



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 5TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL APPEAL NO.100272 OF 2019 (A)

BETWEEN:

GOUDAPPAGOUDA KARIGOUDA PATIL
AGED ABOUT 66 YEARS,
OCC. AGRICULTURE AND DOCTOR IN PROFESSION,
R/O. SHIRUR, TQ. KUNDAGOL,
NOW R/O. DOOR NO.279, 52ND CROSS,
4TH BLOCK, RAJAJI NAGAR, BENGALURU-560010.

...APPELLANT

(BY SRI. H.R. GUNDAPPA, ADVOCATE)

AND:

SIDDAPPA BASAVANNEPPA HUNASANNAVAR
AGE: 41 YEARS, OCC. AGRICULTURE,
R/O. BENAKANAHALLI, TQ. KUNDAGOL.
DIST. DHARWAD.

...RESPONDENT

(BY SRI.ANKIT DESAI, ADVOCATE FOR
SRI. MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4) OF CR.P.C. PRAYING TO CALL FOR RECORDS AND ALLOW THIS APPEAL BY SETTING ASIDE THE IMPUGNED JUDGMENT DATED 18.04.2019 PASSED BY THE SENIOR CIVIL JUDGE & JMFC COURT, KUNDAGOL, IN C.C.NO.01/2019 AND TO CONVICT THE RESPONDENT/ACCUSED UNDER SECTION 138 OF NEGOTIABLE INSTRUMENT ACT, BY ALLOWING THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ





ORAL JUDGMENT

The judgment and order dated 18.04.2019 passed by the Court of Senior Civil Judge and JMFC, Kundagol in C.C.No.1/2018, thereby acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, N.I. Act) is challenged by the complainant in this appeal.

2. Heard the learned counsel for the appellant/complainant and the learned counsel for the respondent/accused. Perused the material on record, including the impugned judgment passed by the trial Court.

3. It is the case of complainant that he is a Doctor by profession and owns agricultural lands at his native village. He gets income from his landed properties as well as from his medical profession. He knows the accused since long time and they had financial transaction. The accused met him in the third week of December, 2014 and requested to lend loan of Rs.5,00,000/- to meet his legal necessity. Therefore, he advanced the said loan on 24.12.2014. The accused agreed to



repay the loan within 4 months, but failed to fulfill the promise. On 05.05.2015, when the complainant demanded the accused to repay the loan, accused issued a cheque bearing No. C/MGB No.740991 dated 05.05.2015 of Karnataka Vikas Grameena (Malaprabha Grameena) Bank. The said cheque when presented at Syndicate Bank, was returned for insufficient funds in the account of the accused to honour the cheque. The complainant issued a legal notice, for which the accused did not send any reply and therefore, he filed the complaint.

4. Before the trial Court, the complainant got himself examined as P.W.1 and examined one witness as P.W.2. He got marked Exs.P1 to P7. The accused got himself examined as D.W.1 and got marked two documents as Exs.D1 and D2.

5. The learned Magistrate vide impugned judgment, acquitted the accused of the offence punishable under Section 138 of the N.I. Act, which is challenged by the complainant in this appeal.

6. The learned counsel for the complainant contended that the cheque in question belongs to the accused is not disputed



and even the signature on the cheque has not been disputed by the accused and therefore, a presumption arises in favour of the complainant under Section 139 of the N.I. Act. He contended that inspite of issuance of notice and service of the said notice on the accused, he did not reply to the said notice and only during trial, he has come up with a false defence stating that the cheque was misused by the complainant. He contended that complainant by examining himself and also by examining P.W.2, has established the issuance of cheque by the accused to the complainant towards loan of Rs.5,00,000/- received by him and dishonour of the said cheque, amounts to an offence punishable under Section 138 of the N.I. Act. He contended that the trial Court without properly appreciating the evidence on record, has erroneously acquitted the accused. Therefore, sought to reverse the judgment of acquittal and convict the accused, by allowing the appeal.

7. Per contra, learned counsel for the respondent/accused contended that the complainant is a stranger to the accused and at no point of time, the cheque was handed over to him towards any loan taken from the complainant. He contended that the



complainant has utterly failed to establish his financial capacity to lend a huge loan of Rs.5,00,000/-. It is his contention that one Ananda Girimallanavar and the accused were residing in the same room at Benakanahalli village, while they were in P.U.C. In the said room, there were a group of students who used to collect Rs.100/- each every month and deposit the said amount in the account of the accused, to use it for the need of the students. The accused used to give the duly signed cheque to his friend Ananda Girimallanavar and one such cheque was misused by his brother i.e., P.W.2, who gave it over to the complainant, who filed a false complaint against the accused. He contended that the accused by adducing the defence evidence, has rebutted the presumption and the trial Court having appreciated the entire evidence and material on record, rightly acquitted the accused. Therefore, sought to dismiss the appeal.

