



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL APPEAL NO. 729 OF 2012 (A)

BETWEEN:

RAVIKUMAR
S/O MAHADEVAPPA
AGED ABOUT 40 YEARS
R/O KHB COLONY
NANJANGUD
DIST: MYSORE

...APPELLANT

(VIDE ORDER DTD.09.04.2025 SMT. ARCHANA MURTHY,
AMICUS CURIAE)

AND:

K.J. PUTTARAJU
AGED ABOUT 47 YEARS
CONTRACTOR
"VINAYAKA NILAYA"
OPP:CARMEL ENGLISH SCHOOL
SRIKANTESHWARA NAGAR
OOTY ROAD, NANJANGUD
DIST: MYSORE

...RESPONDENT

(BY SRI. SREENIVASAN, M.Y, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED U/S.378(4) OF CR.P.C
PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER PASSED
BY THE II ADDL. SESSIONS JUDGE, MYSORE IN CRL.A.
No.41/2011 DATED 29/3/2012 - ACQUITTING THE
RESPONDENT/ ACCUSED FOR OFFENCE P/U/S.138 OF N.I. ACT
AND RESTORE THE JUDGMENT AND ORDER PASSED BY ADDL.



CITY CIVIL JUDGE & JMFC., NANJANGUD IN C.C. No.79/2008
DATED 1/3/2011.

THIS CRIMINAL APPEAL HAVING BEEN RESERVED FOR
JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,
THE COURT, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

This Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure by the complainant being aggrieved by the judgment and order dated 29.03.2012 passed by the II Additional Sessions Judge, Mysuru in Criminal Appeal No.41/2011, whereby, the appellate Court reversed the judgment of conviction and sentence passed by the learned Additional Civil Judge and JMFC, Nanjangud in CC No.79/2008 dated 01.03.2011 and acquitted the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 ('NI' Act for short). The present appeal calls into question the correctness and



legality of the said order of acquittal passed by the learned Sessions Judge.

2. The factual matrix that lead to the filing of this appeal is, that the appellant herein who was the complainant before the trial Court had lodged a private complaint under Section 200 of Cr.PC alleging that, the respondent, who was known to him for several years, had borrowed a hand loan of Rs.6 lakhs from him on 20.07.2007. It was alleged that, the said loan was extended without any security based on mutual trust and acquaintance and that the accused had promised to repay the said amount within short time. The complainant contended that, when he demanded repayment of the said amount, the respondent issued a cheque bearing No.293853 dated 25.09.2007 drawn on Viajaya Bank, Nanjangud Br. in favour of the complainant for the said amount. The cheque when presented through the complainant's banker was returned unpaid with an endorsement '*insufficient funds*'.



3. Thereafter, the complainant caused a statutory legal notice on 2.10.2007 addressed to the accused, calling upon him to make the payment of the cheque amount within the stipulated period as mandated under the provisions of the NI Act. The notice was dispatched by both the RPAD and Under Certificate of Posting. The RPAD was returned unclaimed and UCP was served. In spite of service, no reply was received and no payment was made, the complainant therefore, filed the complaint under Section 200 of Cr.PC for the offence punishable under Section 138 of the NI Act before the learned JMFC Court, Nanjangud initiating proceedings against the respondent.

4. During the trial, the complainant examined himself and produced various documents including the dishonored cheque and endorsement issued by the bank, legal notice, postal acknowledgement and other supporting material all of which were marked as Ex.P1 to P16. The complainant contended that the issuance of the cheque by the accused and its subsequent dishonour clearly made



out the ingredients of the offence under Section 138 of the NI Act. The complainant also submitted that, there existed a legally recoverable debt and since the cheque was issued in discharge of such debt and was returned unpaid, the presumption under Section 139 of the Act was clearly attracted.

5. On the other hand, the accused entered appearance and contested the proceedings. He examined himself as PW.1 and produced exhibits Ex.P1 to P16 and closed evidence. DW.1 PUTtaraju was examined as DW.1 and documents D1 to D9 were marked in support of his defence. The defence taken by the accused is that, he was a civil contractor during the period 2001-2002 and used to purchase hardware and building materials from one Shashidhar. In the course of those business transactions, he has issued several signed blank cheques to Shashidhar for the purpose of settling accounts. In those circumstances, one of the cheques was misused by the



complainant and that the cheque in question was never issued in discharge of debt owed.

6. The accused denied having borrowed of any money from the complainant and denied any financial liability. No witness was examined on behalf of the accused and Shashidhar who was the key link in the defence theory was also not examined.

7. The learned trial Court, after considering the evidence adduced by both the parties came to the conclusion that the accused had admitted his signature on the cheque and that the defence set up by him was not substantiated by any convincing evidence. The learned trial Court invoked presumption under Section 118 and 139 of the NI Act and held that the accused had failed to rebut the presumption that the cheque was issued in discharge of legally enforceable debt. Consequently, the accused was convicted and sentenced to pay Rs.6.00 lakhs as compensation.



