

KAVP010068622025



Presented on : 10-09-2025

Registered on : 12-09-2025

Decided on : 01-08-2026

**IN THE COURT OF IV ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VIJAYAPUR, AT: VIJAYAPUR**

Dated this the 1st day of July 2026

PRESENT

SHRI Gangappa Irappa Patil

B.A., LL.B.(Spl.)

IV Addl. District & Sessions Judge
Vijayapur

Crl.A.No.63/2025

**Appellant/
Accused:**

Franky,
Proprietor of J.M.J. Electrical Karwar,
Krista Jayanti Complex,
Opp-Saint Joseph Scool,
Kaju Baag Karwar.

(By Sri. V.B.Dhanashetti, Advocate)

-V/S-

**Respondent/
Complainant**

S.B.Bagewadi,
Age: 50 years, Occ: Business,
R/o: S.B.Electrical Shahapeth Road,
Ganapati Chowk, Vijayapur.

(By Sri. D.S.Parasanalli, Advocate)

JUDGMENT

This appeal is filed by the Appellant praying to set-aside the judgment of conviction dated 11.8.2025 passed by the 1st Additional Civil Judge & JMFC 1st Court Vijayapur in C.C.No.3040/2017 and to acquit him in the said case.

2. The appellant of this appeal was the accused before the Trial Court. The respondent of this appeal was the complainant before the Trial court. The rank of the parties to this appeal will be hereinafter referred to with the same rank as assigned to them before the trial court for the sake of convenience.

3. **The brief facts which leads to file this appeal in nutshell are as follows:**

The complainant is running electrical shop under the name and style S.B. Electrical, Vijayapura. The accused is running the shop under the name and style J.M.J Electrical, Karwar. The accused is well acquainted with complainant and frequently purchased electrical

materials from complainant's shop. The accused has purchased electioal materials for Rs.2,57,625/- on 23.12.2015 and agreed to pay said amount within 45 days. The complainant approached the accused and demanded said balance amount. Then the accused issued cheque bearing No.828323 dated 16.9.2016 for Rs.1,00,000/- drawn on Corporation Bank, Kaikini Road, Karwar branch. The complainant presented the said cheuqe through his banker Syndicate Bank, Vijayapura for encashment, but the said cheque was returned dishonored with endorsement "Funds Insufficient" on 17.09.2016. The accused with an intention to cheat and dupe the loan amount has issued the said cheque. Thereafter the complainant issued legal notice dated 27.09.2016 to the accused through RPAD. The accused has received the said notice on 29.09.2016. The accused did not pay the amount. Hence the complainant constrained to file the suit.

4. After perusal of the material available on record and on prima facie material grounds, the trial Court took cognizance and thereafter sworn statement has been recorded and summons was issued to Accused. After service of summons, the Accused appeared through his counsel and got himself enlarged on bail and substance of accusation was recorded as to the alleged offence under Section 138 of Negotiable Instrument Act. The Accused pleaded not guilty and claimed to be tried.

5. In order to substantiate his case, the Complainant has been examined himself as PW.1 and Ex.P.1 to Ex.P.5 are marked. The accused did not lead any evidence.

6. After completion of evidence of complainant's side, the statement of accused under section 313 of Cr.P.C was recorded. The accused denied all the incriminating circumstances appearing against him in the evidence to be false.

7. The trial court, after hearing the arguments and after perusing the oral and documentary evidence available on record, passed the impugned judgment by convicting the accused for the offence punishable u/Sec.138 of N.I. Act. The accused being aggrieved by the said judgment of the trial court has preferred this appeal.

8. Grounds of appeal in nutshell as urged in the appeal memorandum are as follows:-

- a) The judgment passed by the trial court is contrary to the law and facts and same is erroneous.
- b) The trial court ought to have acquitted the accused.
- c) The trial court committed serious error by convicting the accused.
- d) The trial court has not at all provided proper opportunity to the appellant.
- e) The trial court has not at all provided proper opportunity to the appellant.
- f) It is the fact that, the innocence of the accused should be proved in the criminal

case, by cross examining the witness, and in the present case on hand, no opportunity has given to the appellant.

- g) The appellant suffered from lack of opportunity and due to the lack of opportunity, the appellant unable to prove his defence.
- h) The trial court ought to have held that, since, the appellant though allegedly issued the cheque to the respondent, but, the burden is on the respondent to prove the payment at the first instance, but, in the present case on hand, the trial court observed that, only the issuance of cheque itself suffice to prove the offence as alleged, which is totally erroneous.
- i) The trial court, ought to have held that, since, the complainant has to prove the legally recoverable debt, in which the he has to succeed in proving the said fact, and in the complaint or in the evidence i.e., in examination in chief, there is no whisper in respect of the cheque amount is the legally recoverable debt.
- j) In the absence of the pleadings and also evidence regarding the legally recoverable debt, the conviction is unsustainable.
- k) The observations and reasoning of the trial court are all contrary to the law and facts and same is erroneous.

