NC: 2026:KHC-D:3201
CRL.RP No. 100032 of 2023

HC-KAR

IN THE HIGH COURT OF KARNATAKA,AT DHARWAD

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V.SRISHANANDA

CRIMINAL REVISION PETITION NO. 100032 OF 2023

(397(CR.PC)/438(BNSS))

BETWEEN:

SIDDALINGESH S/O MAHADEVAPPA HANCHINAL
AGE 46 YEARS, OCC. BUSINESS
R/O BEHIND VIJAY NAGAR, HIGH SCHOOL,
GADAG 582101, TQ AND DIST. GADAG.

...PETITIONER

(BY SMT. KAVYA C. SHETTAR, ADVOCATE)

AND:

ASHIF @ ASIF S/O REHMANSAB
@ RAHEMANSAB HONNAWAD @ HONWAD
AGE 44 YEARS, OCC. BUSINESS
R/O H.NO.96, MIG 1 HUDCO COLONY,
GADAG 582101, TQ AND DIST. GADAG

...RESPONDENT

(BY SRI. SUBHASH J. BADDI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/SEC.397 R/W 401 OF CR.P.C. SEEKING TO SET ASIDE THE JUDGMENT PASSED BY THE I ADDITIONAL PRINCIPAL JUDGE FAMILY COURT, GADAG IN CRL.PPEAL NO. 24/2010 DATED 18.11.2022 AND JUDGMENT PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC COURT, GADAG IN C.C.NO. 516/2017 DATED 27.08.2020 AND THEREBY ALLOWING THIS REVISION PETITION BY ACQUITTING THIS PETITIONER FOR THE OFFENSE PUNISHABLE U/SEC. 138 OF NI ACT, IN THE INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE V.SRISHANANDA)

Heard Ms.Kavya C.Shettar, learned counsel for the revision petitioner and Sri Subhash J.Baddi, learned counsel for the respondent.

2. Petitioner is the accused who suffered an order of conviction in C.C No.516/2017 confirmed in Criminal Appeal No.24/2020 for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Facts in the nutshell which are utmost necessary for disposal of the present petition are as under:

A complaint came to be lodged under Section 200 of the Code of Criminal procedure alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act in respect of a dishonoured cheque issued by the accused in favour of the complainant.

4. It is the case of the accused that he stood as guarantor and there was no transaction at all between the original borrower and the complainant. Therefore, there is no legally recoverable debt and the cheque has been misused by the complainant.

5. Learned Trial Judge, after completing the necessary formalities, convicted the accused and sentenced as under:

> *"Acting under Section 255(2) of Cr.P.C accused is hereby convicted for the offence punishable u/S 138 of N.I.Act and accused is sentenced to pay a fine of Rs.7,00,000/- (seven lakhs only).*
>
> *In case of default thereof accused shall suffer simple imprisonment for 5 (five) months.*
>
> *Acting u/Sec.357 of Cr.PC it is hereby ordered that the accused shall pay compensation of Rs.6,75,000/- to the complainant out of fine amount and remaining amount of Rs.25,000/- shall be paid to the state for the expenses incurred in the prosecution.*
>
> *Accused is directed to pay the fine amount including compensation within 15 days from the date of order."*

6. Being aggrieved by the same, accused filed an appeal before the First Appellate Court in Criminal Appeal No.24/2020.

7. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, dismissed the appeal by holding in paragraphs 28 to 44, as under:

28. On bare perusal of the object of the Negotiable Instruments Act, it shows that the main object of the Chapter introducing dishonour of cheques on account of insufficiency of funds as penal offence in the Act is to enhance the acceptability of cheques. In order to attract the ingredients of Sec. 138 of NI Act, the complainant needs to prove that the cheque drawn by a drawer of the Cheque on an account maintained by him issued to the payee in discharge of any debt or other liability, cheque is presented to Bank within three months of the date of heque and returned by the drawer bank as unpaid, complainant has made a demand for the payment of the said amount of money by giving a notice in writing within 30 days of receipt of information of dishonour by the Bank, and the drawer of such cheque has not made the payment of the said amount of money to the payee within fifteen days of the receipt of the said notice, then such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.

