



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL APPEAL NO. 553 OF 2014 (A)

BETWEEN:

SRI. P.L. KEMPEGOWDA
S/O LINGEGOWDA,
AGED ABOUT 73 YEARS,
R/AT KUVEMPUNAGARA,
MAYASANDRA,
TURUVEKERE TALUK-577 102,
TUMKUR DISTRICT.

...APPELLANT

(BY SRI. MANJUKUMA B.T., ADVOCATE FOR
SRI. M.N. MADHUSUDHAN, ADVOCATE (P/H))

AND:

SRI. C.S. RANGASWAMY
S/O POOJARI SIDDAPPA,
AGED ABOUT 53 YEARS,
R/AT CHIKKABEERANAKERE,
MAYASANDRA POST,
TURUVEKERE TALUK-577 102,
TUMKUR DISTRICT.

...RESPONDENT

(BY SRI. S.S. MAHENDRA, ADVOCATE (P/H))



THIS CRL.A. IS FILED U/S.397 CR.P.C PRAYING TO CALL FOR ENTIRE RECORDS AND SET ASIDE THE IMPUGNED JUDGMENT AND ORDER PASSED BY THE V ADDL. DISTRICT & SESSIONS JUDGE AT TIPTUR IN CRL.A.NO.55/13 DATED 27.3.2013 BY ALLOWING THIS REVISION.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

ORAL JUDGMENT

This is a complainant's appeal preferred against the judgment of acquittal passed by the Court of V Additional District and Sessions Judge at Tiptur in Crl.A No.55/2013, wherein the learned Sessions Judge has set aside the Judgment and order passed in CC No.48/2010 by the Court of Civil Judge and JMFC, Turuvekere, convicting the accused for the offence punishable under Section 138 of the NI Act.

2. Heard the learned counsel for appellant and respondent. Perused the material on record.



3. It is the case of the complainant that, the accused borrowed a hand loan of Rs.3,00,000/- from him for business purpose, agreeing to repay the same within 15 days, but not repaid as promised. When he demanded for the repayment of the said amount, accused issued a cheque bearing No.577243 dated 05.10.2009 for Rs.3,00,000/- drawn on State Bank of Mysore, Mayasandra Branch, Turuvekere Taluk. When the said cheque was presented for encashment, the same was dishonoured with an endorsement 'funds insufficient'. Thereafter, he issued a legal notice dated 14.10.2009 and in spite of service of the said notice, the accused neither replied to the notice nor repaid the amount hence, committed an offence punishable under Section 138 of NI Act.

4. Before the trial Court, the complainant got examined himself as PW1 and got examined two more witnesses, namely the Bank Manager and the Postmaster



as PW2 and PW3. He got marked Exs.P1 to P10. The accused got himself examined as DW1.

5. The trial Court based on the oral and documentary evidence, convicted the accused for the offence punishable under Section 138 of the NI Act and sentenced him to pay a fine of Rs.6,00,000/-, in default of payment of fine, to undergo SI for 6 months. Out of the fine amount, a sum of Rs.5,90,000/- was ordered to be paid to the complainant as compensation.

6. Aggrieved by the Judgment and order of conviction and sentence passed by the trial Court, accused preferred Crl.A No.55/2013 before the Court of V Additional District and Sessions Judge at Tiptur. The learned Sessions Judge vide impugned judgment dated 27.09.2013, set aside the judgment and order passed by the trial Court and acquitted the accused.

7. The learned counsel for appellant/complainant contented that the accused borrowed a hand loan of



Rs.3,00,000/- and in discharge of the said liability, issued the cheque at Ex.P5. Since he did not repay the amount, a legal notice was issued as per Ex.P2. The accused has received the said notice, but failed to repay the amount. Hence, complaint was filed.

8. The learned counsel contended that the accused has not disputed the cheque and that he was maintaining an account at SBM, Mayasandra Branch Turuvekere Taluk. The fact that the cheque was dishonored with an endorsement, 'funds insufficient' in the account of the accused and failure on the part of the accused to honour the cheque amounts to an offence under Section 138 of the NI Act. He contended that the complainant has discharged his burden by examining himself as well as examining the bank manager and the postmaster and therefore, there is a presumption in complainant's favour, which has not been rebutted by the accused. He contented that the reasons assigned by the learned Sessions Judge for setting aside the judgment of conviction passed by the



trial Court are not in accordance with law. Accordingly, sought to allow the appeal.

