KACM300011152019

Presented on : 24-12-2019
Registered on : 24-12-2019
Decided on : --
Duration :

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

:PRESENT:

Smt. Nandini.M.N, B.A.,LLB.,
Civil Judge and JMFC.,
Koppa.

Dated this the 18th day of July 2026

CC.NO. 916/2019

Complainant: P.C.A.R.D. Bank, Koppa Branch, Koppa, Chikmagalur District – 577126, Represented by its present Manager.

V/S

Accused : Smt. Sudha W/o Shaji, R/o Gunavanthe Road, Haranduru Village, Koppa Post and Taluk, Chikkamagaluru District.

1. **Date of commencement of offence/ Date of cheque : 03.04.2019**
2. **Date of report of offence : 20.06.2019**
3. **Date of arrest of the accused : ----**
4. **Name of the complainant : Officer, P.C.A.R.D. Bank, Koppa Branch, Koppa.**
5. **Date of commencement of evidence: 27.11.2019**
6. **Offence complained of : 138 of N.I. Act.**

7. Opinion of the Judge : Convicted.

8. Complainant represented by : Sri. H.N.V., Adv.

10. Accused represented by : Sri. K.S.S., Adv.

Sd/-xxx 18.07.2026.

(Smt. Nandini M.N.)
Civil Judge & JMFC.,
Koppa.

J U D GM E N T

The complainant bank has filed this private complaint under section 200 of Cr.P.C. against the accused for the offence punishable under section 138 of Negotiable Instruments Act.

2. The brief facts of the complainant's case are as follows:

The accused borrowed the loan of Rs.49,000/- from the complainant bank on 05.03.2015 with the assurance of repayment of the said loan in monthly installments. The accused failed to as agreed. When the complainant issued notice on 14.12.2018 to the accused for the payment of the balance amount, the accused has issued a cheque bearing No. 776725, dated 03.04.2019 for Rs.42,640/- drawn on Syndicate Bank, Koppa-Kaduru Branch in favour of the complainant bank and assured to the complainant bank that the cheque will be honoured whenever it is presented for encashment. The complainant presented the said cheque through C.D.C.C. Bank, Koppa Branch for encashment. The said cheque was dishonoured and returned to the complainant by the endorsement with a shara of “Account closed”. Thereafter, the complainant issued legal notice, dated 09.05.2019 to the accused calling upon him to pay back the cheque amount within 15 days from the date of receipt of the notice. The said notice was duly served on 09.05.2019 to the accused. Hence, the complainant having no other option has filed the present case by alleging that the accused with an intention to cheat the complainant bank has issued the said cheque. Hence his case.

3. Upon taking cognizance and the sworn statement of the complainant was recorded and as per the direction of the **Hon’ble Supreme Court of India in Indian Bank Association and others V/s Union of India and other (2014) 5 SCC 590** the sworn statement was treated as the complainant evidence. The complainant was examined as PW.1 and documents marked as Ex.P.1 to Ex.P.5 and the complainant side evidence was closed. Thereafter, the summons was issued against the accused. The accused appeared through his counsel and was released on bail.

The plea of accused recorded by this Court. The accused pleaded not guilty and claimed that she has defence to make and on the same day the counsel for the accused filed application under section 145(1) of N.I.Act to cross examine of PW.1. Hence, the case was posted for cross examination of PW.1.

4. Thereafter, sufficient opportunity was given to the accused. But she did not present before this court and failed to cross-examine of PW.1. Hence case was posted for record of the statement of accused under Section 313 of Cr.P.C. But the accused has remained continuously absent before the Court and in spite of giving her sufficient opportunity. Hence, the statement of the accused under Section 313 of Cr.P.C. was dispensed with and her defence evidence was also taken as nil. And the matter was posted for arguments.

