

**IN THE COURT OF THE I ADDL. SESSIONS JUDGE
AT CHIKKAMAGALURU.**

*Present:- Sri. **K.S.THIMMANNACHAR** B.Sc.,LL.B
I Addl. Sessions Judge,
Chikkamagaluru.*

Dated this the 30th day of October 2015

CRIMINAL APPEAL NO.155/2014

*Appellant: Smt.Sarojamma B., W/o Rama Shetty H.V.,
Aged about 60 years, R/o Gopika
compound, Kanchugar street, Near
Suggikal, Chikkamagaluru.*

[Represented by Sri V.T.Thomas, Advocate]

V/s

*Respondent: Bomme Gowda, S/o Ramegowda @
Puttaswamy Gowda, Sadarahalli village,
Hiregouja post, Chikkamagaluru Taluk.*

[Represented by Sri H.C.Nataraj, Advocate]

J U D G M E N T

*This appeal is filed by the appellant under Section 372(2) of
Cr.P.C., against the judgment of acquittal passed in C.C.No.360/2014
dated 23.09.2014 on the file of the II Addl. Senior Civil Judge and
JMFC, Chikkamagaluru.*

*2. The appellant was the complainant and respondent was
the accused before the trial court. I would like to refer to the parties in*

this appeal with respect to their ranks, which they held in the trial Court.

3. The complainant filed a complaint against the accused stating that the accused for his urgent necessity borrowed a sum of Rs.1,10,000=00 from the complainant and for repayment of the said amount, the accused issued a cheque bearing No.628426 dated 08.07.2008 in favour of the complainant for Rs.1,10,000=00 drawn on Canara Bank, Hiregouza branch, Chikkamagaluru Taluk. It is stated that when the cheque was presented for encashment through her banker State Bank of Mysuru, Chikkamagaluru branch, it was returned with an endorsement dated 08.09.2008 stating that "Funds insufficient". It is stated that the complainant issued a notice dated 23.09.2008 calling upon the accused to pay the cheque amount. It is stated that the said notice was received by the accused on 30.09.2008 and he has not made the payment, instead he gave an untenable reply dated 04.10.2008. Hence, the complaint.

4. After filing of the complaint the sworn statement of the complainant was recorded. Thereafter, after taking cognizance of the offence, summons was issued to the accused. The accused appeared before the court. He was released on bail. His plea was

recorded. He has pleaded not guilty and claimed to be tried. Thereafter, the complainant was examined as P.w.1. Ex.P1 to P7 were marked. The accused examined himself as D.W.1, but no documents were marked on his behalf. The learned trial judge after hearing both sides and appreciating the evidence on record, acquitted the accused acting under Section 255(1) of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act.

5. Aggrieved by the above said judgment of acquittal, the complainant/appellant has preferred this appeal. The appellant has assailed the order of acquittal on the following grounds:

- 1) The trial court erred in appreciating the evidence on record.*
- 2) The complainant has complied with all the requirements of Negotiable Instruments Act to make out an offence under the Negotiable Instruments Act.*

6. I have heard the arguments of both sides.

7. The points that arise for my consideration are:

- (1) Whether the appeal is maintainable under Section 372(2) of Cr.P.C. against the Judgment of acquittal?*
- (2) What order?*

8. My answer to the above points are as under:-

Point No.1: In the Negative

Point No.2: As per final order for the following:

REASONS

9. **Point No.1:-** In the decision in Crl.Petition No.6072/2014 in the case of M/s.Hill Range Power Project Developers and others Versus M/s Acciona Wind Energy Private Ltd., the Hon'ble High Court of Karnataka at para Nos.6 and 7 of the Judgment has held that:

“6. Therefore, the word “Complainant” under Proviso to Section 142 of N.I.Act and “the victim” under Section 2(wa) of Cr.P.C., are not one and the same. In view of this, I am of the considered opinion that appeal filed under Proviso to Section 372 of Cr.P.C., is not maintainable.

7. The petition is accepted. The impugned order is set aside. The complainant is at liberty to file an appeal in the light of observations made herein and in accordance with law. If there were to be delay in filing the appeal, the complainant can invoke appropriate provisions of the Limitation Act”.

10. In the decision reported in 2014(1) DCR 481 in the case of Sri Gokulam chit and Finance Co.(P) Ltd Vs. Damodaran, at para 36, the Hon'ble High Court of Kerala has held that:

“36. Thus, in the instant case, I find that the appeal against acquittal of the accused in a complaint filed under Sec.190(a) read with Sec.200 of the Cr.P.C., alleging an offence punishable under Sec.138 of the N.I.Act, would not lie before the Sessions Court under Sec.372 of the Cr.P.C., and the same will lie before this Court with the special leave under Sec.378(4) of the Cr.P.C. Thus, there is no illegality or impropriety in the impugned judgment dismissing the appeal by the learned Sessions Judge on the ground of the lack of jurisdiction. Needless to say, this order will not stand in the way of seeking proper remedy, before this Court”.

11. Therefore, by holding so, the Hon’ble High Court of Karnataka and also Hon’ble High Court of Kerala have come to the conclusion that the appeal against the acquittal for the offence punishable under Section 138 of Negotiable Instruments Act is not maintainable.

12. The present appeal is filed under Section 372(2) of Cr.P.C. against the Judgment of acquittal passed by the learned II Addl. Senior Civil Judge and JMFC, Chikkamagaluru, in C.C.No.360/2014 dated 23.09.2014 for the offence punishable under Section 138 of the Negotiable Instruments Act. Therefore, in view of the above said decisions, the present appeal filed by the appellant

before this court is not maintainable. Accordingly, I answer point No.1 in the negative.

13. **Point No.2:-** *For the above said reasons, I proceed to pass the following:*

ORDER

The appeal filed by the appellant under Section 372(2) of Cr.P.C. against the judgment of acquittal passed by the learned II Addl. Senior Civil Judge and JMFC, Chikkamagaluru, in C.C.No.360/2014, dated 23.09.2014 for the offence punishable under Section 138 of the Negotiable Instruments Act, is hereby dismissed as not maintainable.

No order as to costs.

Send back the L.C.R along with a copy of the judgment to the concerned court.

[Dictated to the stenographer directly on the computer, the print out corrected by me and then pronounced in the open court on this the 30th day of October 2015].

Sd/-

[K.S.Thimmannachar],
I Addl. Sessions Judge,
Chikkamagaluru.

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