KABC030123302023

# IN THE COURT OF L ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU

PRESENT

SRI. S.M. ARUTAGI.,
B.Com., LLB., (Spl),
L ADDL.C.J.M., BENGALURU.

DATED THIS 10TH DAY OF AUGUST 2026

***C.C.No.7413/2023***

**Complainant**:

Sri. S.Srinivasaiah,
S/o Late Sanjeevappa,
Aged about 61 years,
R/at No.12, Balaji Garden,
Silavepura Main Road,
Hurulichikkanahalli,
Bangalore-560 090.
**Since dead by Lrs**

1. **a) Smt. Manjula**
W/o late S.Srinivasaiah,
Aged about 55 years,

**b) Sri. Ravindra.S**
S/o late S.Srinivasaiah,
Aged about 36 years,

**c) Sri. Lohith.S**
S/o late S.Srinivasaiah,
Aged about 34 years,

**d) Kum. Gouthami.S**
D/o late S.Srinivasaiah,
Aged about 26 years,

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All are R/a No.12, Balaji
Garden, Silavepura Main Road,
Hurulichikkanahalli,
Bangalore-560 090.

**(By Kumar M.D. Associates).**

**// Versus //**

**Accused:**

Sri. H.V.Jayaramaiah,
S/o Late Veerakempaiah,
Aged about 62 years,
R/at No.266/1-18, 'Matrushree
Nilaya', Behind Sri Benaka
Bhavana, Chikkamadhure Main
Road, Hesaraghatta,
Bangalore-560 088.

**(By Sri. C.R.Srinivasa, Advocate)**

**TABULATION OF THE EVENTS**

| | | |
|---|---|---|
| O1 | Date of Commencement of offence | 08.12.2022 |
| 02 | Date of report of offence | 17.01.2023 |
| 03 | Arrest of the accused | 08.02.2024 |
| 04 | Name of the complainant | Sri. S.Srinivasaiah, |
| 05 | Date of recording evidence | 18.03.2023 |
| 06 | Date of closing of | 09.07.2026 |

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| | | |
|---|---|---|
| | evidence | |
| 07 | Offences complained of | U/s 138 of N I Act |
| 08 | Opinion of the Judge | Accused found guilty |

( S.M.ARUTAGI)
L ADDL.C.J.M.,BENGALURU.

## J U D G M E N T

The complainant has filed this complaint U/s 200 of Cr.P.C., for the offence punishable U/s 138 of Negotiable Instrument Act.

2. The case of the complainant is that, himself and accused are well known to each other for past several years. The accused had approached to him during the month of October 2021 and requested for assistance of financial help for domestic and to clear other loans for Rs.2,50,000/- and same will be returned within one year. In pursuance of request made by the accused, the

complainant had paid the sum of Rs.2,50,000/- on 27.10.2021 by way of cash.

3. Thereafter, towards repayment of the said amount, the accused had issued a cheque bearing No.284718 dated 08.12.2022, for a sum of Rs.2,50,000/- drawn on Canara Bank, I.I.S.C. Branch, Bangalore. But said cheque was returned unpaid with an endorsement **"Funds Insufficient"** when the complainant presented through his banker. Thereafter, the complainant had got issued a legal notice dated 17.12.2022 demanded the accused to repay the cheque amount, but the accused fail to repay the amount within stipulated period. Accordingly, the complainant filed this complaint to take necessary action against the accused in accordance with law.

4. Since, this is a complaint filed under section 200 of Cr.P.C.,. After taking cognizance, the sworn statement of the complainant was recorded and

summons was issued. In pursuance of the process, the accused was appeared before the Court through his counsel and got enlarged on bail. Thereafter, the substance of accusation was recorded, wherein the accused pleaded not guilty and claims to be tried.

5. Thereafter, the complainant got examined himself as PW-1 and got exhibited 06 documents marked at Ex.P-1 to Ex.P-6. During the pendency of the case, the complainant unfortunately died and on the application, the legal heirs of complainant were brought on regard and after amending the complaint, one of the LR's of complainant got himself examined as PW.2 and got marked one document at Ex.P.7 which is death certificate of complainant.

6. Thereafter, the statement of accused as required under section 313 of Cr.P.C., was recorded, for which the accused denied it as false and submitted that he has defense evidence to lead and thereafter, the accused has got himself examined as

DW-1 and no document has been produced in support of his case and also not examined any witnesses on his behalf.

