HC-KAR

NC: 2025:KHC-K:4882
CRL.A No. 200237 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MRS JUSTICE M G UMA

CRIMINAL APPEAL NO.200237 OF 2023

(378(Cr.PC)/419(BNSS))

BETWEEN:

THE MANAGING DIRECTOR
JAMAKHANDI SUGAR LTD.,
SRI S.DAYANAND,
AGE: MAJOR, OCC: MANAGING DIRECTOR,
R/o. JAMAKHANDI, DIST.BAGALKOT,
ITS BRANCH NO.2, NAD K.D., TQ. INDI,
DIST. VIJAYAPUR AND REPRESENTED BY ITS PA
HOLDER AND ITS SUPERINTENDENT OF NAD KD,
BRANCH NO.2 OF INDI TALUK VIZ.,
SRI SAHEBGOUD VITHAL PARAGOND,
R/o. NAD KD, TQ. INDI, DIST.VIJAYPUR-586 101.

...APPELLANT

(BY SRI S. S. MAMADAPUR, ADVOCATE)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

AND:

SRI NAGANATH
S/O MAHADEVAPPA BIRADAR,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. TADDEWADI,
TQ. INDI, DIST.VIJAYAPUR.

...RESPONDENT

(BY SRI B.K. HIREMATH, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378 (4) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 12.06.2023 PASSED BY THE HON'BLE CIVIL JUDGE AND JMFC, INDI IN CC NO.719/2014 AND CONSEQUENTLY CONVICT THE RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NI ACT.

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

CORAM: HON'BLE MRS JUSTICE M G UMA

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE M G UMA)

The complainant in C.C.No.719/2014, on the file of the learned Civil Judge and JMFC, Indi, (for short 'the Trial Court'), is impugning the judgment of acquittal dated 12.06.2023, acquitting the respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act').

2. Parties are referred to as per their rank before the Trial Court for convenience.

3. The facts of the case in brief are that, the complainant is the Sugar Factory, represented by its Managing Director. The accused is a labour contractor.

He received Rs.10,00,000/- by way of demand draft for the purpose of harvesting the sugarcane and supplying the same to the factory. The accused has not carried out the work as agreed. Thus, a sum of Rs.4,99,800/- was due from the accused. Towards repayment of the said amount, he has issued the cheque as per Ex.P1 on 26.07.2014. When the cheque was presented for encashment, the same was dishonoured, as there was 'funds insufficient' in the account of the accused. The complainant got issued legal notice as per Ex.P3. In spite of service of notice, accused has not replied to the legal notice nor he has repaid the cheque amount. Thereby he has committed the offence punishable under Section 138 of N.I.Act. Thus, the complainant filed the private complaint before the Trial Court in PCR No.23/2014.

4. The learned Magistrate took cognizance of the offence, registered C.C.No.719/2014 and summoned the accused. The accused had appeared before the Trial Court and pleaded not guilty. The office superintendent of

complainant – Company examined it power of attorney as PW.1 and got marked Exs.P1 to P6 in support of its contention. The accused has denied all the incriminating materials available on record in his statement under Section 313 of Cr.P.C., but has not led any evidence in support of his defence. The Trial Court after taking into consideration all these materials on record, came to the conclusion that the accused has rebutted the legal presumption and therefore, he is entitled for acquittal. Being aggrieved by the same, complainant is before this Court.

5. Heard Sri S.S.Mamadapur, learned counsel for the appellant and Sri B.K.Hiremath, learned counsel for the respondent. Perused the materials on record including the Trial Court records.

6. In view of the rival contentions urged by learned counsel for both the parties, the point that would arise for my consideration is:

"Whether the judgment of acquittal passed by the Trial Court suffers from infirmities and calls for interference by this Court?"

My answer to the above point is in the '***Affirmative***', for the following:

REASONS

7. As stated above, it is the contention of the complainant that, the accused being the labour contractor has received Rs.10,00,000/- to deliver the sugarcane to the sugar factory. He had not carried out his work fully and a sum of Rs.4,99,800/- was due from him. Towards repayment of the same, he issued the cheque - Ex.P1 on 26.07.2014. The same was dishonoured. The legal notice was served on the accused. In spite of the same, he has not repaid the cheque amount and thereby, he has committed the offence punishable under Section 138 of N.I.Act.

8. PW.1 being the power of attorney, deposed on behalf of the complainant. He was cross-examined at length. His cross-examination discloses that the accused has admitted issuance of the cheque as per Ex.P1 with his signature. As per the tenor of cross-examination, it is contended that the same was given as security while entering into an agreement. Thereby the accused admits issuance of the cheque with his signature and also entering into contract with the complainant. Once the accused admits issuance of the cheque with his signature, the presumption under Sections 118 and 139 of N.I.Act would arise. The burden shifts on the accused to rebut the legal presumption. Admittedly, the accused has not issued reply notice on receipt of the statutory notice as per Ex.P3. He has not stepped into the witness box. During cross-examination of PW.1, nothing has been elicited from him to disbelieve his version. Under such circumstances, it cannot be said that the accused is successful in rebutting

the presumption under Sections 118 and 139 of N.I.Act. Accordingly, the accused is liable for conviction.

