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IN THE COURT OF PRL. CIVIL JUDGE AND JMFC,

AT: BHATKAL

PRESENT: Smt. Deepa Aralagundi.
B.Com., LL.B.,
Prl. Civil Judge & JMFC, Bhatkal.

Dated 4th day of March, 2026

CRIMINAL CASE No.2021/2022

Complainant :

The Bhatkal Agricultural And Rural Development
Co-op Bank Ltd., Bhatkal
Represented by its Junior Manager,

Sri. Dinesh K. Naik,
Aged about: 45 years,
R/o: Mankuli, Bhatkal,

(By Sri. M.M.N., Advocate)

Vs.

Accused :

Sri. Harishchandra S/o Timmayya Naik
Aged about: 44 years,
R/o: Mugva Mudlamane, Honnavar,
C/o: Bastimakki, Murdeshwar, Bhatkal Taluk.

(By Sri. G.M.N., Advocate)

Date of filing complaint	:	13-09-2022
Date of Registration	:	16-09-2022
Date of Commencement of evidence	:	26-11-2024
Offence Charged	:	Section 138 of N. I. Act
Date of Judgment	:	04-03-2026
Opinion of the Judge	:	Accused found guilty

J U D G M E N T

This complaint is filed under Section 200 of Code of Criminal Procedure against the accused alleging commission of offence punishable Under Section 138 of Negotiable Instrument Act.

2. It is the case of the complainant that, on 30-04-2019 the accused has borrowed personal loan of Rs.50,000/- from the complainant bank by promising to repay the same with interest at the rate of 16% p.a. upon executing certain documents. But the accused has not repaid the said loan amount as agreed and promised by him at the time of obtaining the said loan. There was overdue amount of Rs.66,072/- standing in the loan account of the accused with interest upto 27-07-2022. After repeated the demand and request by the complaint to repay the said loan amount the accused issued a cheque bearing No.333470 dated: 27-07-2022 for Rs.66,072/- drawn on Karnataka Bank Limited, Karki Branch. When the complainant presented the said cheque in The Kanara District Central Co-Op Bank, Murdeshwar Branch for encashment, complainant was informed through its banker that the cheque is dishonored for the reasons **“Kindly Contact Drawer/ Drawee Bank and Pleasen”** vide endorsement dated 01-08-2022. Accordingly, the complainant bank issued a legal notice dated 16-08-2022, to the accused by registered post on his address demanding repayment of the cheque amount within 15 days from the date of receipt of notice. The said notice was received by accused on 19-08-2022. Despite receipt of the legal notice no payment is made by the accused, the present complaint was filed U/s.138 of N. I. Act against the accused.

3. This court took cognizance of the offence punishable Under Section 138 of Negotiable Instrument Act and recorded sworn statement of the complainant. After that this court ordered

to register the criminal case, as there was prima facie material to proceed against the accused and issued summons to the accused.

4. In pursuance of the summons, the accused appeared before this court through his counsel and he was enlarged on bail. Accusation for the offence U/Sec 138 of Negotiable Instrument Act is framed, read over and explained to the accused. He was pleaded not guilty and claimed to be tried. After hearing the both parties adopted summons trial procedure for disposal of the case. The complainant in support of his case examined a Junior Manager of complainant bank as PW-1 and got marked at Ex.P-1 to Ex.P-11 and the complainant closed his side evidence and posted for cross examination of PW-1. PW-1 has fully cross examined. The statement of the accused was recorded U/Sec 313 of Cr.P.C. Wherein the accused has denied the incriminating evidence adduced against him as false and he submits that he has no defence evidence. Heard arguments. Perused the materials available on record.

5. On the basis of the contentions raised in the complaint and documents, the following points would arise for my consideration:

- 1) Whether the complainant proves that, the accused issued the cheque Ex.P-1 towards discharge of legally enforceable debt ?
- 2) Whether the complainant proves the guilt of the Accused punishable under section 138 of N.I.Act?
- 3) What order or sentence ?