7. Heard the arguments on both side and perused the documents available on record. The counsel for accused files following decisions:-

1. *Ashok Baugh Vs. Kamal Baugh, in Crl. L.P.358/2012 dated 06.10.2015 by Hon'ble Delhi High Court;*
2. *Sajidur Rehman Vs. Rajiv Kashyap & Anr. In Crl.Rev.P.500/2014 dated 04.08.217 by Hon'ble Delhi High Court;*

8. I have gone through the above cited decisions.

9. The following points arise for my due consideration:-

1. *Whether the complainant proves that Ex.P.1 cheque has been issued by the accused towards discharge of legal liability ?*

2. *Whether the complainant proves that, Ex.P.1 cheque was dishonored on its presentation ?*

3. *Whether the complainant has complied the mandatory provisions under Sec.138(A) to (c) of N.I.Act ?*

4. *Whether the complainant proves beyond doubt that the accused without having sufficient funds in his account, Ex.P.1 cheque towards discharge of legal liability and failed to make good to complainant after its dishonour within the stipulated period and thereby committed an offence punishable under Sec.138 of N.I.Act ?*

5. *What sentence or order?*

10. My findings to the above points are as follows:

| | | |
|---|---|---|
| Point No.1 | : | In the Affirmative. |
| Point No.2 | : | In the Affirmative. |
| Point No.3 | : | In the Affirmative. |
| Point No.4 | : | In the Affirmative. |
| Point No.5 | : | As per final order for the following:- |

## REASONS

11. **POINT NO.1 & 2:** Since both points are interrelated, to avoid repetition of facts they are taken up together for common discussions.

12. It is pertinent to note that under section 138 of Negotiable Instrument Act, will be complete only if the cheque was issued towards discharge of legal liability and if it is dishonored for insufficient funds in the account of accused.

13. In order to prove the case, the complainant got examined himself as PW-1 by fling the affidavit by way of examination-in-chief and he reiterated the complaint averments. In this connection the complaint reveals that, in order to meet family and legal necessities and to clear debts, the accused borrowed a sum of Rs.2,50,000/- from the complainant and towards repayment of the said amount the accused issued a cheque bearing No.284718 for a sum of Rs.2,50,000/- dated 08.12.2022 drawn on Canara Bank, I.I.S.C. Branch Bengaluru as per Ex.P.1. The said cheque was

returned with an endorsement **“Funds Insufficient”** when presented through his banker at., Ex.P.2.

14. It is relevant to note that U/s 118 of N I Act, the presumption is available regarding consideration as to the date and also holder or holder in due course of the cheque. Therefore, when the complainant presents the cheque, it implies that it was given to him by the accused for some purpose. This presumption has to be rebutted by the accused by adducing defense evidence.

15. Further, the presumption under section 139 of NI Act, is rebuttal presumption and unless contrary is proved, it shall be presumed that holder of the cheque received the cheque of the nature referred to U/s 138 of NI Act, for discharge in whole or in part any debt or other liabilities.

16. It is relevant to note that, the accused has not denied that is Ex.P.1 cheque belongs to him, and

even he has not disputed his signature found at Ex.P.1(a) cheque in question. The accused in order to rebut the presumption available for the complainant, the learned counsel for the accused cross-examined the PW-1 at length and put forth the certain defense which has been specifically denied by the PW-1. At foremost, the accused has taken up specific defense that, he has no transaction with the complainant and he has not given cheque as per Ex.P.1 in favour of complainant and there is no direct transaction in between himself and complainant and even the accused disputed the financial status of the complainant. It is relevant to note that though the accused has taken the defense put forth at the time of cross-examination has been specifically denied by the PW.1 and the PW.1 withstood the test of cross-examination.

17. It is relevant to note that though the accused has taken the defense that he never borrowed the loan from complainant and no transaction with a complainant and he is having a transaction with one Mahadevaiah who is working at their science laboratory as a helper and in the year 2017, he was suffering from financial problem and therefore, he availed a loan of Rs.7,00,000/- from the Mahadevaiah and same has been paid by him and at the time of availment of loan from the Mahadevaiah, he issued 6 cheques to him and after repayment of the said loan amount, he asked to return the said cheques. However, the said Mahadevaiah told that he was shifting his house at Yalahanka and postponed the return of the cheques which are given by the accused at the time of availment of loan.

