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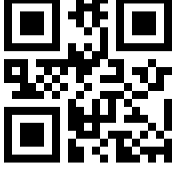

IN THE COURT OF THE LXXII ADDL. CITY CIVIL & SESSIONS JUDGE AT MAYO HALL BENGALURU, (CCH-73)

Present:
Sri. P. G Chaluva Murthy,
M. A. L.L.M
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 20th day of February 2024

Crl. Appeal. No.25217/2023

Appellant/ Accused:-	***Sri. Javid,*** *Aged about 34 years,* *S/o Sri. Ikbal,* *R/at No.204, Bachappa Layout,* *Rajiv Nagar,* *Devasandra, K.R.Puram,* *Bangalore-560 036.* ***[By Sri. G. Veerendra Babu -Adv]***

V/s

Respondent/ Complainant:	***Mr. Shaik Khaleel,*** *Aged about 38 years,* *S/o Shaik Ibrahim,* *Proprietor,* *M/s Networkz (IT submission),*

having office at No.165,
2nd Floor, D.K. Street,
Shivajinagar,
Bangalore-560 051.

[By Sri. Kari Gowda H -Adv]

JUDGMENT

This appeal is by the accused before the trial court, who suffered the judgment of conviction for the offence punishable U/Sec.138 of NI Act passed by XXXIV ACMM, Mayohall Unit, Bengaluru, in CC.No.56830/2014, dtd. 3.2.2023, challenging the validity of the judgment.

2. For the sake of convenience the parties hereinafter will be referred to with their ranking assigned before the trial court.

3. ***The facts of the case:-***

The Complainant supplied 20 desktops and laptops to the Accused on 1.12.2013 and the Accused in order to repay the amount towards supply of desktop and laptops issued a Cheque for Rs.3,00,000/- bearing No.613577 dtd: 10.2.2014. On presentation of the said cheque, the same came to

be dishonoured for want of sufficient funds in the account of the accused. Inspite of demand notice by the Complainant, the Accused not chosen to pay the amount outstanding towards the Cheque and thereby the Accused has committed an offence punishable U/Sec.138 of Negotiable Instruments Act. Thereafter the Complainant approached the trial court for appropriate legal action against the accused.

4. Pursuant to summons the Accused entered appearance through his Counsel before the Trial Court. The substance of the accusation was read over and explained to the Accused in the language known to him. The Accused pleaded not guilty and claimed to be tried. The Complainant got examined as PW1 and got marked 09 documents and closed his side. The Accused got examined as DW.1 and got marked Ex.D.1 to Ex.D.5 documents and closed his side.

5. The trial court after hearing the counsel for Complainant, convicted the Accused for the offence

punishable U/Sec.138 of NI Act vide Judgment dtd.3.2.2023.

6. From the records, it appears that earlier the complaint was dismissed by the Trial Court and Accused was acquitted vide judgment dtd: 1.3.2019 in C.C.No.56830/2014. Thereafter, it appears that the Complainant challenged the judgment of acquittal passed by the Trial Court in Crl.A.No.574/2019 before the Hon'ble High Court of Karnataka and thereafter the Hon'ble High Court of Karnataka vide judgment dtd: 26.11.2019 set aside the judgment of acquittal and remanded the matter back to the Trial Court to dispose of the above matter afresh in accordance with law.

7. Thereafter, as aforesaid, the Trial Court convicted the Accused for the offence punishable under Section 138 of the Negotiable Instruments Act vide judgment dtd: 3.2.2023.

8. Feeling aggrieved by the said judgment of conviction, the Accused is in appeal on the following grounds.

1. The Order of the trial court is opposed to law, facts circumstances and probabilities of the case.

2. The learned magistrate failed to observe the contradiction in the notice, Complainant and evidence and on the absence of lack of evidence wrongly come to conclusion that the appellant has committed offence under section 138 of the Negotiable Instruments Act.

3. The learned Trial Judge has wrongly come to the conclusion that, the payment of Rs.1,00,000/- by the accused towards settling the claim of the complainant and as per Ex.D-1 the complainant had clearly admitted that, the accused only due Rs.10,000/- (Rupees Ten Thousand Only) and this admission clearly goes to show that, the entire claim of the comp cleared by the accused.

4. The learned trial judge has failed appreciate the admission by the Complainant regarding Ex.D-1 document, the Ex.D-1 clearly indicates that, the complainant had acknowledged that, the accused only due Rs.10,000/- towards his claim.