6. My findings to the above points are:

Point No.1 : In the Affirmative

Point No. 2: In the Affirmative

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

REASONS

7. **POINT NO.1 AND 2:** Since these points are interrelating with each other. Hence they are taken up together for discussion to avoid repetition of facts.

8. It is the case of the complainant that, on 30-04-2019 the accused has borrowed personal loan of Rs.50,000/- from the complainant bank by promising to repay the same with interest at the rate of 16% p.a. upon executing certain documents. But the accused has not repaid the said loan amount as agreed and promised by him at the time of obtaining the said loan. There was overdue amount of Rs.66,072/- standing in the loan account of the accused with interest upto 27-07-2022. After repeated the demand and request by the complaint to repay the said loan amount the accused issued a cheque bearing No.333470 dated: 27-07-2022 for Rs.66,072/- drawn on Karnataka Bank Limited, Karki Branch. When the complainant presented the said cheque in The Kanara District Central Co-Op Bank, Murdeshwar Branch for encashment, complainant was informed through its banker that the cheque is dishonored for the reasons **“Kindly Contact Drawer/ Drawee Bank and Pleasen”** vide endorsement dated 01-08-2022. Accordingly, the complainant bank issued a legal notice dated 16-08-2022, to the accused by registered post on his address demanding repayment of the cheque amount within 15 days from the date of receipt of notice. The said notice was received by accused on 19-08-2022. Despite receipt of the legal notice no payment is made by the accused, the present complaint was filed U/s.138 of N. I. Act against the accused.

9. The complainant has approached this court by alleging that the accused has committed an offence punishable Under Section 138 of Negotiable Instrument Act. The burden is casted on the complainant to prove that he has complied with the mandatory requirements of Section 138 of Negotiable Instrument

Act and also he has to prove the existence of legally recoverable debt under the disputed cheque. In order to prove the case of the complainant, the Junior Manager of complainant bank is examined as PW-1 and got marked Ex.P-1 to Ex.P-11, Ex.P1-(a). The chief examination of PW-1 is nothing but the reiteration of averments made in the complaint.

10. The PW-1 got marked the Disputed cheque as Ex.P1. Signature of accused as Ex.1(a). Return Memo as Ex.P.2. Copy of legal notice as Ex.P3. Postal receipt as Ex.P.4. Postal acknowledgment as Ex.P5. Certified Copy of loan application as Ex.P6. Certified Copy of loan agreement as Ex.P7. Certified Copy of Demand promissory note as Ex.P8. Certified Copy of Bank receipt as Ex.P9. Certified copy of statement of loan account as Ex.P10 and True copy of proceeding as Ex.P11.

11. In order to prove the case of the complainant, PW-1 has to satisfy the ingredients of Under Section 138 of Negotiable Instrument Act. In the present case, the cheque dated: 27-07-2022 was presented for encashment, which was bounced with an endorsement of Kindly Contact Drawer/ Drawee Bank and Pleasen on 01-08-2022. The complainant got issued legal notice to the accused on 16-08-2022. The accused received the said notice on 19-08-2022 without any demur. The accused has to comply the demand notice within 15 days from 20-08-2022 and after the expiry of 15th day, the cause of action accrues to the complainant for presenting the complaint. In this case, 15th days expires on 03-09-2022 and the cause of action commences from 04-09-2022 and the complaint has to be presented within one month from that date. In this case, the complainant has presented the complaint on 13-09-2022 which is well within the stipulated period and thereby the complainant has complied with the mandatory provisions of Under Section 138 of Negotiable Instrument Act.

12. In order to constitute an offence under section 138 of Negotiable Instrument Act, the complainant has to fulfill the following requirements which are as follows:

- i) Cheque should have been issued for the discharge in whole or part of any debt or other liability.
- ii) Cheque should have been presented before the bank within a period or within a period of its validity whichever is earlier.
- iii) The payee should have issued a legal notice in writing to the drawer of the cheque within 30 days from the date of information by the bank.
- iv) After the receipt of the notice, the drawer should have failed to pay the cheque amount within 15 days from the date of the receipt of the said notice.
- v) On non payment of the amount due, on the dishonored cheque within 15 days from the date of the receipt of the notice by the drawer, the complaint should have been filed by the complainant within one month from the date of expiry of the grace time of 15 days before Metropolitan Magistrate or not below the rank of JMFC.

