KABR320005612011

IN THE COURT OF II ADDL CIVIL JUDGE AND JMFC DEVANAHALLI.

Dated this the 1st day of August 2026

Present

Smt. Chandrika. K. T. **BCA,LL.B.,**
II Addl. Civil Judge and JMFC,
Devanahalli

CC No.3215/2011

Complainant : Smt. Manula @ Anjinamma
W/o Munisubbanna,
Aged about 45 years,
R/at Ramanathapura Village,
Kundana Hobli, Devanahalli Taluk.

(By Sri. S.K., Advocate)

V/s

Accused : Sri. H.B. Suryankantha
S/o H.N. Byrappa,
Aged about 45 years,
R/at Huthanahalli Village,
Jala Hobli, Bengaluru North Taluk.

(By Sri. A.Y.A., Advocate)

1. Date of filing private complaint	21.04.2011
2. Offences complained of	U/Sec.138 of N.I. Act.

3. Opinion of the judge.	As per final order

JUDGMENT

This judgment arise out of the private complaint filed by the complainant under Sec 200 of Cr.P.C against the accused for the offence punishable under Sec 138 of Negotiable Instrument Act and to pass necessary order for the amount of Rs.3,25,000/- (Rupees Three Lakh Twenty Five Thousand only) due to the complainant from the accused and to grant such other reliefs.

2. The case of the complainant is that, the complainant had filed civil suit in OS.No.185/2008 on the file of Senior Civil Judge, Devanahalli against the complainant's mother and brother seeking for partition in property bearing Sy.No.69. During the pendency of the suit the accused herein has purchased the said property in Sy.No69 measuring to an extent of 2 acres. Hon'ble Court of Senior Civil Judge has decreed the suit allotting the complainant's 1/3rd share in the suit schedule property in OS.No.185/2008. After coming to know about this fact the accused approached the complainant to execute a confirmation deed for the sale transaction that he made with her brother and mother and to received consideration of complainant's share in the said property. The complainant has also agreed for the same and agreed to receive consideration of Rs.8,25,000/- from the accused towards her share in the property which the accused has purchased. In furtherance to this agreement, the complainant

along with her children had executed a confirmation deed dated 13.07.2010. On that date, accused has paid Rs.5,00,000/- in cash and issued post dated cheque bearing No.27964 drawn on Union Bank of India, Yelahanka Branch dated 13.01.2011 for balance consideration of Rs.3,25,000/-. The complainant has presented the said cheque for encashment through her banker Canara Bank, Vishwanathapura Branch on 13.01.2011. But the said cheque was dishonored with an endorsement dated 22.01.2011 to the effect as "Funds Insufficient". Accused has requested the complainant to present the cheque on 10.02.2011 again. The complainant as per the assurance made by the accused has presented cheque again on 10.02.2011 which again came to be dishonored with a endorsement dated 10.02.2011 for insufficient funds. Thereafter the complainant got issued a legal notice to the accused on 03.03.2011 through RPAD demanding the payment of cheque amount. The notice was duly served to accused on 04.03.2011 but till today the accused has not paid the cheque amount to the complainant nor given any reply to said notice. Hence complainant constrained to file the present complaint.

3. Accused appeared in pursuance of summons issued to him and he was released on bail on 09.04.2012 and the plea was recorded on 31.10.2012. Complainant was examined in chief as PW.1 and she was cross examined by counsel for accused. Complainant has also examined one witness by name K.S. Srinivasa as PW.2

4. Complainant got marked 11 documents Ex.P1 to Ex.P11. Thereafter the statement of accused U/s 313 of CrPC was recorded by explaining the incriminating circumstances appearing against him. Accused denied those circumstances as false. He adduced defence evidence by examining himself as DW1 and got marked 3 documents as Ex.D1 to Ex.D3. Ex.D.1 was marked during the cross examination of PW.1.

5. Heard both counsel. Learned counsel for the accused has relied upon the decisions **1) 2019(2) ACR 1978, 2) 2023 Livelaw SC 46, 3) 2007 5 SCC 264, 4) 2023 3 KCCR 2018, 5) 2022 4 KCCR 3136 & 6) 2016 4 KCCR 2891**. Perused the materials placed before the court.

