



**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 07<sup>th</sup> DAY OF APRIL, 2026.**

**Crl.A.No.5059/2025  
(Old Crl.A.No.04/2021)**

**Appellant/**

**Accused:**

Ninganna S/o Hanamanthapa  
Bevinahalli, Age: 50 years, Occ: Legal  
Practitioner and Agriculturist, R/o Devi  
Nagar Shahapur, Tq: Shahapur, Dist:  
Yadgiri.

**(By Sri.S.M Adv.)**

**V/s**

**Respondent/**

**Complainant:**

Anjanaya Died by Lrs

1. Laxmi W/o Anjanaya Undavali,  
Age: 45 years, Occ: House hold,
2. Naga Geetanjali D/o Anjanaya  
Undavali, Age: 20 years, Occ: Student,



3. Sanjana D/o Anjanaya Undavali,  
Age: 19 years, Occ: Student,
4. Cahendrawati W/o Nageshwarrao,  
Age: 70 years, Occ: House hold,
5. Venkatkumar S/o Anjanaya Undavali,  
Age: 17 years, Occ: Student, (U/g of Lrs  
No.1) all are resident of Madiwaleshwar  
nagar, Halbavi Raod, Halisagar, Tq:  
Shahapur.

**(By Sri.NRK Adv.,)**

**JUDGMENT**

Being aggrieved by the judgment of conviction and order of sentence, passed by the learned PrI.Civil Judge and JMFC, Shahapur, in CC No.492/2015, dated 18.01.2021, convicting the appellant/accused, for the offence punishable U/Sec. 138 of NI Act, the appellant/accused is before this court challenging the correctness and legality of said judgment of conviction and order of sentence.



The rank of the parties are referred as per their rank before the trial court for convenience of the court, the appellant is accused and respondent is complainant before the trial court.

**2. Brief facts of the prosecution case:**

The complainant filed complaint U/sec.200 of Cr.P.C for the offence punishable U/Sec.138 of NI Act, stating that, the complainant and accused are close to each other, accused has requested the complainant to pay Rs.9,99,900/- as hand loan for the purpose of his agricultural development and for his business purpose on promise to repay the same within 01 month, the complainant has paid Rs.9,99,900/- to the complainant on 27.03.2015, the accused issued post dated cheque No.218711, for Rs.9,99,900/- dated 27.04.2015 of SBI Bank branch Shahapur, in favour of complainant, the accused requested the complainant to present the cheque, the complainant presented the cheque through



GDCC Bank Limited Shahapur in his account, said cheque returned with bank endorsement insufficient funds on 29.04.2015, the accused has issued said cheque having knowledge that, he has not maintained amount in the account to honor the cheque, therefore the complainant got issued legal notice through RPAD on 13.05.2015 to the accused calling upon him to pay the cheque amount within 15 days from the date of receipt of notice, and accused replied notice on 23.05.2015, and denied the contents of notice, hence the complainant lodged the complaint, hence the complainant has filed complaint against accused for the offence punishable U/Sec.138 of NI Act.

**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. Issued the summons U/Sec.204 of Cr.P.C 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, plea was recorded, the accused not plead guilty and claimed to be tried.

**4.** The complainant is examined as PW1 and got marked as many as 07 documents as per Ex.P1 to 7, PW1 has filed his chief-examination by way of affidavit, reiterated the averments of complaint, Ex.P1 is the original cheque, Ex.P2 & 3 are the returned memos, Ex.P4 is the legal notice, Ex.P5 is postal receipt, Ex.P6 is acknowledgment, Ex.P7 is the reply notice. Accused statement U/Sec.313 of Cr.P.C was recorded by the trial court. On the other hand, accused is examined DW1, but, no documents produced by the accused.

**5.** After hearing arguments on both side the trial court passed the judgment and order of conviction, convicting the accused for the offence punishable U/Sec.138 NI Act, being aggrieved by the said judgment



of conviction and order of sentence, the accused/appellant is before this court, challenging the correctness and legality of the said judgment of conviction, and order of sentence on following;

**“GROUNDS”**

**I.** The judgment under appeal is erroneous under the facts and law, as the trial court failed to considered the material placed before it, the trial court failed to appreciate oral and documentary evidence produced by the parties and came to wrong conclusion and passed the impugned judgment and order.