5. Heard the arguments on both sides.

6. On the basis of above contentions and documents, the following point that arise for my consideration are:

1) Whether the complainant proves beyond all reasonable doubts that the accused has issued cheque bearing No.776725, dated 03.04.2019 drawn on Syndicate Bank, Koppa-Kaduru

Branch for a sum of Rs.42,640/- towards the discharge of legally recoverable debt, which came to be dishonored as “Account closed” and further the accused has failed to clear the cheque amount within the statutory period in spite of issuance of legal notice by the complainant and thereby the acused has committed an offence punishable under section 138 of Negotiable Instrument Act?

2) What order?

7. My findings on the above points are 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:

8. **Point No.1:** It is much relevant to discuss about the ingredients of Section 138 of N.I. Act to constitute the offences unedr this Act. In this regard, the complainant has to show:

i) That the cheque was belongs to the accused;

ii) Such cheque was issued towards legally recoverable debt;

iii) The said cheque came to be dishonored;

iv) The accused has not paid the amount covered under the cheque even after receipt of notice within stipulated time;

9. To substantiate his case, the complainant has examined himself as PW.1 and Ex.P.1, Ex.P.1(a) to Ex.P5 documents are marked. First, for the purpose of establishing the prima facie case, if we perused the documentary evidence filed by the complainant which are marked as Ex.P.1, Ex.P.1(a) to Ex.P.5, the Ex.P.1 is a cheque, dated 03.04.2019. The said Ex.P.1 was presented and the endorsement given on 03.04.2019, which is within the stipulated period. As such, the requirement under section 138(a) of N.I. Act is fulfilled. Further, upon presentation of the said cheque Ex.P.1, the drawee bank has given endorsement that the said cheque Ex.P.1 was returned unpaid for the reason of "Account closed". The said endorsement of the bank is marked as Ex.P.2. Thereafter, the complainant has issued legal notice dated 08.05.2019, which is marked as Ex.P.3. The legal notice was issued on 08.05.2019, which is within 30 days of the receipt of information of cheque being unpaid. As such, the requirement under section 138(b) of N.I. Act is also fulfilled. The said legal notice is duly served to the accused. The complaint was filed on 20.06.2019,

which is within the period of limitation. As such, the requirement under Section 138(c) of N.I. Act are also fulfilled.

10. By considering these ingredients of documentary evidence, it can be held that the components of section 138 of N.I. Act are fulfilled. Keeping this in view let us proceed to examine the oral evidence available on the record.

11. I am of the opinion that there is no need of repeating the entire case of the complainant as it is already narrated in the inception of the judgement.

12. By considering this and also on the evidence available on the record it is admitted that the Ex.P.1 cheque is belongs to the accused and the Ex.P.1(a) signature is also of accused. The complainant has examined himself as PW.1 by reiterating the entire contents of the complaint alleging that, the accused is the customer of his Company and the accused had availed a loan of Rs.49,000/- on 05.03.2015 and had agreed to repay the said loan with interest in monthly installment basis. The accused is defaulter in payment of monthly installment as agreed by her. When the complainant insisted and demanded for repayment of aforesaid loan amount, accused had issued a cheque for Rs.42,640/- for the

repayment sake, cheque drawn on Syndicate Bank, Koppa-Kaduru Branch, bearing No. 776725 dated 03.04.2019 in way of discharge of said liability and assures that the said cheque will be honoured when presented for encashment. He received the said cheque in good faith without suspecting the accused any malafide. Further, as per the request and assurance of the accused, presented the said cheque by him to the drawee bank for enchashment through C.D.C.C. Bank, Koppa Branch on 10.04.2019, but the said cheque dishonored and returned unapid for the reason “Account closed” as per memo issued by drawee Bank, dated 10.04.2019. The same is informed to him by his banker by returning said cheque with memo. In this regard the learned counsel for the accused has cross examined the PW.1. The cross of PW1 is taken as Nil. Even sufficient time has been given to the accused she has failed to keep herself present before the Court. Hence, the statement of the accused Under Sec. 313 Cr.P.C. is was dispensed with and the defence evidence was also taken as nil after applying the Indian Bank Association V/s Union of India case. In order to avoid delay in the proceedings, especially in the naute of case relating to offence punishable under section 138 of N.I. Act, heard the argument from the complainant side. The accused regularly remained absent before this Court without any specific reason. Then the attitude of the accused shows that she is protracting the proceedings without any reason.

