IN THE COURT OF THE III-ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU-MADIKERI

Present:

SRI.SURENDRA G, *B.A.L. LL.M.*
III-Additional District & Sessions Judge,
Kodagu-Madikeri.

Dated this the 08th day of July, 2026.

Crl. Appeal. No.88/2024

Appellant/s	:	Rasheed P.M, Risha Trading Company, Proprietor, Packkolil Old No.111/13A, New No.11/60A, Paingottoor, Kerala-686671.
		(By Smt. Daya H.Bangera, Advocate)
		Vs.
Respondent/s	:	Mohammad Zakir K.Z, S/o Zubair K.A, Aged 27 years, Proprietor of Khalifa Construction and Trading, Thayathbane House, Kottamudi, Hodavada Village, Hodavada Post, Madikeri Taluk, Kodagu District.
		(By Shri. P.U.Preetham, Advocate)

JUDGMENT

The present Criminal Appeal is filed by the appellant/accused under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, calling in question the legality, correctness and propriety of the Judgment of conviction and Order of sentence dated 11.06.2024 passed by the learned Prl. Civil Judge (Jr.Dn.) & JMFC, Madikeri, in C.C. No.1416/2022, consequently seeking to set aside the impugned judgment of conviction and order of sentence passed by the trial court.

2. For the sake of convenience, the parties herein are referred to as per their litigative status/rank before the trial Court.

3. The case of the complainant before the trial court in brief is that, respondent is the sole proprietor of Khalifa Construction and Trading. According to him, during the months of April and May 2021, the accused who was carrying on business under the name and style of Risna Trading Company, purchased Garcinia Cambogia from the complainant for a total consideration of ₹4,00,000/-. Towards discharge of the said legally enforceable liability, the accused issued a post-dated cheque bearing No.658166 dated 21.04.2022 for a sum of ₹4,00,000/- drawn on the State Bank of India, Nellimattom Branch, Ernakulam District, Kerala, in favour of the complainant. The complainant presented the cheque for encashment through his banker, Kotak Mahindra Bank, Madikeri Branch, but the cheque came to be dishonoured on 05.05.2022 with the endorsement "Account Closed". Thereafter, the complainant caused issuance of a statutory legal notice dated 19.05.2022 demanding payment of the cheque amount, which was duly served upon the accused on 28.05.2022. Despite service of the notice, the accused neither complied with the demand nor replied to the notice. Hence, alleging

commission of the offence punishable under Section 138 of the Negotiable Instruments Act, the complainant instituted the complaint before the learned Trial Court.

(a) Upon appreciation of the oral and documentary evidence placed on record, the learned Trial Court held that the respondent/complainant had successfully established that the cheque in question was issued by the accused towards discharge of a legally enforceable debt. The Trial Court observed that the accused had not disputed the issuance of the cheque or his signature appearing thereon, thereby attracting the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act. It was further held that the cheque was presented within the prescribed period, but was dishonoured with the endorsement "Account Closed", and that the statutory demand notice was duly served on the accused, who failed to make payment within the stipulated period.

(b) The Trial Court further held that the defence raised by the accused, namely that the cheque had been issued only as a security cheque and that the complainant had no authority to maintain the complaint in his individual capacity, was not substantiated by any cogent oral or documentary evidence. The Court observed that the complainant, being the sole proprietor of Khalifa Construction and Trading, was competent to prosecute the complaint in his individual capacity and that the accused had failed to rebut the statutory presumptions available in favour of the complainant. Consequently, the Trial Court answered the principal point for determination in the affirmative, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to pay a fine of ₹4,00,500/-, out of which ₹4,00,000/- was directed to be paid to the complainant as compensation, with a default sentence of simple imprisonment for one year.

4. Being aggrieved by the above said Judgment of Conviction and Order of Sentence, appellant filed this appeal seeking setting aside the trial court judgment and his acquittal on following grounds:

Grounds for Appeal:

(i) The appellant has, contended that the impugned judgment and order of conviction passed by the learned Trial Court are illegal, erroneous, contrary to law, facts and probabilities of the case and therefore liable to be set aside. It is specifically urged that the learned Trial Court has failed to properly appreciate the oral and documentary evidence placed on record and has erroneously convicted the appellant without there being sufficient material to establish the existence of a legally enforceable debt or liability. It is further contended that the learned Trial Court failed to appreciate that the cheque in question was not issued towards discharge of any legally recoverable debt or liability and that the complainant himself had admitted circumstances showing that there was no legally enforceable liability against the appellant. According to the appellant, the statutory presumption under the Negotiable Instruments Act stood sufficiently rebutted and the Trial Court failed to consider the defence in its proper perspective.