**II.** The trial court failed to considered the facts that, the accused has denied the loan and financial capacity and complainant failed to discharge initial burden to have shelter under Sec.139 and 118 of Ni Act, the trial court failed to considered the facts that, the complainant failed to prove the existence of legally recoverable debt.



**III.** The trial court failed to considered facts that, the complainant failed to prove source of income and his financial capacity to advance such a huge loan amount to the accused, the trial court failed to considered the settle position of law, looking to the facts and circumstances of the case on hand. Hence the judgment and order under challenge is liable to be set-aside.

**6.** After admitting the appeal, this court has passed the order, on application filed U/sec.389(1) of Cr.P.C., and suspended the operation and execution of the trial court order of conviction and sentence and issued notice to the respondent. The respondent appeared through counsel and received TCR.

**7.** Heard argument on both side.

**8.** I have perused judgment of conviction and order of sentence of the trial court, and re-appreciated oral and documentary evidence, led by both the parties before the trial court, and considered material placed



before the court, considered the arguments of the learned counsel for the appellant and the Ld counsel for respondent, on perusal of the same, the points that would arise for my consideration are as follows:-

**POINTS NO.1.** Whether the complainant proved that, he has issued demand notice to the accused and same was served on the accused before filing of the complaint, discharged his initial burden to have benefit of presumption under Sec.139 and 118 of NI Act ?

**POINT NO.2.** Whether complainant proves the existence of the legally recoverable debt of Rs.9,99,900/- lakhs and accused has issued cheque towards discharge of legally recoverable debt ?

**POINT NO.3.** Whether the complainant proves that, he has financial capacity to advance the loan amount of Rs.9,99,900/- lakhs to the accused ?



**POINT NO.4.** Whether accused proves that, he has rebutted the presumption on preponderance of probabilities ?

**POINT NO.5.** Whether the appellant/accused made out grounds to show that, the judgment of conviction and order sentence, recorded by the trial court, in C.C No.492/2015, dated 18.01.2021, is deserves to be set-aside and thereby call for the interference of this court ?

**POINT NO.6.** What order ?

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

**Point No.1: In the Affirmative,**

**Point No.2: In the Negative,**

**Point No.3: In the Negative,**

**Point No.4: In the Affirmative,**

**Point No.5: In the Affirmative,**

**Point No.6: As per the final order,**

**for the following:-**



**REASONS**

**10. POINT No.1 to 5:** These points are interconnected to each other, in order to avoid repetition of facts and evidence, I proposed to answer these points commonly.

**11.** The specific case of the complainant as per complaint is that, the complainant and accused are close to each other, accused requested the complainant for financial help of Rs.9,99,900/- and on request of the accused the complainant has paid Rs.9,99,90/- on 27.03.2015, on promise to repay the same within 01 months and accused issued post dated cheque No.218711 dated 27.04.2015, same was presented by the complainant, but, cheque was dishonored and returned on 29.04.2015 with endorsement funds insufficient, hence complainant got issued notice to the accused same was served, accused denied the contents of legal notice, on account of which, the complainant



has filed the present complaint, even after service of notice accused failed to pay cheque amount, hence the complainant lodged the complaint against accused for the offence P/U/Sec.138 of NI Act.

**12.** The complainant is examined as PW1 and got marked as many as 07 documents as per Ex.P1 to 7, PW1 has filed his chief-examination by way of affidavit, reiterated the averments of complaint, Ex.P1 is the original cheque, Ex.P2 & 3 are the returned memos, Ex.P4 is the legal notice, Ex.P5 is postal receipt, Ex.P6 is acknowledgment, Ex.P7 is the reply notice. Accused statement U/Sec.313 of Cr.P.C was recorded by the trial court. On the other hand, accused examined himself as DW1 and no documents.

