KABC0C0107922025

Presented on : 28-03-2025
Registered on : 28-03-2025
Decided on : 12-06-2026
Duration : 1 years, 2 months, 15 days

IN THE COURT OF XIV ADDL.CHIEF JUDICIAL MAGISTRATE, MAYO HALL UNIT, BENGALURU

Dated: This the 12th day of June, 2026

Present:

Smt. Reshma H.K., B.A.,LL.B.,
XIV ACJM, Bengaluru

C.C.No.54725/2025

Complainant	:	M/s Kinara Capital Private Limited, (Visage Holdings & Finance Private Limited) Having its registered office at No.50, 2nd Floor, 100 feet road, HAL 2nd stage, Indiranagar, Bengaluru-560038. Represented by Mrs.Vinaya Shetty, Legal Manager.

(By **S.L., Associates,** Adv)

V/s

Accused	:	M/s Suresh, Having its registered office at No.254/1, Indira Nagar, Neyveli Kurinjipadi, Vadalur, Cuddalore, Tamil Nadu.

Represented by its proprietor,
Mr/Mrs.D.Suresh
S/o Dhandapani,
Aged about 35 years.

(By Sri.**N.A.,** Adv.)

J U D G M E N T

This is the complaint filed by the complainant under section 223 of BNSS, against the accused for the offence punishable under section 25, 26 & 28 of Payment and Settlement Systems Act, R/w Section 138 of Negotiable Instruments Act and to take cognizance of the offence to punish the accused in accordance with law.

2. The factual matrix of the complaint is the complainant is a private banking organization engaged in lending financial assistance to its valued customers through various financial products. Accused had availed loan facility from the complainant and executed affordable working capital (unsecured) loan agreement No.WCUDL0010368 in favour of complainant. Complainant sanctioned loan amount of Rs.5,50,000/- @ 32% PA for a tenure of 36 months and same was disbursed on

21.09.2022 to the accused banking account for his own *bonafide* and genuine use. Accused has utilized the said loan and failed to make the repayment towards discharge of his part liability also therein the accused had obliged and agreed to repay the loan amount together with interest and other applicable charges in monthly installments. The accused agreed to abide all terms and conditions. Towards the repayment of the availed loan amount, accused represented by its proprietor issued a NACH/ECS certificate which was processed under transaction bearing UMRN No.BARB0000000017836669 dated 18.07.2024 for sum of Rs.4,59,655.58000000002/- drawn on accused bank account No.695001000002464, in Bank of Baroda, in favour of complainant towards the discharge of legal liability. Accused assured that sufficient balance would be maintained to honor the NACH/ECS certificate when it presented for encashment.

3. Complainant presented the said NACH/ECS certificate for realization through its banker IDFC First Bank, Residency Road, Richmond Town Branch, Bengaluru. However, the said NACH/ECS certificate bearing UMRN No.BARB0000000017836669 returned as 'balance insufficient'. Therefore, the complainant

issued a statutory demand notice to the accused on 04.09.2024 through registered post. But, it was returned on 10.09.2024 with postal acknowledgment as ‘no such person’. It is averred that the accused has issued NACH/ECS/E-Mandate knowing fully well that there was insufficient balance in his bank account. Therefore, he is liable for prosecution under the provisions of the Payment and Settlement Systems Act. Hence, this complaint is filed.

4. This court after perusing records, cognizance of the offence was taken and there on sworn statement of the complainant was also recorded. The criminal case has been registered against the accused.

5. Upon service of summons, accused has appeared through his counsel and enlarged on bail. Thereafter, the court has recorded the plea of the accused and he did not pleaded guilty of the offence and claims to be tried. Hence, the case was posted for trial.

6. The complainant in order to prove his case, he himself examined as PW.1 and got marked 07 documents i.e., Ex.P-1 to Ex.P-07. Notarized copy of Power of attorney marked as

Ex.P1, copy of letter dated 20.09.2023 addressed by IDFC 1st Bank marked as Ex.P2, NACH dishonour intimation dated 08.08.2024 marked as Ex.P3, Copy of NACH mandate marked as Ex.P4, Copy of demand notice dated 04.09.2024 marked as Ex.P5, Postal receipt marked as Ex.P.6 and returned postal cover marked as Ex.P.7.

7. After completion of the evidence of complainant, the substance of the evidence has been read over and explained to the accused under section 313 of Cr.P.C. the accused is denied the incriminating evidence available against them and choosed to lead evidence on his behalf, but failed to lead evidence.

8. Heard arguments and perused the materials placed before me. The following points would arise for consideration.

1. ***Whether the complainant proves that the accused for having dishonored NACH/ECS certificate bearing UMRN/ECS No.BARB0000000017836669 dated 18.07.2024 for a sum of Rs.4,59,655.5800000000 drawn on accused account No.69500100002464 in Bank of Baroda, issued in favour of complainant and committed the alleged offence.?***

2. ***Whether the complainant proves that the alleged offence against the accused is***

covered under Section 138 of Negotiable Instrument Act.?

3. What Order?

9. My findings on the above points are as under:-

Point No.1 & 2: In the "**Negative**"

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

BRIEF STATEMENT OF REASONS FOR THE DECISION

10. **Point No.1:** In order to prove the case, the power of attorney holder of complainant company examined as PW-1 and got marked 07 documents i.e., Ex.P-1 to Ex.P-07. Notarized copy of Power of attorney marked as Ex.P1, copy of letter dated 20.09.2023 addressed by IDFC 1st Bank marked as Ex.P2, NACH dishonour intimation dated 08.08.2024 marked as Ex.P3, Copy of NACH mandate marked as Ex.P4, Copy of demand notice dated 04.09.2024 marked as Ex.P5, Postal receipt marked as Ex.P.6 and returned postal cover marked as Ex.P.7.

