KABC030064722023

Presented on : 08-02-2023
Registered on : 08-02-2023
Decided on : 10-07-2026
Duration : 3 years, 5 months, 2 days

IN THE COURT OF XII ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU.

Dated this the **10th of July, 2026.**

:Present:
Smt. Dhanalakshmi.R

XII Addl. Chief Judicial Magistrate, Bangalore.

CC.No.4143/2023

Complainant :	Sri. J Santosh, S/o.A Jai Kumar, Aged 42 years, R/At: No 100/10, Mohna Reddy Building, 4th Main, Behind Ayappa Temple, Madivala, Bommanahalli, Bengaluru - 560068. (By **Sri.M.S.Harish.,** Advocate)
V/s	
Accused :	Sri. James Manohar S/o. Shanta Kumar Aged about 27 years R/At No Palanajogihalli, Bengaluru Rural, Malatahalli, Doddaballapura,

	And also at working in Yelahanka Post Office, Yelahanka, Bengaluru-560064. (By **Sri.M.K.Nayazuddin**, Advocate)

1.	The date of commission of the offence	:	25.01.2022
2.	Date of the filing of complaint	:	05.02.2022
3.	Name of the Complainant	:	Sri.Santhosh J
4.	Date of recording of evidence	:	08.02.2023
5.	Date of closing of evidence	:	09.07.2026
6.	Offence Complained of	:	138 of NI Act
7.	Opinion of the Judge	:	Accused is convicted
8.	Date of such order for the following	:	10.07.2026

J U D G M E N T

01. This case is registered U/sec. 200 of Cr.P.C based on the written complaint given by the complainant against the accused for the offence

punishable under Section 138 of Negotiable Instrument Act, 1881 (hereinafter called as NI Act for the purpose of brevity).

02. **T<u>he case of the complainant in brief is as under : -</u>**

The accused is the brother-in-law of the complainant and they have a good relationship. The accused approached the complainant for hand loan of ₹ 50,000/- for his urgent commitments. Accordingly the complainant has paid the said amount by way of cash. The accused failed to repay the amount within 6 months as agreed by him. Upon insistence the accused has issued cheaue bearing No.000032 dt: 28.10.2021 drawn on Bandan Bank, Yelahanka Branch, Bengaluru for sum of Rs.50,000/-. As per the insturction of the accused when the complainant has presented the said cheque for encashment through his

Banker i.e. State Bank of India, Mission Road branch, Bengaluru, the same came to be dishonoured with an endorsement as "Funds insufficient" on 06.12.2021. As such the complainant has issued demand notice dt: 04.01.2022 to the accused calling upon him to repay the cheque amount within 15 days from the date of receipt of the said notice. Inspite of receiving the said notice, the accused has not repaid amount. Hence, the present complaint.

3. On filing of the complaint, the sworn statement of the complainant is recorded and marked 6 documents as per Ex.P1 to Ex.P6. The complainant has complied all the statutory requirements under Sec.138 of NI Act. Thereafter, the case is registered against the accused and summons issued.

4. On service of summons, the accused has appeared through his counsel and he was enlarged on bail. The substance of accusation was read over and explained to the accused in the language known to him. The accused has pleaded not guilty and claimed to be tried. As per the directions of Hon'ble Supreme Court of India in ***Indian Bank Association V/s Union of India & Others reported in (2014) 5 SCC 590***, this court has treated the sworn statement of the complainant as his evidence. On application filed by the counsel for the accused under Section 145(2) of NI Act, permission was accorded to cross examine PW1. Inspite of giving sufficient opportunity the accused has not cross examined PW1. The staement of the accused under Section 313 of Cr.P.C., is recorded wherein the accused has stated that the complainant has stolen his cheque from his house

and by misusing the same, filed false case against him. The accused also not lead his defence evidence.

05. Heard the learned counsel for the complainant and he has also filed written arguments. Arguments on behalf of the learned counsel for the accused is taken as nil. Perused the records.

06. The following points arise for consideration:

POINTS

1) Whether the complainant proves that the accused has issued the cheque for the legally recoverable debt as alleged by him?

2) Whether the accused has committed the offence punishable under section 138 Act?

3) What Order or Sentence?

07. The above points are answered as under:

Point No.1: In the Affirmative,

Point No.2: In the Affirmative,

Point No.3: As per the final order for the following:

REASONS

08. **POINT No. 1 :** This Court is of the opinion that it need not repeat the entire averments made in the complaint here also, as this Court has already narrated the same at the inception of this judgment.

9. In order to bring home a liability under Section 138 of NI Act, 1881, following elements must spring out from the averments in the complaint and the evidence adduced by the complainant, viz.