6. **The points that arise for my consideration are:**

1. *Whether the complainant has made out all ingredients of Sec.138 of NI Act to prove the guilt of the accused?*

2. Whether the complainant proves that, the accused issued cheque bearing No.27964 for Rs.3,25,000/- dated: 13.01.2011, drawn on Union Bank of India, Yelahanka branch towards discharge of the legally recoverable debt or liability and on its presentation the same was dishonored for 'Funds Insufficient' and inspite of service of legal notice, the accused failed to pay the cheque amount within the statutory period and thereby committed the offence punishable u/Sec.138 of N.I. Act?

3. What order?

7. My findings on the above points are as follows:

Point No.1 : In the **Affirmative.**

Point No.2 : In the **Affirmative**

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

R E A S O N S

8. **Point No.1:**- Under section 138 of N.I. Act the offence will complete only if mandatory provisions of Section 138(a) to (c) are complied with. As per Sec.138(a), cheque has to be presented to the Bank within a period of 03 months from the date on which it was drawn or within the period of its validity whichever is earlier. In this case Ex.P1 cheque was drawn on 13.01.2011 and the cheque was presented to the presenting Bank on the same date. Documents reveal that the cheque was presented within 3 months from the date of its issuance. The said cheque was returned as per bank memo Ex.P2 dated 22.01.2011 and Ex.P10 dated 10.02.2011 for '**Funds Insufficient**'. As per clause (b) of Sec.138, the payee or the holder in due course of the cheque has to make demand for payment of the said amount by giving notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the Bank regarding return of the cheque as unpaid. In the present case, the bank memo was received on 10.02.2011 and legal notice was issued on

03.03.2011 as per Ex.P3. The documents reveal that the notice was issued within 30 days of the receipt of information Ex.P10. Sec.138(c) provides that, the drawer of such cheque fails to make payment of the said amount to the payee or to the holder in due course of the cheque within 15 days of the receipt of the said notice. In this case notice was duly served to accused as per Ex.P5 & Ex.P7 on 04.03.2011 and it came to the knowledge of the complainant on 11.04.2011 as per Ex.P7. As per Sec.142(b), the complainant has to file complaint within one month of the date on which the cause of action arises under clause (c) of the proviso to Sec.138. The accused had to make payment of the cheque amount within 15 days from the day on which the accused receives legal notice. Here in this case, the notice sent to accused on 03.04.2011 and said notice was served to accused on 04.04.2011. The complainant filed the complaint on 21.04.2011 waiting for 15 days giving an opportunity to the accused to make the payment of cheque amount as mandated by statute. Therefore, this court is of the view that, the complainant has complied with the mandatory provisions of section 138 (a) to (c) of the Act. Accordingly, point No.1 is answered in the **Affirmative**.

9. **Point No.2:**- The complainant has filed the present application U/s 200 of CrPC alleging that the accused has issued a cheque dated:13.01.2011 for Rs.3,25,000/- drawn on Union Bank of India, Yelahanka Branch in favour of the complainant towards the payment of the balance consideration amount as per

the confirmation deed dated 13.07.2010. The complainant in order to prove her case got examined herself as PW1 and got marked original cheque, bank memo, legal notice, postal cover.

10. The question now is whether the cheque in question belongs to the accused and whether the signature on the cheque is the signature of the accused. In this case the complainant, in-order to prove her case produced the original cheque issued by the accused containing signature of accused on it, which was marked as Ex.P1(a). During the defence evidence, in his cross examination has admitted that, Ex.P1 cheque is his cheque and Ex.P1(a) is his signature. Therefore the initial burden of proof regarding the issuance of cheque is proved before this court.

12. It is well settled principle that admission is the best evidence. Hon'ble Apex Court, in series of decisions held that, admissions can be a best piece of evidence. Thus, admission given by the accused is sufficient to conclude that the execution of negotiable instrument (cheque in question) is admitted as well as proved.

13. Once the execution of cheque in question is proved, the court shall draw presumption available under Sec 139 of NI Act that Ex.P1 has been drawn towards the discharge of legally enforceable debt and is drawn for valid consideration.

14. This court would like to take support from decision of

the **Hon'ble Apex Court in Rangappa Vs Mohan (AIR 2010 SC 1898)**, wherein, it is held that once the execution of negotiable instrument is either proved or admitted, then the court shall draw a presumption to the effect that the said negotiable instrument has been drawn for valid consideration and the legally recoverable debt was in existence.

15. Further, our **Hon'ble High Court in S. A. Suryanarayana Vs M.S.Devendrappa (2013 (5) KCCR 3716)** followed the ratio laid down in Rangappa's Case and held that "signature of accused admitted to be that of the accused, presumption envisaged u/s118 can legally inferred that cheque was made in return for consideration and court is required to presume that holder of cheque received it for discharge of any debt or liability". Of course, the presumption available is rebuttable one.

