



**IN THE COURT OF THE III ADDL. DISTRICT & SESSIONS  
JUDGE, CHICKBALLAPURA.**

**PRESENT**

SHRI. SIDDANNA B. HANDRAL.,  
B.Sc.,LL.B(Spl).  
III Addl. Dist. & Sessions Judge,  
Chickballapura.

DATED THIS THE 30th DAY OF JULY - 2026

**CRIMINAL APPEAL No.06/2026**

**Appellant** : Smt. Parveen Taj,  
W/o. Jeelan Basha,  
Aged about 38 years,  
R/at Refath Cloth Center,  
Near Chethan Naidu Villa,  
Nethaji circle, 9<sup>th</sup> Ward,  
Bagepalli Town,  
Chickballapur District.  
  
(By Sri.M.Venkateshappa, Deputy  
Legal Aid Defense Counsel)

**//Vs.//**

**Respondent** : Smt.Mahaboob Bi,  
W/o. Hussain Sab,  
Aged about 50 years,  
Cloth business,  
R/at 8<sup>th</sup> Ward,  
Bagepalli Town,  
Chickballapur District.  
  
(By Sri.M.A., Advocate)

## **JUDGMENT**

The present criminal appeal has been preferred by the appellant/accused u/Sec.415 of BNSS,2023 against the judgment and order of conviction dated 02.05.2025 passed by the learned Civil Judge & JMFC, Bagepalli in C.C.No.165/2022 wherein the trial court convicted the appellant for an offence punishable u/Sec.138 of Negotiable Instrument Act (hereinafter referred to as N.I.Act) and sentenced her to pay a fine of Rs.4,10,000/- (Rs. Four Lakh Ten thousand only) in default, the accused shall undergo simple imprisonment for a period of 6 months, out of fine amount accused is directed to pay compensation of Rs.4,00,000/- to the complainant by way of compensation.

### **2. The factual matrix of this appeal are that:**

The complainant and the accused are well known to each other from last several years. The accused being a proprietor of Rafath Cloth Center, to meet her legal necessities approached him with a financial request of Rs.4,00,000/- in the 2<sup>nd</sup> week of September 2021 and to repay the same within five to six months or as early as possible. Accordingly the complainant with an intention to help the accused has paid a sum of Rs.4,00,000/- as required by the accused and in consideration of the same, the accused has issued a cheque bearing no.357772 for a sum of Rs.4,00,000/- drawn on Syndicate Bank now Canara Bank, Bagepalli Branch dated 2.2.2022 in favour of the complainant and requested her to present same on or after 2.2.2022 for realization of the

amount at the concerned bank. Thereafter, the complainant has presented the said cheque for encashment on 16.2.2022, but to the shock and surprise of the complainant the said cheque was dis-honoured and bank authorities have issued an endorsement that, "INSUFFICIENT FUNDS" and thereafter the complainant got issued legal notice to the accused on 14.3.2022, and the same has been served upon the accused on 19.3.2022, but the accused did not replied to the said notice, thus the complainant filed a complaint against the appellant /accused for the offence punishable u/Sec.138 of N.I.Act.

3. Thereafter, the trial court after taking cognizance issued summons to the appellant who in turn appeared through her advocate and thereafter case was posted for recording of plea and 313 statement, and thereafter the trial court has recorded the substance of acquisition but the appellant / accused pleaded not guilty and claims to be tried and also filed application U/s. 145(2) of N.I. Act and case was posted for cross of PW.1 and by that time accused remained absent, thereafter cross of P w.1 taken as nil and thereafter posted for recording of statement of the accused U/S.313 of Cr.P.C. and the accused remained absent by considering the same, recording of the statement U/S.313 of Cr.P.C. dispensed with as per the principles of law laid down in Crl. Rvn. Ptn.No.664/2020 dated 7.2.2025 in the case of Sunil Yadav VS Smt. Y.C.Manju passed by the Hon'ble High Court of Karnataka and posted the case for arguments and thereafter hearing the arguments of the complainant and arguments of

the accused taken as not addressed and passed the judgment, convicting the appellant/accused punishable u/Sec.138 of N.I.Act, consequently, appellant/accused is liable to pay a fine of Rs.4,10,000/- in default, the accused shall undergo simple imprisonment for a period of 6 months, out of fine amount directed to pay sum of Rs.4,00,000/- to the complainant by way of compensation.

