IN THE COURT OF THE IX JUDICIAL MAGISTRATE OF FIRST CLASS :: HYDERABAD.

Present**: Smt. K. Shreewani**
IX Judicial Magistrate of First Class,
Hyderabad.

Dated this the 27th day of January, 2026

CC. NI. 45 of 2026
In
STC NI. 2856 of 2021

Between:-

M/s.Parafina Corporation
Proprietorship concern rep. By
its Prop.Ramesh Jain HUF, Rep by
its Karta, Sri Ramesh Jain,
S/o.Parasmal Jain
having its office at 16-2-681/4,
Malakpet, Main Road, Hyderabad.

...Complainant

AND

Mr.Thuraga Seshasai,
S/o.T.Veeraswamy,
Age:56 years, Occ:Business,
R/ao.H.No.16-2-751/C/5/2,
Flat No.301, Tirumala Srinivas Towers,
Near Venkateshwara Temple,
Asmangadh, Malakpet, Hyderabad.

Also at Plot No.153, Nagarjuna/Shiva Hills,
Near Raja Rajeshwari Temple, Almasguda,
Saroornagar, Hyderabad, T.S. **... Accused**

Section of law	:	U/Sec.200 of Cr.P.C of Sec.138 of Negotiable Instruments Act.
Plea of the Accused	:	Pleaded not guilty.
Finding of the Court	:	Found not guilty.
Sentence or Order	:	In the result, accused is found not guilty for an offence under Sec.138 of NI Act. Accordingly, accused is acquitted for an offence under Sec. 255 (1) Cr.P.C. Bail bonds of the accused shall be in force for a period of six months from this day as provided under Sec.437A of Cr.P.C. for preferring appeal to the higher court by the prosecution or by the defacto complainant. No property was

produced before this court, hence there is no order with regard to property.

This case is coming before me today for final disposal in the presence of M/s.Vishal Kedia Advocate and Associates for the complainant and P.Ravinder advocate ans Associates for the accused and having heard and having stood over for consideration till this day this court delivered the following:

:: J U D G M E N T ::

1. This is a Private complaint filed by the complainant against the accused for the offence U/Sec.200 of Cr.P.C of Sec.138 of Negotiable Instruments Act.

2. The brief facts of the case as enumerated in the complaint:-

The complainant is doing the business of credit facility on vehicles. The accused had approached the complainant with a request to provide credit facility for the purchase of vehicle “Hyundai Verna bearing Reg. No.TS-08-EE-5677 along with Mr.Kunchem Venkat Krishna, Thuraga Padmaja, Thuraga Sainath and others. That Mr.Kunchem Venkat Krishna had agreed to stand as guarantor for the credit facility and on the representation made by them, complainant has agreed and approved the hire purchase credit facility of Rs.5,50,000/- payable in 36 equated monthly installment of Rs.23,770/- each payable on 15th of every month starting from 15-09-2019 to 15-08-2022 and accordingly entered into the agreement of hire purchase facility subject to executing the necessary agreements, verification, submission of documents and vehicles papers, Hypothecation endorsement on RC and completing the RTA proceedings etc., duly accepted and acknowledged by them. The complainant agreed to approve, extend and disburse the amount under hire purchase facility. The accused have been irregular in payment of monthly installment and failed, willfully defaulted to make the payment of installment on the agreed date of 15th of every month.

