KABC030186572024

Presented on : 05-04-2024
Registered on : 05-04-2024

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

Dated this the 28th day of July 2026

PRESENT
Sri.Parameshwara.P.J, B.Com.,LL.B.
XXI ACJM, Bengaluru

CRIMINAL CASE NO.11576/2024

Complainant	:	**M/s.N.Rajendra Prasad.H.U.F,** No.77, 2nd floor, Mahalakshmi Mahal, D.K.Lane, Chickpet, Bengaluru-560053. Rep.by its Kartha Sri.Rajendra Prasad, s/o.Nemichand, aged about 55 years
		(By Sri.HCR., Adv)

V/s

Accused	:	**Syed Wajeed Ali**, s/o.Akthar Ali, 256, 5th main, 6th cross, Chandra layout, Near Vijaynagar BDA, Bengaluru-560040. Also at : Syed Wajeed Ali, s/o.Akthar Ali, 256, 5th main, 7th cross, Arundathinagar, Chandra layout, Bengaluru-560040.

(By Sri.VKR., Adv.)

JUDGMENT

This complaint is filed u/s.200 of Cr.P.C., for the offence punishable u/s.138 of N.I.Act.

2. The case of the complainant in brief is as follows:

That the complainant is doing vehicle hire purchase business and other allied business activities. The accused has stood as guarantor to principle borrower Wajeed Pasha who hypothecated his vehicle bearing no.KA 17 C 0475 by executing hypothecation agreement on 15/10/2019 in favour of the complainant and issued a cheque bearing no.000050, dtd: 02/01/2024 for Rs.1,70,000/- drawn on Kotak Mahindra Bank, Vijaynagar branch, Bengaluru in favour of the complainant and assured that the cheque will be honoured. The accused has executed all the relevant documents at the time of borrowing. Believing the words of accused, complainant presented the cheque for encashment with his banker Bank of Baroda, Gandhinagar branch, Bengaluru but to the utter shock and surprise of the complainant, the cheque returned unpaid for the reason of 'Insufficient Funds' vide return memo dtd: 05/01/2024. After receipt of memo the complainant got issued a legal notice on 10/01/2024 to accused calling upon him to pay the cheque amount. The same was unclaimed by the accused on 12/01/2024. The accused is fully aware that he issued the cheque towards discharge of his legally recoverable debt and caused the cheque to be dishonoured and failed to pay the amount in spite of notice. Hence, the accused committed the offence u/s.138 of N.I.Act. Under these backgrounds, the complainant prayed to punish the accused for the offence u/s.138 of N.I.Act.

3. After taking cognizance of the offence, the sworn statement of the complainant recorded and issued process to accused. On service of summons, the accused has appeared through his counsel and he has been enlarged on bail throughout the trial. The substance of accusation framed, read over and explained to the accused in the language known to him. He pleaded not guilty and claimed to be tried.

4. The affidavit filed in lieu of sworn statement has been treated as evidence in view of direction issued by Hon'ble Apex court in the case of **Indian Bank Association and Others Vs.Union of India 2014 (5) SCC 59** and got the documents marked at Ex.P.1 to P.18.

5. The complainant examined himself as PW1 and got marked documents at Ex.P.1 to 18. The accused examined u/s.313 of Cr.P.C., regarding incriminating circumstances appearing in the evidence but he denied the same. The accused examined himself as DW1.

