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S A HIDAYATH ULLA SHARIFF

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THE COURT OF THE III ADDL. DISTRICT & SESSIONS JUDGE, RAMANAGARA

:PRESENT:

Sri. S.A.Hidayathulla Shariff, B.A.,LL.M.,
III Addl. Dist. & Sessions Judge, Ramanagara

Dated this the 27th day of June 2026

Crl.A.No.61/2021

Appellant **Accused**	**:**	Sri. Prathap, S/o Ramesh, Aged about 32 years, R/at No.383, "Mathrusri Nilaya" Chowdeshwari Prasanna, 4th 'C' Cross, 1st Main, KHB Layout, Sathanuru Road, Channapatna Town, Ramanagara District. **(Rep by Sri.A.N., Advocate)**

Vs.

Respondent **Complainant**	**:**	Smt. Shilpa, W/o Shivalingegowda, Aged about 41 years, R/at C/o Late Ramalingegowda, Thagachasguppe Village & Post, Channapatna Taluk, Ramanagara District. **(Rep by Sri.G.R.S., Advocate)**

JUDGMENT

This appeal is preferred by the appellant/accused under Section 374(3) of Cr.P.C., against the Judgment of conviction and order of sentence dated 12.08.2021 passed by the learned Addl. Civil Judge & J.M.F.C., Channapatna, convicting the appellant/accused for the offence punishable under Section 138 of Negotiable Instruments Act. The trial Court has sentenced the accused to pay a fine amount of Rs.4,80,000/- and in default of payment of fine amount to undergo simple imprisonment for a period of 6 months. The trial Court has further ordered that on the realization of the fine amount, a sum of Rs.4,70,000/- shall be paid to the complainant as compensation and remaining sum of Rs.10,000/- was ordered to be remitted to the State.

2. For the sake of convenience, the parties will be referred to as per their ranking assigned in the Court below.

3. The brief facts for the disposal of this appeal are as under:

It is the case of the complainant that accused is a known person to her. On 04.06.2010, accused had borrowed a loan of Rs.4,80,000/- from her for improvement of his business in Thibbadevi Mobile

Gallery by executing the agreement agreeing to repay the borrowed loan amount with interest at the rate of 1% within one year. After expiry of one year, when the complainant has demanded the accused for repayment of the loan amount borrowed, accused had issued a post dated cheque bearing No.273779 dated 02.12.2011 for a sum of Rs.4,80,000/- in favour of the complainant drawn on State Bank of India, Channapatna Branch, requesting the complainant to produce the cheque for encashment in the month of February 2012. As per the assurance of the accused, on 04.02.2012 the complainant has presented the above mentioned cheque for encashment through his banker, Abhyudaya Mahila Grameena Sahakara Bank Limited. On 07.02.2012 the cheque of the accused returned dishonored due to "Insufficient of Funds" in the account of the accused to honour of the same. The efforts of the complainant to meet the accused with regard to dishonour of the cheque were not fruitful. On 21.02.2012, the complainant got issued a legal notice to the accused and same was served on the accused on 25.02.2012. Accused has sent untenable reply to the legal notice. Accused has not repaid the amount pertaining to dishonour of the cheque issued by him.

4. The trial Court has took cognizance of the offence and registered a case against the accused and issued

summons to the accused. In response to the summons issued by the trial Court, accused appeared before the trial Court and got enlarged on bail. Accused was represented by a counsel. The trial Court has framed substance of accusation against the accused and the same was read over and explained to the accused. The accused has pleaded not guilty for the substance of accusation and stood for trial.

5. A perusal of trial Court record discloses that in proof of his case, complainant got herself examined as PW1 and examined one witness as PW2. Exs.P1 to P7 documents were tendered in the evidence of complainant. After closure of the evidence of the complainant, the statement of the accused, as required under Section 313 of Cr.P.C., was recorded by the trial Court. Accused has denied the incriminating evidence found against him. Accused has led defence evidence by getting himself examined as DW1. Accused has not tendered any documents in his defence evidence.

6. Based on the materials placed on record, trial Court has framed following points for consideration:-

1. Whether the complainant proves beyond all shadow of doubt that, the accused has committed the offence

punishable under Sec.138 of Negotiable Instruments Act?

