



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

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

CRIMINAL APPEAL NO.1696 OF 2018

BETWEEN:

A. T. GOVINDARAJ
S/O. TIMMAPPA
AGED ABOUT 67 YEARS
R/O. YAJAMAN RANGEGOWDARA STREET
ARASIKERE-573 103

...APPELLANT

(BY SRI ANOOP HARANAHALLI, ADVOCATE)

AND:

SRI B. NOOR MOHAMMED
S/O. LATE MOHAMMED BUDEN SAB
AGED ABOUT 68 YEARS
SUNNI CHOWK, BASTIGUDI ROAD
BESIDE AL AMEEN SCHOOL
ARASIKERE-573 103
HASSAN DISTRICT

...RESPONDENT

(BY SRI VIJAYA KRISHNA BHAT M., ADVOCATE)

THIS CRL.A. IS FILED U/S. 378(4) CR.P.C. BY THE ADVOCATE FOR THE APPELLANT/S PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 03.04.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN CRL.A.NO.106/2016-ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF N.I. ACT.





THIS APPEAL, COMING ON FOR FURTHER HEARING, 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 being aggrieved by the judgment and Order dated 03.04.2018, passed in Crl.Appeal No.106/2016 on the file of II Additional District and Sessions Court, Hassan (hereinafter referred to as 'the First Appellate Court'). By which the First Appellate Court, while allowing the appeal filed by the accused-respondent has set-aside the judgment and order of conviction dated 15.04.2016 passed in C.C.No.179/2012 on the file of Senior Civil Judge and J.M.F.C., Arasikere (hereinafter referred to as 'the Trial Court').

2. Brief facts of the case are that complainant-appellant being owner of land bearing Sy.Nos.256 and 257, Arasikere, was desirous of selling the same to one Yasin Mohiddin. Accused-respondent acted as a commission agent in facilitating the said sale transaction. The complainant-appellant had paid Rs.1,50,000/- to the accused-respondent towards commission amount. It was agreed that if the contract between the complainant-appellant and said Yasin Mohiddin, did not go



through, the accused-respondent would return the said sum of Rs.1,50,000/- paid by the complainant-appellant towards the commission amount.

3. That for various reasons the agreement between the complainant-appellant and said Yasin Mohiddin did not go through and the said agreement was cancelled. As such the complainant-appellant had requested the accused-respondent to refund the commission amount of Rs.1,50,000/-, which was initially declined by the accused-respondent. However, a Panchayath was convened on 30.01.2012, in which accused-respondent herein had executed an agreement undertaking to refund the amount and in furtherance thereto issued a cheque dated 30.03.2012, bearing No.134665 drawn on State Bank of Mysore, Bazaar Branch, Arasikere for a sum of Rs.1,50,000/-. The said cheque was presented for encashment by the complainant-appellant on 30.03.2012, which returned with an endorsement "funds insufficient". The complainant-appellant, on re-assurance of the accused-respondent, had re-presented the cheque on 18.05.2012. Yet the said cheque returned with an endorsement "funds insufficient".



4. The complainant-appellant caused issuance of a notice on 26.05.2012, calling upon the accused-respondent to refund the amount. Despite receipt of the said notice, accused-respondent has not complied with the demand made therein, giving rise to cause of action. Accordingly, complainant filed the complaint on 19.06.2012 under Section 138 of the N.I. Act. Accused-respondent appeared and pleaded not guilty. Matter was taken up on trial.

5. Complainant-appellant examined himself as PW1 and two more witnesses as PW2 and PW3 and exhibited 11 documents marked as Ex.P1 to Ex.P11. Accused-respondent examined himself as DW1 and one witness as DW2 and exhibited one document as Ex.D1.

6. On appreciation of the evidence, trial court convicted the accused-respondent for the offence punishable under Section 138 of the N.I. Act.

7. Being aggrieved, accused-respondent preferred an appeal in Crl.Appeal No.106/2016.



8. On reappréciation of the evidence, the First Appellate Court passed the following:

" The appeal filed by the appellant under Section 374 of Criminal Procedure Code, is hereby allowed.

The conviction judgment passed by the trial Court in Criminal Case No. 179/2012 dated 15.4.2016 is hereby set aside.

The accused is acquitted from the case.