16. Since the complainant has proved that the said cheque belongs to the accused and bears the signature of the accused, and as the execution of cheque is also admitted by the accused, the burden shifts on the accused to prove that how the said cheque came to the hands of the complainant and how the said cheque was misused by the complainant.

17. In this case the accused admitted the execution of confirmation deed dated 13.07.2010 and also his liability to pay Rs.8,25,000/- to the complainant as a consideration to her share

in the property which he purchased from her mother and brother. The accused has also admitted the said transaction between the complainant and him. The accused has also admitted the issuance of Ex.P1 cheque to the complainant with respect to the aforementioned to the transaction. The only contention that, the accused has taken before the court as a defence is that at the time of the agreement for confirmation deed, Ex.P1 cheque was issued as a security, however on the date of execution of the confirmation deed entire consideration amount of Rs.8,25,000/- was given to the complainant. On the same day the accused has asked the complainant to return the cheque as entire consideration amount of Rs.8,25,000/- was paid in the cash to the complainant. However, the complainant kept on the postponing the return of Ex.P1 cheque to the accused. Now, the same cheque is misused and the present case filed by the complainant against the accused. There is no liability of the accused to pay the balance consideration amount as entire consideration is already paid.

18. In order to prove this defence, the accused has cross examined PW.1 at length and suggested the defence taken by the accused to PW.1 which was any way denied by the complainant. The accused has relied upon the document Ex.D1, which is also marked as Ex.P8 by the complainant, which is the confirmation deed. This deed is registered document showing the confirmation of the sale deed with respect to property in Sy.No.69 sold by the complainant's mother and brother in favour of the accused, by

the complainant. In the said deed Ex.D1/Ex.P8, there is a mention that towards the execution of the confirmation deed, no consideration is received by the complainant. However, during the cross examination of DW.1 and also during the cross examination of PW.1, the accused has admitted that, it was agreed between the complainant and the accused that, in relation to this confirmation deed, Rs.8,25,000/- to be paid by the accused to the complainant as a consideration. Accused during his chief examination has also categorically stated that, he has agreed to pay Rs.8,25,000/- as a consideration to the complainant.

19. But, the accused stated that, at time of the agreement, before the execution of confirmation deed, he had issued Ex.P1 as a security for Rs.3,25,000/-. However, on the date of the execution of the confirmation deed, he has paid Rs.8,25,000/- in cash and thereby, the complainant ought to have returned the cheque, but the same was not returned. It was also the contention of the accused that, there was no mention about the existence of consideration in Ex.D1 document as Ex.D1(a) portion clearly shows that, there was no consideration paid to the complainant by the accused as per Ex.D1 deed. However, the same has been contracted by the accused himself during the chief examination by stating that it was agreed upon by both accused and the complainant that a consideration would be paid to the complainant by the accused of Rs.8,25,000/- in relation to the confirmation deed that the complainant has executed in favour of accused. The contention urged by the complainant is

that as accused has sought for non mentioning of the consideration amount in the confirmation deed, to avoid the payment of stamp duty, it was agreed that another agreement has to be executed between the parties about the transaction involving consideration amount between the complainant and the accused as per Ex.P8. During the cross examination of DW.1, accused has also admitted that, EX.P9 contains his signature and Ex.P9(a) is his signature. But, he does not know where he has made that signature.

20. Further in his cross examination also admitted that, without seeking any documents, he will not make any signature on any other documents. He has also admitted that for Rs.3,25,000/- he has issued Ex.P9 cheque to the complainant. With this admissions, the accused has clearly admitted his liability to pay Rs.3,25,000/- to the complainant and issuance of cheque Ex.P1 cheque to the complainant for the payment of Rs.3,25,000/- and he has also admitted that, there was existence of sale consideration. He has also specifically stated that, there was existence of sale consideration of Rs.8,25,000/- which is agreed upon to be paid by the accused to the complainant in furtherance of Ex.D9 confirmation deed. Such being the case, the contention taken by the accused during the cross examination of PW.1 by marking contents of Ex.D1(a) that there was no consideration amount received by the complainant cannot be accepted as the accused has clearly admitted about the existence

of the consideration to be paid by the accused to the complainant.