2. What order?

7. The trial Court after hearing the arguments of learned counsel for the complainant and learned counsel for the accused and after appreciating the evidence on record has answered point for consideration in the affirmative and convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Being aggrieved by the conviction Judgment and Order of sentence passed by the trial Court, the appellant/accused has preferred this appeal challenging the same on various grounds.

8. Several grounds were urged in the Memorandum of Appeal. It is contended that the impugned conviction judgment and order of sentence passed by the trial Court is opposed to law, facts and probabilities of the case. It is further contended that the trial Court has erred in convicting the accused in the absence of complainant proving the fact that cheque in question was issued towards discharge of legally enforceable debt or liability. It is further contended that trial Court has erred in not considering the fact that complainant has failed to prove his financial capacity to lend substantial amount of Rs.4,80,000/- to the accused. It

is further contended that trial Court has erred in not considering the defence of the accused that cheque in question was a blank cheque issued by the accused to the complainant and complainant has misused the said cheque and filed a false case against the accused. It is further contended that trial Court has erred in not considering the fact that the complainant has not proved the mode of payment of the alleged loan amount to prove the existence of legally enforceable debt. It is further contended that trial Court has erred in not considering the fact that complainant has failed to prove that cheque in question was given by the accused to the complainant voluntarily towards discharge of legally enforceable debt. It is further contended that trial Court has erred in not considering the fact that the presumption under Section 139 of Negotiable Instruments Act was not a conclusive proof but a rebuttable presumption and the accused through the cross-examination of the complainant and also through the defence evidence has rebutted the statutory presumption available in favour of the complainant under Section 139 of Negotiable Instruments Act. It is further contended that the trial Court has erred in not properly appreciating the evidence produced on by the parties before the trial Court. On these grounds, the appellant/accused sought to allow the appeal and to set aside the impugned conviction Judgment and order of sentence passed by the trial Court and to acquit him for the offence punishable under Section 138 of Negotiable Instruments Act.

9. After Filing of the appeal, Court notice was issued to the respondent. In response to Court notice, respondent has entered her appearance before this Court and contested the appeal. The respondent was represented by a counsel. This Court has secured the entire record of C.C.No.408/2012 from the trial Court.

10. Written arguments filed on behalf of the counsel for appellant/accused. Heard learned counsel for respondent. Perused the trial Court record.

11. The following points that arise for my consideration are:

> 1. Based on the evidence produced on record whether trial Court was justified to found accused guilty for the offence punishable under Section 138 of N.I. Act?
>
> 2. Whether the impugned judgment of conviction and order of sentence passed by the trial Court in C.C.No.408/2012 dated 12.08.2021 on the file of Addl. Civil Judge & JMFC., Channapatna, convicting the accused for the offence punishable Section 138 of N.I.Act, suffer from any illegality,

thereby required to be interfered by this Court exercising its appellate jurisdiction?

3. What order or decree?

12. My answer to the above points are as follows;

Point No.1: In the Affirmative.

Point No.2: In the Negative.

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

:**<u>REASONS</u>**:

13. **<u>Point No.1 & 2</u>**: Since these two points are inter-connected with each other, to avoid repetition of facts and findings, these two points are taken up together for consideration.

A perusal of the trial Court record discloses that it is the specific case of the complainant that, accused is a known person to her. On 04.06.2010, accused had borrowed a loan of Rs.4,80,000/- for improvement of his business in Thibbadevi Mobile Gallery by executing an agreement agreeing to repay the loan amount with interest at the rate of 1% within one year. After expiry of one year, when the complainant has demanded the accused for repayment of the loan amount borrowed, accused had issued a post dated cheque bearing No.273779 dated 02.12.2011 for a sum of Rs.4,80,000/- in favour of the complainant drawn on

State Bank of India, Channapatna Branch, requesting the complainant to produce the cheque for encashment in the month of February 2012. As per the assurance of the accused, on 04.02.2012 the complainant has presented the above mentioned cheque for encashment through his banker, Abhyudaya Mahila Grameena Sahakara Bank Limited, on 07.02.2012 the cheque of the accused returned dishonored due to "Insufficient of Funds" in the account of the accused to honour of the same. The efforts of the complainant to meet the accused with regard to dishonour of the cheque were not fruitful. On 21.02.2012, the complainant got issued legal notice to the accused and same was served on the accused on 25.02.2012. Accused has sent untenable reply to the legal notice. Accused has not repaid the amount pertaining to dishonour of the cheque issued by him.

