KABC030059452024

IN THE COURT OF XXXVI ADDL.CHIEF JUDICIAL MAGISTRATE, BENGALURU CITY

Dated this the 31st day of July, 2026

Present: **Sri.K.M.ANANDA.,B.A.,LL.M,**(Corres)
XXXVI Addl.C.J.M., Bengaluru.

C.C.No.2989/2024

Complainant	Smt.Rathna.R W/o Late.K.Y.Ramesha, Aged about 50 years, Residing at Flat No.B-705, 7th Floor, Perody Classic Apartments, BTS.Layout, Next to HDFC Bank, Arekere, Bannerghatta Road, Bengaluru-560 076. *(By Sri.Praveen.G, Advocate)*

V/s

Accused	Sri.V.S.Prakash S/o T.D.Veeregowda, Age 50 years, Residing at # 1160, 5th Cross, 12th Main Road, Raghavendra block, Srinagar, Bengaluru-560 050. *(By Sri.Gopal Naik Advocate)*

Date of Institution of case	07.12.2023
Nature of case	Cheque amount of ₹10,00,000/-
Date of recording of evidence	03.01.2024
Date of Judgment	31.07.2026
Offence complained of	U/s 138 of Negotiable Instruments Act
Final order	Convicted

<u>JUDGMENT UNDER SECTION 392 OF BNSS</u>

This is a case arisen out of the private complaint filed by the complainant U/Sec.200 of Cr.P.C against the accused for the offence punishable U/Sec.138 of the Negotiable Instruments Act (NI Act) for bouncing of cheque for a sum of ₹10,00,000/-.

2. ***<u>Complaint averments in brief</u>:***

Complainant submits, accused approached her and requested to lend a hand loan of ₹10,00,000/- to overcome the dire situation and due to the family necessity and financial crunch. Complainant paid a sum of ₹10,00,000/- through cash on 22.02.2020 in presence of complainant's husband and promised to return back within six months. In the month of October 2023 finally accused agreed to return back the amount. Accordingly, he had issued two post-dated Cheques bearing No.897666 and 348485 dated:10.10.2023 for a sum of ₹5,00,000/- each drawn on Karnataka Bank, Herohalli branch, Bengaluru towards payment.

3. The complainant further submits when she presented the cheques to her banker for realization, it came to be dishonoured and returned with endorsement '*Funds Insufficient*' on 11.10.2023 and '*Payment stopped by drawer*' on

12.10.2023. Thereafter, the complainant got issued Legal notice to the accused on 02.11.2023 and demanded the repayment of the cheque amount within 15 days from the date of the receipt of the notice. The notice sent through RPAD was not duly served on the accused as addressee left. Despite the same, accused neither came forward to pay the cheque amount nor issued any reply, which constrained file the complaint.

4. The Sworn statement of the complainant was recorded through her Exts.P.1 to Ex.P.8 was marked. Taken the cognizance issued summons to accused, who appeared through counsel and obtained bail. Plea was recorded. The accused pleaded not guilty and claimed to be tried.

5. After cross examination of Pw-1 by the accused, the Statement of the accused U/Sec.313 Cr.P.C was recorded, wherein, she was given an opportunity to explain the incriminating circumstances appearing against her in the complainant's evidence. The accused denied all the allegations leveled against her.

6. Heard the arguments on both sides and perused the materials available on record.

7.The following points arise for my consideration :

Point No.1	Whether complainant proves that she

	had given a sum of ₹10,00,000/- by way of cash to accused, on the assurance that he would repay the same and to clear the debt he had issued two Cheques bearing No.897666 and 348485 dated: 10.10.2023 for a sum of each ₹5,00,000/- drawn on Karnataka Bank Ltd, Herohalli branch, Bengaluru, but failed to keep the amount in her account when it was presented for encash, cheque was dishonoured due to '**funds insufficient**' and '**Payment stopped by drawer**' she got issued pre-complaint notice, despite of receipt of notice, failed to repay, therefore, accused has committed the offence punishable U/Sec.138 of N.I.Act ?
Point No.2	What Order ?

8. My findings on the above points are answered as under:

Point No.1	In the affirmative
Point No.2	As per final order for the following:

R E A S O N S

9. **<u>Point No.1:</u>** Before adverting to the facts of a case, it is better to reproduce Sections.138 and 139 of NI Act:

*138. **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 provision 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) thecheque has been presented to the bank within a period of six months 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 of other liability" means a legally enforceable debt or other liability.

