



NC: 2025:KHC:8427
CRL.A No. 522 of 2024
C/W CRL.A No. 503 of 2024
CRL.A No. 511 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MRS JUSTICE M G UMA
CRIMINAL APPEAL NO.522/2024 (A)

C/W

CRIMINAL APPEAL NO.503/2024 (A)
CRIMINAL APPEAL NO.511/2024 (A)

IN CRL.A.NO.522/2024

BETWEEN:

SRI. M/S. MAHAVEERA TRANSPORT
PVT LTD., OFFICE AT A- 41,
DEVARAJ URS TRUCK TERMINAL
OPP. KANTEERAVA STUDIOS
YESHWANTHPURA,
BENGALURU - 560 022
REPRESENTED BY ITS MANAGING
DIRECTOR, SRI SUSHIL KUMAR JAIN
AGED ABOUT 70 YEARS
MOB - 9342815878

... APPELLANT

(BY SRI. A.S. GUPTA, ADVOCATE)

AND:

SRI RADHAKRISHNAN
S/O BHASKARAN PILLAI
AGED ABOUT 63 YEARS
RESIDING AT #41, 2ND CROSS
HARMONY CLASSIC ORCHADS,
PHASE-1 BEHIND MEENAKSHI
TEMPLE BANNERGHATA ROAD
BENGALURU - 560 078.

... RESPONDENT

(BY SRI. KRISHNA S. VYAS, ADVOCATE)



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THIS CRIMINAL APPEAL IS FILED U/S 378(4) OF CR.P.C. PRAYING TO A) SET ASIDE THE ORDER PASSED BY THE TRIAL COURT IN C.C.NO.6005/2022 ON THE FILE OF XX ADDITIONAL SMALL CAUSES JUDGE AND ADD.C.M.M. AND MACT, BENGALURU (SCCH-22) AND ALLOW THIS CRL.A. B) GRANT DOUBLE OF THE CHEQUE AMOUNT ALONG WITH INTEREST AND COST OF THE PROCEEDINGS IN THE TRIAL COURT AND BEFORE THIS APPEAL. C) GRANT RELIEF U/S 357 OF CR.P.C. AND COMPENSATION TO THE APPELLANT.

IN CRL.A.NO.503/2024

BETWEEN:

SRI. M/S. MAHAVEERA TRANSPORT
PVT LTD., OFFICE AT A- 41,
DEVARAJ URS TRUCK TERMINAL
OPP. KANTEERAVA STUDIOS
YESHWANTHPURA,
BENGALURU - 560 022
REPRESENTED BY ITS MANAGING
|DIRECTOR, SRI SUSHIL KUMAR JAIN
AGED ABOUT 70 YEARS
MOB - 9342815878

... APPELLANT

(BY SRI. A.S. GUPTA, ADVOCATE)

AND:

SRI SRINIVAS
S/O SASTAMVELI RAGHAVAN PILLAI,
AGED ABOUT 59 YEARS,
RESIDING AT #137, 2ND CROSS,
3RD MAIN, DOLLARS COLONY,
BEHIND SHOPPERS STOP,
BANNERGHATTA ROAD,
BENGALURU - 560 078

... RESPONDENT

(BY SRI. KRISHNA S. VYAS, ADVOCATE)



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C/W CRL.A No. 503 of 2024
CRL.A No. 511 of 2024

THIS CRIMINAL APPEAL IS FILED U/S 378(4) OF CR.P.C. PRAYING TO 1) EXAMINE THE LEGALITY, THE PROPRIETY AND CORRECTNESS OF THE PROCEEDINGS BEFORE THE TRIAL COURT IN C.C.NO.6003/2022, ON THE FILE OF XX ADDL. SMALL CAUSES JUDGE AND ADDL. CHIEF METROPOLITAN MAGISTRATE AND MACT, BENGALURU (SCCH-22). 2) SET ASIDE THE ORDER PASSED BY THE TRIAL COURT IN C.C.NO.6003/2022, ON THE FILE OF XX ADDL. SMALL CAUSES JUDGE AND ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AND MACT, BENGALURU (SCCH-22) AND ALLOW THIS APPEAL.

