KABG010079302024

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, AT BELAGAVI

DATED THIS THE 07th DAY OF JULY, 2026

PRESENT : **SHRI MANJUNATH NAYAK**
B.A.L. LL.B.
Prl. District & Sessions Judge
Belagavi.

CRIMINAL APPEAL No.277/2024

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APPELLANT/ ACCUSED: : Sri Vitthal S/o Hanumantappa Badri,
Age: 41 years, Occ: Service,
R/o NWKSRTC, Belagavi Division,
4th Depot, Auto Nagar,
Belagavi.

(By Sri M.M. Shaikh, Advocate)

Vs.

RESPONDENT/ COMPLAINANT : Smt. Jayashree Shivalingayya Pujeri,
Age: 41 years, Occ: Housewife,
R/o Plot No.3656, Anand Building,
Ramatirth Nagar, Belagavi.

(By Sri P.V. Hiremath, Advocate)

J U D G M E N T

This appeal is filed by the above named appellant/accused under Section 374 of Code of Criminal Procedure (In short 'Cr.P.C.'), challenging the legality and correctness of the judgment dated 09.08.2024, passed by the learned Presiding Officer of JMFC VII, Belagavi, in CC No.126/2018, in convicting the appellant/accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (In short, 'N.I. Act'). For the sake of convenience, parties are referred in this appeal, as per their ranks/status before the trial Court.

Brief facts leading to filing of this Appeal:

2. The complainant has filed a private complaint before the trial Court under Section 200 of Cr.P.C., by alleging that the accused has committed the offence punishable under Section 138 of NI Act. In the said complaint, it is alleged that, the complainant and the wife of accused are friends and during the year 2011-12, the complainant has sold their house property and kept the amount in the joint account of her and her husband. During May-2016, the accused requested the complainant to advance an amount of Rs.5,00,000/- to him. Accordingly, in the presence of her husband, one Mallayya Kadayya Pujari and Ishwarayya Gurusiddayya Pujari, complainant advanced an amount of Rs.5,00,000/- to the accused. The accused agreed to repay the

same within 6 months. Subsequently, the accused demanded further amount of Rs.1,00,000/-. The complainant has transferred an amount of Rs.1,00,000/- to the accused through bank transfer. The accused failed to repay the said amount in spite of repeated demand. When the complainant insisted for repayment, accused issued a post dated cheque bearing No.647104 dated 24.01.2018 for Rs.6,00,000/-. When the complainant presented the said cheque for encashment, it was dishonoured for the reason of 'Funds Insufficient'. The complainant has issued a legal notice and in spite of service of notice, the accused failed to repay the cheque amount and not given any reply for the legal notice and thereby committed the offence punishable under Section 138 of NI Act.

3. The learned trial Court has registered private complaint and recorded the sworn statement and having found prima-facie materials, ordered to register a criminal case against the accused for the offence punishable under Section 138 of N.I. Act and same was registered as CC No.126/2018.

4. The accused has appeared before the trial Court and pleaded not guilty. The complainant examined herself as PW.1 and got marked Ex.P1 to 16 documents.

5. The statement of the accused was recorded under Section 313 of Cr.P.C. The accused has denied all the incriminating evidence appearing against him. As a defence evidence, accused examined himself as DW1 and one witness on his behalf as DW2 and got marked Ex.D.1 to 3 documents.

6. The learned JMFC VII, Belagavi, after hearing arguments of both the parties, vide judgment dated 09.08.2024, has convicted the accused for the offence punishable under Section 138 of NI Act and sentenced him to pay a fine of Rs.8,34,000/- and in default to pay the fine amount, ordered the accused to undergo simple imprisonment for a period of six months.

