KABC0C0014452016

<u>IN THE COURT OF XXXIII ADDL. CHIEF JUDICIAL MAGISTRATE, MAYO HALL UNIT, BENGALURU</u>

-: PRESENT:-

P.S. Santhosh Kumar, M.Com., LL.M.,
XXXIII ADDL.CHIEF JUDICIAL MAGISTRATE, BENGALURU.

<u>DATED THIS THE 2ND DAY OF JULY 2026</u>

<u>C.C.NO.50491/2016</u>

COMPLAINANT	:	**SRI. VEDAVILAS,** S/o. Late. Hottappa, Aged about 41 years, R/at. No.7, 1st cross, H.T. Lane, Kalkere main road, R.M. Nagara, Bangalore-560016. **[By Sri. B.R. Ananda and B.H. Shiva Kumar, Advocates]** **Vs.**
ACCUSED	:	**SMT. V. ANUSUYA,** W/o. Sri. Krishnappa, D/o. T. Venkataramanappa, Aged about 34 years, R/at. Khaji Hosahalli, Hosakote Taluk, Bangalore Rural district.

Also R/at.
Smt. V. Anusuya,
W/o. Sri. Krishnappa,
D/o. T.
Venkataramanappa,
No.4, 7th main, 7th cross,
BTM layout, 2nd stage,
Bangalore-560076.
[By Sri. Avinash N.V., Advocate]

J U D G E M E N T

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

2. The factual matrix of the case are as follows:-

The accused is known to the complainant in connection with a sale transaction pertaining to the land measuring 37 guntas in Sy.No.13/2 of Thirumalshettyhalli village, Anugondanahalli Hobli, Hosakote Taluk, which was agreed to sale in favour of complainant under an agreement for sale dated 29.11.2022. The accused and the complainant came together in connection with the above sale transaction right from the stage of negotiation of the commercial terms and also conveyance of the property by way of agreement for sale. The accused executed an agreement for sale in favour of the complainant in respect of the land measuring 37 guntas in Sy.No.13/2 of Khajihosahalli village, Anugondanahalli Hobli, Hosakote Taluk, on various terms and conditions on 29.11.2022 and on the same day the accused has received an amount of Rs.30,00,000/- (Rupees Thirty lakhs only) by way of cash and cheque as mentioned in the agreement for sale before the witnesses as against the total sale consideration amount. After execution of the agreement for sale, the accused has not performed his contractual obligation as agreed in the agreement for sale between the accused and the complainant. The accused failed to perform his contractual obligation as agreed under the agreement for sale and the complainant was always ready and willing to perform his part of contractual obligations. The complainant has also issued legal notice to the accused on 23.11.2013 and called upon the accused to complete the contractual obligations and the said notice was duly served and the accused did not give any reply to the legal notice issued by the complainant. The accused failed to perform her contractual obligation and informed the complainant that her inability of non-performance of the contractual obligation as agreed in the agreement for sale. Hence, a panchayath was held on 01.09.2015 before the Panchayathdars, the complainant and accused agreed to cancel the agreement for sale and the accused has agreed to repay the amount received by her from the complainant and also the accused has agreed to pay the amount of Rs.5,00,000/- in addition to the amount received at the time of agreement for sale due to non-compliance of contractual obligation, totally the accused has agreed to pay a sum of Rs.35,00,000/- to the complainant and on the very same day, the accused issued two postdated cheques bearing No.181904 for a sum of Rs.20,00,000/- and one more cheque bearing No.181905 for a sum of Rs.15,00,000/- both dated 16.10.2015 drawn on HDFC