1. *A person must have drawn a cheque on an account maintained by him in a bank for*

payment of a certain sum of money to another person from out of that account for the discharge of any legally enforceable debt or liability;

2. *The cheque has been presented to the bank within a period of three months from the date mentioned on the cheque or within the period of its validity, whichever is earlier;*
3. *The cheque is returned by the bank unpaid either because the amount of money standing to the credit of the 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 the bank;*
4. *The payee or the holder in due course of the cheque 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*
5. *The drawer of such cheque fails to make the payment to the payee or the holder in due course of the cheque within 15 days of the receipt of the notice.*

10. It is well settled that whenever complainant alleges that the accused has committed the offence punishable under Section 138 of NI Act, obviously, the complainant has to establish that there was a legally enforceable debt and to discharge the said legally enforceable debt the accused has issued the cheque and subsequently the said cheque has been dishonoured because of insufficiency of funds in the account of the drawer/accused. Keeping in view of these main and important ingredients of Section 138 of NI Act, this Court proceeds to discuss the evidence available on record.

11. As been stated above, the complainant has examined himself as PW-1. The PW-1 has filed affidavit in lieu of his examination in chief under Section 145 of N I Act reiterating the entire averments of the complaint.

12. The Ex.P-1 is the cheque dt: 28.10.2021. On perusal of Ex.P-1 cheque makes it clear that it supports the stand taken by the complainant herein. The Ex.P2 is the Bank endorsements discloses that the aforesaid cheque has been dishonoured on 06.12.2021 for the reason of "Funds Insufficient" in the account of the drawer. As per clause (a) of proviso to Section 138 of NI Act the cheque is to be presented for encashment within three months or within the period of its validity from the date on which the cheque has issued. The Ex.P-1 bares the date dt: 28.10.2021 and it was presented on 06.12.2021, which are within the prescribed period.

13. Further, as per clause (b) of proviso to Section 138 of N I Act, the complainant is required to issue legal notice, in writing, to the drawer/accused making a demand for repayment

of the said cheque amount within 30 days from the date of receipt of information about the dishonor of the cheques. The Ex.P2 is the drawee's Bank endorsements dated 06.12.2021. The Ex.P-3 is the office copy of the legal notice dated 04.01.2022 and Ex.P4 and Ex.P5 are the Postal receipts dt: 05.01.2022. Therefore, the complainant has issued legal notice within 30 days from the date of knowledge of dishonor of cheque. Thus, the provisions of clause (a) & (b) of proviso to Section 138 of N I Act have been complied with. The Ex.P-6 is the postal acknowledgment dt: 10.01.2022 shows that the legal notices got issued by the complainant is returned. As per clause (c) of the proviso to Section 138 of N I Act, the drawer/accused is entitled to have 15 days time to make the payment of the cheque amount. Therefore, the complainant was required to wait till

24.01.2022. According to the complainant, no payment was made by the drawer/accused within that period. Thus the cause of action for filing the complaint arose on 25.01.2022. Further the clause (b) of Section 142 of N I Act makes it clear that the complaint has to be filed within 30 days from the date of cause of action arose. Thus this complaint was required to be filed on or before 24.02.2022. The endorsement made by this Court on the complaint reveals that the complainant presented this complaint on 05.02.2022 and as such, this complaint is filed well within the time limit. Therefore, this Court is of the considered opinion that that the complainant has complied all the necessary components of Section 138 of NI Act.

14. The complainant has stated that the accused being his brother-in-law has borrowed loan of Rs.50,000/- for his urgent commitments.

The complainant has lent the said amount by way cash. The accused for the repayment of the said hand loan though issued Ex.P1 cheque but the same got dishonoured for the reason “Funds Insufficient” as per Ex.P2. The accused has not at all denied the execution of Ex.P1 cheque in favour of the complainant and also his signature in the cheque at Ex.P.1. Hence the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused.

15. The accused in order to rebut the said presumption has not cross-examined PW1 nor lead any defence evidence. There by the accused has not taken any defence to rebut the case of the

complainant. The accused by not cross examining PW1 and by not leading his evidence has not disputed the case of the complainant.

16. It is well settled that in order to attract offence Under Section 138 of NI Act the cheque in question must have been issued towards legally enforceable debt. Under Section 118 of the Act, a presumption shall be raised regarding consideration, date, transfer, endorsement and regarding holder in the case of negotiable instruments. Even under Section 139 of the Act, a rebuttable presumption shall be raised that, cheques in question was issued regarding discharge of legally enforceable debt. These presumptions are mandatory provisions that are required to be raised in case of negotiable instruments.