14. A perusal of evidence led by the complainant before the trial Court discloses that in proof of her case complainant got herself examined as PW1 and tendered Ex.P1 to 7 documents in evidence. Ex.P1 is the Cheque in question bearing No.273779 dated 02.12.2011 shown to have been issued by the accused in favour of the complainant drawn on State Bank of India, Channapatna branch, for a sum of Rs.4,80,000/-. Ex.P2 is the Bank endorsement dated

07.02.2012 issued by the State Bank of India, Channapatna branch which reveals that Ex.P1- cheque in question was returned dishonored for the reason 'Funds Insufficient'. Ex.P3 is the office copy of legal notice dated 21.02.2012 got issued by the complainant to the accused. Ex.P4 is the RPAD acknowledgment evidencing receipt of Ex.P3- legal notice by the accused. Ex.P5 is the RPAD postal cover containing Ex.P3- legal notice issued to another address of the Accused. Ex.P6 is the copy of the reply legal notice dated 05.03.2012 got issued by the accused to the complainant. Ex.P7 is the copy of the agreement dated 04.06.2010 alleged to have been executed by the accused in favour of complainant. A perusal of recitals of Ex.P7 agreement dated 04.06.2010 discloses that the accused has acknowledged under the said agreement about borrowing of a loan of Rs.4,80,000/- from the complainant, agreeing to repay the loan amount with 1% interest within a period of one year. One P.N.Harish and C.S.Kumar are shown as the two attesting witnesses of the agreement. The agreement shown to have signed by the complainant and also the accused.

15. In proof of her case, the complainant got examined one witness by name P.N.Harish as PW2. PW2 in his evidence has deposed that on 04.06.2010

in his presence accused had borrowed a loan of Rs.4,80,000/- from the complainant by agreeing to repay the loan amount within a period of one year and executed Ex.P7 agreement and he has attested the same as one of the attesting witnesses. PW2 in his evidence has identified Ex.P7(c) as his attesting signature.

16. A perusal of the oral and documentary evidence produced by the complainant and re-appreciation of the same discloses that the same fully supports the case of complainant that accused has issued Ex.P1 cheque in question for discharge of legally enforceable debt and said cheque dishonoured due to the reason 'Funds Insufficient'. In spite of issuance of Ex.P3 statutory notice to him, accused has failed to repay the cheque amount. The complainant after fulfilling of the mandatory requirements stated under Section 138 of Negotiable Instruments Act has filed a private complaint before the trial Court within statutory period of limitation.

17. In the present case, the accused has led defence evidence by getting himself examined as DW1. Accused in his defence evidence has stated that he do not know the complainant. He is an agriculturist by profession having annual income of Rs.4,00,000/- to

Rs.4,50,000/-. He has not borrowed any loan amount from the complainant. His mother Shilpa had borrowed a loan of Rs.1,50,000/- about 4-5 years ago from another person and he had issued his cheque as security for the said loan amount. The writing found on Ex.P1 cheque was not his writing. Accused has misused the cheque and filed a false case against him.

18. In a decision reported between **Rangappa Vs. Mohan reported in AIR 2010 SC 1898**, the Apex Court of the land has held that once the execution of Negotiable Instrument is either proved or admitted, the Court shall draw presumption to the effect that the said negotiable instrument has been drawn for valid consideration and the legally recoverable debt was in existence. It was further held that presumption available under Section 139 of Negotiable Instrument Act is not a conclusive proof, but the said presumption is a rebuttable one. The accused has to rebut the presumption which is available and favourable to the complainant. It is open to the accused to raise the defence wherein the existence of legally enforceable debt or liability can be contested.

