KAGD040022932022

IN THE COURT OF THE I ADDL. CIVIL JUDGE & J.M.F.C.,I COURT GADAG.

Present: - Smt. Shilpa G. Thimmapur,
(B.A. LL.B (HONS) LL.M.)
I Addl. Civil Judge & JMFC.,I
Court Gadag .

DATED: - **THIS THE 08st DAY OF JULY, 2026.**

Criminal Case No.1866/2022

COMPLAINANT: Sri.Hareesh S/o Mallikarjun Devagannavar
Age: 29 Years, Occ: Business,
R/o. Ward No.33, teachers colony,
near zoo, Gadag, Tq:Dist: Gadag.

(By Sri.C.I.P., Advocate.)

Vs

ACCUSED: Pramod S/o Rachappa Gadagin,
Age: 25 years, Occ:business,
R/o. opposite Sharanabasaveshwar
temple, Gadaga,
Tq:Dist: Gadag.

(By Sri.C.R.D., Advocate.)

:: JUDGMENT ::

The complainant has filed this present complaint U/sec 200 of Cr.P.C. against the accused for having committed an offence P/U/Sec.138 of N.I. Act.

2. Brief facts of the complainant's case is as under:-

It is the case of the complainant that, complainant and accused are known to each other since 10-15 years ago and they are friends. On that basis the accused approached the complainant for the financial help to meet his family necessities and his business. As such, the complainant gave an amount of cash Rs.1,90,000/- to the accused on 05.03.2022. After receipt of the amount the accused promised the complainant to repay the hand loan amount within 2 months i.e., on 07.05.2022.

3. Even after repeated requests the accused did not repaid the amount. Thereafter, accused issued a post dated cheque on 06.05.2022 bearing cheque No.054662 for Rs.1,90,000/- drawn on Axis Bank Ltd, Gadag Branch in favour of complainant. As such the complainant presented the said cheque for encashment of amount of Rs.1,90,000/- to the Indian bank, Gadag Branch, on 10.05.2022. Unfortunately, on

11.05.2022 the same was returned to the complainant with endorsement as “50- Account closed”.

4. After receipt of endorsement, the complainant got issued legal notice on 30.05.2022 through R.P.A.D. calling upon the accused to repay the cheque amount within 15 days from the date of receipt of notice. The notice was not served to the accused and returned to the complainant with reasons as “Un claimed” on 07.06.2022. After lapse of 15 days from 07.06.2022 that from the date of return of statutory notice, the accused who was liable to pay the loan amount of Rs.1,90,000/- has failed to make payment, as such he has committed the offence P/U/Sec.138 of N.I. Act. With these allegations the complainant presented complaint U/Sec.200 of Cr.P.C. to take action against the accused.

5. After perusal of complaint and other documents, this Court has taken the cognizance and recorded the sworn statement. After satisfaction of sufficient materials to issue summons to accused this Court has issued summons to accused along-with copy of the complaint.

6. In pursuance of the summons the accused appeared and got enlarged on bail. After explaining the accusation, the plea was recorded. The accused pleaded not guilty and submitted that he has defense to offer.

7. As per the decision of the Hon'ble Supreme court Indian Bankers Association V/s Union of India, this court has treated the affidavit of complainant as evidence as per Section 145 (1) of N.I.Act and treated the complainant as PW-1. However, the provision is silent about the marking of the documents. Hence, this court in compliance of Section 273 of Cr.P.C., the documents were marked as Ex.P-1 to Ex. P.5. The complainant who is examined as PW-1 was cross examined by L/Advocate for accused.

8. Thereafter, the statement U/Sec.313 of Cr.P.C, was recorded by explaining the incriminating evidence against accused, for which the accused denied and submitted that he has defense evidence to lead. Accused examined himself before this Court as DW-1 and got marked Ex.D-1 to 8. DW-1 is cross examined by learned advocate for Complainant.

9. Heard arguments of counsel for accused. Perused the oral and documentary evidences and materials on record.

10. The following points arise for determination of this case:

1) Whether the complainant proved satisfactorily that the accused had issued *cheque bearing 054662 dated 06.05.2022 to discharge the legally enforceable debt due to the complainant and on presentation they were dishonored & reported with an endorsement as "50- account closed" and he did not make payment of the amount of the same within the time stipulated after statutory notice, and thereby he has committed an offence Punishable Under Section 138 of N.I. Act?*

2) What order?

11. The findings to the above points are as under:

Point-1:- In the Negative.