139. Presumption in favour of holder.*—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section.138 for the discharge, in whole or in part, of any debt or other liability.*

10. To prove her case, Complainant herself got examined as PW.1 and got marked Eight documents as Ex.P.1 to Ex.P.8. The Complainant Smt.Rathna.R who is examined as PW.1, reiterated the complaint averments in her affidavit filed in lieu of examination in chief. The followings are the documents which got exhibited.

Ex.P.1	Canara Bank Cheque No.897666, dated:10.10.2023, ₹5,00,000/-
Ex.P.2	Bank Memos (funds insufficient) dated 11.10.2023

Ex.P.3	Canara Bank Cheque No.348485, dated:10.10.2023, ₹5,00,000/-
Ex.P.4	Bank Memos (funds insufficient) dated 12.10.2023
Ex.P.5	Copy of Legal notice dated: 02.11.2023
Ex.P.6	Postal receipt dated:02.11.2023
Ex.P.7	Postal acknowledgment dated 3-11-2023. (The complaint was presented on 8-12-2023 well within 45 days from the date of receipt of notice).
Ex.P.8	Death certificate of husband of complainant

11. THE STAND TAKEN BY ACCUSED DURING CROSS EXAMINATION OF PW1: The PW1 that is complainant deposes that she is a housewife, she studied up to 10th standard. Her husband's name is Ramesh K.Y., he worked in Bash Company for a period of 22 years. At that time of retirement he used receive ₹80,000/- salary, also admits she has not produced any document to show that her husband was getting salary of ₹80,000/-. She admits her husband is no more. Also admits she has not had bank pass book of her husband. She resides in her own house. She gets ₹50,000/- per month, but she has not produced any document in this regard and also there is no difficulty in producing document. She also further deposes not only said income she also having the savings amount obtained from her mother as her mother used to pay ₹10 to ₹20,000/- occasionally, she used to pay visit to her mother's home once in a month. Her husband died 4 years ago.

12. The PW1 further deposes she has two daughters both completed engineering and both got married, around ₹25,00,000/- was incurred for marriage. Her husband not only doing work in Bash Company he also used to do real estate business, but for this there is no document and she is not aware what was his income from real estate, but she denies the suggestion that other than the working in Bash company her husband was not doing anything. Her husband died in the month of May 2022, after her death the income is stopped, around ₹20 to 25,000/- is required for family expenditure. PW1 is further cross examined by learned Advocate who represents accused. She deposes her husband worked in Bash Company when it was in Adugodi, later in the year 2018 company was shifted to said place, also admits when her husband and Accused were working in Adugodi in the said company the company provided cupboard where both her husband and accused share it and were keeping things in it, but PW1 denies the suggestion that when her husband obtained voluntary retirement in the year 2019, at the time he took all the belongings of the accused which were kept in said cupboard.

13. The PW1 further deposes that accused received amount on 22.02.2020, she paid amount after 6 months from date of request, at the time of lending money her husband was present, she gave amount of five hundred denomination notes, but she is not aware how many

bundles were there, she gave by way of cash and also she admits there was no difficulty to transfer the amount through bank. Father she deposed there is no difficulty in get examine her parents or brother. Accused promised to return the amount within 6 months, but failed. She herself alone paid visit to accused house and demanded money, but she does not know the exact date and timings. PW1 also admits there is a difference in ink of signature and rest of the writings on both the cheques. The witness voluntarily himself handed over by writing the cheques, the PW1 denies the suggestion that except signature rest were written by herself. The PW1 denies the suggestion that no notice was sent to proper address of the accused and signature on Exhibit P.7 is not the signature of accused and also denies the suggestion that the cheques and signature appear in Exhibit P7 are different. The PW1 denies the suggestion that the cheques were very old. They were not handed over in the year 2023. The cheques were kept by accused in the cupboard. After shipping the company her husband took all the belongings of the accused and now after death of her husband she misused the cheques and filed a complaint. PW1 denies the suggestion that accused has not received any cheque amount. Now in order to gain unlawful gain case is filed.

