

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE RAJENDRA BADAMIKAR

CRIMINAL APPEAL NO.2158/2018

BETWEEN:

SRI. JITHENDRA KUMAR N.M,
S/O. NAMTHI MADHAVARAO,
AGED ABOUT 45 YEARS,
RESIDING AT SY.NO.12/1,58/59,
VASISTA RESIDENCY, NO.5,
3RD FLOOR, 1ST CROSS,
UTTARAHALLI MAIN ROAD,
BENGALURU-560 061.

...APPELLANT

(BY SRI. KUMAR .S.J AND SRI. S. RAJASHEKAR, ADVOCATES)

AND

SRI. T. GURURAJ,
S/O. TANDONI RAO,
AGED ABOUT 42 YEARS,
RESIDING AT NO.337,
10TH MAIN ROAD,
SRINIVASANAGAR,
BENGALURU-560 050.

AND ALSO WORKING AT:-

YOKAGAWA INDIA PVT. LTD.,
NO.96, ELECTRONIC CITY COMPLEX,
HOSUR ROAD,
BENGALURU-560 100

...RESPONDENT

(BY SRI. S. VISWESWARAIAH, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4)
OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED
30.08.2018 PASSED BY THE XVI A.C.M.M., BENGALURU IN

C.C.NO.21873/2016, ACQUITTING THE RESPONDENT/ACCUSED OF THE OFFENCE P/U/S 138 OF N.I. ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.04.2024, COMING ON FOR '*PRONOUNCEMENT OF JUDGMENT*' THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the complainant under Section 378(4) of Cr.P.C. challenging the judgment of acquittal dated 30.08.2018 passed by the XVI Additional Chief Metropolitan Magistrate, Bengaluru ('trial Court' for short) in CC No.21873/2016, whereby the learned Magistrate has acquitted the accused/respondent herein of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, N.I. Act').

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to this case are that, complainant-Sri.Jithendra Kumar N.M. and accused-Sri. T. Gururaj are relatives and well-acquainted to each other. It is alleged that in view their long standing

relationship and well-acquaintance, the accused approached the complainant seeking hand loan of Rs.5.00 Lakhs in October 2013 for family necessity and to purchase a site promising to repay the same within 4 to 6 months. Therefore, it is alleged that the complainant has advanced loan of Rs.5.00 Lakhs in cash. But, accused failed to repay the said loan within the time as assured. It is alleged that, when the complainant has persistently demanded for repayment of the loan amount, on 01.11.2014 the accused has issued a cheque for Rs.5.00 Lakhs dated 15.11.2014 bearing No.213940 drawn on State Bank of Mysuru, Electronic City Branch, Bengaluru, for Rs.5.00 Lakhs. When the said cheque was presented to the Bank, it was bounced for Insufficient Funds. Hence, the complainant has lodged a complaint against the accused for the offence under Section 138 of the N.I Act, before the trial Court.

4. The learned Magistrate after recording sworn statement has taken cognizance of the offence and issued process against the accused. The accused appeared

through his counsel and was enlarged on bail. The plea recorded under Section 138 of the N.I. Act was denied by the accused.

5. The complainant was examined as PW.1 and he placed reliance on 08 documents marked at Exs. C1 to C8. During cross-examination of PW.1/complainant, Exs. D1 and D2 were got marked by way of confrontation. Then the statement of accused under Section 313 of Cr.P.C. was recorded and the accused denied the incriminating evidence appearing against him. The learned Magistrate after hearing the arguments and after appreciating the oral and documentary evidence has acquitted the accused of the offence punishable under Section 138 of the N.I. Act. Being aggrieved by this judgment of acquittal, the complainant is before this Court by way of this appeal.

6. Heard the arguments advanced by the learned counsels appearing for the appellant/complainant and the respondent/ accused. Perused the records.

7. Learned counsel for the appellant/complainant would contend that, in the reply notice itself, the accused

has admitted the receipt of Rs.5.00 lakhs as hand loan and cheque as well as signature have been admitted and as such the presumption is in favour of the complainant under Section 139 of the N.I. Act. Hence, the learned counsel would contend that the said presumption is not rebutted and the learned Magistrate on irrelevant considerations has acquitted the accused and hence, he would seek for allowing the appeal by convicting the accused for the offence under Section 138 of the N.I. Act.

8. Per contra, the learned counsel for the respondent/accused would submit that, though the said transaction regarding availment of loan was admitted, the same was already repaid and the blank cheques were obtained at the time of advancement of loan, which is evident from the admissions given by the complainant and hence, the presumption in favour of the complainant stands rebutted. As such, the learned counsel would contend that the learned Magistrate has appreciated all these aspects in proper perspective and rightly acquitted the accused of the offence punishable under Section 138

of the N.I. Act, and as such the said impugned judgment does not suffer from any perversity or illegality and it does not call for any interference by this Court. Hence, he would seek for dismissal of the appeal.

