KABC0A0004382025

IN THE COURT OF LXXIII ADDL.CITY CIVIL & SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU. (CCH.74)

PRESENT:

Smt. Anitha N.P., B.A.L., L.L.M.,
LXXIII Addl.City Civil & Sessions Judge,
Mayohall Unit, Bengaluru.

Dated this the 17th day of October 2025.

Crl. Appeal No.25028/2025

Appellant/ Accused:	Mr. Mohammed Usama Kandhlavi, Aged about 41 years, W/o: late Izhar Ahmed, R/at G7, Jeevan Apartment, Jamia Nagar, Okhla New Delhi 110025 **(Rep by Syed Mujahid UI Islam- Adv.)**

V/S

Respondent/ Complainant:	Mr. Hassan Moosa, Aged about 61 years, S/o: late Moosa Dawood, R/at No.37/4, Cunningham Road Cross, Jayramdas Layout, Bengaluru 560052 **(Rep by Sri. J.S., - Adv.)**

JUDGMENT

This is an Appeal filed by Accused under Section 374(3) of Cr.P.C., R/w.sec.415 of BNSS being aggrieved by the Judgment dated 02.12.2024 passed in C.C. No.58989/2018 on the file of XXXIV ACMM, Bengaluru, convicting him for an offence punishable under Section 138 of the Negotiable Instruments Act [hereinafter referred to as 'NI Act', for brevity] and sentencing him to pay fine of Rs.54,40,000/- and in default of payment of fine, to undergo simple imprisonment for 6 months. Out of the fine amount, a sum of Rs.54,35,000/ is directed to be paid to the respondent/complainant as compensation and remaining Rs.5,000/- is ordered to be remitted towards State expenses.

2. The parties are referred to their original ranking as referred in trial court for convenience sake. The Appellant is the Accused and Respondent is the Complainant before the trial court.

3. Brief facts of the complainant before the trial court is as under:-

The complainant is doing a business of Toys and other accessories and accused is a developer represeted by its Proprietor. The accused approached the complainant in the month of March 2018 seeking financial assistance and as the complainant was knowing the accused and his family he agreed to provide financial assistance of Rs.60 lakhs on condition that accused should repay the amount within 3 months. The accused agreed for the same and accordingly the complainant transferred amount of Rs.20 lakhs on 08.03.2018 through RTGS and Rs.40 lakhs on 14.03.2018 through RTGS. In the month of June 2018 in Delhi the accused given 3 cheques bearing No.706777 for a sum of Rs.20 lakhs, No.706779 for a sum of Rs.20 lakhs. The complainant accepted the said cheques and as per the instructions of accused he presented the said cheques in the month of July 2018 before his banker and the said 2 cheques returned unpaid with endorsement 'funds insufficient' on 02.08.2018 and another cheque returned as 'Alteration required drawer's authentication'. The complainant hence issued demand notice on 08.08.2018 and the said notice returned as 'not claimed'. The notice issued to accused through speed post returned as served on 11.08.2018 and the notice issued through courier also served on accused on 11.08.2018. The accused has not given reply nor complied the terms of notice. Hence, the

Complainant filed Complaint before the XXXIV ACMM, Mayo Hall Unit, Bengaluru, in C.C.No.58989/2018.

4. After taking cognizance of the complaint, summons has been issued to the Accused. Responding to the summons, he appeared before the Trial Court, enlarged on bail, plea was recorded, Accused pleaded not guilty and claimed to be tried.

5. That to prove the case of the Complainant, the Complainant got examined himself as PW.1 in his affidavit filed in the form of Examination in Chief he has reiterated the averments of the complaint. In support of his case, he has relied on the documents marked as Ex.P1 to Ex.P9.

6. Thereafter, statement of Accused u/s 313 of Cr.P.C., has been recorded and the accused so as to prove his defence got examined himself as DW-1 and he produced 6 documents as per Ex.D1 to 6.