IN CRL.A.NO.511/2024

BETWEEN:

SRI. M/S. MAHAVEERA TRANSPORT
PVT LTD., OFFICE AT A- 41,
DEVARAJ URS TRUCK TERMINAL
OPP. KANTEERAVA STUDIOS
YESHWANTHPURA,
BENGALURU - 560 022
REPRESENTED BY ITS MANAGING
DIRECTOR, SRI SUSHIL KUMAR JAIN
AGED ABOUT 70 YEARS
MOB - 9342815878

... APPELLANT

(BY SRI. A.S. GUPTA, ADVOCATE)

AND:

SRI SUDARSHAN
S/O. SASTAMVELI RAGHAVAN PILLAI
AGED ABOUT 57 YEARS
RESIDING AT #99, 6TH CROSS
DOLLARS COLONY, NEAR J.D.
MARA BELIKAHALLI,
BANNERGHATTA ROAD,
BENGALURU - 560 078

... RESPONDENT

(BY SRI. KRISHNA S. VYAS, ADVOCATE)



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THIS CRIMINAL APPEAL IS FILED U/S 378(4) OF CR.P.C. PRAYING TO 1) SET ASIDE THE ORDER PASSED BY THE TRIAL COURT IN C.C.NO.5370/2022 ON THE FILE OF XX ADDITIONAL SMALL CAUSES JUDGE AND ADDL. C.M.M. AND MACT, BENGALURU (SCCH-22) AND ALLOW THIS APPEAL. 2) AND EXAMINE THE LEGALITY, THE PROPRIETY AND CORRECTNESS OF THE PROCEEDINGS BEFORE THE TRIAL COURT IN C.C.NO.5370/2022 ON THE FILE OF XX ADDL. SMALL CAUSES JUDGE AND ADDL. CMM AND MACT, BENGALURU (SCCH-22) ORDER PASSED ON DATE 30.01.2024.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.02.2025 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

CORAM: HON'BLE MRS JUSTICE M G UMA

COMMON CAV JUDGMENT

The complainant in C.C.Nos.5370, 6003 & 6005 of 2022, on the file of the learned XX Additional Small Causes Judge and Additional Chief Metropolitan Magistrate and M.A.C.T., Bengaluru (SCCH-22) is impugning the judgments dated 30.01.2024, acquitting the accused for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'the NI Act').



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2. For the sake of convenience, the parties shall be referred to as per their rank and status before the Trial Court.

3. Brief facts of the case are that, the complainant filed the private complaint in PCR Nos.5790, 5791, 5792 of 2021 before the Trial Court against the accused, alleging commission of the offence punishable under Section 138 of NI Act.

4. It is the contention of the complainant before the Trial Court that the complainant is a Company represented by its Managing Director-Mr. Sushil Kumar Jain. On 21.12.2020, the accused in all the 3 cases i.e., Sudarshan, Srinivas and B. Radhakrishnan entered into an agreement with the complainant to avail loan of Rs.25,00,000/- to be paid to one Bharath Dayanand Reddy s/o Dhayanand Reddy and in terms of the agreement, Rs.25,00,000/- was paid to Sri. Bharath Dayanand Reddy. Out of the loan amount of Rs.25,00,000/- accused-Sudarshan in C.C.No.5370/2022 undertook to repay Rs.8,00,000/- and issued cheque bearing No.377124 dated 05.07.2021. Similarly, accused-Srinivas in C.C.No.6003/2022 undertook to repay Rs.9,00,000/- and issued cheque bearing No.424144 dated 05.07.2021. Similarly, accused -



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B.Radhakrishnan in C.C.No.6005/2022 undertook to repay Rs.8,00,000/- and issued cheque bearing No.059155 dated 15.07.2021 towards repayment of their portions of the loan amounts. When the cheques were presented for encashment, the same were dishonoured with an endorsement "kindly contact drawer/drawee bank and present again". Since the cheques were already expired, the complainant could not present the cheques once again. Legal notice was issued to the accused calling upon them to repay the cheque amounts. In spite of service of legal notice on all the accused, they have neither repaid the cheque amount nor replied to the notice. Thereby, they have committed the offence under Section 138 of NI Act. Accordingly, the complainant filed 3 different complaints in PCR Nos.5790, 5791 and 5792 of 2021 against the accused alleging commission of the offence punishable under Section 138 of NI Act and requested the Trial Court to take cognizance of the offence and to initiate legal action.

5. The Trial Court took cognizance of the offence and registered C.C.Nos.5370, 6003 & 6005 of 2022. The accused appeared before the Trial Court and pleaded not guilty. The Managing Director of the Company examined himself as PW-1



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and got marked Ex.P1 to P6 in support of his contention. The accused have denied all the incriminating materials available on record in their statement recorded under Section 313 of Cr.PC. But have not led any evidence in support of their defence. However, got marked Ex.D1 in C.C.No.5370/2022 during cross examination of PW-1. The Trial Court after taking into consideration all these materials on record came to the conclusion that the complainant was not successful in proving the guilt of the accused beyond reasonable doubt. Accordingly, passed the impugned judgments, acquitting the accused in all 3 cases. Being aggrieved by the same, the complainant is before this Court.

6. Heard Sri A.S.Gupta, learned counsel for the appellant and Sri. Krishna S Vyas, learned counsel for respondents. Perused the materials including the Trial Court records.