18. It is also taken contention that he was retired in the year 2021 from his service and he was

residing at Hesaraghatta area and since the date, he never met the Mahadevaiah and the cheque given in favour of Mahadevaiah has been misused by the complainant and the said Mahadevaiah. To substantiate the same, the accused has not produced any single scrap of documents before this Court. On the other hand, the complainant in order to disprove the defence taken by the accused regarding availment of loan by the accused and also towards repayment of the said loan, the accused issued a cheque bearing No.284718 dated 08.12.2022 drawn on Canara Bank, I.I.S.C. Branch, Bengaluru. During the course of examination-in-chief, the complainant had reiterated the complaint averments. Further it is deposed that, as per the assurance of the accused, he presented the cheque through his banker. But, the said cheque was returned with an endorsement **"Funds Insufficient"** at Ex.P.2 document. Thereafter, he got issued legal notice through his counsel on 17.12.2022 and thereafter, the accused has not made any reply notice or repayment of cheque amount to him and therefore, he filed this complaint.

19. It is relevant to note that during the course of cross-examination of PW.1 has specifically deposed that he know the accused since 25 years and also himself and accused were working in the TATA Institute as a lab assistant and accused was working in the said institute at IPC Department. It is further deposed that, himself and accused having several monetary transactions and accused in the earlier availed loan from him for the purpose of legal and financial necessities. It is further deposed that at the time of giving the loan to the accused, he drawn Rs.2,50,000/- from the bank and same was given in their institute campus canteen and he has not taken any security due to trust of the accused.

20. It is further deposed that, the accused assured that he will refund the said amount with interest within one year and thereafter, he issued cheque in question. It is further deposed that as per the Ex.P.6 pass book, he with drawn big amount from the bank and in the year 2022, the construction of his house was completed and for the expenses of the said construction of house, he withdrawn the big amount from the bank. It is denied that he was colluding with Mahadevaiah, Umesha and Kasturi, misused the cheque given to them and denied that he has no transaction with accused and he never given any amount to him and the accused has not issued any cheque in question in his favour and rest of the suggestions are made by the counsel accused is totally denied by the PW.1.

21. Furthermore, during the pendency of the case, unfortunately the complainant was died and on

the application the legal heirs of complainant were brought on the card and one of the LRS of complainant, got himself of PW.2 by filing the affidavit and reiterated the complaint averments and also deposed that his father having monetary transaction with the accused and he paid an amount of Rs.2,50,000/- to the accused and the accused had issued ExP.1, cheque in question in favour of the complainant and thereafter, the said cheque was returned unpaid with an endorsement **"Funds Insufficient"** and thereafter, his father had issued a legal notice through his counsel and in spite of that the accused did not made any effort to repay the cheque amount and therefore, his father had filed this present complaint. During the course of cross-examination, he totally denied the suggestion made by counsel for accused and he withstood the test of cross-examination.

22. It is further relevant to note that the accused in order to rebut the presumption available in the complaint got himself examined as DW.1 and in his evidence he deposed that, since the 2013, he know the complainant and he was residing in the Indian Institute of Science at Yeshwanthpura Quarters and himself and accused have no monetary transactions. It is further deposed that, in the year 2017, he requested one Mahadevaiah who is working in their institute as helper and he availed loan of Rs.7,00,000/- from him and towards repayment of the said loan amount, he issued 06 cheques to the Mahadevaiah and thereafter, he repaid the amount to the Mahadevaiah, but the said Mahadevaiah had not returned all the cheques which are given by him and when he was asked the said cheques, the said Mahadevaiah had told that he was shifted his house at Yalahanka and those cheques were missing in his house and since the date, he has

no contact with the said Mahadevaiah and out of the 06 cheques, 03 cheques were given to the bank and the complainant had misused the cheque in question which are given to the said Mahadevaiah and therefore, he appeared through his counsel and deposed that he has no transaction with complainant and he has not availed any loan from the complainant and issued cheque in question at Ex.P.1. The complainant in order to make wrongful gain filed this false complaint by misusing the said cheques issued in favour of Mahadevaiah. But, during the course of cross-examination, the accused has specifically admitted that, he has not furnished any documents with regard to availment of loan from Mahadevaiah and repayment of the loan to him. It is further admitted that, after filing this complaint, he came to know that the complainant and Mahadevaiah have misused the cheque in question. It is clearly admitted that, he has not taken any legal action about misuse of cheque against the complainant and Mahadevaiah and also not issued any legal notice about misuse of cheque to the Mahadevaiah and complainant. It is clearly admitted that the Ex.P.1 cheque is belongs to him and also admitted that the signature found in the said document is belongs to him.

