IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 15TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL APPEAL NO. 200231 OF 2023

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

BETWEEN:

MD. YOUNUS KHAN S/O MD. ISMAIL KHAN,
AGE: 51 YEARS,
OCC: AGRICULTURE AND BUSINESS,
R/O. BHADRUDDIN COLONY,
CHIDRI ROAD, DIST. BIDAR-585401.

...APPELLANT

(BY SRI KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

KAILASH S/O RAJAPPA ALGODE,
AGE: MAJOR, OCC: PEON/ ATTENDER WORKING IN
HEERALAL PANNALAL COLLEGE,
OPPOSITE PRYAVI HOSPITAL, BIDAR-585401.

...RESPONDENT

(BY SRI PREETAM DEVLGAONKAR, ADVOCATE)

Digitally signed by SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA

THIS CRL.A. IS FILED U/S. 378 (4) OF CR.P.C PRAYING TO ALLOW THE APPEAL AND CONVICT THE ACCUSED / RESPONDENT FOR THE OFFENCE PUNISHABLE U/SEC. 138 OF N.I. ACT BY SETTING ASIDE THE JUDGMENT OF ACQUITTAL PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC-II BIDAR, IN C.C.NO.2803/2017 DATED 28.02.2023, AND TO AWARD COMPENSATION TO THE APPELLANT, DOUBLE THE CHEQUE AMOUNT.

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

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. This appeal under Section 378(4) of Cr.P.C., is filed by the complainant assailing the Judgment and Order of acquittal dated 28.02.2023 passed by the Court of Principal Civil Judge and JMFC Court II, Bidar, in C.C.No.2803/2017.

2. Heard the learned counsel for the parties.

3. The appellant herein had filed a private complaint against the respondent herein for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I.Act'), alleging that the respondent who had borrowed a sum of Rs.9,00,000/- as hand loan from the appellant for the purpose of purchasing a plot, had subsequently towards repayment had issued a cheque dated 07.07.2017 bearing No.223328, drawn on State Bank of India, B.V.Bhoomreddy college Road Branch, Bidar, and the said cheque on presentation for realization was dishonoured

by the drawee Bank with the shara 'funds insufficient'. After complying the statutory requirements as provided under the provisions of N.I.Act, the appellant had filed a private complaint before the Court of Jurisdictional Magistrate in which after taking cognizance, the learned Magistrate had issued summons to the accused who had entered appearance and claimed to be tried.

4. During the course of trial, the complainant examined himself as P.W.1 and got marked six documents as Ex.P.1 to Ex.P.6. In support of his defence, respondent examined himself as D.W.1 and his wife Vidyavati D/o. Muktappa was examined as D.W.2 and he got marked one document as Ex.D.1 in support of his defence. The trial Court after hearing both sides vide impugned Judgment and order, had acquitted the respondent for the offence punishable under Section 138 of N.I.Act. Being aggrieved by the same, the complainant is before this Court.

5. Learned counsel for the appellant reiterating the grounds urged in the memorandum of appeal has submitted that, the trial Court was not justified in acquitting the

respondent, since he has failed to rebut the presumption in accordance with law. He submits that, since the signature in the cheque and issuance of the cheque is not in dispute, there is a presumption under Section 139 of N.I.Act, against the respondent which was not rebutted in accordance with law. He also submits that, D.W.2 has admitted that, she had received all the documents after she completed the course and the transaction in question was totally independent and had nothing to do with the complaint that was filed before the consumer's Court.

6. Per contra, learned counsel for the respondent has opposed the prayer made in the appeal and submits that, the trial Court was fully justified in acquitting the respondent.

7. It is the specific case of the appellant that respondent had borrowed a sum of Rs.9,00,000/- as hand-loan for the purpose of purchase of a plot with the promise to repay the same within the end of June, 2017. Towards repayment of the amount borrowed, the cheque in

question dated 07.07.2017 was allegedly issued by the respondent for a sum of Rs.9,00,000/-. The material on record would go to show that wife of respondent was admitted in the institution managed by the appellant for pursuing her nursing course and it has come on record that a sum of Rs.1,10,000/- was paid for pursuing the nursing course during the academic year 2010-2011 by the respondent and his wife. It is the specific defence of the respondent that at the time of admission of his wife (DW.2), the appellant had received a signed blank cheque for security of balance fees, which was subsequently paid by him, but the cheque, which was received by the appellant was not returned.

8. Material on record would go to show that after DW.2 had completed her nursing course, the appellant had failed to return the original records and certificates to her and therefore, she had initiated proceedings before the District Consumer Forum, Bidar against the appellant in C.C.No.85/2016. Ex.D1 is the copy of the judgment

passed in C.C.No.85/2016, wherein, the appellant has been directed to pay a sum Rs.14,42,000/- as compensation to DW.2. According to the appellant, an amount of Rs.9,00,000/- was borrowed by the respondent in the year 2017 with an assurance of repaying the said amount on or before the end of June, 2017. It becomes highly doubtful that appellant would have given a hand-loan of Rs.9,00,000/- to the respondent, when his wife (DW.2) had already initiated proceedings before the jurisdictional consumer forum in the year 2016, wherein, a claim was made for payment of compensation since the appellant had failed to return the original documents and certificates to DW.2, in spite of she completing her nursing course in the academic year 2010-2011 itself. Except Ex.P1 – cheque, there is absolutely no material that was placed by the appellant to prove the alleged transaction between himself and the respondent. According to the appellant, he has paid a huge sum of Rs.9,00,000/- to the respondent, which is not at all proved by him by producing necessary material before the Trial Court. The respondent

has raised a probable defence before the Trial Court and by leading oral evidence and producing documentary evidence in support of his defence, he has probablised the same and therefore, the presumption that arose against him under Section 139 of the Negotiable Instruments Act stood successfully rebutted.

9. Under the circumstances, I am of the view that the Trial Court was fully justified in acquitting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act and I do not find any illegality or irregularity in the impugned judgment and order of acquittal. Hence, I am not inclined to entertain this appeal.

Accordingly, the appeal is dismissed.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

SVH,SRT
List No.: 1 Sl No.: 26
CT:PK