21. Accused has contended that, though he has issued Ex.P.1 cheque for Rs.3,25,000/- but he has paid the entire consideration amount of Rs.8,25,000/- in cash on the day of execution of the confirmation deed. However, despite the payment, the complainant has not returned Ex.P1 cheque to him. Whereas, on the other hand, the complainant has stated that on the day of the execution of confirmation deed only Rs.5,00,000/- was paid by the accused and for remaining Rs.3,25,000/- Ex.P1 cheque has been issued which was dishonored for funds insufficient when it was presented. Hence, the present cases filed.

22. In order to substantiated the case of the complainant, she has got examined one witness by name PW.2 named Srinivas, he in his chief examination as stated that, Ex.P9(b) is his signature which is made on Ex.P9 and Ex.P9 was executed by the accused in favour of the complainant. In his chief examination he has stated that, there was some transaction with respect to the purchase of property by the accused in Sy.No.69 with the complainant. In that relation it was agreed by the complainant and accused that, complainant would execute a confirmation deed confirming purchase of the property by the accused from her mother and brother to which the accused will pay a consideration of Rs.8,25,000/- and among which the accused

has paid Rs.5,00,000/- by way of cash and for remaining Rs.3,25,000/- he had issued Ex.P1 cheque. He has also executed an confirmation deed and also an agreement to that effect as per Ex.P9. He has made his signature on Ex.P9. He was suggested about fact that, prior to the execution of confirmation deed, it was agreed by the accused and complainant about the execution of confirmation deed for that purpose, as a security accused has issued Ex.P1 cheque and not for the payment of the balance sale consideration amount, wherein he denied the same and he has also specifically stated that, when the agreement talk happened only Rs.5,00,000/- was given by the accused in cash and for the remaining balance sale consideration amount, Ex.P1 was issued. He has also stated that, in order to avoid the payment of the stamp duty the said confirmation agreement Ex.P9 was not registered by the accused. Which is also the case of the complainant herein wherein she has specifically mentioned in the complainant that, as the accused wanted to avoid paying the stamp duty for the confirmation deed, and he has not specifically mentioned about the existence of the agreement between parties for the payment of consideration amount by the accused to the complainant. As such, he has executed Ex.P9 confirmation agreement in favour of the complainant about this agreement between the parties. He denied the other suggestion made to him by the counsel for the accused.

23. Nothing was brought on record by the accused to

disbelieve the evidence of PW.2 pertaining to the existence alleged transaction between the accused and complainant and also about the payment of Rs.5,00,000/- by the accused to the complainant and also about issuance of Ex.P1 cheque for the payment of balance sale consideration amount to the complainant and accused. But, per contra the accused has not examined any witnesses before this court to shows that, on the day of execution of the confirmation deed, itself the entire Rs.8,25,000/- was paid in cash and Ex.P1 cheque was issued only for the purpose of security. Therefore, in comparison of evidence produced by both the parties, as there is no materials brought by the accused to prove the probabilities of his defence, the complainant in whose favour presumption is existence has also proved before the court about the existence of legally recoverable debt and also the fact that, Ex.P1 was issued by the accused for the payment of the balance sale consideration amount by examining PW.2 before this court, evidence adduced by complainant appears to be reliable and believable.

24. It is to be noticed that, the standard of proof for the accused to prove his defence before this court is preponderance of probabilities and not the proof beyond reasonable doubt. The accused need not adduce defence evidence or any documents to that effect to prove his probabilities of defence before the court to rebut the presumption in favour of complainant which is drawn U/sec.138 of NI Act. A mere cross examination of PW.1 is

sufficient. This principles of law are already settled in view of various judgments of Hon'ble Hight Karnataka and Supreme Court of India pertaining to the trail of the offence for the punishable U/sec.138 NI Act. Learned counsel for the accused has relied upon such as decisions:-

1. The decision of Supreme Court of India Basalingappa V/s Mudibasappa 2019 (2) ACR 1978.

2. The decision of Supreme Court of India Rajaram S/o Sriramulu Naidu (since deceased) Through Lrs V/s Maruthachalam (Since deceased) Through Lrs. 2023 Live Law (SC) 46.

3. The decision of Supreme Court of India Kamala. S V/s Vidhyadharan M.J & Another (2007) 5 SCC 264.

4. The decision of Supreme Court of India M/s. Navarathna Finance & Leasing, Kalaburgi V/s Mohammed Tajammul 2023 (3) KCCR 2018.