7. After hearing the arguments, the Trial Court passed the impugned judgment and order dated 02.12.2024 convicting the Accused. That highly aggrieved

with the impugned judgment and order, the Accused has filed present appeal on the following grounds:

1) The impugned Judgment is not sustainable either in law or on facts. The learned trial court granted compensation without appreciating the evidence and in violation of principles of natural justice.
2) The trail court failed to consider the payment made by the appellant/accused to the complainant after dishonour of the cheque and issuance of legal notice. The appellant/ accused through his associates and CA made said payments and the trial court failed to take into consideration the same on the ground that the appellant not examined the said witnesses. The complainant not denied the receipt of amount.
3) The complainant not produced any document to show that the amount paid by A.R. Associates was on account of settlement.
4) The trial court not considered that the respondent admitted the receipt of amount of Rs.9,50,000/- from the accused on

18.08.2018 and Rs.50,000/- on 21.12.2021 by way of IMPS.

5) The trial court failed to considered that the accused has paid Rs.30 lakhs out of Rs.40 lakhs and in total a sum of Rs.50 lakhs out of Rs.60 lakhs lent to him.

6) Impugned Judgment is contrary to the principles laid down by the Hon'ble High Court and it is without considering the inconsistency in the evidence. Accordingly, the impugned judgment and order of conviction is liable to be set aside by the intervention of this Court. Hence prayed for allowing the appeal.

8. After service of notice, the Respondent appeared through his counsel. Records secured from trial court.

9. Heard both sides. Perused the entire Trial Court records, including the impugned judgment.

10. The learned counsel for Appellant has relied upon following decision:

PI.Vairavan Vs. AI.Selvakumar in Civil Appeal No.61/2005

11. Upon hearing, the following points arise for determination:-

1. **Does the Appellant proves that the cheque in question was not issued towards any legally enforceable debt?**

2. **Whether the judgment of conviction passed by the Trial Court calls for interference by the hands of this court?**

3. **What Order?**

12. My findings to above points are as under:-

Point No.1: In the Negative

Point No.2: In the Negative.

Point No.3: As per the final order, for the following:-

R E A S O N S

13. **POINT NOs.1 and 2:-**

Since the above two points are interlinked, in order to avoid repetition of facts the above points have been taken up together for consideration.

14. Before re-appreciating the evidence on record, it is necessary to refer some of the latest rulings of the Hon'ble Apex Court reported in **2019 (3) KCCR 2473 (SC) (Basalingappa V/s Mudibasappa),** the Hon'ble Apex Court while considering several earlier rulings on the offence U/Sec.138 of NI Act and also on the presumption U/Sec.118 and 139 of NI Act, at Para 23 was pleased to observe as follows:

> **23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-**
>
> **(i) 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.**
>
> **(ii) 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.**
>
> **(iii) To rebut the presumption, it is open for the Accused to rely on evidence led by him or 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.

(iv) That it is not necessary for the Accused to come in the witness box in support of his defence, Sec.139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the Accused to come in the witness box to support his defence.

15. In a decision reported in **AIR 2010 SC 1898 (Rangappa V/s Mohan),** it is observed as under:-

"Existence of legally recoverable debt or liability- The presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the Accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the Complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption

under Section 139, is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the Accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, 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. The Accused can rely on the materials submitted by the Complainant and it is conceivable that in some cases the Accused may not need to adduce evidence of his/her own."

16. In the decision reported in 2015 (4) AICLR (Mad) 4 between PI. Vairavan Vs. AI. Selvakumar relied on by the accused it is held as follows:

"The burden of proof on the accused is not so heavy and there is not need to disprove the

prosecution case in its entirely and the accused can discharge the burden on the basis of preponderance of probabilities to direct or circumstantial evidence"

17. Keeping in view the broad principles laid down by the Hon'ble Apex Court and Hon'ble High Court of Madras let me re-appreciate the evidence and documents on record.