6. Heard argument and perused materials on record.

7. The learned counsel for the complainant contended that the complainant has proved all the ingredient of the alleged offence and prayed to convict the accused. On the other hand, the learned counsel for accused in his written argument contended that the actual principle loan amount financed under HP agreement was Rs.75,000/- only. But the complainant misused the blank cheque obtained as security at the time of executing guarantor agreement. The complainant arbitrarily filed exorbitant amount of Rs.1,70,000/- which is more than double the principle amount without providing any lawful calculation or statement of accounts. The learned counsel further contended that the complainant has deliberately failed to array the principle debtor as party to the present complaint or take any action against him. The Hon'ble Supreme court in Dashrathbhai Trikambhai Patel Vs.Hitesh Mahendrabhai Patel (2023) held that if a cheque is presented for an

amount higher than the actual debt due on that date, without endorsing the part payment or proving the break down of exact liability the offence u/s.138 of N.I.Act is not attracted. The learned counsel further contended that the accused has successfully rebutted the presumption by adducing evidence. There is material alteration in the cheque, therefore the learned counsel prayed to acquit the accused. In support of his case, the learned counsel has relied upon (2023) 1 SCC 578 - **Dashrathbhai Trikambhai Patel Vs.Hitesh Mahendrabhai Patel.**

8. Now the following points arise for my consideration are :

1. ***Whether complainant has proved that accused issued a cheque bearing no. 000050, dtd: 02/01/2024 for Rs.1,70,000/- drawn on Kotak Mahindra Bank, Vijaynagar branch, Bengaluru in his favour towards discharge of legally recoverable debt/liability, cause it to be dishonoured for the reason of 'Insufficient Funds', failed to pay the amount despite service of notice and thereby he has committed the offence punishable U/s 138 of Negotiable Instrument Act?***

2. ***What order?***

9. My answers to the above points are as under:-

Point No.1 :- **In the Affirmative**
Point No.2 :- As per final order
for the following :-

R E A S O N S

10. It is the case of the complainant that accused has stood as guarantor to principle borrower Wajeed Pasha who hypothecated his vehicle bearing no.KA 17 C 0475 by executing hypothecation agreement on 15/10/2019 in favour of the complainant and issued a cheque for Rs.1,70,000/-. The accused has executed all the relevant documents at the time of borrowing. In order to prove his case, the complainant got examined himself as PW1 and reiterated his case by filing affidavit in lieu of examination in chief. In support of his oral evidence, PW1 has produced Ex.P.1 to 18. Ex.P.1 is the cheque, Ex.P.2 is the Bank endorsement, Ex.P.3 is the legal notice, Ex.P.4 and 5 are the postal receipts, Ex.P.6 and 7 are the returned postal covers, Ex.P.8 is the letter, Ex.P.9 is the Hypothecation agreement, Ex.P.10 is the B extract, Ex.P.11 & 12 are the letters, Ex.P.13 is the Hypothecation agreement, Ex.P.14 is the Letter of commitment, Ex.P.15 is the Statement of account, Ex.P.16 is the B register extract, Ex.P.17 is the letter dtd: 01/10/2022 and Ex.P.18 is the letter dtd: 31/12/2023.

11. In order to prove the existence of legally enforceable debt the complainant relied upon Ex.P.1 cheque and Ex.P.8 letter of commitment written by the accused on 31/12/2023. He also produced Ex.P.9 Hypothecation agreement, Ex.P.10- B extract of RTO, Ex.P.11 letter of commitment executed by accused on 15/10/2019 and Ex.P.12 letter of accused seeking time to pay the amount. A perusal of Ex.P.1, 8 to12 reveals that the accused has stood as guarantor to the principle borrower Wazeed Pasha who hypothecated his vehicle bearing no.KA 17 C 0475 by executing hypothecation agreement on 15/10/2019 in favour of the complainant.

12. A perusal of Ex.P.18 letter dtd: 31/12/2023 reveals that the accused admitting his liability for Rs.91000/- under hypothecation agreement intended to settle the matter and issued a cheque for Rs.1,70,000/-. From this document, it is very clear that the accused not only admitted the existence of legally enforceable debt but also issued Ex.P.1 for discharge of his liability. A perusal of Ex.P.9 Hypothecation agreement also discloses that the accused has stood as guarantor to the principle debtor Wazeed Pasha and the accused along with principle debtor has agreed to the terms and conditions including his liability to pay the amount in the event of failure of the borrower.