7. Being aggrieved by the said judgment, accused has preferred this appeal on following grounds;

GROUNDS OF APPEAL

1. The impugned judgment under appeal is contrary to the law, facts and evidence on record.

2. The trial Court has totally lost its sight from the fact that the evidence and proofs as per criminal jurisprudence has to be analyzed and as per the principles of preponderance of probabilities, while analyzing the evidence and proofs on record, has rushed to a totally wrong and erroneous conclusion, which has jeopardized the valuable rights of the appellant.
3. The trial Court, after noticing that the said criminal case was pending seems to have got carried away and in the anxiety of disposing off the said case, has lost its sight from the order sheet maintained by the said Court and passed the impugned judgment without taking a judicial note of the events and facts that have followed during the course of trial, which fact has jeopardized the valuable rights of the appellant. Hence, the impugned order deserves to be set aside.
4. The trial Court has not at all applied judicious mind to the facts of the case at the time of passing the impugned judgment, which has lead to miscarriage of justice.
5. The trial Court has not at all considered the fact that the respondent has miserably failed

to prove the offence alleged against the appellant, beyond all reasonable doubt, which has jeopardized the valuable rights of the appellants.

6. The trial Court failed to take note of the fact that the respondent, being a housewife did not have financial capacity to lend such a huge amount of Rs.6,00,000/- to the present appellant. The respondent has not placed any single document on record so as to demonstrate that on 26.05.2026 she was having such huge amount with her, moreover the respondent has clearly admitted in her cross examination that she do not have any document or proof to show that on 26.05.2016 she has advanced an amount of Rs.5,00,000/- to the appellant, under such circumstances the trial Court ought to have drawn adverse inference against the respondent herein for non production of documents to show her source of income. Hence, the present appeal deserves to be allowed.

7. The trial Court failed to take note of the fact that the respondent during her course of cross examination has clearly denied that at

the timing lending loan to appellant to the tune of Rs.1,00,000/- she had obtained 2 blank cheques from the appellant. But subsequently the respondent admits in her cross examination that accused had issued two cheques to her bearing 647103 and 647104, which clearly demonstrates that while obtaining loan of Rs.1,00,000/-, the appellant had issued two cheques to the respondent. Now the respondent has misutilized the said cheque by mentioning higher amount so as to cause loss to the appellant, which is unsustainable in the eye of law and the same is against the mandates of Section 138 of NI Act.

8. The trial Court has not considered the conduct of the respondent who has clearly admitted in her cross examination that two security cheques which were handed over by the appellant to the respondent at the time of availing loan of Rs.1,00,000/- out of which one cheque has been misused by the respondent by filing another complaint at Hukkeri Court in the name of one Mr. Mallayya Kadayya Pujeri so as to harass the

present appellant. Hence, on this count also the present appeal deserves to be allowed.

9. The trial Court failed to take note of the fact that the respondent has deposed that an amount of Rs.5,00,000/- has been given on 26.05.2016 to the present accused. The appellant has specifically disputed the presence on the said day, as he has been working in KSRTC and on the alleged day he was on duty. The appellant has produced few documents which were marked as Ex.D1, Ex.D2 and Ex.D2(a) and the very said documents corroborates contentions taken by the appellant. The trial Court has not considered the said aspect in prospective manner and relied on the cross examination of DW1 that while he was on duty, at the time of breakfast or lunch time, he might have received the money. But it is pertinent to note that the appellant being a government servant cannot carry or receive any money much less the alleged amount of Rs.5,00,000/- while he was on duty. Hence, the appeal deserves to be allowed by setting aside the conviction order passed by the trial Court.

10. The trial Court has failed to appreciate the admissions given by the respective witnesses i.e., PW1, DW1 and DW2, which is suffice to hold that the present transaction in question is created with a malafide intention and ought to acquit the appellant.
11. The trial Court ought to have drawn adverse inference against the respondent, as the respondent has not at all substantiated her alleged claim of existence of a legally enforceable debt by producing any cogent evidence or proof of the same, which is a prima facie requirement for proving the said allegation made in her complaint.
12. The trial Court has failed to appreciate the fact that the respondent has not produced any reliable documents to demonstrate that the appellant has to pay an amount of Rs.6,00,000/-. Moreover, the complainant utterly failed to demonstrate that the proceedings which was instituted before the trial Court has complied the pre-requisite conditions laid down under Section 138 of N.I. Act.