29. It is well settled principle of criminal jurisprudence that a criminal trial proceeds on the presumption of innocence of the accused. An accused is presumed to be innocent unless proved guilty. It is the complainant/ prosecution to prove the guilt of the accused beyond reasonable doubt. However, in *respect of offence under section 138 of the Act, although there is a reverse onus clause contained in sections 118 and 139 of the Act, the initial burden is on the complainant.*

30. It is also a settled proposition of law that the standard of A proof which is required from the accused to rebut the statutory presumption under section 118 read with section 139 of the Act is preponderance of probabilities. The accused is not required to prove his case beyond reasonable doubt. This onus on the accused can be discharged from the materials available on record and from the circumstantial evidences or even by admissions in the cross examination of complainant and his witnesses.

31. In K. Bhaskaran v. Sankaran Vaidhyan Balan reported in AIR 1999 SC 3762, the Apex Court held that once the signature in the cheque is admitted to be that of the accused, the presumption envisaged in section 118 of the N. I. Act can legally be drawn to infer that the cheque was made or drawn for consideration on the date which the cheque bears." 32. n Rangappa v. Sri Mohan reported in AIR 2010 SC 1898, a three judges' bench of the Hon'ble Supreme Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can *rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post dated cheque is a well recognized mode of payment."*

33. In K.S. Ranganatha Vs. Vittal Shetty reported in 2021 SCC OnLine SC 1191, a three judges' bench of the Hon'ble Supreme Court held that "once the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. It is further held that the position of law makes it crystal clear that when a cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards a consideration which is a legally recoverable amount; such presumption of course. is rebuttable by proving to the contrary. The onus is on the accused to raise a probable defence and the standard of proof for rebutting the presumption is on preponderance of probabilities."

34 M/s. Kalamani Tax Vs. P. Balasubramanian (Cri.A. No.123/2021) (LL 2021 P.75) decided on 10.02.2021, a three judges' bench of the Hon'ble Supreme Court has observed that even a blank cheque leaf, voluntarily signed and handed over by the accused, *which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."*

35. Applying the above said principles to the present case, accused has failed to rebut presumptions. Further failed to establish his defence to the extent of probabilities.

36. It is not in dispute that bounced Cheque Ex.P2 belongs to the bank account of the accused. It is also not in dispute that signature appearing on the bounced Cheque is the signature of the accused. It is also not in dispute that, Cheque presented by the complainant came to be dishonoured by the banker of the accused for the reason stated in the dishonour memo. Therefore, the complainant has successfully proved the loan advanced to the accused for which the accused issued the cheque in question. Therefore, Accused has failed to rebut the presumption. The trial Court has rightly held that the accused has not rebutted the presumption arising under Section 139 of N.I. Act.

37. On perusal of entire material available on record, it clearly goes to show that accused has admitted his friendship with the complainant. But his contention is that he has not at all borrowed money from the *complainant and has issued cheque for discharge of said loan amount. The accused further sated that he has given security to the complainant for loan availed by common friend Ravi Karmudi from the complainant and he has put his signature on blank stamp paper and the complainant has misused the said blank paper. Further contended that complainant has taken the cheque of the accused from his office and misused it by forgering signature of the accused. Though accused has contended that there was no transaction between him and complainant. The counsel for the accused cross-examined P.W.1 while cross examining P.W.1 he has made a suggestion that the complainant has forged the signature of accused, but witness denied the said suggestion. If at all the complainant has forged the signature of accused he could have filed complaint against complainant or even he has not filed an application U/s. 45 of Indian Evidence Act for sending the disputed document i.e. Ex.P 2 along with the admitted documents 1.e. vakalath filed on behalf of accused to the forensic laboratory for comparison of signature. The accused has not availed the said opportunity only he denied the signature on Ex.P 2.*

38. The counsel for the complainant argued that accused has obtained expert opinion in respect of forgery of his signature and hence accused is entitled for acquittal. The arguments advanced by the learned counsel for accused is very strange, admittedly original cheque is with Court under such circumstance when the cheque *has been sent to expert and at whose instance and who is issued the report has not been properly explained by the advocate for appellant.*

39. There is no specific defence from the accused. D.W. I also in his cross-examination clearly admitted that he has not filed any complaint for theft of cheque Ex.P 2. As discussed supra the accused has not given any complaint about theft of his cheque from his office and also not taken any steps regarding the same. Even the accused has not stated on which date his alleged cheque has been stolen and what step he has taken. Even after coming to know theft of said cheque. Except the bald and vague allegations against complainant there is no reliable evidence on record.

