KADW050060502022

Presented on : 28-09-2022
Registered on : 10-10-2022
Decided on : 04-12-2023
Duration : 1 year, 2 months, 6 days.

IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE & C.J.M., DHARWAD

: PRESENT:

Sri. Mahesh Chandrakanth **B.A., LL.M.**
III Addl. Senior Civil Judge & C.J.M.,
Dharwad

Dated this the 4th day of December, 2023

Criminal Case No.3224/2022

Complainant : M/s Swagat Enterprises,
Represented by its Karta
Sri. Swagat Appasaheb Jinagouda
Age: 39 years, Occ: Business
R/o 170/2, Jot society,
Jyotibha Phule road, Dadar (East),
Mumbai, unit at Dharwad.

(By Sri.H.R.Bentur-Adv.,)

- Vs -

Accused : M/s Sangale Motors,
Represented by its proprietor,
Sri. Swapnil S/o Vijay Sangale
Age: about 46 years, Occ: Business,
R/o Shri Saptashrungi, Devi Temple,
Vivekanand Nagar No.1,
Manmad, Taluk: Nandgaon,
Dist: Nasik 423104, Maharashtra.

and

Sri. Swapnil S/o Vijay Sangale
Proprietor of M/s Sangale Motors
Age: about 46 years, Occ: Business,
R/o Chandwad Road, Near Patil and Singe Petrol Pump, Manmad,
Taluk: Nandgaon, Dist: Nasik 423104,
Maharashtra.

and

M/s Sangale Motors,
C/o Shri Saptashrungi Electronics,
Gala No.1, SR No.371/5, 14/15,
Plot No.4, Darade Complex, Nimon road,
City Manmad, Taluk: Nandgaon,
Dist: Nasik 423104, Maharashtra.

and

M/s Sangale Motors
Near Hotel Shivie, Chandwad Road,
Manmad-423104

and

M/s Sangale Motors
Varad Shankul, Nandgaon Road,
Manmad-423104.

(By Sri.P.V.Vernekar-Adv.,)

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: J U D G E M E N T :

This private complaint is filed by the complainant under section 200 of Cr.P.C., alleging that the accused has committed offence punishable under section 138 of Negotiable Instruments Act. Originally, this case file was on the file of III Addl. Civil Judge and JMFC Dharwad in CC No.260/2018 and the same has been transferred to this court as per the order of the Hon'ble CJM Dharwad and it is renumbered as CC No. 3224/2022.

2. ***<u>Brief facts of the complainant's case are as under</u>:***

That, the complainant is a stockiest and distributor for tractors manufactured by M/s International Tractors Ltd., in Maharashtra. The accused is authorized dealer for sale and service of said company products. The accused requested the complainant to provide tractors and various products of said company on credit basis and he agreed to make payment timely for those supply of goods. The accused is carrying business with complainant on credit basis as per the written agreement entered into between them dated 20.08.2014. As per the said agreement the accused was liable to make full payment of said credit transaction within 30 days from the date of supply of products and if he fails to pay said amount within said period, he has to pay 18% interest per annum on that amount till its realization. Thereafter they entered into another agreement dated 09.01.2016, whereby the accused agreed to pay credit sale amount within 30 days and if he fails to pay that amount within said period, he agreed to pay

1.5% interest for 30 days.

3. Accordingly, the complainant sold and supplied and delivered the tractors and other materials to the accused. He accepted the same and he confirmed the outstanding balance of Rs.76,28,032/- in the agreement dated 09.01.2016. Said transaction was for the period from 01.04.2015 to 28.12.2015 and he again confirmed the balance of Rs.76,64,600/- for the period from 01.04.2015 to 31.03.2016. Hence, as on 30.09.2017 the total outstanding due payable by accused was Rs.95,74,600/-. When the complainant demanded said amount the accused issued following 10 cheques;

Sl. No.	**Cheque No.**	**Date of cheque**	**Amount (Rs.)**	**Reason for Return**
1.	103307	30.09.2017	10,00,000/-	Payment stopped by drawer
2.	103308	30.09.2017	10,00,000/-	Payment stopped by drawer
3.	103309	30.09.2017	10,00,000/-	Payment stopped by drawer
4.	103310	30.09.2017	10,00,000/-	Payment stopped by drawer
5.	103311	30.09.2017	10,00,000/-	Payment stopped by drawer
6.	103312	30.09.2017	10,00,000/-	Payment stopped by drawer
7.	057384	30.09.2017	10,00,000/-	Funds insufficient

