



**IN THE COURT OF II nd ADDL.DISTRICT AND
SESSIONS COURT, YADGIR,**

SITTING AT SHORAPUR.

:PRESENT:

**Sri. Yamanappa Bammanagi, B.A.LL.B (Spl.)
II nd Addl. District & Sessions Judge, Yadgir,
sitting at Shorapur.**

DATED THIS THE 25th DAY OF JULY, 2026.

CrI.A.No.5001/2026

Appellant

Complainant: Shantagouda S/o Bhimarayagouda,
Age: 51 years, Occ: Agriculture,
R/o Koti Moholla,Tq: Shahapur,
Dist: Yadgiri.

(By Sri.Nandkishore Boob. Adv.,)

V/s

Respondent

Accused: J.Veeraprasad, Age: 51 years, Occ:
Business, R/o Sai Nagar, village
Devapur, Tq: Shorapur, Dist: Yadgiri-
585224, now presently residing as
under; J Veera Prasad S/o
Hanamantappa, Age: 57 years, Occ:
Business, R/o Basapattana, Tq:
Gangawathi, Dist: Koppal-583235.

(Ex-parte)



JUDGMENT

Being aggrieved by the order dated 14.10.2025, passed by the Ld. Prl.Civil judge and JMFC court Shorapur, in CC No.2166/2022, dismissed the private complaint filed by the appellant/complainant against accused for the offence P/U/sec.138 of NI Act for default, the complainant/appellant is before this court challenging the correctness and legality of the same.

The parties are referred as per their ranks before the trial court for conveniences of the court, the appellant is complainant in CC No.2166/2022, the respondent is accused in the said case, since complaint filed by the appellant is dismissed for non prosecution, hence the complainant is before this court.

2. Brief facts of the complainant's case:

The complainant is farmer, R/o Koti Mohella-Shorapur, accused is doing business of carrying



paddy and used to purchase paddy from the farmers and after sale of the same, he used to pay money to farmers from whom the accused carried the paddy, he used to issue cheque in favour of farmers for security of paddy bags, as such, the complainant and accused known to each other for the last 05 years, the complainant being agriculturist growing paddy crops and the accused approached the complainant on 10.06.2016 and requested him to sell paddy, and on request of accused the complainant handed over paddy worth of Rs.10 lakhs on 15.06.2016, for security of the said paddy bags the accused has issued post dated cheque bearing NO.429260, dated 06.07.2016, for sum of Rs.10 lakhs, drawn on ING Sysya Bank limited branch Bangalore, in favour of the complainant, the complainant presented the said cheque through his bank on 29.09.2016 for collection, but same was returned on 30.09.2016 as “account closed”, soonafter that, complainant brought the



notice of the accused about dishonor of cheque, but, he did not responded, hence complainant got issued legal notice on 27.10.2016, through his counsel under RPAD, calling upon him to pay the cheque amount within 15 day from the date of receipt of notice, same was served on accused, even after receipt of notice accused did not pay cheque amount, hence the complainant filed complaint U/Sec.200 of Cr.P.C for the offence P/U/sec.138 of NI Act against accused.

3. Being satisfied with the material placed before it, the trial court recorded sworn statement, took the cognizance for the offence punishable U/Sec. 138 of the N.I. Act, and issued the summons to the accused. In pursuance to summons, the accused appeared through his counsel, filed bail application and accused enlarged on bail and during the trial before trial court the accused was on bail, and case was posted for plea, when case was posted for plea, NBW issued against accused not executed for 04



years, the complainant absent, hence the trial court dismissed the complaint for default, as complainant failed to take step against accused, being aggrieved by the said order, the complainant is before this court challenging same on following;

“GROUNDS”

I. The trial court passed the order without giving any opportunity to the complainant and his counsel inspite of attending the court for 09 years, which is not in proper, on perusal of the order sheet it is seen that, the trial court issued NBW against accused continuously for 18 dates, of hearing i.e., from 19.09.2023 to 19.09.2025, during said period the complainant continuously taken steps by furnishing PF, the matter was posted on 06.09.2025, on that day presiding officer of the court was on leave, hence the case adjourned on 14.10.2025, in spite of NBW issued against accused, the concent police officer did not submit his report, there is no reasons assigned for non execution of NBW



issued against accused for such long period.