13. More over, in this case, the accused has not taken any sufficient defence. Because, in spite of giving sufficient opportunities to her to lead defence evidence, she has failed to lead the defence evidence. Therefore, the accused has elicited nothing from her mouth.

14. It is also pertinent to note that considering the factual aspect of the case as well as proceedings under Section 138 of N.I. Act, it is settled law that same has to be concluded expeditiously in the light of guidelines issued by the Courts from time to time for speedy disposal of the cases, the scope of Section 142, 143 and 145 of N.I. Act, it was not necessary for the Trial Court to wait for accused to make his appearance. The Court is empowered to proceed with the case without recording the statement of the accused under Section 313 of Cr.P.C. The mere use of word 'may' cannot be held to confer a discretionary power on the Court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice. If the accused has not bothered to remain present before the Court and also Court has to take not of the fact that complainant is running from pillar to

pillar after filing of the case and when the material discloses that the accused did not bothered, Court has to exercise discretion and proceed with the case by dispensing with statement under Section 313 of the Code. The accused has no regard for directions of the Court. When such being the case, it is the discretion of the Magistrate to dispense with the recording of Section 313 of Cr.P.C.

15. When the accused failed to prove the documentary evidence which were marked as Ex.P1, Ex.P.1(a) to P5 and also when the accused has admitted that Ex.P1 cheque and Ex.P1(a) signature belongs to her, there can be a positive finding in respect of issuance of cheque.

16. By considering all these reasons there is a positive finding in respect of issuance of cheque. When there is initial burden of the complainant is proved, the onus and the burden is shifted on the accused to prove her defence.

17. Once the issuance and signature is proved, it is the burden of the accused to rebut the presumptions under section 138 and 139 of the N.I. Act, which is available in favour of the complainant. The same was observed in the following judgement of Hon'ble High Court of Karnataka.

<u>K.L.J. 2000(3) Page 481 Dr.K.G. Ramachandra Gupta & Another V/S Dr. G. Adinarayana.</u>

> **"NEGOTIABLE INSTRUMENTS ACT, 1881, Sections 138 and 139 – Cheque – Presumption about drawing of – Signature on cheque, admitted to be that of accused – Held, presumption envisaged in Section 139 that cheque was issued for discharging antecedent liability existing on date which cheque bears, can be legally drawn."**

18. As discussed already the complainant has given satisfactory answer about that the accused received a loan of Rs.49,000/-. The accused had agreed to repay the said amount with interest in monthly installment basis and defaulter in payment of monthly installment as agreed by her. But, accused has failed to repay the said amount. No doubt that the complainant has to establish the existence of legally recoverable debt. The complainant in his chief examination has stated on oath and as per his complaint and legal notice and chief examination affidavit. For the repayment of the above said loan amount the accused has issued the Ex.P1 cheque, which came to be dishonored. Under the presumption available under section 118 and 139 of the N.I. Act, if the accused is taking up the defence of non-passing off of the

consideration mentioned in any Negotiable Instrument, it is his/accused burden to rebut the presumption. But, the accused has not given satisfactory probable defence to accept or to rebut the statutory presumptions available in favour of the complainant.

19. The trial of cases under N.I. Act is supported with the presumption available under section 118 and 139 of N.I. Act. For the proper adjudication of the matter the accused has to rebut the above said presumption provided under the N.I. Act in favour of the complainant through other evidence. Mere denial is not enough to rebut the presumption to the extent that the Ex.P1 cheque was not backed up by the consideration as the accused admitted the signature in the Ex.P1 cheque. Hence, without any hesitation it can be held that the presumption available under section 138 of N.I. Act in favour of the complainant stands unrebutted.

