

KAUK010000882023



**IN THE COURT OF THE DISTRICT & SESSIONS JUDGE,
UTTARA KANNADA, KARWAR**

DATED THIS THE 13th DAY OF MARCH, 2026

CRIMINAL APPEAL NO:12/2023

: PRESENT :

Sri. MAYANNA. B.L.,

B.A., LL.B.,

II Addl. District & Sessions Judge,
Uttara Kannada, Karwar.

APPELLANT:

Sri. Mohammed Hussain
S/o Kodi Mohammed,
Aged about 57 years,
R/o: Devinagar, Post: Jali,
Tq: Bhatkal, Dist: Uttara Kannada.

(By CLADC.,)

Vs.

RESPONDENTS: 1. Mavinkurve Primary Fisheries
Co-operative Society Ltd., Bhatkal,
Rep. by its Chief Executive,
Sri. Govind Manjunath Kharvi.

2. The State of Karnataka,
Rep. by the Public Prosecutor,
Uttara Kannada District, Karwar.

(R-1 by Sri. M.L.N., Advocate)

J U D G M E N T

The Appellant/accused has filed this Appeal under Section 374 of Cr.P.C., challenging the judgment, order of conviction and sentence passed by the learned Senior Civil

Judge and JMFC, Bhatkal in C.C. No.77/2021 dated 10/08/2022 and prayed to set aside the same by allowing the Appeal, in the interest of justice and equity.

2. For the sake of convenience, parties herein are referred to with their original ranks assigned to them before the Trial Court. The Appellant is the accused and the Respondent No.1 is the Complainant, before the Trial Court.

3. The brief facts of the case before the Trial Court that the accused borrowed loan of Rs.10,00,000/- from Complainant Society for fish business purpose, agreeing to repay the same with interest. After availing the loan, the accused was irregular and became defaulter. Thereafter, on 02/05/2019, the accused had issued cheque bearing No.009141 for Rs.10,13,034/-, drawn on Federal Bank, to discharge the debt. The complainant has presented the said cheque for encashment through its banker, but same was returned for "Insufficient Funds". Hence, the Complainant Society got issued a legal notice to the accused through RPAD, calling upon him to pay the cheque amount, within the stipulated period of time. In spite of receipt of notice, the accused has not paid the cheque amount. Hence, the Complainant Society has filed the Complaint against the accused for the offence punishable under Section 138 of N.I. Act and prayed to

punish the accused and also prayed to direct the accused to pay the cheque amount.

4. After filing of the Complaint, the learned Magistrate has recorded the sworn statement of the Complainant and took cognizance for the offence alleged against the accused under Section 138 of N.I. Act and a Criminal Case has been registered and summons was issued to accused. Thereafter, the accused appeared before the Trial Court and he was enlarged on bail. The substance of accusation is formulated and explained to the accused and the accused, who understood the accusation, has pleaded not guilty but, claims to be tried.

5. The Chief Executive of the Complainant Society examined as P.W.1 and got marked 12 documents as per Ex.P.1 to P.12. After conclusion of evidence of the Complainant, the Statement of accused, as required under Section 313 of Cr.P.C., was recorded to enable the accused to explain the incriminating evidence appearing against him. However, the accused has denied the incriminating evidences appearing against him and he has not adduced any defence evidence and also not produced any documents on his behalf. The learned counsel for accused has cross-examined the PW.1 at length and Ex.D.1 is marked through confrontation.

6. After hearing the arguments and upon perusal of evidence, the learned Magistrate has convicted the Accused for the offence punishable under Section 138 of N.I. Act. The learned Magistrate has sentenced the Accused to pay a fine of Rs.10,23,034/- and in default of payment of fine amount, the accused shall undergo simple imprisonment for a period of one year and out of the said fine amount, Rs.10,13,034/- shall be paid to the Complainant as compensation and remaining Rs.10,000/- shall be paid to the State, towards expenses.

