KABC030827222022

Presented on : 05-11-2022
Registered on : 05-11-2022
Decided on : 14-08-2026
Duration : 3 years, 9 months, 9 days

IN THE COURT OF THE XXII ADDL.CHIEF JUDICIAL MAGISTRATE, BENGALURU

-: PRESENT :-

M.VIJAY., B.A.L, LLB.
XXII ADDL.C.J.M., BENGALURU.

DATED THIS THE 14TH DAY OF AUGUST , 2026

C.C.No.34335/2022

COMPLAINANT : **Sri. K.S. Gurucharan,**
S/o. Sri. K.V. Seetharam Naidu,
Aged about 42 years,
R/at No.118, 2nd 'C' Cross,
5th Block, Nagarabhavi,
Bengaluru – 560 072.

(By Sri. B.C. Chethan.M., Adv.,

.Vs.

ACCUSED : **Sri. Bhaskar Babu M.J,**
S/o. Sri. M.P. Jeevan,

Aged about 38 years,
R/at B -809, 5th Cross,
2nd 'A' Main Road,
Bahubalinagar, Jalahalli,
Bengaluru – 560 013.

(By Sri. Sagar.K.J Adv.,)

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J U D G M E N T

The complainant has filed this private complaint U/s.200 of Cr.P.C., against the accused for the offence punishable U/s 138 of Negotiable Instrument Act.

2. The brief facts of the case are as follows:- The complainant and accused are well acquittance with each other as family friends, the accused being a common friend of the complainant had approached him for financial assistance during the month of March 2018, accordingly, in order to help the accused, the complainant claims to have been paid Rs.11,03,900/- periodically through RTGS, IMPS, MBS, UPI from April 2018 to February 2022, in turn, the accused towards discharge of the said loan has paid partially a sum of Rs.3,42,900/- and had due of Rs.7,61,600/- when he demanded the accused to pay the said due amount, the accused had undertaking to repay it on or before dt: 28.02.2022 by virtue of letter dt: dt:26.08.2021, but even after completion of said period, the accused failed to pay the said out standing amount of Rs.7,61,600/-, accordingly, he finally demanded the accused in the month of May 2022, accused allegedly issued cheque bearing no.264624, dt:11.05.2022 for a sum of Rs.7,61,600/- drawn on Karnataka Bank, Yeshwanthpur Branch, Bengaluru, with an instruction to present it on 14.06.2022.

3. Believing the words of the accused, complainant claims to have present the cheque through his banker on 14.06.2022, but it got dishonored for "Funds Insufficient", same was intimated to the accused, but he not heed to his demand, accordingly, he was constrained

to issue demand notice on 05.07.2022 same was delivered to the accused, but he failed to pay the cheque amount, even after 15 days, accordingly, this complaint alleging that, the accused has committed an o/p/u/s.138 of N.I.Act.

4. As per the guidelines of Hon'ble Apex Court issued in *Indian Bank Association & others., Vs. Union of India., case,* based on the complaint, the sworn statement affidavit, the documents placed by the complainant along with the complaint. the court took cognizance of an offense punishable under Sec.138 of N.I.Act and ordered to register a criminal case against the accused for the o/p/u/s.138 of N.I.Act.

5. In pursuance to the summons, the accused has appeared through his counsel and he was enlarged on court bail. Substance of accusation read over to him, he pleads not guilty and claimed to be tried. The

complainant in order to prove his case, got examined himself as PW.1 and got marked documents at Ex.P.1 to P.18. The accused was examined U/s.313 of Cr.P.C, she denied the incriminating materials on record, further in order to prove her defence, he got herself examined as DW.1 and got marked Ex.D.1 to D.6(b).