14. THE STAND TAKEN BY ACCUSED IN HIS ORAL EVIDENCE; Accused himself got examined as DW1, in his oral evidence, he deposes he has been working in Bosch Company since 25 years, in these periods many obtained voluntary retirement, KY Ramesh who was working with him as a technician who was his senior colleague, both used to keep the tools gauge and other personal belongings in the cupboard as both shared single cupboard, in the said cupboard he used to keep personal documents, personal belongings and even cheques. As per the Supreme Court direction the company was shifted from Adugodi to Bidadi, the cupboard key was also with the KY Ramesh, he took all his belongings after taken all belongings, the cupboard was scrapped, when company was shifted to Bidadi he had elected separate cupboard, at the time Ramesh was given some other department's job in the said company, he was not feeling well therefore he took VRS, at the time, he knew that his two cheque leafs were lost by himself, he tried to contact bank officials for stop payment. Accordingly he gave instruction for stop payment. At the time of issuance of stop payment requisition he knew that cheques were with the KY Ramesh. At the time he requested the Ramesh to return the cheques. He informed that cheques misplaced, he informed him that, as soon as he gets them he would return them, but he died due to cancer. After that he approached the complainant, she informed that the cheques were misplaced or lost.

Accordingly he approached the police station to lodge a complaint, but police did not receive complaint. Though he did not receive any money either from the complainant or her husband and even he does not know who is Ratnama that is complainant, but only when she came to court he knew her. No notice was received prior to court summons. Only when police approached him along with warrant he knew about the case. In order to gain unlawful gain, a false complaint has been filed. Accordingly, he seeks for exoneration.

15. THE STAND TAKEN BY DW1 THAT IS ACCUSED DURING HIS CROSS EXAMINATION: DW1 deposes that he is residing in the address mentioned in the complaint past 10 years in a rented house, past 29 years he has been working in Bosch Company. In the year 2014 he used to get ₹80,000/- salary but there is no document to show the same, other than salary there was no other income. He has personal loan of ₹4,00,000/- it was taken 7 years ago, still he has to pay ₹4,00,000/- and further deposes that he availed loan of ₹15,00,000/-, for this every month, he pays ₹30,000/- as installment, it was obtained to purchase land. The DW1 further deposes in view of there was a bank opposite to Basch Company while he was working in Company in Adogodi, he used to kept cheque leaves in the cupboard. He further deposese past one year he used kept the cheques in the cupboard. So, he had a sanguine hope that the cheques would not be misused. He used to take amount by presenting cheques every 2 to 3 months. He also deposed that he is not in a position to produce bank statement from year 2014 till now in view of bank was demolished for construction of Metro Rail. But he is not aware whether the said bank was merged with another bank or not.

16. DW1 denied the suggestion that the cupboard was given by company to keep the company items or things not for personal things. The DW1 admits after shifting of company to Bidadi, the complainant's husband was sent to Packing Division in the year 2017. In the year 2025 when police came to his arrest he knew about losing of cheques. He further deposes the husband of complainant took his tablets, cheques, jerkin which were kept in the cupboard. He knew that said Ramesh alone took them, after that he demanded, but he continued to promise to return them but he failed and again he deposes in the year 2015 he asked the accused to return the husband of complainant to return the cheque. Also admits he has not asked the complainant about cheques. Also admits he has not lodged any complaint regarding stealing of cheques. Again he voluntaries cheques were with the complainant's husband. He did not lodge any complaint. He admits in the year 2016 he issued a letter to bank for stop payment and he is not aware in which year cheques were stolen or lost. The

accused admits signature appears in Exhibit P1, but he further deposes the contents were not written by him. The DW1 also admits the Exhibit P1 pertaining to year 2015, Exhibit P3 pertaining to year 2017, also admits signature appears in Exhibit P3. He denies the suggestion that the signature appears in Exhibit P7 postal acknowledgment is not the signature of himself or his family members. No notice was received. The DW1 denies the suggestion that in the presence of Somshekar he received money. He is not aware when the complainant's husband took his belongings, but maybe in the year 2012 or 2013, also admits no stamp payment letter was given so far as Exhibit P1 is concerned. For this he voluntaries he has not mentioned any cheque numbers. Instead he mentioned only stop payment etc..

17. **The Learned counsel who represents complainant argues** that accused received loan of ₹10,00,000/-, for repayment, accused issued two cheque for encashment, but cheques were dishonoured for funds insufficient, accused failed issue a reply notice to the notice got issued by complainant and failed to pay the amount. Signature is admitted by accused. Complainant proved all ingredients of section-138 of NI Act. Therefore, seeks for imposition of double the cheque amount.