- l). The trial court totally mis interpreted the guidelines of the Hon'ble Supreme Court and also totally mis read the same.
- m) The trial court only comes to the conclusion that, since, the issuance of cheque is an offence and thereby, convicted the appellant.
- n) The trial court ought to have held that, since, there is no opportunity given to the appellant and under, such a circumstances, the proof of the offence only by considering the examination in chief is totally erroneous.
- o) The trial court totally misread and misinterpreted the provisions of Sec. 139 of N.I. Act, and the trial court ought to have held that, since, the statutory notice not served on the accused and when the notice is not served on him, then the respondent is not liable to file the complaint.
- p) As per the provisions of law, the statutory notice required to be served on the accused and in case, the accused not complied with the notice, then only, the complainant is having liberty to file the complaint.
- q) The finding of the trial court that, the notice on the appellant deemed to be

served, is not at all liable to be considered and thereby, the complaint itself against the appellant is not tenable in view of the non compliance of the mandatory provisions.

- r) Therefore, looking into the facts and circumstances of the case, it is proper to remit the matter, by providing opportunity to the appellant, to prove his case.
- s) The opportunity should be given to the accused in every case, to prove the case as the basic principle is that, the offence should be established beyond all reasonable doubt and in case any of the doubt arose, then the accused liable to take benefit of doubt, which is available in the present case on hand.

On these and other grounds as urged in the appeal memorandum, the appellant has prayed to allow the appeal and prayed to acquit him for the offence punishable u/s.138 of NI.Act.

9. After filing of the appeal, it is registered as Crl.A.No.63/2025 and notice was issued to the respondent. After service of the notice, the respondent has appeared before the court through his counsel.

Thereafter, the trial court record was called for. After securing the trial court record, the matter was posted for arguments.

10. Heard the arguments of the learned counsel for the appellant. Perused the appeal memorandum, the trial court record and other materials available on record. Perused the written argument furnished by the learned counsel for the respondent.

11. The points that arisen for consideration before this court are as under:

- (1) Whether the judgment passed by the trial court is just and proper and in accordance with law?
- (2) Whether the interference of this court is required in the impugned judgment of the trial court?
- (3) What order?

12 The findings on the above points are as under:

- (1) Point No.1 : In the **Affirmative**
- (2) Point No.2 : In the **Negative**
- (3) Point No.3 : As per final order for the following:

REASONS

13. **Point No.1 and 2:-** These points are interrelated to each other and as such, they are taken together for discussion to avoid repetition of facts.

14. The complainant had filed private complaint before the trial court u/Sec.200 of Cr.P.C. by alleging the commission of offence u/Sec.138 of N.I. Act by the accused. In order to substantiate his case, the Complainant has been examined himself as PW.1 and Ex.P.1 to Ex.P.5 are marked. The accused did not lead any evidence.

15. It is the case of the complainant that the complainant is running electrical shop under the name and style S.B. Electrical, Vijayapura. The accused is running the shop under the name and style J.M.J Electrical, Karwar. The accused is well acquainted with complainant and frequently purchased electrical materials from complainant's shop. The accused has

purchased electrical materials for Rs.2,57,625/- on 23.12.2015 and agreed to pay said amount within 45 days. The complainant approached the accused and demanded said balance amount. Then the accused issued cheque bearing No.828323 dated 16.9.2016 for Rs.1,00,000/- drawn on Corporation Bank, Kaikini Road, Karwar branch. The complainant presented the said cheque through his banker Syndicate Bank, Vijayapura for encashment, but the said cheque was returned dishonored with endorsement "Funds Insufficient" on 17.09.2016. The accused with an intention to cheat and dupe the loan amount has issued the said cheque. Thereafter the complainant issued legal notice dated 27.09.2016 to the accused through RPAD. The accused has received the said notice on 29.09.2016. The accused did not pay the amount.

16. In order to substantiate his case, the Complainant has been examined himself as PW.1 and Ex.P.1 to Ex.P.5 are marked. The accused did not lead

any evidence. Ex.P.1 is the cheque bearing No.828323 dated 16.9.2016 for Rs.1,00,000/-, Ex.P.2 is the Bank memo dated 17.9.2016, Ex.P.3 is the legal notice dated 28.9.2016, Ex.P.4 is the postal receipt, Ex.P.5 is the acknowledgment.

17. On perusal of oral and documentary evidence produced by the complainant it reveals that there is monetary transactions between accused/appellant and respondent/complainant. To attract Section 138 of N.I. Act the ingredients of the N.I. Act shall be complied. The ingredients of Section 138 of the N.I. Act are as follows;

(a) The cheque has been drawn by the accused on Bank account which is maintained by him with a particular Banker.