Bank, Hosakote, in favour of the complainant for a sum of Rs.35,00,000/- for repayment. On the due date i.e., on 16.10.2015, the complainant presented the said cheques through his banker HDFC Bank Ltd., Hosakote branch, Hosakote, for payment. But, it came to be dishonored for the reason **"Account closed"** vide. bank endorsement dated 30.10.2015. Thereafter, the complainant approached the accused and informed about the return of the said cheques. But, the accused has not chosen to pay the amount against the returned cheques. Thereafter, the complainant got issued legal notice dated 09.11.2015 to the addresses where the accused was permanently residing and also to the rented house at Bangalore calling upon the accused to pay the cheques amount. The said legal notices were returned unserved with a postal shara 'left the address' on 19.11.2015 and 26.11.2015. Inspite of it, the accused has failed to pay the cheques amount. Hence, the accused has committed the offence punishable U/s.138 of Negotiable Instruments Act.

3. Based on the complaint, the sworn statement affidavit, the documents etc., the court took cognizance of an offence punishable under Sec.138 of the Negotiable Instruments Act by following the guidelines of Apex Court issued in Indian Bank Association's case and ordered to register a criminal case against the accused for the offence punishable U/s.138 of Negotiable Instruments Act.

4. In pursuance of summons, the accused appeared through her counsel, she was enlarged on court bail, further, substance of plea was recorded, the accused pleaded not guilty and she claimed to be tried. In order to prove his case, the complainant got examined himself as PW1 and got marked Ex.P1 to P8. Upon closure of complainant's side evidence, the court examined the accused U/s 313 of Cr.P.C, the accused denied the incriminating materials appearing against her and the accused got herself examined as DW1 and got marked Ex.D1 and Ex.D2 and also got examined one witness by name Sri. Suresh Kumar D.S. as DW2 and closed her side.

5. I have gone through the written arguments filed by the learned counsel for the complainant and the accused. I have gone through the following citations relied upon by the learned counsel for the accused.

1. (2019) 5 Supreme Court Cases 418 between Basalingappa Vs. Mudibasappa of the Hon'ble Supreme Court of India.
2. (2014) 2 Supreme Court Cases 236 between John K. Abraham Vs. Simon C. Abraham and another of the Hon'ble Supreme Court of India.
3. (2008) 4 Supreme Court Cases 54 between Krishna Janardhan Bhat Vs. Dattatraya G. Hegde of the Hon'ble Supreme Court of India.
4. (2010) 11 Supreme Court Cases 441 between Rangappa Vs. Sri. Mohan of the Hon'ble Supreme Court of India.
5. (2015) 1 Supreme Court Cases 99 between K. Subramani Vs. K. Damodara Naidu of the Hon'ble Supreme Court of India.

Perused the materials available on record.

6. The following points would arise for my consideration:-

1. Whether the complainant proves beyond all reasonable doubts that the accused has committed an o/p/u/s 138 of the Negotiable Instruments Act**?**
2. What Order**?**

7. My findings on the above points are as follows;

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

Point No.2: As per final **order,**

for the following,

R E A S O N S

8. **POINT No.1:** I have gone through the materials available on record. The complainant, who has been examined as PW1, has reiterated the facts stated in his complaint in his chief examination also and in addition to it, he has produced Ex.P1 to 8.

9. Ex.P1 and Ex.P2 are the original cheques bearing No.181904 dated 16.10.2015 for Rs.20,00,000/- and No.181905 dated 16.10.2015 for Rs.15,00,000/-, both were drawn on HDFC Bank Ltd., K.R. road, Melinapete, Hoskote-562114, said to have been issued by the accused in favour of the complainant. Ex.P3 is the bank return memo dated 17.10.2015 said to have been issued by the complainant's banker which goes to show that the cheques in question was dishonored for the reason **"Account closed"**. Ex.P4 is the copy of the legal notice dated 09.11.2015 said to have been sent by the complainant to the accused intimating the fact of dishonor of the cheques to the accused and demanding payment of cheques amount. Ex.P5 is the postal receipt for having sent legal notice to the accused. Ex.P6 and Ex.P7 are the returned postal covers which go to show that the legal notice sent was returned unserved. Ex.P8 is the sale agreement dated 29.11.2012 said to have been executed by the accused in favour of the complainant in respect of the property shown in the schedule therein.