18. **The learned counsel for accused argues that,** the PW1 pleads ignorance about differences in

signature's ink and also rest of the contents of the cheque, whether the signature of accused is there or not on the cheque, she also pleads ignorance regarding service or non of service of notice to accused, date mentioned in the complaint. No notice was served to accused. The notice is bald one. It's not a civil case and it's a criminal case preponderance of probabilities is very crucial. Evidence of Pw-1 does not inspire the confidence of the court, It is further argued by learned counsel for accused that, no loan document is produced. Capacity not proved. Failed to produce bank statement. Alleged payment by way of cash. Alleged payment of after 6 months from the demand. Pw-1 says 10 bundles of ₹500/- denomination. It means, it is ₹5,00,000/- and not 10 lakhs. No suggestion to Dw-1 about receipt of ₹10,00,000/- and issuance of cheques for repayment. Somashekar was not examined. Even accused does not know about complainant, but only when came to court that time he saw her. It is admitted by Pw-1, both her husband and accused used to share single cupboard. The husband of complainant took his tablets, cheques, jerkin which were kept in the cupboard. Because of misuse of cheque stop payment was made. The principle of law that the statutory presumptions under sections 118 and 139 of the NI Act is rebuttable, accused is not required to prove his defence beyond all reasonable doubt, instead he only needs to establish a preponderance of probabilities to dismantle the complaint's case. Accordingly, the accused successfully rebutted the legal presumptions, even by entering into witness box, despite got examined himself as DW1. Accordingly accused seeks for honourable acquittal.

19. ANALYSIS AND FINDINGS: Before move further, it is necessary to rely chapter XIII of NI Act which speaks about special rules of evidence so far as cheque bouncing case is concerned.

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

*118. P**resumptions as to negotiable instruments**.—Until the contrary is proved, the following presumptions shall be made:—*

***(a) of consideration**:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

***(b) as to date:—**that every negotiable instrument bearing a date was made or drawn on such date;*

***(c) as to time of acceptance:—**that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

***(d) as to time of transfer:—**that every transfer of a negotiable instrument was made before its maturity;*

***(e) as to order of endorsements:—**that the endorsements appearing upon a negotiable instrument were made in the order in which they appear then on;*

(f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;

***(g) that holder is a holder in due course**:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.*

119. Presumption on proof of protest.*—In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.*

120. Estoppel against denying original validity of instrument*.—No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.*

121. Estoppel against denying capacity of payee to endorse.*—No maker of a promissory note and no acceptor of a bill of exchange 2[payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to endorse the same.*

122. Estoppel against denying signature or capacity of prior party.*—No endorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.*

20. Admitted facts: The accused admits Exhibit P1 and 3 cheques for ₹5,00,000/- each which belongs to his bank account and the signature appears on them also belong to him.

21. The gist of stand taken by accused: The first and foremost thing is accused has to establish how his account payee cheque went into the possession of complainant. The stand taken by accused does not inspire the confidence of the court. Because at one breath he says he used to keep the signed cheques in the cupboard. It is to be noted he failed to explain why he used to put the signatures on empty cheques without writings of it that too in the company cupboard. It is to be noted in case he wants to hand over cheque to third party and if he is not available and he goes somewhere at the time for utilization the cheque can be signed in advance.

Here such situation was not arisen, as per his say only, his bank situated opposite to his company that was in Adugodi, such being the case well in advance putting the signature on to the cheques without any name, date and amount and that too when cupboard was shared by himself and complainant's husband Ramesh is totally false, untenable defence. It's a kind of figment story. Because no ordinary prudent man would do as thought by accuse. Moreover he is not layman, he is employee of reputed international company and also educated person having worldly knowledge. The burden is on the accused person to prove and show to the court how his signed two cheques went into the possession of complainant, that is the main reason he sets up this story without head or tale.

22. Service of notice to accused: Discussion on Exhibit P7 postal acknowledgment:- The acknowledgments indicates the legal notice that is Exhibit P5 was issued to the address shown in the notice and in the complaint to the accused. It was received on 03.11.2023. The accused says he has not received notice that is why he did not issue any reply to legal notice, but on going through the signatures appears in Vaklath, his deposition plea and statement similar signature is found though in Exhibit P7 it looks like short signature, but court holds the accused himself signed to registered post and obtained registered post and he failed to issue reply.

23. It is quite easy to deny but the Section 27 of the General Clauses Act clearly mandates and also favours the presumption that in case notice or registered letter is issued to correct and proper address it is presumed that notice is delivered or avoided. Because as per the evidence of DW1, he admits, he has been residing in the address shown in the notice past 10 years, it means even in the year 2023 also he was residing in the address shown in the notice so he might have received, but now an after thought defence is set stating that he did not receive the notice. Therefore court holds it is necessary to draw adverse inferences against accused that in view of he was owing liability and by admitting the contents of notice he did not issue reply otherwise he would have issued reply.

