

KAHS010013372026



Presented on : 13-02-2026
Registered on : 13-02-2026
Decided on : 06-07-2026
Duration : 0 years, 4 months, 21 days

**IN THE COURT OF IV ADDL DISTRICT AND SESSIONS
JUDGE HASSAN SITTING AT CHANNARAYAPATNA**

PRESENT

**SMT. KALPANA M.S.
B.Sc., LL.M., PGDCLCF.,
IV Addl. District and Sessions Judge,
Hassan (Sit at Channarayapatna)**

DATED 6th DAY OF JULY 2026

CRIMINAL APPEAL No.62/2026

APPELLANT :

(Complainant - in Trial
Court)

Thimmegowda
S/o Rangegowda,
Aged about 36 years,
R/o Shettihalli Village,
Kasaba Hobli,
Channarayapatna Taluk.

(By Sri D.K.M., Advocate)

V/s

RESPONDENT/ : Lokesha
(Accused – in Trial Court) S/o Ajjegowda,
Aged about 43 years,
KEB Line Man,
R/o B.M.Road,
CHESCOM Office,
Channarayapatna Town and
Taluk.

(By Sri.M.R.C., Advocate)

J U D G M E N T

Appellant has filed this appeal U/s.413 of Bharathiya Nagarik Suraksha Sanhita, assailing the judgment of acquittal passed in C.C.No.162/2022 dated 14.01.2026 on the file of II Addl. Civil Judge and J.M.F.C., Channarayapatna.

2. Rank of the parties is referred to as per their ranks assigned before the trial court.

3. The facts of the case leading to this appeal may be summarized as under;

The appellant is the complainant before the trial court. He has filed a complaint U/s.200 of Cr.P.C. alleging the offence committed by the accused punishable U/s.138 of Negotiable Instrument Act (herein after referred as N.I.Act). According to the complainant, himself and accused are known to each other. In view of such acquaintance, during the last week of July 2021 the accused approached the complainant for hand loan of Rs.3,00,000/- for the purpose of discharging his financial obligations. Accordingly, the complainant has advanced Rs.3,00,000/- to the accused on 29.07.2021 in the presence of witnesses and the accused has issued post dated cheque bearing No.745302 dated 30.11.2021 drawn on Karnataka Bank, Channarayapatna Branch. As per the instruction of accused, on 10.12.2021 the complainant presented the said cheque through his bank and the cheque was returned with an endorsement 'Funds insufficient'. In spite of service of the legal notice

dated 23.12.2021 to his 3 addresses, the accused has not paid the cheque amount. Hence, complaint was filed. The trial court took cognizance and after going through the materials found the prima facie case against accused for the offence punishable U/s.138 of N.I. Act, registered criminal case and issued summons.

4. Before the trial court, accused appeared, got enlarged on bail. The substance of accusation was read over and explained to him. The accused pleaded not guilty and claims trial. The sworn statement of the complainant was considered as examination in chief of P.W.1 and got marked in all 9 documents from Ex.P.1 to Ex.P.9 and closed his side evidence. The statement of accused U/s.313 of Code of Criminal Procedure was recorded. The accused denied the incriminating materials found against him, but not led any defence evidence. The Trial court after hearing arguments on both sides and on appreciation of oral and documentary

evidence, found that accused has not committed the offence punishable U/s.138 of N.I. Act and acquitted for the said offence with an observation that P.W.1 has failed to offer himself for cross-examination and drawn adverse inference under Section 114 of Evidence Act by relying on the decision of the **Hon'ble Supreme Court of India** reported in **(1993) 3 SCC 573** between **Vidyadhar v/s Mankikrao & another and** further observed that complainant has failed to establish the legally recoverable debt and the offence committed by the accused.

5. Feeling aggrieved by the said judgment, appellant/accused person has appeared before this court urging following grounds;

- i) The court has grossly erred in not issuing the court notice to the appellant and his counsel after the case was transferred to that court.

ii) The trial court has grossly erred in not affording adequate opportunity for the complainant and his counsel for establishing his case.

iii) The trial court has grossly erred in ignoring the non-issuance of court notice to the complainant and/or his counsel from the earlier court which has transferred this case for further prosecution of the case.

iv) The trial court has grossly erred in dismissing the complaint without adjudicating the case by getting conducted full-fledged trial and without giving sufficient opportunity for the complainant.

v) The trial court has erred in not considering and observing the required formalities after the transfer of case to that court. As a point of the appellant was also

not informed by the earlier court about its proposed transfer of his case to another court.

vi) The judgment passed by the trial court is contrary to the law and not maintainable either in law or on facts and probabilities of the case.

On these grounds, the appellant prayed to set aside the judgment dated 14.01.2026 passed in CC.No.162/2022 by the II Addl. Civil Judge & JMFC, Channarayapatna and convict the accused.

6. After registration of the appeal, notice was issued. The complainant entered appearance through counsel. The trial court records have been secured.

