

BC0A0005862020



**IN THE COURT OF THE LXXIV ADDL. CITY CIVIL AND
SESSIONS JUDGE MAYOHALL UNIT, BENGALURU
(CCH-75)**

Dated: This the 5th day of July 2023

PRESENT

SMT. SAYEEDUNNISA, M.A., LL.B.,
LXXIV Addl. City Civil and Sessions Judge,
Bengaluru.

CRL.APPEAL. NO. 25042/2020

APPELLANT/ *M. Naveen Kumar,*
ACCUSED *S/o N. Muniappa,*
Aged about 32 years,
R/at No.119, Flat No.402,
Royal Opel Apartment,
HRBR Main Road,
1st Block, Sai Baba Temple,
Bengaluru-560 043.

(Rep. by Sri. Adesh S, Advocate

- Vs -

RESPONDENT/ *Muralidhar,*
COMPLAINANT: *S/o Late Venkataramaiah,*

Agd about 50 years,
R/at No. 5, Building No.10,
3rd Cross, 3rd Main,
Ganesh Temple Street,
St. Thomas Post,
Kammanahalli,
Bengaluru- 560 084.

Rep by Sri. Umesh B.N., Advocate

JUDGMENT

This is an appeal filed by the appellant/accused aggrieved against the impugned judgment of conviction passed by the Learned XXXIII Addl. Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru in C.C.No.54442/2018 on 04.01.2020.

2. The appellant was the accused and respondent herein was the complainant before the trial court and hereinafter they are referred to as per the ranks assigned to them before the trial court.

3. The accused has preferred this appeal on the following grounds:

- 1. That the sentence passed by the trial court is not proper and same is liable to be set-aside.*

2. *Accused is not liable to pay any amount to the complainant and the alleged cheque in dispute was taken by the complainant in Police Station.*
3. *The Trial court has not considered the cross-examination done on behalf of accused.*
4. *The accused has not lead his evidence before the trial court inspite of sufficient opportunity given to him.*
5. *The accused has not issued the cheque in dispute towards the discharge of his liability.*
6. *The Trial court without appreciation of facts has pronounced the judgment.*

4. *Accordingly on all these grounds the accused has prayed for setting side the conviction and sentence passed by the trial court.*

5. *Pursuance to the issuance of notice, the respondent has appeared through his counsel and contested the appeal. TCR was called.*

6. Before this court, the records shows that except the accused has filed appeal, he has not appeared before the court, thereby the court has requested the DLSA to give assistance of any panel Advocate for disposal of the appeal. Wherein the Learned Panel Advocate appeared and submitted written arguments.

7. Heard arguments and perused the material on record.

8. The points that would arise for my consideration are:

1. Whether the appellant/accused is entitled for setting aside the impugned judgment passed by the XXXIII Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru in C.C.No.54442/2018 dt: 04.01.2020.?

2. What order?

8. My findings on the aforesaid points are as under:

Point No.1: In the Affirmative

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

REASONS

9. **POINT NO.1:-** In brief it is the case of the complainant that he had taken residential house for rent from Smt. Sudha, W/o Srinivas on 09.06.2014 by paying entire lease amount of Rs. 7,50,000/-. The said lease amount shall be repaid on surrendering the vacant possession of the leased premises. Accordingly, he was residing in the said premises till May-2016. Thereafter, one person by name Nagaraj Reddy asked the complainant to vacate the premises claiming that he is actual owner of the property. In that connection, when this complainant approached the lessor, who had given the premises Smt. Sudha, he came to know that the said Sudha deceived the complainant and other tenants who were residing in a portion of building by stating that she is the owner of the building and she assured that she will return back the amount to the complainant and other tenants. When the accused was demanding Smt. Sudha to pay the lease amount, accused who

is none other than son-in-law of sister of Smt. Sudha voluntarily had taken liability to pay back the entire lease amount of Rs. 7,50,000/- to the complainant and accordingly had issued cheque bearing No.000021 Dt: 15.02.2017 drawn on HDFC Bank. When the complainant presented the said cheque, it was returned with an endorsement "Undelivered funds Insufficient". Wherein the accused had also executed liability agreement by agreeing to pay the amount. When the cheque was dishonoured, the complainant got issued notice. But, inspite of service of notice, he did not pay the amount. Accordingly the complainant has filed the complaint against the accused for the offence punishable u/s 138 of NI Act.

10. The trial court record shows that after filing of the complaint, the trial court has taken cognizance of the offence. After recording sworn statement, case has been registered against the accused and the presence of the accused has been secured and has recorded the substance of acquisition, the

accused has not pleaded guilty. Thereafter, trial court has recorded the evidence and thereafter statement u/s 313 of Cr.P.C was recorded on 29.08.2019 and case was posted for defence evidence and after 2 hearing dates, accused has prayed time and thereafter on 15.10.2019 defence evidence has been taken as closed and has posted for arguments and further on 5.11.2019 by taking the arguments of accused as not addressed, case has been posted for judgment and judgment has been pronounced on 04.01.2020. The said impugned judgment has been challenged in this appeal.

11. The order sheet shows that no sufficient opportunity has been given for the accused to put forth his defence evidence and argued the matter. It is the case of the complainant that the amount due was payable by one Sudha. Accused is claimed to be the relative of Sudha and the accused had agreed for the liability and had issued cheque. No doubt, before the trial court, complainant appeared, examined as PW.1 and

*produced documents such as liability agreement, lease agreement and cheque in issue. But, when the facts stood like that, when the accused claim that the said liability agreement is alleged to have been obtained forcibly from him in the police station and there is no liability as such on him, the trial court ought to have provided sufficient opportunity for him to rebut the case of the complainant. Hence, without consideration of the matter, on merits, by considering the facts and circumstances of the present case, I hold that it is necessary to remand the matter to the trial court with a direction to the trial court to give an opportunity to the accused to lead defence evidence if any and pass the order on merits. Accordingly, I hold the points No.1 for consideration in **Affirmative***

12. **POINT NO.2:** *In view of my reasons and findings on Point No.1, I pass the following:*

ORDER

Appeal is allowed.

The Judgment dated:04/01/2020 in C.C.No.54442/2018 passed by the Learned XXXIII Addl. Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru, is set-aside.

Matter is remanded back to the trial court with a direction to provide an opportunity to the accused to lead defence evidence.

Accused shall appear before the Trial court on 14.08.2023 and lead his defence evidence without seeking any adjournments failing which the trial court is at liberty to proceed the case in accordance with law.

Office is directed to send back TCR to the Trial Court along with the copy of the judgment.

No order as to costs.

[Dictated to the Judgment Writer, after computerization, corrected, signed and then pronounced by me in the open Court on this the day of 5th day of July 2023].

[SAYEEDUNNISA]

*LXXIV Addl. City Civil & Sessions Judge,
Mayo hall, Bengaluru.*