13. Ex.P.8 Joint letter dtd: 31/12/23 executed by accused and his borrower in favour of the complainant also reveals that accused and his borrower have intended to settle their Hypothecation agreement due obtained on vehicle for Rs.1,70,000/-. In his cross examination DW1 not only admits execution of Ex.P.8 and 9 but also his signature found thereon as Ex.P.8(b) and 9(b). He also admitted that he and his borrowers have agreed to all the conditions mentioned by the complainant. He further admits that execution of letter as per Ex.P.18 wherein the accused clearly admits the issuance of cheque in favour of the complainant for discharge of his liability. Further, DW1 admits that his friend principle borrower has agreed to repay the loan amount with interest to the complainant in 11 EMI payable of Rs.9,000/- in the 1st installment and remaining EMI @ Rs.8,200 in 10 installments from 20/11/2019 to 20/9/2020. He also admitted that he has stood as guarantor for the said loan. Further, DW1 admits that they have failed to pay the amount as agreed. Though DW1 contended that one EMI was paid by his friend and receipt is with his friend. He has not produced the said receipt for the reasons best known to him. For better appreciation of evidence, the cross examination of DW1 dtd: 30/5/26 at para no.2 is reproduced as below:

"…….ನನ್ನ ಸ್ನೇಹಿತ ಪಡೆದುಕೊಂಡ ಸಾಲಕ್ಕೆ ಅಸಲು ಮತ್ತು ಬಡ್ಡಿಯನ್ನು ಸೇರಿ 11 ತಿಂಗಳ EMI ನಲ್ಲಿ ಮರುಪಾವತಿಸುತ್ತೇವೆ ಎಂದು ತಿಳಿಸಿರುತ್ತೇವೆ ಎಂದರೆ ಸರಿ. ಮೊದಲ ತಿಂಗಳು ಕಂತು ರೂ.9,000/-, ಉಳಿದ 10 ತಿಂಗಳು ಕಂತು ರೂ.8,200/-ರಂತೆ ಮರುಪಾವತಿ ಮಾಡಲು ಒಪ್ಪಿದ್ದೇವು ಎಂದರೆ ಸರಿ. ಸದರಿ ಸಾಲವನ್ನು ದಿ.20.11.2019 ರಿಂದ ದಿ.20.09.2020ರ ಅವಧಿಯಲ್ಲಿ ಮುಕ್ತಾಯಗೊಳಿಸಬೇಕಾಗಿತ್ತು ಎಂದರೆ ಸರಿ. ಸದರಿ ಸಾಲವನ್ನು ನಾವು ಒಪ್ಪಿಕೊಂಡಿರುವಂತೆ ಮರುಪಾವತಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸಾಲ ಪಡೆದ ದಿನದಂದ ಈವರೆಗೂ ದೂರುದಾರರಿಗೆ ಹಣ ಪಾವತಿ ಮಾಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿ ಒಂದು ತಿಂಗಳು ಕಟ್ಟಿರುತ್ತೇವೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಒಂದು ತಿಂಗಳು ಹಣ ಪಾವತಿ ಮಾಡಿದ ರಶೀದಿ ನನ್ನ ಸ್ನೇಹಿತ ವಾಜಿದ್ ಪಾಷಾ ಬಳಿ ಇರುತ್ತದೆ. ನನ್ನ ಸ್ನೇಹಿತ ವಾಜಿದ್ ಪಾಷಾ ಪಡೆದುಕೊಂಡ ಸಾಲಕ್ಕೆ ನಾನು ಜಾಮೀನುದಾರನಾಗಿದ್ದೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಸ್ನೇಹಿತ ಸಾಲ ಕಟ್ಟದೆ ಇದ್ದರೆ ನಾನು ಕಟ್ಟುತ್ತೇನೆ ಎಂದು ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ದೂರು ಸಲ್ಲಿಸಿದ ನಂತರ ನಾನು ನನ್ನ ಸ್ನೇಹಿತನನ್ನು ಭೇಟಿ ಮಾಡಿದೆ ಆತ ನನಗೆ ನೋಟೀಸು ಬಂದಾಗ ನಾನು ನೋಡಿಕೊಳ್ಳುತ್ತೇನೆ, ಈಗ ಈ ಕೇಸನ್ನು ನೀನೇ ನಡೆಸಿಕೊ ಎಂದು ತಿಳಿಸಿರುತ್ತಾನೆ. ನಾನು ನನ್ನ ಸ್ನೇಹಿತನ ವಿರುದ್ಧ ಯಾವುದೇ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಂಡಿಲ್ಲ. ನಾನು ನನ್ನ ಸ್ನೇಹಿತನ ಸಾಲಕ್ಕೆ ಜಾಮೀನುದಾರನಾಗಿ ಒಪ್ಪಿ ಸಹಿ ಮಾಡಿರುವುದರಿಂದ ನಾನು ಯಾವುದೇ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಂಡಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿ.ಪಿ.18ರಲ್ಲಿರುವ ಸಹಿ ನನ್ನದೆ ಆಗಿರುತ್ತದೆ. (ಸದರಿ ಸಹಿಯನ್ನು ಆರೋಪಿ ನೋಡಿ ಗುರುತಿಸಿರುವುದರಿಂದ, ಸದರಿ ಸ ಹಿಯನ್ನು ನಿ.ಪಿ.18(ಎ) ಎಂದು ಗುರುತಿಸಲಾಯಿತು). ನಿ.ಪಿ.18 ಮತ್ತು ನಿ.ಪಿ.1ರಲ್ಲಿರುವ ಚೆಕ್ಕು ಸಂಖ್ಯೆಗಳು ಒಂದೇ ಇರುತ್ತವೆ ಎಂದರೆ ಸರಿ. ನಿ.ಪಿ.1ರ ಚೆಕ್ಕು ನನ್ನದೆ ಎಂದರೆ ಸರಿ. ನನ್ನ ಸ್ನೇಹಿತನ ಸಾಲ ತೀರಿಸಲು ನಾನು ನಿ.ಪಿ.1ರ ಚೆಕ್ಕನ್ನು ನೀಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನಗೆ ಎಲ್ಲ ವಿಚಾರ ತಿಳಿದಿದ್ದರು ನಾನು ಈ ಕೇಸಿನಿಂದ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ಸುಳ್ಳು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ….”

