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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 3rd day of July 2026

Crl.A.No.11/2021

Appellant : Accused

Sri. Mohammed Iliyaz,
S/o Mohiuddin Sab,
Aged about 45 years,
R/at No.287, Ward No.22,
Rehamaniya Nagar,
Ramanagara District- 562 159.

Also at Employee of CMC,
Working in the office of the Commissioner,
Ramanagara District.

(Rep by Sri.P.D., Advocate)

Vs.

Respondent : Complainant

Mr. Vinod B.R.,
S/o Ramakrishnappa,
Aged about 36 years,
R/at Ward No.2, Vinayaka Nagar,
Ramanagara Town & District.

(Rep by Sri.A.M., 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 12.01.2021 passed by the learned Addl. Civil Judge & J.M.F.C., Ramanagara, in C.C.No.1070/2016 by convicting the appellant/accused for the offence punishable under Section 138 of Negotiable Instruments Act by sentencing the accused to pay a fine of Rs.3,10,000/- and in default of payment of fine amount to undergo simple imprisonment for a period of 6 months. Out of the above mentioned fine amount, the trial Court has further directed the accused to pay a sum of Rs.3,00,000/- as compensation to the complainant 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:

The case of the complainant in brief is that himself and accused are well acquainted with each other and they are close friends. In the month of January 2016, accused has borrowed a sum of Rs.3,00,000/- from him to purchase a site and also to meet his family necessities, agreeing to repay the amount within a period of 6 months. Accused has failed to repay the loan amount within the agreed period of 6 months. When complainant has demanded the accused to repay the loan amount, he had issued a Cheque bearing No.203908 in favour of the complainant dated 14.07.2016 for a sum of Rs.3,00,000/- drawn on Vijaya Bank, Ramanagara Branch. As per the assurance of the accused, when the complainant has presented the above mentioned cheque for encashment through his banker, Canara Bank, Ramanagara Branch. On 25.07.2016, the cheque returned dishonoured due to insufficiency of the funds in the account of the accused. After dishonour of the cheque complainant met the accused personally and informed him about the dishonour of the cheque and demanded for repayment of the loan amount. But the accused has not properly responded. Thereafter, on 03.08.2016 complainant got issued a legal notice to the accused through RPAD and same was duly served on the accused. In spite of receipt of the legal notice accused has not complied the terms of the legal notice and has failed to repay the loan amount borrowed.

4. A perusal of the trial Court record discloses that trial Court has took cognizance of the offence and registered a case against 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. 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 claimed to be tried.

5. A perusal of the trial Court record discloses that in proof of his case complainant got himself examined as PW1 and tendered Ex.P1 to P5 documents in evidence. After complainant's evidence, 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 examining himself as DW1. Ex.D1 to D4 documents were tendered in evidence on behalf of the accused.

6. On the basis of the materials placed on record, the trial Court has framed following points for consideration:

> **1.** Whether the complainant proves that the accused has committed the offence punishable under Section138 of Negotiable Instrument Act 1881?
>
> **2.** What Order or Decree?

7. The trial Court after hearing the learned counsel for the complainant and learned counsel for the accused and after appreciating the oral and documentary 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 above mentioned conviction Judgment and Order of sentence passed by the trial Court, the appellant/ accused has preferred the present appeal.

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 not considering the fact that the complainant was a total stranger to the accused and complainant has failed to prove that accused was his friend and there was alleged loan transaction between them. It is further contended that trial Court has erred in not considering the fact that the complainant neither in his complaint nor in his evidence has stated the date of alleged loan transaction and only in his cross-examination he has stated that he had lent the loan to the accused on 06.01.2016. It is further argued that the very fact that the complainant in his complaint and evidence has not stated the alleged date of loan transaction clearly goes to show that there was no loan transaction between the complainant and accused and trial Court has erred in not considering the same. It is further contended that trial Court has erred in not considering the fact that except cheque in question the complainant has not got executed any other document for lending substantial amount of Rs.3,00,000/-. It is further contended that though the accused has seriously disputed the financial capacity of the complainant to lend substantial loan amount of Rs.3,00,000/-, complainant has failed to prove his financial capacity. It is further contended that trial Court has erred in not considering the defence of the accused and the document produced by the accused in support of his defence with regard to misuse of Ex.P1 cheque in question by the complainant. It is further contended that trial Court has erred in not considering the fact that the presumption under Section 139 of Negotiable Instruments Act is a rebuttal presumption and accused through the admissions elicited in the cross-examination of the complainant and also through his defence evidence has rebutted the statutory presumption available in favour of the complainant under Section 139 of Negotiable Instruments Act. On these grounds, the appellant has sought to allow the appeal and to set aside the impugned Judgment of conviction 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 his appearance before this Court and contested the appeal. The respondent was represented by a counsel.

