KAMD010046222024

IN THE COURT OF I-ADDL. DISTRICT AND SESSIONS JUDGE AT MANDYA

Dated this the 25th day of April, 2025

-: PRESENT :-

Sri. SHIVAPRASAD K.B., ***B.Com., LL.B.,***
I-Addl. District & Sessions Judge,
Mandya

Criminal Appeal.No.191/2024

APPELLANT:	Ramaiah S/o Narasimhaiah, Aged about 63 years R/at No. Kamplapura Village, Huliyurdurga Hobli, Tumkur District. [Accused before the learned Magistrate] (Rep. by Sri. Ravikumara B.R, Advocate)
	-Vs-
RESPONDENT :	Kemparaju S/o Shivalingaiah, Aged about 44 years, R/at No.Danayakanapura Village, Keregodu Hobli, Mandya Taluk, Mandya District.

[Complainant before learned Magistrate]

(Rep. by Sri. Krishnamurthy, Advocate)

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<u>J U D G M E N T</u>

The appellant filed this appeal under Sec.374(3) of Code of Criminal Procedure r/w Sec.415 of B.N.S.S. challenging the judgment and order dated 26.11.2024 passed in C.C.No.97/2021 on the file of learned I Addl. Civil Judge and JMFC, Maddur, convicting the appellant for the offences punishable under Sec.138 of Negotiable Instrument Act and sentencing him to pay fine of Rs.67,000/- and he shall undergo Simple Imprisonment for 6 months.

2. The appellant is the accused and the respondent is the complainant in C.C.No.97/2021 on the file of learned I Addl. Civil Judge and JMFC,Maddur.

The parties herein are referred to, as referred before the learned Magistrate.

3. The brief facts of the complainant case is that:

The complainant and accused are well known to each other and the accused approached the complainant for a loan of Rs.64,000/- for the purpose of discharge hand loans and improvement of Coconut business during first week of August 2020 and on 15.08.2020, the complainant lent loan of Rs.64,000/- to the accused for the said purpose and accused agreed to repay the same within three months. On the same day, the accused issued a post dated cheque bearing No.322928 for Rs.64,000/- dated 18.11.2020 drawn on Canara Bank, Huliyurudurga Branch and requested the complainant to collect the amount from the said bank on 18.11.2020 or thereafter. The complainant presented the said cheque through his Banker Canara Bank, Maddur Branch for encashment. However, said cheque returned to the complainant with an endorsement 'Funds Insufficient' on 11.12.2020. The complainant got issued demand notice on 19.12.2020 through RPAD, and said notice duly served to the accused on 22,12,2020. Despite receipt of notice, the accused failed to pay the cheque amount or to reply the said notice. Hence, complainant presented the complaint before the learned I Addl. Civil Judge and JMFC, Maddur on 19.01.2021 against the accused for the offence under Sec.138 of NI Act.

4. The learned Magistrate, after sworn statement of the complainant, took cognizance of the offence punishable under Sec.138 of Negotiable Instruments Act, registered the case in CC.No.97/2021 and issued summons to the accused. The accused appeared before the learned Magistrate through his counsel and his plea was recorded. The complainant examined herself as PW.1 and got marked Ex.P.1 to P.8 documents. After completion of the complainant evidence, the accused examined under Sec.313 of Cr.P.C. During his examination under Sec.313 of Cr.P.C., he denied the incriminating materials put to him. The accused himself examined as DW1 and got marked Ex.D1 to Ex.D11 documents.

5. The Learned Magistrate after hearing, convicted the accused as aforesaid, vide judgment and order of sentence dated 26.11.2024.

6. Being aggrieved by the said judgment of conviction and order of sentence, the accused preferred this appeal on the following grounds:

i) The Learned Magistrate erred in not understanding the statutory presumption under Section 118 and 139 of Negotiable Instruments Act and wrongly applied the presumptions available under the said provision;

ii) The Learned Magistrate has not properly appreciated the oral and documentary evidence placed on record and complainant failed to prove that the accused had issued the cheque towards the discharge of his liability;

iii) The Learned Magistrate has not properly appreciated the materials placed before the learned Magistrate;

iv) The learned Magistrate ignored the consistent and reliable evidence adduced by the accused, which rebutted the presumption U/Sec. 139 of Negotiable Instruments Act;

v) The Learned Magistrate erroneously gave wrong reason for justifying the conviction;

vi) The Learned Magistrate failed to appreciate that the complainant failed to comply all the conditions U/Sec.138 of Negotiable Instruments Act;