9. Learned counsel for accused contended that the accused has disputed borrowing hand loan from the complainant and also disputed having issued the cheque in question. The signature on the cheque is not that of the accused. The complainant has failed to prove that the signature was that of the accused. The complainant has not established that he lent a sum of Rs.3,00,000/- to the accused for business purpose. Further, the accused has not received notice at Ex.P2 and the signature on the postal acknowledgment was not that of the accused and therefore, the complainant has also failed to prove that the notice was duly served on the complainant. He contended that the learned Session Judge having regard to the entire facts and circumstances and the material on record and after assigning proper reasons has set aside the judgment of conviction passed by the trial Court. He contended that the reasons are in accordance with law and



this being an appeal preferred against the judgment of acquittal, no compelling or sufficient grounds are made out to upset the findings of the Appellate Court and reverse the said judgment. He has accordingly sought to dismiss the appeal.

10. According to the complainant, the accused borrowed a hand loan of Rs.3,00,000/-, 15 days back prior to issuance of cheque for business purpose and household expenses and in discharge of the said liability, issued a cheque which came to be dishonored when presented to the bank with a shara 'funds insufficient' in the account of the accused. The accused failed to reply to the notice, in spite of receipt of the notice and therefore, committed an offence punishable under Section 138 of the N.I. Act.

11. In the complaint and legal notice, it is stated that about 15 days prior to issuance of cheque, the accused borrowed land loan of Rs.3,00,000/- from the complainant and agreed to repay the said loan amount within 15 days. In the cross-examination PW1 has stated



that the said amount was paid in cash, but he has not produced any documents to show that he had cash of Rs.3,00,000/-. He further admitted that while receiving the cash, the accused did not sign any document. Accused has denied any transaction between himself and the complainant and also denied the issuance of cheque as per Ex.P5. He has also denied the signature on the cheque and the signature in Ex.P2-postal acknowledgment.

12. The complainant has examined the Bank Manager as PW2 and the Postmaster as PW3. Ex.P10 is an agreement executed between the bank and the accused. The learned Sessions Judge has noticed that in the said agreement the signatures of the Executant are in English language whereas, the signatures in Ex.P4 and Ex.P5 are in Kannada language with initials in English language. The Bank Manager has deposed in his cross-examination that he is not having the specimen signatures of accused and he has not produced them. Further, admitted that he cannot say to whom the cheque at Ex.P5 was issued. He



stated that they maintained register pertaining to issuance of the same, but not produced it. According to the accused, though he maintains an account in SBM, Mayasandra Branch, Turuvekere Taluk, he has not obtained any cheque book from the said bank.

13. From the evidence of PW2 it cannot be said that there was any cheque book issued to the accused. The learned Sessions Judge, on perusal of the evidence of PW1, PW2 and DW1 has found that the signatures Ex.P5 and signatures found in Ex.P10 vary in entirety.

14. As far as the receipt of legal notice at Ex.P4, the accused has stated that he has not received any notice from the complainant and the signature found on the acknowledgment is not his signature.

15. In the cross-examination of PW3, he has deposed that he would take the signature on the receipt and also maintains a list of service of registered postal acknowledgment due. He has stated, the signature of the



party will be taken in the said list at the time of service of notice. He has however, not produced the said list before the Court. He has also expressed his ignorance about the service of notice on the accused. However, the accused has admitted in the cross-examination that address found in Ex.P4 is his correct address. Hence, the learned Sessions Judge has held that the complainant has proved the service of legal notice on the accused.

16. The learned Sessions Judge has come to the conclusion that the complainant has not proved that signature found in cheque in question is the signature of accused. Further, this Court finds that the complainant has failed to prove that the cheque in question was issued by the accused in discharge of a legally enforceable debt. The complainant has also not established that he lent a loan of Rs.3,00,000/- by cash to the accused about 15 days prior to issuance of the cheque in question. Admittedly, cheque was not issued on the same day of advancing the loan. No other documents are forthcoming to show that the amount



was paid in cash about 15 days prior to issuance of cheque. The reasons assigned by the learned Session Judge for setting aside the judgment of conviction and sentence passed by the trial Court cannot be said to be either perverse or illegal. There are no grounds made out to interfere with the judgment of acquittal passed by the learned Sessions Judge. Appeal is accordingly ***dismissed.***

Sd/-
(MOHAMMAD NAWAZ)
JUDGE