**13.** Now the question before the court is as to whether the material available before the trial court are sufficient to hold that the accused has rebutted the presumption available to the complainant under



Sec.118 and U/Sec.139 of NI Act, and whether complainant proved that, there is legally recoverable debt and the complainant proved that, he was having financial capacity to pay such huge amount of Rs.9,99,900/- to the accused.

**14.** In order to answer the question it is necessary to re-appreciated the entire oral and documentary evidence, led by both the parties with reference to offence U/Sec.138 of NI Act.

**15.** To hold guilty under section 138 of the N.I. Act, drawer has to issue cheque with knowledge that he has not maintained sufficient amount in his account to honor the cheque as required U/Sec.138 of N.I. Act. Secondly, legally recoverable debt due to the complainant, thirdly, cheque was dishonored for the reasons mentioned in the Bank Memo, Fourthly accused failed to pay the cheque amount after notice, fifthly the complainant served the notice to the accused



prior to filing of the complainant and the complainant was in better position to advance said loan amount to accused.

**16.** I have re-appreciated oral and documentary evidence led by both the parties before the trial court. The complainant is examined as PW1 by filing affidavit in lieu of examination-in-chief, reiterating the contents of the complaint. First of all, I would like to appreciate the oral and documentary evidence in respect of facts relating to the existence of legally recoverable debt to issue cheque in question by the accused to the complainant for Rs.9,99,900/- and another facts connected with the existence of legally recoverable debt is that, financial capacity of the complainant to pay Rs.9,99,900/- to the accused.

**17.** Off-course, the accused not disputed cheque belongs to her and signature on cheque is also not disputed, but accused is not admitted the transaction



stated in the complaint and amount written on the cheque. The defence taken by the accused in reply notice, which is mark and at Ex.P7, which reads thus;

*Your client is working as labour in the house of Basavarajappa Gouda /S/o Mallannagouda, R/o: Halisagar village, Tq: Shahapur, he is very poor man, so, he is not having any amount to advance loan to my client, as such, borrowing the said amount by my client from your client is nothing, but imaginary and untruth. In fact, my client has obtained loan amount of Rs.4,75,000/- from Basavarajappa S/o Mallanagouda Halisagar, Tq:Shahapur, there is entry in respect of said amount in the personal dairy of said Basawarajappa and there is signature of my client in the said dairy. The said Basavarajappa is land lord, businessman and doing illegal money lending business. At the time obtaining the said loan by my client, my client has given a blank cheque to said Basavarajappa as security of said loan amount of Rs.4,75,000/-, so, by taking advantage of this and by misusing the said cheque issued to said Basavarajappa, the said Basavarajappa got issued this false notice through your client who is his servant. But in fact there is no any loan transaction in between my client and your client, there was no necessity to my client obtained any loan from*



*your client, there is no any legal debt enforceable to your client to issue this notice against my client. So, there is no question of making any payment by my client as per your notice does not arises.*

**18.** It is well settled law that, once issuance of cheque and signature is admitted than complainant is entitle to have shelter U/Sec.139 and Sec.118 of NI Act. Further it is well settled law that, the existence of legally recoverable debt is foundational aspect, Sec.139 of the NI Act, primarily raises a presumption that, the cheque was issued for discharging an existing debt or liability, not the debt's enforceability itself, shifting the initial burden onto the accused to rebut the presumption by proving no such debt or liability existed or the cheque was not for that purpose.

**19.** In the case on hand, the signature and cheque is not disputed, but accused rebutted the presumption with strong evidence led by the



complainant himself that, there is no legally recoverable debt or liability of Rs.9,99,900/- to issue cheque in question. Thus, the accused proved his probable defence that, there is no legally recoverable debt of Rs.9,99,900/-.

