KATK010043292025

IN THE COURT OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT TUMAKURU

Dated this the 7th day of July 2026

Present : **Smt. N.Narasamma.,** **B.A.L., LLB.,**
II Addl. District and Sessions Judge,
Tumakuru.

Crl. Appeal No.54 of 2025

Appellant /Accused:-

1.S G Thippeswamy
S/o Late Sannagundappa,
A/a 55 Years, R/at
Madhava Nagara,
Near Mahesh Saw Mill,
Sira.

(By Sri,TDS.,Advocate)

- versus-

Respondent/ Complainant:-

D. S. Nagaraju
S/o Doddasomanna,
A/a 65 Years,
R/at Kamagondanahalli,
Gowdagere Hobli,
Sira Taluk,
Tumakuru Dist.

(By Sri. KSV., Advocate)

JUDGMENT

The appellant/accused has preferred this appeal under Section 415(3) of BNSS 2023 challenging the impugned judgment of conviction passed by the learned Prl., Civil Judge & JMFC., Sira in C.C.No.318/2014 dated 28.06.2025.

2. The parties are referred as their rank before the trail court for the sake of convenience.

3. The brief facts of the said case is that the complainant and the accused are the villagers of Siddanahally and they are well known to each other and the accused had approached the complainant on 10.03.2013 and requested for financial help of Rs.3,00,000/- for the development of brick business and other necessities. Accordingly the complainant agreed for his request and lent Rs.3,00,000/- to the accused and the accused in turn has issued one post dated cheque bearing No.052856 of Kauveri Kalpataru Gramina Bank in favour of the complainant. The complainant has presented the cheque on 10.06.2013 through Canara Bank, Pattanayakanahalli branch for realization. But

the said cheque was returned with an endorsement dated 11.07.2013 as '"Account Closed". The complainant issued legal notice to the accused on19.07.2013 through RPAD calling upon the accused to repay the said amount. The notice was served on the accused but the accused has not repaid the amount to the complainant. The complainant having no other alternative filed PCR before the court on 17.08.2013 within 41 days from the date of service of legal notice and it was filed within the stipulated period of 45 days from the service of legal notice. The accused after receipt of summons, appeared before the court and obtained bail and thereafter plea was recorded and he was not pleaded guilty and claimed to make defence.

4. Thereafter the complainant was examined himself as PW.1 and also examined another witness as PW.2 and got marked Ex.P.1 to Ex.P.5. On the other hand accused got himself examined as DW.1 and also examined one witness as DW.2 and marked Ex.D.1 to D.7.

5. The trial court after hearing the argument of both side has convicted the accused for the above said offence u/Sec.138 of N.I.Act. So, the present

appellant/accused is before this court by challenging the said conviction order on the following:

GROUNDS

The learned trial court has grossly erred in passing the impugned judgment against the appellant and the trial judge has not properly appreciated the evidence of the complainant and has also not properly appreciated the cross-examination of the PW.1 and DW.2 who is the manager of Kalpataru Gramina Bank , Sira. The trial court has grossly erred in coming to the conclusion without appreciating the contradictory admissions of the complainant, in his complaint & in his cross-examination. Wherein the complainant has admitted that the accused is the friend to him and he denies that he had no commercial transactions with him and later he admits the same in the same para that the accused was a member of chit fund which was run by him. The complainant also admits that he had not mentioned in the complaint the place of transaction. The trial court has not looked into

Ex.D.1 i.e., NCR copy of the accused against the complainant, wherein it is clear that the complainant has cheated the accused in respect of Rs.1,50,000/- of chit fund amount. The trial court has utterly failed to appreciate the evidence of DW.2. Hence the order of trial court is otherwise opposed to law, facts and probabilities of the case and against the principles of natural justice. Hence the said judgment of conviction is liable to be set aside.

6. This court admitted the appeal. The respondent has appeared before this court. Trial court records are secured. Heard the arguments of learned advocate for the appellant as well as respondent.

7. In view of the arguments addressed by the appellant and the respondent, the following points arise for my consideration are:

1. Whether the judgment of acquittal passed in C.C.No.318/2014 dated 28.06.2025 by the learned Prl., Civil Judge and JMFC, at Sira calls for interference by this court?

2. What order?

8. My answer to the above points are as under:

Point No.1 : In the **Negative**.

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

REASONS

09. Point No.1 :- It is the case of complainant that the complainant is very well known to the accused and both belongs to same village of Siddanahalli and the accused with that relationship has borrowed a sum of Rs.3,00,000/- from the complainant on 10.03.2013 and agreed to repay the same within 3 months and has issued post dated cheque to the complainant bearing cheque No.052856 of Kauvery Kalpataru Gramina Bank, the said cheque was presented by the complainant on 10.06.2013 through Canara Bank, Pattanayakanahalli branch for realization. But the cheque was returned with an endorsement dated 11.07.2013 as “Accounts Closed”. Thereafter the complainant has complied the statutory provisions of N.I.Act by issuing notice to the accused, and thereafter filed the complaint within statutory period.