6. Heard both the sides. The counsel for complainant filed written arguments. Perused the materials available on record.

7. The following point arises for my determination :

> ***"Whether the complainant has proved that the accused has committed the offence punishable under Sec.138 of Negotiable Instruments Act?"***

8. On that basis my finding on the above point is in the **"Affirmative"** for the following;

R E A S O N S

9. The accused denied alleged liability of Rs. 7,61,600/- as well as issuance of Ex.P.1 cheque in

question towards discharge of above sum and also, issuance of undertaking letter dt; 26.08.2021 and specifically contended that, they have established a company called “Round Bricks Techno Project Pvt. Ltd”., (herein after in short it is referred as RBTPL) as well as a partnership firm “Round Bricks Service Partnership Firm”, (herein after in short it is referred as RBSP Firm.,) the company consists of complainant, accused and complainant's wife as the directors, complainant, accused, Vasu Sahana Choudary & Satish Kumar are the partners of RBSP in the year 2015, in this regard, there were several financial transaction held in between him and the complainant both individually as well as through partnership firm and company, the complainant by misusing those transaction has claimed the alleged liability and he specifically contended that, he had kept his Ex.P.1 cheque for office use as security to the business transaction aforesaid company and partnership, but the complainant has misused and filed this false case. Accordingly, he claims to be an innocent.

10. So, the accused vehemently denied the liability for Rs.7,61,600/- claimed by the complainant, however, he does not disputes the receipt of demand notice at Ex.P.3, and also admittedly not issued reply to said notice, so, the accused not set up his defence in reply despite the demand notice issued by the complainant was duly served. Therefore, it is burden on the complainant to prove that, whether sum of Rs.11,03,900/- was paid to the accused and it was an individual transactions but not their business transaction.

11. The complainant in order to prove his case that, he advanced sum of Rs.11,03,900/- to the accused right from 04.04.2018 to 29.05.2021 individually has relied upon Ex.P.13 to P.18 statement of his bank accounts

ie., Ex.P.13 to P.16 statement of his Karnataka Bank account from 05.04.2018 to 05.04.2021, Ex.P17 & P.18 statements of his IndusInd Bank account from 01.04.2018 to 31.03.2021 and claimed that, from 04.04.2018 to 29.05.2021 as many as 58 transactions were held through online, in other words, the complainant has transferred Rs.11,03,900/- to the accused by way of IMPS, MBS, UPI to the account of accused herein, in contrary, the accused by admitting the receipt of said amount suggested that,

> ಆರೋಪಿಯು ನನ್ನ ಸ್ನೇಹಿತನಾದ ಕಾರಣ ನಾನು ಅವರಿಗೆ ಫೋನ್ ಪೇ ಮೂಲಕ ಹಣ ವರ್ಗಾವಣೆ ಮಾಡುತ್ತಿದ್ದೆ ಅವರು ನಗದು ರೂಪದಲ್ಲಿ ಸಂದಾಯ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ.

12. So, though, the accused admitted the receipt of Rs.11,03,900/- through account but contended that, he used to receive money through online and it was repaid by way of cash, but to substantiate said repayment in

cash, nothing has produced on record, therefore, said repayment in cash cannot be acceptable.

13. Further, the accused admitted Ex.P.1 cheque and signature found thereon is that of him. But, he contended that, he had kept Ex.P1 cheque in his office RBTPL and RBSP Ltd., for the purpose of security to its business, that has been misused by the complainant, but same is denied by the complainant. However, the accused admitted the cheque and signature on the cheque belongs to him and it is his individual cheque but not company or partnership firm cheque, so, it is mandatory upon this court to draw presumption in favour of the complainant that, the cheque was drawn by the accused for sum of Rs.7,61,600/-, even though, he denied the liability, as it is statutory presumption shall be drawn once the accused admitted cheque and signature on the cheque, accordingly, initial presumption

has been drawn in favour of the complainant that, accused has drawn Ex.P.1 cheque for sum of Rs. 7,61,600/- towards discharge of his legally enforceable liability, at this stage, it is worth to note, ***M/s Kalmani Tex and another Vs. P. Balasubramanyam,*** wherein, the lordship held that,

> ***"The statute mandates that, once the signature of an accused on the cheque and cheque are established then the statutory presumption U/S 118(a) r/w 139 of N.I Act must be drawn infavour of the complainant".***

14. However, it is rebuttable in nature, therefore onus is on the accused to prove his contention that, the claimed liability did not exist as on the date of presentation of the cheque. The standard of proof for rebutting the presumption envisaged U/s.118 & 138 of N.I.Act, is preponderance of probabilities, but not strict

proof, however, the probabilities must be capable to accept by the court.

