IN THE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE-FTSC-I, AT CHIKKAMAGALURU

:PRESENT:

Sri. Guruprasad R. Kulkarni, B.A., LL.B (Hons)
Addl. District and Sessions Judge FTSC-1
Chikkamagaluru

Crl. A.No.163/2024

Dated this 9th day of June 2026

APPELLANT: Lalu Pinto S/o Mouris Pinto,
Aged about 57 years,
House No.11, Gopala Gowda Nivasa, Varthakara Bhavana,
Gandhi Nagar, Behind Fort,
Sri.Kollapuradmma Temple,
Chikkamagaluru.

(Rep/by Sri. Gerald Dias, Adv.)

V/S

RESPONDENT: M/s Super Service Station,
K.M. Road, Chikkamagaluru,
A Proprietary concern by
its Proprietor:B.C. Nagaraj
S/o Late Chinne Gowda,
Aged about 77 years,
R/o Suggikal Road, Fort,
Chikkamagaluru.

(R/by Sri. D.L. Ramanujachar, Adv.)

JUDGMENT

This is an appeal assailing the judgment in C.C. No.1769/2022 dated 07.10.2024 on the file of II Addl. Civil Judge and JMFC., Chikkamagaluru.

2. Secured the trial Court records.

3. The ranks of the parties shall be referred to as appearing before the trial Court.

4. The complainant alleges that the accused has purchased diesel and engine oil from him and owed a sum of Rs.8,49,677.63/- as on 31.03.2021 which is acknowledged by him. However, the accused turned defaulter and therefore was liable to pay the outstanding amount alongwith interest at the rate of 12% per annum. As on 14.09.2022 a sum of Rs.5,99,677.63/- was due and after negotiation the accused agreed to pay a sum of Rs.7,50,000/- including the interest towards final settlement. Pursuant to the discharge of his liability, the

accused has issued a cheque bearing No.033281 dated 14.09.2022 for a sum of Rs.7,50,000/- drawn on Union Bank of India, Chikkamagaluru Branch in favour of the complainant. On 16.09.2022 the said cheque was dishonored due to insufficiency of funds. Thereafter, on 20.09.2022 the complainant got issued a demand notice to the accused which was duly served upon him on 21.09.2022. Despite due service of demand notice, the accused has failed to discharge his liability. Hence, the complaint.

5. The accused was summoned after taking cognizance of the offence punishable under Section 138 of Negotiable Instruments Act (for short "N.I. Act"). The accused has entered appearance before the trial Court and is enlarged on bail. Plea of the accused was recorded to which he has pleaded not guilty and claimed to be tried.

6. The complainant has examined himself as PW-1 and got marked Ex.P-1 to Ex.P-6. Ex.P-7 is marked for the

complainant upon confrontation through DW-1. The accused has denied the incriminating circumstances as false. The accused has examined himself as DW-1 and got marked Ex.D-1.

7. After hearing the matter on merits, the trial Court has convicted the accused and sentenced him for having committed the offence punishable under Section 138 of N.I. Act. Aggrieved by the said impugned judgment, the accused has preferred this appeal denying the existence of legally enforceable debt. He also contends that the complainant has misused the Ex.P-1 given towards security for purchase of petrol and diesel by creating Ex.P-6. He contends that the evidence on record is not appreciated by the trial Court in proper prospective. With these contentions it is prayed to set aside the judgment of conviction and sentence and to acquit him.

8. On the contrary, the Ld. counsel for the complainant contends that the contentions urged by the accused lacks

merits. The trial Court has properly appreciated the evidence on record and has arrived at a just conclusion in convicting the accused. The impugned judgment does not suffer from any infirmities calling for any interference in appeal.

9. Heard arguments on both sides.

10. The following points arises for my determination:-

1. Whether the complainant fulfills the essential requisites of Section 138 of N.I. Act?
2. Whether the accused is able to rebut the presumption under Section 139 of N.I. Act by probablising his defence?
3. What order?

11. My findings to the above points is as follows :

Point No.1 : In the Affirmative

Point No.2 : In the Negative

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

REASONS

12. **Point Nos.1 & 2:-** The facts pertaining to these points are overlapping and therefore these points are taken up for common discussion.

13. The evidence on record transpires that the accused was liable to pay an outstanding amount of Rs.8,49,677.63/- to the complainant towards the purchase of diesel and oil and after making part payment towards the said liability, the accused was liable to pay a sum of Rs.5,99,677.63/- with interest @ 12% per annum. Negotiations were held between the two pursuant to which the accused in discharge of his liability has issued the cheque/Ex.P-1 dated 14.09.2022 for a sum of Rs.7,50,000/- including the interest. The said cheque was dishonored for insufficiency of funds as evident from the bank memo dated 16.09.2022 at Ex.P-2. Thereafter, the complainant has got issued the legal notice/Ex.P-3 dated 20.09.2022 calling upon the accused to repay the said amount which was duly served upon him on 21.09.2022 which is evident from the postal acknowledgment at Ex.P-4.

