

**THE COURT OF V ADDITIONAL DISTRICT JUDGE,
BENGALURU RURAL, SITTING AT DEVANAHALLI.**

DATED THIS THE 10th DAY OF NOVEMBER, 2023

:PRESENT:

Sri BIRADAR DEVINDRAPPA N., B.A.,L.L.B.[Spl.]
V Additional District & Sessions Judge,
Bengaluru Rural, [to sit at Devanahalli].

CRIMINAL APPEAL No.15016/2022

APPELLANT/: PALANI K.,
ACCUSED S/o C.KANNAIAH,
AGE : 46 YEARS,
R/AT No.78, 1st FLOOR,
1st MAIN ROAD, 4th CROSS,
NEAR KVV SCHOOL,
NAGARABHAVI MAIN ROAD,
KALYAN NAGAR, MUDALAPALYA,
WARD No.127, BENGALURU.

PRESENTLY R/AT YOGA NIVAS,
13th MAIN, 4th D CROSS,
BHYRAVESWARA NAGARA,
NAGARABHAVI MAIN ROAD,
BENGALURU – 560 072.

Mr.NL - Advocate

V/s

RESPONDENT/
COMPLAINANT V. VENU,
S/o LATE M.VENKATESH,
AGE : 45 YEARS,
R/AT KODAGURKI VILLAGE,
BIDALURU POST,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.

Mr.CRS - Advocate

ORDER

Being aggrieved by the Conviction Judgment and Order of Sentence dated 19.09.2022 passed in CC No.561/2018 on the file of learned Prl. Civil Judge and JMFC, Devanahalli, the accused has preferred this appeal under Section 374[3] of Cr.P.C., praying to set-aside the Conviction Judgment and Order of Sentence and acquit him.

2. Conviction Judgment and Order of Sentence for the offence under Section 138 of Negotiable Instrument Act are under appeal. Accused is appellant and complainant is respondent and they are referred to with Trial Court rank for clarity.

3. Brief facts leading to this appeal are that, accused is an Advocate by profession and a friend of complainant. Accused came into contact with complainant's brother by name K.V.Vasu [hereinafter called as complainant's brother] the officer of a private company having handsome salary. Accused had borrowed money from complainant's brother and repaid.

Later, accused requested hand loan a sum of Rs.20 lakhs to the complainant assuring to repay in a short period and issued postdated cheque. In turn, complainant requested his brother to assist him to advance hand loan. His brother withdrawn money from his bank account and paid to the complainant. Complainant paid said money to the accused and accused issued a postdated cheque. Said cheque came to be dishonored. After compliance of mandatory provisions, complaint was filed, Learned Magistrate taken cognizance, tried the accused, convicted and sentenced him. Hence, this appeal on the following grounds:-

Judgment and order of Trial Court are illegal, improper, incorrect, contrary to law and evidence, material evidence was misread and important material was over looked. Evidence of complainant is contrary to case made out by him. Evidence is not properly appreciated. Infact, accused borrowed no money from the complainant. True facts are that, on 18.07.2006 he

purchased Ex.D.1 a stamp paper from a cooperative bank, borrowed a sum of Rs.5,00,000/- from complainant's brother on 19.07.2006, repaid a sum of Rs.3,00,000/- and balance was only a sum of Rs.2,00,000/- and produced Ex.D.2 bank passbook to prove the payment. According to the accused, he issued two blank cheques at the time of said transaction for collateral purpose. Complainant colluded with his brother, misused one of the said cheques and filed a false complaint. Himself and complainant have settled the dispute and filed a joint memo agreeing that, balance amount is only a sum of Rs.17,50,000/-. Later, he paid Rs.5,00,000/- to the complainant through RTGS. He also paid Rs.3,00,000/- to the complainant's brother through RTGS. If Rs.5,00,000/- + Rs.3,00,000/- is deducted in the agreed amount balance would be only sum of Rs.9,50,000/-. He filed a memo dated 25.05.2022 regarding details. Said memo is not considered by the Trial Court but Trial Court sentenced him to pay fine of Rs.15,50,000/-. Huge amount is involved, burden is upon the complainant to prove existence of legally

recoverable debt in the light of Judgment of our own High Court reported in *ILR 2008 KAR 4629 Shviamurthy V/s Amruthraj*. If complainant discharges his burden then only onus shifts upon the accused to rebut the presumptions. Therefore, no material is there to draw presumptions. Reasons assigned by the Trial Court are perverse, illegal, unwarranted and opposed to law, facts and circumstances. Accordingly, it is prayed to allow the appeal.

4. Trial Court pronounced the Judgment on 19.09.2022. Appeal is filed on 28.10.2022. If 15 days spent to obtain copy of Judgment are deducted appeal is within limitation.

5. Accused filed application to suspend the sentence. Sentence was suspended subject to conditions. No other applications are pending. Notice was issued. Respondent complainant appeared through counsel. Trial Court records are secured. Heard the arguments and perused the records thereafter, following points arise for determination;

- 1] Whether the complainant proved that, accused has committed the offence punishable under Section 138 of Negotiable Instrument Act?
- 2] Whether the Trial Court failed to properly consider the material facts, oral and documentary evidence and apply the settled principles and Judgment order of sentence require interference?
- 3] What Order?

