KABC0A0022362022

IN THE COURT OF THE XXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-29) MAYOHALL, BENGALURU

Dated this the 6th day of January, 2025.

PRESENT:

Sri BALAPPA APPANNA JARAGU B.Sc., LL.M.,
XXVIII Additional City Civil and Sessions Judge,
Bengaluru.

Criminal Appeal No.25106/2022

APPELLANT : Amogh Customer Care
Proprietor/Authorised Signatory
D.C. Raju, Aged about 44 years,
S/o. Channagiri Gowda,
Muthathi, Byadrahalli Post,
Aluguru Hobli, Malavalli Taluk,
Mandya District.

(By Sri P. Sharnivasakumar, Advocate)

–VERSUS–

RESPONDENT : M/s. Yashwanth Enterprises,
No.82/3, Lakshmi Market,
Old Madras Road, Ulsoor,
Bangalore – 560 008.

Represented by its Proprietor,
Shiva Murthy,
S/o. Eraiah,
Aged about 42 years.

(By Sri H.C. Ramesh, Advocate)

JUDGMENT

This is an appeal filed by the appellant/accused under Section 374(3) of Criminal Procedure Code, challenging the judgment of conviction and order of sentence passed by the learned XXXIII Additional Chief Metropolitan Magistrate, Mayohall Unit, Bangaluru in CC No.55574/2019 dated 22.04.2022 sentencing the appellant/accused to pay a sum of Rs.2,66,000/- and in default of payment of fine to undergo six months simple imprisonment.

2. The parties hereinafter will be referred according to their ranking before the Trial Court.

3. The brief facts of the case is that;-

a) The complainant and accused are proprietorship concern represented by their respective proprietors. The accused approached complainant for financial assistance and borrowed sum of Rs.2,00,000/- from complainant. Said amount was paid by complainant to accused through cheque and through NEFT. The accused in order to discharge legal liability has issued cheque bearing No.009291 dated 29.05.2019 for sum of Rs.1,00,000/-, cheque bearing No.009292 dated 29.05.2019 for sum of Rs.36,000/- and another cheque bearing No.009293 dated 29.05.2019 for sum of Rs.1,00,000/- in favour of complainant which were drawn on Axis Bank, Channapatna. On 29.05.2019 complainant presented those cheques for encashment through his banker HDFC Bank, Richmond Road, Bengaluru and all these cheques returned unpaid with memo dated 30.05.2019 for the reason "funds insufficient" in the account of accused. On 10.06.2019, complainant issued legal notice to accused demanding cheque amount. The accused did not claim notice issued by complainant, which deemed to have been served on accused. In spite of service of said notice, appellant/accused failed to comply same and thereby, it is alleged that, the appellant/accused has committed an offence punishable under Section 138 and 142 of Negotiable Instruments Act. Hence, the complaint came to be filed before the Trial Court by the respondent/complainant.

b) The Trial Court after taking cognizance of the offence punishable under Section 138 of Negotiable

Instruments Act and recording sworn statement of respondent/complainant, registered the case in CC No.55574/2019 and issued summons to the accused. After furnishing copy of complaint, plea of appellant/accused had been recorded. The appellant/accused pleaded not guilty and claimed to be tried.

c) It is seen from the Trial Court records that, Authorized signatory of complainant's company got himself examined P.W.1 and got marked 11 documents as Exs.P.1 to P.11. The statement of the accused under Section 313 of Cr.P.C has been recorded. The appellant/ accused has not lead any evidence and not produced any documents. After hearing arguments on both sides, Trial Court has passed the impugned judgment of conviction and order of sentence.

4. Being aggrieved by the impugned judgment of conviction and order of sentence, appellant/accused has challenged judgment of conviction and order of sentence on the following grounds:-

The conviction and sentence are arbitrary and not acceptable in the eyes of law. The impugned judgment is against law and all probabilities of case. The trial court has been misdirected by respondent and come to wrong conclusion that, appellant has committed offence under Section 138 of N.I. Act. The trial court not considered that, there was no enforceable debt and appellant never issued cheque in question to respondent. The impugned judgment and conviction is one sided order. The counsel for accused not cross examined complainant. Sufficient opportunities not given to appellant to put-forth his defense. An opportunity of being heard may be given to appellant. The trial court failed to appreciate irregularity and divergent facts available in documentary evidence. Hence, on these grounds, the appellant/accused has prayed for setting-aside the judgment of conviction and order of sentence.