13. The order under appeal is harsh, one sided and arbitrary, which is liable to be set aside in limine.
14. The whole procedure adopted by the trial Court is off the record and against the provisions of law.
15. The trial court has passed the impugned order hastily and hurriedly which has led to erroneous conclusion.
16. The trial Court has not at all applied its judicious mind before coming to such a harsh and erroneous conclusion which has led to miscarriage of justice.
17. The order under appeal is not a speaking order and hence, the same is liable to be set aside.
18. Viewed from any angle, the impugned judgment passed by the trial Court is not sustainable and hence,the same deserves to be set aside.

8. In response to the notice, respondent/complainant appeared before this court through his counsel.

9. This court secured the entire records of CC No.126/2018 from the learned JMFC VII, Belagavi.

10. I have heard the arguments of both parties.

11. The points that arise for my consideration are:

1. Whether the complainant proved beyond all reasonable doubt that, accused has committed the offence punishable under Section 138 of Negotiable Instruments Act?

2. Whether the impugned judgment of the trial Court is against law, facts and evidence and liable to be intervened by this court?.

3. What Order?

12. My answer for the above points are in the following, because of my below discussed reasons:

Point No.1: **IN THE AFFIRMATIVE**

Point No.2: **IN THE NEGATIVE**

Point No.3: **AS PER THE FINAL ORDER.**

R E A S O N S

13. **Point No.1 and 2:**- To avoid the repetition of my discussion on facts, I have taken these two points together for determination. The complainant has filed the private complaint under Section 200 of Cr.P.C. by alleging that the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act. It is the case of the complainant that the accused

has borrowed an amount of Rs.5,00,000/- from her on 26.05.2016 and thereafter received further amount of Rs.1,00,000/-. According to the complainant, towards repayment of the same, accused issued a cheque for Rs.6,00,000/- and when the complainant presented the said cheque for encashment, it was dishonoured for the reason of insufficient funds. As the accused failed to pay the cheque amount even after service of legal notice, the complainant filed the private complaint before the trial court.

14. The learned trial court taken the cognizance and secured the presence of the accused, who pleaded not guilt of the charges levelled against him. In order to establish the guilt of the accused, the complainant examined himself before the trial court as PW1. During the course of her examination in chief, complainant/PW1 has reiterated the complaint averments and deposed about the accused borrowing an amount of Rs.5,00,000/- and Rs.1,00,000/- and towards payment of the same, issued cheque for Rs.6,00,000/-. PW1 further deposed about dishonour of the said cheque when presented for encashment and the accused failing to repay the cheque amount even after issuance of the legal notice.

15. The complainant has produced the cheque dated 24.01.2018 as per Ex.P1. Acknowledgment regarding dishonour of the said cheque is marked as per Ex.P2. Copy of the legal notice addressed to the accused is marked as per Ex.P3. Exs.P4 and P5 are the postal receipts for having sent the legal notice by registered post. Exs.P6 and P7 are the postal acknowledgments evidencing the service of legal notice personally upon the accused. Exs.P8 and P9 are the bank pass books relating to the complainant and her husband. Ex.P10 is the bank deposit receipt. Ex.P11 is the another cheque issued by the accused to the complainant on 01.12.2016. Ex.P12 is the certified copy of the sale deed dated 02.12.2010. Ex.P13 is the certified copy of the sale deed dated 01.03.2011. Ex.P14 is the agreement of sale entered into between the complainants husband and one Shivanand Pujari. Ex.P15 is the certified copy of the sale deed dated 04.07.2014. Ex.P16 is the notice issued by the Shreemata Co-operative Credit Society, Belagavi to the complainant’s husband.

16. The accused denied incriminating evidence appearing against him and as defence evidence, accused examined himself as DW1. During the course of his evidence, the accused deposed that

the complainant has transferred an amount of Rs.1,00,000/- to his bank on 13.12.2017 and as a security for the same, he has issued some blank signed cheques. DW1 further deposed that he has already repaid the entire amount. DW1 further deposed that he has not received Rs.5,00,000/- from the complainant.