**20.** Now I would like to appreciate the oral and documentary evidence of complainant. PW1 is the wife of complainant as the original complainant died during pendency of trial before the trial court and legal heirs of the complainant brought on the record as complainant legal heirs No.1 to 5. PW1 is wife of deceased complainant and she is examined as PW1 reiterating the averments of the complaint. First I would like to appreciate the fact admitted in the cross of PW1 which reads thus;

ನಾನು ಮತ್ತು ನನ್ನ ಯಜಮಾನರು ಮೂಲತಃ  
ಆಂಧ್ರಪ್ರದೇಶದವರು ಎಂದರೆ ಸರಿ. ಇವತ್ತು ನಾನು ಅಂಧ್ರಪ್ರದೇಶದಿಂದ  
ಬಂದಿರುತ್ತೇನೆ ಎಂದೆಸರಿ ಹಳಿಸಗರದಲ್ಲಿ ನಮಗೆ ಯಾವುದೇ ಮನೆ  
ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣಾ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ  
ಹಳಿಸಗರದಲ್ಲಿ ಇರುತ್ತೇನೆ ಎಂದು ಸುಳ್ಳು ಬರೇಸಿರುತ್ತೇನೆ ಎಂದರೆ  
ಬಸವರಾಜಪ್ಪ ಎಂಬುವರ ಜಮಿನಿನಲ್ಲಿ ಇರುತ್ತೇನೆ. ನನ್ನ ಗಂಡ ಬಸವರಾಜ  
ಎಂಬುವರಕಡೆ ಜಮಿನಿನ ಕೂಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಆತನು



ಲಿಜ್ ಮೇಲೆ ಮಾಡುತ್ತಿದ್ದನು. 40 ವರ್ಷಗಳಿಂದ ಲಿಜ್ ಮೇಲೆ ಇರುತ್ತೇವೆ ಎಂದು ತೊರಿಸಲು ದಾಖಲೆಗಳು ಇರುವುದಿಲ್ಲ. ಲಿಜ್‌ಗಾಗಿ ಪಡೆದ ಜಮಿನಿನ ಹಣ ಎಷ್ಟು ಇತ್ತು ಎಂದು ನನಗೆ ಹೇಳಲು ಬರುವುದಿಲ್ಲ. ನನ್ನ ಗಂಡ ಒಟ್ಟು ಸೇರಿ 50 ಎಕರೆ ಜಮಿನನ್ನು ಲಿಜ್ ಮೇಲೆ ಮಾಡುತ್ತಿದ್ದರು. ಪ್ರತಿ ವರ್ಷಕ್ಕೆ ಆ ಲಿಜ್‌ನ ಜಮಿನಿನಿಂದ 5 ಲಕ್ಷ ರೂ. ಆದಾಯ ಇತ್ತು. 5 ಲಕ್ಷ ರೂ ಗಳಷ್ಟು ಆದಾಯ ಇತ್ತು ಎಂದು ತೊರಿಸಲು ನಾನು ದಾಖಲೆಗಳು ಹಾಜರು ಪಡಿಸಿರುವುದಿಲ್ಲ. ನನ್ನ ಗಂಡನಿಗೆ 5 ಲಕ್ಷ ರೂ. ಆದಾಯ ಇತ್ತು ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೆನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ಗಂಡನು ಬಸವರಾಜ ಎಂಬುವರ ಹತ್ತಿರ ಕೂಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದ ಎಂದರೆ ಸರಿಯಲ್ಲ.

**21.** On careful scrutiny of fact elicited in the cross of PW1 extracted supra, it is clear that, the complainant and his family members are belongs to State of Andra Pradesh, and they have no resident in Hallisagar village, in Karnataka, she admits that, she is residing in the land belongs to one Basavarajappa of Hallisagar village, further she admitted that, her husband was working under said Basavarajappa as lease holder. PW1 deposed that, her husband cultivating the land of 50 acres on lease base, and he was having income of Rs.5 lakhs per year. Question before the court is that, atleast the complainant has to produce lease deeds for 50 acres land. Admittedly no



document produced before the court to prove the income of complainant. It is specific case of the complainant that, the complainant has come to Karnataka for livelihood doing agriculture work on the agriculture lands. The specific defence of the accused is that, the complainant was working in the land of Basavaraja as coolie, and there was a transaction between accused and said Basavaraja in connection with land, on account of which, the accused has issued cheques to said Basavaraj and the present complainant was working under said Basavaraj in his land as a coolie, when there was dispute between said Basavaraja and present accused in connection with land the said Basavaraj got presented the cheque through the complainant and misused the said cheque by the said Basavaraj. The defence taken in reply notice by the accused extracted supra shown that, the complainant being coolie, working under said Basavaraj. So, how



agricultural labour who came from state of Andra Pradesh for livelihood could advance such a huge amount to the accused. So, complainant failed to prove which financial capacity to advance such huge amount of Rs.9,99,900/-.