10. It is relevant to mention here that in the written arguments, the learned counsel for the accused has taken a defence that the legal notice is not served on the accused since it is returned for the reason 'Left addressee'. Further DW1 in her chief-examination has though not stated that legal notice is not served on her, she has stated that when she was residing at Yelahanka in the year 2020 she was informed from her village that police warrant was issued against her and thereafter, she informed it to her advocate and obtained bail from this court. It is relevant to mention here that Ex.P6 returned postal cover goes to show that it has been returned for the reason party shifted return to sender which means the accused was residing in the said address prior to she shifting to some other place. As such, the defence of the accused with regard to service of notice holds no water. Further accused has not adduced any cogent oral and documentary evidence to show that where she was residing as on the date of service of legal notice. However, in the circumstances, I would like to rely upon the decision of the Hon'ble Supreme Court reported in **(2007) 6 SCC 555** wherein the course open to the drawer of the cheque where he claims not to have received the notice sent by post, but received copy of the complaint with the summons has been categorically stated. The Hon'ble Supreme Court has categorically held in that case that in such circumstances the accused can within 15 days of receipt of summons make payment of the cheque amount and on that basis submit to the court that the complaint be rejected and then he cannot contend that there was no proper service of notice. But, no such compliance having been made by the accused could be seen from the materials on record. Further it is relevant to mention here that in cases where service of notice has been disputed by the accused, the Hon'ble High Court of Karnataka has categorically held in its decision in **Cr.R.P.No.814/2021 dated 24.06.2024** that '26. What is to be looked into is, whether the address of the accused which is known to the complainant has been properly mentioned on the registered cover. If it is sent to such registered address, responsibility of the complainant would end and it is for the accused to say as to why he could not receive the cover'.

11. It is relevant to mention here that the accused has not disputed the fact that cheques in question pertain to the account of the accused and that the signatures on the cheques in question pertain to the accused. Such being the case, once the accused accepts and admits that the cheques in question pertain to the account of the accused and that the signatures on the cheques in question pertain to her, the initial presumptions as contemplated U/Sec. 139 of the N.I. Act has to be raised by the court in favour of the complainant, however, the accused is entitled to rebut the said presumptions as held in the case of **Sri Rangappa Vs. Sri Mohan by the Hon'ble Supreme Court** reported in **AIR 2010 SC 1898.**

12. Once the presumptions U/S 139 and 118 of the Negotiable Instruments Act is raised, it is for the accused to rebut the said presumptions by adducing cogent evidence in support of his defence. It is relevant to mention here that the accused has taken a specific defence that in her chief-examination that her husband Sri. Krishnappa died in the year 2019. She and her husband were doing financial transactions with one Sri. Nagaraj S/o Gundappa upto Rs.50,000/- and they used to borrow and return it. Said Sri. Nagaraj visited the village of the accused Kajihosahalli on 07.12.2012 and at that time they requested him for loan of Rs.3,00,000/- for which he informed them to bring two cheques day after tomorrow and accordingly, they went to him on 09.12.2012 and borrowed Rs.3,00,000/- by issuing blank signed cheques and in that respect the accounts boy in his house made writings on a white paper and at that time one Devalapura Suresh had also accompanied them and he also signed there. The said amount of Rs.3,00,000/- was paid to them through cheque for Rs.2,50,000/- and by way of cash Rs.50,000/-. Said Sri. Nagaraj and the complainant are friends and hence, said Sri. Nagaraj misused the said cheques through Vedavilas and filed this false complaint. It is relevant to mention here that in support of the defence of the accused, she has also produced handloan consent letter at Ex.D1. The said document clearly goes to show that the accused and her husband had borrowed loan of Rs.3,00,000/- from the said Sri. Nagaraj i.e., Rs.2,50,000/- through cheque bearing No.73711 and Rs.50,000/- by way of cash on 09.12.2012 and towards the security for the said loan said Sri. Nagaraj had obtained cheques bearing No.181904 and No.181905 which are the cheques in question in this case. It is relevant to mention here that during the cross-examination of PW1, PW1 has categorically stated that he knows the accused since 10 to 12 years as she had property transactions with Sri. Nagaraj and that said Sri. Nagaraj is his friend which means the complainant is well acquainted with said Sri. Nagaraj. It is relevant to mention here that during the cross-examination of DW1, the complainant has disputed Ex.D1 stating that the signature of said Sir. Nagaraj has been forged on it. Inspite of it, he has not taken any pain to examine in support of his said contention before this court or adduced any documentary evidence to show that said Sri. Nagaraj has taken any legal action against the accused for forging his signature on Ex.D1. On the other hand, the accused in support of the fact of execution of Ex.D1, has also examined the witness to it by name Sri. Suresh as DW2. The DW2 also deposed his chief-examination in line with DW1 and during his cross-examination by the complainant also, the learned counsel for the complainant has suggested that Ex.D1 is a created document and Ex.D1(b) is not the signature of said Sri. Nagaraj and they were categorically denied by the witness DW2.