23. On perusal of the cross examination of DW.1, it clearly goes to show that though the accused had taken specific contention that he has no transaction with complainant and he never borrowed any amount from the complainant and he has not issued cheque in question in favour of the complainant, then what prevented him to file complaint against the complainant about misuse of cheque in question as per Ex.P.1 is not specifically stated by him and even when the accused has not issued any cheque in favour of the complainant and

what prevented him to file complaint before his banker is also not specifically stated by him.

24. Further, it is relevant to note that the accused had not disputed the cheque in question is not belongs to him and also not disputed that the signature found in Ex.P.5 is not belongs to him. As I have already held that when the accused has no transaction with complainant and not issued cheque in question in favour of the complainant, the same was issued in favour of one Mahadevaiah and both of them colluding with each other filed this false complaint, then what prevented him to file a complaint against the complainant or Mahadevaiah is not specifically stated by him. Therefore, the accused has taken up such improbable defense which cannot be believed at all in the absence of cogent and material documentary evidence before this Court.

25. It is further relevant to note that the complainant in order to substantiate his case got produced voluminous documents before this Court marked at Ex.P.1 to Ex.P.7. Moreover, the complainant has filed a passbook marked at Ex.P.6 which clearly goes to show that prior to giving of loan to the accused, he withdrawn an amount of Rs.3,00,000/- from his banker and same was mentioned in Ex.P.6(a), which clearly goes to show that the accused had availed a loan of Rs.2,50,000/- from the complainant and towards repayment of the said loan amount, he issued cheque in question at Ex.P.1 in favour of the complainant. Though the accused has taken contention that the cheque in question is given in favour of Mahadevaiah which, he availed loan from him and repaid the same and inspite of repayment of loan amount the said Mahadevaiah has not returned the said cheques and through the present complainant. he files this

complaint. To substantiate the same, the accused has not produced any single scrap of documents before this Court to show about availment of loan from Mahadevaiah and repayment of loan and even issuance of cheque in his favour and what prevented the accused to examine the said Mahadevaiah or his colleagues by name Kasturi or Umesh is not specifically stated. So, when a dishonor of cheque the accused has taken a plea as to handing over the cheque in question in favour of Mahadevaiah and no complaint lodge with police and the accused failed to produce the acceptable rebuttable evidence as to availment of loan and repayment of loan and giving of cheque in favour of Mahadevaiah cannot be acceptable without producing cogent and relevant document before this Court. As I have already held that the accused has fails to prove the defense taken by him in his evidence and even he has not produced any single scrap of documents before this Court.

26. At this juncture, I would like to rely upon the decision reported in **ILR 2006 KAR 1730- in a case of Dr.Sampathkumar B.V. VS K.G.V.Lakshmi** his lordship has held that,

> *The accused borrowed a sum of Rs.75,000/- in connection with film business. The cheque, Ex P1 was issued towards repayment. When the complainant presented the cheque to the bank, it is dishonoured. Statutory notice is issued as required under section 138 of the Act. Thereafter, a private complaint is filed. It is the contention of the accused that the cheques have been issued only as security for repayment of the loan and contends that a blank cheque is issued. Therefore, no prosecution can lie under sec.138 of the Act.*
>
> *Further his lordship has held that,*
>
> *the dismissal of the complaint on the plea that it was issued only as security and therefore no prosecution would lie is again untenable view. A cheque whether issued for repayment of loan or as security makes little difference under section 138 of the Act. In the event of dishonour, legal consequences are same without distinction. In the present case, issue of cheque, its dishonour and*

*issuance of statutory notice are held to be proved according to the findings of the trial court. When once issue of cheque is proved, a presumption under sec.139 of the Act would arise with regard to consideration. The accused has not led in any evidence to rebut the said presumption. In that view, dismissal of the complaint is bad in law and the complainant has successfully proved the guilt and the accused is liable to be convicted under section 138 of the Act.*

27. In the instant case also the accused availed loan from complainant in order to meet his family and legal necessities and to clear debts and in order to show the payment of loan amount to the accused the complainant has produced voluminous document before this Court which clearly goes to show that towards repayment of loan amount the accused had issued cheque in question at Ex.P.1 and same was returned with an endorsement **"Funds Insufficient"** at Ex.P.2. Therefore, no probable defense has been taken in order to substantiate the case of the accused. Hence, the principle laid down

in the above decisions are aptly applicable to the present case in hand.