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

R E A S O N S

12. Point No.1:- The complainant has filed the present case against the accused stating that, there was a transaction between himself and accused. To that effect the accused has issued cheque for an amount of Rs.1,90,000/-. On presentation of the same, it was dishonoured. As such, he has filed the present case against the accused contending that, accused has committed an offence Punishable U/Section 138 of N.I. Act. In order to bring home the guilt of the accused the complainant has to satisfy the following conditions specified under section 138 of N.I. Act, they are summed up as follows:-

1. There shall be legally enforceable debt.

2. In discharge of that debt accused must have issued cheque.

3. The cheque in question must be presented within 3 months from the date of which, it is drawn.

4. And demand shall be made within thirty days from the date of receipt of information of return of cheque as unpaid.

5. The accused must have failed to make payment within 15 days of the receipt of the said notice.

13. The complainant has produced Ex.P-1 cheque bearing No. 054662 dated 06.05.2022 for Rs.1,90,000/- drawn on Axis bank Ltd., Gadag Branch in favour of complainant for total amount of Rs.1,90,000/- issued by the accused for repayment of hand loan to the complainant. The complainant presented said cheque on 10.05.2022 and it was returned as unpaid on 11.05.2022 as per Ex.P-2. Complainant got issued legal notice on 30.05.2022 within 30 days from the receipt of

Ex.P-2 as per Ex.P.3, Ex.P.4 is the postal receipt, Ex.P.5 is the postal Cover. Even after lapse of 15 days the accused has failed to make a payment of above said cheque amount.

14. The complainant successfully satisfied the conditions mentioned U/Sec. 138 of N.I. Act and a presumption has arisen in favour of complainant U/Sec.139 of N.I. Act, which is extracted as below:

> ***"139: Presumption in favour of holder. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 of for the discharge, in whole or in part, of any debt or other liability."***

15. Though the presumption raised U/Sec.139 of N.I. Act is not absolute but it is rebuttable presumption. The accused can rebut this presumption by leading or bringing the best evidence before the Court.

16. At the time of cross examination of PW-1 L/Advocate for accused put forth his defence and contended that, there was no transaction between the accused and complainant as alleged in the complaint. The cheque was issued as security purpose. The accused is not bound to repay any amount to the complainant. The accused has not issued any cheque in favour of complainant for the alleged transaction.

17. Coming to the merits of the case, in the case on hand the accused has disputed the issuance of cheque in favour of the complainant, but has not disputed his signature in the cheque . But the accused has not taken any action against the complainant for the above allegation till today. Therefore, mandatory presumption U/s.139 of N.I. Act is drawn in favour of the complainant in respect of issuance of cheque towards discharge of legally enforceable debt or liability. It is also to be noted that, the presumption mandated under section 139 of N.I. Act would also extends to the extent of liability as to the existence of debt as on the date of cheque. **The Hon'ble Apex Court in the decision reported in AIR 2010 SC 1898 in Rangappa Vs. Sri Mohan clearly held that,** *"presumption mandated by Section 139 of NI Act does indeed include the existence of legally enforceable debt or liability, this is of course in the nature of rebuttable presumption and it is open to the accused to raise defense whether the existence of legally enforceable debt or liability can be contested. However, there can be no doubt that, there is an initial presumption which favors the complainant.".*

18. From the above it is clear that, the presumption mandated by section 139 of N.I. Act is not at all a conclusive proof and on the other hand the same is rebuttable in nature. The accused can rebut the presumption by raising a probable defence. For this purpose the accused need not adduce evidence on his own in some cases and he can rely upon the evidence materials placed by the complainant and also the circumstances under which the complainant has relied upon to prove his case. Therefore, the standard of proof for rebuttable of the presumption by the accused is 'preponderance of probabilities'.

19. With these aforesaid settled legal principles let this Court embark upon the defence raised by the accused in this case. It is the specific defence of accused that, the cheque in question was not issued by the accused to complainant for the transaction referred in complaint and it was misused by complainant by filling the above false case.

20. While cross examining PW-1 counsel for accused has questioned about the previous case between complainant and accused. PW-1 states that he has filed case against the accused in the year 2019 for dishonour of cheque which is registered in C C No. 174/2019. PW-1 states that the same was compromised between them. PW-1 denies the suggestion that the cheque given at the time of C C No. 174/2019 is misused.

21. It is the burden on the accused to disprove the case of the complainant when there is strong presumption available in favour of the complainant under section 139 of N.I. Act. It is well settled position that, the burden of complainant in prosecution under section 139 of NI Act will be discharged with the aid of presumption of law and facts.