(ii) The appellant has also urged that the cheque was issued in favour of Khalifa Construction and Trading and not in the individual name of the complainant. Though the complainant claimed to be the sole proprietor of the said concern, he failed to produce any acceptable documentary evidence establishing his proprietorship. Therefore, according to the appellant, the complaint itself was not maintainable and the learned Trial Court committed a serious error in overlooking this material aspect.

(iii) It is further contended that the learned Trial Court failed to properly appreciate the law laid down by the **Hon'ble Supreme Court in Criminal Appeal No.643 of 2011 (Milind Shripad Chandurkar v. Kalim M. Khan),** wherein it has been observed that a person claiming to be the proprietor of a proprietary concern is required to establish his relationship with the proprietorship by producing satisfactory evidence. According to the appellant, in the absence of such proof, the complainant was not entitled to maintain the complaint. The appellant has also contended that the learned Trial Court failed to consider his specific defence that the cheque in question had been issued only as a security cheque in connection with earlier business transactions and not towards discharge of any subsisting legally enforceable debt. It is urged that the Trial Court has not properly appreciated this defence and has recorded the conviction without assigning satisfactory reasons for rejecting the same.

(iv) On the above said grounds the appellant has prayed for allowing the appeal by setting aside the impugned Judgment of Conviction and Order of Sentence dated 11.06.2024 passed in C.C. No.1416/2022 by the learned Prl. Civil Judge (Jr.Dn.) & JMFC, Madikeri, and consequently acquitting him of the charge under Section 138 of the Negotiable Instruments Act.

5. This Court has secured the Trial Court records. I have carefully bestowed my anxious consideration to the rival submissions advanced by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent. I have meticulously gone through the entire Trial Court records, the oral and documentary evidence available on record, the impugned judgment, the memorandum of appeal, the written arguments filed by both sides and the judicial precedents relied upon by them.

6. The following points that arise for my consideration are as follows:

> 1. Whether the appellant/accused has made out sufficient grounds to establish that the judgment of conviction and order of sentence dated 11.06.2024 passed by the learned Prl. Civil Judge & JMFC, Madikeri, in C.C. No.1416/2022, convicting her for the offence punishable under Section 138 of the Negotiable Instruments Act, is illegal, perverse or contrary to the evidence on record, thereby warranting interference by this Court?
>
> 2. What order?

7. My findings on the above points are as follows:

Point No.1 : In the **Negative**;
Point No.2 : As per final order, for the following:

-: R E A S O N S :-

8. **Point No.1:-** This Criminal Appeal is preferred by the appellant/accused under Section 415 of BNSS-2023 challenging the judgment of conviction and order of sentence dated 11.06.2024 passed by the learned Prl. Civil Judge and JMFC, Madikeri in C.C. No. 1416/2022, whereby the appellant was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to pay fine of ₹4,00,500/-, out of which Rs.4,00,000/- was ordered as compensation to the complainant and balance of Rs.500/- has been ordered to be paid to the State, with default sentence of simple imprisonment for one year.

9. Before adverting to the detailed discussion on merits, it is just and proper to first consider the arguments advanced by the Appellant as well as Respondent.

10. The learned counsel appearing for the appellant/ accused while arguing vehemently contended that the impugned Judgment of Conviction and Order of Sentence passed by the learned Trial Court is wholly illegal, arbitrary, perverse and opposed to the settled principles governing prosecutions under Section 138 of the

Negotiable Instruments Act. It is submitted that the learned Trial Court has failed to properly appreciate the oral and documentary evidence available on record and has mechanically convicted the appellant without there being any legally admissible evidence to establish the existence of a legally enforceable debt or liability. According to the learned counsel, the findings recorded by the Trial Court are contrary to the evidence available on record and are therefore liable to be interfered with by this Appellate Court.