28. It is further relevant to note that the accused has disputed the financial status of the complainant. In this regard during the course of cross examination of PW.1, he specifically deposed that

"**ಹಣವನ್ನು ನಾನು ಬ್ಯಾಂಕಿನಿಂದ ಡ್ರಾ ಮಾಡಿ ಕೊಟ್ಟಿದ್ದೇನೆ**."

29. Coupled with above depostion, the complainant has got produced Ex.P.6 document which is passbook of Canara Bank and on 27.10.2021, the complainant had withdrawn Rs.3,00,000/- from his banker and same was given to the accused the Ex.P.6(a), clearly goes to show that the complainant having good source of income as deposed in the cross-examination and in order to substantiate his case, the complainant has got

produced cogent and relevant document before this Court. Hence, the defence taken by the accused counsel is improbable which cannot be accepted.

30. At this juncture, I would like to rely upon a decision reported in **(2022) 6 Supreme Court Cases 735- in a case of Tedhi Singh VS Narayan Dass Mahant** wherein his lordship has held that,

> *A. Debt, Financial and Monetary Laws- Negotiable Instruments Act, 1881-S. 139- Rebuttable presumption – Probable defence- Accused can rebut the presumption by establishing probable defence that no consideration was received from complainant.*
>
> *B. Debt, Financial and Monetary Laws- Negotiable Instruments Act, 1881-Ss. 138 and 139- Dishonour of cheque for repayment of loan- Financial capacity of complainant to advance loan to accused- When needs to be established.*
>
> *Complainant need not show in first his financial capacity, unless accused sets up a case questioning complainant's capacity in reply to statutory notice-Accused can set*

*up such a case by producing independent materials or by pointing to materials produced by complainant himself or cross-examining witnesses of complainant-Court has to decide by appreciating totality of evidence.*

*C. Constitution of India- Art.136- Interference of Supreme Court with findings concerned of Court below-Called for when concurrent findings are wholly erroneous causing miscarriage of justice.*

31. In the instant case also, as I have already held that, the complainant has produced relevant and cogent document at Ex.P.6 which clearly reveals that after withdrawal of Rs.3,00,000/- from his banker, he given loan of Rs.2,50,000/- to the accused as requested by him, which clearly goes to show that the complainant is having an amount of Rs.2,50,000/- in his bank account and even as per the ratio of the above decision the complainant need not show in the first his financial capacity, unless accused set up a case questioning the complainant's capacity in reply to the statutory notice. But, in the

present case in hand, the complainant has not issued any reply notice to the accused, then question of considering the defense taken by him cannot be accepted.

32. In a decision reported in **(2015) 8 SUPREME COURT CAES 378 – in a case of T.Vasanthkumar –VS- Vijayakumari,** it is held that,

> *B. Debt, Financial and Monitory Laws- Negotiable Instruments Act, 1881- Ss.138 and 139- Dishonour of cheque- Presumption under Sec.139 that holder of cheque received it for discharge of debt or other liability- when arises-Burden on accused/defendant to rebut- courts below convicted defendant for dishonour of cheque of Rs.5 lakhs given as consideration of a loan given to him by complainant- High Court acquitted defendant on ground that complainant had not proved legally enforceable debt or liability against defendant- Held, High Court was misplaced in putting the burden of proof on complainant- As per Sec.139, burden of proof had shifted on to accused which she failed to discharge – order passed by High Court set aside- conviction restored.*

33. In the instant case also the heavy burden is lies on the accused to prove that he has no transaction with the complainant. Except bear-say the accused has not produced any single scrap of documents before this Court to show that he has no transaction with complainant and even he has not examined any single independent witnesses or produced documents in order to disprove the case of the complainant. Therefore, the defense taken by the accused are improbable defense and it cannot be believed at all in the absence of material and cogent documents. Hence, the ratio of the above decision is aptly applicable to the present case in hand.

