A K.S. RANGANATHA

v.

VITTAL SHETTY

(Criminal Appeal No. 1860 of 2011)

B DECEMBER 08, 2021

[N. V. RAMANA, CJI, A. S. BOPANNA AND HIMA KOHLI, JJ.]

Negotiable Instruments Act, 1881 – s.138 – Dishonour of cheque – Appellant acquitted by trial court – Acquittal reversed by C *High Court – On appeal, held: Respondent successfully discharged the initial burden cast on him – He established that the cheque signed by the appellant was issued in his favour towards discharge of a legally recoverable amount – Parties were known to each other – Appellant admitted about an earlier transaction where he had* D *borrowed the amount and repaid – This indicates that the parties had entered into financial transactions earlier as well and another transaction was probable between them – Respondent discharged the burden of proving that the transaction had actually taken place – To rebut the same, the defence put forth by the appellant that the documents and cheque in the present proceedings were obtained* E *by threatening him had already been considered in a separate proceeding and the respondent was acquitted therein – Acquittal of the appellant not justified – Impugned judgment not interfered with – Code of Criminal Procedure, 1973 – ss.2(d) r/w 200 – Penal Code, 1860 – ss.365, 342, 323, 506.*

F *Negotiable Instruments Act, 1881 – ss.118(a), 139 – Presumption under – Onus to rebut – Standard of proof – Discussed.*

Dismissing the appeal, the Court

HELD: 1.1 The legal aspect relating to the presumption G **arising in law when a cheque is issued, is to be noted at the threshold. The initial burden is placed on the complainant to discharge. When a cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards a consideration which is a legally recoverable amount; such presumption of course, is rebuttable by proving to the contrary.** H **The onus is on the accused to raise a probable defence and the**

standard of proof for rebutting the presumption is on preponderance of probabilities. [Paras 8, 11][658-B-C; 662-G-H]

K.Prakashan vs. P.K. Surendran **(2008) 1 SCC 258 : [2007] 10 SCR 1010;** *Triyambak S. Hegde vs. Sripad* in Criminal Appeal Nos. **849-850 of 2011 – relied on.**

Reverend Mother Marykutty vs. Reni C. Kottaram & Anr. **(2013) 1 SCC 327 : [2012] 9 SCR 530;** *Kalamani Tex & Anr. vs. P. Balasubramania*n **(2021) 5 SCC 283 : 2021 (2) JT 519 – referred to.**

1.2 It was the case of the respondent that the appellant had borrowed the sum of Rs.3,75,000/- on 12.06.2003 which was agreed to be repaid with interest in six months. Hence, cheque No.062589 dated 12.12.2003 for Rs.4,00,000/- drawn on Corporation Bank was issued. The respondent had relied on an 'on demand promissory note' and had stated that one Mr. 'HM' was also present. The said Mr. 'HM' who had also signed as witness to the 'on demand promissory note' was not examined as a witness due to which the trial Judge held the transaction as not proved and in that context it was held that the respondent has failed to prove the case beyond reasonable doubt. However, the respondent had tendered evidence relating to the cheque being issued and had discharged the initial burden. The entire consideration by the Trial Judge to arrive at his conclusion was predicated on the allegation levelled by the appellant that an incident had occurred on 20.01.2004 when the respondent is stated to have obtained the cheque and signatures on certain blank papers by using force. Much is made about the respondent having presented the cheque during February 2004 to assume that he would not have waited that long if the cheque was really dated 12.12.2003 and was issued earlier. Such an assumption would not be justified when, in fact, the cheque is dated 12.12.2003 and was presented within its period of validity. To assume the incident alleged by the appellant to have occurred on 20.01.2004 to be true, the cheque ought to have been dated on or after 20.01.2004. The date of presentation of the cheque is of no consequence provided it is presented within its validity period.