From the above statement it very clear that the accused has not only admitted his liability but also undertaken to pay the amount in the event the principle debtor failed to pay the amount. However, the accused has taken a contention that blank signed cheque obtained as security and he has repaid the entire loan amount but the cheque was not returned by the complainant. He further contended that there is no existence of legally recoverable debt by the accused.

14. Though PW1 has been cross examined nothing worthwhile has been elicited. In his cross examination, though PW1 admits that cheque amount of Rs.1,70,000/- include interest of Rs.90,000/- as well, he denied that the accused has no liability. PW1 further denied that he has misused Ex.P.1 blank cheque obtained from the accused. He also denied that the contents of Ex.P.1 got typed by him only. PW1 further denied that Ex.P.13 to 18 documents are concocted. Though PW1 admits that the accused had paid 1st installment and Rs.6,000/- in the second installment, he states that receipts issued for payment of such receipts issued in the office. Admittedly, the accused has not produced any such receipts.

15. A perusal of Ex.P.9 loan statement of accused and his principle borrower shows that 1st installment of Rs.9,000/- paid on 20/11/2019 and Rs.8,200/- for the 2nd EMI. Ex.P.15 statement of accounts as on 31/12/2023 discloses that the accused paid Rs.5,000/- on 21/09/2020 and Rs.4000/- on 12/01/2022 towards

1st installment and Rs.6,000/- was paid on 12/01/2022. The balance amount towards principle stood at Rs.76,000/- and Rs.1,08,299/- towards interest totally the accused and his principle borrower due to pay Rs.1,84,299/- as on 31/12/2023. A perusal of Ex.P.18 letter dtd: 31/12/23 reveals that the case was settled for Rs.1,70,000/- and accused has issued a cheque in this regard.

