IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 945 OF 2017

BETWEEN:

M MANJUNATH
S/O MAHIMAIAH
AGED ABOUT 48 YEARS
R/AT NO.12, 7TH CROSS, 7TH MAIN,
MALLESWARAM, BANGALORE – 570 003.

...PETITIONER

(BY SRI.CHANDRA SHEKARA K.A, ADVOCATE)

AND:

R KUMAR
S/O LATE RAJAMANIKYAM
R/AT NO.3/2, 6TH CROSS,
CHALUVADIPALYA
DR.T.C.ROYAL ROAD
BANGALORE – 560 053.

...RESPONDENT

(BY S.P.SATHISHA, ADVOCATE)

Digitally signed by NARAYANA UMA
Location: HIGH COURT OF KARNATAKA

THIS CRL.RP FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 12.08.2016 PASSED BY THE XXI A.C.M.M., BENGALURU IN C.C.NO.5136/2015 AND CONFIRMED DATED 14.08.2017 PASSED BY THE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY IN CRL.A.NO.1041/2016 FOR THE OFFENCE P/U/S 138 OF N.I.ACT AND TO ACQUIT THE PETITIONER/ACCUSED.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 24.02.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH

CAV ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order of sentence dated 12.08.2016 in C.C.No.5136/2015 on the file of XXI Additional Chief Metropolitan Magistrate, Bengaluru and its confirmation judgment and order dated 14.08.2017 in Crl.A.No.1041/2016 on the file of LIX Additional City Civil and Sessions Judge, Bengaluru. wherein the petitioner / accused was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I Act').

2. The ranks of the parties would be considered henceforth as per their rankings in the Trial Court for convenience.

Brief facts of the case:

3. The complainant stated to have advanced the loan of Rs.8,50,000/- to the accused on 13.12.2013 for which the accused agreed to repay the loan within six months at the rate of 2% per month. The accused executed on demand promissory note on 13.12.2013 promising him that he

would repay the amount within six months along with interest. However, he did not repay the said amount and interest as well. Therefore, when he insisted the accused to repay the amount, a cheque was issued by the accused on 08.12.2014 for a sum of Rs.10,51,150/-. When the said cheque was presented for encashment on the said date, it was returned as 'funds insufficient'. A legal notice was issued to the accused and brought his notice about the dishonour of the cheque. According to the complainant, notices were sent through Registered Post Acknowledgment Due and Speed Post. In spite of the service of notice, the accused did not repay the amount. Therefore, a case came to be registered by the complainant before the Magistrate and sought for action to be initiated against the accused.

4. The Trial Court and the Appellate Court concurrently held that the accused was found guilty of the offence under Section 138 of N.I Act. Therefore, the petitioner has filed this revision petition.

5. To prove the case of the complainant, the complainant examined himself as PW.1 and also got examined PW.2

on his behalf and got marked 25 documents as Exhibits P1 to P7. On the other hand, the petitioner / accused examined himself as DW.1 and has not led any evidence. The Trial Court after appreciating the oral and documentary evidence on record, convicted the petitioner for the offence stated *supra.* Being aggrieved by the same, the petitioner preferred an appeal before the Appellate Court and the Appellate Court confirmed the judgment of conviction rendered by the Trial Court. Being aggrieved by the same, the petitioner has preferred this revision petition seeking to set aside the concurrent findings.

6. Heard Sri Chandra Shekara K.A, learned counsel for the petitioner and Sri S.P.Sathisha, learned counsel for the respondent.

7. It is the submission of the learned counsel for the petitioner that the defence of the accused before the Trial Court was that there was no legally enforceable debt or liability on the said cheque. In fact, Ex.P7 – On Demand Promissory Note was given to the complainant on the pretext that the complainant would get the loan

sanctioned in favour of the accused. However, he did not get the loan sanctioned.

8. It is further submitted that he had not received any notice as is mandatorily required to be served to him under Section 138(b) of the N.I Act.