***II.** On the date of dismissal order the complainant intimated his counsel and requested to file exemption petition as he was not able to attend the court due to heavy rain in his native place, thus, absence of complainant on that day was not intentional one and it was for genuine for reason, hence order under challenge is liable to be set-aside.*

4. Initially the present appellant has filed Criminal petition No.202075/2025 before the Hon'ble High court of Karnataka at Kalaburagi Beanch, challenging the order of trial court, the Hon'ble High court passed the order directing the petitioner to approach appellant court, having jurisdiction to dispose off the case in accordance with law. Further, the Hon'ble High court directed the District and Sessions court/appellate court to issue necessary



notice to the accused and thereafter secured the presence of both parties, and directed the petitioner to appear before the district court on 10.02.2026, with directions which as follows;

4. The learned District and Sessions Court/Appellate Court is directed to issue necessary notice to the accused and thereafter. secure the presence of both parties before the Court. Since the petitioner represented by a counsel, he is directed to appear before the learned District Court on 10.2.2026.

5. The Registry is directed to forthwith transmit the entire papers including the memorandum of petition, to the jurisdictional District and Sessions Court/Appellate Court.

6. The learned counsel for the petitioner is at liberty to carry out necessary amendments to the petition and to invoke the appropriate statutory provision after the papers are received and numbered by the District and Sessions Court/Appellate Court.

5. In view of the order passed by the Hon'ble High court of Karnataka, Kalaburagi bench, in



Criminal 8 CrI.A.5001/2026
Petition No.202075/2025, dated

18.12.02025 the Ld counsel for the complainant filed memo with computerized copy of order of Hon'ble High court on 10.02.2026, as per the instruction of Hon'ble High court this court directed the office to registered criminal appeal and give number, office complied the directions, given appeal number, and this court issued notice to respondent and notice served on 12.03.2026 on respondent, respondent remained absent, hence the respondent placed ex-parte, original records received.

6. Heard arguments on appellant side, since respondent placed ex-parte, hence posted for judgment.

7. I have perused order of trial court, and entire records, and considered the argument of the Ld counsel for appellant, on perusal of the same, the points that would arise for my consideration are as follows:-



POINTS NO.1. Whether the appellant/complainant made out grounds to show that, his absence before the trial court when case was called out, is for genuine reason and order of trial court under challenge, passed in C.C No.2166/2022, dated 14.10.2025, is deserves to be set-aside and warrants interference of this court ?

POINT NO.2. What order ?

8. My answer to the above points are as follows:

Point No.1: In the Affirmative,
Point No.2: As per the final order,
for the following:-

REASONS

9. POINT No.1: I have perused records of trial court, and order sheet of trial court, on perusal of the same it is seen that, on 25.11.2016 the present appellant/complainant has filed private complaint U/ Sec.200 of Cr.P.C, against present



respondent/accused for the offence P/U/Sec.138 and 142(B) of NI Act. On the same day the trial court directed to register the case in PCR register and posted for sworn statement on 31.12.2016, on the said date the complainant was absent, and posted on 04.02.2017, on 04.02.2017 file was not sent to open court, and case was called on 18.02.2017, on 18.02.2017 the complainant and his counsel present, but, sworn statement was not recorded on 18.02.2017, and posted for sworn statement of complainant on 22.04.2017, on 07.07.2017, 22.08.2017, 08.11.2017, 09.02.2018, 21.06.2018 and 27.09.2018, till 21.06.2018 the complainant remained absent and Ld counsel for complainant regularly present and filed exemption petition, and same were allowed and presence of complainant was exempted on each dates.

10. On 27.09.2018 complainant present his counsel present, and Ld counsel for complainant filed



memo with affidavit U/sec.145 of NI Act, in leave of examination-in-chief of complainant and complainant is examined and got marked Ex.P1 to 5, same was allowed and posted for hearing on 25.10.2018, thereafter, complainant absent and counsel for the complainant filed EP and same were allowed, case was adjourning for hearing till 13.08.2021, on 13.08.2021 counsel for complainant pray time for hearing, and further, the order sheet of trial court reflect that, whenever case was posted for hearing the counsel for the complainant used to file EP and same were allowed.

11. On 17.09.2021 complainant and his counsel present, heard counsel for the complainant, and posted for order on 29.09.2022, on 29.09.2022 the trial court has passed the order holding that, on perusal of the complaint and documents, satisfied the complainant has complied provision of Sec.138(a) to (c) of NI Act, there is prima-facie case, and there are



sufficient material on record to take cognizance for the offence P/U/Sec.138 of NI Act, and direct to register criminal case in register No.III against accused for the offence P/U/Sec.138 of NI Act, and issued summons to accused and posted on 27.10.2022.