8. In the case on hand, there is no much dispute that the cheque belonged to the accused. It is also not disputed that the signature on the said cheque was of the accused. It is the contention of the learned counsel for the complainant that in such an event, a presumption arises under Section 139 of N.I.



Act in favour of the complainant. He has relied on a judgment of the Hon'ble Apex in the case of ***Thongam Tarun Singh Vs. State of Manipur***¹. In the said judgment, it is held that '*if a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for a payment of the debt, or in discharge of a liability. Further, it is immaterial that the cheque may have been filled in by any person other than the drawer. If the cheque is duly signed by the drawer, and otherwise valid, the penal provisions of Section 138 would be attracted.*'

9. In the present case, the issuance of cheque to the complainant is disputed by the accused. The accused has also questioned the financial capacity of the complainant to lend a huge amount of Rs.5,00,000/- without there being any other document in that regard.

10. According to the complainant, he is a medical practitioner and also owns landed properties at Shiruru and Benakanahalli village. It is admitted that complainant instituted a

¹ AIR 2019 SC 2456



civil suit for recovery of loan against one Channabasappa Tadasuru. The accused got marked Ex.D1, certified copy of the promissory note executed by the said person in favour of the complainant. The said Channabasappa lodged a complaint against P.W.1 and a criminal case was registered. Both the loan transactions have taken place in the year 2014. Further in the year 2017, the wife of the complainant sold certain land for their legal necessity. It is the contention of the learned counsel for the accused that all these factors raises doubt regarding the financial capacity of the complainant to lend money to the accused.

11. If the evidence on record is analyzed, it is clear that the complainant has not established his financial capacity to lend a huge loan of Rs.5,00,000/- to the accused. He has admitted that he is an income tax assessee and the documents relating to his income tax payment are in his possession. However, he has not produced it to prove his income during the relevant period. He has not specified as to what is his earning to show his financial capacity to lend a loan of Rs.5,00,000/- to the accused. The trial Court has also noticed from the evidence of P.W.1 that the lands owned by him were affected by drought prior to the



loan transaction i.e., from 2013 to 2016. Hence, it raised serious doubt about the transaction as claimed by the complainant.

12. It is contended by the learned counsel for the appellant that a sum of Rs.1,50,000/- was given to one Channabasappa, may be during the same period when the present transaction took place, however, the suit filed by the complainant against the said Channabasappa was decreed and only thereafter, the said Channabasappa got registered a criminal case against the complainant. He therefore, contended that the said transaction will not disprove the loan transaction between the complainant and the accused.

13. The transaction between the complainant and one Channabasappa, though by itself will not disprove the case of the complainant, however, the complainant has failed to establish his financial capacity to advance a loan of Rs.5,00,000/- to the accused. P.W.2 was examined on behalf of the complainant. He is the brother of Anand Mahadevappa Girmallanavar. He has admitted that the accused and his brother were friends, though pleaded his ignorance about any transactions between them. P.W.2 has admitted in the cross-examination that he knows the



accused and he had contested Panchayath election during 2011, in which he was defeated by the accused.

14. According to P.W.1, accused came to Shiruru and requested him to lend Rs.5,00,000/-. In his cross-examination, he has stated that the accused gave the cheque in Kundagol on 05.05.2015. He has stated that at that time, P.W.2 was also present. Again, he admitted that in the complaint, he mentioned that the accused gave the cheque at Benakanahalli. P.W.2 has not stated that the accused gave the cheque to the complainant at Kundagol. He has stated cheque was given in his house at Benakanahalli and the said amount was paid out of the sale of 60 quintal of chilli. However, the complainant himself has not stated so.

15. From the above evidence on record, a reasonable doubt arises in the mind of the Court regarding advancement of loan of Rs.5,00,000/- to the accused and issuance of cheque by the accused to the complainant towards a legally enforceable debt. The accused has been able to rebut the presumption. The trial Court has acquitted the accused based on the material on record, after assigning reasons. The judgment does not suffer



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from any illegality or perversity. Accordingly, appeal is
dismissed.

SD/-
(MOHAMMAD NAWAZ)
JUDGE

RKM
CT:PA
LIST NO.: 1 SL NO.: 12