

KABI010009042026



**IN THE COURT OF I-ADDITIONAL SESSIONS JUDGE
AT BALLARI**

DATED THIS 07th DAY OF AUGUST, 2026

: PRESENT :

SHRI H.A. MOHAN., B.A.L., LL.B.

I-Addl. District & Sessions Judge, Ballari.

CRIMINAL APPEAL No.29/2026

APPELLANT/COMPLAINANT :-

G.Chandrashekar S/o.
G.Hanumantha Gouda, Aged
about 32 years, R/o. Ward No.13,
Door No.99, Bannapabhavi
Street, Ballari.

(By Shri K.R.M., Advocate)

//Vs//

RESPONDENT :-

V.Baburao S/o.
V.Sathyanarayana, Aged about
65 years, Beside Blue Star
School, Shankar Colony, Ballari.

(Shri S.R.S., Advocate)

J U D G M E N T

Earlier this appeal was filed before the Hon'ble High Court of Karnatataka, Dharwad Bench, but as per the order dated:24.11.2025 in Criminal Appeal No.100286/2019, this case has been transferred to the court of District Judge, Ballari, and thereafter assigned to this court for disposal. Accordingly, the same is taken up for disposal.

2. This is an appeal filed by the complainant in C.C.No.185/2017 on the file of learned IV Addl. Civil Judge & JMFC, Ballari, challenging the Judgment of acquittal dated:20.4.2019 passed in the said case, on the following grounds.

3. It is stated that, the learned trial judge has failed to appreciate the fact with regard to deemed service of notice as per Section 27 of the Negotiable Instrument Act. The learned trial judge has failed to appreciate both oral and documentary evidence with regard to issuance of cheque for discharging the legally recoverable debt. The learned trial judge has failed to take note of the presumption available U/s.139 of Negotiable Instrument

Act. The learned trial judge has blindly believed the version of the accused and by erroneous observations dismissed the complaint. Therefore, the judgment under appeal cannot be sustained in law. Hence, there are grounds to interfere with the said findings and to allow the appeal and to set-aside the judgment of acquittal and to convict the accused for the offence punishable U/sec.138 of Negotiable Instrument Act. Accordingly, prayed to allow the appeal.

4. In-response to the Notice issued, the Respondent has appeared through his Advocate.

5. Records have been secured from the trial court.

6. The learned counsel for the appellant has submitted written arguments.

7. Heard the learned counsel for the respondent.

8. The following points that arise for my consideration: :

1. Whether the appellant has able to prove that, there was legally recoverable debt

from the accused as on the date of issuance of alleged cheque. ?

2. Whether there are grounds to interfere with the findings given by the learned trial judge.?

3. What Order?

9. My answer to the above points are as under:

Point No.1 : In the Negative.

Point No.2 : In the Negative.

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

REASONS

10. **Point Nos.1 and 2** :- These points are interrelated to each other, as such they are taken up together for discussion, to avoid repetition of facts.

11. I have carefully perused the averments made in the written arguments. It is the case of the complainant/appellant that, his brother and accused were known to each other for the past 6 years. In view of the said relationship with his brother, the accused, in the 1st Week of May 2014 approached him for a financial help in a

sum of Rs.5,00,000/- for the purpose of his family and business necessities and by telling that the amount would be repaid within two months, he has received the hand loan of Rs.5,00,000/- from him. Thereafter, the complainant approached the accused and requested him to repay the amount. The accused has issued the cheque bearing No.383403 for a sum of Rs.5,00,000/- dated:12.08.2014 drawn on ING Vysya Bank, DCEC Branch, Ballari, towards discharging of the said date.

12. In this case there is no dispute with regard to presenting the cheque before the Bank for encashment, endorsement and issuance of notice as per Sec.138 of Negotiable Instrument Act. The question before the court is whether the averments made in the complaint were true or not.

13. In this regard, I have carefully perused the evidence of the complainant who has been examined as PW.1. In the cross-examination he has made several admissions. The relevant portion is herewith reproduced for the sake of convenience.