13. Now let me ascertain whether the complainant is entitled to the presumption available U/s. 139 and Section 118 of N.I. Act. Presumptions both under Sections 118 and 139 are mandatory presumptions but rebuttable in nature.

14. In order to raise a presumption U/s. 139 of N.I. Act, the following 3 ingredients have to be ascertained and established in view of decision of **Hon'ble Apex Court in Rangappa V/s Sri. Mohan Reported in AIR 2010 S.C. 1898.**

- 1) The cheque in question must relate to the account of the accused.

- 2) The cheque in question must have been issued by the accused to complainant.
- 3) The accused must not have denied his signature on the cheque.

15. Before entering into factual matrix of the present case I deem it fit to discuss certain statutory provisions of negotiable instrument act. Section 118(A) of NI Act provides for presumption regarding consideration for a negotiable instrument. It reads as under:

“That every Negotiable Instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration”

16. Section 139 of Negotiable Instrument Act provides for presumption in favour of a holder. It reads as under

“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, or any debt or other liability.”

17. In order to draw presumption under section 118 R/w section 139 burden lies on complainant to show: 1) that he had the requisite funds for advancing the sum of money/loan in question to the accused, 2) that the issuance of cheque by accused in support of repayment of money advanced was true and 3) that the accused was bound to make payment as had been agreed while issuing cheque in favour of complainant.

18. (I) In a reported decision : case of Kishan Rao Vs Shankargowda (Criminal Appeal No.803 of 2018 - Supreme Court);“ 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”

19. The use of the phrase “until the contrary is proved” in Section 118 of the act and use of the words “Unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume” and “shall presume” as given in section 4 of the Evidence Act, makes it at once clear that presumption to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of the presumption is over .

This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. Following was held in paragraph 20:

20..... At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the

presumptions, the accused should bring on record such fact and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist....”

The ratio laid down in the above case is very much applicable to the case on hand, because the accused may adduce evidence to rebutt the presumption but mere denial regarding existence of debt shall not serve any purpose.

(II) 2006 AIR (Kar)1730; B.V.Sapathkuar Vs. K.G.V. Lakshmi wherein the Hon'ble High Court of Karnataka has held that:

The accused has not let any evidence to rebut the said presumption. In that view, dismissal of the complaint is bad in law and the complainant has successfully prove the guilt and the accused is liable to be convicted under Section 138 of the act.

19. In the present case accused has not come forward to lead his defence evidence and not produced any documents to prove his case. Further, the counsel for accused taken defence in the cross examination of PW1 that, the accused has given Ex.P1 cheque for security purpose not for repayment of loan amount. The counsel for accused has taken said defence in the cross examination of PW1 dated: 04-02-2025. The said relevant portion of cross examination of PW1 is as follows:

“ಸಾಲದ ಭದ್ರತೆಗಾಗಿ ನೀಡಿದ ಚೆಕ್‌ನ್ನು ದುರುಪಯೋಗಪಡಿಸಿ ಆತನ ವಿರುದ್ಧ ಸುಳ್ಳು ಪ್ರಕರಣ ದಾಖಲಿಸಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.”

20. Further counsel for accused submits that by misusing the said security cheque the complainant has filed this

false complaint against accused. If that is so what prevented the accused to lodge police complaint with respect to misuse of blank cheque against the complainant. Further, he could have approached the police station and could have issued notice to the complainant, but he did not do so. Furthermore, on perusal of record shows that the accused had belatedly taken up the defence of blank cheque. Prior to the filing of the complaint the accused had not even replied to the notice sent by the complainant. Since that would have an opportunity to raise the defence at an earlier stage. All these circumstances led this court that the accused had not raised a probable defence to rebut the statutory presumption. Further the complainant has produced loan application marked as Ex.P6, in the said Ex.P6 loan application, it clearly mentioned that, accused has taken loan from complainant bank and accused has signed the said loan application. However, in this case, it is to be noted that the cheque of the accused is not disputed by the accused. Once this fact has been acknowledged, section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. Further if we believed the defence of the accused taken in the cross examination of PW1, then question arises that, why the accused has not stepped into witness box and not produced any documents to prove his defence.