vii) The Learned Magistrate failed to appreciate that the accused specifically took the defence that the complainant has stolen the disputed cheque at the business place of accused;

viii) The Learned Magistrate failed to appreciate that the complainant has not produced any document to show that on 15.08.2020, he had money of Rs.64,000/-and the Ex.P6 shows that he possessed Rs.4,410/- from 10.08.2020 till 21.08.2020 and the complainant had no financial capacity to lend the money;

ix) The Learned Magistrate failed to appreciate that the examination of the complainant, creates the doubt with regard to the lending of loan to accused ;

x) The Learned Magistrate failed to appreciate that Ex.P6 and Ex.P7 would show that the complainant has no financial capacity to lend the amount on 15.08.2020;

xi) The Learned Magistrate has not appreciated the evidentiary value of Ex.D1 to Ex.D11;

xii) The sentence passed by the Learned Magistrate is severe and unreasonable;

xiii) The Learned Magistrate failed to appreciate that the accused has taken defence with regard to financial capacity of complainant;

xiv) The Learned Magistrate failed to appreciate that the accused has denied the signature on the cheque in question and statutory notice also not served upon him;

xv) The Learned Magistrate failed to appreciate the contradictory evidence of the complainant;

Thus, among other formal grounds, the accused/ appellant prayed to allow the appeal and set aside the impugned judgment and acquit the accused.

7. Pursuant to the notice, the complainant/respondent appeared through his counsel.

8. Secured the records of learned Magistrate.

9. Heard the learned counsel for the accused and complainant and further arguments of accused. The learned counsel for the accused also submitted the written arguments.

10. The learned counsel for the accused relied upon the following authorities:

i. (2010) 11 SCC 441 (Rangappa V/s Mohan);

ii. (2019) 5 SCC 418 (Basalingappa V/s Mudibasappa);

iii. (2015) 1 SCC (K.Subramani V/s K.Damodara Naidu);

iv. (2013) 3 SCC 86 (Vijay V/s Laxman);

v. (2014) 2 SCC 236 (John K.Abraham V/s Simon C. Abraham)

vi. (2024) 8 SCC 573 (Dattaraya V/s Sharanappa);

vii. AIR 1981 SC 950 (Tara Singh V/s State of M.P).

11. Upon hearing both the parties and perusal of records of learned magistrate, the point that arise for my consideration is;

Point No. 1: Whether the impugned Judgment of conviction and order of sentence dated: 26.11.2024 in CC.No. 97/2018 passed by Learned I Addl. Civil Judge & JMFC, Maddur, is illegal and liable for interference by this court?

Point No.2: What Order?

12. My answer to the above points are:

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

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

REASONS

Point No.1 :

12. At the out set, it is not in dispute that the Ex.P1 cheque pertains to the Bank account of accused.

Further, it is also not in dispute that the signature on cheque at Ex.P1(a) pertains to the accused. During the cross-examination of DW1/accused admitted that 'ನಿಪಿ-1 ರಲ್ಲಿರುವ ಸಹಿಯು ನನ್ನದು'. Thus, admittedly, the signature found on the Ex.P1 cheque belongs to accused.

13. The learned counsel for the accused/appellant relied upon the decision reported in **Rangappa v. Mohan, reported in (2010) 11 SCC 441**, wherein it was held that, once the cheque relates to the bank account of the accused and he accepts the same and also admits his signature on the cheque, then the initial presumption under Section 139 of N.I.Act as well as under section 118 of N.I. Act has to be raised in favour of the complainant. But the accused is entitle to rebut the said presumption by raising probable defense on preponderance of probabilities.

14. He also relied upon the decision reported in **(2019) 5 SCC 418 (Basalingappa Vs. Mudibasappa),** the Hon'ble Apex Court referring the decisions of Kali Ram Vs. State of Himachal Pradesh (1973) 2 SCC 808; Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Pyarelal (1999) 3 SCC 35; M.S.Narayana Menon @ Mani Vs. State of Kerala and another (2006) 6 SCC 39 ; Krishna Janardhan Bhat Vs. Dattatraya G.

Hegde (2008) 4 SCC 54; Rangappa Vs. Sri Mohan (2010) 11 SCC 441, summarized the principles on Sec.118(a) and Section 139 of Negotiable Instruments Act at para 25 that :-

> "25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarize the principles enumerated by this Court in following manner:-
>
> 25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
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> 25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
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> 25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the

> materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
>
> 25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
>
> 25.5. It is not necessary for the accused to come in the witness box to support his defence."

