KA14020018132025

IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE & J.M.F.C., AT SHIVAMOGGA.

-: Present :- Smt. Deepa, M.A, L.L.B
II Addl. Sr. Civil Judge &
J.M.F.C., Shivamogga.

DATED 1st DAY OF JULY 2026

CRIMINAL CASE No.809/2025

Complainant:	Sathish Kumar M., S/o Mahabala, Aged about 42 years, R/o Behind Pujesjwari Chowdeshwari Temple, Ashokanagara, Shivamogga City.
	(By Sri.M.K.S., Advocate)
	V/s
Accused :	Kodanda Ramu S.M., S/o Shashikumar, Aged aobut 44 years, R/o 7th cross, Channel Area, Near Chowdeshwari Temple, Ashokanagara, Shivamogga City.
	(By Sri.N.S.R., Advocate)

-::JUDGMENT::-

This case has been registered against the accused on the basis of the complaint filed by the complainant U/s 200 of Cr.P.C. for the offence punishable U/s 138 of N.I.Act.

2. In brief it is the case of the complainant that:-

a. It is submitted that, the accused and complainant are the friends and well known to each other from several years. Out of good friendship, the accused has approached the complainant and requested to lent financial assistance of **Rs.8,00,000/-** by explaining the accused financial difficulties and also need money for business development, due to the accused kind request by explaining the accused financial needs and due to the accused urgent requirements the complainant agreed to give Rs.8,00,000/- in two installment and accordingly on dt.15-01-2021, the complainant given Rs.4,00,000/- in cash and on dt.28-01-2021, again the complainant was given Rs.4,00,000/- in cash to the accused, in total the complainant was given

Rs.8,00,000/- to the accused and at the time of receiving said loan amount, the accused will assured and undertake to repay the said amount in installment along with interest within one year.

b. It is further submitted that, earlier the accused has given only interest for a period few months, thereafter the accused was not pay any interest on the said borrowed amount to the complainant and when the complainant demanded the interest and borrowed amount, the accused was undertake to pay interest on the borrowed amount at a time, after clearing the borrowed amount, for which the complainant allowed some more time to the accused.

c. Further it is submitted that even after expiry of agreed term, the accused neither repay the borrowed amount nor paid any amount towards interest, and then due to the complainant repeated visit and persistent approach and demand, the accused were requesting the complainant by stating due to covid impact his plumbing work business was effected and not reached the accused expected level, hence facing financial crisis and requested the complainant to allow the accused for clearance of debt in installment along with accrued interest and as a mark of the accused sincerity, the accused was paid Rs.10,000/-and then even expiry of more than agreed period the accused was not keep up his promise and after that when the complainant repeatedly approached the accused and demanded for repayment of the borrowed or amount, the accused was issued **cheque Rs.3,95,000/- bearing No.391761 dt.23-01-2023 and another cheque for Rs.3,95,000/- bearing No.391762 dt.23-01-2023, both are drawn on IDBI Bank, Shivamogga Branch** by deducting paid amount and request to pay the interest in future.

d. It is further submitted that, as per the request of the accused, the complainant presented the said cheques for encashment through his banker**, i.e., Punjab National Bank, Savaralane Road Branch, Shivamogga on dated 23-01-2023** and same were dishonored and the return of unpaid cheques were informed to the accused. On such information, the accused was approached the complainant and requested to represent the said cheques for encashment after two months, due to the accused kind request the complainant agreed to present the said cheques after two months and on dt.24-03-2023 the complainant presented the said cheque for collection thorugh his bank i.e., Punjab National Bank, Savaraline Road Branch, Shivamogga and returned unpaid cheques on dt.28-03-2023 with an endorsement stating the said cheques were dishonored for the reason "**FUNDS INSUFFICIENT".** Accused has failed to make necessary arrangements to honour the cheques as assured by him. After the receipt of the dishonoured cheques, the complainant had got issued the legal notice to the accused on **13.04.2023** calling upon the accused to repay the cheques amount within 15 days from the date of receipt of the legal notice. The said legal notice duly served on **21.04.2023**. The accused did not repay the cheque amount even after service of legal notice. The accused has not replied and not complied to said notice. Thereby the accused has committed an offence punishable U/sec.138 of N.I. Act and he is liable to be punished in accordance with law. Hence, prays to convict the accused accordingly.