22. The Hon'ble Apex Court in **Criminal Appeal Nos. 230231/2019 in Bir Singh Vs Mukesh Kumar,** the Hon'ble Apex Court held that; Negotiable Instruments Act (26 of 1881), S 138, S.139-Evidence Act (1 of 1872), S.4 Presumption U/s 139 Is presumption of law, distinguished from presumption of facts Presumptions are rules of evidence and do not conflict with presumption of innocence, which requires prosecution to prove case against accused Obligation on prosecution may be discharged with aid of presumptions of law and presumptions of fact unless accused adduces evidence showing reasonable possibility of nonexistence of presumed fact.

23. Applying the principle enunciated by the Hon'ble Apex Court, heavy burden cannot be put on the complainant unless the accused able to raise a probable defence and probablize the same by cogent material evidence. In this case accused examined himself as DW-1 and produced documents which are marked as Ex. D-1 to 8. DW-1 has deposed that in the year 2018 there was transaction between himself and complainant. DW-1 has produced documents of C C No. 174/2019. Ex. D-4 is the cheque produced in C C No. 174/2019. Ex. D-5 is the memo of the bank. The said cheque is also dishonoured with endorsement as Account Closed. So the said fact becomes important and relevant.

24. So with these points the accused has raised doubt in the case of the complainant. The accused has to brought on record something which is probable in rebuttal of presumption. The accused raised points which has shaken the presumption. So when the accused has raised the probable defence, the complainant has every chance to disprove the said defence. But in the case on there are no efforts by the complainant. Very important that the complainant has not pleaded the earlier transaction between himself and the accused, which becomes relecant. Under such circumstances, it is to be held that, Ex.P.1

cheque in question was not issued by the accused towards discharge of his legally enforceable debt or liability.

25. The accused has to make out a probable defence in rebuttal of presumption. The defence raised by the accused in this case is probabalize and therefore, it is to be held that, the Ex.P-1 cheque in question was not issued towards discharge of legally enforceable debt.

26. Sec.139 of N.I. Act raised a presumption in favour of the holder of cheque that, unless contrary is proved, it shall be presumed that cheque was issued for the legally enforceable debt or liability. In this case the accused has raised a serious doubt in the case of the complainant which rebutted presumption. As such, it can be said that, complainant has failed to prove the legal enforceable debt or liability. Therefore, on the available documents and evidence on record it is sufficient to hold that, there is sufficient evidence brought on record as well as circumstance shown by the accused to doubt the case of the complainant. Hence, it is clear that, the accused has not issued Ex.P.1 cheque in favour of the complainant for discharge of legally enforceable debt. Therefore, legal presumption under section 139 of NI Act cannot be drawn in favour of the complainant. Hence, this court answered the point No.1 in the " Negative".

27. **Point No.2:-** Since the complaint has failed to prove the case beyond reasonable doubt that the cheque in question was issued towards discharge of legally enforceable debt or liability, the benefit of doubt is extended to the accused. In view of the reasons stated in the point No.1, this court proceed to pass the following;-

O R D E R

By acting U/s 255(2) of Cr.P.C., the accused is hereby acquitted for the offence punishable U/Sec.138 of N.I Act.

The accused shall execute bail bond and surety U/Section 437(A) of Cr. P.C.

(Dictated to the stenographer, typed by her on computer and corrected by me, then pronounced in the open Court on this day of 08th July 2026)

SHILPA G TIMMAPUR

Digitally signed by SHILPA G TIMMAPUR
Date: 2026.07.10 18:32:17 +0530

(Shilpa G. Thimmapur)
I Addl. Civil Judge and JMFC.,I Court Gadag.

ANNEXURE

1. List of witnesses for the Complainant:-

PW.1 : Sri.Hareesh S/o Mallikarjun Devagannavar

2. List of Documents for the Complainant:-

Ex.P-1	:-	Cheque
Ex.P.1(a)	:-	Signature for accused
Ex.P-2	:-	Bank return memo
Ex.P.3	:-	Legal notice
Ex.P.4	:-	Postal receipt
Ex.P.5	:-	Postal Cover

3.List of witnesses for the Accused:-

DW.1 : Pramod S/o Rachappa Gadagin

4.List of documents for Accused:-

Ex.D.1	:-	Complaint in CC No.174/2019
Ex.D.2	:-	Application U/sec.147 of NI Act in CC No.174/2019
Ex.D.3	:-	Order sheet in CC No.174/2019
Ex.D.4	:-	Certified copy of cheque
Ex.D.5	:-	Certified copy of Memo

Ex.D.6	:-	Certified copy of Legal notice
Ex.D.7	:-	Certified copy of postal cover
Ex.D.8	:-	Certified copy of notice

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