10. This Court has secured the entire record of C.C.No.1070/2016 from the trial Court. Perused the trial Court record.

11. Written arguments filed by the learned counsel for appellant/accused and also the learned counsel for respondent/complainant. Perused the trial Court record.

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

1. Whether the appellant/accused proves that he had raised a probable defence and rebutted the statutory presumption available in favour of the complainant under Section 139 of Negotiable Instruments Act?

2. Whether the trial Court has erred in coming to the conclusion that accused has committed an offence punishable under Section 138 of Negotiable Instruments Act?

3. Whether the impugned Judgment of conviction and Order of sentence passed by the trial Court convicting the appellant/accused for the offence punishable Section 138 of N.I.Act, required to be interfered by this Court exercising its appellate jurisdiction?

4. What order or decree?

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

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative.

Point No.4: As per final order, for the following:

:**REASONS**:

14. **Point No.1 to 3**: Since these three points are inter-connected with each other, to avoid repetition of facts and findings, these three points are taken up together for consideration.

The learned counsel for appellant/accused in his written argument has contended that complainant was a total stranger to the accused and there was no financial transaction between the complainant and the accused and complainant has failed to prove that accused was his friend and trial Court has erred in not considering the same.

15. The learned counsel for appellant/accused in his written argument has further contended that complainant neither in his complaint nor in his evidence has stated the date of the alleged loan

transaction and only in his cross-examination he has stated the fact that on 06.01.2016 he had lent the loan amount and trial Court has erred in not considering the same.

16. The learned counsel for appellant/accused in his written argument has further contended that except producing Ex.P1 cheque in question complainant has not produced any other documents to prove that he had lent substantial amount of Rs.3,00,000/- to the accused and trial Court has not considered the same.

17. The learned counsel for appellant/accused in his written argument has further stated that the accused during the trial has seriously disputed the financial capacity of the complainant to lend substantial amount of Rs.3,00,000/- to him and in spite of the same the complainant has failed to prove his financial capacity and trial Court has erred in not considering the same.

18. In the written arguments the learned counsel for the appellant/accused has further stated that the trial Court has erred in not properly appreciating the

defence evidence and arguments advanced by the accused in support of his defence.

19. In support of his written arguments, the learned counsel for the appellant/accused has relied on the Judgment of Apex Court of the land between **Basalingappa Vs. Mudibasappa dated 09.04.2019 rendered in SLP (Crl.) No.8641/2018.**

20. On the other hand, the learned counsel for respondent/complainant in his written arguments has supported the reasoning and finding given by the trial Court for conviction of the appellant/accused. In support of his arguments, the learned counsel for respondent/complainant has relied on following;

DECISIONS

1) **Ramappa Vs. Mohan (2010) 11 SCC 441**

2) **Kumar Exports Vs. Sharma Carpets (2009)2 SCC 513.**

In the light of written arguments filed by learned counsel for appellant/accused and learned counsel for respondent/complainant, a perusal of trial Court record discloses that it is the specific case of the complainant that, himself and accused are well acquainted with each other and they are close friends.