7. Being aggrieved by the said judgment and order of conviction, the accused has preferred this Appeal on the grounds that *the Trial Court has failed to note that the Complainant/Respondent No.1 did not prove the alleged loan transaction by producing any cogent documentary evidence and thereby failed to prove/establish that there was any legally recoverable debt from the accused/Appellant. The order passed by the trial court is highly erroneous as there is no evidence on record to order for conviction of the Appellant. The statutory ingredients of the offence alleged against the accused/Appellant are not established by the complainant. The trial court has failed to consider the major contradictions in the complaint and the evidence of the complainant. The trial court has failed to appreciate the oral as well as documentary evidence in proper perspective. The procedure followed by the trial court*

is not justifiable. The trial court has failed to consider that the alleged notice issued to the Appellant lack necessary statutory ingredient and further erred in considering the same as a demand notice under Section 138 of N.I. Act. The trial court has failed to consider that, if there was any legally recoverable debt by Respondent No.1 from the Appellant. The trial court has erroneously come to the conclusion that there was legally recoverable debt. Hence, the interference of this Court is necessary in the Judgment and order of the Trial Court. Hence, prayed to set aside the Judgment of the Trial Court by allowing the Appeal.

8. After registration of the Appeal, notice was issued to Respondent No.1/complainant. In response to the notice, the Respondent No.1 appeared before this Court through its Counsel and contested the same.

9. The records of the Trial Court are secured.

10. After appearance of the respondent No.1, the counsel for Appellant/Accused has filed the memo of retirement. Hence, this court has issued notice to the Appellant/Accused and even after service of notice, the Appellant/Accused did not appear before this court and hence, this court has directed the DLADC to provide an advocate to addressees arguments on behalf of the Appellant/Accused. Pursuant the said order, DLADC files

memo of appearance for Appellant and same is forthcoming in the order sheet.

11. The DLADC argued that the Trial Court has not properly appreciated the evidence on record and approached the matter in vindictive manner, thus the appreciation of evidence is not proper according to law. There was no any legally recoverable debt and hence, finding recorded is perverse. The Trial Court has not considered the defence raised by the Complainant and the Trial Court has wrongly come to the conclusion that the Appellant is liable to pay the debt. The Complainant Society has not complied, the statutory provisions of N.I. Act and ingredients of Section 138 of N.I Act are absent. However, the Trial Court proceeded to convict the Appellant/accused and thereby, the Appellant has suffers injustice and the same should be set right by setting aside the judgment of conviction and also the sentence passed which are too harsh and therefore, he prayed to allow the Appeal.

12. The learned Counsel for the Respondent No.1 has vehemently argued that the accused, who availed the loan from Complainant Society, has executed the necessary documents and has undertaken to repay the same within the stipulated time as per the terms and conditions of the Agreement but, for not having complied the contract, the Complainant Society has requested the accused to repay

the amount and thereby, towards outstanding amount, the accused issued the Cheque in question and the same was dishonoured for “Insufficient Funds” and hence, the Complainant Society issued a notice to accused. In spite of receipt of notice, the accused has not repaid the loan amount. As such, the Complainant Society has filed the complaint and the Trial Court, after appreciating the evidence produced by the Complainant Society as well as accused, has come to the right conclusion that the Complainant has proved the legally recoverable debt and issuance of Cheque and also dishonour of the Cheque for the reason “Insufficient Funds” and also the non-compliance of the demand through notice by the Respondent and proceeded to convict the accused. Therefore, there is no illegality or irregularity committed by the Trial Court in convicting the Appellant. Hence, Respondent prayed to dismiss the Appeal and to confirm the judgment of Trial Court.

13. After hearing the argument addressed by the CLADC and also the counsel for the Respondent No.1, the following points arise for consideration:

1. Whether the Appellant/Accused has made out sufficient reasons to condone the delay of 123 days in filing the Appeal?
2. Whether the Appellant / accused establishes that the conviction judgment

and order of sentence passed by the learned Magistrate is illegal, perverse and capricious and it has to be set aside ?

3. What Order?

14. The findings 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:

REASONS

15. **Point No.1:** The Appellant/Accused has filed an Application (I.A.No.I) under Section 5 of the Limitation Act, seeking to condone the delay of 123 days in filing the Appeal. In support of the said Application, the Appellant has filed an affidavit and stated that due to ill health and inability to travel long distance from his village, he was unable to give instructions to his Advocate to prefer Appeal against the said judgment and hence, there is delay of 123 days in filing the Appeal and therefore, prayed to condone the delay of 123 days in preferring the Appeal. On the other hand, the Respondent has not filed any objections to the said Application. Heard the Counsels for Appellant and Respondent on delay Application along with main Appeal and perused the affidavit enclosed to the Application. It is relevant to mention here that filing of Appeal is matter of right and also it is necessary to give an opportunity to the

parties and without hearing the parties, the Appeal cannot be decided. Further, the Appellant has shown sufficient reasons in the affidavit to condone the delay and hence, the Application filed by the Appellant seeking to condone the delay deserves to be allowed and the delay of 123 days in filing the Appeal, is liable to be condoned. In view of above, this court proceeds to hold the Point No.1 in the **Affirmative.**