9. I have gone through the judgment of acquittal passed by the Trial Court. It has proceeded to acquit the accused on the ground that the agreement between the complainant and accused is not proved by the complainant. It is also observed that PW.1 has not produced any authorization letter on behalf of the complainant. Thus, the accused has rebutted the legal presumption. PW.1 being the office superintendent of complainant – Company, produced the GPA as per Ex.P4, and has spoken about the contention taken by the complainant and stated that there was agreement between the parties an and amount of Rs.10,00,000/- was paid through demand draft. The accused specifically suggested to PW.1 that the cheque – Ex.P1 was issued as security while entering into the agreement for harvesting the sugarcane. When such a suggestion is made to PW.1, it amounts to admission of entering into an agreement by

the accused. Under such circumstances, the Trial Court could not have found fault with the complainant for non-production of the agreement when the accused has taken specific defence that he had issued the cheque – Ex.P1 as a security. Thus, the presumption arises in favour of the complainant. Even though it is contended by learned counsel for the accused that the accused had issued blank cheque as security and the same was misused by the complainant, the burden shifts on him to rebut the presumption, the same cannot be accepted.

10. In this regard, I may refer to the decision of the Hon'ble Apex Court in the case of ***Bir Singh v. Mukesh Kumar***[1]***,*** wherein the Apex Court by referring to its earlier decision held in paragraph Nos.34 and 36 as under:

> *"34. 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. The onus would still be on the accused to prove that the*

[1] (2019) 4 SCC 197

cheque was not in discharge of a debt or liability by adducing evidence.

36. 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."

11. I may also refer to the decision of the Hon'ble Apex Court in ***M/s.Kalamani Tex and Another Vs. P Balasubramanian***[2], wherein the three Judges Bench of the Apex Court discussed at length about the position of law with regard to the burden of proof for the offence punishable under Section 138 of N.I.Act. It referred to its earlier decision in ***Basalingappa Vs. Mudibasappa-[(2021) 5 SCC 283],*** and held in paragraph Nos.14, 15, 16 and 18 as under:

"14. Adverting to the case in hand, we find on a plain reading of its judgment that the trial Court completely overlooked the provisions and failed to

[2] (2021) 5 SCC 283

appreciate the statutory presumption drawn under Section 118 and Section 139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystalized by this Court in Rohitbhai Jivanlal Patel v. State of Gujarat in the following words:

> *"In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing record*

such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant-accused.....”

15. Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the Complainant-Respondent to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.

16. No doubt, and as correctly argued by senior counsel for the appellants, the presumptions raised under Section 118 and Section 139 are rebuttable in nature. As held in MS Narayana Menon v. State of Kerela, which was relied upon in Basalingappa (supra), a probable defence needs to be raised, which must meet the standard of "preponderance of probability", and not mere

possibility. These principles were also affirmed in the case of Kumar Exports (supra), wherein it was further held that a bare denial of passing of consideration would not aid the case of accused.

18. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite Bir Singh v. Mukesh Kumar, where this court held 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."*

(Emphasis supplied)

12. I may also refer to the decision of the Hon'ble Apex Court in ***APS Forex Services Pvt. Ltd. Vs. Shakti***

International Fashion Linkers and Others[3]***,*** wherein it is held in paragraph No.7 as under:

> *"7. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the N.I. Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complain-ant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was is-sued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not*

[3] AIR 2020 SC 945

> *properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complain-ant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. As observed above, Section 139 of the Act is an example of reverse onus - clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence.*

13. Thus, the position of law on the subject is very well settled. The Trial Court has not taken into consideration the position of law and proceeded to acquit the accused without any basis. Hence, I am of the opinion that the impugned judgment of acquittal passed by the Trial Court is liable to be set aside. Accordingly, I answer the above point in the ***affirmative.***

14. Heard learned counsel for the respondent on sentence and I proceed to pass the following:

ORDER

(i) The criminal appeal is ***allowed***.

(ii) The impugned judgment dated 12.06.2023 passed in Criminal Case No.719/2014 by the learned Civil Judge and JMFC, Indi, is hereby set aside.

(iii) Consequently, the respondent/accused is convicted for the offence punishable under Section 138 of the N.I.Act. He is sentenced to pay fine of Rs.7,00,000/- within a period of three months from today and in default of payment of fine, he shall undergo simple imprisonment for a period of one year.

(iv) Out of the fine amount to be deposited by the respondent/accused, a sum of

Rs.6,90,000/- is ordered to be paid to the appellant/complainant as compensation.

Registry to send back the Trial Court records along with copy of this judgment for information and for needful action i.e., for issuance of the conviction warrant.

Sd/-
(M G UMA)
JUDGE

SRT
List No.: 1 Sl No.: 25
CT:PK