40. The counsel for the accused while cross-examining P.W.1 made a suggestion that accused has not made transaction in Karnataka Bank. Witness denied the said suggestion. Though accused has denied the transaction in Karnataka Bank. P.W.2 who is Manager of the Bank. He clearly deposed that accused holds account in Karnataka Bank and Ex.P 2 pertains to the accused account. Ex.P 9 is the account opening form of accused. On perusal of Ex.P 2 and Ex.P 9 it clearly goes to show 2 belongs to the accused account.

41. The complainant has discharged his initial burden by producing oral and documentary evidence with respect to the legally enforceable debt. The burden is on the *accused to rebut the presumption available U/Sec. 118 and 139 of NI Act. In this case the accused has utterly failed to discharge his burden.*

42. It is the specific case of the complainant that the accused has borrowed hand loan of Rs. 7,00,000/- and accordingly he has executed hand loan chit on 2.7.2015 as per Ex.P 1 and has agreed to repay the said loan within one month but has failed to repay the said loan amount and discharge the said liability the accused has issued Ex. P 2 cheque and same has been presented for encashment. The said cheque returned with a memo funds insufficient as per Ex.P 3. Evidence of P.W.1 to 3 and Ex.P 1 to P 10 clearly established that the accused has borrowed an amount of Rs. 7,00,000/- from the complainant and accordingly he has executed hand chit on 2.7.2015. In discharge of his liability he has issued cheque as per Ex.P. 2. Though the accused is having knowledge about insufficiency of funds in his account has issued the said cheque. Thereby accused has committed offence punishable U/Sec. 138 of NI Act.

43. Accused has not given reply to the notice Ex.P 4. Accused admitted his signature on Ex.P 1 hand loan chit and Ex.P 2 cheque. Mere non-producing of the document before the Court with regard to the source of income to advance a loan is not a ground to dismiss the complaint. The accused ought to have rebutted the contention of the complainant by producing cogent *evidence before the Court and mere denial is not enough.*

44. The defence of accused is that he lossed cheque complainant stolen and it is issued for security. The accused cannot blow hot and cold in one breath that there was no transaction in between the accused and complainant and in another breath that the promissory note and cheque were given for security of loan advanced been Ravi Karmudi. All these material evidence has been considered by the trial Court while convicting the accused. Therefore, the same does not requires interference of this Court. Hence, I answer point No.1 in affirmative and point No.2 in negative.

8. Being further aggrieved by same, accused is before this Court in this revision.

9. Smt.Kavya C Shettar, learned counsel would contend that both the Courts have not properly appreciated the material evidence on record and wrongly convicted the accused and sought for allowing the revision petition.

10. She would also contend that there was no legally recoverable debt inasmuch as the accused was only a guarantor and when the original transaction itself is not proved, there is no

liability on the guarantor and thus sought for allowing the revision petition.

11. *Per contra*, Sri Subhas J. Baddi, learned counsel for the respondent/complainant would support the impugned orders and sought for dismissal of the revision petition.

12. In the light of the arguments put forth on behalf of the parties, this Court perused the material on record meticulously.

13. On such perusal of the material on record, it is noticed that Ex.P.1/cheque belongs to accused and signature found therein is that of the accused.

14. According to the complainant, in respect of repayment of the loan of ₹7,00,000/- accused issued the cheque bearing No.461563 dated 21.09.2016, which on presentation came to be dishonoured with an endorsement 'funds insufficient' on 22.09.2016.

15. Statutory notice was issued through registered post, but the notice was refused by the accused. There was no compliance to the callings of the notice and therefore action was initiated.