5. It is submitted that, as per the document Ex.D-1, towards the claim of the complainant was cleared and there was no

due to him, the complainant clearly admitted the same in the Eit.D-1, the learned trial has failed appreciate the Ex.D-1 and wrongly come to the conclusion and convicted the accused/Petitioner.

6. *The Complainant did not produce any material for having supplied goods to the Accused and the Complainant in his cross-examination admitted that the agreement was with one Venkatesh and the blank Cheque of the Accused was taken by the Complainant. However, the Trial Judge failed to failed to appreciate these admissions and wrongly come to the conclusion and Petitioner/Accused.*

7. *The Hon'ble Supreme Court in Krishna Jardhan Bhat's case has clearly held that the existence of legally recoverable debt is not a matter of presumption under Section 138 of the Negotiable Instruments Act.*

8. *The Court below has liberally drawn inferences contrary to the evidence on record overlookig the vital admission made by the Complainant / Respondent in favour of the Accused / Appellant thereby jumping to a wrong conclusion on unproved facts which calls for interference at the hands of this Honble Court.*

9. The Trial Court passed the judgment of conviction on conjectures and surmises which is against to law laid down by the Hon'ble Apex Court.

10. The complainant should prove his case that there is legally recoverable debt is liability the prosecution cannot depend on the weakness of the defense to prove its case. When the initial burden is not discharged by the complainant were no other consideration arises complainant should failed.

11. It is submitted that, Ex.D-1 the document produced by the Petitioner/Accused will clearly goes to show that, there is no liability on Ex.P-1 and the Hon'ble Trial Court without appreciating the velocity of the document and wrongly convicted the accused. Hence call for interference at the hands of this Hon'ble Court.

12. It is submitted that, the order passed by the trial court is perverse and illegal contrary to the documentary evidence on record completely ignoring vital admissions and inconsistent plea of the complainant and believing the oral evidence of the complainant which is itself contradictory and contrary to the documentary evidence on record produce by the Complainant

himself. Hence call for interference at the hands of this Hon'ble Court.

13. The learned magistrate has erred in not following the precedent laid down by the Hon'ble Supreme Court in India despite pointed by the Accused while arriving at the impugned judgment regarding the presumption under section 139 of the Negotiable Instruments Act 1881.

14. Under the above grounds the Appellant sought for acquittal by allowing the appeal.

9. Since, there was delay in filing the above appeal, the Appellant has filed IA.No.1/2023 under Section 5 of Limitation Act for condonation of delay on the ground that he was not keeping well and due to his ill-health he was unable to contact his Advocate and his mother was suffering from cancer and age related issues. The Appellant was only person to take care of his mother and as such there is delay in filing of the above appeal. If the application is allowed no hardship or injury would caused to the Respondent. If the application is not allowed, the Appellant will be put to irreparable loss, hardship and injury. The delay in filing the above

appeal is due to bonafide reasons and not intentional. Therefore, the Appellant sought for condonation of delay and prayed to allow the application.

10. Pursuant to the notice, the Respondent entered appearance through his counsel. I secured the records from the Trial Court.

11. The Respondent has not filed any objections to the said application.

12. Inspite of suffcient opportunity the Appellant not chosen to address arguments on merits of the case. Heard the Counsel for Respondent. The Counsel for Respondent also filed written arguments. Perused the evidence, documents on record and also impugned Judgment of conviction passed by the Trial Court.

13. On re-appreciation of the evidence, documents on record, the following points would emerge for the consideration of this court.

1. Whether the application filed by the Appellant under Section 5 of Limitation Act deserves to be allowed?

2. Whether the Appellant proves that the cheque in question was not issued towards any legally recoverable debt?

3. Whether the Judgment of conviction passed by the Trial Court calls for interference by the hands of this court?

4. What Order?

14. My finding on the above points are as under:

Point No.1 : In the Affirmative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

Point No.4 : As per final order for the following :

REASONS

15. ***POINT NO.1:****-*

The Appellant in his affidavit in support of the application contended that he was not keeping good health and his mother was suffering from cancer and age related issues and therefore, there is delay in

filing the appeal and hence, he sought for condonation of delay of 182 days.

