KABC030781812021

IN THE COURT OF THE XIX ADDITIONAL CHIEF JUDICIAL MAGISTRATE AT BENGALURU CITY.

Dated this the 21st day of July, 2026.

PRESENT: SMT.RASHMI H.B.,B.A.(LAW)LL.B.,LLM.,
XIX ADDL.C.J.M., BENGALURU CITY.

<u>C.C.No.29382 of 2021</u>

Complainant	:-	**Sri.H.Shankar**, S/o Late Honnaiah, Aged about 59 Years, Proprietor of Hema Wines, R/at.No.414, 12th Cross, 6th Main, West of Chord Road, Mahalakshmipuram, Bengaluru - 560086. (**Rep.by Sri.M.K.N., Advocate**)
	-V/s-	
Accused	:-	**Sri.N.Venkatesh @.Neelappa Venkatesh**, S/o Late Neelappa, Aged about 46 Years, R/at.No.204, 7th Cross, 2nd Phase, Manjunathanagar, West of Chord Road, Bengaluru - 560010. <u>And also At</u>: No.14, 6th Cross, Athmeeya Geleyara Balaga Layout, 2nd Stage, Mahalakshmipuram, Bengaluru - 560086. (**Rep.by Sri.G.M.G., Advocate**)

Date of complaint	:-	19-04-2021
Date of Commencement of evidence	:-	21-10-2021
Offence complained	:-	Section 138 of N.I.Act
Opinion of the Judge		Accused is found guilty.

(SMT.RASHMI H.B.,)
XIX ADDL.C.J.M., Bengaluru City.

J U D G M E N T

This is a private complaint filed under section 200 of Cr.P.C., against the accused for the offence punishable under section 138 of the Negotiable Instruments Act.

02. The brief facts of the complaint is as under:

The accused and complainant have entered into lease agreement dated 23-12-2016. As per said agreement, complainant has obtained the portion of house bearing No.106, located at Pipe line Road, Kurubarahalli, Bengaluru from accused, for lease for the amount of Rs.10,00,000/- and paid a sum of Rs.10,00,000/- by way of cash towards refundable lease amount for a period of three years.

However, the accused has breached the agreement by restricting the lease period for one year and refund the lease amount, the accused has issued three cheques i.e., 1)cheque bearing No.807392 dated 20-12-2020 for Rs.1,00,000/-, 2)cheque bearing No.807393 dated 20-01-2021 for Rs.1,50,000/- and 3) cheque bearing No.807394 dated 20-02-2021 for Rs.1,00,000/-, drawn on Punjab National Bank, Mahalakshmi Layout branch, Bengaluru, in favour of the complainant. As per the instructions of the accused, the complainant presented said cheques for encashment through his banker SBI Bank Limited, WOC Branch, Bengaluru. The cheques are returned unpaid with bank endorsement dated 24-02-2021 for the reason **"Funds Insufficient**". Thereafter, the complainant has got issued legal notice to both the addresses of accused on 08-03-2021 through registered post and the same were served to the accused on 13-03-2021. But, the accused has failed to make payment of cheque amount. Hence, complainant has filed this complaint on 19-04-2021.

03. After presentation of complaint, this Court took cognizance of offence and recorded the sworn statement of complainant. Thereafter, a criminal case is registered against accused and summons is issued to the accused. The accused appeared through his counsel and he is enlarged on bail. The copies of the complaint and other papers furnished to the accused. Substance of accusation was read over to him. Accused pleaded not guilty and claimed to be tried.

04. As per directions of Hon'ble Supreme Court of India, in Indian **Bank Association vs Union of India** reported in **2014 (5) SCC 590**, the sworn statement is treated as examination in chief of complainant. In order to prove the accusation made against the accused, the complainant examined himself as PW1 and got marked 12 documents as Ex.P1 to Ex.P12. The defence failed to cross-examine PW1.