3. After the presentation of the complaint, cognizance for the offence punishable under Sec.138 of N.I. Act was taken, sworn statement of the complainant was recorded and after perusal of the complaint, sworn statement and the relevant documents and upon prima facie case made out by the complainant, case was registered and process was issued against the accused and in pursuance of the said process, the accused has appeared and enlarged on bail. Thereafter, plea of the accusation was recorded wherein he pleaded not guilty and claimed to be tried.

4. In order to prove his case, the complainant filed his affidavit and examined as P.W-1 and got marked Ex.P1 to Ex.P7. Thereafter, the statement of the accused as required U/s 313 of the Code of Criminal Procedure was recorded wherein, the accused denied the incriminating evidence appearing against him and did not choose to lead defense evidence.

5. Heard both side and after perusal of the records of the case, the following points would arise for my consideration are:-

-:: <u>POINTS</u> ::-

1. Whether the complainant proves that, the accused has issued two cheques i.e., **Ex.P1 and 2** and the same were returned with a memo that **"Funds Insufficient"** to complainant and in spite of receiving statutory notice the accused has failed to make payment of the cheque amount within the statutory period and thereby committed an offence punishable under sec 138 of the Negotiable Instruments Act?

2. What Order?

6. My findings on the above points are as under:-

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

: REASONS ::

7 ***POINT NO.1 :*** The complainant in order to prove his case, examined as P.W-1. PW1 in his affidavit evidence has reiterated the complaint averments and got marked as Ex.P1 to Ex.P7. Ex.P1 and 2 are the original cheques and Ex.P1(a) and P2(a) are the signatures. Ex.P3 and 4 are the return reports, Ex.P.5 is the copy of legal notice dated 13.04.2023. Ex.P.6 is the postal receipt and Ex.P7 is the postal acknowledgment. To disprove the case of the complainant, the accused himself examined as DW.1, but not produced any documents on his side.

8. It is the case of the complainant that, the accused had issued the two cheques **bearing No.397961 and 391762** for **Rs.3,95,000/- each** dated 23.01.2023 **drawn on IDBI Bank, Shivamogga Branch, Shivamogga** to the complainant towards the discharge of his legal liability towards the loan amount and the said cheques were presented in the Bank and the same was returned with an endorsement that **"Funds Insufficient"** and though, the complainant got issued notice to the accused through Registered Post on **13.04.2023** and was served on him on **21.04.2023** and has not repaid the amount covered under the cheques. Hence, accused has failed to make payment of the said cheques amount of money to the complainant within 15 days. By producing Ex.P1 to Ex.P7, the complainant has satisfactorily established that, he complied with the statutory requirements of the provision to Sec.138 of Negotiable Instruments Act. The cause of action to the complainant arose after expiry of period of 15 days of the receipt of the legal notice. The complainant has filed the complaint in writing under the provisions of Sec.200 of Cr.P.C on **20.05.2023** which is within the period of one month from which the date on which the cause of action arose and hence the complainant has complied with the provisions of Sec.142 of Negotiable Instruments Act.

9. The accused has taken defence that, he along with complainant started Chit fund business and for that reason the accused barrowed Rs.1,00,000/- as loan for interest at Rs.18,000/- per month. At the time of giving loan, two cheques were obtained for security. He has not borrowed Rs.8,00,000/- from the complainant. The complainant has filed false case by misusing the two cheques given at the time of borrowing loan of Rs.1,00,000/- for security. There is no legally recoverable debt from him. Thus, prayed to dismiss the complaint.

10. For this contention, I have perused the cross examination of PW1, evidence of DW1 and also documentary evidence produced by the complaianant. To prove the defence, the accused himself examined as DW1. In the chief examination he has reiterated the defence taken by him.

11. It is the case of the complainant that, on 15.01.2021 he has given Rs.4,00,000/- in cash and on 28.01.2021 again given Rs.4,00,000/- in cash to the accused as per his request. When the complainant requested to repay the loan, the accused paid Rs.10,000/- and on repeated requests of repayment of remaining amount, the accused issued two cheques for Rs.3,95,000/- each which were dishonoured for fund insufficient. The accused taken contention that, he has only taken Rs.1,00,000/- from the complainant and requested to grant time to repay the said amount.