15. So, the onus is rest on accused to prove his defence that, whatever the amount he received through online from the complainant was towards business of company and partnership firm, but not of his individual capacity, in order to prove it, the accused has relied upon Ex.D.1 & D.2 and the materials elicited from cross examination of PW.1 that, RBTPL is a company, he and the complainant, as well as complainant's wife, were the directors of the company, complainant and his wife had invested 60% & 10% shares respectively and remaining 30% is of the accused, in other words, he had 3000 shares, complainant and his wife both had 7000 shares, the profits and losses should be borne equally in the same ratio, accordingly, the said company was established in the year 2015, in addition to that, a

partnership firm ie., RBPS also constituted by himself, complainant as well as Vasu Sahana Choudary and Satish Kumar, further, for the purpose of business of both the company as well as partnership firm, a car was required, accordingly, an Innova car bearing its registration no. KA 51 MH 9644, was purchased by him by availing loan and what ever the payment made by the complainant is a business transaction amounts, as such, he never borrowed any amount individually same is misused by the complainant and filed this false case, as if he borrowed money from him.

16. So, the accused by denying the existence of liability claimed that, whatever the amount received from the complainant through online ie., Ex.P.13 to P.18 that was business transaction but not an individual transaction and he individually paid cash for down payment to purchase Innova car, therefore, it is not an

individual transaction, it is financial transaction held between partnership firm and him, accordingly, claimed liability did not exist. But, during the course of cross examination of DW.1, the accused admitted that, Ex. P.7 is memorandum of association as well as article of association of RBTPL company, Ex.P.8 is Deed of partnership firm and Innova was purchased in the name of partnership firm as per the resolution passed by the partners and also, to purchase said Innova the partnership firm had availed a loan from Toyota Finance, in the name of firm as per Ex.P.12 through confrontation Ex.P.10 to 12 were marked, Ex.P.10 is the payment receipt with respect to Innova car, Ex.P.11 closure report, Ex.P.12 is the delivery note, which discloses that, the accused without resolution from the partnership firm, individually sold the car owned by the partnership firm to one Gajendra Kumar despite he claimed that, he had individually purchased the car, So, these documents

Ex.P.10 to 12 speaks otherwise to his contention that, he was being one of the partner of the RBSP sold the Innova car stood in the name of partnership firm.

17. That apart, the accused confronted Ex.D.2 & D.3, the statement of Karnataka Bank account clearly demonstrate that, the accused has paid EMI to the car loan from 04.04.2018 to 29.05.2018 and suggested to the PW.1 that, entire advance and the EMI paid by him, but the complainant denied and vehemently contended that, he individually paid the down payment amount in cash to purchase the car. So, the accused has to prove how much the down payment he paid to purchase the Innova car, whether he sold the Innova car as per the resolution of partners of the RBTPL or not. But the accused not produced any receipt to that effect.

18. In addition to that, he admitted in the cross-examination that, on behalf of partnership firm RBSP the said vehicle was purchased, Ex.P.10 to 12 speaks to that effect, therefore, though he produced Ex.D.2 to D.6 statement of his accounts ie., from 01.12.2016 to 01.01.2020 he paid EMIs of Rs.25,200/- but not to the complainant towards the claimed amount received through IMPS, MBS , ie., online from the complainant as per Ex.P.13 to P.18 as such, what ever he paid as per Ex.D.2 t D.5 which was towards car EMIs it does not cover the claimed liability.

19. Moreover, the accused during course of cross-examination admitted that, RBTPL company and partnership firm RBSP were constituted in July 2015 and both were closed in May 2017, interestingly, the Ex.P13 to P.18 it clearly discloses that, the accused has received amount from the complainant through online

from 04.04.2018 to 29.05.2021 and that too from his individual account to the accused individual account, the Ex.P.13 to P.18 does not speaks about transaction held in between the accused and the partnership firm as well as the company, further it is not the case of the accused that, both RBTPL as well as RBSP partnership firm business were carrying through an account of the complainant herein, in absence of such evidence, the contention of the accused that, whatever the amount received from the complainant through online as per Ex.P.13 to P.18 were with respect to business of both company as well as partnership firm cannot be acceptable, and such payments were made subsequent to closure of both company as well as partnership firm.

