KABC020108082025

IN THE COURT OF THE XII ADDL. JUDGE, COURT OF SMALL CAUSES & ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU (SCCH-08)

DATED THIS THE 1st DAY OF JULY– 2026

PRESENT: **Smt. Kannika M.S.**
B.A., LL.B.
XII ADDL. SCJ & ACJM,
MEMBER – MACT, BENGALURU.

C.C. NO: 6520/2025

Complainant	:	**Sri. Hemanthkumar D.N.,** S/o. Devalingengowda H.D., Aged about 42 years, No.02, Manjunatha Building, Ground Floor, 80 Ft. Kathiguppe Main Road, Near Vidhyapeetha Circle, BSK IIIrd Stage, Bangalore – 560085.

(By M.S. Associates, Advocate)

:Vs:

Accused	:	**Sri. Avikiran B.T.,** S/o. Thammegowda, Aged about 36 years, Residing at No.110, Near Kalyana Mantapa, Bidarakote Village, Koppa Hobli, Maddur taluk, Mandya District - 571425 And also available at: Sri. Avikiran B.T., S/o. Thammegowda,

M/s. Sree Someshwra Mobile Sales
Service and Electrical shop,
Aged about 36 years,
Shop at Hallegere Village,
Bidarakote Main Road,
Keragodu Hobli,
Mandya Taluk,
Mandya District – 571446.

(By Sri.Manjunatha S., Advocate)

Date of complaint	:	12.02.2025
Date of commencement of Evidence	:	10.03.2025
Offence charged	:	Sec.138 of N.I. Act.
Date of Judgment	:	**01.07.2026**
Opinion of the Judge	:	**Accused is found Guilty**

J U D G M E N T

The Complainant has filed a private complaint under Sec.200 of Cr.P.C., alleging that the accused has committed an offence punishable under Sec.138 of N.I.Act.

02. The sum and substance of the complainant's case is as follows:

The complainant and accused are well known to each other from past several years. The accused requested to complainant to lend hand loan of Rs.6 lakhs to develop his business and other legal necessities by assuring to repay the said amount within two months and the complainant paid said amount on 04.1.2024 by way of cash. Thereafter, towards payment of liability, the accused issued cheque bearing No.482588 for Rs.6,00,000/- dated27.12.2024, drawn on State Bank of India, Hallegere branch, Mandya Dist. As per the instructions of the accused, the complainant presented said cheque for encashment through his Banker namely Bank of India, Kathriguppe branch, Bengaluru, but the said cheque got dishonoured and returned with an endorsement for the reason “Funds Insufficient” on 30.12.2024. Thereafter the complainant issued a legal notice to both addresses of the accused on 10.01.2025 through RPAD demanding to pay the amount, and the same was served to the accused. The accused has not paid the amount. Hence the accused has committed an offence punishable under Section 138 of NI Act.

3. Cognizance was taken and sworn statement of the complainant was recorded. Since there were sufficient materials to proceed against the accused, the summons was issued to accused. Accused appeared through his counsel and got enlarged on bail. Substance of accusation was framed, read over and explained to the accused in the language known to him, he denied the same and claimed to be tried. Hence, the case was posted for complainant's evidence.

4. In order to prove his case, the complainant got himself examined as PW-1 and got marked 7 documents at Ex.P1 to Ex.P7(a) and closed his evidence. The accused has not led his defence evidence.

5. I have heard the arguments and perused the entire records in this case.

6. The following points arise for my consideration:

1. Whether the complainant proves beyond reasonable doubt that, the accused has issued the cheque bearing No.482588 dated 27.12.2024 for a sum of Rs.6,00,000/- drawn on State Bank of India, Hallegere branch, Mandya Dist. and the complainant presented the said cheque for encashment, but the said cheque returned on 30.12.2024 with an endorsement as "Funds Insufficient" ?

2. Whether the complainant further proves beyond reasonable doubt that he has got issued the legal notice dated: 10.01.2025 to the accused demanding the cheque amount from the Accused within 15 days from the date of receipt of the notice, the said legal notice is duly served on the accused, but the accused has failed to make the payment of the cheque amount well within the prescribed time and there by committed an offence punishable under section 138 of Negotiable Instrument Act?