34. Another decision reported in **(2010)11 SUPREME COURT CASES 441 in a case of Rangappa –VS- Srimohan,** it is held that,

> *A. Negotiable Instruments Act 1881- S.139- Presumption under Scope of – Held, presumption mandated by*

*S.139 includes a presumption that there exists a legally enforceable debt or liability- However, such presumption is rebuttable in nature- Criminal Trial-Proof- presumptions- Generally.*

35. On perusal of the above said decision his lordship has held that legal question before us pertains to the proper interpretation of Sec.139 of N.I.Act which shifts the burden of proof on to the accused in respect of cheque bouncing cases.

36. Another decision reported in **AIR 2001-SUPREME COURT 2895 in a case of K.N.Veena –VS-Muniyappan and another** it is held that,

*Negotiable Instruments Act – S.138,S.139-S.118- Cheque dishonour complaint- burden of proving that, cheque had not been issued for any debt or liability- Is on the accused- Denial/averments in reply by accused are not sufficient to shift burden of proof onto the complainant- accused has to prove in trial by leading cogent evidence that there was no debt or liability-setting aside of conviction on basis of some formal evidence led by accused- Not proper.*

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37. In the instant case also, though the accused had took up certain defense, but in order to establish the said fact, except bare say he has not produced any documents before this court and even as I already stated that the accused has not filed any complaint against complainant in order to misuse of cheque and even he has not filed any application before his banker to stop the payment of cheque in question and therefore, so bare say is not sufficient to hold that the accused has no transaction with the complainant. Hence, the principle laid down in the above decision is aptly applicable to the present case on hand.

38. Another decision reported in ***2019 (1) Kar. L.R.689 (SC) in a case of Bir Singh V/s Mukesh Kumar*** *his lordship has held that,*

> ***(B) Negotiable Instruments Act, 1881****- Sections 138 and 139 signed blank cheque- If a signed blank cheque is voluntarily presented to a payee, towards some payment,*

*the payee may fill up the amount and other particulars- This in itself would not invalidate the cheque- The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*

***(C) Negotiable Instruments Act, 1881****- Section 139- Presumption under Section 139- Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of coercion.*

39. Another decision passed by ***Hon'ble Supreme Court of India in Crl. Appeal No.950-951/2018 dtd:31.07.2018 in a case of T.P.Murugan (Dead) THR. LRS. V/s Posa Nandi REP. THR PA holder T.P.Murugan*** *his lordship has held that*

*The appellants have proved their case by over-*
*whelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt. The respondent having admitted that the cheques and Pronote were signed by him, the presumption under S.139 would operate. The respondent failed to rebut*

*the presumption by adducing any cogent or credible evidence. Hence, his defense is rejected.*

40. Another decision passed by **Hon'ble Supreme Court of India in Crl. Appeal No.688/1995 in a case of Hiten P.Dalal V/s Bratindranath Banerjee on 11.07.2001** his lordship has held that,

> *The Special Court found the appellant's defence improbable and the evidence adduced at his instance flawed and unbelievable. After meticulously scanning both the oral and documentary evidence and ultimately drawing on the presumptions statutorily provided under sections 118, 138 and 139 of the Negotiable Instruments Act, the appellant was found guilty. For the reasons stated earlier, there is no ground for us to decide differently and to differ from the view taken by the Special Court in holding the appellant guilty of the offence with which he was charged. We therefore affirm the conviction and sentence imposed on the appellant by the Special Court and dismiss the appeal with costs assessed at Rs.10,000/-.*

41. Another decision reported in **2019 (1) DCR 763 in a case of Mohinder Kumar V/s Mast Ram Pathak** his lordship has clearly held that

***Negotiable Instruments Act, 1881****- Section 138 and 139- Criminal Procedure Code, 1973- Section 378(4)- Appeal against acquittal- Legality- Held- Since trial court has failed to take into consideration the fact once a cheque has been signed and issued in favour of holder then there is statutory presumption that it is issued in discharge of legally enforceable debt/liability though rebuttable- Set aside the order of acquittal- Matter is remitted back to decide afresh in accordance to law- Appeal is allowed.*

