KAUK620020002023

IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC., AT HONNAVAR

-:PRESENT:-

SRI. IRANNA HUNASHIKATTI

B.COM., LL.B.,

Prl. Civil Judge & JMFC.,

Honnavar.

DATED: This 18th day of September-2025

C.C. No. 925/2023

COMPLAINANT:-	**Saint Milagries Credit Souharda Co-Operative Society Ltd., Branch Haladipur,** Represented by its Branch Manager, Honnavar Taluk (U.K.).
	(Represented by Sri. V.R.N., Advocate)
	V/s
ACCUSED:-	**Raheen Mohammad Gurkar,** Aged about : 26 years, R/o Muslimkeri, Post :- Herangadi, Taluk: Honnavar (U.K.).
	(Represented by Sri. P.G.T., Advocate)

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1.	Date of Complaint	11-08-2023
2.	Presence of accused 2a. Before the Court 2b. Released on bail	 26-06-2024 26-06-2024
3.	Name of the Complainant	**Saint Milagries Credit Souharda Co-Operative Society Ltd., Branch Haladipur,** Taluk: Honnavar (U.K.).
4.	Date of the commencement of evidence	11.08.2023
5.	Date of closure of evidence	02.09.2025
6.	Offence Charged	Under Section 138 of Negotiable Instruments Act
7.	Date on which the judgment is pronounced	**18-09-2025**
8.	Opinion of the Judge	Accused found guilty
9.	Complainant represented by	Sri. V.R.N., Advocate
10.	Accused represented by	Sri. P.G.T., Advocate

SD/-
(IRANNA HUNASHIKATTI)
Prl. Civil Judge & J.M.F.C.,
Honnavar.

J U D G M E N T

This is a private complaint filed by the complainant society against the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

2. <u>The brief facts of the complainant's case are as under</u>:- The complainant-society has stated that the accused is a surety for the business loan account No. BL-231 which is borrowed by one namely Abdul Rahaman Abu Mohammed Sab from the complainant-society. Thereafter, the accused had issued a cheque its bearing No. 677030 dated 17-05-2023 for a sum of Rs. 1,96,266/- drawn on "Canara Bank, Haonnavar Branch" to the complainant society for the repayment of the loan amount along with interest due and also requested the complainant society to present the said cheque for encashment. As per the assurance of the accused, the complainant society has presented the said cheque for encashment through its bank account at "Canara Bank, Haladipur Branch", but surprisingly the said cheque is returned on 04-07-2023 with an endorsement as **"Funds Insufficient".** After the receipt of the said endorsement, the complainant got issued a legal notice to the accused on 19-07-2023 order by demanding a payment of cheque amount. The said notice was served to accused on 25-07-2023. In spite of service of notice, accused neither replied to the notice nor repaid the cheque amount to the complainant. The accused has issued the above said cheque to the complainant without maintaining sufficient amount in her bank account. Therefore, the accused has committed an offence punishable under section 138 of Negotiable Instruments Act. Hence the complainant has filed the present complaint to take legal action against the accused in accordance with law.

3. After perusing the records, materials placed before the court, cognizance was taken for the offence punishable U/Sec 138 of Negotiable Instrument Act. Sworn statement of the complainant's authorized officer was recorded and process was issued against the accused since prima-facie material was available to proceed against the accused. Thereafter, accused appears before the court through her counsel and released on bail. After admitted to bail, plea for the offence punishable under section 138 of Negotiable Instruments Act was recorded, read over and explained to the accused in the language best known to her. The accused pleaded not guilty and claims to be tried. For which the case was posted for trial. As per **Indian Bank Association and others vs Union of India and others, reported in (2014) 5 SCC 590,** the sworn statement of the complainant filed by him during pre-summoning stage was considered as the evidence of the complainant. Further the Hon'ble Supreme Court of India in the judgment noted supra, under its 4th direction it was held that, "the court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under section 251 of Cr.P.C to enable him to enter his plea of defence and fix a case for defence evidence unless an application is made by the accused under section 145(2) for recalling a witness for cross-examination."