8. Aggrieved by the said conviction, the accused preferred Crl.Appeal No.41/2011 before the II Additional Sessions Judge, Mysuru. The appellate Court, after re-appreciation of the evidence on record, allowed the appeal and set aside the conviction. The appellate Court held that, the complainant had not placed any reliable material to establish the fact of alleged loan transaction. It observed that, complainant who claimed to have lent large amount of Rs. 6 lakhs but, failed to produce any material indicating his financial capacity or the manner in which such a transaction was entered into. There was no documentary evidence to support the loan, no acknowledgement of debt, no promissory note and no corroborating witness.

9. The learned appellate Court also considered the defence of the accused and held that though the accused had not produced a witness by name Shashidhar, the burden on the accused under Section 139 is only to raise a probable defence, not to prove the defence beyond



reasonable doubt. The appellate Court observed that, the complainant's case appeared improbable and that the mere production of the cheque and the legal notice in the absence of credible foundation of evidence to prove the transaction was insufficient to sustain conviction under Section 138 of Act. Appellate Court acquitted the accused by setting aside the judgment of the trial Court.

10. The complainant aggrieved by the said judgment of the first appellate Court, has preferred this appeal.

11. The records of this appeal further reveal, that after filing of the appeal either the counsel for the appellant or appellant did not appear before the Court, therefore, to keep the interest of the appellant, to prosecute this appeal on behalf of the appellant Smt.Archana Murthy, Advocate is appointed as amicus curiae to assist the Court to decide this appeal.



12. The learned amicus curiae for the appellant argued that, the learned Sessions Judge erred in law in disbelieving the evidence of the complainant and in interfering with the well reasoned judgment of the trial Court. It was contended that, once signature on the cheque is admitted, the statutory presumption arises in favour of the complainant and that the accused had not produced sufficient evidence to rebut the said presumption. It was also argued the defence taken by the accused is mere afterthought and that the appellate Court has adopted an approach which is contrary to the settled principle of law held by the Apex Court.

13. Per contra, learned counsel for the respondent-accused supported the finding of the first appellate Court and submits that, the complainant had no financial capacity to advance the loan as alleged in the complaint and there was no loan transaction entered into both himself and the complainant. The cheque so issued to the hardware businessman is misused by the complainant.



Thus, according to him, the acquittal order passed by the appellate Court is legally justifiable and cannot be interfered with.

14. I have carefully considered the submissions made and meticulously gone through entire material on record.

15. It is no doubt true that, under Section 139 of the NI Act, once execution of the cheque and the signature thereon is admitted, the presumption arises that, the cheque was issued for the discharge in whole or in part, of any debt or other liability. However, it is equally well settled the presumption is rebuttable and that the burden on the accused is not to prove his defence beyond reasonable doubt but, to raise a probable defence which creates in the mind of the Court about the existence of legally enforceable debt. The standard of proof required to rebut the presumption is that, of preponderance of probabilities.



16. In the instant case, the complainant has failed to establish even the basic elements of transaction, no receipt agreement or contemporaneous record has been produced to evidence the loan of Rs.6 lakhs. The complainant did not prove his financial capacity to lend such an amount nor did he examine any witness who would speak to the transaction. In his own evidence, he has stated that when he lent loan to the accused, except himself nobody was there and has not received any cheque from the accused.

17. On scrupulous reading of the evidence spoken to by PW. 1, he states that, for the purpose of security he has not taken any pronote or cheque and he has paid Rs.6 lakhs to the accused without any interest. The learned first appellate Court taking this evidence of PW.1 held that, in view of evidence of complainant, the defence of appellant appears to be probable as he was not acquainted with the complainant, question of borrowing money never arose and that his friend N.K.Shashidhar to whom he gave



cheque for security purpose for repayment towards purchase of cement and hardware from his shop, the complainant might have got the same concocted. The entire claim rests on the issuance of a cheque and the legal notice without any supporting proof of the underlying debt. When the issuance of cheque may raise a presumption under the law, such a presumption cannot operate in a vacuum or substitute the absence of foundational facts.

18. The appellate Court, in my opinion has correctly evaluated the evidence and rightly held that complainant failed to establish the existence of legally enforceable liability. The defence, though not fully proved is sufficient to cause a reasonable doubt the complainant's version. In criminal jurisprudence when two views are possible, one favourable to the accused must be adopted. The presumption under Section 139 of the NI Act cannot be elevated to the rule of compulsion to convict in every case



where the cheque is admitted irrespective of the surrounding circumstances.

19. This Court sitting in appeal, finds no perversity, illegality or manifest error in the findings recorded by the learned Sessions Judge. The acquittal recorded by the appellate Court is based on proper appreciation of evidence supported by cogent reasoning and does not call for interference by this Court. It is the settled principle that, the interference in an order of acquittal is permissible only when the findings are unreasonable, perverse or contrary to the evidence on record which is not the case here. Accordingly, this Court finds no merit in the present appeal. Resultantly, I pass following:

ORDER

- (i) The Criminal Appeal is ***dismissed***.
- (ii) The Judgment and Order dated 29.03.2012 passed by the II Additional Sessions Judge, Mysore, in Crl.Appeal No.41/2011 acquitting the accused of



offence punishable under Section 138 of
NI Act is hereby confirmed.

(iii) Trial Court record be returned to the trial
Court forthwith along with a copy of this
judgment.

(iv) Amicus curiae's fee is fixed at
Rs.10,000/-. Registry to make necessary
arrangements to pay the same to her.

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

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List No.: 1 Sl No.: 1