



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. 625 OF 2015 (A)

BETWEEN:

SRI.JESUDAS
S/O BELAVANDERAN,
AGED ABOUT 53 YEARS,
RESIDING AT NO.11,
RAYAPURAM MAIN ROAD,
JAGAGEEVANRAM NAGAR,
BENGALURU-560 018

...APPELLANT

(BY SRI. ANANDEESWAR D R., ADVOCATE)

AND:

SRI.HULLURE GOWDA
S/O MARE GOWDA,
AGED ABOUT 62 YEARS,
RESIDING AT
AMBARISH COMPLEX,
KALIDASA STREET,
NEAR STATE BANK OF MYSORE,
H.D. KOTE,
MYSORE DISTRICT-571 114

...RESPONDENT

(BY SRI. K S PRAVEEN KUMAR ., ADVOCATE)

THIS CRL.A. IS FILED U/S.378(4) CR.P.C BY THE ADV.
FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY



BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 30.04.2015 PASSED BY THE COURT OF THE LXLL ADDL. CITY CIVIL AND S.J. (CCH-63), BENGALURU IN CRL.A.NO.1238/2014 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 138 OF N.I. ACT.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

ORAL JUDGMENT

Appellant / complainant has preferred this appeal challenging the judgment dated 30.04.2015 passed by the Court of the XLII Additional City Civil and Sessions Judge, Bengaluru in Criminal Appeal No.1238/2014, wherein the learned Sessions Judge has set aside the judgment and order dated 14.10.2014 passed by the Court of XIII Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.17977/2011 and acquitted the respondent / accused of the offence punishable under Section 138 of the N.I.Act.



2. Heard and perused the material on record.

3. It is the case of the complainant that he is a registered PWD contractor and accused is doing business under the name 'M/s Harish Traders' and he is the proprietor of the said firm. In the second week of December 2008, accused approached him for hand loan of Rs.3,00,000/- for business purpose. Hence, with a good intention, he paid Rs.3,00,000/- to the accused in the last week of December 2008. The accused issued a post dated cheque bearing No.986662 drawn on State Bank of Mysore, H.D.Kote Branch dated 05.09.2010, assuring that the cheque will be honoured when presented to the bank. Thereafter, at the request of the accused, he waited till first week of October 2010 to present the cheque and on 06.10.2010, he presented the cheque for realisation through his bank i.e., Canara Bank, Town Hall Branch, Bangalore, but the cheque came to be dishonoured with shara "exceeds arrangements". He issued a legal notice dated 18.10.2010, to which the accused replied on



25.10.2010 denying the cheque transaction. Hence, filed complaint against the accused for committing an offence punishable under Section 138 of the N.I.Act.

4. The accused denied any money transaction with the complainant, though admitted that he is the proprietor of M/s Harish Traders and the cheque in question belongs to his business firm. The defence taken by the accused was that he had lost the cheque in the month of August 2010 and the matter was reported to the concerned bank. The said lost cheque was misused by the complainant for illegal gain etc.

5. Before the Trial Court, the complainant got examined himself as PW1 and got marked Ex.P1 to Ex.P6. The accused got himself examined as DW1 and got marked Ex.D1 to Ex.D13.

6. The Learned Magistrate vide judgment dated 14.10.2014 in C.C.No.17977/2011, convicted the accused for the offence punishable under Section 138 of the



N.I.Act, holding, the complainant has established that the accused has issued Ex.P1 cheque towards legally recoverable debt and he has successfully proved that the accused has committed the offence punishable under Section 138 of the N.I.Act.

7. The Learned Sessions Judge vide impugned judgment has set aside the judgment and order passed by the Trial Court, which is under challenge in this appeal.

8. In this case, the accused has admitted that the cheque in question at Ex.P1 belongs to the firm, wherein he is the proprietor. However, he has denied any money transaction with the complainant. When the accused has admitted that Ex.P1 belongs to his firm, then, there is a legal presumption in favour of the complainant. However, the said presumption is not absolute. The accused can rebut the said presumption by adducing acceptable legal evidence.



9. In this case, according to the accused, he lost the cheque in question and he had reported the matter to the concerned bank. Ex.D4 is the endorsement issued by the bank on a letter given by the accused regarding loss of cheque. In the said letter, it is stated that the cheque was lost on 20.08.2010. The letter was given to the bank on 21.08.2010 and the endorsement was issued by the bank on 21.08.2010.

10. The Learned Magistrate while appreciating Ex.D4 came to the conclusion that the banker has received the requisition on 04.08.2010, which is, much prior to the loss of cheque according to the accused. The Learned Sessions Judge having carefully perused Ex.D4 has come to the conclusion that the bank has received the letter/Exhibit D4 on 21.08.2010 and not on 04.08.2010. Even this Court, on a careful examination of Ex.D4, is of the opinion that the said letter dated 21.08.2010 was received by the bank on the very same day and acknowledged on 21.08.2010 itself and not on



04.08.2010. Further, the Trial Court based on the endorsement at Ex.P2, cheque was of the opinion that the said cheque was dishonored with the shara "exceeds arrangement" and if really the accused issued the intimation under Ex.D4, the banker would have issued the endorsement as 'stop payment'. However, it is to be seen that the cheque was dishonored with an endorsement "exceeds arrangement" on 08.10.2010, but on Ex.D4, as already held, the banker has issued an endorsement on the very same day i.e., on 21.08.2010. Only because the cheque was not returned with an endorsement 'stop payment', that itself will not disprove the document at Ex.D4, which is endorsed by the banker, much prior to presentation of the cheque.

11. The accused has got marked Ex.D1 and Ex.D2, two other complaints filed by the complainant against other persons alleging offence punishable under Section 138 of the N.I.Act. Ex.D3 is one of the cheque's in respect of which the complaint was filed. According to the accused,



the complainant was in the habit of filing false complaints. Ex.D1 to Ex.D3 are not disputed by the complainant. The accused has also produced Ex.D5 to Ex.D11, the documents in respect of the property owned by him, and Ex.D12, the premium paid certificate of LIC. It is the contention of the accused that he is having an annual income of Rs.5 to 6 Lakhs and there was no occasion for him to take loan from the complainant. The Trial Court based on the said documents, wherein, it reflected about accused taking loan from the bank has drawn adverse inference against him.

12. In this case, according to the complainant the accused approached him in the second week of December, 2008 requesting for a hand loan of Rs.3,00,000/- stating that he has suffered loss in the business. He advanced the said sum by cash in the last week of December 2008. The cheque is dated 05.09.2010. According to the complainant, the accused issued a post dated cheque. Except the said cheque, no other documents relating to



the money transaction are forthcoming. The complainant has stated that he was having the amount with him received from selling a house property. However, there is no material placed to show that the complainant had sold his property prior to lending loan of Rs.3,00,000/- to the accused.

13. The accused has also relied on Exhibit D13, the complaint lodged to the police regarding loss of cheque. The said complaint is dated 22.10.2010. The police has issued an endorsement of even date. The said complaint was however, filed after receipt of legal notice by the accused, but Ex.D4 is dated much prior to presentation of the cheque and receipt of legal notice.

14. From the evidence and materials on record, this Court is of the view that the accused has been able to rebut the presumption available in favour of the complainant. The learned Sessions Judge has acquitted the accused, assigning reasons. There are no compelling



grounds to set aside the judgment. The appeal is therefore, dismissed.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

SS
List No.: 1 Sl No.: 15