That the accused have failed to honour the NACH-ECS mandate presented for monthly installment on the due date and hereby violated the terms of the agreement. That inspite of several reminders the accused have failed to pay the overdue amounts and further that the conduct of the accused is highly inappropriate, evasive and abusive. After great persuasion the said vehicle was surrendered and repossessed by the complainant on 22-09-2020 from the accused in a very bad condition. Accordingly the said vehicle was sold on 25-03-2021 and the sale proceeds of Rs.3,25,500/- were appropriated towards the outstanding amounts. After several reminders the accused has issued cheque No.000012 for Rs.4,70,000/- dated 02-08-2021 drawn on HDFC Bank, Dilsukhnagar Branch, towards balance outstanding and promised to honor the same on its presentation. That believing his representation, complainant has deposited the said cheque for realization in their banker i.e., Andhra Pradesh Mahesh Co-operative Urban Bank Limited, Malakpet Branch on 02-08-2021 but the said cheque was returned for the reason "Funds Insufficient" vide cheque return memo dated 03-08-2021. The accused have also obtained another credit facility of Rs.2,70,000/- for the purchase of vehicle Car Volkswagen Vento bearing Registration No.AP-29-AV-2115. The accused have failed to honour and pay the installments and finally the accused have issued cheque No. 000011 for Rs.3,20,000/- dated 02-08-2021 drawn on HDFC Bank, Dilsukhnagar Branch, towards balance outstanding and promised to honour the same on it's presentation. The complainant has deposited the said cheque for realization in their bank Andhra Pradesh Mahesh Co-operative Urban Bank Limited, Malakpet Branch on 02-08-2021 but the said cheque was returned for the reason "Funds Insufficient" vide cheque return memo dated 03-08-2021. The accused is using the vehicle unauthorizedly and have refused to surrender the vehicle and secreted the vehicle to avoid its repossession as per law, thereby have violated the terms and conditions of the agreement. The complainant had issued legal notice dated 25-08-2021 calling upon the accused to forthwith surrender the vehicle. That the accused have falsely represented himself to be a medical practitioner/Doctor. The complainant to enter into the contractual agreement and to part with an amount of Rs.5,50,000/- and Rs.2,70,000/- by extending credit facility for purchase of the vehicles with a malafide intention to deceive, cheat, defraud and cause wrongful loss to the complainant. the complainant got issue a legal notice dt. 25-08-2021 from his counsel through R.P.A.D. and the accused received the notice on 30-08-2021 and failed to pay the cheque amount.

3. After recording the sworn statement of the complainant and considering the facts and circumstances of the case, this court took cognizance of the offence U/Sec.138 of Negotiable Instruments Act and issued summons to the accused.

4. On receipt of the summons, the accused appeared before the court and he was supplied with copies of complaint and other document, as contemplated under Sec. 207 of Cr.P.C.

5. The accused was examined under Section 251 Cr.P.C. explaining the substance of accusation alleged against him for the offence under Section 138 of the Negotiable Instruments Act, 1881, for which the accused denied the same, pleaded not guilty and claimed to be tried.

6. To substantiate the complainant case, complainant examined himself as P.W.1 and got marked Ex.P.1 to Ex.P8.

Ex.P1: Cheque bearing No.000012, dt.02-08-2021 for an amount of Rs.4,70,000/-.

Ex.P2: Cheque Return Memo dt.03-08-2021.

Ex.P3: Office copy of the Legal notice dt.25-08-2021.

Ex.P4: Postal Receipts dt.28-08-2021(2 nos.).

Ex.P5: Track Report marked along with Section 65-B Certificate of Indian Evidence Act, dt.30-08-2021.

Ex.P6: Return Cover dt.30-09-2021.

Ex.P7: Account Statement dt.09-06-2023.

Ex.P8: Hire Purchase Agreement dt.29-08-2019.

7. After closure of complainant side evidence, the accused was examined under section 313 Cr.P.C. with reference to the incriminating evidence appearing in the complainant witnesses, accused denied the same.

8. The learned counsel for complainant submitted the oral argument and the learned counsel for the accused submitted the oral arguments.

9. Basing on the rival contentions of both learned counsels, the following point is framed for determination.

“Whether the complainant proved the existence of legally enforceable debt against accused person and whether accused person has rebutted the presumption U/Sec.200 Cr.P.C of 138 of Negotiable Instruments Act in favour of complainant?”

Points for determination:

i) Whether the mandatory requirements prescribed for an offence to be constituted Under Section 138 of Negotiable Instruments Act, 1881 are being satisfied in the present case?

ii) If so, whether the accused could rebut the presumption Under Section 139 of the Negotiable Instruments Act, 1881?

(iii) To what order?

10. POINT (i):

For an offence to be constituted Under Section 138 of the Negotiable Instruments Act, 1881, the section itself mandates certain conditions to be complied with, which if not satisfied, the offence under this section would not be constituted.

Section 138 of Negotiable Instruments Act, 1881, reads as here under:

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 (now three months as per circular of RBI vide circular RBI/2011-12/251 DBOD AML BC No.47/14.01.001/2011-2012 dated 04.11.2011, with effect from 01.04.2012 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.

11. The initial burden is on the complainant to show that cheque was issued to discharge a legally enforceable debt or other liability and then only the burden shifts to the drawer of the cheque to rebut the presumption U/Sec.138 of Negotiable Instruments Act.

