

KAMS010046712025



**IN THE COURT OF THE III ADDL. SESSIONS JUDGE:
MYSURU.**

PRESENT

Sri **Gururaj Somakkalavar**, M.A.,LL.B.,
III ADDL.SSESSIONS JUDGE: MYSURU.

CRL.A/230/2025

Dated this the 29th day of April, 2026

**Appellant/
Accused:**

Ramesh,
S/o Doddanna,
Aged about 29 years,
R/at Indira Nagara,
Palahalli,
Srirangapatna Taluk,
Mandya District.

[By Sri.O.S.B, Advocate]

V/s

**Respondent/
Complainant:**

Smt.Bhagya.
W/o Raja,
Aged about 50 years,
R/at Ward No.11,
Vinayaka Colony, Bannur Town,
T.Narasipura Taluk,
Mysuru District.

[By Sri.G.P.C, Advocate]

: JUDGMENT :

The appellant/accused has assailed the legality and correctness of his conviction to the offence punishable U/Sec.138 of N.I Act and his sentence to pay fine amount of Rs.7,10,000/- and in default of payment shall undergo simple imprisonment for a period of Six months for the said offence and further sentenced him that, the complainant is entitled for Rs.7,00,000/- U/Sec.357(1) of Cr.P.C., through its impugned judgment and order of sentence dated 04.10.2023 in C.C.No.64/2023, on the file of Civil Judge and JMFC, T.Narasipura.

2. The parties are referred to their original ranks.

3. Essential material facts lead to this appeal succinctly is as follows:-

It is the case of the complainant that, the accused is well known to the complainant and out of said acquaintance, during the first week of August 2022, the accused approached the complainant seeking financial assistance to meet his legal necessities and borrowed a sum of Rs.6,50,000/-, agreeing to repay the same within a short span. In spite of repeated requests and demands, the accused failed to make repayment and thereafter,

issued a cheque dated 09.11.2022, bearing No.373748, drawn on State Bank of India, Palahalli, Srirangapatna Taluk for a sum of Rs.6,50,000/- assuring honoring of the said cheque. As per the assurance, the complainant presented the said cheque for encashment through his banker Karnataka Bank Ltd., Bannur Branch but to his shock and surprise, the cheque came to be returned unpaid for the reasons "Drawers Signature Differs" vide memo dated 14.11.2022. Immediately on 18.11.2022, the complainant got issued a legal notice calling upon the accused to repay the amount. The said legal notice though served upon the accused on 23.11.2022, he failed to make payment. Hence, the complainant has filed this complaint.

4. The Trial Court after taking cognizance on the complaint of complainant and examination of available materials, including complaint and sworn statement of complainant and other materials registered a case in C.C.No.64/2023 against accused for the offence punishable U/Sec.138 of N.I.Act. Accused appeared before trial court through his counsel. He was supplied with copies of papers and its supporting materials. Substance of accusation was read over and explained to

the accused. Accused pleaded not guilty and claims to be tried.

5. The complainant to bring home above guilt of accused, herself examined as PW.1 and got marked 05 documents exhibited as Ex.P.1 to P.5. Accused was examined U/Sec.313 of Code of Criminal Procedure. He has denied all incriminating evidence appeared against him.

6. The trial court after hearing arguments of learned counsels and examination of available materials, found accused guilty for the above offence with aforementioned finding on the points addressed for decision making in the impugned judgment and believed the existence of above version of complainant through impugned judgment and accordingly sentenced accused in the above manner through impugned order of sentence.

7. Feeling aggrieved and dissatisfied with the above nature of verdict of court below, accused has preferred instant appeal. Accused in his appeal memo, while reiterating above noted material events taken place prior to complaint and subsequent to complaint, it is specifically contended that,

The impugned order passed by the learned trial court is not correct in the eye of law, absolutely one sided and legally unsustainable too.