(a) It is further argued that the respondent/complainant has utterly failed to establish the very foundation of the complaint. Though the complaint is filed by the respondent in his individual capacity claiming himself to be the sole proprietor of Khalifa Construction and Trading, absolutely no documentary evidence such as the registration certificate of the proprietary concern, GST registration, trade licence, MSME registration, bank account particulars or any other acceptable document has been produced before the Trial Court to establish that the respondent was in fact the sole proprietor of the said proprietary concern on the date of the alleged transaction. Mere self-serving oral assertion cannot be accepted as proof of proprietorship. In the absence of proof regarding the respondent's status as proprietor, it is contended that he lacked the legal competence and locus standi to institute and prosecute the complaint. Therefore, on this technical ground alone, the complaint was liable to be dismissed.

(b) The learned counsel further submitted that the cheque admittedly stands in the name of Khalifa Construction and Trading and not in the personal name of the respondent. When the transaction is alleged to have been entered into on behalf of a proprietary concern, the respondent was under a legal obligation to establish by cogent documentary evidence that he was the proprietor of the said concern. In the absence of such proof, the complaint itself becomes legally untenable and the learned Trial Court has committed a grave error in overlooking this fundamental defect. The learned counsel also contended that the respondent has equally failed to establish that the appellant was the proprietor of Risna Trading Company. Though the complaint proceeds on the footing that the appellant was carrying on business as the sole proprietor of the said concern, no documentary evidence whatsoever has been produced to establish such proprietorship. No registration certificate, GST certificate, trade licence, bank account, business registration or any other legally admissible document has been produced to connect the appellant with the proprietary concern. In the absence of proof that the appellant was the proprietor or person legally responsible for the affairs of Risna Trading Company, fastening criminal liability upon him is wholly unsustainable. Therefore, the complaint deserves to be rejected on this technical ground itself.

(c) It is further argued that the learned Trial Court has failed to appreciate that the burden initially rested upon the respondent/complainant to establish the identity and legal status of both the proprietary concerns involved in the alleged transaction. Unless the respondent established that he was the proprietor of Khalifa Construction and Trading and that the appellant was the proprietor of Risna Trading Company, no legally enforceable liability could have been fastened upon the appellant merely on the basis of the cheque. The failure to prove these foundational facts strikes at the very root of the maintainability of the complaint. The learned counsel further contended that the Trial Court has erroneously invoked the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act without first insisting upon proof of the foundational facts. It is submitted that the statutory presumptions arise only after the complainant establishes the basic ingredients necessary to maintain the complaint. Since the respondent failed to establish his legal capacity to prosecute the complaint and also failed to establish the legal status of the appellant as proprietor of Risna Trading Company, the statutory presumptions could not have been invoked against the appellant.

(d) It is also argued that the Trial Court has ignored the specific defence of the appellant that the cheque in question had been issued only as a security cheque in connection with previous business transactions and not towards discharge of any existing legally enforceable debt or liability. According to the learned counsel, the Trial Court has rejected this defence without assigning proper reasons and without appreciating the evidence in its correct perspective. The learned counsel further placed reliance upon the judgment of the **Hon'ble Supreme Court in Milind Shripad Chandurkar v. Kalim M. Khan (Criminal Appeal No.643 of 2011)** and submitted that where a person claims to represent a proprietary concern, the relationship between the individual and the proprietary concern must be established by acceptable evidence. Since no such evidence has been produced in the present case, the complaint itself is not maintainable in law.

On all these grounds, the learned counsel for the appellant prayed that the impugned Judgment of Conviction and Order of Sentence passed by the learned Trial Court be set aside and the appellant be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act.

11. Per-contra, the learned counsel appearing for the respondent/complainant while arguing vehemently supported the Judgment of Conviction and Order of Sentence passed by the learned Trial Court and submitted that the impugned judgment is based upon proper appreciation of the oral and documentary evidence available on record and does not suffer from any illegality

or perversity warranting interference by this Appellate Court. It is contended that the learned Trial Court has rightly appreciated the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act and has rightly held that the appellant has miserably failed to rebut the same by adducing any acceptable evidence.

(a) The learned counsel further submitted that the respondent has successfully established the business transaction between the parties by producing Ex.P-6, namely the Tax Invoice issued by Khalifa Construction and Trading in favour of RISNA Trading Company. The said tax invoice specifically contains the GST number of the respondent's proprietary concern, the GST particulars of the purchaser, the description of goods, quantity, value of the goods and bears the signature of the respondent/complainant. It is argued that the signature found on Ex.P-6 is identical and tallies with the signatures of the respondent found in the complaint, sworn affidavit, deposition before the Trial Court and other documents produced in the case. Therefore, Ex.P-6 clearly establishes that the transaction had actually taken place between the parties.