In the month of January 2016, accused has borrowed a sum of Rs.3,00,000/- from him to purchase a site and also to meet his family necessities, agreeing to repay the amount within a period of 6 months. Accused has failed to repay the loan amount within the agreed period of 6 months. When complainant has demanded the accused to repay the loan amount, he had issued a Cheque bearing No.203908 in favour of the complainant dated 14.07.2016 for a sum of Rs.3,00,000/- drawn on Vijaya Bank, Ramanagara Branch. As per the assurance of the accused, when the complainant has presented the above mentioned cheque for encashment through his banker, Canara Bank, Ramanagara Branch on 25.07.2016, the cheque returned dishonoured due to insufficiency of the funds in the account of the accused. After dishonour of the cheque complainant met the accused personally and informed him about the dishonour of the cheque and demanded for repayment of the loan amount. But the accused has not properly responded. Thereafter, on 03.08.2016 complainant got issued a legal notice to the accused through RPAD and same was duly served on the accused. In spite of receipt of the legal notice accused has not complained the terms of the legal notice and has failed to repay the loan amount borrowed.

21. A perusal of the trial Court record discloses that, in proof of his case complainant got himself examined as PW1 and tendered Ex.P1 to P5 documents in evidence. A perusal of the documentary evidence produced by the complainant discloses that Ex.P1 is cheque in question bearing No.203908 dated 14.07.2016 for a sum of Rs.3,00,000/- alleged to have been issued by the accused in favour of the complainant drawn on Canara Bank, Ramanagara Branch. Ex.P2 is the Bank endorsement dated 25.07.2016 issued by the Vijaya Bank, Ramanagara Branch, with regard to dishonour of Ex.P1 Cheque in question for the reasons "Funds Insufficient". Ex.P3 is the office copy of the legal notice dated 03.08.2016 issued by the complainant to the accused. Ex.P4 is the postal receipt pertaining to Ex.P3 legal notice. Ex.P5 is the RPAD acknowledgment evidence in receipt of Ex.P3 legal notice by the accused.

22. As against the above mentioned evidence led by the complainant, accused got himself examined as DW1. Accused in his defence evidence has stated that complainant is a stranger to him. In the year 2012 he had borrowed a sum of Rs.50,000/- from one Puttaraju and as security given his Passbook, ATM card and Cheque book. He had repaid the loan

amount to Puttaraju in the year 2016. In spite of repayment of the loan amount, Puttaraju has not returned his Passbook, ATM card and Cheque book. On 06.05.2016, he has intimated his Bank about the losing of his cheque. Only after receipt of the summons by the Court, he came to know that complainant has filed a case against him. He had not received any legal notice from the complainant. On 26.07.2016 he has lodged a police complaint and police have directed him to get the matter settled in the Court. He has replied the legal notice of the complainant. When he has enquired Puttaraju about Ex.P1 cheque in question, he had deposed his ignorance.

23. DW1 in his evidence has produced Ex.D1 reply notice dated 20.08.2016, Ex.D2 postal receipt pertaining to Ex.D1 notice and Ex.D3 Bank statement evidencing some financial transactions between him and one Puttaraju and Ex.D4 his Aadhar Card.

24. Before appreciating the evidence produced on record this court is of the opinion that it is necessary to go though some of the citations pertaining to the aspect of presumption and applicability of

presumption under Section 139 of Negotiable Instrument Act.

25. In a decision reported between **Kumar Exports Vs. Sharma Carpets (2009)2 SCC 513,** the Apex Court of the land has held that, the accused in a trial under Section 138 of Negotiable Instrument Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstance of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut statutory presumption the accused is not expected to prove his defense beyond reasonable doubt as is expected of the complainant in a criminal trial.

26. Further, 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, then Court shall draw a presumption to the effect that 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 rebuttable one. The accused has to rebut the presumption which is available and favourable to the complainant. It is open to the accused to arise the defense wherein the existence of legally enforceable debt or liability can be contested. For rebutting the presumption, accused need not adduce evidence with unduly high standard of proof, but the standard of proof for doing so with that of preponderance of probabilities. If the accused is able to raise a probable defense which creates doubt about the existence of legally enforceable debt or liability, the onus shifts back on the complainant. It is also held that, for rebutting the presumption accused can rely on the materials submitted by the complainant or his cross-examination and he need not necessarily adduce evidence in all cases.

27. In light of proposition of law cited in the above cited decisions, a perusal of evidence on record discloses that accused during the trial has not disputed 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 N.I.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 or liability. The next question to be looked into is whether any probable defence was raised by the accused.