That the alleged offence had been committed by the respondent on 20.01.2004 itself, was considered in C.C. No.6318/2004. When a jurisdictional Court had gone into the very same allegation and had rendered its judgment on 06.12.2006, another court exercising co-ordinate jurisdiction could not have brushed it aside lightly. The sum and substance of the defence is that the documents and cheque had been obtained by the respondent on 20.01.2004 by threatening the appellant. In that regard, the circumstances thereto were referred and it has been categorically stated that the appellant had filed a complaint, pursuant to which a case was registered against the respondent for the offence punishable under Sections 365, 342, 323 and 506 of IPC. To arrive at the negative findings on the points raised, the Magistrate has assigned detailed reasons and has arrived at the conclusion that the evidence of the complainant in respect of the incident alleged to have taken place near the Taluk office, is not at all acceptable and therefore the prosecution has failed. Further, though an investigation was conducted in the said proceedings and the trial had proceeded, no material objects had been seized, which has been commented upon by the Magistrate. The same would indicate that the cheques and other documents relied upon in the present proceedings, were not found to be created by threatening the appellant, as alleged. The Court had therefore arrived at the conclusion that the prosecution had miserably failed to prove its case beyond all reasonable doubts against the accused for the alleged offences. The said finding and conclusion arrived at in the relevant proceedings would indicate that the incident alleged to have occurred on 20.01.2004, was not proved to have taken place. If that be the position, the defence sought to be put forth in the instant case and the witnesses examined in the instant proceedings are only by way of improvement in respect of the same cause of action. Therefore, the defence sought to be put forth relating to the cheque and other documents having been obtained by force, cannot be accepted as a probable defence when the respondent successfully discharged the initial burden cast on him of establishing that the cheque signed by the appellant was issued in his favour toward discharge of a legally recoverable amount. The fact that the appellant has admitted about an earlier transaction where according to him, he had borrowed the amount

and repaid the same in the year 1995, would indicate that the appellant and the respondent had entered into financial transactions earlier as well and another transaction was probable between the parties who were known to each other. The respondent had discharged the burden of proving that the transaction had actually taken place. To rebut the same, the very case put forth by the appellant cannot be accepted as probable defence since the said aspect had already been considered in a separate proceeding (C.C.No.6318/2004) and the respondent had been acquitted in the said proceedings. The conclusion reached by the Magistrate to acquit the appellant herein was not justified. The Single Judge of the High Court was therefore justified in his conclusion though detailed reasons have not been assigned. No reason to interfere with the judgment passed by the High Court impugned in this appeal. [Paras 12, 13, 15 - 18][663-A-G; 665-D-F; 666-E-H; 667-A-F]

Case Law Reference

[2007] 10 SCR 1010	**relied on**	**Para 8**
[2012] 9 SCR 530	**referred to**	**Para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1860 of 2011.

From the Judgment and Order dated 18.08.2010 of the High Court of Karnataka at Bangalore in Criminal Appeal No.485 of 2008.

S. N. Bhat, Ms. Parvati Bhat, Advs. for the Appellant.

Ranji Thomas, Sr. Adv., V. N. Raghupathy, K. K. L. Gautam, Rahul Mohod, Advs. for the Respondent.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

1. The appellant is before this Court assailing the judgment dated 18.08.2010 passed by the High Court of Karnataka in Criminal Appeal No. 485 of 2008. By the said judgment, the Learned Single Judge has allowed the appeal filed by the respondent herein and set aside the judgment of acquittal passed by the IIIrd Additional Civil Judge (Junior Division) and JMFC, Udupi in favour of the appellant herein in Criminal Case No. 3207 of 2004. Consequently, the appellant herein was convicted

A and sentenced to pay compensation of Rs.4,00,000/- (Rupees four lakhs) within four months. In default thereto, the appellant was sentenced to simple imprisonment for a period of six months. The appellant was further ordered to pay a fine of Rs.5,000/- to the State, in default, to undergo simple imprisonment for a period of 15 days. The appellant therefore is claiming to be aggrieved by the judgment impugned herein.

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2. The factual matrix, in brief, is that the appellant and the respondent are known to each other. Both of them hail from Udupi in Karnataka. The respondent filed a private complaint under Section 2(d) read with Section 200 of the Code of Criminal Procedure ('Cr.PC' for short) against the appellant seeking that he be punished for committing

C the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short). The complaint was filed on 17.03.2004 before the II Additional Civil Judge (Junior Division) and JMFC, Udupi in P.C. No. 213 of 2004 which was thereafter registered as CC No. 3207 of 2004. It was the case of the respondent that the appellant carried

D on the business of money lending and land brokerage for which he used to take loan from the respondent as and when required. In one such transaction, as per the case put forth by the respondent is that the appellant borrowed a sum of Rs. 3,75,000/- (Rupees three lakh seventy-five thousand) from the respondent on 12.06.2003 and executed an 'on demand promissory note' and a receipt in acknowledgment. The appellant

E also issued a post-dated cheque bearing No. 062589 for Rs. 4,00,000/- (Rupees four lakhs) dated 12.12.2003, which included interest for six months. The said cheque was drawn on Corporation Bank, Ambalpady Branch, Udupi.