18. The definite case of the Complainant/ Respondent is that The complainant is doing business of Toys and other accessories and accused is a developer represented by Proprietor. The accused approached the complainant in the month of March 2018 seeking financial assistance and as the complainant was knowing the accused and his family he agreed to provide financial assistance of Rs.60 lakhs on condition that accused should repay the amount within 3 months. The accused agreed for the same and accordingly the complainant transferred amount of Rs.20 lakhs on 08.03.2018 through RTGS and Rs.40 lakhs on 14.03.2018 through RTGS. In the month of June 2018 when the complainant was in Delhi accused has given 3 cheques bearing No.706777 for a sum of Rs.20 lakhs, No.706779 for a sum of Rs.20 lakhs. The complainant accepted the said

cheques and as per the instructions of accused he presented the said cheques in the month of June 2018 before this banker and the said 2 cheques returned unpaid with endorsement 'funds insufficient' on 02.08.2018. The complainant hence issued demand notice on 08.08.2018 through RPAD, speed post & courier and they were served on accused on 11.08.2018. The accused has not given reply nor complied the terms of notice and thereby, the Accused has committed the offence punishable under Sec.138 of Negotiable Instruments Act. Thereafter the Complainant approached the Trial Court for appropriate legal action against the Accused.

19. The Complainant in order to prove the averments of the complaint got examined himself as PW.1 and also got exhibited Ex.P.1 to Ex.P.9 documents and closed his side. On the contrary the Accused examined himself as DW.1 and got marked 6 documents as per Ex.D.1 to Ex.D.6 and closed his side.

20. Let me go through the documents produced by the Complainant before the Trial Court. Ex.P.1 & 2 are the cheques, Ex.P.3 & 4 are the bank endorsements,

Ex.P5 is the Office copy of Legal Notice, Ex.P.6 is the postal receipt, Ex.P7 unserved postal cover, Ex.P8 is the bank account statement and Ex.P9 is certified copy of Civil Suit No.877/2021.

21. The complaint has been presented by the Complainant before the Trial Court on 20.09.2018. On perusal of all the above documents with date of filing of the complaint, it is clear that before filing of the complaint the Complainant has complied with all the requirements of Section 138 of the Negotiable Instruments Act and the present complaint is filed well within the period of limitation and it is in accordance with the provisions of Negotiable Instruments Act.

22. In the case on hand it is not in dispute that Ex.P1 & 2 cheques are belongs to the account of accused and the signature there on is that of accused. The cheque is issued in the name of complainant. Hence there is an initial presumption in favour of the complainant under Sec.138 & 118 of NI Act. The burden to rebut the said presumption is on the accused on the basis of principles of preponderance of probabilities.

23. The defence of the accused is that the trial court has not considered the payment made by the accused to the complainant after dishonour of the cheque and so also after issuance of legal notice. It is also the defence of the accused that he made payment to complainant through his associates and CA and trial court not considered the same and on the contrary held that the said persons who had paid the amount on behalf of accused were not examined. He made payment to the complainant on 18.08.2018 and on 21.12.2021 and the same was admitted by complainant in his cross-examination but same was not considered by the trial court.

24. Let me go through the ocular evidence of both complainant and accused and also the documentary evidence relied on by both the parties. As discussed above Ex.P1 & 2 cheques are pertains to the account of accused and the signature thereon is that of accused. The accused is Kandhlavi Developers represented by its proprietor Mohammed Usama Kandhlavi ie., the accused. In his cross-examination this accused deposed that he is the sole proprietor of accused and he knows complainant. He admits that complainant has paid him

Rs.60 lakhs he admits that on 18.12.2021 he has taken DD to the name of complainant for a sum of Rs.6 lakhs and thereafter on 29.12.2021 he cancelled DD. He admits that he has issued 3 cheques to the complainant and 2 cheques are the cheques involved in this complaint.