13. Further it is relevant to mention here that it is the case of the complainant that the cheques in question were issued by the accused in respect of refund of advance money in the panchayath held before the panchayathdars on 01.09.2015. It is relevant to mention here if at all the cheques in question were given to the complainant on 01.09.2015, how it could be possible to receive the very same cheques by said Sri. Nagaraj under Ex.D1 cannot be understood and the same has not been also explained by the complainant either by examining said Sri. Nagaraj before this court or by examining any one of the panchayathdars who participated in the said panchayath before this court. Further on what basis the complainant is contending that the signature of said Sri. Nagaraj at Ex.D1(b) is forged by the accused also cannot be understood as because it is not the case of the complainant that he is familiar with the signature of said Sri. Nagaraj or that he has any other document containing his signature in his possession.

14. Further it is relevant to mention here that upon going through the Ex.P8 which is the agreement of sale claimed to have been executed between the complainant and the accused and towards which refund of advance sale consideration the cheques in question said to have been issued, goes to show that the said agreement is not only executed between the complainant and the accused, but it was executed among the accused as vendor and the complainant and said Sri. Nagaraj as purchasers. Further it goes to show that the advance sale consideration of Rs.30,00,000/- was paid by both the purchasers i.e., the complainant paid Rs.27,50,000/- in cash and said Sri. Nagaraj paid Rs.2,50,000/- through cheque bearing No.73711 dated 10.12.2012. Even though the said document is executed among them, it does not contain the signature of said Sri. Nagaraj for the best reasons known to the complainant and the said fact has also been admitted by PW1 during his cross-examination. Such being the case, under what circumstances the accused had agreed to refund the entire advance sale consideration to the complainant loan could not be seen from the materials available on record. Further it is relevant to mention here that the complainant even did not taken any pain to say in his complaint as well as in the legal notice about the execution of the said document among them for the best reasons known to him. In the absence of signature of said Sri. Nagaraj on Ex.P8, certainly it cannot be said that the complainant could have succeeded in getting refund of advance sale consideration even if a suit is filed seeking the said relief. Moreover, the complainant has also not filed any such suit for refund of advance sale consideration on accused agreeing to cancel the said agreement for the best reasons known to him and also there is no documentary evidence to show that the said agreement was canceled by the accused and the complainant. Further the cheque number 73711 for Rs.2,50,000/- mentioned in Ex.P8 also finds place in Ex.D1 and as per Ex.D1, through that cheque only a part of the loan amount of Rs.2,50,000/- was paid to the accused and her husband. The ratio in which the advance sale consideration of Rs.30,00,000/- as per Ex.P8 paid by the purchasers also creates doubt in the minds of this court that said Sri. Nagaraj might have misused the cheques issued under Ex.D1 and filed this complaint through the complainant as contended by the accused.