12. Complainant to support and substantiate his case has examined himself as P.W.1 and got marked Ex.P1 to Ex.P8.

13. Complainant/ P.W.1 has filed chief affidavit in lieu of chief examination and reiterated the facts as mentioned in complaint. In nutshell, Pw.1 deposed that he has doing the business of credit facility on vehicles. During the normal course of business the accused have approached him with a request to provide credit facility for the purchase of Hyndai Verna bearing registration No.TS-08-EE-5677 along with

Mr.Kunchem Venkat Krishna, Mrs. Thuraga Padmaja, Mr.Thuraga Sainath and others. That Mr.Kunchem Venkat Krishna had agreed to stand as guarantor for the credit facility and on the representation made by accused and others, he has agreed and approved the hire purchase credit facility of Rs.5,50,000/- payable in Thirty Six equated monthly installment of Rs.23,700/- each on 15th of every month starting from 15-09-2019 to 15-08-2022 and accordingly entered into the agreement of hire purchase credit facility. Believed the representation made by the accused and others, he has approved, extended and disbursed the amount under hire purchase credit facility. The accused is irregular in payment of monthly installments and failed, willfully defaulted to make the payment of installment on the agreed date. That the accused was in due and liable to pay an amount of Rs.5,17,354/- and as on today he is in due of Rs.9,46,026/-. The accused issued the cheque No.000012 for Rs.4,70,000/-dated 02-08-2021 drawn on The HDFC Bank Ltd., Malakpet Branch, with a promise to honour the same as and when presented for payment. Believed the accused words, he has deposited the said cheque in his bank i.e. Andhra Pradesh Mahesh Co-operative Urban Bank Limited, Malakpet Branch on 02-08-2021 but the said cheque was returned for the reason "Funds Insufficient" vide cheque return memo dated 03-08-2021. he has got issued a Legal notice dated 25-08-2021 By RPAD calling upon the accused to pay the amount of the dishonoured cheque within 15 days from the date of receipt of the said notice. The accused has received the same but failed to pay the cheque amount nor gave any reply as such he has filed the above complaint. After great difficulty and efforts, vehicle was located and repossessed in total loss accident condition and was disposed as scrap after due intimation and consent of the accused. The agreement was terminated on 25-03-2021, the accused has not cleared the outstanding amount inspite of several reminders, notices. The accused has also obtained another credit facility of Rs.2,70,000/- for purchased of vehicle Volkswagen Ventro and has defaulted in payment even the said credit facility also.

14. The complainant examining himself as PW.1 and adducing documentary evidence, Ex.P.1 to Ex.P.8 has proved the existence of legally enforceable debt, for which accused issued the cheques and raised the presumption U/Sec.138 of Negotiable Instruments Act in his favour.

15. The accused has to rebut such presumption either by adducing independent evidence or by eliciting something in the cross examination of PW.1. The standard of proof for doing so is that of preponderance of probability. Therefore, if accused is able to raise a probable defence while creating doubt about the existence of legally enforceable debt or liability, the case of complaint fails. Now it has to be seen whether

the accused is raised any probable defence to rebut the presumption under Sec. 139 N.I. Act.

16. Accused to disprove the complainant claim has cross examined PW.1. During the cross examination of PW.1, it was elicited that he know the contents of complaint, Legal notice as well as chief affidavit. The accused informed him that the accused is doing business related to medical field. The accused approached him in the month of May 2018 requested him for hire purchase for his car. He denied that he has not mentioned in the complaint that the accused approached him in the month of May 2018 requested him for hire purchase for his car. He denied that he has deposed false. He agreed that he has not mentioned the date till when the accused had paid the installment and also the due amount to be paid by the accused in his complaint, legal notice as well as chief affidavit. He added that he has mentioned the due amount and filed the account statement which shows the complete details of the accused related to the dates and amount paid by him and also the amount due by the accused. He does not remember whether they have sent any letter to the accused demanded him to repay the amount. He added that they had requested the accused on phone and had given messages on whatsapp. He denied that they have not sent any letter to the accused demanded him to repay the amount. He denied that they have not given any messages on whatsapp to the accused and also never requested the accused repay the amount on phone call. At the time of given loan for vehicle purchase they usually collected agreement copy, ID proof and address proof. He denied that at the time of given loan they collected empty signed cheques as security. They had given loan to the accused for purchase of two vehicles. He added that initially he had taken loan for purchase of Vento car for an amount of Rs.2,70,000/- than he had taken loan for the purchase of Verna car for an amount of Rs.5,50,000/-.