16. **Point No.2:** Perused the records. The Complainant Society has filed the Complaint under Section 200 of Cr.P.C., before the Prl. Civil Judge and JMFC, Bhatkal, against the accused for the offence punishable under Section 138 of the N.I. Act. It is the case of the Complainant that the accused has availed loan of Rs.10,00,000/- from the Complainant Society for fish business on 14/08/2017 and agreed to repay the said loan amount with interest and promised to repay the said loan amount as per the terms and conditions of the Agreement and thereafter, the borrower has failed to repay the loan amount as undertaken and as on 02/05/2019, the outstanding loan amount was Rs.10,13,034/-. Hence, the Complainant Society insisted the accused to repay the loan amount, as such, the accused has issued a Cheque bearing No.009141 dated 02/05/2019 for Rs.10,13,034/- drawn on Federal Bank, Bhatkal Branch in favour of the Complainant Society and the same was presented by the

Complainant Society for encashment through its Banker. The said Cheque was dishonoured for the reason “Insufficient Funds”. Hence, the Complainant Society got issued a legal notice to the accused on 29/05/2019, through RPAD, calling upon the accused to pay the said Cheque amount, within 15 days from the date of receipt of the said notice. In spite of receipt of notice, the accused has not paid the cheque amount. Hence, the Complainant has filed the Complaint against the accused for the offence punishable under Section 138 of N.I.Act and prayed to punish the accused and also to direct the accused to pay the cheque amount.

17. In order to prove the case, the Chief Executive of Complainant Society, was examined as P.W.1 and in the examination-in-chief affidavit, the P.W.1 has reiterated the averments made in the complaint and further asserted that the accused has availed loan and has issued the Cheque in question towards repayment of outstanding loan amount and on presentation of the said cheque for encashment, same was dishonoured for the reason “insufficient funds” and hence, the Complainant Society got issued legal notice to accused and the said notice was received by him, but he has not paid the Cheque amount. Hence, the Complainant has filed the complaint to take action against the accused for the offence under Section 138 of N.I. Act and in support of its case, the Complainant has also produced the Cheque

issued by the accused, Memo issued by the Bank, copy of Legal Notice issued to the accused, Postal Receipt, Postal Acknowledgment, Authorization Letter, Attested Cash receipt, Attested Demand Promissory Note, Attested Fish purchasing agreement deed, copy of Loan Application, Attested Loan Agreement, Business Transaction Ledger Extract and got them marked as Ex.P.1 to P.12.

18. The counsel for the accused has cross examine the P.W.1 and in the cross examination, the P.W.1 has stated that the accused has obtained loan on 14.08.2017 and the maximum limit is fixed for Rs.10,00,000/-. The Ex.P.7 does not tally with the original resolution. He further stated that they used to conduct auction for sale of fish. He admits that there will be a document if the amount paid in cash and if the amount paid in cheque. He admits that the contents of the Ex.P.8 to P.11 are belongs to him. The accused has issued a cheque on 02.05.2019 and Ex.P.12 depicts the principle amount. He admits that the interest is not mentioned in interest column. He denied that as per Ex.P.12 the accused is not liable to pay the cheque amount. He denied that they used to collect blank cheque form borrower. He denied that except signature in Ex.P.1 the remaining contents are belongs to him. He denied that they have misused the cheque, which issued for security purpose. They used to give fish to accused on credit basis. Under the circumstances, the documents was shown to the

complainant. Since the witness has admitted the signature, it was marked at Ex.D.1. He denied that there is difference between signature and contents in the cheque. He stated that Ex.P.12 is ledger extract belong to society written by him and it is stated that the cheque was issued for sum of Rs.10,13,034/- by computing and including the earlier interest.