3. As per the case of the respondent, when the cheque was

F presented for realisation on 17.02.2004, the same was dishonoured by the bank for "insufficient funds" in the account of the appellant. Having got issued a legal notice dated 18.02.2004 and on the demand for payment of Rs.4,00,000/- (Rupees four lakhs) not being complied, the respondent filed the complaint in the jurisdictional court, the details of which is

G referred to supra. The appellant however came out with the defence that though he had borrowed an amount of Rs.80,000/- from the respondent in the year 1995, the same was repaid with interest, amounting to Rs.3,20,000/- (Rupees three lakh twenty thousand) through various cheques and there was no further amount due and payable. The appellant therefore denied that he had taken any loan on 12.06.2003, as alleged. It

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was the further case of the appellant that the respondent had assaulted and threatened him on 20.01.2004 and by force had obtained his signatures on blank papers as also on some cheque leaves which were being misused. The appellant had in that regard lodged a complaint on 02.02.2004, the trial of which was held in the Court of Additional Civil Judge (Junior Division) and JMFC, Udupi in CC No. 6318/2004. However, admittedly the respondent herein was acquitted in the said proceedings, through the judgment dated 06.12.2006 which has attained finality.

4. In order to contend that the complaint filed by the respondent alleging dishonour of cheque was motivated, the appellant alleged that as he had incurred debts, he decided to sell one of the properties belonging to him, which was purchased in the year 1994, so as to clear the said debts. The respondent evinced interest to purchase the same for Rs.3,00,000/- (Rupees three lakh) but the appellant declined to sell it to the respondent as according to him, the said property was worth more than Rs.7,00,000/- (Rupees seven lakh). The appellant alleged that the respondent had therefore filed the instant complaint, based on false allegations.

5. On the rival contentions, the learned trial Judge raised the point for consideration, as to whether the respondent herein had proved that the cheque dated 12.12.2003 for Rs. 4,00,000/ (Rupees four lakh) was issued by the appellant to discharge the legal debt or liability and thereby committed the offence punishable under Section 138 N.I Act. The learned trial Judge having accepted the version put forth by the appellant passed an order of acquittal. The learned Judge of the High Court, has on the other hand, accepted the case of the respondent herein and taking into account the presumption that had arisen on the cheque being issued and such presumption not being rebutted for the reasons indicated by it, has allowed the appeal and convicted the appellant which has resulted in this appeal.

6. We have heard Mr. S.N. Bhat, learned counsel for the appellant, Mr. Ranji Thomas, learned senior counsel with Mr. V.N. Raghupathy, learned counsel for the respondent and perused the appeal papers.

7. From the rival contentions urged before us and the facts which emerge from the records, it is clear that cheque bearing No.062589 dated 12.12.2003 drawn on Corporation Bank, Ambalpady Branch, Udupi for the sum of Rs. 4,00,000/- (Rupees four lakh), which is the subject

matter of the complaint in CC No.3207 of 2004, has been brought on record. However, in the light of the defence that was raised, the point which arises for consideration is as to whether the said cheque was in fact issued by the appellant on 12.06.2003 by post-dating it to 12.12.2003 and making it payable on or after that date, towards discharge of a legal debt.

8. The legal aspect relating to the presumption arising in law when a cheque is issued, is to be noted at the threshold. No doubt, as noted by the trial court with reference to the decision of this Court in ***K. Prakashan vs. P.K. Surendran*** (2008) 1 SCC 258, the initial burden is placed on the complainant to discharge. Learned counsel for the appellant has further relied on the decision of this Court in ***Reverend Mother Marykutty vs. Reni C. Kottaram & Anr.*** (2013) 1 SCC 327 with reference to para 13, which reads as hereunder;

> **"13.** That apart, having considered the conclusions of the learned trial Judge, we find that those conclusions were drawn by adducing cogent and convincing reasoning and we do not find any fault in the said conclusions drawn by the learned trial Judge. In the circumstance, the principles set out in the decision relied upon by the learned counsel for the appellant in *M.S. Narayana Menon* as regards the presumption to be drawn and the preponderance of probabilities to be inferred, as set out in paras 31 to 33, are fully satisfied. Those principles, set out in paras 31 to 33, can be usefully referred to which are as under:
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> "*31.* A Division Bench of this Court in *Bharat Barrel & Drum Mfg. Co.* v. *Amin Chand Payrelal* albeit in a civil case laid down the law in the following terms:
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> (SCC PP.50-51 para 12)
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> '*12.* Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(*a*) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would

shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(*a*) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt.'