14. The legal provisions governing the presumptions under the Negotiable Instruments Act particularly Section 118 of

the Act embodies that it shall be presumed, until the contrary is proved, that every negotiable instrument was drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability. Section 139 of the N.I. Act imposes reverse onus on the accused of proving the non-existence of the presumed fact that cheque was not issued in discharge of a debt/liability.

15. It is well settled that as per Section 139 it is obligatory on the Court to raise the presumption that the cheque is issued towards discharge of liability/debt in every case where the factual basis for the raising of the presumption is established. However it does not preclude the accused against whom the presumption is drawn from rebutting it and proving the contrary.

16. It is the initial burden on the complainant to establish that the cheque was issued by the accused towards

discharge of his debt/liability. Once the complainant is able to establish the said fact, the presumption under Section 139 of the N.I. Act shifts the evidential burden on the accused in proving that the cheque was not issued by him towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumption that he has issued the cheque in discharge of his debt/liability would operate against him.

17. In Basalingappa V/s Mudibasappa (2019) 5 SCC 418 it is held that in order to rebut the presumption and to prove the contrary, it is open for the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The accused has the option to establish that the non-existence of debt/liability is so probable that a prudent man ought under the circumstances of the case, to act upon the supposition that debt/liability did not exist.

18. Thus, the accused has two options, first in proving that the debt/liability does not exist by leading defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstance of the case.

19. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party. It may comprise circumstantial evidence or presumption of law or fact. Thus, it can be derived that once the accused tenders evidence to the satisfaction of the Court that there exists no debt/liability, the burden shifts on the complainant to prove the existence of a debt/liability. The presumption under Section 139 of N.I. Act does not come to the aid of the complainant if he fails to prove the said fact.

20. In Bir Singh V/s Mukesh Kumar (2019) 4 SCC 197 the Hon’ble Supreme Court has held that mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque is sufficient to draw the presumption.

21. It is the specific defence raised by the accused that the complainant has misused his signed blank cheque issued towards the security of purchase of diesel and oil on credit basis and to have created Ex.P-6 which is the confirmation of balance dated 28.07.2021. Though the accused claims that the said cheque is misused by the complainant, no evidence is forthcoming that he has taken any legal recourse in this regard against the complainant regarding the alleged misuse of his cheque.

22. In Sripati Singh V/s State of Jharkand (2021 SCC OnLine SC 1002) the Hon’ble Supreme Court has held as under:

"17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as

security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

23. Therefore, the contention that the cheque in question was issued towards security or that it was not issued in respect of an outstanding debt or liability, cannot be sustained. The accused is required to demonstrate that

there was no legal debt or liability outstanding towards the complainant, which the accused has failed to prove in the present case.

24. DW-1 has categorically admitted that he has been purchasing diesel and engine oil from the complainant for the past 30 years. The disputed fact is as to the outstanding balance for having purchased the diesel and oil from the complainant. The accused has also not given any reply to the legal notice compelling to draw an adverse inference against him.

25. Though the accused disputes the contents of the cheque/Ex.P-1, he does not dispute his signature over the same. Section 20 of N.I. Act dealing with inchoate instruments contemplates that "where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima

facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount, provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

26. The mandate of Section 20 of N.I. Act is clear that once the execution of cheque is admitted, it shall be taken that the cheque was issued by the accused in favour of the complainant towards the discharge of his liability. Hence the presumption under Section 139 of N.I. Act needs to be drawn against the accused as having issued the cheque/Ex.P-1 towards discharge of his liability.

27. The oral and documentary evidence tendered by PW-1 and Ex.P-1 to Ex.P-7 it is manifest that the complainant has fulfilled the essential requisites of Section 138 of N.I. Act. The accused is unable to impeach the credibility of the evidence led by PW-1.

28. The evidence tendered by DW-1 or the bank statement at Ex.D-1 does not probablise the defence of the accused as regards to the non-existence of legally enforceable debt. The accused is unable to discharge the evidential burden in discrediting the evidence led by the complainant/PW-1 nor he is able to demonstrate any credible circumstance so as to rebut the presumption under Section 139 of N.I. Act by probablising his defence. None of the grounds urged by the accused in appeal in support of his contentions are tenable.

29. Having re-appreciated the evidence on record, it is manifest that the trial Court has properly appreciated the evidence before it and has arrived at a just conclusion in

convicting and sentencing the accused which does not call for any interference in appeal. Accordingly, I answer point No.1 in the Affirmative and point No.2 in the Negative.

30. **Point No.3**:- For the reasons indicated above, I proceed to pass the following:

ORDER

Appeal is hereby **DISMISSED** with cost of Rs.2,000/-.

The Judgment of conviction and sentence in C.C. No.1769/2022 dated 07.10.2024 on the file of II Addl. Civil Judge and JMFC., Chikkamagaluru is hereby **AFFIRMED**.

Records be consigned.

G R KULKARNI
Digitally signed by G R KULKARNI
Date: 2026.06.09 18:54:48 +0530

Addl. Dist. & Sessions Judge-FTSC-1
Chikkamagaluru