*Held: in a very recent judgment in TP Murugan V/s Bojan (2018) 8 SCC 469, the Hon'ble Supreme Court has held that once a cheque has been signed and issued in favour of holder of cheque, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability, but at the same time, it was also held that his presumption is rebuttable one and the issuer of cheque can rebut that presumption by adducing credible evidence that the cheque was issued for some other purpose like security for loan etc.*

*Bearing in mind the aforesaid exposition of law, it is clearly evidence that the learned trial Magistrate has failed to take into consideration the fact the once a cheque has been signed and issued in favour of the holder, there is a statutory presumption that it is issued in discharge of legally enforceable debt or liability. This presumption, of course, is rebuttable one if the issuer of the cheque is able to discharge the burden that it was issued for any other purpose like security of loan.*

> *In view of the presumptions attached by virtue of Sections 118 and 139 of the Act, the Court was required to draw a presumption that the cheque was issued for consideration and until the consideration was proved, some presumption would hold good. Therefore,, in the given circumstances, the learned trial Magistrate has clearly fallen in error, in not being aware of the presumption attached to Negotiable Instruments Act by virtue of Sections 118 and 139 of the Act and has, therefore, erred in placing the initial onus on the complainant rather than placing the same on the accused/respondent.*

42. On perusal of the above cited decisions their lordships have clearly held that once a cheque has been signed and issued in favour of the holder, there is a statutory presumption that it is issued in discharge of legally enforceable debt or liability, but at the same time, it was also held that this presumption is rebuttable one and the issuer of cheque can rebut that presumption by adducing credible evidence that the cheque was issued for some other purpose like security for loan etc.,.

43. Further his lordship held that If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This is itself would not invalidate the cheque and the onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

44. In the instant case also the accused has taken up certain defense that he never borrowed any loan amount from complainant and no transaction between himself and complainant and complainant colluding with Mahadevaiah had misused the cheque in question. Though, he has taken certain defense, but in order to substantiate the said facts, he has not produced any cogent and relevant documents before this Court and also not examined any independent witnesses before this Court and even as I have already stated that what prevented him to file complaint against the complainant or Mahadevaiah

is also not specifically stated by him and also not filed any application before his banker to stop the payment of cheque. Therefore, from this evidence one thing is clear that, in order to escape from legal consequences has taken up such improbable defense which cannot be believable at all. Hence, the principal laid down in the above decision is squarely applicable the present case in hand. On perusal of the documents available on record, it is crystal clear that the accused has availed a loan of Rs.2,50,000/- from the complainant for domestic and family purpose and to clear debts. Under such circumstances considering the oral as well as documentary evidence placed before this Court, when there is evidence of complainant regarding issuance of cheque and its dishonor on presentation and when there is no probable defense to rebut the presumption available U/s 118 and 139 of NI Act, I am of the opinion that the complainant has successfully establish the point No.1 and 2. Accordingly I answer **point No.1 and 2 in the Affirmative.**

45. **POINT NO.3:-** It is relevant to note that section 138 of Negotiable Instrument Act, the offense will complete only if mandatory provisions of section 138(a) to (c) are to complied. Ex.P.1 cheque is dated 08.12.2022 bearing No.284718 drawn on Canara Bank I.I.S.C. Branch, Bengaluru. On perusal of Ex.P.1 it crystal clear that it supports stands taken by the complainant. Ex.P.2 is Bank endorsement it shows that the aforesaid cheque was dishonor for reasons "Funds Insufficient".

46. It must be noted that as per (b) of proviso section 138 of Negotiable Instrument Act, the complainant had required to make demand for repayment of said amount within 30 days from the date of receipt of cheque as unpaid. Ex.P.3 is copy of legal notice shows that the complainant made a

demand in writing calling of the accused to make repayment of the said amount by issuing legal notice dated 17.12.2022 which is within the 30 days from the date of receipt of the cheque as unpaid.