9. Having heard the arguments and on perusing the records, now the following point would arise for my consideration:-

“Whether the impugned judgment of acquittal passed by the learned Magistrate is arbitrary, erroneous and perverse so as to call for any interference by this Court?”

10. It is the specific case of the complainant that the accused has availed loan of Rs.5.00 Lakhs in the month of October 2013 for his family necessity and towards discharge of the said legally enforceable debt, the said cheque under Ex.C1 came to be issued. Ex.C1/Cheque belongs to the accused and it bears his signature are undisputed facts. Since the cheque and signature have been admitted, the initial presumption under Section 139 of the N.I. Act that *the cheque was issued towards legally enforceable debt* is in favour of the

complainant. Apart from that, under Section 118 of the N.I. Act also, the presumption regarding the transaction is being undertaken for a consideration and hence, it is for the accused to rebut the said presumption.

11. The complainant is examined as PW.1 and he has reiterated the complaint allegations. No doubt, the complainant was cross-examined at length, wherein his financial status was challenged and the assertion regarding issuance of cheque, obtaining cheque etc., as security were elicited, but these aspects become irrelevant in view of reply notice given on behalf of the accused by his counsel. The reply notice issued by the counsel for accused is marked at Ex.C8 and in Para No.2 of the reply notice, there is a specific admission that the accused is a relative of complainant and accused has borrowed hand loan of Rs.5.00 Lakhs in the month of October, 2013 for his family necessity and it is asserted that at that time, 05 blank cheques and 04 Promissory Notes were collected by the complainant.

12. Much arguments were advanced regarding Exs.D1 & D2 and cross-examination was on Exs.D1 & D2. But, when in the reply notice itself the accused has admitted about he borrowing of Rs.5.00 Lakhs in the month of October, 2013 and issuance of Blank Cheques, the burden is on the accused to prove that he has already repaid the borrowed loan amount, as now he is asserting that the issuance of cheque was not towards the legally enforceable debt. But, the accused has not entered into the witness box and his statement recorded under Section 313 of Cr.P.C. is also silent in this regard. When the accused in his reply notice admitted the transaction of availment of loan and when he admits that the cheque belongs to him and it bears his signature, now the question of accused disputing the transaction does not arise at all. The non-production of Promissory Notes or Pro-notes etc., have no relevancy in this regard. Much cross-examination was made regarding submission of IT Returns and non-disclosure of the statement of account etc. But, as observed above, when in the reply notice itself this fact is admitted by the accused, question of

complainant proving this fact once again does not arise at all, and it is for the accused to rebut the presumption, but he has not taken any pain to substantiate his claim regarding repayment.

13. The learned Magistrate is carried away with the cross-examination pertaining to other criminal cases lodged against the wife of the accused. But, the learned Magistrate has completely ignored the admission of the transaction in the reply notice itself. When in the reply notice the transaction itself is admitted, calling upon the complainant to prove the transaction again does not arise at all. The entire approach of the learned Magistrate in this regard is arbitrary and erroneous and as such, the impugned judgment of acquittal calls for interference by this Court.

14. Further, records disclose that the cheque was issued in the month of October, 2013. Admittedly, the complainant is not a money lender. Further, his conduct is also not befitting to the relationship between the parties since he has also misused the other cheques and filed

complaint against the wife of the accused for Rs.10.00 Lakhs as admitted in the cross-examination. Hence, since the accused has committed an offence under Section 138 of the N.I. Act, he is required to be punished in this regard. But, as regards the sentence portion is concerned, the conduct of the complainant also needs to be considered.

15. The offence under Section 138 of the N.I. Act is punishable with fine which may extend to double the cheque amount or with imprisonment for two years or both. In the instant case, the cheque amount is Rs.5.00 Lakhs. But, as observed above, the conduct of the complainant in prosecuting the wife of the accused in respect of cheque for Rs.10.00 Lakhs is also questionable. Under these circumstances, in my considered opinion, it is just and proper to impose fine of Rs.6.00 Lakhs to the accused, which would serve the purpose. The impugned judgment of acquittal is perverse and arbitrary and hence, it calls for interference by this Court. Accordingly, the

point under consideration is answered in the affirmative and accordingly, I proceed to pass the following:-

ORDER

- i) The appeal stands **allowed**.
- ii) The impugned judgment of acquittal dated 30.08.2018 passed by the XVI Additional Chief Metropolitan Magistrate, Bengaluru, in CC No.21873/2016, is hereby set aside.
- iii) The accused is convicted for the offence punishable under Section 138 of the N.I. Act and he is sentenced to pay fine of Rs.6.00 Lakhs (Rupees Six Lakhs only), in default, he shall undergo S.I for a period of six months.
- iv) Out of fine amount of Rs.6.00 Lakhs, Rs.5,50,000/- shall be paid to the complainant by way of compensation and Rs.50,000/- shall be credited to the State towards expenses incurred by the State.

**Sd/-
JUDGE**

KGR*