20. In addition to that, despite admission of closure of company as well as partnership firm in May 2017 till date accused admittedly not taken any steps

against the complainant about misuse of his security cheque kept in the office of both company and partnership firm in connection with the business of both the institutions and nothing has produced any document to show that, directors had kept their individual cheques for the business of both company and partnership firm, in contrary, the complainant has produced Ex.P.7 & P.8 memorandum of association and articles of Association of RBTPL and deed of partnership of RBSP Ex.P.8 which does not contain any recital about personal or individual cheques kept by any of the directors or partners in its office. Accordingly, the contention of the accused that, he had kept his personal cheques in his office for security towards business of both the institutions cannot be acceptable and it is nothing but an after thought. Hence, not trustworthy to believe it.

21. That apart, accused in order to substantiate his defence that, what ever the amount he received from the complainant as per Ex.P.13 to P.18 was with respect to business transaction of both the company as well as partnership concern, but, he failed to produce the audit report or other accounts to show that, sum of Rs. 11,03,900/- received from the company as well as partnership firm right from 2015 to till its closure May 2017, as such, in absence of this crucial material the defence of the accused is not creditworthy.

22. Further, during course of cross-examination of PW.1, the accused taken another contention in contrary to his defence that, the RBPS partnership firm had subscribed the chit and chit amount of Rs.10,000/- was paying on behalf of firm to one Abhishek on every month and said chit amount was his individual amount, but for that, accused has not produced any document to show

his contention that, he individually paying the chit amount on behalf of partnership firm and also he has not examined said Abhishek to prove his contention that, he had subscribed the chit in the name of partnership and individually paying the chit amount. So, said mere suggestion also cannot be relied upon without any proof to that effect.

23. So, considering the entire materials on record, the accused has taken multiple defences to disprove the case of the complainant despite of his admission about receipt of Rs.11,03,900/-, through IMPS/MBS, as shown in Ex.P.13 to P.18 that, what ever he received the amount from the complainant account was business transaction amount, but not individual liability as claimed by the complainant, but admittedly, accused has not produced any document to show that, the business of both RBPTL company and RBSP partnership firm was

carrying through an accounts of complainant as shown in Ex.P.13 to P.18 , therefore, he failed to prove the same.

24. In addition to that, accused has taken another contention that, as per Ex.D.2 to D.6 he paid EMIs of Innova car but not the partnership firm, but Ex.P.10 to P.12 speaks otherwise that, down payment paid by the partnership firm and car was purchased by the RBS partnership firm by availing car loan from TOYOTA finance as per the resolution passed by the partnership firm, but not his individual car, despite he paid EMIs but he admitted that, he sold said car to one Gajendra Kumar as per Ex.P.12 without the knowledge of partnership firm in the year 2020, though the claim of the complainant does not include the value of the car but it is relevant to consider when the accused contended that, he individually purchased the car and also, contended that, the cheque in question had kept in office

of the company as well as partnership firm for security to its business.

25. But no documents produced to that effect to show directors were using their individual cheques for the business of the aforesaid company and partnership firm, in absence of that, the accused utterly failed to establish his defence that, he received Rs.11,03,900/- from the complainant through online, is of his business transaction amount but not individually received and what ever the amount he paid as per Ex.P.13 to P.18 ie., Rs.3,42,000/- towards chit transaction or to receive cash amount from the complainant without any documents.

26. Accordingly, the complainant has proved the receipt of Rs.11,03,900/- by the accused subsequent to closure of both the company as well as firm and receipt of partial amount of Rs.3,42,000/- from the accused and it

is individual financial transaction between complainant and accused but not on behalf of company as well as partnership firm and cheque in question also belongs to the accused, in other words it is an individual cheque of accused but not the business transaction even though, the accused denied Ex.P.6 undertaking. As such, accused failed to rebut the presumption drawn in favour of the complainant that, the cheque received by the complainant towards discharge of legally enforceable amount of Rs.7,61,600/- and the claimed liability did not exist as on the date of presentation of Ex.P1 cheque, further, the accused failed to issue his reply, despite receipt of the demand notice from the complainant and he failed to pay the cheque amount within stipulated time, as such, the accused is found guilty for the o/p/u/s.138 of N.I.Act.