At the outset, the learned trial court gravely erred in passing the judgment of conviction by not providing the appellant/accused an opportunity to cross-examine the complainant, which is a fundamental right guaranteed under Section 311 of CrPC and also a facet of the principles of natural justice.

Further it is the settled principle of law and the same is reiterated in catena of Apex Court judgments that violation of the right to cross-examine is a violation of the basic principle of natural justice rendering the trial vitiated.

The Learned Trial Court hurriedly and mechanically recorded the plea of the accused and immediately proceeded to record the statement under Section 313 CrPC on the very same day without affording the accused reasonable time to understand and prepare for his defence. This undue haste amounts to procedural irregularity and gross miscarriage of justice and cautioned against curtailing procedural safeguards under procedural established law.

Further, despite the plea of the accused being recorded and the statement under Section 313 CrPC being taken, the accused

was not granted any opportunity to lead defence evidence or summon witnesses in his support which is gross violation of principle of natural justice and procedural established law.

Further, the learned trial court erred that, just after two days of recording of 313 CrPC statement, the matter was abruptly taken up for hearing of arguments of the complainant by the learned trial court and the accused's genuine prayer seeking time for arguments was also unjustly refused, resulting in miscarriage of justice.

The Learned Trial Court committed a legal error in directing the appellant to pay ₹7,10,000/- as compensation though the cheque amount involved was only ₹6,50,000/-, without giving any justification or reasons for awarding a higher sum.

The Trial Court treated the matter as ex-parte despite the fact that the accused had appeared before the court, was granted bail, and pleaded not guilty on record. Thereafter, no proper opportunity was given to contest the case, which is violative of the right to a fair trial under Article 21 of the Constitution of India.

The summary nature of proceedings adopted by the Trial Court, completing trial hurriedly within a span of few days, has seriously prejudiced the rights of the appellant causing grave injustice warranting setting aside of the impugned judgment.

Further the learned trial court has not taken into consideration the economic background, monthly revenue and standard of living of this Accused before coming to the conclusion to pass the said impugned judgment against the accused.

Further the learned trial court has erred in considering the fact that whether the complainant has proved by adducing cogent evidence that the amount recoverable by the accused is in respect of legally recoverable debt, as in fact during the trial the complainant has not adduced any such evidence which could clearly prove that the cheque amount was legally recoverable debt from the Accused.

The appellant may be permitted to take additional grounds at the time of addressing arguments on merits.

As appeal is not in time, application for condonation of delay for cogent reason mentioned in the said application only, has also been filed along with this memorandum of Appeal.

Order for the payment of rs.7,10,000/-, an additional amount of Rs.10,000/-towards the expenses of the state is also exharbirent, without valid reason, erroneous and unsustainable under law.

With the above contentions the accused/appellant prayed to set aside the Judgment passed in C.C.No.64/2023 dated 04.10.2023 on the file of Civil Judge and JMFC, T.Narasipura.

8. Heard both sides.

9. In the light of challenge of impugned judgment by accused and above noted materials, following points fall for decision making of this court:-

1. Whether the present case is to be remanded for fresh consideration ?

2. Whether the impugned judgment and order of sentence passed by the learned Magistrate is call for interference ?

3. What order?

10. This court upon re-appreciation of available materials in the file with reference to prevailing law of land, give finding to the above points as follows:-

Point No.1: In **Affirmative**

Point No.2: In **Affirmative**

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

REASONS

POINTS No.1 and 2:

11. I have perused the appeal memo, the private complaint, order sheet, impugned judgment and other materials available on record. The Respondent/complainant filed the private complaint against the accused. After considering the materials the learned Magistrate took cognizance and registered the case against the accused, the accused appeared through his counsel and opposed the complaint. After full fledged trial the trial court convicted the accused in the above manner. Being aggrieved by the judgment of conviction the appellant has filed this appeal.

