



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 9TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CRIMINAL APPEAL NO.567 OF 2019

BETWEEN:

1. SRI. B.R.ANAND
S/O B.RAMACHANDRAPPA
R/AT 2007, 23RD CROSS
8TH MAIN, KARESANDRA VILLAGE
BSK 2ND STAGE,
BENGALURU-560 070.

...APPELLANT

(BY SRI. LOHITH M., ADVOCATE)

AND:

1. SMT. V.R. GISHA
D/O RAJANNA
AGED ABOUT 42 YEARS
R/AT NO.1, MUKODLU VILLAGE
THATAGUPPE POST
SOMANAHALLI MAIN ROAD
BENGALURU-560 082.

...RESPONDENT

(BY SRI. CHANDRASHEKAR P. PATIL, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 08.02.2019 PASSED BY THE IV ADDITIONAL AND XXX ADDL.C.M.M., BENGALURU IN C.C.NO.386/2018 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT.





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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

1. Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. This appeal is filed against the order of acquittal passed by the Trial Court in C.C.No.386/2018 dated 08.02.2019 for the offence punishable under Section 138 of Negotiable Instruments Act.

3. The factual matrix of case of the complainant before the Trial Court that the appellant and respondent are working together in BESCOM at K.R circle, Bengaluru from several years and they are known to each other. The appellant retired from the service in the year 2014 and he has received the substantiating retirement service benefits from the BESCOM authority. The respondent being co-employee wants to perform her sister's marriage and requested hand loan of Rs.11,70,000/- and she want to



discharge her liability towards constructions of house in which she is residing now. Accordingly, the appellant has conceded her request paid the above said amount in the month of June 2014 and she has agreed and promised to repay the amount within two years and after two years the appellant has requested her to repay the said amount and for discharge of her liabilities she has issued a subject matter of Cheque bearing No.511101 dated 02.08.2017 drawn on Canara Bank by assuring that on presentation of the Cheque, the Cheque would be honored. When the same was presented, the same was returned with an endorsement 'Funds insufficient' and immediately made the demand and the accused did not come forward to pay the same. The notice was served on the respondent/accused but no reply was given. Hence, compliant was filed and cognizance was taken and accused was secured before the Trial Court and did not plead guilty and hence, the complainant examined himself as P.W.1 and got marked the document Ex.P.1 to Ex.P.7. The accused did not lead any defense evidence, however, the



accused was subjected to 313 statement. The Trial Court having considered the material on record, both oral and documentary evidence, comes to the conclusion that notice was not issued within period of 30 days and notice was given on 31st day and also considering the admission given by the P.W.1 that notice was not sent within time and also regarding the alteration in the Cheque which was admitted by the complainant doubted the case of the complainant and comes to the conclusion that the complainant has not proved the case and acquitted the accused.

4. Being aggrieved by the judgment of acquittal, the present appeal is filed before this Court. The main contention of the counsel appearing for the appellant that issuance of cheque is not disputed and only defense was taken that an amount of Rs.11,70,000/- was borrowed and the same was corrected as Rs.11,70,000/-. The counsel would contend that the Cheque was not returned on the ground that there was a correction in the Cheque and also contend that if no such amount was borrowed by



the accused, he would have given the reply when the notice was served on the accused. The Trial Court committed an error in coming to the conclusion that notice was issued after the limitation period and fails to take note of the date and also Trial Court comes to the erroneous conclusion that there was an alteration and fails to take note of the signature made by the accused when the correction was made in the Cheque and it is not the case of the accused that signature was not belongs to the accused. The Trial Court ought not to have doubted the said Cheque when the correction was made and the accused herself signed the Cheque with regard to the correction is concerned, the very reasoning given by the Trial Court is erroneous.

5. The counsel in support of the argument relied upon the judgment reported in **(2014) 11 SCC 769** in case of ***Econ Antri Limited V/s Rom Industries Limited and another*** wherein the Apex Court held that recurring of period of limitation is to be calculated by excluding the date on which the cause of action was arose.