**22.** That apart, the complainant being coolie worker, and there is no material before the court to show that, complainant was having source of income to advance the loan of Rs.9,99,900/-. Further, the complainant failed to produce any single documents to show that, he had cultivating the land on lease base and having source of income to advance such huge amount to the accused. Non production of any relevant documents to prove the financial capacity of the complainant after admitting the facts that, the complainant came to Karnataka and stayed in Hallisagar village for coolie work, and he was working as coolie under said Basavaraja as admitted in the cross of



PW1. Under such circumstances it can be safely held that, the complainant failed to prove his financial capacity and failed to prove the existence of legally recoverable debt to issue the cheque. Now I would like to extract para No.1 of the complaint which reads thus;

*That, the complainant and the accused are close to each other. Therefore accused has requested the complainant to pay Rs.9,99,900/- as hand loan from the purpose of accused agricultural development as well as business purpose promising to repay the said loan amount within one month at Halisagar Tq.Shahapur.*

**23.** On careful perusal of the facts stated in the complaint extracted supra, it is clear that, the accused is totally unknown person to the complainant, because, the complainant is belongs to State of Andra Pradesh and he was doing coolie work in the land belongs to one Basavarajappa. The complainant failed to state that how he came to know accused, because there is no transaction between the accused and complainant,



further, no prudent man could believe that, the complainant has paid Rs.9,99,900/- to unknown person, except the statement in the complaint that, “ the complainant and the accused are close to each other ” this facts shows that, there is no transaction between the complainant and accused and question of approach by the accused to the complainant for financial help does not arise, because, the complainant is totally unknown person, the complaint not only unknown to accused person, but, he is unknown to the persons of Hallisagar village, because, the complainant is belongs to state of Andra Pradesh and he came to coolie work to Hallisagar village and working under one Basavaraj as a coolie, if complainant is financial so sound having possession of Rs.9,99,900/- then why he could come to Hallisagar village to do the coolie work. That apart, even in the complainant he has not stated the date, month and year on which the accused approached to the



complainant for financial help of Rs.9,99,900/-, even no lease deed produced, at this stage, it is relevant to appreciate the fact elicited in the cross of DW1. The accused is examined as DW1, DW1 denied the entire transaction, existence of legally recoverable debt and he denied that, the accused has sufficient source of income, accused is practicing advocate and he is running Bheeralingeswara finance in Shahapur, and he getting sufficient income. I would like to extract the relevant portion of cross of DW1, which reads thus;

ನಾನು 2001 ರಲ್ಲಿ ವಕೀಲರ ವೃತ್ತಿಯನ್ನು ಪಡೆದಿರುತ್ತೇನೆ. ನಾನು ಶಹಾಪುರದಲ್ಲಿ ವಕಾಲತ ಮಾಡುತ್ತಿದ್ದೆನೆ. ಶಹಾಪುರದ ಬಿರಲಿಂಗೇಶ್ವರದ ಪೈನಾನ್ಸ್ ಇರುತ್ತೇನೆ. ಪ್ರತಿ ವರ್ಷ ಆ ಪೈನಾನ್ಸನ ಎರಡುವರೆ ಕೋಟಿ ಅಷ್ಟು ಟರನೊವರ ಇರುತ್ತದೆ. 2018 ಮತ್ತು 2019 ನೇ ವರ್ಷದಲ್ಲಿ ಒಂದು ಕೋಟಿ ಒಳಗಡೆ ಟರನೊವರ ಇತ್ತು. ಇವತ್ತಿನವರೆಗೂ ಶಹಾಪುರದ ಬಿರಲಿಂಗೇಶ್ವರ ಪೈನಾನ್ಸ್ ಅಸ್ತಿತ್ವದಲ್ಲಿ ಇರುತ್ತದೆ. 2017-18 ರಲ್ಲಿ ಕೋ -ಆಪರೇಟಿವ ಸೊಸಾಯಿಟಿ ಪೈನಾನ್ಸನ ನವಿಕರಣ ಗೊಳಿಸಿರುತ್ತೇನೆ.