16. To establish that there was a loan transaction, not only complainant got examined himself, but also a witness by name Manjunath Shesharaddy Konaraddy as PW-3.

17. In his cross-examination, he has specifically answered that he has seen the loan transaction wherein accused has borrowed the money for his business purpose and also for the household needs.

18. He denied the suggestion that the cheque was obtained during the course of cricket betting and the cheque was issued for and on behalf of Ravi Karmudi and accused stood as a guarantor for said Ravi Karmudi.

19. Likewise, the suggestion made to PW-3 that there was a signature obtained on a blank bond sheet is also denied by PW-3. The complainant and PW-3 having supported the case of the prosecution are coupled along with the documents that is placed on record viz., the cheque, dishonoured note, copy of the legal notice and certified copy of the order sheet in C.C.No.2775/2014 and death of Ravi Karumudi, would be

sufficient enough to establish that the complainant has discharged the initial burden to raise the presumption under Section 139 of the Negotiable Instruments Act.

20. It is not in dispute, that such a presumption is a rebuttable presumption.

21. To rebut the said presumption, the accused examined himself as DW-1 and denied the case set up by the complainant, stating that he had issued the cheque only as a guarantor. In his cross-examination, he admitted that he did not issue stop payment instructions to the Bank and also he specifically admitted that Ravi Karmudi that he has not filed any complaint regarding the cheque missing from his cheque book.

22. In other words, DW-1 has maintained two versions that he acted as a guarantor for the Ravi Karmudi, who had borrowed a sum of ₹7,00,000/- and in the second breath, he has taken a contention that complainant used to visit the office of the accused and he has stolen away Ex.P1 cheque from his office. Accused has examined a witness on his behalf by name

Ravikumar Pandappa Reddi as DW-2. In his cross-examination, he has answered that Ravi Karmudi died on 10.05.2015 and admitted that the death certificate.

23. The versions of DW-1 and DW-2 is contradictory, as in the cross-examination of DW-1, he denied that there was no transaction between complainant and Ravi Karmudi.

24. Taking note of the material evidence on record, the learned trial Judge was of the considered opinion that the two contradictory defences taken by the accused were not established to any extent and certainly not to the extent required to rebut the presumption in favour of the complainant under Section 139 of the Negotiable Instruments Act.

25. It is also evident that no prudent person would keep quiet that if a stolen cheque has been misused, that too in a sum of ₹7,00,000/-, even after engaging the advocate and defending the criminal complaint before the trial Magistrate.

26. The accused has un unequivocally admitted that he has not filed any complaint either with the bank or with the jurisdictional police with regard to the missing of the cheque marked at Ex.P1.

27. Similarly, the version of DW-2 that the cheque in question was issued as a security for cricket betting on behalf of Ravi Karmudi is also not established, and these two versions are inconsistent and cannot be accepted together.

28. Taking note of these aspects, the learned Judge of the First Appellate Court, while re-appreciating the material evidence on record, rightly dismissed the appeal filed by the accused.

29. Having regard to the limited revisional jurisdiction this Court does not find any legal infirmity or error of jurisdiction so as to interfere with the orders passed by the learned trial Magistrate and learned Judge of the First Appellate Court.

30. However, the complainant has not filed any appeal against the order of sentence, whereby the learned trial Magistrate, after convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, imposed a fine of ₹7,00,000/-. Out of which, only ₹6,75,000/- was ordered to be paid as compensation to the complainant, while the remaining

₹25,000/- was directed towards the defraying of State expenses. Such a course was not permissible, as no State machinery was involved in the matter.

31. Thus, in the absence of any appeal by the complainant seeking enhancement of the compensation, this Court is of the considered opinion that entire sum of ₹7,00,000/- ordered as the fine shall be paid as compensation to the complainant in entirety. The order of the trial Magistrate directing ₹25,000/- towards defraying State expenses is set aside, as no State machinery is involved in the adjudication of the dispute and *lis* is privy to the parties.

32. With the above modification, the following order is passed:

ORDER

The criminal revision petition is dismissed.

Sd/-
(V.SRISHANANDA)
JUDGE

KCM,RHR/-
LIST NO.: 1 SL NO.: 17