24. Further for better understanding section 27 in The General Clauses Act is reproduced which speaks about service by post.

27. Meaning of service by post; *Where any [Central Act] [Substituted by A.O.1937, for " Act of the Governor General-in-Council.] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

25. Section 27 of the General Clauses Act deals with the presumption of service by post. It establishes a legal

presumption that a properly addressed, stamped, and posted letter is deemed to have been served on the addressee at the time it would ordinarily be delivered, unless the contrary is proven. This presumption simplifies proving service in legal proceedings. It is the case of complainant that she got send a statuary notice to accused via registered post to his last known address. Letter and the postal receipt acknowledgment due card indicating delivery. Accused claims he never received the notice. The onus is on accused to prove non-receipt. The learned counsel for accused would argue that despite the postal receipt, he never actually received the notice. He might present evidence suggesting he was away from his residence during the delivery period, or that the address on the acknowledgment card is incorrect, or any other evidence to rebut the presumption of service. But to prove the same, he has not produced any contra evidence except orally saying. The court holds that, complainant complied with the requirements of Section 27 by sending the notice via registered post to accused's correct address, affixing proper postage, and obtaining proof of delivery. Therefore, service is presumed to have been effected on the date of delivery indicated on the acknowledgment due card.

26. The DW1 denies the suggestion that in the presence of Somshekar he received money of ₹10,00,000/-. Actually, for the first time, name of Somashekar was introduced by counsel for complainant without any reasons and lack of application of mind, it was not the case of complainant that, amount was received by accused in the presence of said person. Therefore, court holds, it is irrelevant for discussion.

27. Failure of accused to reply to notice leads to an inference:-The complainant as per exhibit P 5 got issued a notice demanding accused to pay cheque amount of ₹10,00,000/- within 15 days. On going through Exhibit P.7 postal acknowledgment accused received notice on 09-11-2023, but failed to give reply to notice. The fact that the accused has failed to reply to the statutory notice under section 138 of the NI Act leads to an inference that there is merit in the complainant's version. The accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan.

28. Now at this stage, it is relevant to rely on citation reported **Tedhi Singh V/s. Narayan Dass Mahant, (2022) 6 SCC 735.** The relevant portion of the said judgment of Hon'ble Apex court is reproduced herein below:-

"10. … The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the

wherewithal(substance/means), it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence." (emphasis supplied)

Therefore, by considering supra citation, it is held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.

29. **Drawing adverse inferences against accused:-** The accused says at one breath he knew that cheques were lost or taken by husband of complainant KY Ramesh that too he knew that in the year 2015 itself. The husband of complainant died on 22.05.2020 as per death certificate that is Ext.P_8. It means the said Ramesh was alive for a period of 5 years from year 2015 to 2020. So nobody keeps quiet without take back the cheques and moreover he is not an ordinary guy he studied up to

engineering and he knew the consequences of cheques, despite without neither lodged a police complaint or filed private complaint seeking return of cheques he kept quiet. Though in his evidence Dw-1 deposes, he approached the police, but they failed to take any action. For this no evidence is produced, even failed to suggest to Pw-1 during her cross examination. This indicates an after thought defense is set up.

30. Further, now accused builds a story that he was keep on asking the husband of complainant, but he postponed, even after his death, he requested the complainant to return the cheques. she also told him cheques were misplaced. But in his evidence deposes that, he saw the complainant for the first time when she appeared before the court. All these indicate story brought by Accused are totally incorrect and they are against natural human conduct because no ordinary prudent man would react as reacted by Accused.

31. **Non filing of income tax returns:**- It is true, bank transactions is concerned, the bank authority failed to take action, it is not the proper forum to question it, the accused can approach concerned authority by lodging complaint that despite having financial capacity complainant failed to submit income tax returns. On the ground of non producing IT returns and also capacity,

court cannot dismiss the complaint just because, complainant says **she** paid the amount by way of cash. Moreover there is no hard and fast rule that in case loan is created by handing over the amount by way of cash is not ground to dismiss the complaint.

32. The learned counsel for accused argues that, a debt created by a cash transaction above ₹20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above ₹20,000/- (Rupees Twenty Thousand).

33. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty

Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced.