15. Thus, the ratio laid down in the aforesaid decisions makes clear that, once the accused admits his the signature on the Cheque or execution of the cheque is proved or the signature on the cheque is not disputed by the accused, the presumption under Sec.139 of N.I.Act activated in favour of the complainant, and the onus shifted on the accused and then, something which is probable has to be brought on record by the accused to shift the onus on the

complainant. Further, unless the accused has brought the facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised.

16. Further, in the decision reported in **(2024) 8 SCC 573 (Dattaraya V/s Sharanappa)**, the Hon'ble Apex Court examining the evidence for rebuttal in the light of 'Rangappa' case and 'Rajesh Jain' case, at para-28 held that accused can place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 of Cr.P.C. 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed.

17. During the course of arguments, the learned counsel for the accused/appellant vehemently contended that as per the contents of complaint averments, the transaction was during the 1st Week of August, 2020 and on 15.08.2020 lent the loan of Rs.64,000/- to the accused for discharge of his hand

loan and improvement of his Coconut business and issued the post dated cheque dated 18.11.2020. However, as per the evidence of complainant, the transaction took place on 15.08.2020, when the accused approached the complainant. So, there is material contradiction with regard to the transaction between the parties. He further contended that the complainant was customer of the accused, and accused doing Coconut business and had sufficient source of income, there was no necessity to borrow the loan from the complainant at any point of time. He further contended that the bank statement of complainant would show the balance below Rs.5,000/- during August 2020 and income tax returns of complainant at Ex.P6 and Ex.P7 does not show the loan due by the accused. Further, he contended that even after the alleged transaction, the complainant had the coconut business with the accused. He has not produced the books of accounts to show the discontinuation of coconut transaction with accused. The accused seriously disputed the transaction and elicited several inconsistent and doubtful evidences from the mouth of complainant. The learned Magistrate has not considered the cross-examination of PW1 and the infirmities elicited from the mouth of complainant. He also contended that there is no definite evidence to prove the transaction except the Ex.P1 cheque. The evidence of PW1 contains false evidences with regard to the transaction. So, the evidence of PW1 also unreliable. Under such circumstances, the complainant failed to prove the legally enforceable debt and the accused able to show the probable defence that there is no legally enforceable debt. Further, he contended that when there is two views possible, the accused is entitle for acquittal. Hence, he prayed to allow the appeal and set aside the impugned order and acquit the accused.

18. The learned counsel for the complainant/respondent contended that the accused took up contention that the complainant had stolen the cheque of accused and misused. But the accused failed to prove said defence. The complainant and accused are the businessmen and there is no dispute with regard to the financial ability of the complainant. He submitted that in the absence of probable defence, the impugned judgment passed by the learned Magistrate is proper and hence, prayed to dismiss the appeal.

19. On careful perusal of the evidence on record, it is not in dispute that the complainant is doing Coconut business in the name and style of Sri. Arakereshwara Traders at Uppinakere village, Maddur. Further, it is not in dispute that the accused also doing Coconut business at Huliyurudurga and he used to purchase the Coconuts from farmers. Further, it is also not in dispute that the complainant was purchasing the Coconuts from the accused and he was a customer of accused.

20. However, further on careful perusal of the evidence on record, it is not in dispute that the demand notice as per Ex.P3 is served on the accused and he has not replied to the said notice. The accused has not raised any specific plea either during recording of his plea or during his examination U/Sec. 313 of Cr.P.C.

21. The cross-examination and the defence evidence goes to show that the accused took up the contention that he kept the cheque at his table to issue such cheque to farmers and while the complainant came to his shop to purchase the Coconut, he had stolen the cheque and said cheque has been misused by the complainant. So, as per the version of accused

Ex.P1 cheque is a stolen cheque. As indicated above, the accused neither replied to the aforesaid legal notice nor raised specific defence either during recording his plea or examination of accused U/Sec. 313 of Cr.P.C. Further, it is seen that the accused has not specified the specific time of loss of cheque from shop. In the defence evidence, the accused specifically stated that even after the theft of cheque, the complainant transacted for one year. So, according to accused, one year back to the alleged transaction, the cheque was stolen. But, the Ex.P1 cheque dishoured for funds insufficient, which shows that the accused has not informed the loss of cheque to the Bank. The accused is a businessmen and knowing consequences of the misuse of the cheque. If really the accused lost the cheque as alleged by him, he must have intimated to his Banker with regard to the loss of cheque.