6. My findings to the above points are as under:

Point No.1: In the Affirmative;

Point No.2: In the Negative;

Point No.3: As per final order for the following:

:: REASONS ::

7. **POINT No.1 AND 2:-** Both points are interlinked. Hence, taken up together to avoid the repetition. Date of transaction is not in dispute.

8. According to the complaint, he borrowed money from his brother and advanced Rs.20,00,000/- hand loan to the accused. Accused issued postdated cheque and cheque was dishonored.

9. It is the case of accused, he had borrowed only a sum of Rs.5,00,000/- from complainant's brother, issued two blank cheques and handed over a stamp paper, repaid Rs.3,00,000/- and balance is only a sum of Rs.2,00,000/- but complainant misused one of the said cheques and filed a false complaint.

10. In order to prove his case, complainant and his brother are examined as PW-1 and PW-2, got marked 07 document namely, cheque, cheque return memo, legal notice, postal receipt, track consignment, legal notice and bank statement of complainant's brother.

11. In order to prove his case, accused entered into witness box, got examined as DW-1 and produced a bank passbook and a receipt having purchased stamp paper.

12. After hearing the arguments and perusal of the records, the Trial Court, considered the joint memo, recorded a finding that, complainant proved his case and thereby sentenced the accused to pay fine a sum of

Rs.15,50,000/- and in default to suffer simple imprisonment for one year.

13. According to joint memo referred to in the Trial Court Judgment accused agreed to pay Rs.17,50,000/- in 3 installments on or before 15.04.2021, 15.05.2021 and 15.06.2021 at the rate of Rs.5,00,000+ Rs.5,00,000/- + Rs.7,50,000/- respectively. Trial Court noticed payment of Rs.2,00,000/- and thereby concluded that, outstanding amount is Rs.15,50,000/-.

14. In view of the joint memo, the Trial Court has not discussed the evidence with reference to the case made out by the complainant and accused. Though, the accused admits about joint memo and his liability as per said memo, he contends that, he paid Rs.3,00,000/- + Rs.5,00,000/- subsequent to the joint memo.

15. Joint memo is at page 92 of Trial Court records. Trial Court observation is inconformity with contents thereof. Ex.D.2 bank passbook of the accused discloses that, on 01.02.2018 Rs.2,00,000/- and on 16.03.2018 Rs.1,00,000/- was paid to Vasu K.V. the

complainant's brother by RTGS and said payments are underlined.

16. Passbook is upto 28.03.2019. Passbook subsequent to joint memo is not produced. However, accused filed a memo dated 25.05.2022 stating that, on 01.02.2018 he paid Rs.2,00,000/- and on 16.03.2018 Rs.1,00,000/- to Vasu K.V., the complainant's brother and on 30.11.2021 Rs.5,00,000/- to the complainant.

17. Passbook of transaction dated 30.11.2021 is not produced and payment of Rs.5,00,000/- to the complainant is not proved. Payments dated 01.02.2018 and 16.03.2018 are previous to joint memo. However, the Trial Court considered payment of Rs.2,00,000/- and said fact is not disputed by the complainant. Therefore, Trial Court committed no error to consider the memo.

18. I have carefully considered the oral and documentary evidence produced by the parties. Evidence of PW-1 and PW-2 the complainant and his brother, contents of Ex.P.1 to Ex.P.7 referred to above establishes the complainant's case. No material contradictions are

there between the complainant's case and evidence. No facts are elicited to disbelieve the evidence of PW-1 or PW-2 or both thereby complainant discharged his initial burden and presumptions are available.

19. Evidence of DW-1 the accused is against his own case. He admits joint memo thereby the liability, issuance of cheque and dishonor of cheque etc. He failed to prove payment of Rs.5,00,000/- dated 30.11.2021 or Rs.3,00,000/- in all a sum of Rs.8,00,000/- subsequent to joint memo. Hence, no illegality was committed by the Trial Court. Seeing from all the angles, I am of the opinion that, complainant is able to prove his case. No technicalities are brought to my notice to disprove the complainant's case. Defence evidence is not suffice to rebut the complainant's case. Trial Court has rightly convicted the accused and sentenced. Sentence awarded is proper. Accordingly, point No.1 is answered in the 'Affirmative' and point No.2 in the 'Negative'.

20. **Point No.3:** For the foregoing reasons, I proceed to pass the following;

ORDER

Appeal under Section 374[3] of Cr.P.C., preferred by the accused is dismissed.

Consequently, Conviction Judgment and Order of Sentence dated 19.09.2022 passed in CC No.561/2018 on the file of learned Prl. Civil Judge and JMFC, Devanahalli, by which accused is convicted and sentenced for the offence under Section 138 of Negotiable Instrument Act is confirmed.

Return the records alongwith a copy of this order.

[Dictated to the Stenographer, transcribed and computerized by her, corrected, signed and then pronounced by me in the open court on this the 10th day of November, 2023.]

(BIRADAR DEVINDRAPPA N.)
V Addl. District & Sessions Judge,
Bengaluru Rural District,
sit at Devanahalli.