IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

CRIMINAL APPEAL NO.780 OF 2024 (A)

BETWEEN:

SRI. MALLESH C.,
S/O CHIKKARANGAIAH,
AGED ABOUT 54 YEARS,
R/AT NO.19,
PUNVARVASATHI COLONY,
MANCHANABELE,
ARKAVATHINAGARA
SEEGEHALLI GATE,
KADABAGERE,
BENGALURU - 562 130.

...APPELLANT

(BY SRI. VIJAYA KUMAR K., ADVOCATE)

AND:

SRI UMESH M. K.,
S/O LATE MARTHAIAH,
AGED ABOUT 46 YEARS,
R/AT NO.2, 2ND CROSS,
OPP NANJUNDESHWARA, CANDEMENTS
GIDDENAHALLI MAIN ROAD,
SEEGEHALLI GATE,
ARKAVATHINAGARA,
(PUNARVASATHI COLONY MANCHANABELE)
KADABAGERE POST,

BENGALURU NORTH TALUK,
BENGALURU - 560091.

...RESPONDENT

(BY SRI. RAVISHANKAR S., ADVOCATE)

THIS CRL.A. FILED U/S.378(4) CR.P.C., PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 26.02.2024 PASSED BY LEARNED VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT AT BENGALURU IN CRL.A.NO.35/2023 AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL JUDGMENT

This appeal is by the complainant of a case involving alleged offences punishable under Sections 138 and 139 of the Negotiable Instruments Act, 1881.

2. Being aggrieved by the order dated 26.02.2024 passed in Crl.A.No.35/2023 on the file of VI Additional District & Sessions Judge, Bengaluru, Rural District, Bengaluru, by which the appeal filed by the accused/respondent under Section 374(3) of Cr.P.C

challenging the validity and legality of the judgment of conviction order passed by the Chief Judicial Magistrate, Rural District, Bengaluru in CC.No.9639/2021 dated 12.04.2023 has been allowed acquitting him of the offence punishable under Section 138 of Negotiable Instruments Act.

3. The case of the complainant/appellant is that he had advanced a loan of Rs.4,50,000/- to the accused/respondent on 05.08.2017 and in repayment of the said loan, accused/respondent had issued subject cheque on 04.02.2021 that when the said cheque was presented for encashment, the same was returned with an endorsement 'insufficient funds'. Complainant/appellant had issued a notice on 02.03.2021 calling upon him to make the payment as contemplated under the law. Non-compliance with the said notice has given rise to cause of action and constrained him to file the complaint under Section 138 of N.I. Act.

4. The complainant examined himself as PW1 and produced five documents as Ex.P1 to Ex.P5. Accused/respondent pleaded not guilty and examined himself as DW1 and another witness as DW2 and got marked 8 documents as Ex.D1 to Ex.D8. Magistrate framed the following points for consideration:

> *1. Whether the complainant proves that, accused, in order to discharge the legally recoverable debt owed towards the complainant, issued the cheque bearing No.698093, 04.02.2021 for Rs.4,50,000/-, drawn on Indian Overseas Bank, Machohalli Branch, Bengaluru.. When said cheque was presented by the complainant for encashment, it was dishonored for* ***"Funds Insufficient"*** *on 05.02.2021. Thereafter, complainant issued the notice to accused on 02.03.2021 intimating about dishonour of said cheque. Said notice was served on the accused. Thereafter, accused has not made any effort to make payment of the cheque amount. Accordingly, accused has committed offence punishable U/Sec. 138 of NI Act?*
>
> *2. What order?"*

5. On appreciation of evidence, passed the Judgment of Conviction and sentence dated 12.04.2023, convicting and sentencing the accused/respondent for the offence punishable under Section 138 of Negotiable

Instruments Act, sentencing him to pay the fine of Rs.4,55,000/- and in default to undergo imprisonment for 3 months.

6. Being aggrieved, accused/respondent preferred an appeal in Crl.A.No.35/2023, following points were framed for consideration:

> *"1) Whether the cheque was issued towards a time barred debt and the same would not fall within the definition of legally enforceable debt as contended by the appellant?*
>
> *2) Whether the judgment of conviction and sentence passed by the trial Court in C.C.No.9639/2021 dated 12.04.2023 is perverse, improper and deserves to be set aside?"*
>
> *3) What order?"*

On re-appreciation of the matter, the First Appellate Court answered point Nos.1 and 2 in the affirmative. The First Appellate Court having found the debt being time barred and relying upon the judgment of the Apex Court in the case of ***SASSERIYIL JOSEPH* vs *DEVASSIA*** reported in ***2001 SCC ONLINE SC 1513*** and the order of the Co-ordinate Bench of this Court in the case of ***THE BIDAR***

URBAN CO-OPERATIVE BANK LTD. VS. Mr.GIRISH reported in ***2021 AIR(kar)(R) 600***, proceeded to allow the appeal acquitting the accused/respondent of the offence punishable under Section 138. Being aggrieved the present appeal.

