

KADW240013372018



IN THE COURT OF 1st JMFC, HUBBALLI

Present: **Smt. Triveni M.Iragar** M.Com., LL.B.
JMFC-I Court, Hubballi.

C.C. No.1282/2018

Dated this the 30th day of January-2025

Complainant : Veeresh S/o Rajashekhar
Kamadolli, Age: 28 years,
Occ: Private Service,
R/o: H.No.81/C
Vijayanagar, Hubballi.

(By Sri.S.M.B., Advocate)

V/s

Accused : Raju B. Pawar,
Age: Major, Occ: Business,
R/at: H.No.29, 2nd Cross,
Indra Prasth Nagar,
Old Hubballi, Hubballi.

(By Sri.D.S.M. Advocate)

Date of cheque 29-01-2018

Date of complaint 03-03-2018

Date of arrest of accused -

Name of the complainant	Veeresh S/o Rajashekhar Kamadolli
Date of starting of evidence	06-04-2018
Date of closing of evidence	15-07-2023
Offence complained of	P/U/Sec.138 of N.I.Act.
Opinion of the Judge	Accused found guilty
Complainant Represented by	Sri.SMB, Advocate.
Accused defence by	Sri.DSM., Advocate.

JUDGMENT

The complainant has filed this complaint against the accused U/Sec.200 of Cr.P.C to punish the accused for committing an offence punishable U/Sec.138 of N.I. Act.

2. The gist of the complainant's case is as under:-

It is the case of the complainant that, complainant and accused are close acquainted person each other that the accused is doing Estate Agency during June-2017 accused came to the complainant and appraised his financial problem and requested a hand loan amount of Rs.1,05,000/- and promised that he will return the

same within short time. Considering the request of accused the complainant had prevailing acquaintance had paid the said amount and the accused promised to the complainant that he will repay the said amount within 04-05 months. Complainant as there was close acquaintance of accused and assurance made by accused kept silent. After lapse of agreed period the complainant requested the accused to return the amount. On request of complainant the accused had issued a cheque bearing No.994705 for Rs.1,05,000/- dated: 29.01.2018 drawn on State Bank of India Siddaroodh Nagar Branch Hubballi and assured the complainant that the same would be duly honored. Believing the words of accused complainant had presented cheque for collection. On its presentation it is got dishonored as 'funds insufficient' on 29.01.2018. After receiving the same return memo the complaint issued a legal notice to the accused on 07.02.2018 it duly served on the accused on 09.02.2018. After receipt of legal notice the accused had not made any effort to make good the cheque amount and he did not replied to the notice issued by the complainant. Therefore, the complainant

constrained to file this complaint with a prayer that the accused be tried under 138 of NIA Act and he be compensated with the double the cheque amount and other reliefs deems fit to the court.

3. After presentation of this complaint and on perusal of the documents this court office was directed to register the case in PCR register and matter was posted for the sworn statement. On 06.09.2018 sworn statement of the complainant was recorded. After taking the cognizance office was directed to register case in CC register and thereafter summons was issued to the accused.

4. On service of summons accused appeared before the court and took bail. Substance of accusation prepared and read over to the accused. He denies all the accusations made by the complainant and he claims for trial. Thereafter the matter was posted for the complainant evidence. Complainant has filed affidavit on 21.08.2019 and Ex.P.1 to 5 marked and matter was posted for cross-examination of PW1 on 15.07.2023. P.W.1 deposes that, he was working in Gandharv Engineering Works in the year 2012

there he came to know about Prakash Doddamani, through that Prakash Doddamani he came to know about accused and accused was introduced to him as he is real estate business man and that accused was relative of Prakash Doddamani and it is also appraised that the accused is in need of financial assistance and he did not remembered the exact date when he met accused for the first time. But he remembered the year it was 2011-2012. Prakash Doddamani had worked along with him for 03 years. But he did not remembered the exact period may be it is 2010 to 2013 and he admits that in that period only Prakash had introduced him accused and he had helped the accused financially that to for Rs.1,05,000/- and while giving money to accused other than him and accused no body was present. Further he admits that after that 03 years period worked along with Prakash Doddamani he did not met Prakash Doddamani there onwards and he did not remembered the date time and place where he had given money to accused and he did not had any other business dealings with the accused other than the money given by him to accused and further he admits that he did not bisi