5. Even after sufficient opportunities, proper steps to respondent not taken.

6. Secured the records from the Trial Court. Even after sufficient opportunities, the learned counsel for

appellant not advanced his arguments as such in view of decision of Hon'ble Supreme Court ***dated 14.07.2022 in Crl.A.No.803/2017 in case of Dhananjay Rai @ Guddu Rai Vs. State of Bihar***, appeal taken for final disposal on merits.

7. The points that arise for my determination are:

1. Whether the complainant/ respondent has established that, accused/appellant had given cheque bearing No.009291 dated 29.05.2019 for sum of Rs.1,00,000/-, cheque bearing No.009292 dated 29.05.2019 for sum of Rs.36,000/- and another cheque bearing No.009293 dated 29.05.2019 for sum of Rs.1,00,000/- drawn on Axis Bank, Channaptna in favour of complainant towards discharge of his debt?
2. Whether the judgment of conviction and order of sentence needs to be interfered with?
3. What Order?

8. My answers to the above points are as under:–

POINT No.1 - In the affirmative;

POINT No.2 - In the negative;

POINT No.3 - As per final order,

for the following –

REASONS

9. **POINTS NO.1 AND 2 :-** As these points are inter-related to each other and involves common appreciation of facts and evidence on record, findings on one point are bearing on other point, in order to avoid repetition of facts and for convenience sake, both points are taken together for common discussion.

10. On re-appreciation of entire material on record, complainant company has filed complaint against accused company for the offence punishable under section 138 and Sec.142 of Negotiable Instruments Act. It is specifically alleged in private complaint as well as sworn statement and evidence of authorized representative of complainant, who examined as PW.1 that, accused approached complainant for financial assistance to meet his urgent business necessities and borrowed sum of Rs.2,00,000/-. In order to show, an amount of

Rs.2,00,000/- paid to accused through cheque and NEFT, statement of accounts issued by HDFC Bank produced as per Ex.P.11. On careful perusal of said document on 31.10.2018, an amount of Rs.1,00,000/-, on 17.11.2018 an amount of Rs.50,000/- and on 19.11.2018 an amount of Rs.50,000/- credited to account of accused. It is further specifically stated in complaint and evidence of P.W.1 that, accused in order to discharge legally recoverable debt has issued cheque bearing No.009291 dated 29.05.2019 for sum of Rs.1,00,000/-, cheque bearing No.009292 dated 29.05.2019 for sum of Rs.36,000/- and another cheque bearing No.009293 dated 29.05.2019 for sum of Rs.1,00,000/- in favour of complainant. In order to substantiate these facts, cheques have been produced as per Exs.P.2 to P.4.

11. The PW.1 has specifically stated, cheque issued by accused were presented for encashment through complainant's banker and same were returned with endorsement "funds insufficient". Those endorsements issued by Axis Bank, Channaptna has

been produced before the court as per Exs.P.5 to P.7. Legal notice dated 10.06.2019 issued by the complainant company to the accused has been produced as per Ex.P.8.

12. Un-served postal covers with notice and postal receipts have been produced as per Exs.P.10 and P.9 respectively. In Ex.P.10 it is clearly mentioned as person whose name mentioned in address not present, postal cover with notice returned to complainant. It is not mentioned that, address of accused mentioned in postal cover is insufficient or incomplete. Further, accused has not denied and disputed his address as mentioned in Ex.P.10. Under these circumstances, as per provisions of Sec.27 of General Clauses Act, notice issued by complainant to correct address of accused deemed to have been served on him.