28. A perusal of the contents of the complaint and evidence of the complainant discloses that complainant claims that he is well acquainted with the accused and accused was his friend. On the other hand accused has led evidence stating that complainant is a stranger to him. Complainant in his cross-examination has categorically admitted his ignorance with regard to the family members of the accused. The very fact that the complainant has admitted his ignorance with regard to the family members of the accused supports the contention of the accused that complainant was stranger to him.

29. In the present case, the evidence on record discloses that admittedly the alleged loan of Rs.3,00,000/- was not paid on interest by the complainant to the accused. Further, except Ex.P1 cheque in question, complainant has not taken any other document as security from the accused for lending substantial amount of Rs.3,00,000/- to him. The circumstance of not charging any interest by the

complainant to the accused for lending substantial amount of Rs.3,00,000/- for a long period of 6 months, required to be considered as a relevant circumstance to find out as to whether the existence of debt has been proved or not. No prudent man would lend substantial amount of Rs.3,00,000/- to another person who was neither a friend nor a relative without charging any interest, without obtaining any proper security document for a long period of 6 months that to amount was alleged to be paid in cash and not by means of account payee cheque. The above mentioned circumstances, under which the alleged amount said to have been lent by the complainant to the accused creates serious doubt with regard to the genuineness of the alleged financial transaction between the complainant and the accused.

30. Further, a perusal of evidence on record discloses that complainant neither in his complaint nor in his evidence has specifically stated the fact as to on which date he had lent the loan amount of Rs.3,00,000/- to the accused. Only in his cross-examination by the defence counsel, complainant has stated that on 06.01.2016 he had lent the loan amount to the accused. The very fact that the complainant

neither in his complaint nor in his evidence has specifically stated the date of alleged financial transaction between him and the accused is another circumstance which create serious doubt with regard to the alleged financial transaction between the complainant and the accused.

31. A perusal of cross-examination of the complainant discloses that during the cross-examination of the complainant, accused has seriously disputed the financial capacity of the complainant to lend substantial amount of Rs.3,00,000/- to him. Complainant in his cross-examination has categorically admitted the fact that he is having no documents to prove his financial capacity to lend a sum of Rs.3,00,000/- to the accused. Complainant in his cross-examination has stated that he is doing business in Coconut and Mango and had annual income of Rs.8,00,000/-. However, the complainant has not produced any documents before the trial Court to show that he was doing business in sale of Coconut and Mango and had annual income of Rs.8,00,000/-.

32. The Apex Court of the land in a decision reported between **Tedhi Singh Vs. Narayana Das Mahant in 2022 SCC OnLine SC 302** has held that where the accused has failed to send reply to the legal notice, challenging the financial capacity of the complainant or in the reply notice has not challenged the financial capacity of the complainant, at the first instance complainant need not prove his financial capacity. However, at the trial if the financial capacity of complainant is challenged, then it is for the complainant to prove the same.

33. In light of the ratio of the above cited decision, a perusal of evidence on record discloses that during the trial accused has challenged the financial capacity of the complainant in the cross-examination of the complainant. Hence, the burden is on the complainant to prove his financial capacity to lend a sum of Rs.3,00,000/- to the accused.

34. A perusal of the evidence on record discloses that though in the cross-examination of the complainant accused has seriously disputed the

financial capacity of the complainant to lend a substantial amount of Rs.3,00,000/- to him, complainant has not produced any documentary evidence to prove his financial capacity.

35. In a decision reported between **APS Forex Vs. Shakti International Fashion Linkers Pvt. Ltd in (2020)12 SCC 724,** Apex Court of the land has held that when accused raises issue of financial capacity of complainant, in support of his probable defense, despite presumption operating in favour of complainant regarding legally enforceable debt under Section 139 of Negotiable Instruments Act, onus shifts again on the complainant to prove his financial capacity by leading evidence, more particularly when it is a case of giving loan by cash and thereafter issue of cheque.