17. The accused has examined one Smt.Laxmi Ramappa Talawar as DW2 and she deposed that accused is her son-in-law and there was no transaction between the complainant and the accused on 26.05.2016 regarding payment of Rs.5,00,000/-. DW2 further said that the complainant has not paid an amount of Rs.5,00,000/- to the accused.

18. The complainant has produced the certificate issued by the KSRTC Depot Manager, Belagavi as per Ex.D1. Copy of the Muster Roll for the month of May 2016 issued by the KSRTC is marked as per Ex.D2. Ex.D3 is the statement of account relating to the bank account of the accused at Canara Bank, Mahadwar Road Branch, Belagavi.

19. The trial court, by appreciating all these oral and documentary evidence, held the accused as guilty of committing

the offence punishable under Section 138 of the NI Act and sentenced him to pay fine of Rs.8,34,000/-. In default to pay the fine amount, accused was directed to undergo simple imprisonment for 06 months. Out of the deposited fine amount, an amount of Rs.8,24,000/- was ordered to be paid to the complainant as compensation and balance amount of Rs.10,000/- to the state as a fine amount. Challenging the said judgment, the accused is before this court with this appeal.

20. There is no serious dispute as such about the financial transaction between the complainant and the accused. It is not in dispute that Ex.P1 cheque is belong to the bank account of the accused. The signatures of the accused appearing on Ex.P1 cheque is also not in dispute. The accused handing over Ex.P1 cheque to the complainant is also not in dispute.

21. However, defence of the accused is that he borrowed an amount of Rs.1,00,000/- from the complainant and towards repayment of the same, blank cheques with his signatures were obtained from him and by misusing the same, the present complaint is filed. According to the accused, he has never

borrowed an amount of Rs.5,00,000/- from the complainant and he has already repaid the amount of Rs.1,00,000/- borrowed from the complainant

22. In view of the admitted facts relating to the monetary transaction between the complainant and the accused, the accused borrowing an amount of Rs.1,00,000/- from the complainant and issuance of Ex.P1 cheque to the complainant and signature of the accused appearing on the said cheque, initial burden upon the complainant stands discharged. Thereby, the onus will be shifted upon the accused to substantiate his defence and to displace the benefit presumption available in favour of the complainant.

23. Even though the complainant has got benefit of presumption, still initial burden of having legal debt for issuance of Ex.P.1 has to be discharged by her. In order to discharge the initial burden, the complainant has produced Ex.P1 cheque. Apart from that, in order to show that she had financial capacity to advance the loan of Rs.5,00,000/- and Rs.1,00,000/-, complainant has produced the bank pass books as per Exs.P8 and P9, which shows

that during the relevant period when payment of Rs.5,00,000/- was made to the accused, there was sufficient amount in her bank account. The entries in Ex.P9 pass book also reveals that an amount of Rs.7,40,000/- was withdrawn by the complainant on 25.05.2016. According to the complainant, she has withdrawn the said amount from her bank account and paid same to the accused in cash. The complainant has also produced the sale deed and sale agreement to show she and her husband having financial capacity to advance the loan to the accused. By producing all those documents, the complainant has discharged the initial burden on her about she having financial capacity to lend Rs.5,00,000/- to the accused on 26.05.2016. Now the court has to consider as to whether the accused has rebutted the benefit of presumption and discharged onus shifted on him.

24. According to the accused, the amount borrowed by him from the complainant is only Rs.1,00,000/- and as a security for the same, blank signed cheques were obtained from him and he has repaid the said amount. Of course, there is evidence to show that Rs.1,00,000/- was transferred to the bank account of the

accused. According to the complainant, in addition to the said Rs.1,00,000/-, Rs.5,00,000/- was borrowed by the accused.

25. It is pertinent to note here that this defence introduced by the accused was only during the course of trial before the trial court. When Ex.P1 cheque was dishonoured, a legal notice was issued to the accused calling upon him to repay the cheque amount. It is evident from Ex.P4 and 5 that the said legal notice was sent to both the addresses of the accused by registered post. Exs.P6 and P7 postal acknowledgments shows that the said legal notice was received by the accused.