16. The judgment is passed on 3.2.2023 and the appeal is filed by the Appellant on 3.8.2023. There is six months delay in filing the above appeal. Along with the application the Appellant produced medical record of Smt. Masthani who according to Appellant is the mother of the Appellant. It appears from the medical records that during the month of March 2023 Smt. Masthani appears to have taken treatment at Praven Neoro and Emergency Hospital. He also produced medical records of one Smt. Fathima and it is not established as to who is the Fathima. Even the said patient is also taken treatment in the month of May 2023. Therefore, prima-facie it apperas that the Appellant was engaged in providing treatment to his mother which is supported by the medical records. The delay requires to be condoned liberally and the Hon'ble Apex Court and Hon'ble High Court of Karnataka in catena of rulings observed that the delay in filing the appeal has to be condoned liberally. In the instant case, if the delay is condoned and appeal is

considered on merits, no prejudice would be caused to the other side. The Respondent, as aforesaid not filed objections to the application denying the averments made in the affidavit in support of the application. Hence, the application filed by the Appellant deserves to be allowed. Under the circumstances, the Point No.1 is answered in the Affirmative.

*17. **POINT NOs.2 and 3:**-*

Since the above two points are interlinked, in order to avoid repetition of facts the above points have been taken up together for consideration.

18. The Learned Counsel for the Respondent during the course of arguments contended that the supply of goods and issuance of Cheque is not in dispute. The Complainant supplied computer items to the Accused and in order to discharge the liability the Accused issued a Cheque for Rs.3,00,000/-, which came to be dishonoured for want of sufficient funds in the account of the Accused. The Learned Counsel submitted that the Accused started denying his signature on the Cheque and as such the matter was

referred to the expert and the expert opinion is in favour of the Complainant. Though the Accused has repeatedly contended that the goods were supplied to one Venkatesh, friend of the Complainant and the cheque in question was issued to the Complainant as security for the goods supplied to the said Venkatesh, the said Venkatesh has not been examined before the Court for the reasons best known to the Accused. The above appeal is filed after lapse of 182 days and no reasons assigned for the delay in filing the above appeal. Even before the Trial Court also the Appellant dragged on the matter for several years. The Appellant also not complied with the interim order passed by this Court while suspending the sentence. Thereby the Appellant with utter disrespect to the order of this Court not chosen to appear before the Court to contest the matter on merits after filing the above appeal. Therefore, the Learned Counsel for the Respondent contended that there is no reason to interfere with the judgment of the Trial Court and no grounds made out by the Appellant in the above appeal. Therefore, the

Learned Counsel for the Respondent sought for dismissal of the appeal with costs.

19. Before appreciating the arguments canvassed by the Learned Counsel for the Respondent and before re-appreciating the documents and evidence on record, it is necessary to refer couple of important rulings of the Hon'ble Apex Court on the aspect of presumption available in favour of the Complainant under Section 118(A) and 139 of Negotiable Instruments Act and the manner of rebuttal of the said presumption by raising probable defense by the Accused. The Hon'ble Apex Court in a ruling reported in ***AIR 2010 SC 1898 (Rangappa V/s Mohan),*** *observed as under:-*

> ***"Existence of legally recoverable debt or liability- The presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the Complainant. Section 139 of the Act is***

an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139, is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/ defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally

> ***enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the Complainant and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."***

*20. In another ruling reported in **2019 (3) KCCR 2473 (SC) (Basalingappa V/s Mudibasappa),** the Hon'ble Apex Court while considering several earlier rulings on the offence U/Sec.138 of NI Act and also on the presumption U/Sec.118 and 139 of NI Act, at Para 23 was pleased to observe as follows:*

> ***23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-***
>
> ***(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.***
>
> ***(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting***

> ***the presumption is that of preponderance of probabilities.***
>
> ***(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the Complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.***
>
> ***(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Sec.139 imposed an evidentiary burden and not a persuasive burden.***
>
> ***(v) It is not necessary for the accused to come in the witness box to support his defence.***

21. Keeping in view, the broad principle laid down by the Hon'ble Apex Court, let me reappreciate the documents and evidence available on record to know whether the Accused has been able to rebut the presumption available in favour of the Complainant under Section 118(A) and 139 of the Negotiable Instruments Act.