7. Learned counsel for the appellant contended that the appellant - complainant is the private limited Company represented by its Managing Director - Mr. Sushil Kumar Jain. Very same Managing Director deposed before the Court as PW-



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1. The accused have never disputed Ex.P6 - the agreement dated 21.12.2020, where under all the accused are arrayed as second party and at their instance, loan of Rs.25,00,000/- was paid to Bharath Dayanand. Ex.P6 refers to the cheques bearing No.424144 for Rs.9,00,000/- dated 05.07.2021, No.377124 for Rs.8,00,000/- dated 05.07.2021 and No.059155 for Rs.8,00,000/- dated 15.07.2021 drawn by each of the accused in 3 different cases. The accused are neither disputing that they are the parties to Ex.P6 nor they are disputing issuance of cheques, which are subject matter in these 3 complaints. It is not disputed that the cheques in question were dishonoured. Service of legal notices are also not disputed. Admittedly, the accused have not issued any reply. Under such circumstances, the legal presumption under Sections 118 and 139 of NI would arise. The accused have not stepped into the witness box. However, got marked Ex.D1 - the absolute sale deed, during cross examination of PW-1 in C.C.No.5370/2022, which is dated 19.12.2020 i.e., much earlier to Ex.P6. Therefore, it will not enure to the benefit of the accused in any manner. However, the Trial Court proceeded to pass the impugned judgments solely on the ground that PW-1 even though the Managing Director of the



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private limited Company, had no authority to represent the Company and the authorization given by Board of Directors is not produced.

8. Learned counsel submitted that, when admittedly, PW-1 is the Managing Director of Private Limited Company entered into an agreement as per Ex.P6, producing the Resolution, authorizing him to represent the Company was not at all necessary. There will be implied authority in favour of the Managing Director and the same was never questioned by the accused. However, to be on safer side, memo dated 03.12.2024 is filed producing copy of the Board Resolution authorizing PW-1 Sushil Kumar Jain to prosecute and defend the case relating to the Company. Therefore, it is clear that PW-1 had authority to represent the Company. Under such circumstances, the Trial Court has committed an error in dismissing the complaint solely on the ground that the authorization letter is not produced.

9. Learned counsel submitted that the accused have not taken any legal defence and therefore, the legal presumption under Section 118 and 139 of NI Act were never rebutted. Under such circumstances, the accused are liable for



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conviction. Accordingly, prays for allowing the appeals and to convict the accused.

10. *Per contra*, learned counsel for respondents-accused opposing the appeals submitted that the complainant is M/s. Mahaveera Transport Private Limited, which is a private Company, said to be represented by its Managing Director. But Incorporation Certificate of the Company is not produced. According to PW.1, there was a Resolution in the Board Meeting authorizing him to represent the Company and to file the complaint. No such Resolution is produced before the Trial Court. The Articles of Association is not produced to contend that he is the Managing Director and authorized to represent the Company. Under such circumstances, the complaint is liable to be dismissed in *limine*.

11. Learned counsel further submitted that the accused never admitted execution of the agreement dated 21.12.2020 marked as Ex.P6. The terms of this agreement go to show that the first party has agreed to purchase the property from the second party subject to certain conditions. But during cross-examination of PW.1, he categorically admitted Ex.D1 i.e. copy



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of the Registered Sale Deed dated 19.12.2020 under which, the property was already purchased. Under such circumstances, no sanctity could be attached to Ex.P6 which is admittedly subsequent to a Registered Sale Deed Ex.D1. Under Ex.D1, even the actual possession of the property was handed over to the complainant. Moreover, there is no reference to lending of the amount under Demand Draft. Even though, the complainant contends that the amount of Rs.25,00,000/- was paid to Bharath Dayanand as per the directions of the accused through Demand Draft, no such documents are produced. Even the Bank statement is not produced to evidence the fact.

12. Learned counsel submitted that in Ex.P6, there is reference to a tripartite agreement that is to be entered into between the parties. Even the said agreement is not produced by the complainant before the Trial Court. Under these circumstances, the complainant has not discharged his initial burden to prove lending of the amount and issuance of the cheques towards discharge of the legally enforceable debt. Therefore, presumption under Section 139 of NI Act does not arise and under such circumstances, the Trial Court was right in



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acquitting the accused. There are no grounds for setting aside the impugned judgments, which are well reasoned.

13. Learned counsel placed reliance on the decision of the Hon'ble Apex Court in ***Dale & Carrington Investment Private Limited and Another v/s P.K.Pratapan and others¹***, to contend that a Company is a juristic person and act through its Directors. Unless the individual Director is authorized by the Board of Director to represent the Company, he is not authorized to do so.