This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.

33. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be evidence even for the purpose of drawing presumption under another."

Applying the abovesaid principles to the case on hand, we find that the judgment of the trial court in having drawn the conclusions to the effect that the appellant sufficiently rebutted the initial presumption as regards the issuance of the cheque under Sections 138 and 139 of the Act, was perfectly justified. We also find that the preponderance of probabilities also fully supports the stand of the appellant as held by the learned trial Judge. The judgment of the High Court in having interfered with the order of acquittal passed by the learned trial Judge without proper reasoning is, therefore, liable to be set aside and is accordingly set aside.

A Consequently, the conviction and sentence imposed in the impugned judgment [Criminal Appeal No. 1707 of 2007, order dated 17-3-2010 (Ker)] is also set aside."

9. The learned senior counsel for the respondent on the other hand, relied on the decision of this Court in ***Kalamani Tex & Anr. vs. P. Balasubramanian*** (2021) 5 SCC 283 which is as hereunder: -

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"16. The appellants have banked upon the evidence of DW 1 to dispute the existence of any recoverable debt. However, his deposition merely highlights that the respondent had an over-extended credit facility with the bank and his failure to update his account led to debt recovery proceedings. Such evidence does not disprove the appellants' liability and has a little bearing on the merits of the respondent's complaint. Similarly, the appellants' mere bald denial regarding genuineness of the deed of undertaking dated 7-11-2000, despite admitting the signatures of Appellant 2 thereupon, does not cast any doubt on the genuineness of the said document.

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17. 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 [Bir Singh v. Mukesh Kumar, where this Court held that: (SCC p. 209, para 36)

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"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."

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18. Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of "preponderance of probability". In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of NIA.

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19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the

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object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the courts should uniformly levy fine up to twice the cheque amount along with simple interest @ 9% p.a.

10. It would also be apposite to take note of a decision in ***Triyambak S. Hegde vs. Sripad*** in Criminal Appeal Nos.849-850 of 2011 dated 23.09.2021 wherein it was observed as hereunder:

"12. Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the consideration would arise as provided under Section 118(a) of N.I. Act which reads as hereunder: -

"118. Presumptions as to negotiable instruments – Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration – that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.**"**

13. The above noted provisions are explicit to the effect that such presumption would remain, until the contrary is proved. The learned counsel for the appellant in that regard has relied on the decision of this court in ***K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr.***(1999) 7 SCC 510 wherein it is held as hereunder:-

"9. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The Trial Court was not persuaded to rely on the

A interested testimony of DW-1 to rebut the presumption. The said finding was upheld by the High Court. It is not now open to the accused to contend differently on that aspect."

14. The learned counsel for the respondent has however referred to the decision of this Court in ***Basalingappa vs. Mudibasappa*** (2019) 5 SCC 418 wherein it is held as hereunder: -

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"25.We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:

C 25.1. 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.

25.2. 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 D is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities E 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.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an F evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence."

11. The position of law as noted above makes it crystal clear that G when a cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards a consideration which is a legally recoverable amount; such presumption of course, is rebuttable by proving to the contrary. The onus is on the accused to raise a probable

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defence and the standard of proof for rebutting the presumption is on preponderance of probabilities.

12. In the backdrop of the legal position being enunciated, the facts herein are to be noted. It was the case of the respondent herein that the appellant had borrowed the sum of Rs.3,75,000/- (Rupees three lakh seventy-five thousand) on 12.06.2003 which was agreed to be repaid with interest in six months. Hence, cheque No.062589 dated 12.12.2003 for Rs.4,00,000/- (Rupees four lakh) drawn on Corporation Bank was issued. It is true that the respondent had relied on an 'on demand promissory note' and had stated that one Mr. Harish Moolya was also present. The said Mr. Harish Moolya who had also signed as witness to the 'on demand promissory note' was not examined as a witness due to which the learned trial Judge held the transaction as not proved and in that context it was held that the respondent has failed to prove the case beyond reasonable doubt. However, it is to be noted that the respondent had tendered evidence relating to the cheque being issued and had discharged the initial burden.

