KAHS010006152026

Presented on : 23-01-2026
Registered on : 23-01-2026
Decided on : 10-08-2026
Duration: 0 years, 6 months, 18 days.

BEFORE THE III ADDL. DISTRICT & SESSIONS COURT AT HASSAN

PRESENT: Sri. Doddegowda K., B.A., LL.B.,
III Additional District and Sessions Judge, Hassan.

Dated this 10th day of August, 2026

CRL. A. No.28/2026

Appellant/s (Complainant)	:	Srinivas N., S/o Late H.P. Narayana, Aged about 40 years, R/o Archana Nilaya, 4th cross, Vidyuth Nagar, Opp. MCE college, Hassan. **(By Sri. M.A.N., Advocate)**

V/s

Respondent/s (Accused)	:	Revanna E.H., S/o Hanumanthappa, Aged about 41 years, Reserve Police Constable,

R/o Chikkanalu police quarters,
Pension Mohalla, Hassan.
Also R/o No.2, Edigana Hosur,
Holenarasipura Taluk,
Hassan district.

(By Sri. H.R.J., Advocate)

:: **J U D G M E N T** ::

This appeal is filed by the appellant/complainant challenging the judgment of acquittal dated 03.07.2020 passed by the learned II Additional Civil Judge and JMFC, Hassan, in C.C. No.4139/2014 (Old C.C. No.1608/2013), whereby the respondent/accused was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. For the sake of convenience, the parties are referred to according to their rank before the trial Court.

3. The brief case of the complainant is that the complainant and accused were known to each other for several years. Taking advantage of such acquaintance, the accused approached the complainant on 02.02.2013 seeking financial assistance of ₹2,50,000/- for his family necessities and for clearing hand loans.

Believing the accused, the complainant allegedly paid a sum of ₹2,50,000/- in cash to him on 02.02.2013.

4. According to the complainant, towards repayment of the said amount, the accused issued cheque bearing No.008263 dated 08.03.2013 for ₹2,50,000/-. The complainant presented the cheque through his banker on 13.03.2013. The cheque was returned unpaid with the endorsement "Funds Insufficient". Thereafter, the complainant caused a legal notice dated 06.04.2013 to be issued calling upon the accused to pay the cheque amount. As the amount was not paid, the complaint under Section 138 of the Negotiable Instruments Act came to be filed.

5. After taking cognizance, the trial Court secured the presence of the accused and recorded his plea. The accused pleaded not guilty and claimed to be tried.

6. In order to prove his case, the complainant examined himself as PW-1 and documents at Ex.P1 to Ex.P9(a) came to be marked. Ex.P1 is the cheque and Ex.P1(a) is the signature of the accused. Ex.P2 is the bank endorsement dated 13.03.2013. The postal receipts relating to issuance of notice are marked at Ex.P4 and Ex.P5. The returned postal covers are also produced in

evidence. The remaining documents include the documents relating to the connected proceedings, general duty roster and vakalath as referred to in the trial Court record.

7. The accused entered the witness box and examined himself as DW-1. One Madhu was examined as DW-2. Ex.D1 to Ex.D3 were marked on behalf of the accused. Ex.D1 is the cash certificate, Ex.D2 is the SSLC marks card and Ex.D3 is the Aadhaar card.

8. After hearing both sides and on appreciation of the oral and documentary evidence, the learned trial Judge came to the conclusion that the complainant had failed to establish the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly acquitted the accused by judgment dated 03.07.2020. Aggrieved by the said judgment, the complainant has preferred the present appeal.

9. Learned counsel for the appellant/complainant has mainly reiterated the grounds urged in the memorandum of appeal. It is argued that the accused has admitted his signature on Ex.P1 cheque and therefore the trial Court ought to have drawn the statutory presumptions available under Sections 118

and 139 of the Negotiable Instruments Act. According to the learned counsel, in spite of admission of signature by the accused, the trial Court wrongly placed the burden upon the complainant and acquitted the accused.