16. Though PW1 admits that he has not given any complaint before the police against principle borrower Wazeed Pasha, he says that the vehicle was seized. But he denied that his staff members have collected loan in cash from the accused and his staff left office without intimating about the collection of loan amount. Though the accused has suggested this suggestion, he not produced any materials to substantiate his version. Except suggestion, there are no materials on record to probabalize the theory of the accused. In the absence of cogent and reliable materials the contention of accused that he has paid amount to the complainant does not hold water. Further, the contention of the learned counsel for the accused that the complainant obtained blank cheque also not acceptable as It is immaterial that the cheque may have been filled up by any person other than the drawer, if the cheque is duly signed by the

drawer. If a signed blank cheque is presented to a payee to whom some payment is due, the payee may fill up the amount and other particulars. The cheque issued not invalidate. At this stage, it is useful to refer a decision relied upon by the learned counsel for the complainant in ABC 2019 (II) 235 SC in **Bir Singh Vs.Mukesh Kumar** wherein the Honble Apex court has held that even if it is assumed that Ex.P.1 given as security, the accused is liable for the offence punishable u/s.138 of N.I.Act. Under these circumstances, the contention of the learned counsel for the accused also not acceptable.

17. So far as service of notice is concerned, it is the case of the complainant that the complainant presented the cheque for encashment with his banker, but to the utter shock and surprise of the complainant, the cheque returned unpaid for the reason of 'Insufficient Funds' vide return memo dtd: 05/01/2024. After bank endorsement, he got issued legal notice as per Ex.P.3. A perusal of Ex.P.3 to 7 discloses that the complainant soon after receiving bank endorsement issued legal notice to the accused through his advocate demanding accused to pay the cheque amount within 15 days by registered post. In his cross examination, PW1 states that the legal notice was sent to two address of accused and he enquired as to where the accused is residing. Though PW1 says that he

cannot tell as to in which address the accused resides, he denied that he managed to see that the notice was not served on the accused as accused might have take action against him by filing a complaint before the police. Though PW1 admits that the Ex.P.3 does not disclose as to how much of amount to be paid and what was the rate of interest and what was the balance by the accused, he denied that no such notice served on the accused. Ex.P.6 reveals that the legal notice sent returned as 'unclaimed'. There are no materials on record to show that Ex.P.6 was manipulated by the complainant. Even after service of notice the accused has not sent any reply and set up his defence. In the absence of specific defence by sending reply, the contention of the accused that Ex.P.1 obtained as blank as security and misused by the complainant cannot be accepted.

18. In the present case, as stated supra, the accused not only admits the issuance of Ex.P.1 but also signature found thereon. Once the accused has admitted the issuance of cheque and his signature, presumption u/s.118 and 139 of N.I.Act raises in favour of the complainant that the accused has issued the cheque for discharge of his legally enforceable debt unless the accused gives cogent, rebuttable evidence. The evidence adduced by the accused failed to establish or give

probable defence that there was no such existence of legally enforceable debt and Ex.P.1 not issued by the accused. In view of my above discussion the contention the learned counsel for the accused cannot be accepted and the authority relied upon by the learned counsel for the accused is also not much useful as the facts and circumstances are entirely different.

19. The oral and documentary evidence of complainant has clearly established that the accused issued Ex.P.1 cheque to discharge his liability and when it presented, the cheque came to be dishonoured for the reason 'Insufficient Funds' and accused failed to pay the money despite legal notice being served on him. By considering overall evidence of the complainant and materials available on record, I am of the opinion that the complainant has successfully proved the offence punishable u/s.138 of N.I.Act. Accordingly, I answer point no.1 in the **Affirmative**.