(b) It is further contended that Ex.P-7, namely the E-Way Bill generated on 01.04.2021, also corroborates the transaction. The said E-Way Bill contains the name of

Khalifa Construction and Trading as consignor and RISNA Trading Company as consignee. It also contains the GST numbers of both the parties, details of transportation, vehicle particulars and the consignment particulars. According to the learned counsel, Ex.P-6 and Ex.P-7 are contemporaneous commercial documents generated in the ordinary course of business and fully corroborate the complainant's version regarding supply of goods to the appellant. The learned counsel further argued that the contention raised by the appellant that RISNA Trading Company is a company incorporated under the Companies Act is wholly untenable and contrary to the material available on record. Merely because the word "Company" appears in the business name, it cannot be presumed that it is a company incorporated under the Companies Act, 2013. If really RISNA Trading Company was a registered company or any other juristic entity, the burden squarely lay upon the appellant to produce the Certificate of Incorporation, CIN particulars, Memorandum and Articles of Association, GST registration showing incorporation, or any other statutory documents to substantiate such defence. However, despite sufficient opportunity, the appellant has not produced even a single document to show that RISNA Trading Company is a company incorporated under the Companies Act or any partnership firm registered under law. Therefore, the defence raised by the appellant is a mere technical plea without any evidentiary foundation.

(c) The learned counsel further submitted that on the contrary, Ex.P-1 namely the cheque in question itself, clearly discloses the description "RISNA TRADING COMPANY – PROPRIETOR: RASHEED P.M." The cheque bears the admitted signature of the appellant. The appellant has never disputed either the issuance of the cheque or the signature appearing thereon. Once execution of the cheque is admitted, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act immediately comes into operation and the burden shifts upon the appellant to rebut the said presumption by leading cogent and convincing evidence. Unfortunately for the appellant, no oral evidence has been adduced, nor has any documentary evidence been produced to probabilise his defence. It is further argued that after dishonour of the cheque, the respondent caused issuance of the statutory legal notice under Ex.P-3, which was duly served upon the appellant. Even after service of the statutory demand notice, the appellant neither issued any reply disputing the transaction nor denied his status as proprietor of RISNA Trading Company nor disputed the issuance of the cheque. The silence maintained by the appellant despite receipt of the statutory notice constitutes an important circumstance corroborating the case of the respondent. Had the defence now urged in appeal been genuine, nothing prevented the appellant from raising the same by issuing an appropriate reply notice.

(d) The learned counsel also submitted that during the course of cross-examination of PW-1, the appellant has substantially admitted the business transaction and has even suggested that the cheque was issued only as a security cheque. Such a defence itself amounts to an admission regarding issuance of the cheque and existence of business dealings between the parties. Even assuming for the sake of argument that the cheque was issued as a security, it is now well settled that a security cheque, if issued towards an existing or legally enforceable liability, would also attract the provisions of Section 138 of the Negotiable Instruments Act. Therefore, the defence set up by the appellant does not probabilise his case in any manner. It is further contended that the appellant has not stepped into the witness box nor has he produced any documentary evidence to rebut the statutory presumptions. Mere suggestions put to PW-1 during cross-examination do not constitute evidence and cannot displace the statutory presumption available in favour of the complainant. The appellant has also failed to explain why his account was closed before presentation of the cheque and has not assigned any satisfactory reason for dishonour of the cheque with the endorsement "Account Closed."

(e) The learned counsel therefore submitted that the respondent has successfully proved all the essential ingredients constituting the offence under Section 138 of the Negotiable Instruments Act, namely the existence of a legally enforceable debt, issuance of cheque, dishonour of the cheque, issuance of statutory demand notice within the prescribed period, service of notice and failure of the appellant to make payment within the statutory period. On the other hand, the appellant has utterly failed to rebut the statutory presumptions available in favour of the respondent either by documentary evidence or by any acceptable defence.