7. Learned counsel for the complainant/appellant taking this Court through the records, submits that the accused/respondent has not disputed the issuance of cheque nor has he disputed the signature which itself is sufficient enough to draw the statutory presumption that is available in favour of the complainant/appellant requiring no further proof in the matter. He submits since the First Appellate Court has taken upon itself the issue with regard to the limitation, same also ought not to have been considered in the light of the order passed by the Co-ordinate Bench of this Court in the case of ***SANGAMESHWAR CHITS PVT. LTD., VS. SRI.G.R.MARIGOUDAR*** decided on 25.09.2013 in **Crl.A.No.2506/2009**. Referring to paragraph 7 of the said

order, learned counsel submits that there is no prohibition for a person paying a time-barred debt by issuing a cheque which itself constitutes an acknowledgment and that this factual and legal aspect of the matter has been lost sight of by the First Appellate Court, warranting interference in the hands of this Court. Hence, seek for allowing of the appeal.

8. *Per contra*, learned counsel appearing for the accused/respondent submits that a specific defence was set up by the accused/respondent that the cheque in question was issued as a security on behalf of one Siddagangaiah, who was the tenant of the complainant/appellant. That the complainant/appellant was running a chit fund business and the said Siddagangaiah having taken the chit amount was required to furnish security for due payment of installments. It was under these circumstances, Siddagangaiah had requested the accused/respondent to issue his cheque which was

accordingly issued and the complainant /appellant has misused the same.

9. That according to the complainant, he had lent Rs.4,50,000/- on 05.08.2017 by way of cash which was a period after coming into the effect of demonetisation i.e., on and from 09.11.2016. Therefore, there was no possibility of complainant/appellant keeping a huge cash of Rs.4,50,000/- which itself is concocted. He further submits that the issuance of a cheque in the instant case has not been admitted by the accused/respondent to be towards discharge of the said liability. Therefore, the reliance placed on by the learned counsel on the judgment in the case of ***Sangameshwar chits*** case (*supra*) is not applicable to the factual case. He refers to another judgment of Co-ordinate bench of this Court in ***Bidar Urban Co-Operative Bank Ltd.***, (*supra*) contends that a time bar debt would not get revived by mere issuance of a cheque. Therefore, he submits that the appeal is bereft of merits and seeks for dismissal of the appeal.

10. Heard. Perused the records.

11. According to the complainant, he had lent the loan of Rs.4,50,000/- on 05.08.2017. Though the advancing of the loan by way of cash during the period, as rightly pointed out by learned counsel for the accused/respondent subsequent to coming into force of demonetisation itself is questionable, and even if it is to be accepted, according to the complainant, the cheque in question came to be issued by the accused on 04.02.2021 clearly indicating that the debt had become time barred. The question therefore arises as to whether under the facts circumstances of matter issuance of the cheque alleged by the accused, amounts to acknowledgment of the debt.

12. In the order passed by the Co-ordinate Bench of this Court in the case of ***Sangameshwar Chits Pvt. Ltd.***, (*supra)*, relied upon by the learned counsel for the complainant, there was no dispute of the accused

voluntarily issuing the cheque. The Contents of paragraph 7 of the said order reads as under:

> *"7. Therefore, in the present case on hand, notwithstanding that the appellate Court has found that the amount due from the respondent was a time barred debt, which could not be recovered by recourse to filing a civil suit for recovery of such money. The cheque issued in discharge of such a debt was not a legally enforceable instrument, cannot be accepted. The logic that nothing prevents a man from repaying a time barred debt, voluntarily, and in the place of legal tender, if the very man issues a cheque in due repayment of such a time barred debt, it is a promise made to discharge such a debt by virtue of issuance of the cheque. Therefore, the cheque not being disputed as having been issued by the respondent is a voluntary payment made, of a time barred debt. It cannot, therefore, be said that it was not enforceable and if the cheque has been dishonoured for want of sufficient funds, it is clearly an offence punishable under Section 138 of the N.I.Act. The appellant having complied with all other formalities in brining the complaint, the same could not have been rejected on the ground that the payment was in respect of a time barred debt. The authoritative opinions expressed herein above would support this view."*

13. Perusal of the aforesaid paragraph 7 indicates that the respondent/accused had voluntarily made the payment. Therefore, it was held that voluntary payment is not prohibited, which is not the case at the hand.

14. As noted above, the specific stand taken by the accused/respondent in the instant case was that he had issued the cheque in question as a security for the payment of chit fund amount by one Siddagangaiah, who has been examined as DW2. Thus, there is a specific denial. Apart from denial, a completely a different case has been set up by the accused/defendant. In that view of the matter, the reliance placed by the counsel on the judgment of this Court in **Sangameshwar Chits** (*supra*) is of no avail.

15. As regards to the position of law on the time barred debt, the Co-ordinate bench of this Court in the case of ***Bidar Urban Co-operative Society*** (*supra*) referring to the position of law as enunciated by the Apex Court as well as other High Courts has come to conclusion that time barred debt would not get revived by mere 0issuance of a cheque.

11. Under the facts and circumstances of the case, no ground is made out for interference and appeal lacks merit. Accordingly, it is ***dismissed***.

Sd/-
(M.G.S. KAMAL)
JUDGE

DS
CT:TSM
List No.: 1 Sl No.: 17