36. In light of the ratio of the above cited decision, a perusal of evidence on record discloses that in the present case, complainant claims that he had given loan by cash, thereafter Ex.P1-cheque in question was issued by the accused in his favour. In the present case, accused has challenged the financial capacity of the complainant and hence, the onus shifts on the complainant to prove his financial

capacity by leading evidence. However, the complainant has not produced any reliable documentary evidence to prove his financial capacity.

37. The Apex Court of the land in a decision reported between **John K.Abraham Vs. Symon C.Abraham and another, reported in 2014 AIR SCW 2158** has held that, in order to draw presumption under Section 118 read with Section 139 of Negotiable Instrument Act, the burden is heavily on the complainant to show that he had required funds for having advanced the money to the accused and the issuance of cheque in support of the said payment advanced was true and the accused was bound to make the payment as he had been agreed while issuing the cheque in favour of the complainant.

38. The Apex Court of the land in another decision reported between **K.Subramani Vs. K.Damodar Naidu reported in 2015 AIR SCW 64** has held that when complainant failed to prove his source of income to lend amount to the accused and consequently failed to prove that there is legally recoverable debt payable by the accused to him, accused cannot be convicted for the offence

punishable under Section 138 of Negotiable Instrument Act.

39. A perusal of the impugned judgment of conviction passed by the trial Court discloses that the trial Court has not properly appreciated the oral and documentary evidence produced on record by the parties in a proper perspective and only based on the fact that accused has not disputed his signature found on Ex.P1- cheque in question and has not replied Ex.P3- statutory notice has applied presumption under Section 139 of Negotiable Instrument Act and erred in coming to the conclusion that complainant has proved that Ex.P1- cheque in question was issued for discharge of legally enforceable debt or liability.

40. In a decision reported between **Anss Rajashekar Vs. Augustus Jeba Ananth reported in 2019(3) KCCR 2126 (SC)** the Apex Court of the land has held that, in a trial for the offence punishable under Section 138 of Negotiable Instruments Act, when the accused raises a probable defence with regard to absence of legally enforceable debt the accused rebut the presumption under Section 139 of Negotiable Instrument Act and accused liable to be acquitted.

41. A perusal of the impugned conviction Judgment passed by the trial court discloses that trial Court has lost sight of the fact that the presumption under Section 139 of Negotiable Instrument Act is not a conclusive proof, but is a rebuttable presumption and it is for the accused to raise the defense wherein the existence of legally enforceable debt or liability can be contested and trial Court has lost sight of the fact that through the admissions elicited in the cross-examination of the complainant the accused has successfully raised a probable defense that no financial transaction took place between him and the complainant and also successfully raised a probable defence that complainant had no financial capacity to lend him the alleged amount and thereby successfully rebutted the statutory presumption available in favour of the complainant under Section 139 of Negotiable Instrument Act.

42. By perusing the oral and documentary evidence produced on record and re-appreciation of the same, I hold that the trial Court has not properly appreciated the oral and documentary evidence in right perspective and has erred in coming to the conclusion that complainant has proved that accused has committed an offence punishable under Section 138

of Negotiable Instrument Act and accused has failed to rebut the statutory presumption available to the complainant under Section 139 of Negotiable Instrument Act. On the other hand, the appellant/accused has proved 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 and hence, the same is required to be interfered by this Court exercising appellate jurisdiction. With these observations I answer points Nos.1 to 3 in the Affirmative.

43. **POINT NO.4**: - In view of my findings on point No.1 to 3 in the 'Affirmative', and the reasons assigned thereon, I proceed to pass the following:

ORDER

The Criminal Appeal filed by the appellant/accused under Sec.374(3) of Cr.P.C. is allowed.

The conviction Judgment and Order of sentence passed by the learned Addl. Civil Judge & J.M.F.C., Ramanagara, in C.C.1070/2016, dated 12.01.2022 is hereby set aside.

The appellant/accused is acquitted for the offence punishable under Section 138 of Negotiable Instrument Act. Bail bond and surety bond of the accused stands cancelled.

Send a copy of this Judgment to the trial Court along with trial Court record.

(Dictated to the Stenographer Grade I, transcribed by her, corrected by me and then pronounced in the open Court on this the 3rd day of July, 2026.)

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