22. Apart from that, as per the defence evidence, he received the legal notice one year after the loss of cheque, and while he enquired the complainant, he told that he had stolen the cheque jokingly and would return the said cheque to him; however, he has not returned the cheque. Such version of the accused seems flimsy, because no one would present the

cheque for encashment and withdraw the money from the others bank account jokingly. Though according to accused, while he approached the police to lodge the complaint and the police told to decide the dispute in the pending proceeding, he has not laid any complaint against the complainant before Magistrate. So, it appears that, there is no material to substantiate the version of accused that the complainant had stolen the cheque at Ex.P1 from the shop of accused.

23. During the course of arguments, the learned counsel for the accused pointed out and heavily relied upon the contradictions and doubtful circumstances arose in the cross-examination of PW1 to contend the non-existence of debt. On perusal of the cross-examination of PW1, it appears that accused possessed the Bank accounts at Canara Bank at Maddur Branch, Ujjawala Bank at Besagarahalli, Sahaya Seva Bank at Besagarahalli, Grameena Udyoga Bank and Corporation Bank at Mandya and he is doing Coconut business, since 15 years. In the cross-examination of PW1, he stated that he purchased the Coconut from the accused, 15 days prior to the said monetary transaction. He stated that he has not transacted with accused from 07.08.2020.

24. Further, he stated that at the time of monetary transaction with accused, he had not conducted the audit and he got conducted the audit of his business from September, 2020 i.e. next month to the alleged transaction. Further, he stated that at the time of monetary transaction with the accused, he was not paying the income tax. In the cross examination of PW.1, the accused suggested that the accused sold the Coconut worth Rs.65 to 75 lakhs to him and he admitted such suggestion. So, it appears that there was long standing coconut business ties between the accused and complainant.

25. In the cross examination of PW.1, the accused suggested that he used to issue receipt for purchase of coconuts and complainant purchased the Coconuts on 27.09.2020, 23.09.2020, 20.09.2020, 30.08,2020, 15.08.2020 and the complainant PW1 denied those suggestions. Further, the accused suggested to PW.1 that he weighed the Coconuts at SLV weigh bridge and such suggestion also denied by PW1. He stated that he used to weigh the Coconut at weigh bridge located at APMC market and beside the Padmamma Kalyana Mantapa. He stated that he cannot produce the document to show those aspects. The accused also

suggested that the complainant used to transport the Coconuts in the vehicle bearing No. KA-06 AA-1344 and PW.1 stated that he does not know the owner of said vehicle.

26. The DW1 during his evidence produced copies of cash bills at Ex.D1 to Ex.D8 to show the coconut transaction between the accused and complainant, even after the date of Ex.P.1, and those documents appears that on 07.08.2020, 08.08.2020, 15.08.2020, 30.08.2020, 27.09.2020, 20.09.2020, 23.09.2020 complainant purchased the Coconut from the accused. Those Ex.D1 to Ex.D8 are the carbon copy of the bills. However, during cross examination of PW.1 complainant, he denied the issuance of those bills and he denied the coconut transaction after 07.08.2020. Be that as it may.

27. After cross-examination of PW.1 on 01.04.2023, the complainant produced his statement of account from 01.01.2020 to 31.12.2020 at Ex.P6, balance sheet at Ex.P7, Form No.3 CB and CD Audit report at Ex.P8. In the cross-examination on 17.11.2023, the PW1 admitted that Ex.P7 and Ex.P8 pertains to the period of 01.04.2020 to 31.12.2021 and he produced the documents shown in column No.11(c)

of Ex.P8 to the auditor i.e. bank Book, Cash book, General Ledger, Purchase register and sales invoices. He admitted that as per Ex.P6, he had the balance of Rs.4,410/- and till 21.08.2020, there was no transaction in his Bank account. He admitted that he has not produced any documents to show that he possessed Rs.64,000/- on 15.08.2020 i.e. on the date of lending.

28. Ex.P.6 the statement of account of complainant for the period of 01.01.2020 to 31.12.2020, appears that on 10.08.2020, the complainant had the balance of Rs.4,410/- and an amount of Rs.,6,18,700/- credited to his account on 21.08.2020. So, it appears that the complainant bank account show the balance of Rs.4,410/-, as on the date of transaction. In cross-examination, the PW.1 stated that he paid the money to accused at 5-00 p.m. at his shop on 15.08.2020. He stated that he has not withdrawn the amount of Rs.64,000/- to pay such amount to accused. So, as per the complainant version, he lent the money, which was in his hand.