20. **POINT NO.2:-** In the present case, the complainant has prayed to punish the accused in accordance with law. Since the complainant has successfully proved the guilt of accused for offence u/s 138 of NI Act it is necessary to punish him suitable and award reasonable compensation to the complainant. At this juncture, it is relevant to quote decision of our **Hon'ble High court of Karnataka** in **A.V.Poojappa vs.Dr.S.K.Vagdevi** in **Crl.Rev.Pet.No.13/2020 dtd: 4/6/25** wherein the Hon'ble High Court of Karnataka has held that while imposing punishment for the offence u/s.138 of N.I.Act the court required to examine the following aspects :

1. The quantum of the loan
2. The defence taken by the accused, more particularly whether he has taken a false defence and failed to prove the same.
3. Whether the accused has dragged on the matter unnecessarily and thereby delayed the disposal of the case at the stage of trial, appeal, revision and before the Hon'ble Supreme Court.
4. Whether the transaction relates to business between the parties or the parties are business class who would have utilized the amount for their business and flourish, or
5. In other cases, the returns the loan amount would have brought, if it was kept in a fixed deposit in a nationalised bank etc,

21. Similarly, in another case of **M/s.Banavathi and company Vs.Mahaveer Electromech Pvt, Ltd., and others Crl.R.P.996/2016**, wherein the **Hon'ble High court of Karnataka** has held that while passing sentence for the offence u/s.138 of N.I.Act future interest on the compensation amount is to be awarded. In the present

case, the complaint was filed on 06/02/2024 and there is considerable period in disposal of the case. Hence, keeping in mind the principles laid down in the above decisions and also having regard to the facts and circumstances of the case, this court is of the considered opinion that it is fit case to direct the accused to pay compensation out of the fine imposed with interest @ 9% per annum from the date of Judgment till compensation is deposited. Accordingly, I proceed to pass the following:-

O R D E R

The accused is found guilty of the offence punishable u/s.138 of N.I.Act and acting U/s.255(2) of Cr.P.C the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act.

The accused shall pay a fine of ₹1,75,000/- and in default of payment of fine amount, accused shall undergo simple imprisonment for a period of six months.

Out of said fine amount, ₹1,70,000/- shall be paid to the complainant as compensation as contemplated U/s 357(1) of Cr P C and remaining amount of Rs.5,000/- shall be defray to the State.

The complainant is entitled to the compensation amount of Rs.1,70,000/-

with interest at 9% per annum from the date of order till realization.

The accused shall deposit the said compensation amount with interest @ 9% per annum as ordered above within a month.

The bail bond and surety bond stand canceled.

Office to furnish certified copy of the Judgment to the accused free of cost forthwith.

(Dictated to stenographer, transcribed by her, revised by me and then pronounced in open court on this the 28th day of July 2026)

(Sri. Parameshwara.P.J)
XXI Addl.CJM : Bengaluru

ANNEXURE

LIST OF WITNESSES EXAMINED FOR COMPLAINANT:

P.W.1 - Mr.N.Rajendra Prasad.

LIST OF WITNESSES EXAMINED FOR ACCUSED:

D.W.1 - Syed Wajeed Ali

LIST OF DOCUMENTS EXHIBITED FOR COMPLAINANT:

Ex.P.1	Cheque
Ex.P.2	Bank endorsement
Ex.P.3	Legal notice
Ex.P.4-5	Postal receipts
Ex.P.6-7	Postal acknowledgment
Ex.P.8	Letter

Ex.P.9	Hypothecation agreement
Ex.P.10	B extract
Ex.P.11-12	Letters
Ex.P.13	Hypothecation agreement
Ex.P.14	Letter of Commitment
Ex.P.15	Statement of account
Ex.P.16	B Register Extract
Ex.P.17-18	Letters

LIST OF DOCUMENTS EXHIBITED FOR ACCUSED: NIL

(Sri.Parameshwara.P.J)
XXI Addl.Chief Judicial Magistrate,
Bengaluru.