8.	057385	30.09.2017	6,64,600/-	Funds insufficient
9.	057386	30.09.2017	10,00,000/-	Funds insufficient
10.	057387	30.09.2017	9,10,000/-	Funds insufficient
Total				**95,74,600/-**

4. The complainant presented said cheques for encashment on 28.12.2017 through its banker Karnataka Bank Ltd., Gopalpur branch, Dharwad. The Sl.No.1 to 6 cheques were returned on 29.12.2017 with an endorsement 'payment stopped by drawer' and remaining Sl.No.7 to 10 cheques returned on the same day with endorsements 'funds insufficient', thereby those cheques dishonoured. The complainant's banker issued return memos on 02.01.2018. Hence, the complainant issued legal notice to the accused on 23.01.2018 demanding the payment of said cheques amount. Said notice duly served to accused on 29.01.2018. In spite of service of said notice, he not paid the cheque amount, thereby he committed the offence punishable under Section 138 of N.I. Act. Hence, the complainant filed the present complaint.

5. The Court took cognizance of the offence against the accused for the offence punishable under Section 138 of

N.I.Act, and issued summons to the accused. He appeared through his advocate and obtained bail. Hence, he is on bail.

6. Plea was framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

7. To prove the case of the complainant, its authorized signatory one Sri. Swagat Jinagouda got examined himself as P.W.1 and he got marked Ex.P.1 to 66 documents. As per the decision of Hon'ble Apex Court reported in **AIR 2014 SC 2528 (2014(5) SCC 590)** between ***Indian Bank Association and others Vs. Union of India and others,*** the sworn statement of the complainant is treated as his chief evidence.

8. On completion of the complainant’s evidence, statement of the accused under Section 313 of Cr.P.C has been recorded. He denied all the incriminating evidence appeared against him. He examined one witness as D.W.1 and he himself got examined as D.W.2 and he got marked Ex.D.1 to D.4 documents.

9. Heard the arguments of both side and perused the material placed on record and written arguments filed by the

accused.

10. The following points arise for my consideration :-

1. Whether the complainant proves that the accused issued 10 cheques i.e., (1) cheque bearing No.103307, (2) cheque bearing No.103308, (3) cheque bearing No.103309, (4) cheque bearing No.103310, (5) cheque bearing No.103311, (6) cheque bearing No.103312, (7) cheque bearing No.057384, (8) cheque bearing No.057385, (9) cheque bearing No.057386, (10) cheque bearing No.057387, all drawn on State Bank of Hyderabad, Manmad branch, Dist: Nasik, Maharashtra, dated 30.09.2017 for the discharge of legal liability and when the complainant presented the said cheques, the Sl.No. 1 to 6 cheques returned on 29.12.2017 with endorsements 'payment stopped by drawer' and remaining Sl.No.7 to 10 cheques returned on 29.12.2017 with endorsements 'funds insufficient' and thereafter in spite of service of legal notice the accused not paid the amount, thereby he committed offence punishable under Section 138 of N.I. Act?

2. What order?

11. My answers to the above points are as under;

Point No.1: In the affirmative

Point No.2: As per final order,

for the following:

: **R E A S O N S** :

12. **Point No.1** :- To prove the case of the complainant its authorized signatory one Swagat Jinagouda got examined himself as P.W.1 and he filed his affidavit in lieu of his sworn statement and he adopted the same as his chief evidence. In support of his oral evidence he relied on Ex.P.1 to 66 documents. Ex.P.1 to 10 are cheque bearing Nos.103307, 103308, 103309, 103310, 103311, 103312, 57384, 57385, 57386, 57387 respectively. Ex.P.11 to 30 are bank memos, Ex.P.31 is copy of company ledger statement, Ex.P.32 is confirmation statement of account, Ex.P.33 is office of legal notice, Ex.P.34 to 38 are postal receipts, Ex.P.39 to 43 are postal A.D. cards, Ex.P.44 is dealership certificate, Ex.P.45 is letter dated 20.07.2014, Ex.P.46 is agreement dated 20.08.2014, Ex.P.47 is letter of undertaking dated 21.08.2014, Ex.P.48 is agreement letter dated 09.01.2016, Ex.P.49 is extract of ledger account, Ex.P.50 is letter of undertaking dated 09.1.2016, Ex.P.51 is additional letter of

undertaking, Ex.P.52 is signature verification form, Ex.P.53 is payment demand notice dated 24.08.2019, Ex.P.54 & 56 are reply notices, Ex.P.55 are postal receipts, Ex.P.57 is ledger account. Ex.P.58 to P.60 are invoices, they are marked by confrontation to D.W.2. The P.W.1 got marked Ex.P.61 certified copy of order in C.S. Suit No.93/22, Ex.P.62 to 65 are e-mail copies and Ex.P.66 is account statement in his further evidence.