34. So far as capacity of complainant and legally recoverable debt is concerned:- The oral evidence of Pw-1 clearly inspires the confidence of the Court that she possessed such amount that is ₹10,00,000 to pay to Accused. It is not disputed that she does not have a won house, it is not disputed that she gets rent of ₹50,000/- per month though she did not produce any documents and also she deposes that she often used to get money from her parents. As observed above her oral testimony inspires the confidence of the court that she was capable to pay ₹10,00,000/-. It is to be noted the much burden is on the accused to explain how his signed cheques went into the possession of complainant other than issued for return of money obtained from complainant. It is true, evidence of Pw-1 is mismatching compare with the oral testimony, but it does not lead to dismiss the complaint by holding non financial transaction between herself and accused and stolen cheques were misused.

35. Whether bank endorsement "payment stopped" attracts section-138 of NI Act:- Yes; The said section says about return of cheque as unpaid amounts to bouncing of cheque and it attracts such offence. Here also as per bank endorsement that is Ext.P-4 dated 11-10-2023, the Ext.P-3 cheque no.348485 returned as unpaid due to stop payment instruction given by accused. No prior notice was given to complainant before given the instruction to his bank about stop payment that too when he issued a cheque. Further failed to explain for what reasons, he issued such instruction to bank. Even failed to produce copy of such requisition.

36. Further it is to be noted as per Ext.P-2 dated 11-10-2023, the Ext.P-1 cheque No.897666 returned due to insufficient fund. After having the knowledge of bouncing of this cheque, accused issued stop payment application to the bank by next day. Otherwise, he would not have issued stop payment instruction to bank. When accused knew about loosing of cheque in the year 2015 itself, nobody would keep quite without issuance of stop payment application to bank. But he waited nearly 8 years. It is totally false that, after death of husband of complainant, she misused the cheques stolen by her husband and filed this complaint. All these indicate, accused had the intention to cheat the complainant or bank inadvertently issued such endorsement. Accused has not had good intention in contesting the case.

37. Presumption in favour of complainant:- It is to be noted court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt or liability in two circumstances. Firstly, when the driver of the cheque admits issuance or execution of the cheque and secondly in the event where the complainant proves that cheque was issued or executed in his favour by the drawer. Presumption takes effect even in a situation where the accused contends that a blank cheque was voluntarily signed and handed over to the complainant. As soon as the complainant discharges the burden to prove that the cheque was issued for discharge of debt, the presumptive device under Section 139 shifts the burden on the accused that is the evidential burden on the accused of proving that the cheque was not received by the bank towards the discharge of any liability.

38. **Burden of accused:-** It is also true, the nature of evidence required to shift the evidential burden need not necessarily be direct evidence or i.e. oral or documentary evidence or admissions made by the opposite party. Thus it may comprise circumstantial evidence or presumption of law or fact, thereafter if the evidential burden is not discharged by the accused, the presumed fact will have to be taken to be true. Without expecting the complainant to do anything further. The another thing is standard of proof to discharge the evidential burden to revert such presumption once raised, held, not as heavy as that usually seen in situations where the prosecution where the prosecution is required to prove the guilt of an accused thus accused held not expected to prove the non existence of the presumed fact beyond reasonable doubt, but he

must meet the stand of preponderance of probabilities, similar to a defendant in a civil proceeding.

39. Further in order to revert the presumption and prove to the contrary, accused held entitled to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. It is to be noted pre-ponderance of probabilities in favour of the accused's case may be even 51% to 49% and arising out of the entire circumstances of the case, which includes the complainant's version in the original complaint, the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice his statement under erstwhile Section 313 of Cr.PC or at the trial as to the circumstances under which the promissory note or cheque was executed. Thus all of the above can raise a pre-ponderance of probabilities justifying a finding that there was no debt or liability.

40. **Ink**:- It is true, on perusing the cheque and on bare eyes, signature’s ink and also rest of the contents of the cheque are different. But on this ground alone court can’t say that cheque is created and it is bad in law. Moreover, there is no hard and fast rule that signature and contents of cheque must be in same ink.

41. Conclusion;- Court holds the accused received loan amount of ₹10,00,000/- in the month of February 2020, to return the amount he issued cheques that is Exhibit P1 and 3, the Exhibit P.1 dishonored for want of sufficient fund but Exhibit P.3 dishonored that stop payment by drawer. This clearly indicates accused without having sufficient amount in his account and also purposefully knowing that complainant would present the cheque he filed a letter for stop payment. So his dishonour indicates he has no defence. Therefore accused should be convicted.