10. It is further argued that the evidence of PW-1 coupled with Ex.P1 to Ex.P9(a) sufficiently establishes the transaction and the liability of the accused. According to the appellant, the finding regarding lack of financial capacity is erroneous and the trial Court has failed to appreciate the evidence in its proper perspective. It is therefore contended that the judgment of acquittal is arbitrary, erroneous and contrary to the settled principles of law. Accordingly, the appellant seeks setting aside of the judgment of acquittal and conviction of the accused.

11. Per contra, learned counsel for the respondent/accused has supported the judgment of the trial Court. It is argued that the trial Court has assigned detailed and sound reasons, particularly while considering the defence of the accused. The accused has specifically denied borrowing ₹2,50,000/- from the complainant and has taken a definite defence that Ex.P1 cheque was not issued to the complainant at all.

12. It is further argued that the cheque had been handed over to one Madhu in connection with a transaction of ₹10,000/- and the said Madhu himself has been examined as DW-2 in support of the defence. It is contended that the accused has not merely denied the transaction, but has entered the witness box and also examined the person to whom, according to him, the cheque had actually been given.

13. Learned counsel for the respondent has further contended that the complainant has failed to establish his financial capacity to advance ₹2,50,000/- in cash. The complainant has not produced his bank statement, passbook, accounts or any contemporaneous document to establish availability or payment of ₹2,50,000/- on 02.02.2013. It is also pointed out that PW-1 has admitted in his cross-examination that the alleged amount was not disclosed in his Income-tax returns and has described the amount as unaccounted money.

14. It is further contended that there is no documentary proof regarding payment of ₹2,50,000/- to the accused and that the defence evidence has raised a probable case regarding the manner in which the signed cheque went out of the possession of

the accused. It is therefore argued that the statutory presumption stood rebutted and that the complainant thereafter failed to establish the alleged legally enforceable liability. Accordingly, the respondent seeks dismissal of the appeal.

15. On the basis of the grounds urged in the appeal and the arguments advanced by both sides, the following points arise for consideration:

1. Whether the appellant/complainant establishes that the judgment of acquittal dated 03.07.2020 passed in C.C. No.4139/2014 (Old C.C. No.1608/2013) is perverse, illegal or contrary to the evidence on record and therefore calls for interference by this Court?

2. What order?

16. The findings of this Court on the above points are as follows:

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

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

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

17. **Point No.1 :-** Before considering the evidence on record, it is necessary to keep in mind the settled principles governing the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act. It is not in dispute that the accused admits his signature on Ex.P1 cheque. Therefore, the initial statutory presumption under Sections 118(a) and 139 of the Negotiable Instruments Act necessarily arises in favour of the complainant. However, such presumption is rebuttable. The accused is not required to rebut it beyond reasonable doubt. The standard required from the accused is only that of preponderance of probabilities. The accused may rebut the presumption either by leading his own evidence or by relying upon the evidence and circumstances brought out in the complainant's evidence. If the accused brings on record circumstances making the existence of the alleged debt improbable, the evidentiary burden shifts back to the complainant. These principles have been clearly stated by the Hon'ble Supreme Court in **Rangappa v. Sri Mohan, (2010) 11 SCC 441** and **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**. Therefore, the contention of the appellant that no presumption

has been drawn merely because the trial Court ultimately acquitted the accused cannot be accepted. Drawing the presumption is one stage. The next question is whether the material placed on record by the accused is sufficient to raise a probable defence and rebut that presumption. It is in this background that the evidence has to be examined.

18. The defence of the accused in the present case is specific. The accused has denied having borrowed ₹2,50,000/- from the complainant. His case is that Ex.P1 cheque was not issued to the complainant towards discharge of any loan. According to him, the cheque was given to one Madhu in connection with an amount of ₹10,000/-. Significantly, the accused has not stopped at merely suggesting such a defence in the cross-examination of PW-1. He has entered the witness box as DW-1. More importantly, the said Madhu has also been examined as DW-2. Thus, the person to whom, according to the accused, the cheque had been handed over has himself been brought before the Court. The trial Court, after considering the evidence of DW-1 and DW-2 along with the evidence elicited from PW-1, found the defence probable. On reconsideration of the material, this Court does not find any

sufficient reason to characterize the said conclusion as either arbitrary or perverse. The defence placed before the Court is not a mere bald denial. It provides an alternative and probable explanation regarding possession of the cheque.

19. At this stage, it is also relevant to examine the complainant's version regarding payment of ₹2,50,000/-. According to the complainant, the entire amount of ₹2,50,000/- was paid in cash on 02.02.2013. Admittedly, no receipt, promissory note, loan agreement or other contemporaneous document was obtained from the accused acknowledging receipt of ₹2,50,000/-. There is also no independent evidence regarding actual handing over of such cash. Mere payment of an amount in cash, by itself, cannot be a ground to reject a complaint under Section 138 of the Negotiable Instruments Act. Similarly, mere omission to disclose a transaction in an Income-tax return does not, by itself, make an otherwise genuine debt illegal or unenforceable. Therefore, this Court does not proceed on the basis that the alleged loan becomes legally irrecoverable merely because PW-1 did not show it in his Income-tax returns.

20. At the same time, such circumstances cannot be completely ignored while appreciating the probability of the transaction, particularly when the very transaction and the financial capacity of the complainant have been specifically disputed by the accused. In **Basalingappa v. Mudibasappa**, the Hon'ble Supreme Court has held that when the financial capacity of the complainant is specifically questioned and circumstances are brought on record making the alleged advance doubtful, the burden may shift back to the complainant to satisfactorily explain his financial capacity.

21. In the present case, PW-1 has stated that he was running a fashion designing institution and computer institution. However, no accounts or other material relating to the said business or institution have been produced to show that he had disposable funds of ₹2,50,000/- on 02.02.2013. More importantly, PW-1 has stated that sufficient amount was lying in his bank account and that he had the capacity to advance the money. If that was so, production of the relevant bank statement or passbook would have been the most natural and convenient evidence to show the availability of money at or around the

relevant point of time. No such bank statement or passbook has been produced.

22. When the source and financial capacity were directly put in issue, non-production of the very document which, according to PW-1, could have demonstrated availability of funds assumes significance. The Court is not expecting impossible proof from the complainant. The document referred to by PW-1 himself was capable of being produced, but was not produced.

23. PW-1 has also admitted that the alleged amount was not reflected in his Income-tax returns and has referred to it as unaccounted money. As already observed, this admission alone cannot make the debt legally unenforceable. Nevertheless, when it is considered together with the absence of the bank statement, absence of any written acknowledgment of the loan, absence of independent evidence regarding payment, and the specific defence supported by DW-2, it becomes a relevant circumstance while testing whether the accused has raised a probable defence. In proceedings under Section 138 of the Negotiable Instruments Act, the accused is not required to prove with mathematical certainty how the cheque ultimately reached the complainant. He is

required only to raise a defence which is reasonably probable on the basis of the material available before the Court. Once such probability is established, the complainant must prove the transaction and legally enforceable liability on the required standard.

24. In the present case, the evidence of DW-1 and DW-2, read with the circumstances elicited from PW-1, creates a reasonable doubt about the complainant's version that ₹2,50,000/- was actually advanced to the accused on 02.02.2013 and that Ex.P1 was issued towards repayment of that very amount. There is another aspect relating to the statutory notice. The postal records produced by the complainant disclose that the covers were returned without actual service, with an endorsement indicating that the addressee had left/vacated the place.

25. It is true that actual personal service of a notice is not invariably necessary. Where notice is properly addressed and dispatched in the prescribed manner, the law relating to deemed service may come into operation. Therefore, this Court does not consider it safe or necessary to confirm the acquittal solely on the ground that the postal article was not physically served upon the

accused. At the same time, the endorsement "left" or "vacated", by itself, does not establish that the accused deliberately refused or avoided the notice. The materials produced do not establish actual receipt of the notice. Be that as it may, even leaving aside the question of service of notice, the acquittal is independently sustainable on the evidence relating to the alleged transaction and rebuttal of the statutory presumption.

26. The learned trial Judge has considered the defence evidence and has assigned reasons for accepting the case of the accused as probable. The trial Court has also taken into account the absence of satisfactory proof regarding the complainant's financial capacity and the absence of supporting material for the alleged cash transaction. The findings are therefore based upon material available on record.

27. This Court is conscious that an appellate Court dealing with an appeal against acquittal has full power to reconsider and reappreciate the entire evidence. Nevertheless, an acquittal strengthens the presumption of innocence in favour of the accused. Where the view taken by the trial Court is a reasonably possible view on the evidence, the appellate Court cannot reverse

the acquittal merely because another view may also be possible.

28. In **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**, the Hon'ble Supreme Court has held that although the appellate Court has full power to review and reconsider the evidence, an accused who has secured an acquittal has the benefit of a double presumption of innocence, and if two reasonable conclusions are possible on the evidence, the appellate Court should not disturb the acquittal. The said principles continue to govern an appeal against acquittal. Interference with an acquittal would therefore be justified where the conclusion of the trial Court is manifestly unreasonable, contrary to the evidence, based upon an erroneous approach which has caused miscarriage of justice, or where material evidence has been ignored resulting in a perverse finding. Merely because the appellate Court is capable of arriving at a different conclusion is not sufficient.

29. Applying those principles to the present case, this Court does not find any glaring illegality or perversity in the impugned judgment. The learned trial Judge has considered the material aspects of the case. The defence raised by the accused is

supported by evidence. The complainant's financial capacity was specifically questioned. Despite claiming that the money was available in his bank account, the complainant did not produce the bank statement or passbook. There is no contemporaneous document evidencing payment of ₹2,50,000/- in cash. The alleged transaction was also not reflected in the records referred to in the cross-examination of PW-1. All these circumstances, taken cumulatively and not in isolation, are sufficient to make the defence of the accused probable. Consequently, the presumption arising under Sections 118 and 139 of the Negotiable Instruments Act stood rebutted.

30. Once the presumption stood rebutted, the burden rested upon the complainant to establish the alleged loan transaction and the legally enforceable liability by satisfactory evidence. Except the oral assertion of PW-1 and possession of Ex.P1 cheque, no convincing material has been produced to remove the doubt created by the defence evidence. The trial Court had the advantage of observing the witnesses during the course of evidence and has accepted the defence as probable. The reasons assigned by it cannot be said to be wholly unreasonable or against

the weight of the evidence. On the contrary, the conclusion reached by the trial Court is a possible and reasonable conclusion on the material available.

31. It is no doubt true that Ex.P1 bears the admitted signature of the accused and Ex.P2 discloses dishonour for insufficiency of funds. These circumstances initially operate in favour of the complainant. But admission of signature does not make the statutory presumption irrebuttable. In the present case, the accused has succeeded in crossing the threshold of probability required for rebuttal. Therefore, this Court finds no justifiable or compelling reason to disturb the judgment of acquittal. The appellant has failed to demonstrate that the findings of the trial Court are perverse, manifestly illegal or such that no reasonable Court could have arrived at them. Accordingly, Point No.1 is answered in the **Negative**.

32. **Point No.2 :-** In view of the finding on Point No.1, the appeal deserves to be dismissed and the judgment of acquittal passed by the trial Court deserves to be confirmed.

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

The appeal filed by the appellant/complainant is hereby **dismissed**.

The judgment and order of acquittal dated **03.07.2020** passed by the learned **II Additional Civil Judge and JMFC, Hassan, in C.C. No.4139/2014 (Old C.C. No.1608/2013)**, acquitting the respondent/accused of the offence punishable under **Section 138 of the Negotiable Instruments Act, 1881**, is hereby **confirmed**.

Send back the trial Court records forthwith along with a copy of this judgment.

*(Dictated to the Stenographer, transcribed and typed by her, corrected and revised, then pronounced by me in open Court on this the **10th day of August, 2026**)*

(Doddegowda K.)
III Additional District & Sessions Judge, Hassan.