(b) The amount of money mentioned in the cheque is for discharging the legal liability either wholly or partially and

(c) The cheque is dishonoured or it is returned unpaid due to insufficiency of funds etc.,

(d) Issuance of notice in writing to the drawer of the cheque demanding payments of the cheque amount.

(e) Failure of the drawer to make payment within receipt of the demand notice.

18. On perusal of Ex.P1 to 5 and evidence of the complainant it is prima facie forthcoming that the complainant has complied all the statutory conditions stipulated u/sec. 138 of the NI Act. Hence he is entitled to have the benefit of presumption u/sec. 118 and 139 of the N. I Act. In view of the aforesaid reasons, it can be said that the complainant has proved the initial burden casted upon him to avail the presumption available u/sec. 118 And 139 of the N.I Act.

19. On perusal of the plea recorded by the trial court and statement of accused recorded U/s 313 of Cr.P.C. it discloses that accused has denied the case of the complainant and issuance of cheque. But on perusal of signature on Ex.P-5 cheque, signature of

accused on vakalat, signature of accused in plea and signature of accused in the statement recorded U/s 313 of Cr.P.C are all one and the same. Hence at this juncture the same prima facie shows that the cheque at Ex.P-5 belongs to accused. However he has not substantiated how the cheque at Ex.P-5 was went to the hands of complainant.

20. On perusal of records it is forthcoming that the trial court has given sufficient opportunity to the accused/appellant to conduct the cross-examination of complainant/PW-1 who is respondent herein. Inspite of that opportunity, the appellant/accused not exhausted said remedy available to him before the trial court and now before this court he is praying to remand the case to have cross-examined the complainant. Hence under these circumstances, the contentions of appellant for remanding the matter for the purpose of cross-examination not tenable in eye of law. Moreover the appellant has not disputed the transactions between himself and respondent/complainant, even no defence

has been put-forth by the appellant disputing drawing of cheque in favour of the respondent/complainant. Further the accused has not made out under what circumstances the cheque in questions is handed over to the complainant/respondent. But the complainant is having possession of the cheque which bears signature of the accused is having presumption in eye of law, same is not been disputed by the appellant/accused. The accused has not rebutted the presumption available u/sec. 118 and 139 of the N.I. Act.

21. In the recent decision of Hon'ble Supreme Court of India reported in **(2021) 5 Supreme Court cases 283 : 2021 Online SC 75 (Kalamani Tex and another V/s P.Balasubramanian)**, rendered by Hon'ble three judges bench, the Hon'ble Supreme Court of India has discussed about the provisions of Sec.139 and 118 of N.I.Act. In the said judgment, the Hon'ble Supreme Court of India has held in Para No.13 while discussing the provisions of Sec.118 and 139 of

N.I.Act, that the statute mandates that once the signature of an accused on the cheque is established, then these “reverse onus” clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. As being the fact the appellant/accused not rebutted the presumption available to the complainant either by cross-examining by PW-1 or by leading his evidence and adducing cogent evidence.

22. It is settled principle of law that this court being appellate court and as the judgment under challenge is the judgment of conviction of the Trial Court, unless there is perversity in the finding of the judgment of the Trial Court, the appellate court shall not interfere in the impugned judgment. The judgment of the Trial Court clearly indicates that the learned Magistrate has raised proper points for consideration and has discussed the evidence in detail. The trial Judge has referred the citations of the Hon’ble Supreme Court of India. The learned Magistrate has

discussed the oral and documentary evidence and it has considered the presumption available u/sec. 139 and 118 of the NI Act based on the evidence and has rightly come to the conclusion that the complainant has succeeded in establishing its case regarding the legally recoverable debt.

23. After going through the argument of learned counsel for the appellant and the grounds made out in the appeal memo, this court feels that the appellant has not made out any grounds to set aside the impugned judgment. As such, this court is of the opinion that the impugned judgment of the trial court is deserves to be confirmed and appeal filed by the appellant is deserves to be dismissed. Accordingly, this court answers **Point No.1 in the Affirmative and Point No.2 in the Negative.**

24. **Point No.3:-** In view of the findings on point No.1 and 2, this court proceeds to pass the following:

ORDER

The Appeal filed by the appellant u/s.374(3) of Cr.P.C., is hereby **dismissed**.

The judgment of conviction and sentence dated 11.8.2025 passed by the 1st Additional Civil Judge & JMFC 1st Court Vijayapur in C.C.No.3040/2017 is hereby **confirmed**.

The respondent is at liberty to get release the amount deposited by the appellant at Trial Court.

Send back the Trial court records along with copy of this judgment.

(Dictated to the Stenographer on Computer, script thereof is corrected, signed and then pronounced by me in the open court on this the 1st day of August 2026.)

(GANGAPPA IRAPPA PATIL)
IV Additional Sessions Judge,
Vijayapura.