business with accused but he did not remembered the date when he started the bisi business with accused and when he stopped and he is having knowledge about bisi business and he admits that there is rules for bisi business but right now he did not remembered those rules of bisi business which he had with the accused and he admits that while starting bisi business there is usual practice that from each and every customer they use to take one signed blank cheque, one blank signed paper and one signed blank bond and than only they use do bisi business with customers. He denied suggestion that in the same manner he took one signed crossed blank cheque, one signed blank paper and one signed blank bond from the accused. Further witness deposes that he know about the real estate business of accused other than that he do not know anything about the accused and he admits that in his complaint he wrongly mentioned that the accused is his close friend and he know his family background and he denies suggestion that from 2013 till today he is not having contact with Prakash Doddamani. He admits that he had given money to accused may be during 2010 to 2013 and

he also worked with Prakash Doddamani within that same period and he admits that in his complaint affidavit and notice he did not mention that he worked along with Prakash Doddamani during the period of 2010 to 2013. By this witness closed his evidence and matter is posted for 313 statement. It is recorded on 09.02.2023 and matter is posted for defence evidence. Despite of grant sufficient opportunity accused did not lead his defence evidence. Hence, matter is posted for argument. Argument heard from both side. Matter is posted for judgment.

5. The points that arise for my consideration are:-

1. Whether the complainant proves beyond all reasonable doubt that, the accused has committed an offence punishable U/Sec.138 of N.I. Act?

2. What Order?

6. I answer the above points as under:

Point No. 1 : In the Affirmative.

Point No. 2 : As per final order for the following: -

: R E A S O N S :

7. Point No.1:- On perusal of entire records and cross-examination of P.W.1 it is noticed that, the accused had not denied Ex.P.1 issued by him in favour of the complainant but he had taken defence that the very cheque has been issued by him when he had bisi business with complainant and accused being one of partner of bisi business he did not produce a single piece of documentary evidence to show that the complainant was acting partner in the bisi business and even he did not produce any piece of evidence to show that the complainant had taken one signed blank cheque as per Ex.P.1 from him and it is misutilised by the complainant and complainant had filed a case against him as there is no any piece of evidence produced by the accused his defence can not be believed and accused failed to disprove the presumption available to the complainant U/s 138 of NI Act. Hence, accused is liable to make payment of cheque amount to the complainant. Hence, I answer point No.1 in Affirmative.

8. Point No.2: In view of the reasons and discussions made above, I proceed to pass the following order :

ORDER

Acting U/Sec.255(2) of Cr.P.C., the accused is convicted for an offence punishable U/Sec.138 of N.I. Act and accused is liable to make the payment of Rs.01,10,000/- (Rupees One Lakh Ten Thousand Only).

On default of payment accused shall undergo simple imprisonment for term of 6 months.

Acting U/s 357 (1)(b) of Cr.P.C. it is ordered that Rs.01,05,000/- (Rupees One Lakh Five Thousand Only)., therefrom shall be paid to the complainant as compensation and remaining fine amount of Rs.05,000/- (Rupees Five Thousand Only) is defrayed to the State fee the expenses incurred in the prosecution.

Office is hereby directed to supply free copy of the judgment.

(Dictated to the stenographer directly on computer typed by him, corrected by me, then judgment signed and pronounced in the open court on this the **30th day of January-2025.**)

(Smt.Triveni M. Iragar)
J.M.F.C-I, Hubballi.

ANNEXURE**1) Witnesses examined on behalf of complainant:-**

P.W-1 : Veeresh Rajashekhar Kamadolli

2) Documents marked on behalf of complainant:-

Ex.P-1 : Cheque

Ex.P-1(a) : Signature

Ex.P-2 : Bank Return Memo

Ex.P-3 : Legal Notice Copy

Ex.P-4 : Postal Receipt

Ex.P-5 : Postal Acknowledgment

3) Witnesses examined on behalf of the accused person:-

-NIL-

4) Documents marked on behalf of the accused person:-

-NIL-

(Smt.Triveni M. Iragar)
J.M.F.C-I, Hubballi.