7. Perused the materials on record.

8. On hearing both sides and on perusal of the materials on record, the points do arise for my determination are as under;

1. Whether there is legal and procedural infirmity in the impugned judgment, which requires interference of this court?

2. What Order?

9. My findings on the above said points is as follows:-

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

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

REASONS

10. **POINT NO.1 :-** This is complainant's appeal against judgment of acquittal of the accused for the offence punishable under Section 138 of N.I. Act. It is

forthcoming from the grounds urged by the complainant that the trial court has not observed the required formalities after the transfer of case to that court. The complainant was also not informed by transferor court about its proposed transfer of his case to another court.

11. To appreciate this contention of the appellant, let us examine the trial court records, more specifically order sheet. Initially, this complaint was filed before the Prl. Civil Judge and JMFC, Channarayapatna. The order sheet dated 04.10.2024 reads as under:

“ In view of the order No.79/2024 dated 20.09.2024 passed by the Hon'ble C.J.M., Hassan, this case has been withdrawn from this court and transferred to the court of II Addl. Civil Judge and JMFC, Channarayapatna.”

Thereafter, the case was proceeded before II Addl. Civil Judge and JMFC, Channarayapatna. The accused

appeared, but complainant remained absent from 05.10.2024 till disposal of the case around 15 hearing dates from 05.10.2024 to date of judgment i.e. 14.01.2026.

12. As rightly contented on behalf of the complainant, this case in C.C.No.162/2022 was withdrawn from the Principal Civil Judge and JMFC Court and transferred to the II Additional Civil Judge and JMFC Court, Channarayapatna. It is not forthcoming from the trial Court records that the transfer of this case to another court was notified to the parties and their respective counsels. At the same time, the transferor Court has not chosen to obtain the signature of the parties to the order sheet in order to bring to their knowledge about the transfer and with directions to them to appear before the transferee court on a particular date fixed for their appearance. So also, after transfer the

transferee court has neither issued notice to the parties nor their advocates on record.

13. No doubt, accused was secured before the court under Non Bailable Warrant, however, it fortifies the contention of the complainant that they have absolutely no knowledge about the pendency of this case before the II Additional Civil Judge and JMFC Court. In that scenario, this court opined that the trial Court ought to have issued notice to the complainant calling upon him to subject himself for cross-examination. On the other hand, without following the principles of natural justice, the trial Court has proceeded to pass judgment of acquittal by drawing adverse inference against the complainant under Section 114 of Evidence Act and relied on the decision reported in **(1999) 3 SCC 573**.

14. This court has carefully gone through the law laid down by the Hon'ble Apex Court in the decision. With due respect the facts and circumstances of the cited

decision is not applicable to the case on hand. In the cited decision the defendant no.1 contended that the sale deed executed by the defendant no.2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transaction. This plea was not supported by the defendant no.1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the trial court and avoided the witness box so that he may not be cross-examined. This, by itself, is enough to reject the claim that the transaction of sale between defendant no.2 and the plaintiff was a bogus transaction.

15. Per contra, unlike to the facts and circumstances of the cited decision, in the present case, the complainant has entered into the witness box and filed affidavit evidence reiterating the facts asserted in the complaint on oath and also produced documentary evidence in support of his case. Subsequently, the case

was transferred to another court, which was not notified by the said court and also the transferee court i.e. Trial court has not issued notice to the parties to prosecute the case. Therefore, at no stretch of imagination it can be considered that complainant intentionally avoided witness box and cross-examination by the accused. Therefore, the observation of the trial court to that extent is not sustainable in the eye of law. This court is of the considered view that fair and reasonable opportunity is to be provided to the complainant to prosecute his private complaint on merits. Thus, the judgment of the trial court needs interference of this court of appeal. Accordingly, the point No.1 under consideration is answered in the **Affirmative**.

16. **Point No.2:-** In view of findings on the above points No.1, this criminal appeal is entitled to be allowed by giving an opportunity to the complainant to prove his case. Consequently, the accused shall face the trial

before the trial court. With the said observation, this court proceed to pass the following:

ORDER

This Criminal Appeal filed by the appellant is allowed.

Consequently, the judgment of acquittal dated 14.01.2026 passed in C.C.No.162/2022 on the file of II Addl. Civil Judge and J.M.F.C., at Channarayapatna is hereby set aside.

Matter is remanded to Trial court for fresh trial by giving reasonable opportunity to complainant and accused to lead evidence and to dispose of the case expeditiously.

Both parties shall appear before the trial court on

27.07.2026 without insisting for
fresh notice.

Office is hereby directed to
transmit T.C.R. along with copy
of this Judgment forthwith, for
information.

(Dictated to the Stenographer Grade-III, transcribed and
computerized by her, then corrected, signed and pronounced by
me in open court on this **06th** day of **July 2026**).

(Kalpana M.S.)

4th Additional District and
Sessions Judge, Hassan District.
(Sit at Channarayapatna)