22. From the grounds urged in the appeal, it could be seen that the Accused is not disputing the issuance of cheque in favour of the Complainant however, he disputed the signature on the Cheque which is produced and marked at Ex.P.2. Therefore, after remand by the Hon'ble High Court of Karnataka the disputed document along with the admitted documents were referred to Truth Lab, Bengaluru, and there is a report at Ex.C.1 which is in favour of the Complainant. The Expert is of the opnion that the questioned signatures marked at Ex.P.1(a) to Ex.P.1(f) and Ex.P.2(a) and standard signatures at Ex.P.6(a), Ex.P.7(a) and S1 to S7 were written by one and the same person. In view of this categorical report the Trial Court negatived contention of the Accused that he has not signed the cheque in question and convicted the Accused for the offence punishable under Sec.138 of the Negotiable Instruments Act. Even on perusal of admitted signatures and the signature at Ex.P.2(a) acting under Section 73 of the Indian Evidence Act, this Court is of the opinion that there is no iota of variation in the admitted signatures and the disputed

signatures of the Appellant. Therefore, initial presumption requires to be drawn in favour of the Complainant under Section 118(A) and 139 of the Negotiable Instruments Act that the cheque in question was issued towards legally enforceable debt and there was legal liability as on the date of presentation of the Cheque.

23. Now, the burden is on the Accused to rebut the presumption, by raising probable defense so as to doubt the very existence of legally enforceable debt. The defense of the Accused has to be gathered from the reply notice if any, from the defense evidence and from the line of cross-examination of PW.1. In the case on hand, the Accused admitted the receipt of demand notice and admittedly there is no reply to the demand notice. Of course, the Accused led evidence from his side prior to remand of the case and after remand of the case also. Therefore, it is necessary to refer the defense of the Accused before remand, before appreciating the evidence led by the Accused subsequent to remand of the case. Earlier in his examination-in-chief dtd: 10.12.2018 the Accused deposed that the Complainant neither supplied any

desktops and computers to the Accused and Complainant supplied systems to one Venkatesh and since Venkatesh was not having any documents, the Accused has issued the Cheque to the Complainant as security. He disputed the signature on the Cheque at Ex.P.2. He also stated that there was agreement between the Complainant and the Accused. However, in the very same paragraph the Accused stated that there was negotiation between the parties and accordingly he had paid Rs.1,00,000/- to the Complainant. Again in the very next line he has stated that out of Rs.1,00,000/- he had paid Rs.90,000/- and no receipt was issued by the Complainant. Therefore, he sought for dismissal of the complaint.

24. From the examination-in-chief of the Accused dtd: 10.12.2018 it could be gathered that the Accused is denying the supply of desktops and computers by the Complainant to the Accused and on the other hand, according to Accused it was supplied to one Venkatesh and for security the Accused has issued the Cheque to the Complainant.

25. On remand by the Hon'ble High Court of Karnataka, the Accused filed affidavit in lieu of oral evidence on 28.12.2021. On perusal of the examination-in-chief affidavit of the Accused, it is not happily worded. There are several grammatical variations in the affidavit filed by the Accused. However, what this Court understood from the affidavit is that the Accused is disputing the transaction between the Complainant and the Accused and according to Accused a blank Cheque was given to the Complainant as security for supply of goods to one Venkatesh who his friend, to help him. Certain improvements could be found subsequent to remand, wherein the Accused stated that he had been to Police Station at K.R.Puram and explained the things to the Police and the Police had informed him to clear the matter between themselves etc. It is also stated at Para-5 of his affidavit that the Complainant and others came to the house and started shouting at him and called the Masjid community/committee members etc. These are all improvement made subsequent to remand of the

case. At para-6 of the affidavit it is stated that at the instance of Masjid community/committee members and family members he had agreed to pay Rs.1,00,000/- and signed documents and original papers to the Complainant. All these facts are improvement made by the Accused while deposing after the remand of the case by the Hon'ble High Court of Karnataka.

26. The Accused was cross-examined by the Learned Counsel for the Complainant and even in the cross-examination he disputed his signature on Ex.P.1 which is an Agreement said to have been entered into between the Complainant and the Accused. The nomenclature of the same is computer Supply Agreement dtd: 16.1.2014. He also denied the signature on Ex.P.2 the cheque in question. However, he has stated that he had issued a Cheque to the Complainant without his signature. According to Accused, the Complainant has supplied computers to one Venkatesh, since he had no Cheque facility he had issued the Cheque on behalf of the Venkatesh. In the further cross-examination the Accused admitted that the name printed on the Cheque is that

of the Accused. He also admitted his signature on the Vakalath and the fact admitted by the Accused is that the signature on Vakalath and the Cheque are resembling each other. The witness admitted the receipt of Demand Notice and admitted that he has not replied to the said notice. The Accused admitted his address on Ex.P.7 Delivery Challan sent by the Complainant to the Accused.