9. It is further submitted that even though there was no transaction between himself and the complainant, the Courts below have committed an error in arriving at a conclusion that the accused is liable to pay the amount as stated in the cheque. Making such submissions, the learned counsel for the petitioner prays to allow the petition.

10. Per contra, the learned counsel for the respondent vehemently justified the judgment of the Courts below and he further submitted that the issuance of the cheque and signature found on the cheque has not been disputed. Once the issuance of the cheque and signature are admitted, the presumption would protect the complainant from proving his financial capacity and also liability. It is the accused who has to rebut the presumption by leading cogent evidence. As such, the

accused failed to prove his case to rebut the presumption, the Trial Court and the Appellate Court rightly recorded the conviction which is proper and relevant, therefore, interference with the said findings would not arise. Making such submissions, the learned counsel for the respondent prays to dismiss the petition.

11. Having heard the learned counsel for the respective parties and also perused the findings of the Courts below, it is relevant to refer the legal requirements of Section 138 of N.I Act. The said provision reads as under:

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account**.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person*

shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this 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:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in

due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.]"

12. On compliance of Section 138 of N.I Act and in a case, if the accused admitted the signature and issuance of the cheque, the presumption would arise in favour of the complainant. Therefore, at the initial stage, the complainant need not prove his case. However, once the accused has rebutted the presumption, the burden would be shifted to the complainant to prove his case.

13. In the present case, the accused has been examined himself as DW.1. In his evidence, he has deposed that there was no transaction between himself and the complainant at any point of time. He further deposed that the complainant had obtained a blank cheque and pronote on the pretext that he would get the loan sanctioned to the accused. However, he has not taken any action against the complainant for having misused the cheque and on demand pronote note.

14. The accused except raising the false defence, has failed to produce any documents to show that the complainant had promised him that he would arrange the loan for his necessities. On the other hand, he admitted the execution of on demand promissory note, cheque etc.

15. The Hon'ble Supreme Court in the case of ***BIR SINGH v. MUKESH KUMAR***[1] held that mere denial of the transaction is not sufficient to rebut the presumption, unless, it is followed by the cogent evidence.

16. On reading of the entire case and also the evidence of the accused, I am of the considered opinion that he has not rebutted the presumption guaranteed under Section 139 of N.I Act. Therefore, the findings of the Courts below in rendering the conviction are relevant and proper. However, insofar as the sentence of the Trial Court is concerned, the Trial Court not only imposed a fine to be paid, but also, directed the accused to undergo simple imprisonment for six months. The said portion of the sentence is concerned, when there is a default punishment is imposed to the accused, if he fails to

[1] (2019) 4 SCC 197

deposit the fine amount as awarded, additionally asking him to undergo simple imprisonment for six months would be too harsh and unreasonable. Therefore, the sentence of six months needs to be set aside.

17. In the light of the observations made above, I proceed to pass the following:

ORDER

1. The Criminal Revision Petition is allowed-in-part.
2. The judgment of conviction and order on sentence dated 12.08.2016 passed in C.C.No.5136/2015 by the XXI Additional Chief Metropolitan Magistrate at Bengaluru is modified.
3. The judgment and order dated 14.08.2017 passed in Criminal Appeal No.1041/2016 by the LIX Additional City Civil and Sessions Judge, Bengaluru City, is also modified only in respect of sentence.
4. The petitioner / accused is convicted for the offence under Section 138 of N.I. Act and he is

sentenced to pay fine of Rs.10,61,150/- (Rupees Ten lakhs sixty one thousand one hundred and fifty only). In default of payment of fine, he shall undergo simple imprisonment for six months.

5. Out of fine amount of Rs.10,61,150/-, a sum of Rs.10,51,150/- to be paid to the complainant by way of compensation under Section 357 of Cr.P.C., and the balance amount shall be paid to the State Exchequer.

6. The Registry is directed to send the records forthwith to the Trial Court for necessary compliance.

Sd/-
(S RACHAIAH)
JUDGE

UN
List No.: 1 Sl No.: 34