4. In order to prove its case, the complainant society has examined its authorized officers as PW1 and PW2. The PW1 and PW2 have filed their affidavits evidence in lieu of examination-in-chief and deposed in consonance with the complaint averments. The PW1 and PW2 in order substantiate their oral evidence also got marked the documents vide as Ex.P1 to Ex.P7 and closed their side evidence.

5. After completion of evidence of the complainant, the substance of the evidence was read over and explained to the accused U/Sec 313 of Cr.P.C., and her answers were recorded. Accused denied the incriminating circumstances appeared against her in the complainant's evidence. Thereafter, the accused has chosen to lead her evidence and filed an application under section 145 of NI Act and same was allowed and cross-examination of the PW1 completed. Thereafter, case was posted for arguments.

6. Heard arguments by both side counsels and perused the materials placed before the court.

7. On the basis of the above said materials, the following points arose for the consideration of this court:-

1. Whether the complainant proves that Ex.P1 cheque has been issued by the accused towards discharge of legal liability?

2. Whether the complainant further proves that Ex.P1 cheque was dishonored on its presentation as funds insufficient in the account maintained by the accused?

3. Whether the complainant has complied with the mandatory provisions of Section 138 (a) to (c) of Negotiable Instruments Act?

4. Whether the complainant further proves that the accused without having sufficient funds in her account and issued Ex.P1 cheque towards discharge of her liability and after its dishonor accused has failed to repay the loan amount to the complainant within the stipulated period and thereby the accused has committed an offence punishable under Section 138 of N.I. Act?

5. What order?

8. On the contents of complaint, evidence adduced by the parties and arguments, the findings of this Court on to the order aforesaid points are as hereunder;-

<u>Point No.1</u>	**:-**	**In the Affirmative.**
<u>Point No.2</u>	**:-**	**In the Affirmative.**
<u>Point No.3</u>	**:-**	**In the Affirmative.**
<u>Point No.4</u>	**:-**	**In the Affirmative.**
<u>Point No.5</u>	**:-**	As per the final order for the following:-

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-:R E A S O N S:-

9. Point No. 1 to 4 :- Since these points are interconnected with each other and involve common discussion, they are taken up together for consideration in order to avoid repetition of facts.

Since the facts of this case have been narrated above, I refrain myself from re-narrating the facts to avoid repetition.

10. In order to prove its case, the complainant society examined its authorized officer's as PW1 and PW2. The PW1 and PW2 have filed their affidavits evidence in lieu of examination-in-chief and deposed in consonance with the complaint averments. The PW1 and PW2 in order to substantiate their oral evidence also got marked the documents vide Ex.P1 to Ex.P7. Ex.P1 is the original cheque its bearing No. 677030 dated 17-05-2023 for sum of Rs.1,96,266/- drawn on “Canara Bank, Honnavar Branch”, Ex.P1(a) is the signature of the accused, Ex.P2 is the Banker’s endorsement bearing remark as “Funds Insufficient”, Ex.P3 is the office copy of legal notice dated 19-07-2023 issued to the accused, Ex.P4 is the Postal receipt, Ex.P5 is the Postal acknowledgment & Ex.P6 and Ex.P7 are the true copies of the resolution passed by the Complainant-society authorizing the PW1 and PW2 to file the complaint and depose etc., before the Court.

11. At this point of time, It is pertinent to note that, the Negotiable Instruments Act incorporates two presumptions such as one is under Sec.118 and another is section 139 of the Act speaks as under:-

> **Sec.118: Presumptions 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 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 indorsements – that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(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.

12. It is also relevant to refer Section 139 of Negotiable Instrument Act which reads as under:

> **<u>Sec.139: Presumption in favour of holder</u>:-**
> **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.**

13. Thus, the Act clearly lays down the presumptions in favour of the complainant with regard to the issuance of the cheque by the accused, towards the discharge of his/her liability in favour of the complainant. Under the scheme of the Act, the onus is upon the accused to rebut the presumptions in favour of the complainant by raising a probable defence.

14. However the said presumption is subject to rebuttal and the said legal principle has been reiterated by the Hon'ble Supreme Court in **<u>Kamala S. v/s Vidhyadharan M.J. and Another</u> reported in <u>(2007) 5 SCC 264</u>** wherein it was held as follows,

> **"The Act contains provisions raising presumption as regards the negotiable instruments under Section 118(a) of the Act as also under Section 139 thereof. The said presumptions are rebuttable one. Whether presumption stood rebutted or not would depend upon the facts and circumstances of each case"**.