27. On careful evaluation of the entire evidence of the Accused, it could be gathered that the Accused, not disputing that the cheque in question belongs to his account. As aforesaid, he disputed his signature on the Cheque and now by virtue of expert opinion the Complainant has been able to establish that the signature on the Cheque is that of the Accused only. Absolutely, there is no cross-examination of PW.1 on the report of the Expert.

28. In fact in the cross-examination nothing favourable to the Accused was elicited except usual stock suggestions which have been denied by PW.1. Mere suggestions in the cross-examination do not partake the character of legal evidence.

29. The suggestions in the cross-examination would be suffice to arrive at the conclusion that the Accused had secured materials from the Complainant and not issued Cheque on behalf of one of his friends Venakatesh towards supply of materials to the said Venkatesh. In the further cross-examination dtd: 19.12.2022 there is a suggestion to the following effect:

> ಹಿತೈಷಿಗಳು ಸೇರಿ ಆರೋಪಿ ಮತ್ತು ಫಿರ್ಯಾದುದಾರರ ವ್ಯವಹಾರವನ್ನು ರೂ.*90* ಸಾವಿರ ಹಣ ಪಡೆದು ಅವರಿಗೆ ಸ್ವೀಕೃತಿ ರಶೀದಿ ಕೊಟ್ಟು ನಂತರ ರೂ.*10* ಸಾವಿರಗಳಿಗೆ *2* ಬಾರಿ ಆರ್.ಟಿ.ಜಿ.ಎಸ್ ಮೂಲಕ ಪಾವತಿಸಿರುತ್ತೇನೆಂದರೆ ಸರಿಯಲ್ಲ.

30. Even in the earlier cross-examination also on 25.10.2018 there is a suggestion to the following effect:

> ಆಪಾಧಿತರು ಸಂಪೂರ್ಣ ಹಣ ಕೊಟ್ಟಿದ್ದರುಸಹ ಅದನ್ನು ನಾನು ಪಡೆದುಕೊಂಡು ಅವರಿಂದ ಹೆಚ್ಚಿನ ಹಣ ಪಡೆಯಲು ಸುಳ್ಳು ಪ್ರಕರಣ ದಾಖಲು ಮಾಡಿರುತ್ತೇನೆಂದರೆ ಸರಿಯಲ್ಲ.

31. Again on 11.9.218 there is a suggestion to PW.1 as follows:

> ಆಪಾಧಿತರಿಂದ ನಾನು ಹಲವಾರು ಬಾರಿ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

32. From the aforesaid suggestions, it could be gathered that there is no consistency in the defense taken by the Accused. In one breath the Accused contended that there was no transaction whatsoever between the Complainant and the Accused and the cheque in question was issued as security towards purchase of laptop and desktops by his friend Venkatesh. Whereas in another breath in the cross-examination it is suggested that the Accused has repaid the amount to the Complainant and the Complainant had received amount from the Accused on several occasions. Ex.D.1 to Ex.D.4 do not establish the payment of Cheque amount to the Complainant. Therefore, the Accused cannot be permitted to approbate and reprobate at the same time. From the line of cross-examination, it could be seen that the Accused himself had got supplied the materials from the Complainant and issued the

cheque in question towards discharge of the said amount.

33. In so far as the issuance of Cheque towards security is concerned, the said contention could be answered by referring to the ruling of the Hon'ble Apex Court reported in ***(2019) 4 SCC 197 (Beer Singh V/s Mukesh Kumar),*** *wherein it is categorically observed thus:-*

> ***"37. A meaningful reading of the provisions of the Negotiable Instrument Act including, in particular, Secs.20, 87 and 139 makes it amply clear that a person who signs a cheque and makes it over to a payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of liability. 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. If the cheque is otherwise valid, the penal provisions of Sec.138 of NI Act would be attracted."***
>
> ***38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other***

> ***particulars. This in itself would not invalidate the cheque."***

34. The principle laid down in the aforesaid rulings is that even the Cheque issued towards security attracts offense under Section 138 of the Negotiable Instruments Act.

35. The Complainant has produced document at Ex.P.7 for having supplied the 20 number of Desktops, LCD, Monitors, Key Boards etc. and it contains the signature of the Accused, which is marked at Ex.P.7(a) and the Accused admitted his address at Ex.P.7 also. A brief cross-examination was directed on Ex.P.7, during the course of cross-examination of PW.1. When it was suggested that the value of the material supplied is not reflected in Ex.P.7, the witness stated that in the Delivery Challan they will not mention the value of the material and they will not send the invoices along with delivery challan. Except one line suggestion on Ex.P.7, absolutely, there is no searching cross-examination of PW.1 on the documents produced by the Complainant.