19. In light of the preposition of law cited in the above mentioned decision, a perusal of evidence on record discloses that accused in his cross-examination

has admitted his signature found on Ex.P1 cheque in question. Since accused has not disputed his signature found on Ex.P1 cheque in question presumption shall be raised under Section 139 of Negotiable Instruments Act to the effect that Ex.P1 cheque in question was issued by the accused in favour of complainant in discharge of legally enforceable debt. The next question to be looked into is whether any probable defence was raised by the accused.

20. A perusal of the cross-examination of the complainant who was examined as PW1 discloses that the accused has taken a specific defence that he had borrowed only a sum of Rs.1,50,000/- from the complainant and issued Ex.P1- cheque in question as security and also executed Ex.P7- agreement as security document. Even in Ex.P6- reply notice issued by the accused to the complainant, accused has not disputed issuance of Ex.P1- cheque in question and execution of Ex.P7- agreement in favour of the complainant. In Ex.P6- reply notice the accused has contended that he had borrowed a loan of Rs.1,50,000/- from the complainant and as security issued Ex.P1- blank cheque and has given Ex.P7- blank signed stamp paper.

21. However, the accused in his defence evidence has taken entire different contention by stating that complainant is a stranger and he has not borrowed any loan amount from the complainant. The defence evidence of the accused that complainant is a stranger to him and he has not borrowed any loan amount from the complainant is contrary to the contents of Ex.P6 his repay notice and also the suggestions made in the cross-examination of the complainant. The defence evidence of the accused that complainant is a stranger to him and he has not borrowed any loan amount from the complainant and not issued Ex.P1 cheque in question to the complainant is a false defence set up by the accused.

22. In the cross-examination of the complainant and also in Ex.P6- reply notice, the accused has taken a specific defence that he has handed over a blank signed cheque and the complainant has misused the same. However, it is pertinent to note that the Apex Court of the land in the decision reported between **Bir Singh Vs. Mukesh Kumar reported in AIR 2019 Supreme Court 2446** has held that;

> "Even a blank cheque, voluntarily signed and handed over by the accused, which is towards some payment would attract presumption under Section 139 of N.I.Act, in the absence of any cogent evidence to

> show that the cheque was not issued in discharge of a debt."

23. In the present case in hand, accused in Ex.P6- statutory notice and cross-examination of complainant alleged to have voluntarily signed and handed over Ex.P1- cheque in question to the accused towards some payment. Hence, even the handing over of the blank cheque would attract presumption under Section 139 of N.I. Act, since accused has failed to prove that Ex.P1 cheque was not issued in discharge of debt.

24. It is pertinent to note that in a trial with regard to the offence under Section 138 of Negotiable Instruments Act, the presumption under Section 139 of Negotiable Instruments Act that the cheque was drawn for discharge of liability of a drawer is a presumption of law. Though the said presumption is rebuttable presumption, the same required to be rebutted by proof and not by a bare explanation which is merely plausible.

25. By going through the evidence produced on record and re-appreciation of the same, this Court is of the opinion that accused has failed to raise a probable defence to create doubt with regard to

issuance of Ex.P1 cheque in question for discharge of legally enforceable debt or liability.

26. The first limb of argument advanced by the learned counsel for the appellant/accused is that the complainant has failed to establish the fact that Ex.P1 cheque in question was issued towards discharge of legally enforceable debt or liability.

27. However, a perusal of evidence on record discloses that the complainant by producing Ex.P1 cheque in question and also by producing Ex.P7 agreement dated 04.06.2010 executed by the accused in favour of the complainant admitting about borrowing a loan of Rs.4,80,000/- from the complainant has proved the existence of legally enforceable debt or liability between the complainant and accused and also proved that Ex.P1- cheque in question was issued towards discharge of the above mentioned liability.

28. The second argument is advanced by the learned counsel for the appellant/accused was that the complainant neither in the complaint nor in his affidavit has stated the exact date, time, place of payment and mode of payment of the alleged loan amount.

29. However, a perusal of the contents of the complainant and evidence of the complainant discloses that complainant has specifically stated the fact that on 04.06.2010 accused had borrowed a loan of Rs.4,80,000/- from him. There is specific pleading and evidence pertaining to the date and mode of payment. Hence, the arguments of the learned counsel for the complainant on this aspect also cannot be accepted.