If the accused deposited any fine amount the same shall be refunded to him.

Send back the LCR records along with the copy of judgment."

9. Learned counsel for the appellant taking this Court through the records submits that the issuance and signature on the cheque has been admitted by the accused-respondent. The purchaser of the property namely Yasin Mohiddin, for whose benefit, the accused-respondent had played the role of broker, himself has deposed about the transaction having failed between him and the complainant-appellant. That the accused-respondent has also admitted of he having entered into agreement on 30.01.2012, undertaking to pay the amount of Rs.1,50,000/-. That in the light of the said oral and documentary evidence, the First Appellate Court ought not to have allowed the appeal on the premise of accused-respondent



not being responsible for the failure of the transaction between the complainant-appellant and said Yasin Mohiddin, as such there was no liability on the part of the accused-respondent to refund the said amount. He submits that such a conclusion arrived by the First Appellate Court is erroneous and contrary to settled principles of law governing the facts of the case. Hence, seeks for allowing of the appeal.

10. Learned counsel appearing for the accused-respondent on the other hand submits that admittedly transaction is one of a commission based transaction which was a contingent transaction. That non-performance of the agreement by the purchaser cannot be attributed to the accused-respondent. The role of the accused-respondent was to facilitate the sale transaction which he had done. As such, he was entitled for the brokerage/commission, which was paid by the complainant-appellant and merely because the sale transaction did not go through the accused-respondent cannot be made liable to refund the amount which was otherwise entitled for the same. He submits therefore there is no legally recoverable debt within the meaning of the provisions of Section 138 of the N.I. Act. The First Appellate Court has



committed no error in allowing the appeal. Hence, he seeks for allowing of the appeal.

11. Heard and perused the records.

12. The facts narrated above do not warrant reiteration.

The only point that arise for consideration is:

1. Whether the First Appellate Court is justified in allowing the appeal on the premise of accused-respondent not being liable to refund the amount in view of failure on the part of purchaser- Yasin Mohiddin to purchase the property as agreed?

13. Issuance of a cheque in question is not in dispute.

Accused-respondent entering into an agreement as per Ex.P10 in his own handwriting is also not in dispute.

14. Perusal of Ex.P10 indicate that the accused-respondent had agreed that since the sale transaction pertaining to the land bearing Sy.Nos.256 and 257 belonging to the complainant-appellant with the purchaser Yasin Mohiddin did not go through, the amount of Rs.1,50,000/- which was paid by the complainant-appellant being subject to condition of the said transaction going through, he had agreed to refund the same. In furtherance thereof, accused-respondent issued the subject cheque. Witnesses to the said documents are one



Nevartirao-PW.2 and Yasin Mohiddin-PW.3. Yasin Mohiddin-PW.3 is none other than the purchaser of the land belonging to PW.1.

15. Perusal of the deposition of the aforesaid two witnesses would indicate that the accused-respondent had indeed agreed and undertaken to refund the said amount of Rs.1,50,000/- to the complainant-appellant and in furtherance thereof had excluded the said agreement and had also issued the cheque in question.

16. When the parties to the transaction have admitted to the terms of agreement requiring complainant-appellant to pay Rs.1,50,000/- and corresponding obligation on the part of the accused-respondent to refund the amount in the event of the sale transaction not going through, the same having not been rebutted in the manner known to law, in the considered view of this Court, the First Appellate Court ought not to have interfered with the judgment and order of conviction passed by the trial Court.

17. It is settled principle of law, that when the complainant discharged the initial burden of accused-



respondent issuing the cheque towards discharge of liability, statutory presumption has to be drawn. In the instant case, apart from the complainant-appellant discharging the initial burden, had also produced the oral and documentary evidence in support of the his claim. The accused-respondent not having rebutted the said presumption and evidence, a mere denial of the same, would not be sufficient.

18. Accordingly, following:

ORDER

(i) Appeal is ***allowed***.

(ii) Impugned judgment and Order dated 03.04.2018, passed in Crl.Appeal No.106/2016 by the II Additional District and Sessions Court, Hassan is set aside. Consequently, judgment and order dated 15.04.2016 passed in C.C.No.179/2012 by the Senior Civil Judge and J.M.F.C., Arasikere is hereby confirmed.

**SD/-
(M.G.S. KAMAL)
JUDGE**