13. It is the case of the complainant that he supplied the tractors and other goods to the accused and the total outstanding balance amount payable by the accused to the complainant was Rs.95,74,600/-. Hence, to clear said outstanding balance amount the accused issued cheques in question and the same are dishonored and in spite of service of legal notice, the accused not paid the cheques amount. All the cheques are dated 30.09.2017. The same were presented on 28.12.2017 and the same were dishonored on 29.12.2017. Thereafter the complainant issued legal notice on 23.01.2018 to the accused to pay the cheques amount within statutory period. The said notice is served to accused on 29.01.2018, but he not paid the amount. Hence, the complainant filed

this complaint on 26.02.2018. Thus, on careful perusal of these documents it is crystal clear that the complainant has proved th basic ingredients of section 138 of N.I. Act. Hence, statutory presumption come into play in favour of the complainant that accused issued cheques in question to discharge the legal liability. Burden is on the accused to rebut the said presumption.

14. To rebut the said presumption the accused cross-examined to the P.W.1 and he took a defence that he has not executed any agreement and he has not issued the cheques in question in favour of the complainant and the complainant by misusing the security cheques filed false complaint against him. Further he took a defence that there is no legal liability to pay the cheque amount.

15. To prove that there was an agreement between the complainant and accused, the complainant produced agreement dated 20.08.2014 as per Ex.P.46. On careful perusal of this document, it reveals that this agreement is between the complainant and accused and it is duly notarized and signed by the parties and witnesses. Further the complainant has produced another agreement dated

09.01.2016 as per Ex.P.48. This agreement is also between the complainant and accused and this agreement is also duly notarized, signed by the parties and witnesses. On these 2 documents the advocate for the accused has cross-examined to the P.W.1. But nothing worth has been elicited to prove that these documents are false and fabricated documents and even nothing has been elicited to prove that the accused has not signed to these 2 agreements and he not executed these 2 agreements.

16. To the Ex.P.48 agreement one Devidas who is friend of the accused has signed as a witness. The accused examined said witness as D.W.1. He deposed that he signed to Ex.P.48 agreement as a witness and he identified his signature as per Ex.P.48(a) and he deposed that said document was executed in the house of complainant and accused handed over the blank cheques in his presence. Thus, as per his chief evidence itself it is clear that, the accused executed this agreement in favour of complainant in the presence of said witness. Hence, the accused cannot deny his signature in those 2 agreements.

17. In his cross-examination the D.W.1 has admitted

that the accused had purchased those 2 bond papers at Manmad. On perusal of the entry made in these 2 agreements, it is crystal clear that said bond papers purchased by the accused at Manmad. Thus, it is clear that he purchased those 2 bonds and executed those agreements in favour of the complainant. Thus, the complainant has proved that there was business transaction between him and the accused and accused executed those 2 agreements and agreed to purchase the tractor and other goods on credit basis and pay interest in case of failure as mentioned in the said agreements.

18. The accused led his defence evidence. He himself got examined as D.W.2 and he filed his affidavit in lieu of his examination-in-chief and he deposed that his signature was obtained on the agreements by way of misrepresentation. But to prove his said contention he has not produced any cogent evidence. He deposed that the agreement dated 09.01.2016 i.e., Ex.P.48 is fabricated and forged document and he filed a complaint against the present complainant at Nandgaon police station. But he has not produced any document to prove the same. On the other hand, as per the

evidence of D.W.1 it is clear that accused signed to said agreement and now he falsely deposed before the Court that, said agreement is fabricated and forged one. Thus, his said defence is not believable.

19. As the complainant has proved the business relationship between it and accused as per Ex.P.46 and 48, now the complainant has to prove that, it supplied the goods to the accused and balance payment was Rs.95,74,600/-. To prove the same, the complainant relied on Ex.P.48 agreement. As per the recital No.26 of said agreement, it reveals that the accused who was dealer agreed and confirmed that outstanding balance as on 28.12.2015 was Rs.76,28,032/-. Thus, it is clear from this document that as on the date of said agreement the said outstanding balance was payable by the accused to the complainant.

20. To prove the said amount the complainant produced the account statement as per Ex.P.49. From this document also it is clear that, said amount was outstanding amount payable by the accused to the complainant. Further to prove the said outstanding amount, the complainant relied on Ex.P.51 letter issued by the accused to the complainant.