**24.** When the accused has such a source of income as extracted supra, then question of accused approaching the complainant for financial help of Rs.9,99,900/- does not arise, and even the complainant



was not in position to advance the said loan amount to the accused. So, specific defence of the accused is that, one Basavaraj and accused person are belongs to same village, and there was a transaction between the said Basavraja and accused in connection with landed property on account of which, the accused as given 3 to 4 cheque to the said Basavaraj and the present complainant is working under said Basavaraj as a coolie. And said Basavaraj misused the cheque belongs to accused by presenting the same through complaint whoi is working under him as coolie. The complainant has admitted that, he came to Hallisagar village for coolie work and doing coolie work under one Basavarajappa as it could be seen from the cross of DW1.

**25.** Looking from any angle the complainant failed to prove existence of legally recoverable debt and his financial capacity to advance the said loan to the



complainant, On perusal of the facts stated in the complaint extracted supra, there is no specific date, month and year on which the accused approached the complainant for financial help of Rs.9,99,900/-. The complainant directly stated in the complaint that, he requested the accused to present the cheque and presented the cheque, the complainant has stated in the complaint that, accused promised to repay the amount within one month, but in the complaint the complainant has not stated when he demanded of repay loan, if accused refused to repay the loan then complainant has to present the cheque. But, the complainant has not stated in the complaint that, he requested the accused for repayment, and accused failed to repay, the question of request of presenting the cheque for encashment not arose, but, complainant did not demanded for repay, than presentation of cheque does not arise, this is unnatural conduct which creates doubt about the case



of the complainant. Thus, there is no material facts in the complaint to constitute offence U/Sec.138 of NI Act, and the existence of legally recoverable debt of Rs.9,99,900/- is not proved, complainant failed to prove his financial capacity, thus, accused rebutted the presumption.

**26.** It is well settled law that, once the accused rebutted the presumption available to the complainant under NI Act then the burden of proof to prove the offence U/sec.138 of NI Act is as per the criminal jurisprudence that, the complainant has to prove his case beyond all reasonable doubt after rebutting presumptions U/Sec.139 and Sec.118 of NI Act.

**27.** It is also well settled law that, when an accused has rebutted the presumption U/Sec139 of NI Act, the standard of proof of doing so is that of preponderance of probabilities. Therefore if the accused is able to raise a probable defense which creates doubt



about the existence of a legally enforceable debt or liability, then it can be safely held that complainant utterly failed to prove his case.

**28.** It is well settled law that, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt and it is not necessary for the accused to get into witness box to prove his defendant. Even accused can rely upon the complaint evidence in order to raise his defence. It means that, accused is not expected to rebutta the presumption beyond all reasonable doubt. The standard of disproof is only on the level of preponderance of probabilities.

**29.** It is also well settled law that, the burden is cast heavily upon the complainant to show that he had the requisite funds for advancing the money to the accused. In the cross of PW1 she admitted that complainant is belongs to state of Andra Pradesh, he



came to Hallisagar village for coolie work. First of all, the complainant has not stated in the complainant about his source of income, but, in the complaint he stated that, he has lands on lease and getting income from the lease land, no single document produced to show that, he is cultivating the lands on basis of lease. What is stated by PW1 in the cross is that, her husband had 50 acres land on lease in Hallisagar village, and her husband is doing agriculture work on leased land, but, no single document produced to show that, he has taken 50 acres land on lease, atleast the complainant has to produce lease deeds for 50 acres land, but, complainant failed to produce lease deeds, the non production of lease deeds having possession of said document creates a doubt about the existence of legally recoverable debt and financial capacity of the complainant. PW1 further deposed in the cross-examination that, her husband was getting income of