29. In the cross-examination of PW.1, the accused directed questions with regard to Ex.P7 and Ex.P8 and the PW.1 categorically stated that he has not shown

the loan liability of accused in Ex.P.7 and Ex.P.8 the balance sheet and Audit report of the Auditor for the period from 01.04.2020 to 31.03.2021. It is pertinent to note that both the complainant and accused are engaged in Coconut business and except the Ex.P1 cheque, there is no other material to show the lending to the accused. Though according to complainant, he paid the said loan amount by way of cash at his shop on 15.08.2020 at 5 p.m., he has not produced either cash book, Bank book, Ledger or the purchase register mentioned in Ex.P.8 to show that as on the date of lending, he had cash money of Rs.64,000/- with him. The complainant withheld such important documents and he failed to show the possession of the cash amount of Rs.64,000/- as on the day of alleged transaction. If really the complainant possessed such amount and he lent an amount of Rs.64,000/- to the accused on the alleged day, he would have produced his account ledgers and shown the said loan amount of accused in the balance sheet.

30. Apart from that, it is seen from the complaint averments, the accused approached the complainant during 1st week of August 2020 for the loan amount for discharge his hand loan and improvement of his

Coconut business and on 15.08.2020, paid the loan amount and accused issued a post dated cheque. In the evidence the PW1 states that on 15.08.2020, the accused approached him for money and on the same day, he paid the money at his shop at 5-00 p.m. in the presence of Umesh his brother-in-law. So, there is a material contradiction with regard to time of approach for the loan amount. Under these circumstances, there are reasonable doubts with regard to alleged transaction and possession of alleged money on the date of alleged lending. Thus, on reappreciation of evidence on record though the accused failed to show the theft of cheque at Ex.P1 as alleged, he able to show the reasonable doubts with regard to the alleged transaction and existence of debt. Thus, the accused able to show the circumstances for the non-existence of debt and the presumption U/Sec. 139 of Negotiable Instrument Act stands rebutted.

31. The learned Magistrate appreciating the evidence on record, holds that the accused failed to take any legal action with regard to theft of cheque, and the complainant had the financial capacity to lend the loan to the accused. However, the learned Magistrate has not appreciated the contradiction as to

time of approach for the loan by accused and failure of complainant to show the possession of alleged money to lend loan by way of cash, in the light of contentions raised by the accused. It is true that the accused could not prove the theft of cheque at Ex.P1 and he has not taken any legal action with regard to the missing of the cheque. However, it is also to be seen that the complainant was purchasing the Coconut from the accused and complainant has not produced any documents to show that he possessed cash amount of Rs.64,000/- as on 15.08.2020 to lend the said money to the accused. The complainant, a businessman, withheld the important documents like Cash book, Bank book, Ledger, Purchase register audited by his Auditor. Therefore, an adverse inference has to be drawn that if he produced those documents the actual financial condition on the said date would be revealed and it would goes against the complainant. Further, there is material contradiction as to time of approach of accused for alleged loan. Under these circumstances, there is doubt about the existence of legal enforceable debt covered under the Ex.P1 cheque and the accused able to show the circumstances for non existence of debt. Therefore, the impugned judgment of conviction and order of sentence passed by the learned Magistrate is illegal and liable for interference by this Court. Therefore, the appeal deserves to be allowed. Hence, I hold the point No.1 in the **Affirmative**.

Point No.2:-

32. In view of my above findings on point No.1, I proceed to pass the following:

O R D E R

The Criminal Appeal filed by the appellant/accused under Section 374(3) of Cr.P.C. R/w Sec.415 of BNS is **allowed.**

The judgment of conviction and order of sentence passed in C.C.No.97/2021 dated 26.11.2024 by the learned I Addl. Civil Judge and J.M.F.C, Maddur is **set aside**.

The Complaint filed under Sec.138 of N.I.Act r/w/s.200 of Cr.P.C. by complainant/respondent is **dismissed.**

The accused/appellant is **acquitted** for the offence punishable U/Sec. 138 of N.I.Act.

Refund the fine amount to the accused/ appellant, if he deposited before the learned Magistrate.

Return the records to the Learned Magistrate along with copy of this judgment.

(Dictated to the Stenographer Grade-I, directly on computer, corrected and then pronounced by me in the open Court on this the 25th day of April, 2026)

(SHIVAPRASAD.K.B.)
I Addl. District and Sessions Judge
Mandya.