15. Further it is relevant to mention here that PW1 during his cross-examination has stated that he was working as a Supervisor in Bangalore Plastic factory in the year 2011 and was doing real estate business and that he was drawing monthly salary of Rs.26,000/- in the year 2012. PW1 though stated so, has not adduced any documentary evidence either in relation to his salary income or income from his real estate business atleast to show that he had financial capacity to pay Rs.27,50,000/- in cash as mentioned in Ex.P8. Further though he has stated that he is an income tax assessee, he has not produced his I.T.R., pertaining to the relevant period of the alleged transaction for the best reasons known to him. Though the above said discrepancies to show his income are not alone the deciding factors, in view of recitals of Ex.D1 and failure on the part of the complainant to establish that either Ex.D1 is a created document or that the signature of said Sri. Nagaraj is forged by the complainant by adducing cogent evidence, it gains relevance to decide this case and failure on the part of the complainant in that respect also supports the defence of the accused.

16. It is relevant to mention here that if we take into consideration the oral and documentary evidence adduced by both the parties and in view of my above discussion, it can certainly be said that there was no legally enforceable debt due by the accused in favour of the complainant. Further it is relevant to mention here that the above said decisions relied upon by the learned counsel for the accused also would not help the accused in the above facts and circumstances of the case since the facts and circumstances of the present case and the above said citations are totally different. However, keeping in mind the settled principles of law laid down in the above said decisions relied upon by the learned counsel for the accused and considering the materials available on record, I am of the opinion that the accused has successfully rebutted the presumptions available in favour of the complainant and on the other hand, the complainant has failed to establish his case beyond all reasonable doubts and hence, the accused is to be held not guilty for the commission of the offence punishable under Sec.138 of Negotiable Instruments Act. With these observations, my findings on **Point No.1** is in the **Negative**.

17. Point No.2: In view of my findings on Point No.1, I proceed to pass following;

O R D E R

Acting u/s. 255(1) of Cr.P.C., the accused is hereby acquitted of the offence punishable u/s.138 of Negotiable Instrument Act, 1881.

The bail bond and surety bond furnished by the accused shall stand hereby continued till the appeal period is over

(Typed to my dictation by the Stenographer, directly over Computer, corrected, signed and then pronounced by me in the open court, on this the ***2nd day of July 2026)***

SANTHOSHKUMAR P S Digitally signed by SANTHOSHKUMAR P S Date: 2026.07.03 17:49:31 +0530

(P.S. Santhosh Kumar),
XXXIII ACJM, BENGALURU.

A N N E X U R E

1. Witnesses examined on behalf of Complainant:

PW1	**:**	**Sri. Vedavilas**

2. Documents marked on behalf of complainant:

Ex.P.1 & 2	:	2 Original cheques
Ex.P.1(a) & 2(a)	:	Signatures of the accused
Ex.P.3	:	Bank return memo
Ex.P.4	:	Office copy of the legal notice
Ex.P.5	:	Postal receipt
Ex.P.6 & 7	:	2 Returned postal covers
Ex.P.8	:	Agreement of sale dated 29.11.2012

3. Witnesses examined on behalf of Accused:

DW1	**:**	**Smt. Anusuya**
DW2	**:**	**Sri. Suresh Kumar D.S.**

4. Documents marked on behalf of Accused:

Ex.D1	:	Consent letter of handloan
Ex.D1a	:	Signature of the accused
Ex.D1b	:	Signature of Nagaraj
Ex.D2	:	Notarized copy of Aadhar card

SANTHOSHKUMAR P S

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Date: 2026.07.03 17:49:43 +0530

(P.S. Santhosh Kumar),
XXXIII ACJM, BENGALURU.