At page No.9 the deposition of PW.1 as follows:

“ಆರೋಪಿಯು ನನಗೆ ದಿನಾಂಕ: 02.05.2019 ರಂದು ಚೆಕ್ಕ್ ನೀಡಿರುತ್ತಾರೆ. ದಿನಾಂಕ: 02.05.2019 ರಂತೆ ನೀವು ಸಾಧಿಸುವಂತೆ ರೂ.10,13,034/- ಗಳು ನಿಮ್ಮ ಸಂಸ್ಥೆಗೆ ಬರಲು ಬಾಕಿ ಇದೆ ಎಂದು ಯಾವ ದಾಖಲಾತಿ ಮೇಲೆ ಹೇಳಿರುವಿರಿ ಎಂದರೆ ಸಾಕ್ಷಿ ನಿ.ಪಿ.12 ಲೆಡ್ಜರ್ ಎಕ್ಸ್ಟ್ರಾಕ್ಟ್ ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿದ್ದಾಗಿರುತ್ತದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನೀವು ಹಾಜರುಪಡಿಸಿದ ದಾಖಲಾತಿಯಲ್ಲಿ ಆರೋಪಿಯು ದಿನಾಂಕ: 02.05.2019 ರಂದು ರೂ.10,13,034/- ಗಳನ್ನು ನೀಡಲು ಬಾಕಿ ಇರುತ್ತಾನೆ ಎಂಬುವುದರ ಬಗ್ಗೆ ನಮೂದು ಇಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅದರಲ್ಲಿ ಅಸಲಿನ ನಮೂದು ಇರುತ್ತದೆ. ಆದರೆ ಚೆಕ್ಕ್‌ನ್ನು ನೀಡುವಾಗ ಬಡ್ಡಿಯನ್ನೆಲ್ಲಾ ಸೇರಿಸಿ ನಿಮಗೆ ನೀಡಿದ್ದಾಗಿರುತ್ತದೆ .”

He denied that the accused is not liable to pay any amount and cheque in question issued for security purpose and same has misused by the complainant society.

19. On the other hand, while recording statement under Section 313 of Cr.P.C., the accused has denied the incriminating evidence appearing against him and he submitted that he has defence evidence. However, he has

not adduced any defence evidence and also not produced any documents on his behalf.

20. Therefore, on careful consideration of the evidence produced by the Complainant both oral as well as documentary, makes it very clear that the accused has applied loan of Rs.10,00,000/- for fish business purpose and has obtained loan from the Complainant Society on 14/08/2017 and in this regard, the accused and guarantors have executed the necessary documents and same is evident from the Ex.P.9 to P.11. The Ex.P.8 confirms the transfer of loan amount to the Account of the accused and loan ledger extract also supports the same at Ex.P.12. As such, all these documents concurs the loan transaction between the Complainant Society and accused. Though the accused has cross examined the P.W.1, he has not disputed the loan documents and also signatures on the said documents.

21. In the cross of P.W.1, the accused has taken defence that there is discrepancy between the writing and the signature as written in Ex.P.1 and the P.W.1 has denied the same. Further, when the Cheque was presented by the Complainant Society for clearance, same was dishonoured for the reason "Insufficient Funds" as per Ex.P.2 & 3. It is also clear as per Ex.P.4 that the Complainant has issued a legal notice calling upon the accused to pay the Cheque amount and as per Ex.P.5, the notice was served on the

accused. The loan documents at Ex.P.8 to 12 concurs the loan transaction.

22. The Chief Executive of the Complainant Society, who examined as P.W.1, deposed the evidence on oath that accused has obtained loan of Rs.10,00,000/- and thereafter, he has not repaid the loan amount. When the Complainant Society requested to clear the outstanding loan amount, the accused issued the cheque in question and on the presentation, same was bounced back for insufficient funds and even after receipt of notice, the accused has not paid the Cheque amount. Therefore, the complainant has proved the case and has complied the Section 138 of N.I. Act and on the other hand, the accused has failed to disprove the case of the complainant and hence, he is liable to be convicted for the offence punishable under Section 138 of N.I. Act.

23. Therefore, in view of the above, the Complainant Society has proved that the accused availed loan for fish business purpose from the Complainant Society and issued the cheque in question towards clear the outstanding loan amount, which is legally recoverable debt and the accused has failed to disprove the issuance of cheque and also loan documents. Therefore, when the Cheque is belonging to the accused and the accused has failed to disprove the signature on Cheque in question at Ex.P.1 and not denied the documents relating to loan

transaction at Ex.P.8 to Ex.P.12, it is presumed that the Cheque has been issued towards legally recoverable debt.