12. The present appeal is preferred by the accused/appellant challenging the judgment dated 04.10.2023 in C.C.No.64/2023, on the file of Civil Judge and JMFC, T.Narasipura. Herein the trial court has convicted the accused U/s.138 of N.I.Act and sentenced him to pay fine of Rs.7,10,000/- and in default undergo simple imprisonment for six months. Aggrieved by the said judgment, the present appeal is preferred.

13. Since the accused has challenged the conviction order of the trial court, the evidence is to be re-appreciated in this appeal. The complainant has to discharge initial burden and prove the liability by the accused.

14. In order to prove the case, complainant examined himself as PW-1 and marked Ex.P.1 to 5.

15. To substantiate the case, the complainant produced Ex.P.1 cheque, Ex.P.1[a] is the Signature, Ex.P.2 is the Bank Endorsement, Ex.P.3 is the Legal notice, Ex.P.4 is the Postal receipt, Ex.P.5 is the Postal acknowledgment.

16. The complainant is not subjected to cross-examination. After hearing both the sides, the trial court convicted the accused for the alleged offence U/s.138 of N.I.Act. The appellant/accused has raised point in this appeal that the complainant has not substantiated his case and not discharged burden. Further, raised number of grounds. It is mainly prayed in the appeal to set aside the judgment and remand the matter for fresh trial.

17. If, the entire material before the court looked into, as per the complainant accused has borrowed

Rs.6,50,000/- and issued impugned cheque got dishorned. The first and foremost thing is to be appreciated that, the cheque is returned with shara Drawers Signature Differs as per memo dated 14.11.2022. The point to be appreciated is whether the accused himself has changed the signature or the signature was signed by somebody is a matter of appreciation.

18. Secondly, in the complaint averment it is not specifically stated the purpose for borrowing the said amount of Rs.6,50,000/-. Though, appellant/accused's statement is recorded under Sec.313 of Cr.P.C. where, the accused has put up explanation that, he has borrowed only Rs.50,000/-. But, here in this case the amount of Rs.6,50,000/- is mentioned, which is huge amount as against claim of the accused of Rs.50,000/-.

That apart, during the pendency of the appeal the appellant has filed application under Sec.391 of Cr.P.C seeking to produce additional evidence. Wherein it is put forth that, since there is dispute between the wife of accused and the complainant, who is none other than the sister of wife of accused, the present case is filed. However, the said application came to be dismissed.

19. But, the factual aspects in this case are subject to scrutiny in the trial. It is to be noted here that, the amount involved is huge amount of Rs.6,50,000/- and it is ordered to pay Rs.7,10,000/-. Such being the case, an opportunity has to be given to the accused to put up his defence. If, he has not been given opportunity that will amounts to violation of principals of natural justice and conviction is without opportunity to the accused. There is nothing much to discuss, but given facts and circumstance it appears that, it is fit case to remand the matter upon setting aside the judgment of the trial court.

20. On appreciation of evidence and circumstances, this is the case which requires the detailed trial. As such, the present judgment of conviction is to be set aside and matter is remanded back to the trial court for fresh consideration. With these observation the judgment of the trial court is set aside and matter is remanded back for fresh disposal. Accordingly Point No.1 & 2 are answered in the **Affirmative**.

POINT No.3:

21. In the light of my finding on point No.1 and 2 this court proceeds to pass the following;

ORDER

Appeal filed by the appellant is hereby **allowed**.

Impugned judgment and order of sentence of Trial court passed on 04.10.2023 in C.C.No.64/2023, on the file of Civil Judge & JMFC, T.Narasipura, is hereby **set aside**.

The matter is remanded back to Trial court for a fresh consideration and proceed in accordance with law.

Send copy of this Judgment along with Trial court records forthwith.

[Dictated to the stenographer on computer, corrected and then pronounced by me in the Open Court, this the **29th day of April 2026**]

[Gururaj Somakkalavar]
III Addl District & Sessions Judge,
Mysuru.