11. It is worth to note that accused failed to cross-examine the PW-1 and also failed to lead any evidence on his behalf. Therefore, evidence of P.W.1 remained unchallenged.

Further, as per the evidence on record, it is proved by the complainant that the accused has availed loan facility from the complainant and executed affordable working capital loan agreement bearing No.WCUDL0010368. Further, towards repayment of the availed loan amount accused represented by its proprietor issued a NACH/ECS certificate as per Ex.P3. On representation of the said certificate for realization and the same was returned by stating 'balance insufficient'.

12. On meticulous perusal of the contents of the complaint, affidavit of PW-1 and exhibited documents a doubt arise in the mind of court as to maintainability of present complaint with respect to connecting the alleged offence under Section 138 of Negotiable Instrument Act. With this regard, on careful reading of the entire averments and explanation of Section 138 of Negotiable Instrument Act and it is worth to reproduce the same and same is as follows:-

> ***"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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months 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."

13. Further, on reading of the above Section with its explanation it is worth to relay on the definition of the 'cheque'. Section 6 of Negotiable Instrument Act, 1881 explains about the meaning of 'cheque' and same is thus:-

"6. "Cheque".— A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I.—For the purposes of this section, the expressions—

(a)"a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto

system ;

(b)“a truncated cheque” means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.”

14. Further, in order to prove the guilt of the accused for offence under section 138 of Negotiable Instruments Act, 1881, the complainant is required to prove the following ingredients beyond reasonable doubt:

(i) Accused had issued a cheque in favor of complainant.

(ii) The said cheque has been issued in discharge of a debt or liability and is for consideration.

(iii) The said cheque has been dishonored on presentation.

(iv) Accused has failed to make payment of cheque amount within statutory period of service of legal notice served to him by complainant.

15. It is noteworthy to mention that on reading of the above two Sections i.e., Section 6 and Section 138 of Negotiable Instrument Act, 1881 together with the present case on hands, it

shows that the Ex.P3-NACH/ECS certificate does not covered under explanation of the above Sections of Negotiable Instrument Act. Under the circumstance, the crux of the matter is to decide is can ECS or NACH dishonour be treated like cheque bounce under Section 138 of Negotiable Instrument Act? Or in other way can ECS or NACH bounce be converted into a cheque bounce case under Section 138 of Negotiable Instrument Act?

16. The crucial issue is that whether criminal liability can be invoked for dishonor of NACH/ECS bounce. It is worth to note that ECS/NACH transactions are electronic mandates and it is an instructions given by a bank to bank. There is no physical or electronic charges. Moreover, Electronic Payments Systems are governed by the Payment a Settlement System Act, 2007, which regulates electronic fund transfer. Moreso, ECS/NACH is an instruction to bank and cheque is a Negotiable Instruments. Therefore, ECS/NACH bounce cannot be legally converted into cheque bounce. When the electronic payment fails it is absolutely a civil liability and remedy is available under different forum. The ECS and NACH certificates cannot be considered as 'cheque'. If the cheque dishonored it attracts criminal liability as

provided under Section 138 of Negotiable Instrument Act and at the same time the ECS and NACH transaction are electronic payments. In case of failure in electronic payments it remains civil in nature and not directly linked to a ‘cheque’. Therefore, it is just and proper to come to a conclusion that the complainant failed to proves that the accused for having dishonored NACH/ECS certificate bearing UMRN/ECS No.BARB0000000017836669 dated 18.07.2024 for a sum of Rs.4,59,655.5800000000 drawn on accused account No.69500100002464 in Bank of Baroda can be treated as ‘cheque’ and the alleged offence against the accused is covered under Section 138 of Negotiable Instrument Act. Therefore, I answered point No.1 and 2 in the **Negative**.

17. **Point NO.3:-** The foregoing reasons and finding to point No.1 and 2, leads this court to proceed to pass the following:

ORDER

Acting under Section 278(1) of BNSS, accused is acquitted of the offence punishable under Section 138 of Negotiable Instruments Act and he is set at liberty.

Bail bond executed by the accused shall stands cancelled.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me, signed then pronounced in the open court on this the 12th day of June, 2026.)

RESHMA H K Digitally signed by RESHMA H K Date: 2026.06.15 11:35:26 +0530

(SMT.RESHMA H.K.)
XIV ACJM, BENGALURU

ANNEXURE

1. **List of witnesses examined on behalf of the complainant:**

PW-1 : Vinaya Shetty

2. **List of witnesses examined on behalf of the accused:**

- NIL -

3. **List of documents marked on behalf the complainant:**

Ex.P.1	:	Notarized copy of Power of Attorney
Ex.P.2	:	Copy of letter dated 20.09.2023
Ex.P.3	:	NACH dishonour intimation dated 08.08.2024
Ex.P.4	:	Copy of NACH mandate
Ex.P.5	:	Copy of demand notice dated 04.09.2024
Ex.P.6	:	Postal receipt
Ex.P7	:	Returned postal cover

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4. **List of documents marked on behalf of the accused:**

- NIL -

RESHMA H K

Digitally signed by RESHMA H K
Date: 2026.06.15 11:35:19 +0530

(SMT.RESHMA H.K.)
XIV ACJM, BENGALURU