As per this document also it is clear that the accused has undertaken to pay said outstanding amount and he stated that he has given six undated blank cheques, limited to Rs.10,00,000/- each as per agreement dated 09.01.2016. Thus, as per this document also it is clear that said amount was payable by the accused to the complainant.

21. The complainant issued a notice to the accused calling upon him to pay outstanding balance amount i.e., as on 05.08.2019 of Rs.1,20,28,945/-. To said legal notice accused issued reply notice through his advocate on 04.09.2019 as per Ex.P.54. From this document, it reveals that the accused has clearly admitted about execution of Ex.P.48 agreement dated 09.1.2016. Thus, it is clear that he executed said agreement and he confirmed the outstanding balance, but before this Court he falsely deposed that said agreement is fabricated one. His oral evidence and documentary evidence are contrary to each other. Thus, his entire evidence is not believable.

22. To prove the outstanding balance payable by accused i.e., cheque amount as on 30.09.2017 was Rs.95,74,600/-, the complainant has produced the ledger

account statement as per Ex.P.57. From this document it is crystal clear that the outstanding amount payable by the accused to complainant was Rs.95,75,563/-. Further the complainant has produced all the invoices to prove the supply made by it to the accused and said invoices were confronted to the accused, he admitted the same, hence, the same are respectively marked as Ex.P.58 to 60. From these documents also it is clear that the complainant supplied the tractors and other goods to the accused on credit basis.

23. The Ex.P.62 to 65 are the e-mail correspondences between accused and complainant. From these documents, it reveals that the accused requested the account statement for the period from 01.04.2016 to 31.03.2017 and accordingly, the complainant has forwarded said statement to the accused as per Ex.P.65 e-mail and its attachment. From these documents also it reveals that the complainant supplied the materials and sent the statement to the accused. The accused has not disputed those e-mails and statement sent by the complainant and even the accused has not produced the said statement to contradict the same. Hence, as per the above referred documents, it is clear that there was business

transaction between the accused and complainant on credit basis and the accused was liable to pay cheque amount to the complainant.

24. Though the accused has disputed his liability to pay cheque amount, but he not elicited anything in the cross-examination of P.W.1 to dispute the statements produced by the complainant and even the accused has not produced any other statements to disprove the statement of the complainant. Hence, it is clear that the statements produced by the complainant are believable and it is clear that to discharge the said legal liability i.e., to clear the outstanding amount payable by the accused to complainant, the accused issued cheques in question.

25. The accused has taken a contention that he issued cheques in question for security purpose. There is no dispute with regard to the same. The parties in their respective agreements itself have clearly mentioned that the accused has to issue blank cheques towards outstanding balance payment of credit transaction. As per Ex.P.47 letter issued by accused to the complainant dated 21.08.2014 it is clear that through said letter the accused issued six blank cheques

in favour of complainant. Out of those six cheques, the Sl.No.7 to 10 cheques are presented by the complainant. In the said Ex.P.47 letter itself the complainant has clearly mentioned that he is purchasing the tractors on credit basis as per agreement dated 20.08.2014 (Ex.P.46) and he undertaken that, if he fails to make payment of outstanding credit dues, the complainant is at liberty to fill up the cheques, date, amount by calculating the interest and he can present the said cheques. Thus, it is clear that the accused has given authority to the complainant to fill the inchoate cheques.

26. Further it is clear from Ex.P.48 agreement recital No.4 that, if the accused-dealer fails to make the payment of outstanding dues, the complainant is at liberty to fill up the cheques and present for encashment. In Ex.P.51 also the accused has admitted about issuance of six undated blank cheques in favour of complainant. Further as per Ex.P.50 agreement, it reveals that the accused issued six blank cheques in favour of complainant for purchase of tractors on credit basis. The said six cheques are Sl.No.1 to 6 cheques. Thus, it is clear that he issued Sl.No.1 to 10 cheques in

favour of complainant for security purpose and he agreed that if he failed to pay the outstanding amount, the complainant is at liberty to fill up the cheques and present for encashment. Thus, it is clear that the accused issued blank cheques and given authority to the complainant to fill up the said cheques for clearance of outstanding liability of the accused.

27. As per section 20 of Negotiable Instruments Act, it is clear that if an incomplete cheque is delivered it gives authority to the holder to complete the same and it prima facie gives authority to him to fill up the same and complete the instrument. Thus, it is clear that the accused given authority to the complainant to complete the above referred Sl.No.1 to 10 cheques and present the same for encashment.

28. The advocate for the accused has vehemently argued that the cheques in question are issued by the accused for security purpose and those cheques are stale cheques. Hence, by misusing the same the complainant filed false case. He further argued that blank cheque is not a valid cheque in the eyes of law and cheques in question are presented after lapse of six months. Hence, cheques in

question have no validity in the eyes of law. But as discussed above, by way of written agreements and letters the accused has given authority to the complainant to fill the blank cheques. Thus, it is clear that the accused himself authorized the complainant to fill the cheques and present the same. There is no bar to fill the security cheques and present for encashment. The Hon'ble Apex Court in the decision reported in **2016(10) SCC 458** between ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited*** case, it is held that even if the post dated cheque is issued for security purpose also section 138 of N.I. Act, attracts. Thus, the argument of the advocate for the accused holds no water.

29. He argued that the cheques in question are issued in the year 2014 and they are presented in the year 2017. Hence, they are not valid cheques and he argued that the validity of cheque will be only for six months. In the cheques the validity is shown as 3 months “from the date of instrument”. Thus, the validity of the cheque will start from that date and ends after 3 months. The cheque dates are 30.09.2017 and they are presented on 28.12.2017. Hence, it

is clear that within 3 months from the date of drawing of those cheques are presented for encashment. Thus, it is clear that within the validity period itself those cheques are presented.

30. The advocate for the accused argued that the date of the cheque has to be presumed from the year 2014. But to substantiate his said argument there is no any supporting authorities or law. On the other hand, as per the judgment of Hon'ble Apex Court reported in **(2011)3 Supreme Court Cases 609** between ***Shri Ishar Alloy Steels Ltd., Vs. Jayaswals Neco Ltd.,*** it is clear that the validity of the cheque starts from the date mentioned in the cheque. Thus, the validity of the cheque starts from that date and not from the date of handing over the cheque for security purpose. Thus, his said arguments also holds no water. The relevant para No.7 of the said judgment is extracted as under;

> "7. It has further to be noticed that to make an offence under Section 138 of the Act, it is mandatory that the cheque is presented to "the bank" within a period of six months <u>from the date on which it is drawn or within the period of its validity, whichever is earlier</u>. It is the cheque drawn which has to be presented to "the bank" within the period specified therein. <u>When a post-</u>

> dated cheque is written or drawn, it is only a bill of exchange. The post-dated cheque become a cheque under the Act on the date which is written on the said cheque and the six months' period has to be reckoned, for the purposes of Section 138 of the Act, from the said date."
>
> (emphasis supplied)

31. He argued that blank cheque is not a valid cheque. But as per section 20 of Negotiable Instruments Act, the law itself permits to issue blank cheques and as per the decision of Hon'ble Apex Court in **Sampelly (Supra)** case, it is clear that issuing blank cheques for security purpose is permissible. Thus, his said arguments holds no water.

32. The accused has never disputed his signature in the cheques in question. Further it is clear that he issued those cheques to clear the outstanding balance as per the agreements. The complainant proved that the outstanding amount payable by the accused to complainant was Rs.95,74,600/- i.e., cheque amount and for that amount only the complainant filled the cheques and presented the same. Thus, it is clear that the cheques in question are issued by the accused to discharge the legal liability.

33. The accused to rebut the statutory presumption available to the complainant and to prove his defence that the

complainant misused his blank cheques which were issued for security purpose he has not produced any cogent evidence. Thus, he failed to prove his defence and rebut the statutory presumption.

34. The accused led his defence evidence and produced Ex.D.1 to D.4 documents. He produced the e-mail letter as per Ex.D.1, which is forwarded e-mail and it reveals that the same is dated 03.03.2023. But the original message is pertaining to the year 2014. But he has not produced the said original e-mail and its attachments. Thus, Ex.D.1 cannot be relied upon in this case and the same is not relevant.

35. The accused has produced 2 letters issued by International Tractors Limited as per Ex.D.3 and D.4. These 2 letters are between the said International Tractors Limited and accused and these documents are no way concerned to the complainant and transaction in question. Thus, these 2 documents are also not relevant to the present case.

36. The advocate for the accused has argued that this Court has no territorial jurisdiction to try the present case.

The present case is based on the cheques in question. Earlier the jurisdiction to try the N.I. Act, cases was different. But now the jurisdiction is settled and fixed by legislature itself by amending to section 142 of Negotiable Instruments Act i.e., by inserting sub-section (2) and now the jurisdiction is where the cheque is delivered for collection through an account. The section 142(2) of N.I. Act, reads as under;

> "(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—
>
> (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account,-is situated; or
>
> (b) if the cheque is presented for payment by the payee or holder in due course, otherwise, through an account, the branch of the drawee bank where the drawer maintains the account. is situated.
>
> Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.".

37. As per the above section, it is clear that to try the complaint for the offence punishable under Section 138 of

N.I. Act, now the jurisdiction is where the cheque is delivered for collection through an account i.e., where the cheque is presented for encashment. Admittedly, the cheques in question are presented through Karnataka Bank Limited, Gopalpur branch, Dharwad. Thus, it is clear that Dharwad i.e., this Court is having jurisdiction to try the present case. Hence, the arguments of the advocate for the accused that this Court has no territorial jurisdiction to try the complaint is not tenable.

38. He argued that in the agreements the jurisdiction is fixed at Mumbai and an arbitration clause is also inserted. But said jurisdiction is only with regard to civil dispute arising out of the said agreements if any. The jurisdiction for dishonour of cheque is entirely different and the parties cannot fix the jurisdiction as per their own choice, because now the jurisdiction is fixed as per section 142(2) of Negotiable Instruments Act. Thus, the said arguments also holds no water.

39. The advocate for the accused has further argued that the signatures of the accused have been forged by the complainant. But to prove the same the accused has not

produced a single piece of evidence before this Court. Though he alleged that he lodged a complaint with Nasik police, but he not produced any documents to prove the same. Thus, he failed to prove his said allegation.

40. He further argued that D.W.2 (accused) has deposed in his evidence that the agreements were not notarized before him and he was not present at that time. But he never disputed his signature in the said agreements and execution of said agreements. Moreover, it is for the accused to prove that said documents are not duly notarized before the notary. To prove the same, he not taken any pain to summon the said notary and to prove the said defence. Thus, he failed to prove this defence also.

41. The advocate for the accused has taken a defence at the time of arguments that complainant has made extra billings and he supplied defective goods. But to prove the same also the accused has not produced any evidence before this Court. Mere taking a defence is not sufficient. The party who asserts or takes such defence has to prove the same. But to prove the said defence the accused has not produced any cogent material before this Court.

42. In the written arguments it is contended that, the complainant is removed from stockiest by the main company. The same is irrelevant to the present case. Moreover, to prove the same the accused has not produced any evidence before this Court. The accused took a defence that International Tractors Limited company is proper person to depose in this case. Hence, he filed an application to summon the said company. His said application is rejected by this Court. Against that he filed Criminal Revision Petition No.67/2021. The same is dismissed with costs of Rs.10,000/-. Thus, it is clear that the accused has taken several inconsistent defences and he failed to prove the same. Thus, it is crystal clear that he utterly failed to prove his defence and rebut the statutory presumption available to the complainant.

43. The advocate for the accused has argued that in Ex.P.48 the proprietor name is shown as Raju Mahajan, but the name of the accused is not shown. But in the said agreement itself it is clearly stated that said agreement is between the complainant and accused i.e., M/s Sangale Motors and accused himself signed to said document on each page and his friend D.W.1 also signed. Thus, mere

typographical mistake in the name will not sufficient to deny the entire agreement. Though name is wrongly typed at page-2, but at page No.4 i.e., last page the name of the accused is correctly typed and he signed to the said agreement. Hence, said argument also holds no water.

44. He further took a contention that in the notary column the page number is shown as '2' and said agreement contains 8 pages. On perusal of said endorsements put by notary, it reveals that he mentioned serial number, date and page number. That does not mean that said agreement contains only 2 pages. Moreover, said notary is the proper person to clarify the said doubt of the accused. If the accused is having said doubt he could have summoned the said notary and get clarified his doubt. But he has not made any effort to summon the said notary and prove his defence. Thus, his said argument also holds no water.

45. The advocate for the accused in his written arguments has taken a contention that the complainant has no capacity to file the complaint as HUF (Hindu Undivided Family). In the cause-title it is shown that complainant firm is represented by its kartha. Kartha means not only

pertaining to Hindu Undivided Family, kartha is a term which denotes management of a family or firm. Herein this case there is no family dispute is involved. Hence, HUF is not involved in this case. The connotation 'kartha' mentioned in the cause-title means manager of said firm. Thus, the accused cannot misinterpret the said term and take benefit of the same.

46. Once the complainant proves that cheques in question belongs to accused and the same are duly presented and complainant complied all the ingredients of section 138 of N.I. Act, the statutory presumption come into play in his favour and accused has to rebut the same either by cross-examining the complainant or by leading cogent evidence. Mere taking inconsistent defence and illogical defence is not sufficient to rebut the said presumption.

47. The advocate for the complainant has argued that once the complainant proves ingredients of section 138 of N.I. Act, presumption arises in favour of complainant and the accused has to rebut the same by adducing cogent evidence. In support of his arguments he relied on a decision reported in **(2019) 4 Supreme Court Cases 197** between ***Bir Singh***

Vs. Mukesh Kumar. He further argued that as the complainant has proved his case, the accused should be punished with double of the cheque amount and complainant may be compensated. In support of his said argument, he relied on a decision reported in **(2012) 1 Supreme Court Cases 260** between ***R.Vijayan Vs. Baby and another,*** and he relied on another decision reported in **(2015) 17 Supreme Court Cases 368** between ***H.Pukhraj Vs. D. Parasmal***.

48. The advocate for the accused in support of his arguments he relied on the following decisions;

(i) 2008 Legal Eye (SC) 633, between ***Harman Electronic (Private) Limited Vs. National Panasonic India Limited***,

(ii) 2010 Legal Eye (P & H) 4677, between ***Rishi Kumar and another Vs. Parle Biscuits Pvt Ltd.,***

(iii) 2010 Legal Eye (Bom) 3824, between ***Punjabrao Bhagwanrao Ghuge Vs. Rajkumar S/o Kamalkishor Agrawal,***

(iv) 2011 Legal Eye (Mad) 2254, between ***Agate Finance Limited and others Vs. L.S.P. Agro Limited and others.***

(v) 2015 Legal Eye (Del) 5225 between ***Ashok Baugh Vs. Kamal Baugh and others,***

(vi) 2010 Legal Eye (Del) 4480 between ***Religare Finvest Limited Vs. State and another,***

(vii) 2008 Legal Eye (Ker) 201 between ***Joseph Sartho Vs. Gopinathan Nair***,

(viii) 2007 Legal Eye (Bom) 509 between ***Hanumant R. Naik Vs. Ajit Harmalkar,***

(ix) Judgment of Hon'ble Apex Court in Civil Appeal No.4226 of 2012 between ***Anvar P.V. Vs. P.K.Basheer and others.***

49. The above referred Sl.No.1 and 2 judgments i.e., **Harman Electronics (Private) Limited** and **Rishi Kumar** (**supra)** cases are pertaining to the jurisdiction of the Court. As discussed above and in view of section 142(2) of Negotiable Instruments Act, now jurisdiction is settled. Hence, these 2 judgments are not applicable to the present case.

50. Sl.No.3 judgment i.e., **Punjabrao (supra)** case is on probable defence and proof. It is held in that case that, if the accused has made out probable defence, he has to be acquitted. But herein this case the accused has not made any such probable defence and his oral and documentary evidence are contrary to each other. Thus, this judgment is not applicable to the facts of the present case.

51. Sl.No.4 judgment i.e., **Agate Finance Limited (supra)** case is pertaining to clubbing of cheque cases. In that reported judgment 29 cases were clubbed together. Hence, the Hon'ble High Court of Madras has held that clubbing of cases is not permissible in law. But herein this case no such cases are clubbed with the present case. Hence, this judgment is also not applicable to the present case. There is no bar to present 10 cheques and file a common complaint. Herein this case, all the 10 cheques are same dated cheques and issued by the accused in favour of the complainant and they are presented in a same bank and common legal notice is issued. Thus, there is no bar to file single complaint. Hence, said judgment is not applicable to the facts of the present case.

52. Sl. No.5 **Ashok Baugh (supra)** case is pertaining to stolen cheques/missing cheques. Herein this case, there is no such allegation that the complainant stolen the cheques of the accused and misused the same. Thus, this judgment is also not applicable to the facts of the case on hand.

53. Sl.No.6 **Religare Finvest Limited (supra)** case is

on question of jurisdiction. The same is also not applicable to the present case.

54. Sl.No.7 **Joseph Sartho (supra)** case is pertaining to difference of amount in the cheque and debt. But herein this case, the accused has not proved any such defence that there is difference in the cheque amount and his liability. Thus, this judgment is also not applicable to the case on hand.

55. The advocate for the accused relied on **Hanumant R. Naik (supra)** case and argued that the blank cheque is not the cheque in the eyes of law. He relied on head note of said citation. But on careful reading of the said judgment it reveals that, the complainant has failed to prove the transaction between him and the accused. Hence, the Hon'ble High Court has held that accused has made out probable defence and complainant failed to prove his case. But herein this case, the accused has not made out any probable defence. Thus, said judgment is also not applicable to the present case. Hence, decisions relied on by the advocate for the accused are not helpful to the accused.