6. The counsel also relied upon the judgment reported in **(2001) 6 SCC 582** in case of ***Munoth Investments Ltd., V/s Puttukola Properties Ltd and another*** and referring this judgment, the counsel would contend that the Apex Court held that commences from the receipt of information regarding return of the cheque as unpaid, notice issued to drawer though beyond the limitation from the date of dishonour was within the limitation from the date of receipt of information thereof and comes to the conclusion that held that the High Court erred in quashing the compliant as belated without considering the said evidence.

7. The counsel also relied upon the judgment of **(1999) 3 SCC 1** in case of ***Saketh India Ltd and others V/s India Securities Ltd.,*** wherein also discussion was made with regard to limitation period ought to have been computed, the date from which the limitation period is to computed, held, has to be excluded, where the notice of returning of the Cheque as unpaid was served on the drawer on 29.09.1995, the fifteen days' period of making



of payment by the drawer under proviso S.138(c) held, expired on 14.10.1995 and cause of action to file a compliant against him arose on 15.10.1995 in computing the one month limitation period under Section 142(b) for filing complaint against the drawer, the date 15.10.1995, held excludable.

8. Per Contra, the counsel appearing for the respondent would vehemently contend that not specified the date of transaction in the complaint. The Counsel also would vehemently contend that the very reasoning given by the Trial Court with regard to the limitation as well as not proved the case of the complainant is based on the material available on record. The counsel also brought to notice of this Court that the admission elicited from the mouth of P.W.1 during the course of cross-examination regarding limitation as well as correction is very fatal to the case of complainant and the same has been considered by the Trial Court while dismissing the compliant and an unequivocal admission was given with regard to notice was not sent within time and also an



admission was given that in Ex.P1 there was a correction and the same was invalid Cheque and even though not led any defense evidence and the very admission given by the complainant itself is enough to comes to a conclusion that there was an alteration and when the material alteration is there, the Trial Court rightly comes to the conclusion that the complainant has not proved his case.

9. The counsel also would vehemently contend that there was no any financial capacity to make the payment of Rs.11,70,000/- and the same was also taken note of by the Trial Court with regard to the capacity is concerned and hence not committed any error.

10. The counsel in support of his argument, he relied upon the judgment reported in **(2002) Crl. L.J 4176** in case of **Devendra Kumar Surana V/s Lalit Porwal** the counsel referring this judgment would contend that Madhya Pradesh High Court held that notice of demand within fifteen days after receipt of information about dishonour of Cheque, petitioner's plea that he could not serve notice on 15th day being public holiday, evidence



showed that post office was functioning on that day for urgent and essential work, notice could have been sent by courier or by fax or through personal service, notice sent beyond period of limitation of fifteen days, complaint liable to quashed.

11. The counsel also relied upon the judgment reported in **(2007) 4 SCC 415** in case of **Chandrappa and others V/s State of Karnataka** and referring this judgment the counsel brought to notice of this Court that the Trial Court gave benefit of doubt to accused finding that prosecution had not examined material witnesses, testimony of the witness was unreliable and inconsistent, prosecution story was unnatural, knife produced before Court as Mudammal article was not the same which was used by accused in inflicting injuries.

12. The counsel also relied upon the judgment of the Apex Court reported in **(2015) 1 SCC 99** in case of **K.Subramani V/s K.Damodara Naidu** the counsel referring this judgment also would contend that legally recoverable debt not proved as complainant could not



prove source of income from which alleged loan was made to appellant-accused, presumption in favour of holder of Cheque, hence, held, stood rebutted, acquittal restored.