30. The next limb of argument advanced by the learned counsel for the appellant/accused is that the complainant has failed to prove his financial capacity to lend substantial amount of Rs.4,80,000/- to the accused.

31. However, a perusal of the evidence on record discloses that neither in Ex.P6 reply notice nor in his defence evidence accused has specifically disputed the financial capacity of the complainant to lend substantial sum of Rs.4,80,000/- to him. On the other hand, accused in cross-examination of the complainant and also in Ex.P6- reply notice has admitted about borrowing of hand loan of Rs.1,50,000/- from the complainant. Under these circumstances, the arguments of the learned counsel for the appellant/ accused that complainant has failed

to prove her financial capacity to lend substantial amount of Rs.4,80,000 cannot be accepted.

32. The next argument advanced by the learned counsel for appellant/ accused is that trial Court has erred in not properly appreciating the evidence produced on record with regard to the transaction in question.

33. However, a perusal of the impugned judgment passed by the trial Court discloses that trial Court has properly appreciated the oral and documentary evidence produced on record and rightly found the accused guilty for the offence punishable under Section 138 of N.I. Act. Hence, the arguments of the learned counsel for the appellant/accused on this point also cannot be accepted.

34. The learned counsel for the accused in his written arguments has relied on the decisions reported between **Basalingappa Vs. Mudibasappa, (2019)5 SCC 418, Kumar Exports Vs. Sharma Carpets, (2009)2 SCC 513, John K. Abraham Vs. Simon C.Abraham, (2014)2 SCC 236, K Subramani Vs. K.Damodara Naidu (2019)1 SCC 99, APS Forex Services Pvt. Ltd., Vs. Shakthi International Fashion Linkers, (2020)12 SCC 724, M.S.Narayana Menon @ Mani Vs. State of Kerala**

(2006)6 SCC 39, Rangappa Vs. Mohan (2010)11 SCC 441. Vijay Vs. Laxman and another (2013)3 SCC 86.

35. I have perused the ratio of the above cited decisions. Unlike cited decisions in the present case in hand, complainant has proved that Ex.P1- cheque in question was issued towards discharge of legally enforceable debt. Apart from that, in the present case in hand, accused in his reply notice and also in his defence evidence has not contested the financial capacity of the complainant to lend loan amount to him. Apart from that, accused has also failed to rebut statutory presumption available to the complainant under Section 139 of N.I.Act. Hence, the ratio of the above cited decisions relied on by the learned counsel for the appellant/accused are not helpful for him.

36. By perusing the oral and documentary evidence produced on record and by re-appreciating the same, this Court is of the opinion that trial Court has properly appreciated the oral and documentary evidence in a proper perspective and rightly came to the conclusion that complainant has proved that accused has committed an offence punishable under Section 138 of Negotiable Instruments Act. On the other hand, accused has failed to rebut the statutory presumption available in favour of the complainant under Section

139 of Negotiable Instruments Act. The appellant/ accused has failed to prove that Judgment of Conviction and Order of Sentence passed by the trial Court is not in accordance with law, facts and probabilities of the case. The appeal is devoid of merits. By perusing the impugned conviction Judgment and order of sentence passed by the trial Court, I hold that this Court is not having any reasons to interfere with the well reasoned impugned conviction Judgment and Order of sentence passed by the trial Court. Hence, I answer point No.1 in the Affirmative and point No.2 in the Negative.

37. **POINT NO.3**: In view of my findings on point No.1 and 2 and the reasons assigned thereon, I proceed to pass the following:-

ORDER

The Appeal filed by the appellant/ accused under Section 374(3) of Cr.P.C., is hereby dismissed.

The Judgment of conviction and Order of sentence passed by the learned Addl. Civil Judge & JMFC., Channapatna, in C.C. No.408/2012 dated 12.08.2021 convicting the accused is confirmed.

Send back the trial Court record with a copy of Judgment.

(Dictated to the Stenographer Grade I, transcribed by her, corrected by me and then pronounced in the open Court on this the 27th day of June, 2026.)

(**S.A.Hidayathulla Shariff**)
III Addl. District & Sessions Judge,
Ramanagara.