27. So, far as sentence and compensation is concern, an o/p/u/s.138 of N.I. Act, is a civil wrong and compensatory in nature, punitive is secondary, considering, the above settled principal of law with facts and circumstances of the case, which clearly reveals that, complainant and accused are friends, complainant is not claiming any interest for the claimed amount, as such, considering the nature of transaction and duration of pendency, if the fine of Rs.8,05,000/- is imposed that would meet the ends of justice, hence, the complainant is entitled for sum of Rs.8,00,000/-, as a compensation as per Sec.357(1) of Cr.P.C., remaining amount of Rs.5,000/-, is to be appropriated to the state, in case of default, the accused shall under go simple imprisonment for a period of 6 months. Accordingly, I answered the above point in **“Affirmative”**.

<u>O R D E R</u>

Acting ***U/s.278(2) of BNSS -2023 (Old Correspondence No. 255(2) of Code of Criminal Procedure),*** *the accused is convicted for an o/p/u/s.138 of Negotiable Instrument Act.*

The accused is sentenced to pay a fine of ***Rs.8,05,000/-, (Rupees Eight Lakhs and Five Thousand only)*** *in default, the accused no.2 shall undergo simple imprisonment for a period of six months.*

Out of the fine amount received, ***Rs.5,000/-, (Rupees Five Thousand only)*** *is to be appropriated to the State and by way of compensation as per the provision* ***U/s. 396 of BNSS - 2023 (Old Correspondence No.357(1)(b)*** *of* ***Cr.P.C),*** *the complainant is entitled for* ***Rs.8,00,000/-, (Rupees Eight Lakhs only) .***

The bail bond and surety bond of the accused shall stand cancelled.

Office is directed to furnish a free copy of the judgment to the accused.

(Dictated to the Stenographer directly on computer, typed by her, corrected, signed and then pronounced by me in the open court, on this the 14th day of August, 2026)

(M.VIJAY)
XXII ACJM, BENGALURU.

A N N E X U R E

1. Witnesses examined on behalf of Complainant:

P.W.1	:	Sri. K.S.Gurucharan

2. Documents marked on behalf of complainant:

Ex.P.1	:	Original cheque
Ex.P.1(a)	:	Signature of the accused
Ex.P.2	:	Bank return memo
Ex.P.3	:	O/c of the legal notice
Ex.P.4	:	Postal receipt
Ex.P.5	:	Postal cover
Ex.P.6	:	Letter dt: 26.08.2021
Ex.P.6(a)	:	Signature of accused
Ex.P.7	:	Memorandum of Association & Articles of association of RBTPL
Ex.P.8:	:	Reconstitution Admission -Cum – Retirement) deed of partnership
Ex.P.9	:	Invoice
Ex.P.10	:	Receipt of Financial Services
Ex.P.11	:	Closure Simultaneous Report
Ex.P.12	:	Delivery Note
Ex.P.13	:	Bank statement for the period from 04.04.2018 to 31.03.2019
Ex.P.14	:	Bank statement for the period from 01.04.2019 to 31.03.2020
Ex.P.15	:	Bank statement for the period from 01.04.2020 to 31.03.2021

Ex.P.16	:	Bank statement for the period from 01.04.2021 to 31.03.2022
Ex.P.17	:	Bank statement for the period from 01.04.2018 to 31.03.2020
Ex.P.18	:	Bank statement for the period from 01.04.2020 to 31.03.2021

3. Witnesses examined on behalf of Accused:

DW.1 : Sri. M.J.Bhaskar Babu

4. Documents marked on behalf of Accused:

Ex.D.1	:	Share Certificate
Ex.D.2 to D.6	:	Bank Statements
Ex.D2(a) to (f)	:	Relevant Entries
Ex.D3(a) to (I)	:	Relevant entries
Ex.D4(a) to (k)	:	Relevant entries
Ex.D5(a) to (I)	:	Relevant entries
Ex.P.6(a) & (b)		Relevant entries

(M.VIJAY),
XXII ACJM, BENGALURU.