15. Further in **Basalingappa vs Mudibasappa,** reported in **(2019)5 SCC 418.**, it was held as follows,

> **"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:**
>
> **25.1. 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.**
>
> **25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.**
>
> **25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence.Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.**
>
> **25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.**
>
> **25.5. It is not necessary for the accused to come in the witness box to support his defence."**

16. Now coming to Section 118 of N.I. Act, the presumption is available regarding consideration as to the date and also holder or holder in due course of cheque. When the complainant presents the cheque, it implies that it was given to him by the accused for some purpose. This presumption has to be rebutted by the accused by adducing defence evidence.

17. Now coming to the Section 139 of the N.I. Act. The section 139 is a rebuttal presumption and unless and until the contrary is proved, it shall be presumed that the holder of a cheque has received the cheque of the nature referred to in section 138 for the discharge in whole or in part any debt or other liability. As observed supra, section 139 of N.I.Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter is for the accused to rebut such presumption by leading sufficient evidence. This principle has been supported with the decision of Hon'ble Apex Court reported in **APS Forex services Pvt.Ltd vs Shakti International Fashion Linkers and others** in **Criminal Appeal No. 271/2020**.

18. Further in **Rangappa v/s Sri Mohan,** reported in **AIR 2010 SC 1898,** the Hon'ble Supreme Court of India has held that,

> **"It is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that**

> **of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail".**

19. In **<u>Hiten P Dlala vs Bratindranath Banarjee</u>** reported in **<u>AIR 2001 SC 3897</u>,** wherein the Hon'ble Supreme Court of India has held that,

> **"The presumption under section 139 of the Act is a presumption under law, it is not a presumption of fact. This presumption has to be raised by the Court in all the cases once the factum of dishonor is established. The onus of proof to rebut this presumption lies on the accused. The standard of such rebuttal evidence depends on the facts and circumstances of each of case. Such evidence must be sufficient, cogent and should prove beyond any reasonable doubt. Therefore, a mere explanation is not enough to repel this presumption of law."**

20. Though it is settled position of law that, once the execution of the cheque is admitted section 139 of Negotiable Instruments Act mandates presumption that, cheque issued for the discharge of any debt or other liability, but the said presumption U/s 139 is a rebuttable presumption and the onus on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. The said presumptions may be rebuttable by placing materials on record or through independent evidence lead by the accused or from suspicious circumstances clouding the prosecution case and damaging it.

21. In the present case, accused has not stepped into witness box to lead her defense. At this time it is important to note that, in this case the accused has not examined before the court, but no doubt that the accused can make her defense without entering to the witness box. Hence, in order to rebut the case of the complainant, accused has raised her defence by cross examining the PW2.

22. The learned Counsel for the accused cross examined PW2. For the purpose of better understanding this court have reproduced the relevant portion of the cross-examination of the PW2 is as hereunder :-

"ಆರೋಪಿಯು ಪ್ರಸ್ತುತ ಪ್ರಕರಣದಲ್ಲಿನ ಸಾಲಕ್ಕೆ ಜಾಮೀನುದಾರನಾಗಿದ್ದಾರೆ. ಸಾಲಗಾರರು 2021 ನೇ ಸಾಲಿನಲ್ಲಿ ರೂ.2,50,000/- ಸಾಲವನ್ನು ಪಡೆದಿದ್ದಾರೆ. ಸಾಲಗಾರರು ದಿನಾಂಕ 08-04-2021 ರಂದು ಸಾಲವನ್ನು ಪಡೆದಿದ್ದಾರೆ. ಸದರಿ ಸಾಲಕ್ಕೆ 15% ಬಡ್ಡಿ ಇದೆ. ಆರೋಪಿಯು ಟೇಲರಿಂಗ್ ಕೆಲಸವನ್ನು ಮಾಡುತ್ತಾರೆ. ಆರೋಪಿಯು ಸಾಲದ ಮರುಪಾವತಿಗಾಗಿ ಚೆಕ್ಕನ್ನು ನೀಡಿದ್ದಾರೆ. ಆರೋಪಿಯು ಭದ್ರತೆಗಾಗಿ ನೀಡಿದ ಚೆಕ್ಕನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡಿದ್ದೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ ಎಂಬುದಾಗಿ ನುಡಿದಿದ್ದಾರೆ".

