

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.718 OF 2015

BETWEEN:

SRI ABDUL RAHIMAN
S/O ANDUNHI,
AGED ABOUT 63 YEARS
R/O ARLAPADAVU HOUSE,
PANAJE VILLAGE & POST,
PUTTUR TALUK,D.K-574201

...APPELLANT

(BY SRI. HAREESH BHANDARY T., ADV.)

AND:

SRI JANARDHANA ACHARYA
S/O AMBU ACHARYA,
AGED ABOUT 45 YEARS
R/O AJJIKALLU HOUSE,
VOLAMOGRU VILLAGE,
PUTTUR TALUK,D.K-574201

...RESPONDENT

(BY SRI. S. RAJASHEKAR, ADV.)

THIS CRL.A. IS FILED U/S.378(4) CR.P.C PLEADED TO SET-ASIDE THE JUDGMENT ORDER DATED 22.11.2010 PASSED BY THE II ADDL. S.J., DAVANAGERE IN CRL.A.NO.88/2010 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 138 OF N.I. ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.12.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

Appellant-complainant has preferred this appeal against the judgment of acquittal dated 30th May, 2015 passed in Criminal Appeal No.55 of 2014 by the V Additional District Sessions Judge, Dakshina Kannada, Mangalore, sitting at Puttur (for short "the first appellate court") whereby the judgment of conviction and order on sentence dated 07th February, 2014 passed in CC No.221 of 2011 by the Principal Civil Judge and JMFC, Puttur (for short "the trial Court"), came to be set aside.

2. For the sake of convenience, the parties herein are referred as per their rank before the trial Court.

3. Brief facts leading to this appeal are that the complainant filed complaint under Section 138 of Negotiable Instruments Act. After taking cognizance, case was registered in CC No.221 of 2011. It is alleged by the complainant that accused demanded a loan of ₹79,750/- for his urgent necessities. Considering the urgency of the accused, the complainant lent a sum of ₹79,750/- with the condition to repay the same within a month. Accused agreed for the same and received the amount. Even after lapse of a month, accused did not come forward to repay the loan amount. The complainant demanded the money for which the accused issued

a cheque bearing No.170791 dated 22nd December, 2007 drawn on State Bank of Mysore, Puttur Branch, assuring that the same will be honoured upon presentation. Complainant presented the cheque for encashment, but the same was returned with an endorsement "insufficient funds". Registered demand notice was issued to the accused on 5th January, 2008 calling upon to pay the amount covered under the cheque within the stipulated period as required under the law and the same was served on the accused on 8th January 2008. The accused instead of complying with the demand, has given frivolous reply to the said notice. Hence, the complainant presented the complaint.

4. In pursuance of summons, accused appeared before the court, plea was recorded, the accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, one witness was examined as PW1, four documents were marked as Exhibits P1 to P4. On closure of prosecution side evidence, statement of the accused under Section 313 of Code of Criminal Procedure was recorded. Accused has totally denied the evidence of prosecution witnesses and adduced evidence of two witnesses as DWs1 and 2. Having heard the arguments on both sides, the trial court convicted the accused for offence

under Section 138 of Negotiable Instruments Act and sentenced to pay fine of ₹1,55,000/-, and in default, to undergo simple imprisonment for a period of three months. Aggrieved by this judgment of conviction and order on sentence, accused preferred appeal before the first appellate court. The same came to be allowed and the judgment of conviction passed by the trial Court was set aside and accused was acquitted. Being aggrieved by the judgment of acquittal passed by the first appellate court, the complainant has preferred this appeal.

5. Sri Harish T. Bhandary, learned Counsel appearing for the complainant would submit that the impugned judgment of acquittal passed by the court is highly illegal, arbitrary and unreasonable. He would submit that the first appellate court has failed to properly appreciate the available material on record and has erred in acquitting respondent. The first appellate court has failed to note the presumption under Sections 139 and 118 of Negotiable Instruments Act, which ensures the benefit to the appellant that the cheque is issued for legally recoverable debt, unless and until contrary is proved and the respondent has not disputed the issuance of the cheque. The first appellate Court has observed that there is no specific pleading about the date of borrowing loan by the

respondent from appellant. He would further submit that the first appellate court failed to note that the accused has admitted the transaction with the complainant and the signature in the cheque is also not disputed and therefore, the presumption under Sections 139 and 118 of Negotiable Instruments Act is required to be drawn in favour of the Appellant/complainant.