42. Therefore, court holds that, complainant has proved that she had given a sum of ₹10,00,000/- by way of cash to accused, on the assurance that he would repay the same and to clear the debt he had issued two Cheques bearing No.897666 and 348485 dated: 10.10.2023 for a sum of each ₹5,00,000/- drawn on Karnataka Bank Ltd, Herohalli branch, Bengaluru, but failed to keep the amount in her account when it was presented for encash, cheque was dishonoured due to 'funds insufficient', and she got issued pre-complaint notice, despite of receipt of notice, failed to repay, therefore, accused has committed the offence punishable U/Sec.138 of N.I.Act. **Accordingly point number 1 is answered in the affirmative.**

43. **Point No.2**: In view of findings given on point no.1, let me decide about punishment and fine. Before adverting this issue let me rely on reliance. In the case of Rajesh V/s Ajay Singh 2023 10 SCC 148 dated 09.10.2023 and also our High court in the case of Dr.Vijay V/s G.Jayaprakash 2025 SCC Online Kar 11279 R.Vijayan V. Baby and Anr AIR 2012 SC 528 have held that when there is a conviction there should be a consequential levy of fine of an amount sufficient to recover the cheque amount and interest thereof at a fixed rate of 9% per annum interest, the

Criminal Appeal No.19.02.2011 in the case of R. Vijayan.

44. A careful perusal of the documents placed before this Court would go to reveal the compliance of all the essentials enshrined in Sec.138 of the N.I.Act. The complainant not only produced the cheque within time for collection but also issued legal notice to the accused upon their dishonour. When the accused failed to pay the cheque amount within the stipulated period, he filed this complaint. Therefore, complainant is entitled to the presumption available U/Sec.118(a) and 139 of the N.I. Act. **From year 2022**, amount of **₹10,00,000/-** is remained unpaid. Therefore, order for double cheque amount along with interest is need of the hour to compensate the complainant.

45. Further, The Hon'ble Apex Court in the case of **Sanjabij Tari V/s Kishore S.Borcar** in Criminal Appeal No.1755 of 2010 dated 25.09.2025 held about **INTENT OF CHAPTER XVII OF N.I.ACT;**

- *Having heard learned counsel for the parties, this Court is of the view that it is essential to first outline the scope and intent of Chapter XVII (Sections 138 to 148) of NI Act which has been inserted by Act 66 of 1988 w.e.f. 1st April 1989.*

.The Statement of Objects and Reasons of Act 66 of 1988 states, "….to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

.The provisions contained in Chapter XVII provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the banker for that account, the drawer of such cheque shall be deemed to have

committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

.Consequently, this Court is of the view that the intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation.

46. **Regarding imposition of jail term and compensation**: Thus in the light of the position which the accused be made liable U/Sec.138 of N.I.Act. The Hon'ble Supreme Court in the case of **Kaushalya Devi Massand** V/s **Roopkishore Khore (2011) 4 SCC 593** held in para 11 that "having considered the submissions made on behalf of the parties, we are of the view that gravity of a complaint under the NI Act cannot equated with an offence under the provisions of the Penal Code, 1860 or other criminal offenses. An offence under section-138 of the N.I.Act, 1881 is almost in the nature of a civil wrong which has been given criminal overtones. The magistrate was of the view that imposition of a fine payable as compensation to appellant was sufficient to meet ends of justice.

47. But the Hon'ble Supreme Court in the case of **Mainuddin Abdul Sattar Shaikh** V/s **Vijay D Savi (AIR 2015 SC 2579)** taken different view by holding that court can impose jail term along with compensation. Even the following initial para of section-138 of NI Act speaks in case the accused shall be

deemed to have committed an offence and shall, without prejudice to any other provision 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. Further it is to be noted, in order to strengthen the banking and value of cheque in view of banking sector and business depends upon the cheque, in the year 2003 by Act No.2002 with effect from 6-2-2003, by way of amendment inserted 2 years imprisonment, earlier it was for one year. The better understanding said para is reproduced.

The initial para of Section.138 of N.I.Act says : *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 provision 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:*

48. But imprisonment is not imposed by considering the facts involved in the case and also complainant seeks the double the cheques amount and has not sought for any incarceration.

49. So far as awarding compensation is concerned. Since the provisions of Chapter XVII of N.I.Act strongly lean towards the grant of reimbursement of the loss by way of compensation, the court should, unless there are special circumstances, exercise the power to levy fine upto twice the cheque amount (keeping in view the

cheque amount and simple interest hereon at 9% per annum as the reasonable quantum of loss) and directing to payment of such amount as compensation is necessary. Because direction to pay compensation by way of restitution in regards to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount with interest thereon at a reasonable rate.

50. Therefore, award compensation to the extent of twice the cheque amount and simple interest thereon at 9% per annum to the complainant is necessitated though section-117(c) of NI Act speaks 18% per annum, but case on hand is for hand loan and not business transactions and also in view of accused received amount way back **in the year 2022** and we are in year 2026 (**Even court could not complete the trial within 6 months as envisaged U/Sec.143(3) of N.I.Act)** and said amount is remained unpaid.

51. It is to be noted, the object of Chapter XVII of the Negotiable Instruments Act is both punitive and also compensatory and restitutive. It provides a single forum and single proceeding for enforcement of criminal liability by reason of dishonour of cheque and for enforcement of the civil liability for realization of the cheque amount, thereby obviating the need for the creditor to move

to different forum for relief. Therefore unless there were special circumstances, in case of conviction, the court should uniformly exercise the power to levy fine up to twice the cheque amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct payment of such amount as compensation is need of the hour.

52. Further every day, the value of money is decreasing and living cost is escalating like anything by way of inflation and there is no much value for money. If really, complainant either invested in movable property like gold or purchase land/site, by this time trice the value she would have got. That is the reason, why the Parliament in order to strengthen the banking and value of cheque in view of banking sector and business depends upon the cheque, in the year 2003 by Act No.2002 with effect from 06-02-2003, by way of amendment inserted twice the cheque amount, earlier it was only cheque amount. Accordingly directing the accused to pay twice the cheque amount way of compensation with simple interest thereon at 9% per annum to the complainant from the date of filing the complaint till it’s realization would sub serve the justice. Even in default of payment of the said compensation, the accused

shall undergo simple imprisonment for a period of 6 months is necessary. For the afore-going reasons, I proceed to pass the following:

O R D E R

Accused is found guilty of the offence punishable U/Sec.138 of Negotiable Instruments Act 1881.

(ii) Acting U/Sec.278(2)of BNSS (erstwhile 255(2) of Cr.P.C), accused is hereby convicted of the offence punishable U/Sec.138 of Negotiable Instruments Act 1881.

(iv) Further it is hereby directed the accused to pay twice the two cheques amount ie. **₹10,00,000/-** + **₹10,00,000/-** = **₹20,00,000/-** by way of compensation with simple interest thereon at 9% per annum to the complainant from the date of filing the complaint till it's realization.

(v) In default of payment of the said compensation, the accused shall undergo simple imprisonment for a period of 6 months.

(vi) Out of the total fine amount, a sum of **₹20,00,000/-** shall be paid to the complainant as compensation under section 395 of BNSS (erstwhile section-357 of Cr.P.C.) and **₹25,000/-** shall be remitted to the State exchequer.

(vii) Further, it is also made clear that in view of proviso to Section.461 of BNSS (erstwhile Sec.421(1) of Cr.P.C), the accused shall not be absolved of his liability to pay compensation, even if he undergoes the default sentence.

(viii) Bail bond of the accused stands canceled.

(ix) Office is directed to supply free copy of this judgment to the accused forthwith.

(Dictated to the Stenographer, directly on computer and typed by him, revised corrected and then pronounced by me in the open Court on this the 31st day of July, 2026)

(**K.M.ANANDA**)
XXXVI Addl.C.J.M., Bengaluru.

A N N E X U R E S

List of witness examined for the complainant:

PW.1	Smt.Rathna.R

List of documents marked for the complainant:

Ex.P.1	Canara Bank Cheque No.897666, dated:10.10.2023, ₹5,00,000/-
Ex.P.2	Bank Memos (funds insufficient) dated 11.10.2023
Ex.P.3	Canara Bank Cheque No.348485, dated:10.10.2023, ₹5,00,000/-
Ex.P.4	Bank Memos (payment stopped by drawer) dated 12.10.2023
Ex.P.5	Copy of Legal notice dated: 02.11.2023
Ex.P.6	Postal receipt dated:02.11.2023
Ex.P.7	Postal acknowledgment dated 3-11-2023. (The complaint was presented on 8-12-2023 well within 45 days from the date of receipt of notice).
Ex.P.8	Death certificate of husband of complainant

List of witness examined for the defence	Nil
List of documents marked for the defence	Nil

XXXVI Addl.C.J.M., Bengaluru.