Rs.5 lakhs from agriculture work on lease base. But, no document produce to prove the source of income and legally recoverable debt. Admittedly the complainant came to Hallisagar village from the State of Andra Pradesh for coolie work, when complainant himself came to Hallisagar village for livelihood, how it is possible for the complainant to pay Rs.9,99,900/- to the accused, these is no material before the court to prove the financial capacity of the complainant and the existence of legally recoverable debt. Looking to the facts and circumstances of the case on hand, it can be safely held that, the complainant failed to prove his financial capacity to advance such a huge amount to the accused and failed to prove the existence of legally recoverable debt. Thus, the accused has rebutted the presumption available to the complainant U/Sec.139 and 118 of NI Act on preponderance of probabilities. So, the



complainant failed to prove his case after rebutting the presumption.

**30.** In support my opinion I relied on the decision reputed in *2011 CRI.L.J552, in case of Amzad Pasha V/s H.N Lakshmana*, there lordship was pleased to held those;

*“(B) Negotiable Instruments Act (26 of 1881), S.138 Dishonour of cheque – Accused alleged to have taken loan from complainant – Complainant has not placed any evidence to show that he had financial capacity to lend substantial amount of Rs.4,54,000/- Admittedly no document evidencing the loan transaction has come into existence - Case of complainant that he had lent Rs.4,50,000/- to the respondent is highly improbable and not acceptable – None of witnesses in presence of whom loan amount was paid by complainant examined by complaint – Adverse inference can be drawn against complainant - Accused liable to be acquittal”.*

**31.** On appreciation of the oral and documentary evidence with reference to facts stated in the complaint



and reasons assigned supra, I am of the opinion that, the complainant failed to prove legally recoverable debt and his financial capacity. Off-course, it is well settled law that once issuance of cheque and signature appeared on cheque is not disputed, the complainant is entitle to have benefit U/Sec.138 of the N.I. Act. But it is only shifting of burden of proof. As soon as the complainant is entitle to have a shelter U/Sec.139 then the burden shifts on the accused to rebutted the presumption if the accused succeeded in rebutting the presumption then burden of proof shifts on the complainant to prove the ingredients of section 138 of N.I. Act. In the case on hand the complainant failed to prove that the accused was under need of money, and the complainant failed to prove the existence of legally recoverable debt and failed to prove his financial capacity. But, trial court did not considered and not properly appreciated the oral and documentary evidence



led by the complainant, and directly come to conclusion that, since accused admitted his signature on cheque, hence complainant is entitle to have presumption under Sec. 139 of NI Act, and convicted the accused for the offence punishable U/sec.138 of NI Act, which is against the material placed before it, and against settled position of law extracted supra.

**32.** On re-appreciation of oral and documentary evidence led by both the parties and material placed before the court and reasons assigned supra and relying on the decisions referred above, the observation and reasons assigned by the trial court in its judgment of conviction, recorded by it, in CC No.492/2015, dated 18.01.2021, is not correct under the law and facts, and requires interference of this court. Hence, I answer point No.1, 4 & 5 in the **Affirmative** and point No.2 & 3 in the **Negative**.



**33. POINT NO.6:** In view of the discussion made on point No.1 to 5, I proceed to pass the following;

**ORDER**

The appeal preferred by the appellant/accused, U/Sec.374 of the Cr.P.C is hereby allowed.

Consequently, the judgment of conviction and order of sentence, dated 18.01.2021, passed by learned Prl. Civil Judge and JMFC, Shahapur, in CC No.492/2015, is hereby set-aside and appellant/accused is acquitted for offence P/U/Sec.138 of NI Act.

The suspension order dated 29.01.2021, is hereby stands canceled, the appellant/accused is entitle for refund of 10% of Rs.10 lakhs in case if appellant/accused deposited in term of

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Crl.A.No.5059/2025  
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order passed by the this court before the  
trial court.

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 07<sup>th</sup> day of April - 2026)

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