6. Further, learned counsel would submit that the observation made by the first appellate court that the complainant has not narrated the disputed transaction and not mentioned the date of issuance of cheque in his complaint as well as in notice and evidence, and non-mentioning of the date of transaction will go to the root of the case of the complainant is not correct and bad in law. Under the Negotiable Instruments Act, the entire case depends upon the documentary evidence, and once the issuance of cheque and transaction is admitted, it is not necessary to prove each and every sequence of the transaction. When there is no dispute with regard to signature of the accused on the cheque in question, the approach of the first appellate court which has proceeded with case as a money recovery suit, is bad in law. The defence taken by the accused is not probable defence to

disprove the non-existence of the consideration. There is no cogent or convincing evidence by the accused to disprove the presumption available to the complainant. The defence of the accused that the cheque was issued as a security, cannot be accepted. He would further submit that Sections 138 and 142 of NI Act was introduced with the object of giving credibility to negotiable instruments in a business transaction and to discourage the people from disregarding the commitments. The balance of convenience should lean in favour of an interpretation which serves the object of the statute. He would further submit that the presumption of Sections 118 and 139 of Negotiable Instruments Act is rebuttable in nature. To rebut the said presumption, accused has to adduce probable defence to disprove the non-existence of the consideration. But the accused took a different defence in respect of issuance of cheque. The defence taken by the accused in reply notice is not the defence taken by him during the course of trial. On all these grounds, it is sought to allow the appeal.

7. Sri S. Rajashekar, learned Counsel appearing for the respondent has submitted his written arguments supporting the judgment of acquittal passed by the first appellate Court. He has relied on the following decisions:

- i) BASAPPA v. MUDIBASAPPA - (2019)5 SC 418;
- ii) JOHN K. ABRAHAM v. SIMON C. ABRAHAM - (2014)2 SCC 236;
- iii) K SUBRAMANI v. K DAMODARAN NAIDU (2015)1 SCC 99;
- iv) SHIVA MURTHY v. AMRITRAJ - ILR 2008 Kar.4629;
- v) SANJAY MISHRA v. KANISHKA KAPOOR @ NIKKI - 2009(4) Mh.L.J 155

8. Having heard on both sides and on perusal of material on record, the following point would arise for my consideration:

"Whether the first appellate Court is justified in reversing the judgment of conviction to acquittal?"

9. I have examined the materials placed before this Court. It is the case of the prosecution that accused has issued Cheque No.170971 dated 22nd December, 2007 for Rs.79,750/- drawn on State Bank of Mysore, Puttur Branch in favour of the complainant for discharge of loan obtained by the accused. The same was presented for encashment and it was returned with an endorsement, "insufficient funds". Hence, complainant issued legal notice to the accused on 05th January, 2008 calling upon the accused to pay the cheque amount within fifteen days. The accused did not pay the amount, but

has given reply stating that the cheque in question is not issued towards any legally enforceable debt or the liability, but the same is issued for the purpose of security. Further, he has stated that he is ready to pay the amount of Rs.5,000/- which was borrowed from the complainant. To substantiate the case of the complainant, Cheque-Exhibit P1, Bank Endorsement-Exhibit P2, copy of the legal notice-Exhibit P3 and reply notice-Exhibit P4 has been produced. During the course of cross-examination of DW1, he has clearly admitted that he has put his signature on Cheque-Exhibit P1 as per Exhibit P1(a).

10. On perusal of materials placed before this Court, it is crystal clear that the complainant has proved the essential ingredients to constitute the offence under Section 138 of Negotiable Instruments Act. Since the complainant has proved the essential ingredients to constitute the offence under Section 138 of the NI Act, the burden lies upon the accused to rebut the evidence placed by the complainant under Section 139 of NI Act. To rebut the case of the complainant, the accused has examined two witnesses as DWs1 and 2.

