

IN THE COURT OF THE II ADDL.SEINOR
CIVIL JUDGE & J.M.F.C, RANEBENNUR

Present:Smt.Nivedita M.Munavallimath.,
B.Com.,LL.M
II Addl.Senior Civil Judge & JMFC,
Ranebennur.

Dated this the 24th day of December 2021

Criminal Case No.177/2018

Complainant: Pranalinga s/o Mallikarjuna Choori
Age: 52 years, Occ: Business &
Agriculture,
Residing at:Choudeshwari
Badavane, Ranebennur.

V/s

Accused : Ramanagouda s/o Ishwargouda
Patil, Age: 50 years,
Occ: Agriculture,
Residing at: Pala Village,
Taluka, Mundgod.

O R D E R

The accused has filed the application U/Sec. 227 of Cr.P.C praying to discharging of the offence punishable U/s 138 of N.I. Act.

2. In the application the accused stated that he is the innocent and he has been falsely implicated in this case with mala-fide intention to extract money and to cause financial loss to him. During the cross examination the complainant himself admitted that Ex.P.1 is the post dated cheque. As per Section 5 and 6 of Negotiable Instruments Act, the post dated

cheque is not payable till the date which shown thereon and prior to that it remains as invalid instrument. Therefore the provisions of Section 138 of Negotiable Instruments Act has no application to post dated cheques and prays to discharge the accused of the offences punishable U/Sec. 138 of Negotiable Instruments Act.

3. Per contra, the complainant filed objection stating that the application is not maintainable either under law or under facts. It is further contended that it is falsely mentioned in the application that the Ex.P.1 is the post dated instrument and nowhere in the cross examination the complainant admitted as it is post dated instrument. Further contended that Ex.P.1 is returned by the bank for “insufficient funds” and not for “instrument post date” and it is the valid instrument as it is accepted by the bank and simply it cannot be called as invalid document. Further contended that the Negotiable Instruments Act, is the special legislation and there is no provision for discharge of accused. Hence the application filed by the accused is not maintainable and prays to dismiss the same.

4. Heard both side and perused the records.

5. The points for my consideration is as under:

1. Whether the accused is entitled to discharge acting U/Sec.227 of Cr.P.C?

2. What order?

6. My answer to the above point is in the **Negative**, for the following :

REASONS

7. **Point No.1:** The complainant has filed complaint U/s 200 of Cr.P.C against the accused for an offence punishable U/s 138 of NI Act. The present application is filed by the accused praying to discharge him of the offences punishable U/Sec. 138 of Negotiable Instruments Act, on the ground that he is the innocent and he has been falsely implicated in this case with mala-fide intention to extract money and to cause financial loss to him. During the cross examination the complainant himself admitted that Ex.P.1 is the post dated cheque. As per Section 5 and 6 of Negotiable Instruments Act, the post dated cheque is not payable till the date which shown thereon and prior to that it remains as invalid instrument and therefore the provisions of Section 138 of Negotiable Instruments Act has no application to post dated cheques.

8. As against this, the complainant contended that the Negotiable Instruments Act is a special

legislation which does not provides for discharge of accused and moreover the complainant nowhere admitted that Ex.P.1 is post dated cheque and hence the application is not maintainable.

9. In the light of above contentions of the parties, I have gone through Sec.227 of Cr.P.C. It provides that if the judge considers that there is no sufficient grounds for proceeding against the accused, upon hearing the submissions of the prosecution and the accused in the behalf and consideration of the record of the case along with document submitted therewith, he shall be discharge by recording reasons for such discharge. It is pertinent to note that the above referred Section comes under Chapter-XVIII which relates to the trial before a court of session. It means Section 227 of Cr.P.C empowers the court of session to discharge the accused. But this court is not a court of session to entertain the present application. In support of my view, I relied upon a Judgment reported in **ILR 2001 Karnataka 3909** rendered by **the Hon'ble High Court of Karnataka** in the case of **M.Ramaiah vs Ramanika Silks (Private)**. In the said case, the Metropolitan Magistrate has discharged the accused acting U/Sec. 227 of Cr.P.C of the offences punishable U/Sec. 138 of Negotiable Instruments Act. The Hon'ble High Court of

Karnataka after discussing the provisions categorically held that Section 227 of Cr.P.C confers power on the Session Judge for discharge of accused, but the learned Magistrate cannot discharge the accused by invoking Section 227 of Cr.P.C. Therefore in my opinion, the application filed by the accused is not maintainable. Accordingly I answer the above point No.1 in the **Negative.**

10. Point No.2: For the above reasons, I proceed to pass the following:

O R D E R

The application filed by the accused
U/Sec. 227 of Cr.P.C is hereby dismissed
with cost of Rs.1,000/-.

[Dictated to the Stenographer directly on computer typed by her, after transcription, the same is corrected and then pronounced by me in the open court on this 24th day of December 2021].

II Addl. Senior Civil Judge
and JMFC., Ranebennur.

