainted with him completely from close means will not advance the money simply to such person whom he knows without trust that money will be returned. In the present case the complainant states he knows the accused but not acquainted through family or from his education days, then how he knows the accused and what is the relation or the intimacy with the accused on the basis of which he alleges that he has advanced 2,00,000/- for domestic expenditure of the accused is not put forth by the complainant which is not credible to believe the version of complainant.

ii. In the complaint it is stated that for domestic and business development the accused had asked for hand loan of Rs.2,00,000/- and complainant has advanced Rs.1,50,000/- as 1st installment in the last week of July and 2nd installment of Rs.50,000/- in the first week of August by way of cash. However, in the chief examination affidavit the

complainant has stated due the urgent need of money the accused has received Rs.2,00,000/- from him in last week of August 2019 in two installments. There is complete contradiction in the statements averred by the complainant in his complaint and in his chief examination affidavit, as to when and for what purpose he has advanced hand loan of Rs.2,00,000/- to the accused. It is the complainant who has to prove before the court about the existence of legally enforceable debt as per section 101 to 103 of Indian Evidence Act 1872. On careful perusal of entire evidence of complainant there is doubt regarding advancing the loan of Rs.2,00,000/- to the accused wherein it goes to show that the complainant has failed to prove the existence of legally enforceable debt.

12. The grounds on which the accused has set up rebuttal is that there is no legally enforceable debt and the complainant had no financial capacity to advance loan of Rs.2,00,000/- to accused. To prove the defense of the accused, the complainant was put to cross examination and in his cross examination the complainant states that Rs.600 to 800 was his saving per day which he used to deposit Rs.6000 to 8000 in his bank account once in a month. However, on careful perusal of Ex.P 9 which is the account statement extract of the complainant, there are no entries as to deposit of Rs.6000 to 8000/- in his account regularly.

13. On suggestion in the cross examination, the complainant has stated that he has given loan in the form of cash which he had saved in his house and the same is not mentioned by him in his complaint or notice Ex.C 3. When asked to the complainant that how he managed to arrange the 2nd installment, complainant initially answers he has borrowed from his elder brother and later states he has borrowed from his younger brother Vishwanath. When the complainant has borrowed 2nd installment from his brother, will he not be knowing Vishwanath is his elder or younger brother? all these aspects create suspicion in the mind of court regarding the version of complainant.

14.The accused has stepped in to the witness box and has stated that he does not know the complainant and there are no transaction or dealings between him and complainant but admits that he had many transactions with one Vijay and during one such transactions he had given 2 cheques and 1 bond to the said Vijay and after the transaction he has not collected his cheques and bond from Vijay. The complainant in his evidence has admitted that Vijay is his cousin and he was working under the accused.

15. The accused has denied that he had any financial crisis or has received any money for his domestic expenses from complainant. The accused has even pleaded his ignorance about complainant and Vijay hailing from same place.

16. In the supra stated decision of **Rajesh Jain v. Ajay Singh reported in 2023 INSC 888** the Apex Court has held that-

“40. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of ‘preponderance of probabilities’, similar to a defendant in a civil proceeding. [Rangappa vs. Mohan (AIR 2010 SC 1898)] 41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words ‘until the contrary is proved’ occurring in

Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist.

17. Though Ex.C.2 is the Bank Memo/endorsement discloses that the aforesaid cheque has been dishonored on 02-12-2020 for the reason of ***Other reasons*** and the legal notice as per Ex.C 3 is issued thereafter which this complaint is filed as per section 142 of NI Act, the complainant has failed to inspire the confidence of the court that he had advanced Rs.2,00,000/- to the accused as hand loan and to repay the same accused has handed over Ex.C1 to him. Complainant has failed to prove the existence of legally enforceable debt.

18. From the tenure of the cross-examination of the complainant it is clear that the accused has challenged the financial capacity of the complainant. In spite of opportunities, the complainant has not

produced any documents that he had a financial capacity to advance loan of Rs.2,00,000/- and there are contradictions as to when he has advanced the loan to the accused in his complaint and in his chief examination affidavit. It can be inferred that the complainant had no financial capacity to advance the loan of Rs.2,00,000/- to accused. Hence, in view of the above and on careful perusal of Ex,C9 it is doubtful that the complainant who runs the grocery had the financial capacity to lend the loan up to the tune of Rs.2,00,000/- specially in time of Covid-19 period. The standard of proving the defence is preponderance of probabilities and not proof beyond reasonable doubt. The same is also held in the decision reported in **2006 (3) Crimes 117 (S.C.) between M.S.Narayana Memon @ Mani V/s. State of Kerala and Another.**, that:

“To rebut the presumption available under Section 118 and 139 of N.I. Act, what was needed was to raise a probable defence, standard of proof would be preponderance of probabilities could be drawn not only from material on records, but also reference to circumstances upon which he relied”

19. The version of the accused in the present case is reasonable and probable that the complainant had no financial capacity to lend a loan of Rs.2,00,000/-. Even the transaction does not seem to be the real transaction between the complainant and accused. No ordinary prudent man can believe that, the complainant running ordinary grocery business could lend a loan of above amount. Even there are no supporting documents like IT return or regarding any other business undertaken by the complainant that too more importantly in the time of pandemic like Covid-19 to show that he was having the financial capacity to pay the accused the alleged cheque amount of Rs.2,00,000/-.

20. It is also the defense of the accused that the complaint is not filed within the period of limitation prescribed under section 142(1)(b) of NI Act 1881, but the Hon'ble Apex court in ***IN RE: Cognizance for extension of limitation*** has held that *"It is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings"*. Therefore in view of the above said decision of Hon'ble Supreme Court of India the complaint

filed by the complainant is to be treated as it was filed within the period of limitation.

21. In view of the above discussion and reasoning the complainant has failed to prove the existence of legally enforceable debt to repay which the accused had advanced that cheque marked as Ex.C1 and also the accused has successfully rebutted the case of complainant. The complainant has failed to prove his case. This Court is of the view that, cheque bearing No. 507795 dated: 07.02.2020 in favour of complainant for sum of Rs.2,00,000/- was not issued for discharge of legally recoverable debt. Hence, point No.1 is answered in **Negative**.

22. On Point No. 2 : In view of the above discussions and findings the accused is not found guilty for the offence punishable under Section 138 of N.I. Act. Having regard to the fact that the complainant has failed to prove the accusation against the accused. In view of the same the accused is entitled to be acquitted for the above said accusation. Thereby, proceed to pass the following:

:ORDER:

- *In exercise of Sec. 255 (1) of Cr.P.C., the accused is hereby acquitted for the Offence punishable U/Sec.138 of N.I. Act.*

- *Bail Bonds & surety bonds of accused stands discharged.*

(Directly typed by me on computer, corrected and then pronounced in the Open Court, by me, on this the 18th day of March, 2026.)

(Akshata T)
CIVIL JUDGE AND JMFC.,
HADAGALI

ANNEXURE

1. List of Witnesses examined for Complainant:

CW.1: Shashidar Roanada

2. List of Witnesses examined for Defence:

DW.1: Shamshuddin Rajesh Sab Malyakoppa

3. List of Documents marked for Complainant:

Ex.C.1 : Original Cheque.

Ex.C.2 : Return memo.

Ex.C.3 : Legal Notice.

Ex.C.4 : Postal receipt.

Ex.C.5 : Postal Acknowledgment.

Ex.C.6 &7: General license

Ex.C.8 : Kirani receipt.

Ex.C.9 : Bank statement

4. List of Documents marked for Defence:

-NIL-

(Akshata T)
CIVIL JUDGE AND JMFC.,
HADAGALI