4. As against the said judgment the appellant/accused preferred the present appeal on various grounds that, the trial court comes to a wrong conclusion that, the accused has issued a cheque for legally dischargeable debt by drawing presumption, but the accused is not known to the complainant at any point of time and never borrowed the money and issued the cheque to the complainant and there is no transaction between her and the complainant. The complainant has misused the blank cheque by filling the contents and presented the same without his knowledge and consent. The complainant has no financial capacity to lend huge amount. The trial court has not given sufficient opportunity to rebut the presumption available to the complainant by cross examining him and producing the evidence and also not given sufficient opportunity to record his statement U/S.313 of Cr.P.C. The substance of acquisition framed by the trial court is not in accordance with law and has not provided sufficient opportunity to prove his defense and the accused is house wife and having husband and children and has to look after her family members, except her there are no other person to look after her family

members, hence, for the said grounds the appellant/accused prayed for setting aside the judgment passed by the trial court and the matter may be remanded to the trial court for fresh hearing after giving the sufficient to the appellant/accused.

5. After service of the notice the respondent has appeared through his counsel. The trial court records are secured.

6. Heard arguments on behalf of learned counsel for the appellant/accused and learned counsel for the respondent /complainant.

7. On the basis of grounds urged by the appellant/accused in this appeal and rival arguments canvassed by both sides, the following points that are arise for consideration of this court:

- 1) Whether the learned trial court erred in not providing the opportunity to the accused for cross examination of the complainant /PW.1 and to lead her evidence and the judgment of the trial court is against to the law of natural justice ?
- 2) Whether the respondent/complainant has established that the disputed cheque has been issued by the accused to meet her legal necessities as contended by her ?

3) Whether the trial court has committed error in law or on facts in convicting the accused/appellant ?

4) What order ?

8. The above points are answered as under:

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

Point No.2 & 3: **Does not survive for consideration.**

Point No.4 : As per final order for the following:

**::REASONS::**

9. **Point No.1:** The appellant/accused in the appeal memo has specifically contended that the learned trial judge has failed to provide sufficient opportunity to the appellant/accused for cross examination of the respondent/complainant and also for canvassing the arguments hurriedly passed the judgment. In the light of above grounds urged by the appellant it is considered opinion of this court is that, if once appeal filed by the appellant is sustained under the law before this court as per the point No.1 framed by this court, then certainly the rest of the points No.2 and 3 framed by this court survive for further consideration, otherwise they does not survive, as such this point is taken up since question of law of natural justice is involved.

10. It is the main ground of the appellant/accused that she got the case to disprove the claim made by the respondent in the complaint but the trial court has not been provided opportunities to her to cross examine the complainant and to lead evidence and addressing the arguments on her behalf, therefore, it is not possible for her to disprove the case of the complainant, but without providing opportunity has passed the judgment which deprived of her right of cross examination and to give her evidence, from these grounds appellant/accused sought for remand of the case for fresh trial.

11. It is well settled law by the Hon'ble Supreme Court of India in a decision decided in **Crl.Appeal No.546/2011 between M.B.Sukurali Vs. State of Assam**. In so far as how to dealt the criminal case against the accused, before made liable the accused for the charge. As it is necessary to extract the guidelines issued by the Hon'ble Apex Court that **“we are of the opinion that even assuming that the counsel for the accused does not appear because of the counsels negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for default of his counsel and in such a situation the court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of a person is most important feature of our constitution. Article 21 which guarantees protection of life and personal**

**liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the heart and soul of the fundamental rights.” Further the Hon'ble High Court of Karnataka has been held in Crl.Rev.Petition No.436/2011 in a case of Malappa Vs. K.S.Nagarajappa & in another Crl.Rev.Petition No.1217/2017 in a case of Munirathnaiah Vs. R.Chandreshakhar in so far providing the opportunity to the accused to maintain the natural justice to dispose of the case on merit under Negotiable Instruments Act.**

12. In the light of principles of law laid down by the Hon'ble Apex Court of India and High Court of Karnataka, the factual aspects of the present case are to be examined by this court. On careful perusal of the records of the trial court more particularly order sheet of the trial court discloses that, the accused appeared through her counsel on 13.9.2022 and case was posted on 2.11.2022 for recording of plea and 313 statement and thereafter the trial court has recorded the plea of the accused on 20.11.2024 and posted the case for cross of P W 1 on 9.12.2024 and again case was posted on 31.12.2024 for cross of P W 1, thereafter accused remained absent on 5.2.2025 on that day NBW was issued to the accused and posted on 25.3.2025 and thereafter the accused was arrested by the police and produced in the Home Office on 14.3.2025 and on that day accused was released and thereafter on 25.3.2025 the trial court has taken the cross of P W 1 as nil and also recording of the statement U/S.313 of

Cr.P.C. dispensed with and posted the case for arguments on 2.4.2025 and on that day neither the accused nor her counsel present before the court, but the trial court heard the arguments on merits and arguments of accused taken as not addressed and posted the case on 2.5.2025 for judgment and on that day in the absence of the accused and her counsel judgment was passed by convicting the accused and imposed a fine of Rs.4,10,000/- and in default the accused shall undergo simple imprisonment for six months.