17. It is the burden of the accused to rebut the contention taken by the complainant with preponderance of probabilities by placing cogent and corroborative evidence. To prove his defence, accused has not adduced positive evidence in this case. The accused has not at all denied the contents of demand notice nor liability to pay the amount covered under the cheques and he kept mum for long time.

18. This court has recorded the statement of accused as required under Sec.313 of Cr.P.C. At the time of recording statement the accused has stated that complainant has stolen his cheque from his house and by misusing the same, filed false case against him. But the accused in order to prove his defence has not at all cross examined PW1 nor lead defence evidence. At the cost of repetition, there is no rebuttal evidence to

disbelieve the evidence of PW1. In view of Sec.139 of NI Act, it has to be presumed that cheques are issued in discharge of debt or liability and accused did not raise a probable defence.

19. In the light of the discussion made herein above, this court is of the considered opinion that complainant has proved that accused has committed the offence punishable under Section 138 of NI Act. Accordingly, this point is answered in the affirmative.

20. **POINT No.2 :-** NI Act was enacted to bring credibility to the cheque. The very purpose of the enactment is to promote the use of the Negotiable Instrument, while to discourage the issuance of the cheque without having sufficient funds in their account. Such being the case, the intention of the legislature is that complainant be suitably

compensated while the accused be punished for his act.

21. When compensation is awarded enforcement of the same come into question. There is no provision in the Code of Criminal Procedure for imposing default sentence for enforcing the payment of compensation. In this regard, the Hon'ble Supreme Court in the decision reported in **2002 (2) SCC 420** between **Suganthi Suresh Kumar Vs. Jagadeeshan** was pleased to hold that *"the court may enforce the order by imposing sentence in default"*. The same is reaffirmed in latest decision in **2010 AIR SCW 3398** between **K.A.Abbas H.S.A. Vs Sabu Joseph**. Therefore, it is deemed fit to provide default sentence in order to enforce the payment of compensation. Ex.P.1 cheque are of the Year – 2021. Therefore, the complainant is deprived of the money that was

rightfully due to him for about 05 year. Accordingly, it is deemed fit that a compensation of Rs.67,000/- (Rupees Sixty Seven Thousand only) be granted. It is to be seen that as per the reportable judgment of the **Crl.R.P.No.996/2016 dt: 09.07.2025 between M/s.Banavathy and company Vs. Maheer Electro Mech (P) Ltd., and to others** the Hon'ble High Court at paragraph No.21 has held as under:

> *"while passing the order of the sentence after determining the fine/Compensation the court shall also pass an order to pay future interest at the rate of 9% p.a on the compensation amount payable to the complainant by fixing time of one or two months to deposit compensation amount so that even if the matter is challenged before the Session Court in appeal and High Court in Revision the interest of the complainant will be protected".*

22. Hence, as per the above judgment the complainant is entitled for future interest at the

rate of 9% p.a., on the compensation amount from the date of judgment till its repayment. Further the accused is directed to deposit the compensation amount before this court within three months from the date of this order. Accordingly, in the light of above discussions, this court proceed to pass the following:-

ORDER

Acting under section 255(2) of Cr.P.C., the accused is convicted for the offence punishable under Section 138 of the NI Act and he is sentenced to pay fine of Rs.67,000/- (Rupees Sixty Seven Thousand only) and in default to undergo Simple Imprisonment for a period of six months.

If the fine amount is recovered a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) is ordered to be paid to the complainant by way of compensation as per the provisions under Section 357 of Cr.P.C., and the remaining amount of Rs.2,000/- is to be appropriated to the State.

The complainant is entitled for future interest at the rate of 9% p.a., on the compensation amount from the date of judgment till its complete repayment.

The accused is directed to deposit the compensation amount before this court within three months from the date of this order.

The Bail Bond and cash surety of the accused shall stand canceled.

Supply a free copy of this Judgment to the accused.

(Dictated directly using mobile Adalath AI app, copied and computerized by the stenographer, corrected by me and then pronounced in the open Court on this **10th day July, 2026).**

(Dhanalakshmi.R)
XII Addl. CJM, Bengaluru

ANNEXURES

Witnesses examined for the Complainant:

PW.1	Sri. Santhosh.J

Documents exhibited for the Complainant:

Ex.P.1	Cheque
Ex.P.2	Memo of the Banker,
Ex.P.3	Copy of Legal Notice
Ex.P.4 & 5	Postal Receipts
Ex.P.6	Postal Acknowledgment

Witnesses examined for the defence Accused:

NIL

Documents exhibited for the defence Accused:-

NIL

(Dhanalapkshmi.R)
XII Addl. CJM, Bengaluru

CC.NO.**4143/2023**

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