12. On 27.10.2022 complainant and his counsel present, reissued summons to accused, and posted on 22.12.2022, on 22.12.2022 complainant was absent, EP filed, allowed. The summons to accused returned with endorsement refused, service of summons on accused held sufficient and issued NBW against accused, and posted for on 24.01.2023, on 24.01.2023 NBW issued against accused not reported, Ld counsel Sri.PMK filed avakalath for accused, and filed bail application U/Sec.436 of Cr.P.C and application U/Sec.70(2) of Cr.P.C, after herein on both side, application filed U/Sec.70(2) of Cr.P.C was allowed, NBW recalled, bail application allowed and accused release on bail, and posted for



plea on 07.03.2023, posted on 02.05.2023, thereafter, accused remained absent from 19.05.2023 to 18.02.2025, on 18.08.2025 complainant absent his counsel present, EP filed, allowed. Reissued NBW to accused if FP is paid, and issued notice to surety and posted on 06.09.2025, on 06.09.2025 PO is on leave and posted case on 14.10.2025. on 14.10.2025 the Ld trial court passed the order under challenge which reads thus;

Complainant absent. Counsel absent. No representation. Kep by for 3 PM. Again called out complainant absent. Counsel absent. No representation, hence this Court come to the view that the said case is 3 years old case. The complainant not diligent with his case. Hence complaint filed by the complainant is hereby dismissed for default for non taking steps against the accused.

13. On careful scrutiny of entire order sheet of trial court extracted supra, it is clear that, complainant/appellant has filed complaint against



respondent/accused ¹⁴ U/Sec.200 of Cr.P.C on ^{Crl.A.5001/2026} 25.11.2016, for the offence P/U/Sec.138, 142(b) of NI Act and posted on 31.12.2016 for sworn statement of complainant, on 31.12.2016 complainant was not present and posted on 04.02.2017 for recording of sworn statement of complainant, but, on 04.02.2017 the case was not called out in the open court as the file did not send to the open court and posted on 18.02.2017.

14. On 18.02.2017 complainant and his counsel present, but, trial court did not recorded sworn statement of complainant and simply passed the order as call on 22.04.2017 for sworn statement. Thereafter, on 27.09.2018 complainant and his counsel present, and sworn statement of complainant recorded and got marked Ex.P1 to 5, and posted for hearing on 27.10.2018. from 27.09.2018 to 17.09.2018 case was posted for hearing till 17.09.2022. So, the trial court, after recording sworn



statement of complainant on 27.09.2018 did not taken cognizance and posted for hearing till 17.09.2022 for 04 years. For 04 years the complainant appeared before the trial court and in some hearing dates the complainant was absent and counsel for the complainant was present and filed EP and EP were allowed regularly. Thus, the complainant was very much present before the trial court for 04 years only for taking cognizance for the offences alleged against accused.

15. After 04 years i.e., on 17.09.2022 the trial court passed the order, which reads thus;

The complainant has filed Private Complaint against the accused U/Sec.200 of Cr.P.C for the offence punishable U/Sec.138 of NI Act along with sworn statement U/Sec.145 of NI Act.

Perused the complaint and documents. I have satisfied that, the complainant has complied the provisions of Sec.138(a) to (c) of NI Act. He has prime facie case and placed the



sufficient materials on record to take cognizance for the offence punishable U/Sec.138 of NI Act. Thus, I proceed to pass the following;

ORDER

Office is hereby directed to register the criminal case in register No.III against the accused for the offence punishable U/Sec.138 of NI Act. Issue summons to the accused. If P.F and complaint copy and documents are furnished. Call on 27.10.2022.

16. Thus, the trial court took cognizance for the said offence after 04 years of sworn statement of complainant, but, complainant and his counsel regularly appeared before the court, when complainant is absent, counsel for the appellant filed EP and EP allowed regularly. Thus, the complainant being farmer, sold his paddy to the accused and accused issued cheque in question, in favour of complainant for payment of price of paddy, waited for 04 years for taking cognizance.



17. On 27.07.2022 summons issued to accused, on 22.12.2022 summons returned with endorsement refused, accused absent, service of summon held sufficient and issued NBW against accused, on 24.01.2023 NBW not return, Ld counsel appeared for accused and filed bail petition and petition for recall of NBW and same were allowed and accused release on bail, and posted for plea, on 03.05.2023 for plea, on 06.07.2023 for plea, on 19.08.2023 for plea, EP filed for accused, same were allowed, accused remained absent till 12.10.2023, EF filed for accused allowed till 12.10.2023, on 12.10.2023 accused absent, issued NBW against accused, and issued notice to surety, thereafter, for more than 15 adjournment NBW issued against accused and notice issued to the surety not executed and not served respectively, till dismissal of the complaint.