5. The decision of Supreme Court of India Prakash Shetty V/s Venkatesha 2022 (4) KCCR 3136.

6. The decisions of Supreme Court of India Prabhakar Murthy V/s S.G. Shankaraiah 2016 (4) KCCR 2891.

25. The above decisions is about the principles involved in trial offence U/sec.138 of NI Act. Keeping in view of this principles, this court has adjudicated this case. Therefore,

reiteration of this judgments and its ratio at this stage is not necessary. Though the accused has examined himself and got marked the Ex.D1 to Ex.D3 documents. Ex.D2 & Ex.D3 documents are of with respect to the existence of case between the mother of the complainant and accused. But, Ex.D2 & Ex.D3 documents are of no aid to the accused in proving his defence before this court. Accused by examining himself and by cross examining PW.1 has only brought before the court what defence he was taken before this court stating that Ex.P1 cheque was issued as a security and not for the payment balance consideration amount. However, this defence that the accused has taken has to be proved by the accused, though the proof is only preponderance of probabilities. But in the present case, mere stating the defence by way of cross examination and examination in chief of the accused, the accused has not brought the probabilities of his defence. Therefore, in the proof of defence taken by accused, it can be considered that, the accused has not brought the materials to prove his defence before this court. Therefore, the accused has failed to rebut the presumption U/sec.139 of NI Act drawn in favour of the complainant by establishing probabilities of his defence before the court.

26. In this case the presumption is in the favor of the complainant. There is no cogent evidence adduced before this court by the accused to disprove the presumption raised in favor of the complainant. Mere taking of the defence is not sufficient, the accused has to bring the various probabilities through

evidence either oral or documentary before this court to support his case and to disprove the presumption raised in favor of the complainant. In this regard Hon'ble apex court held in M. S. Narayana Menon @ Mani V/s State of Kerala And another reported in AIR 2006 SC 3366, that *"Once the accused discharges the initial burden placed on his the burden of proof would revert back to the prosecution".*

27. In the present case the accused failed to rebut the initial burden lies on him. The nature of the rebuttable evidence to dispel the presumption available in favour of the complainant under section 139 of Negotiable Instrument Act should be on high footing. Mere plausible explanation is not sufficient to dispel the presumption.

28. Therefore, on perusal of the case file, materials produced before this court, this court is of the opinion that the complainant has clearly proved before this court that Ex.P1 cheque was issued in his favour by the accused towards the discharge of legally enforceable debt. The presumption regarding existence of legal liability as provided u/s.139 of N.I. Act is not replaced by the accused by giving rebuttable evidence. Hence, point No.2 is answered in the **Affirmative**.

29. **<u>Point No.3:-</u>** In view of the above discussions, this court proceed to pass the following:-

ORDER

Acting under Section 255(2) of Cr.P.C., the accused is convicted for the offence punishable U/Sec.138 of N.I. Act. In consequence, accused is sentenced to pay fine of **Rs.3,25,000/-** (Rupees Three Lakh Twenty Five Thousand Only) and in default of payment of fine, the accused shall undergo S.I. for three months.

Further it is also ordered that out of the fine amount so realized, the entire sum of **Rs.3,25,000/-** (Rupees Three Lakh Twenty Five Thousand Only) shall be paid to the complainant as compensation under Section 357(1) of Cr.P.C.

Bail bond of the accused and surety stands canceled.

Office is directed to supply a free copy of the judgment to the accused forthwith.

*(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the Open Court on this **1st day of August 2026**)*

(Chandrika. K. T.)
II Addl. Civil Judge and JMFC,
Devanahalli

ANNEXURE

The list of witnesses examined on behalf of prosecution:

PW.1 : Smt. Manjula @ Anjinamma

PW.2 : Sri. K.S. Srinivas

List of documents marked on behalf of prosecution:

Ex.P1 : Cheque

Ex.P1(a) : Signature of accused

Ex.P2 : Bank memo

Ex.P3 : Legal Notice

Ex.P4 & 5 : Postal receipts

Ex.P6 : Postal acknowledgments

Ex.P7 : Postal Return

Ex.P8 : C/c of Sale deed

Ex.P9 : Compromise Agreement

Ex.P9(a) : Signature of DW.1

Ex.P9(b) : Signature of PW.2

Ex.P10 : Bank Endorsement

Ex.P11 : Bank Statement

The list of witness examined on behalf of defence:-

DW.1 : Sri. Suryakanth

DW.2 : Sri. Manjunath

The list of documents exhibited on behalf of defence:-

Ex.D1 : Consent deed

Ex.D2 : Nadakacheri Letter

Ex.D3 : RRTC Letter

(Chandrika. K. T.)
Addl. Civil Judge and JMFC,
Devanahalli