With this background, let me peruse the defence of the accused. The accused has taken defence that, the complainant had misused the Ex.P1.

23. In the present case, admittedly the notice was issued by the complainant on 19-07-2023 and it was served on the accused on 25-07-2023. The case of the complainant society is that, the accused has never replied to the demand notice.

Failure of accused in giving reply to legal notice issued by complainant is one of strong circumstances to draw an inference that accused had issued a cheque in favour of complainant towards part payment of legally enforceable debt.

24. In order to prove the said fact, the learned counsel for the complainant vehemently argued before the court that Ex.P1 cheque belongs to the accused and the accused has not been disputed the cheque in question and her signature affixed on cheque, for which this court by applying Sec 118 and Sec 139 of Negotiable Instrument Act has to draw presumption that the accused in discharge of her legal liability has issued Ex.P1 cheque. It is further argued that the complainant has followed the formalities as contemplated U/Sec 138 of Negotiable Instrument Act. It is further argued that the legal notice was issued to the accused as per the law and the same was duly served, but the accused has not repaid the cheque amount within the stipulated period. Hence by considering all these aspects the accused has to be convicted for the offence punishable under Section 138 of Negotiable Instruments Act and direct the accused to pay the amount covered under the cheque to the complainant society.

25. In the instant case, the learned counsel for the complainant society further argued that, accused has clearly admitted that she has issued the Ex.P1 cheque to the complainant society and it was dishonored as per Ex.P2 endorsement. Therefore, it shows that as on the date of issuance of the cheque, the accused owe loan amount to the complainant society.

26. However, PW2 in his cross examination clearly stated that, accused is a surety for the loan amount & issued a cheque in favour of complainant society.

In the present case, PW2 was subjected to cross examination, but he stood with his case and nothing has been elicited from his mouth by the learned advocate for the accused in order to prove his defence. Moreover, PW2 clearly explained in his cross examination that, how Ex.P1 cheque came to the hand of the complainant society. However, some minor discrepancies found in the cross examination of the PW2. But those discrepancies are minor in nature and not affect the case of the complainant.

On the another hand, except denying the case of the complainant society, the accused has not adduced any document on her behalf in order to substantiate her defense/contention.

27. In the present case, the accused never objected or denied the fact of issuance cheque. But she has contented that the the complainant society misused the Ex.P1.

If at all cheque has been misused by the complainant, then why she could not have made any attempt to take necessary action against the complainant. In this case even after service of notice also the accused has not taken any legal action against complainant. There is no complaint lodged against complainant stating that the complainant society has misused Ex.P1. There is no any evidence in order to show that, the accused issued the Ex.P1 in favour of the complainant society as a security for the loan transaction between complainant & Abdul Rahaman Abu Mohammad Sab and it was misused by the complainant.

Therefore, counsel for accused failed to adduce the documents or evidence in order to show that, complainant society has misused Ex.P1. Hence, this defence will not help the defence of the accused.

28. In light of the arguments canvassed by the learned counsel for the complainant society, this court has carefully perused the Ex.P1 to Ex.P7, which are the cheque, bank endorsement, and legal notice issued to the accused. It is noticed that the accused has not disputed that the cheque does not belong to her account and at the same time, she has not disputed the signature on the cheque. This goes to show that the accused has issued the cheque towards the complainant. Ex.P3 is the legal notice shows that the complainant society has narrated its contentions and given the notice to the accused by giving her sufficient opportunity to pay the loan amount. The same was duly served on the accused as stated in Ex.P5. Thus, from the above documentary evidence placed on record, this court is of the opinion that the cheque, which is issued by the accused has remained unencashed.