12. There is no dispute between the parties that, borrowing of loan from the complainant. The complainant stated that, the accused borrowed Rs.8,00,000/- and repaid only Rs.10,000/-. The accused taken defence that, he has borrowed Rs.1,00,000/- from the complainant and ready to repay the same if Court granted time. In the cross examination DW.1 at Para No.1 clearly admitted that, the complainant is his friend and he is doing jelli transport business with own Lorry. Further DW.1 categorically admitted that, "ನಾನು ದೂರುದಾರರಿಗೆ ರೂ 7,90,000/- ಗಳ 2 ಚೆಕ್ಕುಗಳನ್ನು ಕೊಟ್ಟಾಗ ಮನೆ ಮಾರಾಟ ಮಾಡಿ ಹಣ ಸಂದಾಯ ಮಾಡುತ್ತೇನೆ ಕಾಲಾವಕಾಶ ಕೊಡಿ ಎಂದು ಕೇಳಿದ್ದನು ಎಂದರೆ ಸಾಕ್ಷಿ ಕಾಲಾವಕಾಶ ಕೇಳಿ ಚೆಕ್ಕನ್ನು ನಾನೇ ಬರೆದುಕೊಟ್ಟಿದ್ದೆನು ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ."

13. Through this admission, the accused himself admitted borrowing of loan and issuance of cheque for Rs.7,90,000/-. He has also admitted regarding issuance of Ex.P.5/Notice by the complainant and he has requested him to grant time to give amount. Further in his cross examination the accused categorically admitted that, after appearance before the court also he sought for 6 months time to repay the amount. For this suggestion the accused stated that, "ಅಂದಿನಿಂದ ಇಂದಿನವರೆಗೂ ಕಾಲಾವಕಾಶ ಬೇಕು ಎಂದು ಕೇಳುತ್ತಲೇ ಬರುತ್ತಿದ್ದೇನೆ ಏನಂರೆ ಸಾಕ್ಷಿ ಮನೆ ಮಾರಾಟವಾಗದ ಕಾರಣ ಕಾಲಾವಕಾಶ ಕೇಳುತ್ತಿದ್ದೇನೆ ಎಂದು ಉತ್ತರಿಸುತ್ತಾರೆ. Such being the case, alleged defence of the accused cannot be believable. Nothing on record to disbelieve the contention of the complainant.

14. Admittedly, accused having knowledge about the bank transactions. If really the complainant has misused the cheque of the accused given as security at the time of borrowing loan of Rs.1,00,000/- and he has misused the both cheques what prevent him to take necessary steps against the complainant is not explained. An ordinary prudent man in similar set of circumstances, if he really did not owe any amount to the payee and payee retained the blank cheque, definitely, he would either intimated to the banker to stop the payment or issued a notice to the payee, calling upon him to return the cheque. No such steps has been taken against the complainant. Mere taking defense itself is not sufficient to disprove the presumption available to the complainant under Sec.139 of Negotiable Instruments Act. The accused cannot take advantage by creating a story by saying that, he has not issued any cheque for repayment of Rs.8,00,000/-. Therefore, the contention of the accused cannot be accepted. Moreover, the accused has not denied the Ex.P1 and 2 and signatures therein.

15. The careful analysis of oral and documentary evidence of complainant would clearly establish that, the accused has issued a cheque at Ex.P1 and 2 to discharge legally recoverable debt to the complainant. Once, issuance of the Cheque and signature in it are proved the statutory presumption would arise under sections 139 and 118 of the N.I.Act that cheque has been issued by the drawee for legally recoverable debt and the cheque was issued for valid consideration. As per the decision of the **Hon'ble Supreme Court of India reported in 2010 AIR SCW 296 (Rangappa V/s Mohan)** the presumption that the cheque was drawn in discharge of legally recoverable debt is a presumption of law that ought to be raised in every case, though, it is a rebuttable presumption. Further, it is also held that mere plausible explanation by the drawer is not sufficient and proof of that explanation is necessary. The principle of law laid down in the above decision is applicable to the facts of this case.

16. In the case on hand, since the complainant is in possession of the Ex.P.1 and 2/Cheques, the Court has to draw the initial presumption that, she is the payee of that cheque. Of course, the presumption under sec 139 and 118 of the N.I.Act are rebuttal presumption. But, once the initial burden is discharged by the complainant, the onus shifts on the accused to rebut the complainant's case.