47. Ex.P.4 and Ex.P.5 are postal receipt and postal cover which are clearly discloses that the notice issued by the complainant has been returned with an endorsement unclaimed. So, on looking to the address shown by the complainant in the cause title of complaint, it is clear that he issued the notice at Hesaraghatta, Bengaluru address and the accused in his evidence he clearly deposed that he was residing at Hesaraghatta which clearly goes to show that the accused intentionally and deliberately not received the cheque issued by the complainant and same was returned to him with an endorsement as unclaimed. So, when the complaint has issued registered notice to the complainant and same was returned as unclaimed as the accused has not

replied to the same, is clearly goes to show that the complainant has followed the mandatory provisions of Negotiable Instrument Act. Moreover, as per (c) of proviso to section 138 of NI Act, the accused was entitled for 15 days time to make repayment of aforesaid amount. Further as per section 142(b) of Negotiable Instrument Act, the complaint is to be filed within 30 days from the date of cause of action arises. This complaint has been filed on 17.01.2023, which is well within the stipulated period. Therefore, I am of the opinion that the complainant has complied the mandatory provisions of section 138 of Negotiable Instrument Act and therefore, the contention taken by the accused with respect to non service of notice to him cannot be reliable and trustworthy. Accordingly, I answer **point No.3 in the Affirmative.**

48. **POINT NO.4:-** The complainant has established that Ex.P.1 cheque was issued by the

accused towards discharge of liability and the said cheque was returned and in spite of legal notice at Ex.P.3, he has not paid the amount within stipulated period and the complainant has complied the mandatory provision of section 138 (a) to (c) of Negotiable Instrument Act and since the accused having failed to make good to the complainant within stipulated period. Therefore, the accused has committed an offense punishable U/s 138 of Negotiable Instrument Act. There is no contra evidence to rebut the presumption U/s 118 and 139 of Negotiable Instrument Act. Further, section 138 of Negotiable Instrument Act was enacted to bring credibility to the cheque and very purpose of enactment is promote the use of Negotiable Instrument while to discourage the issuance of cheque without having sufficient funds in their account. Such being the case, the intention of the legislator is that, the complainant be suitably compensated while accused be punished for his act .

49. Further section 117 of Negotiable Instrument Act, the complainant is entitled for the compensation. Here, the complainant was disproved the money that was rightfully due to him almost for a period of 5 years as Ex.P.1 cheque pertains to year 2022. Under such circumstances the complainant is entitled for expenses incurred in sending notice of dishonor to the accused and also the expenses incurred in presenting the complaint and the inconvenience caused to him. Accordingly, in the light of above discussion, I answer the **point No.4 in the Affirmative.**

50. **POINT NO.5:-** For the forgoing discussion and reason assigned by me and my findings to the above points, I proceed to pass the following:-

KABC030123302023

## :ORDER:

By exercising the power conferred U/s 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable U/s 138 of Negotiable Instrument Act.

The accused is sentence to pay a fine of Rs.2,80,000/- and out of which, a sum of Rs.5,000/- shall go to State as penalty and remaining amount shall be paid to the complainant as compensation.

In default of payment of fine, the accused shall undergo simple imprisonment for a period of 6 months.

KABC030123302023

The bail bond and surety bond of the accused is hereby stands cancelled.

Free copy of this judgment shall be given to the accused.

(Dictated to the stenographer-III, typed by her, corrected by me and then pronounced in open court on this the 10th day of August 2026)

**(S.M. ARUTAGI.)**
**L ADDL.C.J.M., BENGALURU.**

## :A N N E X U R E:

**List of witnesses examined for Complainant:-**

PW-1 : S. Srinivasaiah S/o Late Sanjeevappa R/o Bengaluru

PW-2 : Lohith .S. S/o Late Srinivasaiah R/o Bengaluru

**List of witnesses examined on behalf of the Accused:-**

DW-1 : Jayaramaiah S/o Veerakempaiah R/o Bengaluru

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**List of documents marked for Complainant:-**

| | | |
|---|---|---|
| Ex.P-1 | : | Original Cheque, |
| Ex.P-1(a) | : | Signature. |
| Ex.P-2 | : | Endorsement of Bank |
| Ex.P-3 | : | Legal notice, |
| Ex.P-4 | : | Postal receipt, |
| Ex.P-5 | : | Postal cover, |
| Ex.P-5(a) | : | Copy of notice |
| Ex.P-6 | : | Bank pass book, |
| Ex.P-7 | : | Death certificate of complainant |

**List of documents marked on behalf of the Accused:-**

- NIL-

**(S.M. ARUTAGI)**
**L ADDL.C.J.M., BENGALURU.**

SHANKAR ARUTAGI

Digitally signed by SHANKAR ARUTAGI
Date: 2026.08.13 02:13:06 +0530