(f) In support of the above submissions, the learned counsel for the respondent placed reliance upon the decisions viz.,

1 Criminal Appeal No.4171 of 2024 (Hon'ble Supreme Court of India);

2. M/s. Laxmi Dyechem v. State of Gujarat (Hon'ble Supreme Court of India);

3. P. Rasiya v. Abdul Nazer (Hon'ble Supreme Court of India);

4. Rajesh Jain v. Ajay Singh (Hon'ble Supreme Court of India);

5. Criminal Petition No.8257 of 2019 (High Court of Karnataka); Sanat Kumar v. Sanjay Sharma (Delhi High Court);

6. Sanat Kumar Vs. Sanjay Sharma (Hon'ble Delhi High Court);

7. Criminal Appeal No.508 of 2015 (Hon'ble High Court of Karnataka).

(g) By placing reliance upon the above said decisions of Hon'ble Apex Court and Hon'ble High Courts, the learned counsel further contended that once the execution of the cheque is admitted, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act necessarily arise in favour of the holder and the burden squarely shifts upon the accused to rebut the same by leading cogent evidence. Mere denial or suggestions made during cross-examination, without substantive evidence, are not sufficient to rebut the statutory presumption.

(h) Accordingly, it is prayed that this Appellate Court may hold that the learned Trial Court has rightly appreciated the evidence on record and has rightly convicted the appellant. Since the respondent/complainant has established his case beyond the standard required under Section 138 of the Negotiable Instruments Act and the appellant has failed to rebut the statutory presumptions, the present appeal deserves to be dismissed with costs and the Judgment of Conviction and Order of Sentence dated 11.06.2024 passed in C.C. No.1416/2022 deserves to be confirmed.

12. Let us discuss this case in the light of the statutory presumptions available under the Negotiable Instruments Act 1881, the relevant statutory provisions are extracted below:

Section 118 of Negotiable Instruments Act 1881, deals with -Presumptions as to negotiable

instruments.—Until the contrary is proved, the following presumptions shall be made:

(a) **of consideration**:- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) **as to date**:— that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance**:— that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer**:-that every transfer of a negotiable instrument was made before its maturity;

(e) **as to order of indorsements**:-that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;

(f) **as to stamp**:— that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course**:-that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 139 deals with - Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

13. It is now necessary to consider the evidence adduced by the appellant/accused during his chief examination and cross-examination before the Trial Court.

14. During the course of cross-examination, PW-1 admitted that he had filed another cheque bounce case for a sum of ₹4,00,000/- and further admitted that the cheque in question was issued in the name of Khalifa Construction and Trading. He also admitted that the statutory legal notice was issued in his individual name, namely Mohammed Zakir, and that the present complaint was likewise instituted in his individual capacity. However, PW-1 categorically denied the suggestion that he had no authority to file the complaint and clarified that he had instituted the complaint in his own name since he was carrying on business as the sole proprietor of Khalifa Construction and Trading. He specifically asserted that Khalifa Construction and Trading is a sole proprietorship concern and not a company or partnership firm. PW-1 further deposed that the commodity sold to the accused was Kachampuli (Garcinia Cambogia), a forest produce commonly used as a souring thing in food preparations, and stated that during the year 2021 the accused had purchased the said commodity from him through Khalifa Construction and Trading. He also admitted that the proprietary concern possessed a valid GST registration.

Though it was suggested that the invoice relating to the sale of Kachampuli had not been produced before the Court, PW-1 denied the suggestion and specifically asserted that the relevant document had in fact been produced before the Trial Court. Except eliciting these admissions regarding the manner in which the complaint was instituted and the business being carried on under the trade name Khalifa Construction and Trading, nothing substantial could be elicited in the cross-examination to discredit the transaction or impeach the credibility of PW-1.

15. The main defence projected by the appellant throughout the proceedings is that the complaint itself is not maintainable since the cheque was issued in favour of Khalifa Construction and Trading and the complaint has been filed by Mohammed Zakir in his individual capacity. It is further contended that the respondent has not produced any document proving that he is the sole proprietor of Khalifa Construction and Trading. It is well settled that a sole proprietorship concern has no separate legal existence apart from its proprietor. Unlike a company incorporated under the Companies Act or a partnership firm governed by the Partnership Act, a proprietary concern is merely a trade name under which an individual carries on business. Therefore, a sole proprietor is fully competent to institute proceedings either in his own name describing himself as proprietor or in the trade name of his