17. In the case on hand, having regard to the facts, this Court is of the opinion that, the accused has failed to rebut the case of the complainant regarding issuance of the cheque by the accused in favour of the complainant. Thus, the above contention taken by the accused has to be negative. No doubt, as per the law laid down by the **Hon'ble Apex Court in Rangappa V/s Mohan supra and in 2007(4) CCC (SC) K.Prakashan V/s P.K.Surenderan),** the burden of proof on the complainant is beyond all reasonable doubt. But for the accused, it is only preponderance of probabilities and it is not mandate that the accused should enter into witness box to rebut the presumption. That means to say, at least, the accused must able to make out a probable case to show that, the case of the complainant is false, frivolous and he is not liable to pay the cheque amount. In this case on hand, except bare denials, there is no cogent, concrete, clear-cut case on behalf of the accused. Only during the cross examination of P.W-1 and in the examination in chief, the accused has taken some contentions and all those contentions are without any valid base. Mere plausible explanations or bare denials will not sufficient to make out a probable case. The accused must make out a case and that should in all probabilities appear to be true to any prudent man under similar set of facts. But in the case on hand, the accused has failed to do so. Therefore the above contention on behalf of the accused is not tenable.

18. The complainant has established with beyond reasonable doubt that, the accused has issued the cheque towards amount due from the accused. The contents contained in **Ex.P.1 to Ex.P7** also goes to show that, the complainant has complied with the statutory requirements as contemplated U/s 138 and 139 of N.I.Act. Though, P.W.-1 was cross examined at length by the learned counsel for the accused, nothing worth is elicited so as to discard his testimony given in the chief examination.

19. In so far as the issuance of statutory notice is concerned, the complainant had sent the notice to the last address of the accused and the same was served on him. It becomes crystal that statutory notice is served on the accused and he has deliberately not repaid the amount due to the complainant.

20. As already observed, the entire materials on record clearly go to show that, the accused had issued cheque towards payment of the sum. It is a settled position of law that, the burden to prove the consideration for the cheque lies on the accused. If not rebutted the presumption is that the cheque was issued for consideration. It is for the accused to prove that, both cheque were not issued towards a debt or liability. He has to lead credible evidence for rebuttal of this presumption. Mere denial of averments will not suffice to shift this burden on the complainant. The presumption U/s 139 of the Act is a presumption of law and is not a presumption of fact. This presumption arises when once the factum of dishonor is established. Of course, the onus of the proof to rebut this presumption lies on the accused. The standard of such rebuttal evidence must be sufficient, cogent and should prove beyond any reasonable doubt. Therefore, a mere explanation given by the accused is not enough to rebut this presumption of law.

21. Having regard to the entire materials on record, I am of the considered opinion that, the accused has failed to prove that, he had not issued Ex.P1 and 2/cheques for discharge of his legal debt or liability and on the other hand the complainant has convincingly proved that, both cheque issued by the accused was in discharge of his legal liability and the same were dishonoured for insufficient of funds and thereby, he has committed an offence punishable U/Sec.138 of the Negotiable Instruments Act. ***Accordingly, I answer this point in the Affirmative.***

22. ***POINT NO.2:-*** In view of my discussion made supra, I proceed to pass the following:-

-:: ORDER ::-

Acting under section **255(2) of Cr.P.C.,** the accused is hereby convicted for the offence punishable Under Sec.138 of the Negotiable Instruments Act.

Accused is sentenced to pay a fine amount of Rs.7,95,000/- and in default to pay fine amount, accused shall undergo Simple Imprisonment for the period of three months.

If the entire fine amount is recovered from the accused, Rs.7,90,000/- shall be payable to the complainant as compensation U/s 357(1) of Cr.P.C., and Rs.5,000/- to the state.

The bail bond of the accused stands cancelled.

Office is directed to supply copy of the judgment to the accused free of the cost forthwith.

(Dictated to the Stenographer, typed by her, same is corrected and then pronounced by me in the open court on this **1st day of July 2026**.)

(SMT.DEEPA)
II Addl. Sr. CJ & JMFC,
Shivamogga.

ANNEXURE

1. Witnesses examined on behalf of complainant :-

P.W.1	:	Sathish Kumar

2. Documents exhibited on behalf of complainant :-

Ex.P.1	:	Cheque dated 23.01.2023
Ex.P.1(a)	:	Signature
Ex.P.2	:	Cheque dated 23.01.2023
Ex.P.2(a)	:	Signature
Ex.P.3 & 4	:	Bank endorsements
Ex.P.5	:	Legal notice dated:13.04.2023
Ex.P.6	:	Postal receipts
Ex.P.7	:	Postal acknowledgment

3. Witnesses examined on behalf of Accused :-

D.W.1	:	Kodandarama

4. List of witnesses and documents on Defense side : -

NIL

(Smt.DEEPA)
II Addl. Sr. CJ & JMFC,
Shivamogga.