13. Thus, on careful perusal of the records of the trial court it reveals that, the accused has not been provided with fair opportunity to contest the case before the trial court as the matter was set down for cross examination of PW.1 on 9.12.2024 and in the absence of accused and her counsel the trial court taken the cross examination of PW 1 as nil and immediately posted the case for arguments on 2.4.2025 and on the said day the arguments on complainant side taken as heard and arguments on behalf of the accused taken as not addressed and posted the case for judgment on 2.5.2025 and on that day judgment was pronounced, even though the accused was absent and the trial court has not issued NBW to the accused and without securing the accused has pronounced the judgment in her absence, as such no fair opportunity was given to the appellant to contest the matter before the trial court. Hence, the impugned judgment is liable to be set aside by this court since the trial court had not given sufficient opportunity to the accused and has come to a conclusion by convicting the accused. The trial court has also

not given sufficient opportunity to the accused to cross examine the PW.1 and lead her evidence, under these circumstances, the matter is required to be remitted back to the trial court from fresh disposal without considering into the merits of the case.

14. Hence for the above said reasons if an opportunity is granted to the appellant to contest the case by cross examining the PW.1 and also by leading her evidence if any certainly it would not defeat the case of the complainant and cause prejudice to the complainant, therefore, for the said reasons, this court is of the considered view that the judgment passed by the learned trial judge warrants to interference by this court on the ground of natural justice as per the principles of law laid down by the Hon'ble Apex Court of India and Hon'ble High Court of Karnataka as referred supra.

15. It is also true that once the case remanded for fresh disposal as sought by the accused it consumes some sort of precious time of the court, but only on that ground the valuable rights of the accused to establish her defence and providing opportunity to the accused for conducting fair trial, the relief sought by the appellant cannot be denied. Even without giving an opportunity to the accused it cannot be expected to dislodge the presumption proposed to be drawn against the accused. The very apprehension of the complainant that if the matter is remanded back for fresh disposal of the case, it consumes the valuable time of the

court and the accused may had chance to dodged the proceedings before the trial court can be meted out or prevented by imposing stringent conditions to safeguard the interest of the complainant, thereby in view of the above stated reasons this court is of the considered opinion that the learned trial court has not provided sufficient opportunity to the accused to face fair trial, therefore, in order to comply the natural justice the matter in question is required to be remanded back for fresh disposal in accordance with law by providing sufficient opportunity to the accused, accordingly this point is answered in the **Affirmative**.

16. **Point No.2 and 3:** In the light of discussion made in the above point this court come to the conclusion that the matter in question is required to be remanded back for fresh disposal in accordance with law, such being the fact these points does not survive for consideration, accordingly these points answered as above.

17. **Point No.4:** In the light of discussion made and answer to the above points in the interest of justice it is just and proper to proceed to pass the following :

**ORDER**

The Criminal Appeal filed u/Sec.415 of BNSS is hereby allowed on cost of Rs.2,000/-.

The judgment and sentence passed by the learned Civil Judge & JMFC, at Bagepalli in C.C.No.165/2022 dated 2.5.2025 is hereby set aside

and remand back for fresh disposal in accordance with law subject to the following conditions:

The appellant/accused is directed to pay the cost of Rs.2,000/- to the complainant/PW.1 at the time of cross examination before the trial court.

The trial court is hereby directed to provide an opportunity to the accused for cross examination of the complainant/PW-1 and to lead defence evidence if the accused chooses to lead her evidence. The trial court shall take up the case from the stage of cross examination of the PW.1.

Both the complainant and accused are hereby directed to appear before the trial court on **17.8.2026** without expecting any notice or summons from the trial court and the appellant/accused is directed to cross examine the PW.1 on the date fixed for her appearance, unless and otherwise the learned trial court adjourn the matter for the specific reasons.

If the appellant / accused remained absent, the trial court is at liberty to proceed with the case in accordance with law.

The trial court shall adjudicate the case in the earliest that too shall make an all endeavor to

disposal of the case within three months from the date of receipt of order of this court.

Send TCR to the concerned court along with the copy of the judgment immediately.

(Dictated to the Stenographer grade-III directly on the computer, print out signed and then pronounced by me in open court on the **30<sup>th</sup>** day of July 2026)

(Siddanna B. Handral)  
III- Addl. District & Sessions Judge,  
Chickballapur.