26. During the course of evidence, the accused tried to introduce a case that the said legal notice was not served on him. In this regard, accused has drawn the attention of this court to his signature appearing on Ex.P1 cheque and also his signatures appearing on Exs.P6 and P7 postal acknowledgments. Of course, the signature in Ex.P1 cheque, if compared with the Exs.P6 and P7 postal acknowledgments, difference is evident. The complainant/PW1 has also admitted the same during the course of

her cross-examination. However, there is no reason to say that the said legal notice was not served upon the accused personally.

27. The accused, who was examined before the trial court as DW1, specifically admitted in his cross-examination that the addresses shown in legal notice and postal acknowledgments are his correct address. When legal notice has been issued by registered post to the correct address of the accused and it is returned as served, a presumption is attached that there is a valid service of legal notice upon the accused. Therefore, burden is upon the accused to rebut the presumption and to prove that the said legal notice was not actually served on him. Baring denial of service of legal notice, no other materials have been produced to controvert the postal acknowledgments, which shows that the legal notice was addressed to the correct address of the accused and same has been returned as served. Therefore, this court has to accept that there is a valid service of legal notice upon the accused.

28. Admittedly, the accused has not given any reply for the legal notice. If the accused has not borrowed the loan of Rs.5,00,000/- from the complainant, he would have given a

suitable reply for the said legal notice. This is one of the circumstances, which comes in the way of this court in accepting the version of the accused.

29. It is pertinent to note here that though the accused claimed that he has borrowed loan of Rs.1,00,000/-, regarding repayment of that Rs.1,00,000/-, there is no evidence. Except repayment of Rs.5,000/-, Rs.7,000/- and Rs.10,000/- there is no other material to show that entire admitted loan amount of Rs.1,00,000/-, has been fully repaid by him. If the accused has repaid the admitted loan of Rs.1,00,000/-, he would have got some documents with him, because he receiving Rs.1,00,000/- from the complainant is by way of account transfer. But, regarding repayment of entire admitted loan there is no evidence, which would also falsify the case of the accused.

30. If the accused has repaid the loan of Rs.1,00,000/- to the complainant, he would have made an attempt to get back the blank signed cheques, which were said to have been given to the complainant as a security for the loan of Rs.1,00,000/-. Absolutely, there is no evidence to show that the accused making any attempt to get back the blank signed cheques. If the complainant has not

returned the blank signed cheque given as a security for the loan, even after repayment of the entire loan amount, accused would have taken any legal action against the complainant. At least a police complaint would have been filed by the accused. No such legal actions have taken by the accused. This aspect will also come in the way of this court in accepting the version of the accused.

31. It is pertinent to note here that the complaint refers about issuance of one cheque by the accused to the complainant. During the course of cross-examination of complainant/PW1, she admitted about receiving of 02 cheques from the accused and also admitted cheque numbers. One of those cheque is Ex.P.1. During the course of further evidence, the complainant has produced one more cheque as per Ex.P11. So altogether there were 03 cheques, in the custody of the complainant, which belong to the accused and containing his signatures. Now the accused has to explain as to the reason for issuance of 03 different cheques to the complainant, if the transaction between them is only to the tune of Rs.1,00,000/-. If the loan borrowed by the accused is only Rs.1,00,000/-, there was no reason for the accused to issue 03

different blank signed cheques. This aspect also would come in the way of this court in accepting the version of the accused.