13. The counsel also relied upon the judgment reported in **2018 (3) KCCR 2764** in case of **A.P.Amit Kumar V/s A.P.Manjunath** the counsel referring this judgment also would contend that brought to notice of this Court discussion made in paragraph No.18 with regard to the evaluation of material available on record, Section 87 of N.I Act which has been extracted that is effect of material alteration, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

14. The counsel also relied upon the judgment reported in **AIR 2011 (NOC) 422 (CHH)** in case of **B.Girish V/s S.Ramaiah** wherein held that accused specifically denied the monetary transaction and that Cheque was not issued for discharge of any debt or



liability, no documentary evidence led by complainant to show alleged transaction, though complainant alleged that he lent money to accused after borrowing from other sources, there was no documentary evident to show alleged borrowings nor any agreement for payment of interest between the complainant and accused.

15. The counsel also relied upon the judgment reported in **(2008) 1 SCC 258 in case of K.Prakashan V/s P.K.Surenderan** the counsel referring this judgment brought to notice of this Court discussion made in paragraph No. 16 wherein discussion was made with regard to burden of proof on the accused in terms of Section 139 of the Act has been discussed in detail. In paragraph No.17 also discussed the judgment of M.S.Narayana Menon wherein extracted paragraph No.38 with regard to the defendant may not adduce any evidence to discharge the initial burden placed on him, even an accused need not enter into the witness box and examine other witnesses in support of his defense and also brought to the notice of this Court paragraph No.18 as



well as paragraph No.19 and so also paragraph No.21 with regard to the fact that when two views are possible, the appellate Court shall not reverse a judgment of acquittal only because another previous cognizance to be taken and the counsel would vehemently contend that by referring this judgment the scope of appeal is very limited, if two views are possible, then benefit of doubt will extend in favour of the accused.

16. Having heard the appellant's counsel and also the counsel appearing for the respondent and also considering the material on record and also in keeping the contentions of respective counsel and also the principles laid down in the judgments of the Apex Court, relied upon by the appellant's counsel and also the counsel appearing for the respondent, the point that would arise for consideration of this Court are:

- 1) Whether the Trial Court committed an error in acquitting the accused for the offence punishable under Section 138 of N.I Act and whether this Court can exercise the appellate jurisdiction in coming to the



conclusion that finding of Trial Court is perverse and also not on material on record?

2) What Order?

17. Having heard the appellant's counsel and also the counsel appearing for the respondent and also the judgment of the Trial Court, the Trial Court while dismissing the complaint, comes to the conclusion that notice was not issued within 30 days and it was issued on 31st day and the same was discussed in paragraph No.14 and also extracted the answer elicited from the mouth of P.W.1 and even if any answer is given by the complainant that admitting that notice was given after period of limitation, the Court has to take note of the statute and Section 138(a) and 138(b) of N.I Act also to be looked into and the Section 138(b) is very clear that the payee or the holder in due course of the Cheque, as the case may be makes a demand from the payment of the said amount of money by giving a notice in writing to the drawer of the cheque (within 30 days) of the receipt of information by



him from the bank regarding the return of the Cheque as unpaid and also the time stipulation is made in Section 138(c) of the N.I Act and with regard to this aspect is concerned, the judgment of the Apex Court in ***Econ Antri Limited V/s Rom Industries Limited and another*** the Apex Court in the judgment categorically held that period of limitation for filing complaint under Section 142(a) according to that the period of limitation is to be calculated by excluding the date on which cause of action arose.

18. It is also important to note that the other judgment wherein also discussion was made that it commences from the receipt of information regarding the return of the Cheque unpaid. Having perused the Cheque and also the Ex.P2, it is clear that intimation was given on 05.08.2017 and notice was given on 04.09.2017 and the very contention of the counsel that it was 31st day and Trial Court also accepted the same.