proprietary concern. The objection raised by the appellant is thus purely technical in nature and does not go to the root of the maintainability of the complaint. It is significant to note that during the cross-examination of PW-1, the appellant specifically suggested that Khalifa Construction and Trading was either a company or a partnership concern. PW-1 categorically answered that it is neither a company nor a partnership firm but a sole proprietorship concern. This assertion has remained unshaken throughout the cross-examination. Except putting suggestions, the appellant has not produced any material to demonstrate that Khalifa Construction and Trading is a company incorporated under the Companies Act or a registered partnership firm. In the absence of any rebuttal evidence, the oral testimony of PW-1 assumes considerable significance and rightly came to be accepted by the learned Trial Court.

16. Further, the evidence of PW-1 is substantially corroborated by Ex.P-6, the Tax Invoice. On careful perusal of Ex.P-6, it clearly reveals that the invoice has been issued by Khalifa Construction and Trading in favour of RISNA Trading Company. The invoice contains the GST number of the seller, the GST particulars of the purchaser, description of the goods, quantity, value, and the signature of the respondent. The signature found on Ex.P-6 is consistent with the signature appearing in the complaint, sworn affidavit, deposition before the Court and other documents produced by the complainant. The appellant

has not disputed the genuineness of the said signature nor has he adduced any evidence to show that Ex.P-6 is fabricated or concocted. Consequently, Ex.P-6 constitutes a contemporaneous business document lending complete assurance to the prosecution version regarding supply of goods. Likewise, Ex.P-7, namely the E-Way Bill generated on 01.04.2021, assumes considerable evidentiary value. The said E-Way Bill specifically mentions Khalifa Construction and Trading as consignor and RISNA Trading Company as consignee. It also contains the GST numbers of both the parties, transportation particulars and details of the consignment. These documents were generated during the ordinary course of business and there is absolutely no challenge to their authenticity. When Ex.P-6 and Ex.P-7 are read conjointly, they unmistakably establish the commercial transaction between the parties. These documents also probabilise the complainant's version that Garcinia Cambogia (Kachampuli) was supplied to the appellant pursuant to the invoice.

17. During cross-examination, PW-1 admitted that he had filed the complaint in his own name and candidly explained that he had done so because he was carrying on business under the name and style of Khalifa Construction and Trading as its sole proprietor. He consistently maintained that the concern was a proprietary concern. He also deposed that the concern possessed a valid GST registration. Though a suggestion was put that the invoice

had not been produced before the Court, the witness specifically denied the suggestion and asserted that the relevant document had indeed been produced. The appellant could not elicit anything in the lengthy cross-examination to impeach the credibility of PW-1 or to probabilise his defence.

18. Another important circumstance which completely demolishes the defence of the appellant is Ex.P-1, namely the cheque in question. A careful reading of Ex.P-1 reveals that it bears the description "RISNA TRADING COMPANY – PROPRIETOR: RASHEED P.M." The appellant has never disputed his signature appearing on Ex.P-1. Once execution of the cheque is admitted, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act immediately come into operation. The law is now well settled that the burden thereafter shifts upon the accused to rebut the presumption by raising a probable defence. In the present case, except making suggestions during cross-examination, the appellant has not entered the witness box nor produced any documentary evidence. Therefore, the statutory presumption has remained completely unrebutted.

19. The appellant has attempted to contend that RISNA Trading Company is a company and therefore the complaint is not maintainable. This contention is equally

devoid of merit. Merely because the word "Company" is found in the trade name does not automatically make it a juristic person incorporated under the Companies Act. Had RISNA Trading Company actually been a company incorporated under the Companies Act or a registered partnership firm, nothing prevented the appellant from producing the Certificate of Incorporation, CIN, Memorandum and Articles of Association, GST registration indicating corporate status or any other statutory document. No such document has been forthcoming. On the contrary, the cheque itself describes the drawer as "Proprietor: Rasheed P.M." This itself probabilises the complainant's case that the appellant was carrying on business as sole proprietor under the trade name RISNA Trading Company.