ಆರೋಪಿಯು ನನ್ನ ಕುಲಸೃರೂ ಅಲ್ಲ. ಹಾಗೂ ಸ್ನೇಹಿತನೂ ಅಲ್ಲ. ಆರೋಪಿತನೊಂದಿಗೆ ನನಗೆ ಯಾವುದೇ ರೀತಿಯ ವ್ಯವಹಾರವಿಲ್ಲ. ನಾನು ವ್ಯವಸಾಯ ಮಾಡಿಕೊಂಡಿದ್ದೇನೆ. 4-5 ವರ್ಷಗಳಿಂದ ಮಳೆ ಬರದ ಕಾರಣ ವ್ಯವಸಾಯದಲ್ಲಿ ನಷ್ಟಗಳಾಗಿವೆ ಎಂದರೆ ಸರಿ. ನಾನು ಇನ್‌ಕಂ ಟ್ಯಾಕ್ಸ್ ಆಸೆಸ್ಸಿ ಇಲ್ಲ ಎಂದರೆ ಸರಿ. ರೈತರ ಬಳಿ ಸಾಮಾನ್ಯವಾಗಿ ಡಿಸೆಂಬರ್ ನಲ್ಲಿ ಬೆಳೆ ಕಟಾವು ಆದ ನಂತರ ಹಣ ಬರುತ್ತದೆ ಎಂದರೆ ಸರಿ ಅದಕ್ಕೂ ಮೊದಲು ಹಣ ಸಿಗುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಎಸ್ ಬಿ ಹೆಚ್ ಬ್ಯಾಂಕ್ ನಲ್ಲಿ ನನ್ನ 1 ಆಕೌಂಟ್ ಇದೆ. 2013 ಮತ್ತು 2014 ರಲ್ಲಿ ನಾನು ಇನ್‌ಕಂ ಟ್ಯಾಕ್ಸ್ ಕಟ್ಟಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನನ್ನ ಬಳಿ ದೊಡ್ಡ ಮೊತ್ತ ಇರುವುದಕ್ಕೆ ಯಾವುದೇ ಸಾಕ್ಷಿಗಳು ಇಲ್ಲ (ಐದು ಲಕ್ಷ). ನನ್ನ ಪರ್ಯಾಯವಲ್ಲಾಗಲೀ ನನ್ನ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಾಗಲೀ ನನ್ನ ಬಳಿ ರೂ.5,00,000/- ಹೇಗೆ ಬಂದಿತ್ತು ಎಂಬುದನ್ನು ಬರೆಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಆರೋಪಿತನಿಗೆ ರೂ.5,00,000/- ಕೊಟ್ಟಂತೆ ಯಾವುದೇ ಪ್ರಾಮಿಸರಿ ನೋಟ್ ಅಥವಾ ಚೆಕ್ ಇರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನಾನು ಆರೋಪಿತನಿಗೆ ಹಣವನ್ನು ಕೊಟ್ಟಿದ್ದರ ಬಗ್ಗೆ ಯಾರ ಸಮಕ್ಷಮದಲ್ಲಿ ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದು ನನ್ನ ಪರ್ಯಾಯವಿನಲ್ಲಿ ಹಾಗೂ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಬರೆಸಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನನಗೆ 2014-15 ನೇ ಸಾಲಿನಲ್ಲಿ ಸಾಕಷ್ಟು ವರಮಾನ ಬಂದಿದ್ದರ ಬಗ್ಗೆ ನಾನು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ನೀಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನಾನು ಆರೋಪಿತನ ವಿರುದ್ಧ ನೀಡಿರುವ ಚೆಕ್ 2011 ನೇ ಇಸವಿನಲ್ಲಿ ನೀಡಲಾದ ಚೆಕ್ ಪುಸ್ತಕದ 1 ಎಲೆ ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಆರೋಪಿತನು ನನಗೆ ಈ ಪ್ರಕರಣದ ಚೆಕ್ ನ್ನು ಎಲ್ಲಿ ಯಾವಾಗ ಯಾವ ಸಮಯಕ್ಕೆ ನೀಡಿದ್ದರು ಎಂದು ನಾನು ಪರ್ಯಾಯವಿನಲ್ಲಿ ಬರೆಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನಿಪಿ-1 ರಲ್ಲಿ ಮೊತ್ತವನ್ನು ಇಂಗ್ಲೀಷ್ ಅಕ್ಷರಗಳಲ್ಲಿ ಯಾರು ಬರೆದಿದ್ದಾರೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಿಪಿ-1 ರಲ್ಲಿ ಬರೆದಿರುವ ಅಂಕಿ ಅಂಶಗಳು ಮತ್ತು ಮೊತ್ತದ ಅಕ್ಷರಗಳು ಮತ್ತು ಸಹಿಯ ಯಾರು ಬರೆದಿರುತ್ತಾರೆ ಎಂದು

ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ವಕೀಲರ ಮೂಲಕ ಆರೋಪಿತರಿಗೆ ಕಳುಹಿಸಲಾಗಿದೆ ಎಂದು ನೋಟೀಸಿನಲ್ಲಿ ನನ್ನ ಸಹಿ ಇಲ್ಲ ಎಂದರೆ ಸರಿ.

14. The above said admissions on the part of complainant would show that, there was no friendship between him and the accused and there was no transaction between himself and the accused. He was an agriculturist and he had sustained loss in the agricultur and he was not a income tax assess. There is no document to show that he was having so much money to lend to the accused.

15. Further, he has given ignorance with regard to the suggestions that this cheque was issued in the year 2011.

16. Considering the said admissions on the part of complainant and the evidence of PW.2 who is an advocate and younger brother of complainant, the learned trial judge has come to a conclusion that the accused has rebutted the presumption available in favour of the complainant, as per Section 139 of Negotiable Instrument Act. Because PW.2 has also stated that, complainant is his elder brother

and he has been practicing as an advocate. The accused was running a canteen in front of the court complex and he was having acquaintance with the accused. He himself and complainant were residing in the same house. He does not know that, either in the complaint or in the notice it is mentioned that, he was present at the time when the amount was paid to the accused. According to the complainant this PW.2 was present when the amount was paid to the accused. But according to the PW.2 in his presence amount was not paid. Therefore, there are totally contradictory statements given by the complainant and his brother PW.2 who is a practicing advocate.

17. When the admissions given by the complainant clearly establishes that, he did not know as to who is the accused and he was not having so much of money and on what basis he has paid the amount to the accused and he had no capacity to lend money, these are the important things to rebut the presumption available under section 139 of Negotiable Instrument Act. When, from out of the evidence of complainant and his witness and also the

evidence of accused the court can come to a conclusion that, the alleged transaction was not possible to be taken place and the complainant was not known to the accused and the complainant was not capable to lend money, the case of the complainant cannot be believed and accepted.

18. The learned trial judge has categorically given findings with regard to that aspect and came to a right conclusion in the matter. There is sufficient material to come to a conclusion that the accused has able to discharge the presumption available under section 139 of Negotiable Instrument Act. Absolutely there is no believable evidence placed by the complainant to establish that he had a capacity to lent so much of money and that was paid to the accused. Therefore, there are no grounds to interfere with the findings of the learned trial judge. The grounds urged in the appeal memo are not tenable in law. Therefore, There is no merit in the appeal. As rightly pointed out by learned counsel for the accused the appeal does not survive. Accordingly, I answer Point Nos.1 and 2 in the **Negative**.

19. **Point No.3** :- In the result, I proceed to pass the following:

ORDER

The Appeal filed u/Section 372 of Cr.P.C. by the Appellant/complainant in C.C.No.185/2017 on the file of learned IV Addl. Civil Judge & JMFC, Ballari challenging the Judgment dated:20.04.2019 is dismissed with cost.

Consequently, the Judgment of acquittal dated 20.04.2019 passed by the learned IV Addl. Civil Judge & JMFC, Ballari in C.C. No.185/2017 is hereby confirmed.

Office is directed to send back the records of the trial Court along with copy of this Judgment forthwith.

(Dictated to the Stenographer Grade-III, transcribed and computerized by him, corrected and then pronounced by me in the open Court on this 07th day of August, 2026)

(H.A. MOHAN),
I-Additional Sessions Judge,
Ballari.