13. It is worth to note here that, accused has not denied and disputed his signature on Ex.P.2 to P.4 cheque. It is one of grounds mentioned in appeal memo that, there is no legally recoverable debt established by complainant. As already discussed, Ex.P.11 itself

sufficient, amount paid by complainant through cheque and NEFT credited to account of accused. Such being the documentary evidence on record, accused/appellant estopped from contending there is no legally recoverable debt.

14. It is worth to note here that, from Ex.P.8 to P.10 it is clear even after issuance of legal notice, accused has not paid cheque amount to complainant within 15 days from date of deemed receipt of notice. Further it is to be noted here, as could be seen from trial court records, even after sufficient opportunities, complainant was not cross examined by accused side. Under these circumstances, contention of appellant/ accused proper opportunity to contest case filed by complainant not extended to accused is not at all sustainable. Moreover, the accused has not lead any defense evidence even after sufficient opportunities. It is evident from order sheet of learned trial court that, on 01.04.2021, accused filed application under Sec.145(2) of NI Act and same was allowed. Thereafter, matter repeatedly adjourned for cross examination of

complainant and even after sufficient opportunities P.W.1 was not cross examined by learned counsel for accused/appellant.

15. Fact to be noted here, signature on cheque as per Exs.P.2 to P.4 belonging to D.C. Raju, who is authorized proprietor of accused is not denied and disputed. As such, there exist legal presumption as provided under Sec.139 of N.I. Act in favour of complainant/respondent. Once, such presumption is available, it shall have to be presumed cheque as per Exs.P.2 to P.4 were issued by accused to complainant towards discharge of legally recoverable debt.

16. It is to be required to be noted here, Hon'ble Supreme Court in ***Indian Bank Association and Others Vs. Union of India and another*** has clearly given direction to courts how to deal with cases filed under Section 138 of N.I. Act. It is clearly observed by Hon'ble Supreme Court, there is no necessity to recall and re-examine complainant after summoned the accused, unless magistrate passes specific order as to why complainant is to be recalled. Such an order is to

be passed on application made by accused under Sec.145(2) of Act. Herein the case, in pursuance of an application filed by accused, complainant/P.W.1 was recalled for cross examination.

17. As already discussed, even after sufficient opportunities, P.W.1 was not cross-examined by counsel for accused and no specific defense set up by the accused and legal presumption as provided under Sec.139 of N.I. Act which was available to complainant not discharged by accused. Even in present appeal also, appellant and his counsel not appeared before the court. Even after sufficient opportunities, appellant and his counsel not appeared before the court and advanced argument and thereby able to demonstrate their grounds of appeal as urged in memorandum of appeal.

18. Taking into consideration of above mentioned facts, there is no plausible explanation by accused to say he has sufficiently discharged legal presumption attached to Ex.P.2 to P.4, which are produced by complainant before the court. The accused failed to rebut presumption and failed to prove that, there is no

legally recoverable debt as contended by complainant. This virtually has clinched the issue for the Trial Court to accept the case of the complainant and convict the accused/appellant for the offence punishable under Section 138 of Negotiable Instruments Act.

19. Therefore, on re-appreciation of evidence, I am of the considered view that, absolutely there are no grounds to come to a different conclusion or to say that the conclusion drawn by the Trial Court are perverse and contrary to evidence on record. Hence, I answer **point No.1 in affirmative and point No. 2 in negative.**

20**. Point No.3 :-** In view of my finding on the above points, I proceed to pass the following:

O R D E R

Criminal Appeal filed under Section 374(3) of Cr.P.C., by the accused/appellant, is hereby dismissed by confirming the Judgment of conviction and order of sentencing passed by learned XXXIII Additional Chief Metropolitan

Magistrate, Mayohall Unit, Bangaluru, in CC No.55574/2019 dated 22.04.2022.

Send back the Lower Court records along with copy of this judgment.

(Dictated to the Stenographer directly on computer, typed & computerized by her, corrected and signed by me and then pronounced in the open Court on this the **6th** day of **January,** 2025).

(BALAPPA APPANNA JARAGU)
XXVIII Additional City Civil and
Sessions Judge, Mayohall, Bengaluru.