05. Thereafter, the accused remained absent when matter is posted for Statement under section 313 of

Cr.P.C. Therefore, as per the Judgement of Hon'ble High Court of Karnataka in **Criminal Revision Petition No.664/2020**, dated 07-02-2025 in case of **Sunil Yadav Vs. Smt.Y.C. Manju**, this court has dispensed the statement under section 313 of Cr.P.C. In this case, accused has failed to lead defence evidence.

06. Heard the arguments of learned counsel for complainant. The defence did not adduce arguments. Perused entire case record carefully.

07. On the basis of contentions raised in the complaint the points that arises for determination of this Court are as follows:

1. Whether the complainant proves that, the accused issued the cheque towards discharge of legally enforceable debt?
2. Whether the complainant proves the guilt of the accused for the offence punishable under section 138 of Negotiable Instruments Act?
3. What order?

08. Now, this Court answers to above points are as follows:

Point No.1: In the **Affirmative**;

Point No.2: In the **Affirmative**;

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

:: R E A S O N S ::

09. POINTS No.1 and 2: Since these points are inter-relating with each other, they are taken up together for common discussion to avoid the repetition of facts and findings.

10. This case is tried as summons case. As this matter is tried as summons case, this Court relies on the evidence recorded by learned predecessor in office. In that regard, this Court relies on decision of Hon'ble **Supreme Court of India** in the case of **Mehsana Nagarik Sahkari Bank Ltd., V/s Shreeji Cab Co. & Others** reported in **2014(13) SCC 619**. Wherein the Hon'ble Supreme Court had observed that de-nova hearing is necessary only when the evidence is recording in summary manner. Therefore, this Court has proceeded with the case on the basis of part evidence recorded previously.

11. Before proceeding with the discussion, in order to prove the guilt of offence under section 138 of N.I. Act, initial burden casts on the complainant to prove the following ingredients:

a) The cheque must have been drawn for discharge of existing debt or liability.

b) Cheque must be presented within validity period.

c) Cheque must be returned unpaid due to insufficient funds or it exceeds the amount arranged.

d) Fact of dishonour be informed to the drawer by notice within 30 days.

e) Drawer of cheque must fail to make payment within 15 days of receipt of the notice.

12. In order to prove the case, the complainant - Sri. H.Shankar has examined himself as PW1. The PW1 has filed an affidavit in lieu of examination-in-chief reiterating entire complaint averments. In support of his oral evidence, he produced Ex.P1 to 12 documents. The complainant got marked original lease deed dated 23-12-2016 as Ex.P1, three original cheques as Ex.P2 to 4, signatures of accused as Ex.P2(a) to 4(a), three bank endorsements as Ex.P5 to 7, demand notice as Ex.P8, two postal receipts as Ex.P9 and 10 and two postal acknowledgments as Ex P11 and 12.

13. Though several opportunities are granted to accused, he failed to cross-examine PW1. Therefore, cross-examination of PW1 taken as nil. Therefore, evidence of PW1 is unchallenged and unrebutted.

14. The evidence of PW1 and Ex P1 to 12 clearly show the complaint is filed within time and all the ingredients of section 138 of N.I.Act. The cheque is issued for legally recoverable debt and it is dishonored for the reasons "Funds Insufficient". The said fact is brought to the notice of accused. Till date the accused did not comply the demand of the complainant for payment of amount mentioned in the cheque. Therefore, PW1 has discharged his burden to prove the ingredients of the offence punishable under section 138 of Negotiable Instruments Act.

15. Another aspect is to consider whether the Ex.P2 to 4 cheques and Ex.P2(a) to 4(a) signatures belongs to the accused or not. The accused did not dispute the said facts. The accused did not lead evidence to show the said signature not belong to him and he did not explain how Ex P2 to 4 cheques came to the custody of PW1 other than the version stated by PW1. These facts clearly shows that the cheques in dispute is belongs to accused and he has signed the said document. Therefore, presumption under section 118 and 139 of N.I. Act lies in favour of the complainant.