19. It is important to note that in view of the judgment the intimation given by the bank has to be excluded and the same cannot be taken into consideration



and if the same is taken into consideration, the notice is within time of 30 days and hence, the very finding given by the Trial Court is erroneous with regard to the limitation is concerned. No doubt the counsel for the appellant relied upon the judgment of Madhya Pradesh and when the Apex Court says that the date of intimation which was given has to be excluded and also in the judgment of the Apex Court reported in **(1999) 3 SCC 1** in case of ***Saketh's*** which is referred above, the very judgment of the Apex Court with regard to the discussion limitation period ought to have been computed, the date from which the limitation period is to computed, held, has to be excluded and hence, the judgment relied upon by the counsel for respondent also not comes to the aid to substantiate the reason given by the Trial Court and even prior to the judgment of Madhyapradesh High Court, the Apex Court and even subsequent to the judgment in 2014, it is very clear to the point that the date has to be excluded and hence, the very reasoning given by the Trial Court is not correct.



20. Now, coming to the aspect of other reason given by the Trial Court that there is a material alteration and having perused the document of Ex.P1 –Cheque and the same is dated 02.08.2017 and also it has to be noted that amount is mentioned as Rs.11,70,000/- and also dot line was put in between the three zeros’ and also the contention that it was only an amount of Rs.11,700/- and not Rs.11,70,000/- and when the correction was made and alteration was made, the very author of the Cheque put one more signature in the correction and when such signature was made with regard to the correction is concerned, the Trial Court fails to take note of the said fact into consideration that the accused has signed the same with regard to the correction also.

21. It is also important to note that the accused also not led any defense evidence and apart from that when the notice was given to the accused and the same was acknowledged and no reply was given even if it is any manipulation of the Cheque and when the claim made in the legal notice itself that an amount of Rs.11,70,000/-



was claimed and if no such amount was borrowed, the accused ought to have given the reply disputing the very transaction and no such reply was given and not disputed the same at the earliest point of time. It is also important to note that not led any evidence before the Trial Court also to substantiate the contention of the accused.

22. It is also important to note that the judgment relied upon by the counsel appearing for the respondent that the accused need not necessary to enter into the witness box to rebut the case of the complainant and no doubt an answer was elicited from the mouth of P.W.1 with regard to the limitation aspect as well as correction is concerned, but the fact is that when the correction was made what made him to put signature when the alteration was there in the Cheque there was no any explanation and also admitted that when the notice was sent no reply was given and even not adduced evidence and even in the absence of any rebuttal evidence also the Trial Court committed an error in coming to such a conclusion that there is a material alteration and fails to take note of the



counter signature made by the accused when there was a correction in the Cheque and hence, the very reasoning given by the Trial Court is erroneous with regard to the material alteration is concerned and no any explanation on the part of the accused for having given the Cheque to the tune of Rs.11,70,000/- and Cheque was gone to the hands of complainant and even no such suggestion was made to the P.W.1 in the cross - examination regarding the circumstance under which the Cheque was gone to the hands of the complainant and I have already pointed out that even when the correction was made, counter signature was also made by the complainant also not explained anything and when such material is not available before the Court, the Trial Court ought not to have comes to a such a conclusion that the case of the complainant cannot be believed and the very finding given by the Trial Court is against the material on record and fails to take note of all these factors into consideration while acquitting the accused and hence, it requires interference of this Court exercising the appellate jurisdiction and material



available on record was not considered by the Trial Court and hence, it requires interference and I answer the point as affirmative.

23. In view of the discussions made above, I pass the following:

ORDER

- i) The Criminal Appeal is ***allowed***.
- ii) The impugned judgment of acquittal passed by the Trial Court in C.C.No.386/2018 dated 08.02.019 is set-aside. Consequently, the appellant is directed to pay the fine of Rs.12,00,000/- and out of that the complainant is entitled for an amount of Rs.11,70,000/- and remaining amount of Rs.30,000/- shall be defrayed in favour of the State. If the appellant fails to pay the amount within two months from today, the accused is sentenced to undergo imprisonment for a period of one year.

Sd/-
(H.P.SANDESH)
JUDGE

RHS
List No.: 1 Sl No.: 52