32. The accused, by producing Exs.D1 and D2, tried to impress upon this court that on 26.05.2016, he has attended the duty as the conductor of the KSRTC. Hence, according to the accused, the question of he meeting the complainant on the said day for borrowing amount of Rs.5,00,000/- will not arise. Of course, the documents produced as per Exs.D1 and D2 shows that on 26.05.2016 the accused has attended his duty as conductor of the KSRTC Bus. However, that cannot be a ground to say that he has not borrowed the amount from the complainant on the said day. Because, the transaction between them has taken place at Belagavi and the accused has attended duty also at Belagavi city. May be after attending duty on the said day, he might have met the complainant for borrowing the loan. It is not the case of the accused that on 26.05.2016 he was far away from Belagavi and therefore, he could not have met the complainant and borrowed the amount from the complainant. Even according to the accused, he was at Belagavi city on the date of borrowing the loan amount. Therefore, by producing Exs.D1 and D2, accused cannot falsify the

case of the complainant and also cannot displace benefit of presumption.

33. Another document produced by the accused is his bank account extract as per Ex.D3, which shows repayment of amount of Rs.5,000/- on 19.01.2017. Accused receiving amount of Rs.1,00,000/- from the complainant is also evident from entries in Ex.D3. However, there is no evidence to show that the accused has repaid more than Rs.5,000/- to the complainant as per Ex.D3. If the accused has repaid the entire loan amount of Rs.1,00,000/-, he would have produced some other evidence also. Neither Ex.D3 nor there is any other evidence to show that the accused repaid even admitted loan of Rs.1,00,000/-. Considering these aspects, I have to say that the accused has miserably failed to substantiate his defence and also failed to rebut and displace benefit of presumption available in favour of the complainant, because of she is having a valid negotiable instrument with her.

34. Another contention urged by the accused is about the complainant filing another complaint against the accused through her relative Sri Mallayya Kadayya Pujari by musing another cheque

by filing complaint before the Hukkeri court. Regarding the filing of said case by said Mallayya Kadayya Pujari against the accused before Hukkeri Court both the parties have not produced any materials before this court. The learned counsel for the complainant submitted during the course of his arguments that the said case filed before Hukkeri court was compromised by the accused by repaying the amount to said Sri Mallayya Kadayya Pujari. This submission made on behalf of the complainant has not been denied or disputed by the accused. The accused compromising with said Mallayya Kadayya Pujari also gives an indication that he is due to pay amount to him. If really the accused is not due to pay any amount to said Sri Mallayya Kadayya Pujari and it was a case filed by misusing blank signed cheque handed over to the complainant, the accused would not have compromised with said Sri Mallayya Kadayya Pujari. Hence, the contention of the accused in this regard cannot be accepted by this court.

35. The learned trial court, by considering all these aspects, has rightly held that the accused has failed to substantiate his defence. The learned trial court has rightly convicted the

accused for the offence punishable under Section 138 of Negotiable Instrument Act. I found no reason to say that said finding of the trial court is erroneous one.

36. Now I have to consider the question of sentence and punishment imposed by trial court. After finding the accused guilty of committing the offence punishable under Section 138 of Negotiable Instrument Act, learned trial court has sentenced the accused to pay fine of Rs.8,34,000/-, out of which Rs.8,24,000/- was ordered to be paid to the complainant as compensation. The disputed cheque is for Rs.6,00,000/-. The amount borrowed by the accused was during the year 2016 and cheque was issued during the year 2018. Hence, trial court imposing the fine of Rs.8,24,000/- cannot be said as disproportionate or inappropriate for the offence committed by the accused. Hence, even in respect of sentence, there are no grounds for interference. Accordingly, I answer the point No.1 **in the Affirmative** and point No.2 **in the Negative**.

37. **Point No.3**:- In view of my above findings on above points, appeal filed by the accused/appellant is liable to be dismissed. Accordingly, I proceed to pass the following:

O R D E R

The appeal filed by the appellant/ accused under Section 374 of Cr.P.C. is dismissed.

The impugned Judgment dated 09.08.2024, passed in CC No.126/2018 by the learned JMFC-VII, Belagavi is confirmed.

Send back the records of the trial Court along with the copy of this judgment forthwith.

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(Dictated to the Stenographer Grade-III, after transcription, computerized and print out taken by her, corrected and then pronounced by me in the Open Court on this **07th day of July, 2026)**

(Manjunath Nayak),
Prl. District & Sessions Judge,
Belagavi