11. DW1 has deposed that he had taken his push-cart to the workshop of the accused for repair. The accused has told him to come after one month to take back the push-cart.

As he could not arrange for money, he went to the workshop of the accused after three months. The accused asked him to pay Rs.5,000/- as the repair cost. Accordingly, when he went to the workshop with the amount, his cart was not there and when enquired with the accused, he told him that he incurred Rs.5,000/- for repair of the push-cart and as he was in urgent need of money, he borrowed it from the complainant and gave him the cart. Then, they both went to the house of the complainant wherein he gave Rs.5,000/- to the accused, in turn, the accused gave the same to the complainant. But the complainant told them that he cannot give back the push-cart. He has further deposed that when the accused gave him money, he also demanded for two cheques and the accused issued him two cheque leaves. It is further deposed that the complainant demanded Rs.25,000/- more if he has to return the cart and also two cheques. But the accused did not give him the amount demanded. As he was repeatedly asking for the cart, the accused made a new cart and gave it to him.

12. DW2-Janardhanachary, i.e. the accused, has deposed in his evidence that he know the complainant and he was doing fabrication work and running a shop and he has not borrowed an amount of Rs.79,750/- from the complainant. He

knows one Jayaramegowda. He came to his shop and had given the push-cart for repair. He informed him to come after one month and further told him that the repair cost would be Rs.5,000/-. The said Jayaramegowda did not come after a month and came only after three months. By that time, the push-cart was not in his possession. He asked the complainant for Rs.5,000/- loan. At the time of lending loan, the complainant insisted to give push-cart which belonged to Jayaramegowda on the promise that he will return the same to Jayaramegowda whenever he comes and asked to give two cheques for security. Accordingly, he has issued two blank cheques and borrowed loan of Rs.5,000/-. After three months Jayaramegowda came and approached the complainant and paid him the amount of Rs.5,000/-. But the complainant demanded Rs.25,000/- and he neither returned the push-cart nor returned the cheques, despite repayment of loan amount of Rs.5,000/-. Further, he has deposed that the complainant has no financial capacity to lend the loan amount shown in the cheque. The complainant has misused the cheque and has filed false complaint against him and sought for acquittal. During the course of cross-examination of DW2, he has clearly admitted his signature on the cheque-Exhibit P1. If really, the accused had issued blank cheques for the loan amount of

Rs.5,000/- when the complainant issued legal notice to the accused, the accused ought to have taken legal steps against the complainant for misuse of the cheque in question. Accused has not taken any legal steps against the complainant for misuse of the cheque in question till this day. In reply notice, the accused has not stated that the complainant has no financial capacity to lend loan of Rs.79,750/-. For the first time before the Court, the DW2-accused has deposed that the complainant has no financial capacity to lend the amount of Rs.79,750/-. Hence, this defence set up by the accused for the first time before the Court, cannot be accepted. The trial Court has properly appreciated the material on record in accordance with law and facts. The first appellate Court has observed that the alleged date of transaction is not mentioned in the legal notice-Exhibit P3. This observation is not sufficient to discard the evidence of the complainant for the reason that burden lies upon the accused to rebut the presumption under Section 139 of NI Act. Though the accused has not placed any legally acceptable evidence before it, the first appellate Court has acquitted the accused which is not sustainable under law.

13. Considering the facts and circumstances of the case and keeping in mind the decision relied upon by the

learned counsel for the appellant, and also the provision of Section 139 of Negotiable Instruments Act, I am of the considered opinion that the first appellate Court has not properly appreciated the material on record and reversed the judgment of conviction passed by the trial Court. Hence, I answer the point that arose for consideration, in the negative.

14. In the result, I proceed to pass the following:

ORDER

- i) Appeal is allowed;
- ii) Judgment of acquittal dated 30th May, 2015 passed in Criminal Appeal No.55 of 2014 by the V Additional District & Sessions Judge, Dakshina Kannada, Mangalore sitting at Puttur, is set aside;
- iii) Judgment of conviction and order on sentence dated 07th February, 2014 passed in CC No.221 of 2011 by the Principal Civil Judge and JMFC, Puttur is confirmed.
- iv) Registry to send the copy of this judgment along with trial court records to concerned Courts.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn