

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 6 OF 2013 (A)

BETWEEN:

SRI SIDDIVINAYAKA ADIKE STORES
A REGISTERED PARTNERSHIP FIRM
NO.7, APMC YARD
SAGAR, SHIMOGA DISTRICT
REPRESENTED BY ITS PARTNER
C. GURUMURTHY
S/O LATE C. GOPLAKRISHNA RAO
AGED ABOUT 68 YEARS
RESIDENT OF CHIPPALI VILLAGE
SAGAR TALUK, SHIMOGA DISTRICT
PIN: 577 401.

...APPELLANT

(BY SRI. R V JAYAPRAKASH, ADVOCATE)

AND:

1. M/S. SRI UDUCHANADA BASAPPA & SONS
A PARTNERSHIP FIRM
APMC YARD, SAGAR
SHIMOGA DISTRICT - 577 401.
2. U C SIDDALINGESHWARA
S/O LATE U. CHANNAVEERAPPA
AGED ABOUT 55 YEARS
MARKET ROAD, SAGAR TOWN
SHIMOGA DISTRICT - 577 401.
3. U C SANGAMESHWARA
S/O LATE U. CHANNAVEERAPPA
AGED ABOUT 50 YEARS
MARKET ROAD, SAGAR TOWN
SHIMOGA DISTRICT - 577 401.

4. U C BASAVESH
S/O LATE U. CHANNAVEERAPPA
AGED ABOUT 55 YEARS
MARKET ROAD, SAGAR TOWN
SHIMOGA DISTRICT – 577 401.

...RESPONDENTS

(BY SRI. N JAGADISH, ADVOCATE FOR R1 TO R4)

THIS CRL.A IS FILED U/S.378(4) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 14-08-2012 IN C.C.NO.87/2008 ON THE FILE OF THE ADDITIIONAL JUDICIAL MAGISTRATE FIRST CLASS, SAGAR AND ALLOW THE COMPLAINT FILED BY THE APPELLANT/COMPLAINANT AND CONVICT THE ACCUSED FOR AN OFFENCE PUNISHABLE UNDER SEC. 138 OF THE N.I. ACT AND ETC.,

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 16.08.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

JUDGMENT

1. This appeal is filed by the complainant/appellant being aggrieved by the judgment and order of acquittal dated 14.08.2012 in CC No.87/2008 on the file of the Additional Judicial Magistrate First Class, Sagar, wherein the Trial Court acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'NI Act').

2. The rank of the parties in the Trial Court henceforth will be considered accordingly for convenience.

Brief facts:

3. The complainant - Firm is a Partnership Firm engaged in carrying the business of agricultural products like Arecanut, Pepper, Cardamom etc., on a commission basis. The first respondent is also a Partnership Firm and respondent Nos.2 to 4 are its Partners. The respondents used to purchase Arecanut on a credit basis from the appellant. In this regard, the first respondent - Firm had opened a Khata in the appellant - Firm. Whenever the respondents purchased Arecanut on a credit basis, it was agreed between the parties that 21% p.a. interest to be paid. As per the account extract

as of 08.07.2004, the respondents were due an amount of Rs.1,59,380/-, by adding 16% p.a. interest for the period of 09.07.2004 to 25.09.2007, the complainant rounded off the amount of Rs.2,52,095/-. The accused had issued the cheque by rounding off Rs.2,50,000/- on 25.09.2007. When it was presented for encashment, the said cheque was dishonoured with a shara that 'account closed'. The said cheque was signed by accused No.4 / respondent No.4. On receiving the intimation on 03.10.2007, a notice was issued on 31.10.2007 through RPAD and the said notice was served to the respondents on 02.11.2007. In spite of the notice having been served to the respondents, the respondents neither repaid the amount nor replied to the notice. Hence, it is constrained the complainant to lodge a complaint before the jurisdictional Magistrate.

4. On behalf of the complainant, Shri C.Gopalakrishna Rao, examined himself as PW.1 and got marked 25 documents as Exs.P1 to P25. On the other hand, the respondents have not examined any witnesses nor produced any documents on their behalf to rebut the presumption. The Trial Court recorded the acquittal on the ground that the complainant / appellant not proved the legally enforceable debt or liability.

5. Heard Shri R.V.Jayaprakash, learned counsel for the appellant and Shri N.Jagadish, learned counsel for the respondents.

6. It is the submission of the learned counsel for appellant / complainant that the Trial Court committed error in arriving at a conclusion that the complainant has to prove the legally enforceable debt or liability even though the statutory presumption has not been rebutted. The method adopted by the Trial Court in appreciating the law of the presumption is erroneous and perverse and therefore, the judgment of acquittal is liable to be set aside.

7. It is further submitted that the transaction which took place between the respondent and the appellant has been recorded and mentioned in the document which is marked as Exs.P9 to P25. Those documents have not been considered by the Trial Court properly resulting in passing the impugned judgment which is required to be set aside.

8. It is further submitted that the respondent herein in the cross-examination of PW.1 has not elicited any contradictions or discrepancy in respect of the transaction.

However, the Trial Court recorded the acquittal on the basis of assumption and presumption which is alien to the criminal jurisprudence. Therefore, the order of acquittal passed without any basis is required to be set aside. Making such submission, the learned counsel for the appellant prays to allow the appeal.

9. Per contra, the learned counsel for the respondents vehemently justified the order of acquittal passed by the Trial Court and submitted that as per Ex.P10, the partnership firm was not in existence and Exs.P1, P10 and P11 are the documents produced by the appellant have not been registered in terms of Section 69(2) of the Indian Partnership Act. Therefore, the said documents are to be vitiated. Since the documents are to be vitiated, the contents thereof should not be considered. The Trial Court has rightly considered the said aspect and recorded the appropriate acquittal.

10. It is further submitted that the complainant has failed to establish the existence of the legally recoverable debt or liability. Even though the account extract ledger disclosed the balance as a sum of Rs.1,59,380/- as of 08.07.2004, claiming the interest and filled the cheque for Rs.2,50,000/- and presented it for encashment is illegal and illegitimate.

Making such submission, the learned counsel for the respondents prays to dismiss the appeal.

11. Having heard the learned counsel for the respective parties and also perused the findings of the Trial Court, it is appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of **RAJESH JAIN v. AJAY SINGH**¹ paragraph No.56 read thus:

"56. At the stage when the courts concluded that the signature had been admitted, the Court ought to have inquired into either of the two questions (depending on the method in which accused has chosen to rebut the presumption): Has the accused led any defense evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail: Has the accused proved the nonexistence of debt/liability by a preponderance of probabilities by referring to the 'particular circumstances of the case'?"

On careful reading of the dictum of the Hon'ble Supreme Court, it guided us that the burden lies on the accused to rebut the presumption. Once the ingredients of Section 138 of the NI Act are established, the Court has to raise a presumption under

¹ Crl.A No.003126 / 2023 DATED 09.10.2023

Section 139 of the NI Act that the cheque was indeed, issued in discharge of debt or liability.

12. Coming to the present case, the accused has not issued the reply notice even after receipt of the legal notice issued by the complainant. The signature and the issuance of the cheque are admitted by the accused. In the cross-examination of PW.1, the authenticity of the partnership of the firm was questioned. However, PW.1 explained the manner in which the partnership firm was being run by them. PW.1 produced Ex.P11 to show the existence of the partnership firm.

13. When it is suggested to PW.1 that the respondents have not made transactions from the year 2005 onwards, PW.1 admitted that no transaction had taken place from the year 2005 onwards. It is also suggested that prefixing numbers and suffixing numbers of the cheque in dispute have been encashed and the present cheque was issued as a security. However, PW.1 stated that as per Ex.P22, the respondents had to pay the amount as stated in the cheque.

14. Ex.P9 is the document produced by the complainant discloses that as on 08.07.2004 the respondents were due Rs.1,59,380/- and the cheque was issued on 25.09.2007. The

accused under Section 313 of the Criminal Procedure Code have made a statement and produced a written statement stating that the cheque was issued in the year 2005 as a security and PW.1 who was the partner of the old firm has misused the said cheque and the account pertaining to the business of the accused was closed on 21.07.2005.

15. Even though PW.1 has proved the existence of legally recoverable debt or liability on producing EX.P9 account extract, failed to establish that respondent Nos.2 and 3 who are accused Nos.2 and 3 are the partners who were involved in the day-to-day affairs of the business of the company. However, accused No.1 is the firm, accused No.4 is the authorized signatory to the firm held liable for the amount stated in the cheque.

16. Assuming that the cheque was issued in the year 2005, the accused being a partnership firm had to issue notice to the firm of PW.1 asking the firm to return the cheque as there was no existence of liability. Even after receipt of legal notice, the firm of the accused has not issued a reply to the said notice. Considering the non-reply to the notice and not making any efforts to take back the cheque which was issued

as a security nor led evidence to show that there was no balance existed between PW.1 and the accused clearly discloses that the accused has not rebutted the presumption. Therefore, the findings of the Trial Court in arriving at a conclusion that the complainant has to prove the legally recoverable debt or liability appears to be erroneous and illegal. Therefore, the findings of the Trial Court in recording the acquittal is required to be set aside.

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

ORDER

- (i) The criminal appeal is allowed in part.
- (ii) The judgment and order of acquittal dated 14.08.2012 passed in CC No.87/2008 by the Court of the Additional Judicial Magistrate First Class, Sagar, is set aside.
- (iii) The respondent Nos.2 and 3 are hereby acquitted for the offence punishable under Section 138 of the NI Act.
- (iv) The respondent Nos.1 and 4 are hereby convicted for the offence under Section 138 of

NI Act and they are sentenced to pay fine of Rs.3.00 lakhs (Rupees Three lakhs only), in default of payment of fine, they shall undergo simple imprisonment for one and half year.

- (v) The Trial Court is directed to secure their presence for the execution of the sentence in accordance with law.

**Sd/-
JUDGE**

BSS/UN