56. As discussed above, the complainant has clearly proved that he supplied the tractors and other goods to the accused and the accused was liable to pay outstanding amount of Rs.95,74,600/-. Hence, to clear the said amount he issued cheques in question and the same are dishonoured and in spite of service of legal notice, the accused has not paid the cheque amount, thereby he committed the offence punishable under Section 138 of N.I. Act. Thus, I answer **point No.1 in the affirmative**.

57. **Point No.2**: The transaction between the accused and complainant is a commercial transaction and the payment of outstanding amount i.e., cheques amount is pending for payment since 2017. Now we are in the year 2023. Hence, it is clear that said payment is pending since from last six years. Thus, by considering the facts and circumstances of the case, this Court is of the opinion that it is just and proper to convict the accused for the offence punishable under Section 138 of N.I. Act, and impose fine of Rs.1,25,00,000/- and compensate the complainant. Thus, I proceed to pass the following;

: <u>O R D E R</u> :

Acting under Section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable under section 138 of N.I. Act.

The accused is sentenced to pay fine of Rs.1,25,00,000/- and in default of payment of fine amount, he shall undergo simple imprisonment for a period of 6 months.

Acting under Section 357 of Cr.P.C., out of the fine amount the accused is hereby directed to pay Rs.1,24,90,000/- to the complainant as compensation and remaining fine amount of Rs.10,000/- shall be paid to the state.

Bail bonds and surety bonds stands cancelled.

Office is directed to supply copy of this judgment to the accused free of cost.

(Dictated to the Stenographer transcribed, typed by him, corrected and order is pronounced in the open court on the ***4th day of December, 2023****)*

(Mahesh Chandrakanth)
III Addl. Senior Civil Judge & CJM.,
Dharwad

ANNEXURE

1. List of witnesses examined for complainant:

P.W.1	:	Swagat Appasaheb Jinagouda

2. List of documents marked for complainant:

Ex.P.1	:	Cheque bearing No.103307
Ex.P.2	:	Cheque bearing No.103308
Ex.P.3	:	Cheque bearing No.103309
Ex.P.4	:	Cheque bearing No.103310
Ex.P.5	:	Cheque bearing No.103311
Ex.P.6	:	Cheque bearing No.103312
Ex.P.7	:	Cheque bearing No.57384
Ex.P.8	:	Cheque bearing No.57385
Ex.P.9	:	Cheque bearing No.57386
Ex.P.10	:	Cheque bearing No.57387
Ex.P.11 to 30	:	Bank memos
Ex.P.31	:	True copy of company ledger statement
Ex.P.32	:	Confirmation statement of account
Ex.P.33	:	Office copy of legal notice
Ex.P.34 to 38	:	Postal receipts
Ex.P.39 to 43	:	Postal A.D. cards
Ex.P.44	:	Dealership certificate
Ex.P.45	:	Letter dated 20.07.2014
Ex.P.46	:	Agreement dated 20.08.2014
Ex.P.47	:	Letter of undertaking dated 21.08.2014
Ex.P.48	:	Agreement letter dated 09.01.2016
Ex.P.49	:	Extract of ledger account
Ex.P.50	:	Letter of undertaking dated 09.01.2016
Ex.P.51	:	Additional letter of undertaking dated 09.01.2016

Ex.P.52	:	Signature verification form
Ex.P.53	:	Payment demand notice dated 24.08.2019
Ex.P.54	:	Reply notice dated 04.09.2019
Ex.P.55	:	Postal receipts (2)
Ex.P.56	:	Reply notice
Ex.P.57	:	Ledger account from 01.04.2016 to 30.01.2018
Ex.P.58 to 60	:	Invoices
Ex.P.61	:	Certified copy of order in C.S. Suit No.93/22
Ex.P.62 to 65	:	e-mail copies
Ex.P.66	:	Account statement.

3. List of witnesses examined for defence:

D.W.1	:	Devidas S/o Dasharath Kundalagi
D.W.2	:	Swapnil S/o Vijay Sangale

4. List of documents marked for defence:

Ex.D.1	:	e-mail copy of agreement for proprietorship
Ex.D.2	:	Certificate under Section 65 of Indian Evidence Act.
Ex.D.3 & 4	:	Letters issued by International Tractors Limited

(Mahesh Chandrakanth)
III Addl. Senior Civil Judge & CJM.,
Dharwad.

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