18. Thus, from 12.10.2023 to 06.09.2025 accused did not appear before trial court and notice to surety not served for 02 years, on 06.09.2025 PO is on leave, and posted on 14.10.2025, on 14.10.2025 complainant and his counsel absent hence the complaint is dismissed for default for non taking steps against accused.

19. Question before the court is that, complainant being farmer he was away for 04 years for taking cognizance, after taking cognizance, again NBW issued against accused not executed for 02 years. For 02 years the order sheet reflects that, the complainant present, issue NBW against accused if PF is paid, whenever complainant is absent for 02 years, counsel for the complainant used to file EP, same are allowed for 02 years and again trial court used to pass order for issuing NBW against accused if PF is paid, off-course, some adjournment PF not paid.



20. That apart, after service of summons accused appeared through counsel and he was released on bail, posted for recording of plea, when case was posted for plea till dismissal of the case accused did not appear though the complainant has taken steps for NBW by paying PF regularly, so, when case was posted for plea the personal presence of complainant not required when his counsel appeared regularly whenever complainant was absent and used to file exemption petition except on the date on which case was dismissed for default. That apart, accused did not appeared for 02 years for recording of plea, on one date the complainant and his counsel absent and trial court has dismissed the case for default though accused not appeared for recording of plea, which is not correct.

21. On 03.01.2024 court issued NBW against accused and court PC received NBW as it could be seen from order sheet, again on 12.06.2024



complainant paid PF and issued NBW, again on 09.07.2025 PF paid, NBW issued, court PC received NBW, and on 18.08.2025 court PC received NBW on 06.09.2025. On these dates of hearing the complainant paid PF for issuing NBW against accused, but, for the last 02 years no report submitted to the court by the police about execution of NBW against accused or unexecution of NBW. It is settled position of law that, once NBW issued against accused by the court either it shall execute against accused or it shall recall by the court issued NBW against accused, but, in the case on hand, neither executed nor recalled NBW issued by the court. Thus, the observation of trial court that, complainant failed to take step against accused, hence complaint dismissed for default, is not correct. Because, complainant paid PF, only after payment of PF the trial court has issued NBW against accused for 02 years, but, trial court failed to secure accused even



complainant paid PF. Thus, in fact, on careful scrutiny of order sheet of trial court, there is no default on part of complainant in taking steps against accused.

22. On the other hand, this court observed that, the complainant being farmer he regularly appeared before the court personally and through his advocate for 04 years only for taking cognizance and he appeared for 02 years personally and through his advocate for securing accused by paying PF. Thus, on careful scrutiny of material placed before the court this court find no default on part of complainant/appellant in taking steps against accused. The trial court dismissed complaint without securing accused though complainant has paid PF. Under the facts and circumstances of the case, the complainant is a farmer, he has sold his paddy to the accused, in the year 2016 itself, I am of the opinion that, no default found on complainant in taking steps



against accused, hence the order under challenge is liable to be set-aside.

23. Further, it is made it clear that, the observation made and reasons assigned in this appeal will not come in the way of trial court in disposal of the case on merits in accordance with law. Hence, I answer point No.1 in the **Affirmative.**

24. POINT NO.2: In view of the discussion made on point No.1, I proceed to pass the following;

ORDER

The appeal preferred by the appellant/complainant U/Sec.419 of BNSS (Sec.374(2) of Cr.P.C), is hereby allowed.

Consequently, the order of trial court, passed by learned Prl. Civil Judge and JMFC, Shorapur, in CC No.2166/2022, dated 14.10.2025, is



hereby set-aside and complaint filed by
the complainant/appellant is hereby
restored from the stage at which it was
dismissed and appellant/complainant is
to be given an opportunities to proceed
with case in accordance with law.

The appellant/complainant is
hereby directed to co-operate in speedy
disposal of the case without taking
unnecessary adjournments.

Office is directed to send TCR to
the trial court with copy of the judgment.

(Dictated to the Stenographer-III directly on computer, transcript computerized
by her, corrected, initialed and then pronounced by me in the open court, on this the
25th day of July – 2026)

(Yamanappa Bammanagi)
(II nd Addl. District and Sessions
Judge Yadgir, Sitting at Shorapur,