3. What order?

07. My findings on the above points are as under:

Point No.1	**:**	In the Affirmative
Point No.2	**:**	In the Affirmative
Point No.3	**:**	As per final Order for the following:

R E A S O N S

08. Points No.1 and 2: I propose to discuss these points together for common discussion to avoid repetition of facts and for appreciation of evidence.

09. It is the specific case of the complainant that, the accused has borrowed an amount of Rs.6,00,000/- from the complainant. Further, towards repayment of the due amount the accused has issued a cheque for an amount of Rs.6,00,000/- bearing No.482588 dated 27.12.2024 drawn on State Bank of India, Hallegere branch, Mandya Dist. and by believing the words of the accused the complainant presented the cheque for en-cashment, but the said cheque was returned unpaid for the reason Funds Insufficient on 30.12.2024. Thereafter the complainant issued notice to the accused on 10.01.2025 calling upon to make payment of the cheque amount and the same was served. The accused has not paid the amount.

10. The complainant himself examined as PW.1 and produced 7 documents marked as Ex.P1 to P7(a) and signature of accused marked as Ex.P1(a). Ex.P1 is the cheque bearing No.482588 dated 27.12.2024 for a sum of Rs.6,00,000/- drawn on State Bank of India, Hallegere branch, Mandya Dist. & pay in slip, Ex.P2 is the Bank endorsement, Ex.P3 is the Notice issued by complainant counsel on 10.01.2025 to the accused to pay the cheque amount and also stated the dishonour of the cheque when the same was presented. Ex.P4 & 5 are the postal receipts, Ex.P6 is the postal acknowledgment, Ex.P7 & 7(a) are the opened postal cover with legal notice.

11. The complainant filed the complaint against the accused alleging that the accused committed an offence punishable under section 138 of N.I. Act. Hence Section 138 and 139 of the Negotiable Instrument Act are set out herein below for convenience:

138- Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount

of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

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 for the discharge in whole or in part of any debt or other liability.

12. The object of section 138 of the Negotiable Instruments Act is to infuse credibility to negotiable instruments including cheque and to encourage and promote the use of negotiable instruments including cheque in financial transactions. The penal provision of Section 138 of the Negotiable instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheque without serious intention to honour the promise implicit in the issuance of the same.

13. The date of cheque is 27.12.2024, and the complainant presented the cheque within time on which it is drawn. Subsequently the complainant issued a notice through his advocate within the prescribed period as per Ex.P3 after receipt of the endorsement from the bank. Thereafter the complainant filed the complaint within time as contemplated U/Sec. 138 of NI Act.

14. The next question is, whether the amount mentioned in the cheque is for a legally recoverable debt or for other liability. The interpretation of the expression for discharge of any debt or other liability occurring in section 138 of N.I. Act is significant and decisive in matter. The explanation appended to section 138 express the meaning of the expression debt or other liability for the purpose of section 138. This expression means a legally enforceable or other liability. Section 138 treats dishonour of cheque as an offence if the cheque has been issued in discharge of debt or any other liability. The explanation leaves no manner of doubt that to attract an offence under section 138 there should be legally enforceable debt or other liability. The accused has not cross examined the PW.1 and not rebutted the evidence of the complainant. The accused filed joint memo and has admitted the claim of the complainant thereby admits the issuance of cheque and the signature contained in the cheque. The moment when accused admitted the signature contained in cheque then there is a presumption in favour of complainant under section 118 and 139 of N.I. Act. As per section 118 of N.I. Act there is a presumption as to consideration, as to date, as to time of acceptance, as to time of transfer etc until the contrary is proved. As per section 139 of N.I. Act there is a presumption in favour of the complainant that the cheque was issued for discharge of debt or other liability. The said presumption is a legal presumption and it is in favour of the holder of cheque. It is open to the accused to rebut the said presumption. The accused has not rebut the presumptions which is available in favour of the complainant.

15. It is the mandate of Section 139 that there is a presumption in favour of the holder of the cheque that the holder received the cheque of the nature referred to in section 138, for the discharge in whole or in part or other liability. Needless to mention that the presumption contemplated under section 139 of N.I. Act is a rebuttable presumption. However the onus of proving that the cheque was not in discharge of any debt or other liability is on the drawer of the cheque/accused. In **Hiten P Dalal V/s Bratindranath Banerjee** reported in **2001 (6) SCC 16** the Hon'ble Supreme Court held that both section 138 and 139 require that the court shall presume the liability of the drawer of the cheque for the amounts for which the cheque are drawn.

Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under section 139 of N.I.Act is a presumption of law, as distinguished from presumption of facts.

In **Laxmi Dyechem V/s State of Gujarat and others** reported in **2012 (13) SCC 375,** the Hon'ble Supreme court reiterated that in view of section 139 it has to be presumed that a cheque was issued in discharge of a debt or other liability but the presumption could be rebutted by adducing evidence. The burden of proof was however on the person who wanted to rebut the presumption.

In **K.N. Beena V/s Muniyappan and Anothers** reported in **2001(8) SCC 458,** the Hon'ble Supreme court held that in view of the provisions of section 139 of the N.I.Act read with section 118 thereof the court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the contrary. The accused had to prove by cogent evidence that there was no debt or liability. In the present case the accused neither cross examined the PW.1 nor lead evidence to disprove the presumption available infavour of the complainant.

16. Both the parties agreed and filed joint memo on 25.05.2026. On perusal of the joint memo it goes to show that, both the parties have agreed and settled the matter for **Rs.2,50,000/-** as full and final settlement towards the cheque amount. The accused has agreed to pay the said amount in 25 monthly installments of Rs.10,000/- each every month commencing from 15.06.2026 till 15.06.2028. The complainant has also agreed to receive the same from the accused as per the terms mentioned in joint memo. The accused entered into settlement since he borrowed amount from the complainant and she issued cheque which was dishonoured. Hence the accused has committed an offence. **Accordingly, I answered the point No. 1 and 2 in the Affirmative.**

17. Point No.3: In view of the foregoing reasons, the accused is found guilty for the offence punishable Under section 138 of N.I. Act. As per section 138 of N.I. Act the court may punish the accused with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of cheque or both. The N.I. Act is a special statute and as such section 29 of Cr.P.C does not come in the way to impose fine of more than 10,000/- by the Magistrate. Accordingly, I proceed to pass the following:

: ORDER:

The accused is found guilty of the offence punishable Under section 138 of N.I. Act.

Acting under section 255(2) of C.R.P.C the accused is hereby convicted for the offence punishable under section 138 of N.I. Act and sentenced to pay fine of **Rs.2,50,000/-**. Failing which the accused shall undergo simple imprisonment for a period of 3 months.

After deposit of the amount, the complainant is entitled to receive the said amount or if the accused not deposited then he can pay the amount to the complainant through cheque or DD or before the court.

It is made clear that in view of Sec.421(1) of Cr.P.C even if the accused undergoes the default sentence imposed above, he is not absolved of liability to the fine amount.

The bail of and surety bonds stands cancelled.

Supply a copy of judgment to the accused at free of cost.

(Dictated to the Stenographer directly on computer, typed by her, the same is corrected and then pronounced by me in the Open Court on this **1st day of July 2026)**

KANNIKA M S

Digitally signed by KANNIKA M S
Date: 2026.07.29 10:27:37 +0530

(Kannika M.S.)
XII Addl. Judge & A.C.J.M,
Court of Small Causes, Bengaluru.

ANNEXURE

WITNESSES EXAMINED BY COMPLAINANT:

PW.1 : Sri. Hemanthkumar D.N.

LIST OF DOCUMENTS MARKED BY COMPLAINANT:

Exhibits	Particulars of the Document
Ex.P1	Cheque
Ex.P1(a)	Signature of Accused on Ex.P1
Ex.P2	Bank endorsement
Ex.P3	Legal notice
Ex.P4 & 5	Postal receipts
Ex.P6	Postal acknowledgment
Ex.P7 & 7(a)	Opened postal cover with notice.

LIST OF WITNESSES EXAMINED FOR DEFENCE: None

LIST OF DOCUMENTS EXHIBITED FOR DEFENCE: Nil.

KANNIKA M S Digitally signed by KANNIKA M S Date: 2026.07.29 10:27:42 +0530

(Kannika M.S.)
XII Addl. Judge & A.C.J.M,
Court of Small Causes, Bengaluru.