21. The accused has raised untenable defence to avoid consequence of dishonour of cheque. Since the presumption under Section 139 of Act does not stand rebutted by any legal evidence. Then it would be presumed that Ex.P1 issued for legally recoverable debt or liability. But the accused failed to rebut the same. The said presumption Under section 139 of N.I. Act has not been rebutted by the accused. For the above discussed

reason, I am of the view that towards the discharge of amount due by the accused had issued cheque No.333470 dt:27-07-2022 for Rs.66,072/- drawn on Karnataka Bank, in favour of the complainant and it came to be dishonored for the reasons "Kindly Contact Drawer/ Drawee Bank and Pleasen" dt: 01-08-2022 when it was present for encashment and even after receipt of notice the accused has failed to pay the amount of cheque. Ex.P1 cheque dishonored with a reason that "Kindly Contact Drawer/ Drawee Bank and Pleasen". But the accused has not come forward to lead evidence and not stepped in the witness box and not produced any single document to show that he has not issued Ex.P1 cheque to the complainant and there is no legally requirable debt from the accused to the complainant.

22. On the other hand in the cross-examination of the PW-1 nothing was elicited from the mouth of the PW-1. Complainant case is proved as correct and the case of the complainant falls under the presumption contemplated under section 118 of N.I. Act. So on forgoing reasons and discussions on the Point No.1, I am of the opinion that, complainant has clearly, cogently proved his case by oral and documentary evidence. Therefore, the presumption is to be drawn in favour of the holder of the cheque who has received it for discharge of liability. Therefore the accused has committed an offence punishable under section 138 of Negotiable Instrument Act. Hence, I answer Point No.1 and Point No.2 is in affirmative.

23. **Point No.3** :- In view of the findings given on above point, facts and circumstances of the case, the complainant has proved the guilt of the accused beyond all reasonable doubts and complainant has proved the cheque amount mentioned in Ex.P1 is a legally recoverable debt by the accused. Hence, I proceed to pass the following :

ORDER

Acting under Section 255(2) of Cr.P.C. Accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act.

It is ordered that the accused shall pay fine of Rs.68,072/- (Rupees Sixty Eight Thousand Seventy Two Only) for punishment of offence punishable Under section 138 of Negotiable Instrument Act. In case of default of payment of fine amount the accused shall undergo simple imprisonment for a period of six months.

Further, acting under Section 357(1) (a) of Cr.P.C. out of fine amount of Rs.68,072/- a sum of Rs.66,072/- shall be paid to the complainant as compensation and remaining amount of Rs.2,000/- defrayed as prosecution expenses to the State.

Bail bond of the accused shall stand cancelled.

Issue free copy of this Judgment to the accused.

(Dictated to the stenographer, the transcript revised and corrected by me and pronounced in the open court on this the 4th day of March 2026.)

-: ANNEXURES :-

Number of witnesses examined for Complainant :-

PW1 : Sri. Dinesh K. Naik

Number of witnesses examined for defense:-

-Nil-

List of documents marked for complainant :-

Ex.P1 : Cheque
Ex.P1(a) : Signature of the accused
Ex.P2 : Return Memo
Ex.P3 : Copy of legal notice
Ex.P4 : Postal receipt
Ex.P5 : Postal acknowledgment
Ex.P6 : Certified Copy of loan application
Ex.P7 : Certified Copy of loan Agreement
Ex.P8 : Certified Copy of Demand promissory note
Ex.P9 : Certified Copy of bank receipt
Ex.P10 : Certified copy of Statement of loan account
Ex.P11 : True copy of proceeding

List of documents marked for defense:

-NIL-