36. The Accused is also not disputing the compliance of mandatory provisions as contemplated under Section 138 of the Negotiable Instruments Act, before initiating proceedings against the Accused. Even otherwise, the cheque in question as per Ex.P.2 is dtd: 10.2.2014 and the same is dishonoured by the bank on 13.2.2014as per Ex.P.3. Ex.P.4 is the Demand Notice dtd: 20.2.2014. Ex.P.5 Postal Receipt. Ex.P.6 Postal Acknowledgment. The receipt of the notice is not disputed by the Accused and admittedly there is no reply notice by the Accused. When there was demand for huge amount of Rs.3,00,000/- by the Complainant, if at all the Accused had not received any material from the Complainant, there was no reason for the Accused in not replying to the demand notice of the Complainant. No prudent person will keep quite when there is demand for Rs.3,00,000/-. Therefore, it appears that the Accused has not disputed the compliance of mandatory provisions by the Complainant before initiating the proceedings against the Accused.

37. The defense of the Accused as aforesaid is that the materials were supplied to one Venkatesh the friend of the Accused and not to the Accused. Therefore, the burden was heavy on the Accused to establish that the materials were in fact supplied to Venkatesh. The evidence of Venkatesh was very material in the present case. The Accused contended that the said Venkatesh is his friend and in order to help his friend he had issued the Cheque to the Complainant. Nothing prevented the Accused to examine the Venkatesh before the Court to substantiate his defense. On the other hand, Ex.P.7 Delivery Challan is addressed to the Accused and the cheque in question is issued by the Accused. Therefore, the defense taken by the Accused is not at all probable and acceptable. The Accused failed to establish that the cheque in question was not issued towards any legally enforceable debt by raising any probable defense. The defense as stated above, is not all probable and acceptable.

38. In so far as quantum of fine imposed by the Trial Court is concerned, the Trial Court imposed fine of Rs.4,44,000/- as against the Cheque amount of

Rs.3,00,000/-, considering the duration of the litigation. The Complaint was filed in the year 2014 and it is disposed of in the year 2023. The proceedings under Section 138 of the Negotiable Instruments Act is summary in nature which requires to be disposed of within six months. Whereas the proceedings was concluded after lapse of more than 08 years and as such the Trial Court while referring to the judgment of Hon'ble Apex Court reported in ***2012 (1) SCC 260 (R. Vijayan V/s Baby)*** *imposed fine of Rs.4,44,000/- which appears to be reasonable. Therefore, it appears that the Accused is not questioning the quantum of fine imposed by the Trial Court.*

39. Thus, looking from any angle, the Accused failed to establish any probable defence even on the materials produced by the Complainant. Having regard to the facts and circumstances of the case, the Accused failed to substantiate his defence by producing cogent evidence before this court. The Trial Court by appreciating the evidence and documents in a proper perspective and while referring to the rulings of Hon'ble Apex Court has

rightly convicted the Accused for the offence punishable U/Sec.138 of NI Act. In the absence of any perversity or capriciousness while convicting the Accused, there is no reason to interfere with the Judgment of the trial court. Therefore no grounds made out by the Accused to interfere with the Judgment of conviction passed by the trial court. Hence, ***Point Nos.2 and 3 are answered in the Negative.***

40. ***Point No.4:***

In view of the findings on the above points the appeal filed by the Appellant deserves to be dismissed. Accordingly, I proceed to pass the following:-

ORDER

The application filed by the Appellant under Section 5 of Limitation Act is hereby allowed and the delay is condoned.

The appeal filed by the Appellant U/Sec.374 (3) of Cr.PC is hereby dismissed with costs.

The Judgment of conviction passed by the Learned XXXIV ACMM, Mayohall

Unit, Bengaluru, in CC.No.56830/2014, dtd. 3.2.2023, is hereby confirmed.

Send back the records with a copy of this Judgment to the Trial Court.

(Dictated to the Stenographer, typed by her, corrected and then pronounced by me, in the open court on this the ***20th day of February 2024.****)*

[P. G Chaluva Murthy)
LXXII Addl.City Civil & Sessions Judge, Bengaluru. (CCH-73)