25. According to this accused he paid Rs.10 lakhs on 23.05.2018 through RTGS, Rs.10 lakhs on 15.06.2018 by way of cash, Rs.9,50.000/- on 18.08.2018 through RTGS, Rs.5 lakhs on 13.12.2021 by way of DD through CA of accused, Rs.5 lakhs on 13.12.2021 through CA of accused by way of DD, Rs.10 lakhs on 13.12.2021 by DD through the business associate of accused and Rs.50,000/- on 20.12.2021 by way of IMPS.

26. DW-1 in his cross-examination deposed that he has no document to show that on 15.06.2018 he was having Rs.10 lakhs with him, however he can examine the person from who he received said Rs.10 lakhs.

27. It is necessary to note that the accused got marked a letter dated 8.08.2023 issued by AR Associates as per Ex.D1. The said Ex.D1 is categorically denied by the complainant. Similarly Ex.D2 is issued by Kandhlavi

impex and the said document is also denied by the complainant. According to this accused person by name Mohd. Suhail who is found in Ex.D2 was also accused along with him in C.C.No.190/2021.

28. It is necessary to note that the accused has relied upon this Ex.D1 & 2 so as to establish that a sum of Rs.10 lakhs was taken in the form of DD to the complainant and a sum of Rs.10 lakhs was taken in the form of DD to the account of complainant from the business associate of accused and from CA of the accused. It is necessary to note that as admitted by the accused himself the accused has obtained this Ex.D1& 2 from his friends. If the payment was done by this accused through his business associate as well as CA then this accused could have obtained necessary endorsement from the complainant in this regard immdiately after such payment or he could have issued intimation in this regard to complainant regarding making of such a payment through his business associate and CA.

29. It is vital to note that Ex.D1 & 2 are payments not from the account of the accused but from the account

of some third parties that too on 13.12.2021 ie., during pendency of the case before the trial court.

30. It is also necessary to note that the accused also relied on account extract of M/s. Kandhlavi Developers maintained before the Indian Overseas Bank as per Ex.D3 and on perusal of the said account extracts a sum of Rs.9,50,000/- was paid to the account of complainant through RTGS on 18.08.2018 and a sum of Rs.10 lakhs was paid to the complainant on 23.05.2018.

31. As admitted by the accused he has totally received Rs.60 lakhs from the complainant, he also admits that out of the 3 cheques given by him to the complainant he has taken back one cheque for a sum of Rs.20 lakhs. He also admits that so as to refund the amount to the complainant he has issued the cheques. From his account it is only Rs.20 lakhs was transferred to the account of the complainant.

32. However according to accused he has repaid the entire amount to the complainant. He admits that as per Ex.P8 the account statement of complainant a sum of Rs.10 lakhs was transferred on 23.05.2018 and further a

sum of Rs.9.50.000/ was transferred on 18.08.2018, Rs.50.000/- on 20.12.2021 was transferred. It is vital to note that as admitted by this accused he has taken back one cheque out of three cheques issued by him to the complainant which was for a sum of Rs.20 lakhs. The above amounts received by complainant ie., Rs.10 lakhs, 9.5 lakhs & Rs.50,000/- through IMPS are after the issuance of cheque but they are in respect of cheque which was taken back by the accused from this complainant. He admits that he is defendant in the proceedings before the District and Sessions Judge, District South East Saket Courts, New Delhi in Civil Suit No.877/2021.

33. It is vital note that from the ocular evidence of this accused himself it is clear that it is only a sum of Rs.10 lakhs, Rs.9.50.000 and 50.000 was transferred to the account of complainant that too after he taken back cheque for Rs.20 lakhs. The accused who has taken contention that he paid Rs.10 lakhs by way of cash and Rs.5 lakhs through CA and another Rs.5 lakhs through CA and another Rs.10 lakhs through Khandlavi Impex business associate of the accused he has mainly relied on Ex.D1 to 3. As discussed above Ex.D1 & 2 are not

pertains to the account of accused. Ex.D4 is pertains to the AR Associates and similarly Ex.D5 is account of Khandlavi Impex and the same are not pertains to the account of accused.