13. The entire consideration by the learned Trial Judge to arrive at his conclusion was predicated on the allegation levelled by the appellant that an incident had occurred on 20.01.2004 when the respondent is stated to have obtained the cheque and signatures on certain blank papers by using force. Much is made about the respondent having presented the cheque during February 2004 to assume that he would not have waited that long if the cheque was really dated 12.12.2003 and was issued earlier. Such an assumption would not be justified when, in fact, the cheque is dated 12.12.2003 and was presented within its period of validity. To assume the incident alleged by the appellant to have occurred on 20.01.2004 to be true, the cheque ought to have been dated on or after 20.01.2004. The date of presentation of the cheque is of no consequence provided it is presented within its validity period. That the alleged offence had been committed by the respondent on 20.01.2004 itself, was considered in C.C. No.6318/2004. When a jurisdictional Court had gone into the very same allegation and had rendered its judgment on 06.12.2006, another court exercising co-ordinate jurisdiction could not have brushed it aside lightly.

14. The learned Judge of the High Court also referred to the earlier proceedings only as a passing reference. In the instant case, what needs to be noted is the defence that had been put forth before the

learned Magistrate to defeat the case of the respondent herein, so as to consider whether such contention of the appellant can still be considered as a probable defence. The defence put forth by the appellant in the instant case i.e., Section 138 NI Act proceedings in C.C. No.3207 of 2004 as referred to by the learned Magistrate in the course of the judgment, reads as hereunder: -

> "It is further alleged that during the year 2003, in order to clear off the dues to some others, the accused has decided to sell the above referred property and the accused expressed his desire to sell his property before the complainant. At that time, the complainant proposed to purchase the said property from the accused for Rs.3,00,000/, but the accused has refused to sell the said property to the complainant for the above said amount of Rs.3,00,000/- since, the property is worth Rs. 7 lakh. In view of the proposal made by the complainant for small amount, the accused is declined to sell his property to him. Thereafter, the accused himself began to search the customers for purchasing the said property at that time the complainant mislead the proposed purchasers who are ready to purchase the said property representing that the said property was pledged by the accused for the purpose of loan which was obtained by the accused from the finance of the complainant and accordingly, the purchasers who are come forward to purchase the same refused to purchase the said property thereby, the accused transferred some of the portion of the said property to his creditors and some of the portion was transferred in the name of his wife. When facts stood thus, on 20.1.04, when the accused went to taluk office at Udupi with his bike, the complainant chased the accused in his Maruthi Omni Van and thereafter, kidnapped the accused and took him to his office which was situated at Sri. Rama Building at Udupi, wherein the complainant wrongfully restrained the accused and assaulted him with hands and also with iron rods and forcibly obtained various signatures on some blank papers and also on some cheque leaves only with an intention to knock off the property of the accused. It is further alleged that at that time the complainant warned the accused to get some papers from the wife of the accused since the property was stands in the name of the wife of the accused. At that time the complainant further threatened that he will finish the life of the accused as well as wife and children of the accused,

if the said alleged act is intimated by the accused to the police. Thereafter the said incident, the complainant appointed the paid goondas to watch the activities of the accused and the said goonda people also always watched the activities of the accused nearby the compound of the accused, thereby, there was delay in lodging the complaint and accordingly, the accused herein lodged the complaint against the complainant on 2.2.04 nearly after lapse of 12 days from the date of incident. It is further alleged that the complainant is having criminal mind and he has got every criminal background and also faced various criminal charges like offences punishable u/s. 302 and 326 of IPC and also engaged in Criminal activities amongst those, this incident is also one of the charge faced by the accused. It is further alleged that the accused never issued the cheque in question voluntary and the same was obtained by the complainant by force and accordingly, the case was registered against the complainant for the offences punishable u/s. 365, 342, 323 and 506 of IPC and accordingly, the cheque in question and some other documents also misused by the complainant against the accused. In the light of the above said defence, the accused humbly prayed for acquittal."