He agreed that he has filed two cases against the accused. The accused had paid almost regularly for the first car till he obtained loan for the second car. After approval of the loan amount the accused had defaulted the payment of the first car and there after payment of the second car. As they had faith in the accused they had given loan for the second time. He agreed that they have given loan to the accused as the accused was having repayment capacity. He added that basing on the representation of the accused related to repayment capacity. they have not collected any documents to verify whether the accused is having repaying capacity. He added that the accused had shown his bank statement, is own property documents having verified them, the accused had also given guarantors as such they have given the loan to the accused. He does not know whether the accused is having own house at present and he is residing in a rented house. He added that at the time of given the loan he had his own house and he had shown the document.

17. Before entering into the merits of the case let us first see whether the complainant is successful in raising the presumption that the cheque was issued in discharge of a legal enforceable debt .

(I) The facts of the case show that when PW.1 was questioned about the legally enforceable liability owed by the accused, the complainant has filed accounts statement i.e.,Ex.P7 as evidence which is the computation of total dues owed by the accused to the complainant. On perusal of Ex.P7 it shows the statement from 15/08/2019 to 9/06/2023 whereas as per the complaint the loan starts from 15/9/2019 to 15/8/2022. It is the case of the complainant that accused was irregular in payment of monthly installments as such the accused surrendered his vehicle and the said vehicle was disposed on 25/03/2021 for the sale proceeds of Rs.3,25,500/-. At this time let us go through Ex.P7 out of the total loan amount of Rs.5,50,000/- an amount of Rs.5,30,300/- was paid to the accused after deducting the first installment of Rs.23,700/- later the statement shows the accused has been defaulting the monthly installment. As such monthly interest, EMI bounce charges, other charges and overdue interest charges have been charged against the accused. But at some instances when the installment was paid then also the charges have been charged to the accused .

(ii) It is the case of the complainant that the accused entered into an agreement of Hire purchase facility subject to executing the necessary agreements, verification, submission of documents and vehicle papers, Hypothecation endorsement on RC and completing the RTA proceedings. To determine the legality of this agreement, it is necessary to discuss the concept of hypothecation. **In Black's Law Dictionary, Sixth Edn., at page 742 the word 'Hypothecate'** has been given meaning as under:

"To pledge property as security or collateral for a debt. Generally, there is no physical transfer of the pledged property to the lender, nor is the lender given title to the property; though he has the right to sell the pledged property upon default."

In Webster's Encyclopedic Unabridged Dictionary of the English Language, 1989 Edn., at page 702, the meaning of the word 'hypothecate' is given that "to pledge to a creditor as security without delivering over."

In **Corpus Juris Secundum, Vol. XLII, page 370 the word 'hypothecation' is defined as under:**

"A term borrowed from the civil law, and in so far as it is naturalised in English and American law, it means a contract of mortgage or pledge in which the subject matter is not delivered into the possession of the pledge or pawnee; or, conversely, a right which a creditor has over a thing belonging to another, and which consists in a power to cause it to be sold in order to be paid as claim out of the proceeds."

(iii) Hypothecation is not a statutory creation but it is in usage in mercantile field since times immemorial. Hypothecation is understood in mercantile world as creation of charge on movables in favour of hypothecatee by hypothecator where possession of goods will remain with the hypothecator. Thus, the hypothecator can be in possession of goods hypothecated and enjoy the same without causing any damage to the rights of the hypothecate. The hypothecation is neither governed by any statute nor there is any law governing the same directly or indirectly. Therefore, it has to be understood purely on general conditions of the contract as per the terms of the hypothecation agreement. There is no provision in the Contract Act regarding hypothecation nor in the Sale of Goods Act. To understand the concept of hypothecation, it is also relevant to know what is the difference between 'pledge' and 'hypothecation'. To understand the same, it is relevant to refer to judgment of Hon’ble Orissa High Court in **Bhabani Shankar Patra v State Bank of India, AIR 1986 Ori 247**, wherein it was held that:

"11. Hypothecation is an extended form of pledge which has not been expressly dealt with in the law of contract. The distinction between hypothecation of goods and pledge of goods is well known. In case of pledged goods, the goods are stored in the godown under the lock and key of the Bank under the Bank's supervision. Thus, the pledged goods remain under the physical possession of the Bank and no withdrawals or additions of the stocks in the godown are permissible without the Bank's permission. The position with regard to the hypothecated goods is, however, different because these goods are, strictly speaking, not under the lock and key of the Bank but allowed to be kept at the premises of the borrower without any lock and key of the Bank as such but are supposed to be under the constructive possession of the Bank by virtue of deed of hypothecation under which the borrower is obliged to submit regular returns to the Bank indicating the increase and decrease of the value of the said goods to enable the Bank from time to time to determine the drawing of the borrower with regard to it. In law, however, there is no difference with regard to the legal possession of the Bank. In both the cases, the goods are under the constructive possession of the Bank, while in the case of pledge they are also in the actual physical possession of the Bank, but in the case of hypothecated goods they are in actual possession of the borrower subject to the restrictions mentioned above.

It is, therefore, said that hypothecation is only an extended idea of a pledge, the creditor permitting the debtor to retain possession either on behalf of or in trust for himself"

(iv) In **Simla Banking and Industrial Co. v. Pritams, AIR 1960 PH 42** while making a distinction between pledge and hypothecation, a Division Bench of the Hon'ble Punjab High Court held that:

"8. The civil law recognizes two kinds of pledges, viz., the "pignus" (pawn) in which the possession of the thing is actually delivered to the person for whose benefit the pledge was made, and "hypotheca" (hypothecation) in which the possession of the thing pledged remained with the debtor, the obligation resting in mere contract without delivery. In one case possession was actually delivered to the creditor or pawnee, in the other it remained with the debtor. Hypothecation has been defined as a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold in order to be paid his claims out of the proceeds. It is an act of pledging a thing as security for a debt or demand without parting with the possession. It follows as a consequence that although the property remains in the possession of the debtor, it cannot be transferred to a third party without the express consent or permission of the creditor."

(v) According to law of Contract, it would not be possible to enforce any agreement or consideration, the object of which is unlawful, within the meaning of Section 23 of the Indian Contract Act, 1872, which is couched in the following terms :−

"23. What considerations and objects are unlawful, and what not − The consideration or object of an agreement is lawful, unless − it is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful, Every agreement of which the object or consideration is unlawful, is void."

(vi) However relying on the above mentioned citation it can be safely taken that the transaction in question, is also hit by the provisions of Section 23 of the Indian Contract Act, 1872 on when it is the case of the complainant that the accused has issued a cheque of Rs.4,70,000/- dated 2/08/2021 but the complainant did not state whether the said cheque was given as part payment of his outstanding amount or whether it was given as full and final settlement amount. The Account statement filed by the complainant as ExP7 shows a total outstanding amount of Rs.9,46,026/- which is a huge amount. one more thing which has to be noted here is that when the agreement was entered between the accused and the complainant on 29/08/2019 and when the accused became a defaulter how could the accused been given one more vehicle loan .This Agreement was for 3 years i.e., it would terminate on 15/8/2022 but the interest on the said loan was calculated till 9/06/2023 showing an outstanding of a huge amount of Rs.9,46,026/- which can also be treated as regards opposed to public policy.

(vii) Hence, in the considered opinion of this court, such a high penalty can in no way be regarded as a reasonable penalty and if the complainant, which is a NBFC, is permitted to recover penalties at such absurd rates without mentioning the same in the contract or apprising the borrower as to the source of the amount claimed, then the same would be totally contrary to public policy and would go on to set a dangerous precedent (void as per Section 23 read with Section 24 of the Indian Contract Act).

(viii) In order to determine the legality of the overhead charges such as arrears and delayed payment interest and the high interest rate which has led to the accused being liable for more than Rs.9,46,026/- lakhs when the original loan obtained from the complainant was merely Rs.5,50,000/- we have to delve into Section 74 of The Indian Contract Act, 1872. The above said provision stipulates that whenever a contract is broken and the contract contains a stipulation for penalty on account of breach by either party, the party complaining of the breach is entitled to receive reasonable compensation from the other party and such reasonable compensation should not exceed the penalty stipulated in the contract. In the present case, the accused had taken a loan of Rs.5,50,000/- which must not be fully granted to the accused due to EMI charges and certain other charges. Despite the same, the liability of the accused as stated by the complainant in his complaint is more and the amount claimed by the complainant company by the cheque in question, is excessive in nature. Moreover, when the complainant has not placed anything on record to justify how the complainant has reached the sum mentioned on the cheque in question, which also makes the amount claimed by the complainant arbitrary in nature.

