

## M Chandru Vs Anjana Murthy

**Court:** Karnataka High Court At Bengaluru

**Date of Decision:** Jan. 23, 2025

**Acts Referred:** Negotiable Instruments Act, 1881 " Section 138, 138(b), 139  
Code Of Criminal Procedure, 1973 " Section 313

**Hon'ble Judges:** Shivashankar Amarannavar, J

**Bench:** Single Bench

**Advocate:** Appaiah P B, R Pramod

**Final Decision:** Dismissed

### Judgement

Shivashankar Amarannavar, J

1. This appeal is filed by the complainant challenging the judgment of acquittal dated 21.10.2013 passed in C.C. No. 423/2009 by the Principal Civil

Judge and JMFC, Mandya whereunder the respondent - accused has been acquitted for offence under Section 138 of the Negotiable Instruments Act

(hereinafter for the sake of brevity referred to as the "N.I. Act").

2. Brief facts of the complainant's case is, that the respondent - accused for his necessity had borrowed loan of Rs.1,20,000/- on 12.02.2008 and

agreed to repay the same within 2 months. The respondent - accused had issued cheque bearing No. 608153 dated 23.04.2008 drawn on Punjab

National Bank, Mandya, for Rs.1,20,000/-. The complainant presented the said cheque for encashment and it came to be dishonoured for want of

funds. The complainant got issued legal notice dated 03.05.2008 demanding payment of cheque amount. Said notice has been served on the

respondent - accused. The respondent - accused did not pay the cheque amount. Therefore, the complainant presented private complaint against the

respondent " accused for offence under Section 138 of N.I. Act. Learned Magistrate has taken cognizance and registered C.C. No. 423/2009

against the respondent - accused for offence under Section 138 of N.I. Act. The plea of the respondent - accused has been recorded. The

complainant in order to prove his case has examined himself as P.W.1 and got marked Ex.P.1 to Ex.P.5. Statement of the accused has been recorded

under Section 313 of Cr.P.C. The respondent - accused examined himself as D.W.1 and got marked one document as Ex.D.1. Learned Magistrate

after hearing arguments on both sides formulated points for consideration and passed the impugned judgment of acquittal. Said judgment of acquittal

has been challenged by the complainant in this appeal.

3. Heard learned counsel for appellant " complainant and learned counsel for respondent " accused.

4. Learned counsel for appellant would contend that the respondent - accused has admitted his signature on the cheque - Ex.P.1 and therefore, a

presumption under Section 139 of the N.I. Act requires to be raised. He further submits that the contradictions in the notice produced by the

complainant at Ex.P.3 and notice received by the respondent - accused and produced by him at Ex.D.1 are not material contradictions. With this he

prayed to allow the appeal and convict the respondent - accused for offence under Section 138 of the N.I. Act.

5. Learned counsel for respondent - accused would contend that in the notice received by the respondent - accused there is a mention that the

respondent - accused had borrowed a sum of Rs.1,25,000/- and to make payment of this amount borrowed he had issued cheque for Rs.1,25,000/-. He

further submits that as per the averments of the complaint the amount borrowed is Rs.1,20,000/- and the cheque is issued for Rs.1,20,000/-. In the

notice Ex.P.3 there is an alteration in the amount of borrowing and amount of the cheque. He submits that considering the said aspect there is no

notice of demand of actual amount of the cheque and actual amount due. Therefore, there is no compliance of proviso (b) of Section 138 of the N.I.

Act. Considering the said aspect learned Magistrate has rightly acquitted the respondent - accused. With this he prayed for dismissal of the appeal.

6. Having heard the learned counsel for the parties and on perusal of the impugned judgment of acquittal and trial Court records the following point

arises for consideration in this appeal.

"Whether the learned Magistrate has erred in acquitting the respondent - accused for offence under Section 138 of the N.I. Act?"

7. My answer to the above question is in the negative for the following reasons:

It is the case of the complainant that he has lent Rs.1,20,000/- to the respondent - accused and respondent - accused in order to repay the said loan

amount has issued cheque " Ex.P.1 for Rs.1,20,000/- and it came to be dishonoured for want of funds. The complainant has issued notice as per

Ex.P.3 to the respondent - accused. The respondent - accused has produced notice received by him at Ex.D.1. On comparison of both Ex.P.3 and

Ex.D.1 the amount of borrowing and the cheque amount are different and there is overwriting in the amount borrowed and cheque amount in Ex.P.3

" notice. In Ex.P.3 " notice, amount borrowed and cheque amount is Rs.1,20,000/-and in Ex.D.1 notice the amount borrowed is Rs.1,25,000/- and

cheque amount is Rs.1,25,000/-. In the notice Ex.D.1 the complainant has demanded excess amount than the amount due and cheque amount. In

Ex.D.1 there is no mention that excess demand is towards interest and cost. Considering the said aspect it is clear that what is demanded under notice

Ex.D.1 is not amount borrowed and not amount of the cheque. As per Ex.P.1 " cheque the amount of cheque is Rs.1,20,000/-. Considering the said

aspect it is clear that the amount demanded in Ex.D.1 " notice and cheque amount are different. Considering the said aspect learned Magistrate has

rightly held that the appellant " complainant has failed to prove that the respondent - accused has committed offence under Section 138 of the N.I.

Act. There are no grounds made out for allowing the appeal and setting aside the impugned judgment of acquittal.

8. In the result, the appeal is dismissed.