16. As per provision of section 118 and 139 of N.I. Act, the court has to presume liability of the accused and to such amount mentioned in the cheque to discharge legally recoverable debt. The said aspect was denied by the accused. Once the execution of cheque is admitted section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability. Thereafter, the onus of proving probable defense of the accused is on accused and standard of proof for rebutting presumption is preponderance of probabilities. To rebut presumption, it is open for the accused to rely on evidence or the accused can also rely on the materials submitted by the complainant in order to raise probable defense.

17. In that regard, the Hon'ble Supreme Court of India in its Judgment reported in **2019(5) SCC 418 in the case of Basalingappa V/s Mudibasappa** discussed the manner in which accused could rebut the presumption raised under section 118 and 139 of Negotiable instruments Act. The Hon'ble Supreme Court of India in the case of **Basalingappa Vs. Mudibasappa** reported in **2019(5) SCC 418** laid down principles regarding how presumption under section 118 and 139 of N.I.Act can be rebutted. As per the said judgement it is not necessary to accused to enter into witness box to rebut the presumptions.

18. To rebut the presumptions, accused did not entered into witness box. Accused did not send reply notice to demand notice. On going through the evidence on record, in this case, accused did not lead any evidence to rebut the presumption under Section 138 of NI Act. The accused did not explain how the custody of his cheques were gone into the hands of the complainant other than the version of complainant. Therefore said defence and denial of accusation during recording plea does not rebut the presumption U/s.139 of N.I.Act.

19. The Full bench Judgement of Hon'ble Supreme Court of India in the case of **Rangappa vs Sri Mohan** reported in **2010(11) SCC 441** held that presumption mandated by section 139 of N.I.Act does indeed include the existence of legally enforceable debt or liability. Therefore, once the initial burden is discharged by the complainant that the cheque is issued by accused and the signature, the burden casted on the accused to prove the contrary that cheque is not issued for any debt or other liability. The said proposition of law is laid down by Hon'ble Supreme Court of India in the case of the **P Rasiya vs Abdul Nazer and another**. In the Judgement of Hon'ble Supreme Court of India reported in **2021 (5) SCC 283 in the case of M/S**

Kalamani Tex vs P. Balasubramanian. In the para 13 of said Judgement the Hon'ble Supreme Court observed as follows:

> "13. Adverting to the case in hand, we find on a plain reading of its judgement that the trail court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under section 118 and section 139 of N.I.A. The statute mandates that once the signature(s) of an accused on the cheque/ negotiable instrument are established, then these "reverse onus" clause become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. The point of law has been crystalised by the court in Rohitbhai Jivanlal Patel vs State of Gujarath..."

20. Considering aforesaid legal proposition, burden casted on accused to disprove the case of complainant and his defence must be found more probable. As per section 139 of the N.I.Act, it shall be presumed unless contrary is proved, that the holder of cheque has received the cheque of the nature referred to in section 138 of N.I. Act for discharge in whole or in part of any debt or other liability. The presumption mandated by section 139 of N.I. Act, does indeed include the existence of legally enforceable debt or liability. Therefore, once the initial burden is discharged by the complainant that the cheque is issued by accused and the signature, the burden casted on the accused to prove the contrary that cheque is not issued for any debt or other liability. However, in this case accused has failed to make probable defence to rebut the presumptions. Hence, on the basis of the evidence of PW1 and Ex.P1 to 12 documents, the complainant has proved the case and complainant is entitled for recovery of the amount as compensation.

21. On considering the facts and circumstances of the case, the complainant has able to establish that Ex.P2 to 4 cheques are issued to discharge liability of repayment of Rs.1,00,000/-, Rs.1,50,000/- and Rs.1,00,000/- i.e., total sum of Rs.3,50,000/- to complainant by the accused. Ex.P2 to 4 cheques are dishonoured for the reason “Funds Insufficient” in the account of accused and complainant is entitled for the cheques amount as compensation. The Hon'ble High Court of Karnataka in its reported judgement in **2025 SCC Online KAR 786** in the case of **A V Poojappa vs Dr S K Vagdevi rep by her Special Power of Attorney Holder Sri H V Shivashankar** in Para No.24 discussed the following aspect while imposing punishment, which reads as follows:

> "24. While imposing the punishment, the Courts are required to examine the following aspects:
>
> 1. The quantum of the loan
>
> 2. The defence taken by the accused, more particularly whether he has taken a false defence and failed to prove the same.
>
> 3. Whether the accused has dragged on the matter unnecessarily and thereby delayed the disposal of the case at the stage of trial, appeal, revision.
>
> 4. Whether the transaction relates to business between the parties or the parties are business class who would have utilized the amount for their business and flourish, or
>
> 5. In other cases, the returns the loan amount would have brought, if it was kept in a fixed deposit in a nationalized bank etc,"

22. On considering said legal aspect, cheques are dated 20-12-2020, dated 20-01-2021 and dated 20-02-2021. Already 5 years 6 months have lapsed from inception of the complaint and accused did not contested the matter. If said cheque amount kept in FD in nationalized bank, interest at the rate of 6% per annum would have been accrued. Already 5 years 6 months have lapsed and accused has delayed the proceedings with unnecessary reasons. Therefore, it would be appropriate to award additional compensation of Rs.1,00,000/- as cost of the proceedings infavour of complainant. As per the judgement of Hon'ble High Court of Karnataka in **Crl. Rev. Pet. No.996/2016 dated 09-07-2025** in the case of **M/s Banavathy & Company vs Mahaeer Electro Mech(P) Ltd** has held as follows:-

> "While passing the order of sentence after determining the fine/Compensation, the court shall also pass an order to pay future interest at the rate of 9% per annum 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 Sessions Court in appeal and High Court in revision the interest of the complainant will be protected".

23. Considering the said legal proposition, it would be appropriate to award 9% per annum interest on the compensation amount payable to complainant if accused failed to comply the order of sentence within one month. The accused is not a repeated offender. Hence, there is no need to award imprisonment term. The accused is liable to pay the fine amount of Rs.10,000/- to the state towards litigation expenses. Under these circumstances, this Court answers Points No.1 and 2 in the **Affirmative.**

24. **POINT No.3**: For the foregoing reasons stated in the Points No.1 and 2, this Court proceeds to pass the following:

O R D E R

The accused is found guilty for the offence punishable under section 138 of Negotiable Instruments Act.

Acting under section 255(2) of Cr.P.C., the accused is convicted for the offence punishable under section 138 of the Negotiable Instruments Act. The accused is sentenced to pay a fine of Rs 4,60,000/- within 30 days and in case of default he shall undergo simple imprisonment for 6 months.

Out of the fine amount Rs 4,50,000/- shall be paid to the complainant as compensation as per section 357(1)(b) of Cr.P.C. with future interest at the rate of 9% per annum if accused failed to deposit compensation amount within stipulated time of 30 days. The remaining amount of Rs.10,000/- shall be defray to the State.

In view of section 437(A) of Cr.P.C. bail bonds stand extended for 6 months from this date.

Supply free copy of Judgment to the accused.

(Dictated to the stenographer directly on computer, typed by her, revised and corrected by me and signed, pronounced in the Open Court this 21st day of July, 2026)

(SMT.RASHMI H.B.,)
XIX ADDL.C.J.M., Bengaluru City.

::ANNEXURE::

List of Witnesses examined for Complainant:-

PW1	:-	Sri.H.Shankar.

List of Documents marked for Complainant:-

Ex.P1	:-	Original Lease dated 23-12-2016,
Ex.P2 to 4	:-	Three Original Cheques,
Ex.P2(a) to 4(a)	:-	Signatures of Accused,
Ex.P5 to 7	:-	Three Bank Endorsements,
Ex.P8	:-	Office copy of the Legal Notice,
Ex.P9 & 10	:-	Two Postal Receipts,
Ex.P11 & 12	:-	Two Postal Acknowledgments.

List of Witnesses examined for Accused:-

- NIL -

List of Documents marked for Accused:-

- NIL -

(SMT.RASHMI H.B.,)
XIX ADDL.C.J.M., Bengaluru City.