10. In support of the complaint, the complainant was examined as PW.1 and he also examined one witness as PW.2 and got marked Ex.P.1 to P.5 i.e., original cheque, cheque returned memo, legal notice, postal receipt and reply notice dated 22.08.2013.

11. In the cross-examination of PW.1 it was suggested by the accused to the complainant that the complainant and the accused were doing chit business.

12. PW.2 is the witness examined on behalf of the complainant, wherein he has supported the complainant's case stating that he has seen the accused at brick factory and he also know where the transaction taken place between the complainant and the accused. And in the cross examination it was suggested by the accused to PW.2 that the complainant has thefted the cheque belongs to the accused and filed false case against the accused and the complainant has to pay Rs.1,50,000/- to the accused as chit business amount and in that regard the accused filed complaint against the complainant in the police station. So, as per the cross-examination of PW.2, the accused has taken the defence

that it is the complainant who has to pay Rs.1.50,000/- to the accused and the complainant has stolen the cheque from the accused and filed false case against him. But these suggestions were not been put to the PW.1 by the accused for the reasons best known to him.

13. It is admitted by the accused regarding the cheque involved in this case belongs to him and the signature on the cheque also belongs to him. So it is a settled law as per the provisions of N.I.Act that when once the accused admits the signature and cheque belongs to him then the court has to presume that the said cheque has been issued by the accused in order to repay the legally recoverable debt to the complainant until the contrary is proved by the accused by way of rebuttal evidence. The rebuttal evidence by the accused is not only by leading his evidence but it can also be by way of cross-examination of the complainant and his witnesses regarding the defence of the accused.

14. As already stated the two defence taken by the accused is regarding theft of cheque and the blank cheque obtained by complainant from the accused as

security while the accused was doing partnership business of the charcoal. And the accused to rebut the complainant's case got examined himself as DW.1 and produced the documents at Ex.D.1 to D.7 i.e., police acknowledgment, reply notice dated 22.08.2013, postal receipt, book related chit business, cheque dated 26.09.2012 and empty book of charcoal supplier bill. D.W.1 i.e., the accused in his cross-examination has admitted that he has suggested to PW.1 in the cross-examination that PW.1 stolen the cheque. And in his further cross-examination D.W.1 has deposed that he has issued the cheque to the complainant as security for chit business. But there was no suggestion put to the complainant regarding theft of the cheque and also regarding issuance of cheque by the accused to the complainant as security for chit business. No doubt, the accused also examined the Manager of Karnataka Gramina Bank, Sira as DW.2. but his evidence is not in support of accused case. Because accused himself has given the contradictory answers put to him. Further on perusal of Ex.D.1 i.e., acknowledgment issued by jurisdictional police which clearly reveals that, the complainant has taken Rs.1,50,000/- of chit amount and paid to the accused. But the accused has not issued any reply notice by taking up these contentions and the date of Ex.D.1 that is the acknowledgment of complainant is on 10.11.2014, that is subsequent to filing of the complaint on 17.08.2013. So it is an after though by the accused to defraud the complainant.

15. It is an admitted fact that the complainant has complied the statutory provisions of N.I.Act and has rightly issued the notice to the accused as per Ex.P.3 on **19.07.2013**. Whereas the accused has issued the reply notice as per Ex.D.2 on **22.08.2013**. Admittedly, the date of filing the complaint by the complainant is on **17.08.2013.** So, Ex.D.2 was issued by the accused to the complainant after filing the present complaint. And the accused has not given any reason for not issuing the reply notice to the complainant immediately after Ex.P.3. This also reveals that the reply notice issued by the accused is an after thought and improved versions which will not help the accused in rebutting the case of complainant.

16. So on overall perusal of oral and documentary evidence of complainant case as well as the

defence set up by the accused at the time of cross-examination of PW.1 and 2 and the evidence given by the accused and the admissions given by the accused i.e., DW.1 clearly establishes that the accused is going on changing his defence again and again i.e., firstly regarding theft of cheque by the complainant and secondly regarding he has given the cheque for security purpose and Thirdly, it is the complainant who has to owe to the accused Rs.1,50,000/-. So the accused has failed to rebut the complainant's case in all the aspects and failed to disprove the complainant's case.

17. So for all these reasons the trial court has rightly came to the conclusion that the accused failed to rebut the case of the complainant in all aspects. In fact the discussion and reasoning given by the trial court is proper and correct and in accordance with settled principles of law and the trial court has discussed all the material aspects in detail and rightly convicted the accused. Hence, it does not require any interference by this court. Accordingly I answer this point in the **Negative**.

18. **Point No.2**:- For the foregoing reasons on point No.1 , I proceed to pass the following:

ORDER

The appeal preferred by appellant under Sec.415(3) of BNSS is hereby dismissed.

The judgment passed in C.C.No.318/2014 dated 28.06.2025 by the learned Prl., Civil Judge and JMFC, Sira, is hereby confirmed.

Send back the records to the trial court along with copy of this judgment forthwith.

(Dictated to the Stenographer, computerized transcript revised and then pronounced by me in the open Court on this the 7th day of July 2026).

(N.Narasamma.)
II Addl. Dist & Sessions Judge,
Tumakuru.