(ix) Recently, the Hon'ble Supreme Court in **Dashrathbhai Trikambhai Patel vs. Hitesh M. Patel (2023) 1 SCC 578,** had observed in Para 34.1 of its judgment that "for the commission of offence U/sec.138 NI Act, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation."

In the present case, the cheque in question was presented for encashment of a sum of Rs.4,70,000/-**.** However, the same cannot be regarded as a legally enforceable liability on account of being contrary to public policy, as discussed above. Accordingly, the accused has succeeded in establishing that the amount claimed by the complainant via the cheque in question was excessive and did not reflect the legally enforceable liability of the accused.

(x) Furthermore, in the case of **Suman Sethi v. Ajay K. Churiwal and Another, (2000) 2 SCC 380, Hon'ble Supreme Court held**, "It is a well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the breakup of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable- and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonored cheque, notice might well fail to meet the legal requirement and may be regarded as bad."

(xi) The legal demand notice placed on record by the complainant also does not indicate the break-up of the total liability of the accused person by imposing of overhead charges or arrears etc. o perusal of legal demand notice it indicates the demand has been made omnibus for the cheque amount, and not for the "said amount" by indicating the claim for principal sum, interest, cost etc. The complainant company has nowhere specified as to how they arrived at the sum of Rs.4,70,000-. The legal notice therefore is bad in law, as per the discussion above.

(xii) In view of the discussion made above, this Court is of the considered view that the complainant could not establish his case against the accused so as to bring home the guilt on the part of the accused. Further it could be safely concluded that the cheque in question was not issued in discharge of legally enforceable liability, therefore, notwithstanding that it was dishonoured, it cannot come within the purview of section 138 of the NI Act.

18. Hence in view of the above discussion as debt under Ex.P1 cheque held to be not legally enforceable, it is held that all the essential ingredients for an offence to be constituted under section 138 of the Negotiable Instruments Act, 1881, are not satisfied in this present case. Point No.(i) answered accordingly.

POINT (ii):

19. Once the mandatory requirements for an offence to be constituted under section 138 of the Negotiable Instruments Act,1881, are held to be not satisfied, there is no question of raising the presumption under section 139 of the Negotiable Instruments Act,1881 in favour of the complainant.

20. Hence as the mandatory requirements for an offence to be constituted under section 138 of the Negotiable Instruments Act,1881, are held to be not satisfied, the presumption under section 139 of the Negotiable Instruments Act,1881 cannot be raised, as such the

question of accused rebutting the presumption would not arise. Point No.(ii) answered accordingly.

Point (iii)

21. In view of the findings to point Nos. (i) and (ii), this point is answered as here under:

In the result, is found not guilty for an offence under Sec. 138 of NI Act. Accordingly, accused is acquitted for an offence under Sec.255(1) Cr.P.C. Bail bonds of the accused shall be in force for a period of six months from this day as provided under Sec.437 A of Cr.P.C. for preferring appeal to the higher court by the prosecution or by the defacto complainant. No property was produced before this court, hence there is no order with regard to property.

Dictated to the Stenographer-III, transcribed by her, corrected and pronounced by me in open Court on this 27th day of January, 2026.

IX Judicial Magistrate of First Class,
Hyderabad.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:

PW-1.Ramesh Jain/ Complainant.

For Defence:

Nil.

EXHIBITS MARKED

For Complainant:

Ex.P1: Cheque bearing No.000012, dt.02-08-2021 for an amount of Rs.4,70,000/-.
Ex.P2: Cheque Return Memo dt.03-08-2021.
Ex.P3: Office copy of the Legal notice dt.25-08-2021.
Ex.P4: Postal Receipts dt.28-08-2021(2 nos.).
Ex.P5: Track Report marked along with Section 65-B Certificate of Indian Evidence Act, dt.30-08-2021.
Ex.P6: Return Cover dt.30-09-2021.
Ex.P7: Account Statement dt.09-06-2023.
Ex.P8: Hire Purchase Agreement dt.29-08-2019.

For Defence

Nil

M.Os. Marked

NIL

IX Judicial Magistrate of First Class,
Hyderabad.