20. Further, the transaction and issuance of cheque is proved before this court. Section 139 and 118 of N.I. Act has favourable presumptions in favour of the complainant. These presumptions are supported by the admissions made by the accused in respect of cheque and the signature. The accused has taken the defence that the complainant has filed a false case against her. If the complainant has really misused the cheque and

falsely filed the case against the above said accused, then the accused definitely has to take the legal action against the complainant. The accused has also not produced any single document or evidence before this court to disprove the case of the complainant. When the presumptions are not rebutted and defence not proved by the evidence placed by the complainant, the burden shifts upon the accused to rebut the presumption. The accused not placed any probable defence to disprove the case of the complainant. Hence, the defence of the accused is not acceptable in the absence of proper evidence. Thereby, it can be concluded that the Ex.P1 cheque was issued in the nature provided under section 138 of N.I. Act. Mere denial is not sufficient to rebut the presumption in favour of the complainant. In this regard, it is very incumbent to quote the following judgements of the Apex Court.

A.I.R. 2010 SC 1898 Rangappa V/S Mohan

> **"The presumption mandate by Sec. 139 of the Act does indeed including the existence of the legally enforceable debt or liability." Further, in the judgement quoted supra it is also held that:**
>
> **"The burden of the drawer of the instrument is not just to create a doubt or offer**

explanation, but such explanations has to be proved satisfactorily".

<u>A.I.R. 2001 SC 2895 K.N. Beena V/S Muniyappan and Another:</u>

"The burden to prove the consideration for the cheque lies on the accused if not rebutted, the presumption is that the cheque was issued for consideration. It is for the accused to prove that the cheque was not issued towards a debt or liability. He has to lead credible evidence for the rebuttal of this presumption. Mere denial of averments will not be suffice to shift this burden on to the complainant."

21. These citations are squarely applicable to this case as there is admission regarding the relationship, signature on Ex.P1 cheque and issuance of Ex.P1 cheque. The accused has not made out any probable grounds to disprove the complainant's case. On the other hand, the complainant successfully proved his case beyond all reasonable doubts. As such, the point No. 1 is answered in the affirmative.

22. **<u>Point No. 2:</u>** In view of the above findings on point No. 1, I proceed to pass the following order.

ORDER

Acting under Sec. 255(2) of the Cr.P.C 1973. The accused is convicted for the offence punishable U/Sec.138 of the Negotiable Instruments Act.

In view of the conviction, the accused shall undergo simple imprisonment for a period of six months and shall pay fine of Rs.47,640/- out of which Rs.42,640/- shall be paid to the complainant in payment of compensation. In default of the payment of fine, the accused shall undergo simple imprisonment for further period of 2 months.

The remaining balance amount i.e., Rs.5,000/- shall be confiscated to the State.

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

The office is directed to furnish the free copy of judgement to the accused. Call on 18.08.2026.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 18th day of July, 2026.)

Sd/-xxx 18.07.2026.

(Smt. Nandini M.N.)
Civil Judge & JMFC.,
Koppa.

ANNEXURE

List of witnesses examined for the complainant:

PW 1: Prakash S.B. 27.11.2019

List of witnesses examined for the accused:

- NIL -

List of documents marked for the complainant:

Ex.P1:	Original Cheque
Ex.P1(a):	Signature of the accused
Ex.P2:	Memo issued by the Bank
Ex.P3:	Legal Notice
Ex.P4:	Postal receipt
Ex.P5:	Postal acknowlegment

List of documents marked for the accused:

- NIL -

M N NANDINI

Digitally signed by M N NANDINI
Date: 2026.07.20 10:26:44 +0530

Sd/-xxx 18.07.2026.
(Smt.NANDINI.M.N)
Civil Judge & JMFC.,
Koppa.