20. Equally significant is the conduct of the appellant after dishonour of the cheque. The statutory legal notice under Ex.P-3 was admittedly served upon him. Despite due service, the appellant neither issued any reply denying the transaction nor disputed his proprietorship nor alleged misuse of the cheque. Even after institution of the complaint, he did not step into the witness box. If really the defence now projected before this Court was genuine, the appellant would have immediately replied to the statutory notice and produced documentary evidence. His silence at the earliest point of time constitutes an adverse circumstance against him. The defence that the

cheque was issued only as a security cheque is also of no assistance to the appellant. Firstly, such defence itself amounts to admission regarding issuance of the cheque and existence of business transactions. Secondly, even assuming that the cheque was issued by way of security, the law is now well settled that if on the date of presentation there existed a legally enforceable liability, dishonour of such cheque would nevertheless attract Section 138 of the Negotiable Instruments Act. The appellant has utterly failed to establish that no legally enforceable debt existed on the date of presentation of the cheque.

21. The appellant has also placed reliance upon the decision in **Milind Shripad Chandurkar v. Kalim M. Khan** to contend that proprietorship has not been proved. In the facts of the present case, the said decision does not advance the case of the appellant. Here, the complainant has consistently asserted that Khalifa Construction and Trading is a proprietary concern, the commercial documents Ex.P-6 and Ex.P-7 support his version, the appellant himself has transacted with the complainant under the said trade name, and the cheque itself shows the appellant describing himself as proprietor. Thus, the factual foundation in the present case is entirely different. It is also relevant to observe that the appellant has not disputed the tax invoice, E-Way Bill, GST particulars or the business transaction by producing any contra evidence.

Mere suggestions in cross-examination cannot take the place of proof. Suggestions denied by the witness do not constitute evidence. Unless supported by acceptable evidence, such suggestions cannot dislodge the statutory presumption available in favour of the complainant.

22. The Hon'ble Supreme Court in **A.V. Murthy vs. B.S. Nagabasavanna, AIR 2002 SC 985**, has categorically held that -

> *"Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract."*

a) Likewise, in case of **Vijay v. Laxman, (2013) 3 SCC 86,** at Para 14 & 15 the Hon'ble Apex Court held that :

> ***14.*** *"Once the issuance of the cheque is admitted, the presumption under Sections 118(a) and 139 of the Act would operate. The burden shifts to the accused to rebut the same by adducing evidence that the cheque was not issued for consideration or for discharge of any debt or liability."*
>
> ***15.*** *"The presumption is rebuttable. The accused can discharge the burden by showing preponderance of*

probabilities, either by adducing direct evidence or by showing that the complainant's case is improbable."

23. The Hon'ble Supreme Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458** at Para 12 held that -

> "If on the date of the cheque, the liability or debt exists or the amount has become legally recoverable, Section 138 is attracted. The cheque cannot be treated as a mere security, if the liability had already crystallised."

Thus, the defence based solely on the nomenclature of "security cheque" does not absolve the appellant from criminal liability. What is material is the existence of legally enforceable liability on the date of presentation. The appellant has failed to establish that no such liability existed.

24. Applying the above principles laid down by Hon'ble Apex Court to the present case, this Court is of the considered opinion that the appellant has utterly failed to rebut the statutory presumptions available in favour of the complainant. The complainant has successfully established the existence of a legally enforceable debt, issuance of the cheques, dishonour thereof, issuance and service of statutory notice and failure of the appellant to comply with the demand. Consequently, the conviction recorded by the learned Trial Court is justified and does

not call for interference. Hence, the Judgment of Conviction and Order of Sentence dated 11.06.2024 passed by the learned Principal Civil Judge (Jr.Dn.) & JMFC, Madikeri, in C.C. No.1416/2022 is hereby confirmed. The appeal filed by the appellant is liable to be dismissed. Accordingly, Point No.1 is answered in the **Negative.**

25. **Point No.2:-** In view of the findings given on Points No.1, this court proceeds to pass the following:-

ORDER

The Appeal filed by the Appellant/ accused under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is hereby **dismissed.**

The Judgment of conviction and sentence passed by the learned Prl. Civil Judge & JMFC, Madikeri dated 11.06.2024 in C.C.No. 1416/2022 is hereby **confirmed.**

Office to transmit the copy of this Judgment along with the TCR to the trial court forthwith.

File be consigned to record room.

(Dictated through Adalath AI, computerized by Stenographer Grade-I, corrected, signed and then pronounced by me in the open court on this the 08th day of July, 2026).

Sd/xxx
(SURENDRA G.)
III-Addl. District & Sessions Judge,
Kodagu-Madikeri.