34. When the accused has produced Ex.D1 to 5 documents to show that the payment is done to the account of complainant from some other accounts on his behalf the burden is on the accused to prove the said payments. Payment of some amount by third parties to complainant through some other account does not discharge the liability of the accused. Complainant in his cross-examination deposed that he do not know about AR Associates and Kandhlavi Impex. He categorically denied receipt of Rs.49,50,000/- from the accused. It is for the accused establish that as per his authorization the amount has been transferred from his business associate and CA to the account of complainant. He has to establish the necessary instructions given by him to the said persons to make such payment. Mere passing of money to the account of complainant by some parties cannot be called as payment from the accused to complainant. At this stage the best evidence was to summon the very same persons who have transferred

amount to the account of complainant. For the best reasons known to accused this accused has prevented the production of best witnesses before the trial court. Hence, the accused failed to prove the payment of Rs.10 lakhs by way of cash, Rs.5 lakhs and again Rs.5 lakhs through his CA and payment of Rs.10 lakhs through Khandlavi Impex a business associate of accused to the complainant.

35. As admitted by the accused he has received totally Rs.60 lakhs from the complainant and out of the Rs.60 lakhs it is only Rs.20 lakhs was paid to the account of complainant by the account of accused that too after taking back his another cheque. It is to repay the remaining legally recoverable debt the accused has issued Ex.P & 2 cheques to the complainant. The accused failed to rebut the presumption available in favour of the complainant. If the accused really paid Rs.49,50,000/- to complainant he could have issued notice to complainant in this regard, he could have examined his CA and business Associate. That apart he could have instructed his banker to stop payment in respect of Ex.P1 & 2 cheques. However, accused has not done so. Hence, the accused failed to prove his defence

and failed to rebut the presumption available in favour of complainant.

36. In so far as quantum of fine imposed by the trial court is concerned, the Trial Court has imposed total fine of Rs.54,40,000/- as against the Cheque amount of Rs.40,00,00/-, keeping in view the year of transaction, duration of litigation, cost of litigation and interest on the outstanding amount etc. Since the transaction between the parties was of the year 2018 and the above case was disposed of by the Trial Court on 02.12.2024 and keeping in view of the duration of litigation and cost of litigation etc., the Trial Court has rightly awarded fine of Rs.54,40,000/-. Hence, there is no reason to interfere with the quantum of fine imposed by the trial court.

37. Thus, looking from any angle, the Accused failed to establish any probable defence even on the materials produced by the Complainant. Having regard to the facts and circumstances of the case, the Accused failed to substantiate his defence by producing cogent evidence before this court. The Trial Court by appreciating the evidence and documents in a proper perspective and while referring to the rulings of Hon'ble Apex Court has

rightly convicted the Accused for the offence punishable U/Sec.138 of NI Act. In the absence of any perversity or capriciousness while convicting the Accused, there is no reason to interfere with the Judgment of the trial court. Therefore no grounds made out by the Accused to interfere with the Judgment of conviction passed by the trial court. Hence, **Point Nos.1 and 2 are answered in the Negative.**

38. POINT No.3: For the various reasons stated in the point Nos.1 & 2 and findings given on them by me, I proceed to pass the following:-

ORDER

Appeal filed by the appellant/accused under section 374(3) of Cr.P.C., r/w sec.415 of BNSS is hereby dismissed.

Consequently, the impugned judgment and order of conviction passed by trial court in CC No.58989/2018 against the appellant/accused dated 02.12.2023 is hereby confirmed.

Remit the trial court records with copy of this judgment.

No order as to costs.

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(Dictated to the Stenographer, after computerization, corrected and pronounced by me in the Open Court, this the **17th day of October, 2025**)

ANITHA NANJANAGUDU PARASHIVAMURTHY

Digitally signed by ANITHA NANJANAGUDU PARASHIVAMURTHY
Date: 2025.10.30 16:57:40 +0530

(**Anitha N.P.**)
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