29. The oral evidence of PW1 and PW2 are in conformity with the documentary evidence i.e., Ex.P1 to Ex.P7. On appreciation of the oral testimony of PW1 and PW2 and as well as documentary evidence i.e., Ex.P1 to Ex.P7, it is crystal clear that there is a sufficient material grounds to presume that the accused has issued Ex.P1 cheque to the complainant voluntarily. The complainant-society had presented the Ex.P1 cheque within its validity whichever earlier for realization. Soon after receiving the information from the bank, the complainant got issued a demand statutory notice vide Ex.P3 to the accused and the same has duly served on the accused.

30. Thus from the above discussion, it is clear that the complainant society has placed sufficient oral and documentary evidence on record to show that the accused has issued the cheque towards the discharge of legally recoverable debt. On the other hand, accused has not able to prove her defence as such. But she admits the liability towards the complainant society.

31. Hence, the complainant society has shown before this court that, the accused had issued Ex.P1 in favour of complainant society for discharge of debt due to her but the circumstances brought out in the cross examination of PW1 is not sufficient to indicate that the said presumption has been rebutted by the accused and there is no positive evidence to disprove the contents of complaint, therefore it cannot be held that the cheque in question was not issued for discharge of existing debt or liability due by the accused to the complainant. It is pertinent to note that, clause (b) of section 118 of NI Act raise a presumption as to the date of negotiable instrument, according to this presumption, every negotiable instrument bearing a date is presumed to have been made or drawn on such date. According to clause (a) of section 118 of NI Act, every negotiable instrument is presumed to have been made for consideration. There are no materials on record to rebut the presumptions U/s 118 & 139 of NI Act, therefore, the contention of accused is not acceptable. Therefore, the complainant society has proved that the said cheque was issued for legally recoverable debt. Further this Court is of the opinion that as per the amended provision of the Section 138 of the N.I Act, though this Court has the power to award double the cheque amount as fine amount, this court is of the opinion that Rs. 30,000/- has to be awarded as fine amount in addition to the cheque amount of Rs. 1,96,266/- in these facts and circumstances of the case. In total the accused shall pay a sum of Rs. 2,26,266/- as fine amount. Further out of the fine amount, an amount of Rs. 5,000/- shall be payable to the State. The remaining fine amount of Rs. 2,21,266/- has to be payable to the complainant as compensation under Section 357 of Cr.P.C. **With these observations, this Court has answered Point No.1 to 4 are in the Affirmative.**

32. **Point No. 5 :-** For the aforesaid discussion on Point No.1 to 4, this court proceeds to pass the following:-

O R D E R

Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under Section 138 of N.I. Act.

Accused shall pay a sum of Rs. 2,26,266/- and in that, a sum of

Rs. 2,21,266/- shall be paid to the complainant as compensation under section 357(1)(b) of Cr.P.C. and remaining Rs. 5,000/- shall be paid to the state as fine.

The accused is directed to pay the compensation amount to the complainant within two months from the date of this judgment.

In default to pay the compensation amount and fine amount, the accused shall undergo SI for a period of 1 year.

Office is hereby directed to furnish the copy of this judgment to the accused forthwith.

(Typed by me in my laptop, revised, corrected and then pronounced by me in the open Court, on this the **18th day of September, 2025**)

SD/-

(IRANNA HUNASHIKATTI)
Prl. Civil Judge & JMFC.,
Honnavar.

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-:ANNEXURE:-

I. LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT:-

PW1	Sri. Abhishek Anand Mastikatte.	11-08-2023
PW2	Sri. Ajay Suresh Naik.	03-07-2025

II. LIST OF DOCUMENTS EXHIBITED ON BEHALF OF COMPLAINANT:-

Sl.No.	Ex.No.	Nature of Documents
1.	Ex.P1	Cheque its bearing No. 677030.
2.	Ex.P1(a)	Signature of the accused.
3.	Ex.P2	Bank Endorsement.
4.	Ex.P3	Legal Notice.
5.	Ex.P4	Postal Receipt.
6.	Ex.P5	Postal Acknowledgment.
7.	Ex.P6	Authorization letter of PW1.
8.	Ex.P7	Authorization letter of PW2.

III. LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED:-

-NIL -

IV. LIST OF DOCUMENTS EXHIBITED ON BEHALF OF ACCUSED:-

-NIL -

SD/-

(IRANNA HUNASHIKATTI)
Prl. Civil Judge & JMFC.,
Honnavar.

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