15. A close perusal of the above indicates that the sum and substance of the defence is that the documents and cheque had been obtained by the respondent on 20.01.2004 by threatening the appellant. In that regard, the circumstances thereto were referred and it has been categorically stated that the appellant had filed a complaint, pursuant to which a case was registered against the respondent for the offence punishable under Sections 365, 342, 323 and 506 of IPC. This makes it relevant for us to take note of the aspect that was considered in the above noted criminal complaint filed by the appellant. The said case was registered as C.C. No.6318 of 2004. In that case, the learned Magistrate, on taking note of the allegation made by the appellant, had raised the points for consideration and the findings were summarised. They are as follows: -

"5. Heard both sides and perused the record. Now, the points that arise for the due consideration of this Court are as follows: -

(1) Whether the prosecution proves beyond all reasonable doubts that on 20.1.2004 at about 11 p.m. within the jurisdiction of Udupi Town PS at Shivalli Village in Sriram Building at Room

A No. 11 i.e. inside Svitha Finance, having old hatred, the accused locked up CW1 K.S. Rangnathan inside the said finance, thereby wrongfully confined CW1 committed the offence punishable U/s. 342 of IPC?

(2) Whether the prosecution further proves beyond all
B reasonable doubts that on the same date, place and time, the accused in continuation voluntarily assaulted with his hands on the face, neck and other parts of the body of CWl and thereby committed the offence punishable U/s. 323 of IPC?

(3) Whether the prosecution further proves beyond all
C reasonable doubts that on the same date, place and time, the accused in continuation threatened the life of CWl, his wife and children if CWl will not return the loan amount within the prescribed time and thereby committed the offence punishable U/s. Part II of 506 of IPC.

D (4) What order?

6. Now the findings of this Court on the above said points that arisen for due consideration are answered as follows:-

Point No. 1 : In the Negative

E Point No. 2: In the Negative

Point No. 3: In the Negative

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

16. To arrive at the negative findings on the points raised, the
F learned Magistrate has assigned detailed reasons and has arrived at the conclusion that the evidence of the complainant in respect of the incident alleged to have taken place near the Taluk office, is not at all acceptable and therefore the prosecution has failed. Further, though an investigation was conducted in the said proceedings and the trial had proceeded, no material objects had been seized, which has been commented upon by
G the learned Magistrate. The same would indicate that the cheques and other documents relied upon in the present proceedings, were not found to be created by threatening the appellant, as alleged. The Court had therefore arrived at the conclusion that the prosecution had miserably failed to prove its case beyond all reasonable doubts against the accused
H for the alleged offences. The said finding and conclusion arrived at in

the relevant proceedings would indicate that the incident alleged to have occurred on 20.01.2004, was not proved to have taken place. A

17. If that be the position, the defence sought to be put forth in the instant case and the witnesses examined in the instant proceedings are only by way of improvement in respect of the same cause of action. Therefore, the defence sought to be put forth relating to the cheque and other documents having been obtained by force, cannot be accepted as a probable defence when the respondent successfully discharged the initial burden cast on him of establishing that the cheque signed by the appellant was issued in his favour toward discharge of a legally recoverable amount. The fact that the appellant has admitted about an earlier transaction where according to him, he had borrowed the amount and repaid the same in the year 1995, would indicate that the appellant and the respondent had entered into financial transactions earlier as well and another transaction was probable between the parties who were known to each other. In the light of the other circumstances established by the respondent, it would indicate that the respondent had discharged the burden of proving that the transaction had actually taken place. To rebut the same, the very case put forth by the appellant cannot be accepted as probable defence since the said aspect had already been considered in a separate proceeding (C.C.No.6318/2004) and the respondent had been acquitted in the said proceedings. B C D E

18. Hence, the conclusion reached by the learned Magistrate in C.C. No.3207/2004 to acquit the appellant herein, was not justified. The learned Single Judge of the High Court was therefore justified in his conclusion though detailed reasons have not been assigned. In that view, we see no reason to interfere with the judgment dated 18.08.2010, passed by the High Court in Criminal Appeal No.485/2008, impugned in this appeal. F

19. Accordingly, the appeal being devoid of merit stands dismissed. The parties shall bear their own costs.

20. Pending applications, if any, shall stand disposed of.

Divya Pandey Appeal dismissed.