24. From the combined reading of Section 118 and Section 139 of N.I. Act, makes it clear that when the Cheque is belonging to the accused and the signature found on the Cheque is also belonging to the accused and the Complainant has proved the loan transaction and existence of legally recoverable amount, it is the bounden duty of the accused to bring admission in his favour in the cross examination of P.W.1 or by leading defence evidence, so as to rebut the presumption available to the Complainant, but no such attempts were made by the accused, so as to rebut the presumption available to the Complainant as per Section 139 of N.I. Act.

25. It is relevant to mention here that the presumption available under Section 139 of N.I. Act is a rebuttable presumption and the person, who disputes the legality of the Cheque and the presumption available to the Complainant or holder of the Cheque, he is duty bound to rebut the same with clear and cogent evidence and in the absence of a clear and cogent evidence produced by the accused so as to rebut the presumption, this Court has no option except to accept the case of the Complainant and to hold that the Cheque has been issued to discharge the debt. On the other hand, except mere denial, the accused has not produced any evidence to disprove the case of the

Complainant. Further, mere denial will not be sufficient to disprove the case of the Complainant and same has to be proved with cogent evidence.

26. It is relevant to mention here that, when a Cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards clear the loan, which is a legally recoverable debt and such presumption is rebuttable by proving to the contrary. The onus is on the accused to raise a probable defence and the standard of proof for rebutting the presumption is on preponderance of probabilities. On the other hand, the accused has received the legal notice, but neither paid the cheque amount nor issued any reply notice. Further, though he has cross examined the P.W.1, he is unable to rebut the presumption, with cogent evidence and has failed to disprove the signature on Cheque at Ex.P.1 and also not disputed the loan documents at Ex.P.8 to P.12 and signatures on them.

27. Therefore, viewing from any angle, the Complainant has proved before the Court that the accused, who has availed loan, issued the Cheque in question for repayment of loan amount and same was dishonoured and in spite of receipt of notice, the accused has not repaid the same and thereby, he has committed the offence under Section 138 of N.I. Act, which are evident from Ex.P.1 to Ex.P.12 and all the requirements of Section 138 of N.I. Act, is complied

with. Under these circumstances, there is no doubt that the accused issued the Cheque in question and same was bounced back and in spite of receipt of notice, the accused has not paid the Cheque amount. Thereby, he has committed the offence punishable under Section 138 of N.I. Act wherein, the Complainant has proved all ingredients of Section 138 of N.I. Act and thereby, the accused is liable to be convicted.

28. This Court has gone through the Judgment of the Trial Court wherein, the Trial Court has considered the evidence placed by the Complainant, both oral and documentary and also considered the arguments of parties and it has come to the right conclusion by appreciating the evidence in the right manner and the accused issued the Cheque in question Ex.P.1 and on the presentation of the said Cheque, same is bounced back for the reason “insufficient funds” from the account of the accused. On the other hand, the accused has failed to disprove the case of the Complainant. As such, the Trial Court has rightly convicted the accused for the offence punishable under Section 138 of N.I. Act. Therefore, this Court is of the considered opinion that the Appellant/ accused has not made out any grounds, so as to interfere with the judgment of conviction and sentence passed by the Magistrate and thereby, the Appeal filed by the Appellant is liable to be dismissed and the Judgment of the Trial Court has to be

confirmed. With these observations, this Court proceeds to hold the above point No.2 in the **Negative**.

29. **Point No.3:** In view of the above findings on point Nos.1 and 2, this court proceeds to pass the following:

: ORDER :

The Application (I.A.No.I) filed by the Appellant/Accused under Section 5 of the Limitation Act, is hereby allowed and the delay of 123 days in filing the Appeal, is hereby condoned.

The Appeal filed by the Appellant under Section 374 of Cr.P.C., is hereby dismissed.

The Judgment of conviction and sentence passed by the learned Senior Civil Judge and JMFC, Bhatkal in C.C.No.77/2021 dated 10/08/2022 is hereby confirmed.

The office is directed to return the TCR with copy of this judgment.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the 13th day of March, 2026)

(SRI. MAYANNA. B.L.)
II Addl. District & Sessions Judge,
Uttara Kannada, Karwar.