

**HIGH COURT OF KARNATAKA****Bench: Justice Rajendra Badamikar****Date of Decision: 27th May 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2156 OF 2018

**SRI. JITHENDRA KUMAR N.M. ...APPELLANT****VERSUS****SMT. RAJANI GURURAJ ...RESPONDENT****Legislation:**

Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act)

Section 378(4) of Cr.P.C.

**Subject:** Appeal challenging the acquittal of the accused in a cheque bounce case under Section 138 of the N.I. Act.**Headnotes:**

Cheque Bounce – Acquittal – The complainant appealed against the acquittal of the accused by the XVI Additional Chief Metropolitan Magistrate, Bengaluru – Accused had issued a cheque for Rs.10 lakhs, which was dishonored due to insufficient funds – The trial court acquitted the accused, holding that the complainant failed to prove the loan transaction and the accused successfully rebutted the presumption under Section 139 of the N.I. Act [Paras 1-3].

Presumption under Section 139 N.I. Act – The accused admitted the cheque and signature, invoking the presumption in favor of the complainant – The

accused rebutted the presumption by suggesting that blank cheques were given as security for a loan from the complainant's wife and the loan was repaid [Paras 5-15].

Financial Capacity and Lack of Evidence – The complainant could not substantiate his financial capacity to lend Rs.10 lakhs, failed to specify the loan date, and did not declare the loan in his IT returns – The defense of the accused was deemed more probable, and the complainant's inability to provide relevant documents further weakened his case [Paras 10-15].

Decision: The appeal was dismissed – The High Court confirmed the trial court's judgment, finding no perversity or illegality – The complainant failed to prove the loan transaction beyond a reasonable doubt, and the accused successfully rebutted the presumption under Section 139 of the N.I. Act [Paras 17-18].

#### **Referred Cases:**

- Rajaram v. Maruthachalam since dead by LRs., 2023 SC Online 48.

Representing Advocates:

Sri. Kumar S.J and Sri. R. Manjunath for the Appellant

Sri. S. Visweswaraiah for the Respondent

#### **JUDGMENT**

The appellant/complainant has filed this appeal 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, in CC No.2948/2015, whereby the learned Magistrate has acquitted the accused/respondent-Smt.Rajani Gururaj 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 of the case are that, complainant-Sri. Jitendra Kumar N.M. and accused-Smt. Rajani Gururaj are relatives and they are well-acquainted with each other. Out of long standing relationship and acquaintance, in the month of July 2013, the accused approached the complainant for hand loan of Rs.10.00 Lakhs for family necessities and for purchase of a site, with an assurance of repayment of the same within a period of 4 to 6 months. The complainant has paid the said amount of Rs.10.00 Lakhs in cash to the accused. After the period assured, in spite of repeated requests and demands, the accused did not repay the said amount. However, on persistent demand, the accused issued a cheque bearing No.397105 dated 20.11.2014 for Rs.10.00 Lakhs drawn on Corporation Bank, Srinagar Branch, Bengaluru. When the complainant presented the said cheque for encashment through his Banker, it was dishonoured with an endorsement 'Funds Insufficient'. Then the complainant has got issued a legal notice to accused on 17.12.2014, which came to be duly served on accused and an evasive and vague reply was given by her. Hence, the complainant alleging that in spite of accused having knowledge that the she is not having sufficient funds in her account, has issued a cheque and thereby committed an offence under Section 138 of the N.I Act. As such, a complaint was lodged before the learned

Magistrate.

4. The learned Magistrate has taken cognizance of the offences and issued process against the accused Smt. Rajani Gururaj. The accused appeared through her counsel and was enlarged on bail. The plea of accused under Section 138 of the N.I. Act was recorded and she denied the same.

5. The complainant was examined as PW.1 and he placed reliance on 08 documents marked at Exs. P1 to P8. During cross-examination of PW.1/complainant, Exs. D1 & D2 were got marked, by way of confrontation. Then the statement of accused under Section 313 of Cr.P.C., was recorded to enable her to explain the incriminating evidence appearing against her in the case of prosecution. But, the case of accused is of total denial and however, she put-forward the defence that, she had

availed loan from the wife of the complainant and at that time, blank cheques were obtained as security, which were misused. However, the accused has not led any oral evidence in support her defence.

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

7. Learned counsel for the complainant/appellant would contend that, the cheque and signature on the cheque have been admitted by the accused and therefore the presumption under Section 139 of the N.I. Act is in favour of the complainant and the accused has failed to rebut the said presumption by leading cogent evidence. Learned counsel would contend that, the accused has not entered into the witness box to substantiate her defence and the evidence clearly discloses that the complainant has advanced the loan of Rs.10.00 Lakhs and the cheque was issued towards discharge of the legally enforceable debt. The learned counsel would also contend that the learned Magistrate has ignored all these aspects including the presumption available under Section 139 of the N.I. Act. He would contend that on the assumption the learned Magistrate has acquitted accused/respondent, which has resulted in miscarriage of justice and hence, he would seek for allowing the appeal.

8. Per contra, the learned counsel for the respondent/accused would submit that, though the cheque and signature on the cheque have been admitted by the accused, but the cross-examination of accused coupled with Ex.D1 clearly establish that the complainant has failed to prove advancement of loan of Rs.10.00 Lakhs to the accused, as claimed by him. The learned counsel would also assert that the financial capacity of the complainant was challenged and though he has undertaken to produce the documents in this regard, he is unable to produce them and he is unable to give specific date of advancement of the loan. The learned counsel would also contend that the cross-examination of PW.1 discloses that this loan transaction was not shown in IT Returns of the complainant and further he would submit that the cross-examination reveals that, his father-in-law of the complainant has also lodged a complaint against the accused and further the complainant has also lodged a complaint against the husband of the accused and there is an admission regarding receipt of number of cheques as per Ex.D1, which is admitted by the complainant.

Hence, the learned counsel would contend that the accused was able to rebut the presumption available in favour of the complainant and as such, it is for the complainant to prove his case beyond all reasonable doubt, but he has failed to do so and 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. At the outset, it is evident that the complainant and accused are relatives and they are well-acquainted with each other. At the same time, it is also an admitted fact that the disputed cheque-Ex.P1 belongs to the account of accused and it bears the signature of accused.

Hence, the initial presumption under Section 139 of the N.I. Act is in favour of the complainant and it is for the accused to rebut the said presumption on the basis of preponderance of possibilities. At the same time, it is to be noted here that the accused need not to enter into the witness box to rebut the presumption and even by way of cross-examination or on available records relied by the complainant, the accused can rebut the presumption. If the accused is able to rebut the presumption, again the burden shifts on the complainant to prove the case beyond all reasonable doubt. The standard of proof for rebuttal of presumption is not that much high as in the case of proving the case of the complainant and accused can rebut the presumption even by creating a dent in the case of complainant by taking a probable defence. At the same time, it is also important to note here that the accused has taken a defence at the earliest point of time under Ex.P8 by giving reply notice, wherein she has specifically asserted that her husband Sri.Gururaj has borrowed a sum of Rs.5.00 Lakhs from the complainant and at that time, the blank cheques were obtained along with Promissory Notes from the accused as well as the husband of the accused. Hence, now the issue would be, *whether the said defence is established or not ?*

11. At the out-set, the complainant is examined as PW.1 and in his examination-in-chief, he has reiterated the complaint allegations. However, on perusal of the complaint allegations, it is evident that either in the entire

complaint or in the statutory legal notice, the date of advancement of loan is not referred. What is alleged is a simple assertion that in the month of July 2013 the accused has approached the complainant and availed hand loan of Rs.10.00 Lakhs from him. Therefore, it is hard to digest the fact that the complainant is unable to disclose the date of advancement of such a huge loan. Apart from that, the complainant in his cross-examination has admitted that, his wife has also filed a cheque bounce case against the accused claiming that she lent Rs.4.00 Lakhs to the accused. However, the accused has denied the suggestion stating that the said amount is already repaid, which is an issue in CC No.6849/2015. In further cross-examination, the complainant has also admitted that the loan transaction between his wife and the accused was taken place through cheque and by way of account transfer. In such circumstances, it is for the complainant to establish that, apart from the transaction between his wife and accused, he had independent transactions with the accused. In the complaint, the complainant has nowhere pleaded regarding the transaction of his wife with accused. The complainant could have pleaded this aspect. But, the subsequent cross-examination of the complainant discloses that, he has also advanced Rs.5.00 Lakhs to the husband of the accused. If these versions are taken into consideration, then the complainant and his wife had together advanced Rs.19,60,000/- to the accused and her husband together. This is a huge amount and admittedly this amount was not shown in IT Returns of the complainant. No doubt, in the reply notice, the accused has not disputed the financial status of the complainant, but however, she disputes for having received hand loan to the extent of Rs.5.00 Lakhs pertaining to this case.

12. In the cross-examination, the complainant has admitted that, he is working in Hindustan Unilever Company Limited being a B.Com. Graduate and his monthly salary is Rs.70,000/-. But, he did not produce any document to show as to what is his exact monthly salary and what is the take home salary after statutory deductions. Even if Rs.70,000/- is taken as his monthly salary, it is hard to accept that in one year, the complainant was able to advance more than Rs.15.00 Lakhs to accused and his wife was capable of advancing Rs.4,60,000/- independently. As observed above, the complainant has also not disclosed the date of advancement of the loan to the accused.

13. Apart from that, the complainant in his further cross-examination claimed that, in May 2013, he availed Rs.10.00 Lakhs as loan from the Bank. If he had availed loan of Rs.10.00 Lakhs, then that amount should have been credited to his account. He had undertaken to produce the relevant documents in this regard and when he is availed bank loan, he ought to have paid interest for that amount. But, quite interestingly, the complainant claimed that in July 2013 he advanced loan to the accused without charging interest, which appears to be unnatural.

Further, the complainant after having availed loan in May 2013, why he kept that amount in his custody by way of cash till July 2013 is not explained. His own case reveals that the last date of demand is in July 2013 itself and hence, he cannot presume that the accused was going to seek loan in future. As such, this conduct of the complainant creates serious doubt regarding the genuineness of the transaction. Even he has not produced any document for having availed loan of Rs.10.00 Lakhs from the Central Bank of India and if the loan was disbursed to him, it ought to have been credited to his account and when he withdrew this amount from his account, has not been disclosed. It is evident that, he is withholding the material document in this regard and hence, in this regard, an adverse inference is required to be drawn against him.

14. Apart from that, the complainant in his crossexamination has admitted that, he was not capable of paying this huge amount at one stretch and he claims that part by part he made arrangements for accumulating the said amount. Then it is for him to explain as to how he managed to arrange the amount part by part with details. Even he admitted that he has not declared this transaction in his IT Returns.

15. Further, it is interesting to note here that the complainant asserts that the accused availed loan of Rs.10.00 Lakhs from him and loan of Rs.5.00 Lakhs from his wife and the reason is for acquisition of a site. But, the complainant is unable to disclose the date of advancement of loan and his own admission discloses that he was not financially sound and he did not disclose his other sources of income, except salary. No documents were produced to show that he paid the said loan amount out of his savings. Further, it is hard to accept that the complainant has advanced a huge loan of Rs.10.00 Lakhs and his wife has advanced loan of Rs.5,00 Lakhs to the accused, without charging any interest and it is quite unnatural. Further, PW.1/complainant has also admitted that the other



blank cheque issued by the accused is in his possession and that clearly discloses that the complainant has taken number of blank cheques from the accused while advancing some portion of loan to her and now he is taking advantage of the same by filling higher amount in the cheque. From Ex.D1, it is also evident that the complaint was lodged against the complainant by the husband of accused alleging that, on 02.12.2024, the complainant trespassed into the house of accused, assaulted and threatened the accused and her husband. PW.1 has admitted the facts of lodging complaint as per Ex.D1 and this complaint is dated 02.12.2014, and the cheque was presented on 04.12.2014, i.e., after lodging of the said complaint. This clearly discloses that the defence of accused is more probable and accused has created a dent in the case of the complainant.

16. In further cross-examination, the complainant admitted Ex.D1, which is the statement made by himself, wherein he has admitted that he received two cheques from the husband of accused and one cheque from the accused. When there is only one transaction with the husband of accused, why he has obtained two cheques from him, is not explained and the complainant has also admitted that one cheque is still in his possession. No doubt, the accused has not raised the defence of 'financial status' of complainant in her reply notice, but by way of cross-examination, she has exposed the financial status of the complainant. In view of the decision of the Apex Court in the case of ***Rajaram Vs. Maruthachalam since dead by LRs. Reported in 2023 SC Online 48***, even the accused can rebut the presumption and expose the financial status of the complainant by way of cross-examination or on any documents relied by the complainant himself. In the instant case, the cross-examination of the complainant clearly discloses that, he is not financially sound to advance huge loan of Rs.10.00 Lakhs to the accused that too by way of cash. Looking to these facts and circumstances, it is evident that the accused has rebutted the presumption available in favour of the complainant under Section 139 of the N.I. Act. In such an event, the burden again shifts on the complainant and though the complainant/PW.1 has undertaken to produce the bank documents regarding availment of loan or to prove his financial status, he has not produced any such documents in this regard. Hence, the evidence on record clearly discloses that the accused has created a dent in the case of the complainant.



17. The learned Magistrate has appreciated all the above aspects in proper perspective in detail and analyzed the oral and documentary evidence in accordance with law and has rightly come to the conclusion that the presumption in favour of the complainant is rebutted, in view of cross-examination of the complainant. Hence, question of interfering with the impugned judgment of acquittal does not arise at all. The judgment of acquittal passed by the learned Magistrate does not suffer from any perversity or illegality so as to call for any interference by this Court. Hence, the appeal being devoid of any merits does not survive for consideration and accordingly, the point for consideration is answered in the negative.

Accordingly, I proceed to pass the following: -

### **ORDER**

- i) The appeal stands **dismissed**.
- ii) The impugned judgment of acquittal dated 30.08.2018 passed by the XVI Additional Chief Metropolitan Magistrate, Bengaluru, in CC No.2948/2015, hereby stands confirmed.

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