14. Learned counsel placed reliance on the decision of the Hon'ble Apex Court in ***Basalingappa v/s Mudibasappa²*** in support of his contention, that even if the legal presumption under Section 139 of NI Act is to be raised in favour of the complainant, it is open for the accused to rely on the evidence led by the complainant and to rely on the materials produced before the Court to raise a probable defence. The accused is not required to step into the witness box to speak about the defence.

¹ (2005) 1 SCC 212

² (2019) 5 SCC 418



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15. Placing reliance on these decisions, learned counsel contended that, the Director of the Company had no authority to file and maintain the complaint. Lending of the amount of Rs.25,00,000/- was never proved by the complainant, execution of Ex.P6 stands falsified since PW-1 categorically admitted the Registered Sale Deed dated 19.12.2020 marked as Ex.D1. The tripartite agreement referred to in Ex.P6 is also not produced for perusal of the Court, which are sufficient to hold that Ex.P6 is a fabricated document, concocted for the purpose of supporting the false claim by the complainant.

16. Learned counsel also submitted that the legal notices said to have been issued by the complainant were never served on the accused. Even on that ground, the accused were entitled for acquittal and the Trial Court rightly acquitted the accused. Since there are no reasons to interfere with the said judgments, he prays for dismissal of the appeals as devoid of merits.

17. In view of the rival contentions urged by learned counsel for both the parties, the point that would arise for my consideration is:



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"Whether the impugned judgments of acquittal passed by the Trial Court suffers from perversity or illegality and calls for interference by this Court?"

My answer to the above point is in the 'Negative' and pass the following:

REASONS

18. It is the contention of the complainant that, it is a private limited Company represented by its Managing Director Mr. Sushil Kumar Jain. The authority of Mr. Sushil Kumar Jain to file and maintain the complaint is seriously disputed by the accused. During his cross-examination, PW-1 asserted that there is a Board Resolution authorizing him to represent the Company. However, his authority to represent the Company was denied by the accused and such suggestion was denied by the witness. But in spite of that, no such Resolution was produced before the Trial Court. Even though it is stated that he is the Managing Director of the Company, no document is produced to establish the same. Learned counsel for the appellant contended that, the Board Resolution authorizing Mr. Sushil Kumar Jain could not be produced before the Trial Court and copy of the



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same is produced before this Court. The complaint came to be filed before the Trial Court on 17.12.2021 and the impugned judgments acquitting the accused came to be passed on 30.01.2024. But the Board Resolution produced before this Court is dated 03.02.2024 i.e., much after disposal of the criminal complaint before the Trial Court.

19. Learned counsel for the respondent placed reliance on the decision of the Hon'ble Apex Court in ***Dale & Carrington (supra)***, where the Hon'ble Apex Court highlighted the legal position of the Directors of Companies registered under the Companies Act and held that the Company is a juristic person which acts through its Directors, who are collectively referred to as Board of Directors. It is also held that an individual Director has no power to act on behalf of the Company of which, he is the Director, unless by some Resolution of the Board of Directors of the Company, specific power is given to him/her. It is also held that whatever decisions that are taken regarding running of the affairs of the Company, they are to be taken by the Board of Directors as they are the agents/trustees/representatives acting on behalf of the Company in a fiduciary capacity.



20. Learned counsel also placed reliance on the decision of the Hon'ble High Court of Bombay in ***Ashok Bampto Pagui v/s Agencia Real Canacona Pvt. Ltd and Another***³, where the High Court of Bombay has expressed a similar opinion to hold that, it is only the body of Directors called as Board of Directors is having the power to represent the Company, which can be delegated in favor of one of the Directors. Thus, the position of law is very well settled that to file the complainant representing the Company there must be a Resolution by the Board. Even though PW-1 asserts that he is having such authority assigned in his favour by the Board by passing a Resolution, the same is not produced before the Trial Court. The copy of the Resolution produced before this Court is much after disposal of the criminal case before the Trial Court. Under such circumstances, it cannot be said that the complainant Company is represented by an authorised person.

21. The next contention raised by the learned counsel for the appellant is that, the accused have never disputed Ex.P6 - the agreement dated 21.12.2020 under which the accused have availed loan of Rs.25,00,000/-, which was paid to one

³ 2007 SCC Online Bom 482



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Bharat Dayanand. He contends that Ex.P6 – the agreement also refers to the cheques in these three cases marked as Ex.P1 issued by the accused individually towards discharge of legally enforceable debt. Therefore, the accused who are not disputing Ex.P6 cannot dispute issuance of cheques as well and under such circumstances, presumption under Sections 118 and 139 of NI Act would arise.

22. It is pertinent to note that the accused had never admitted execution of the agreement Ex.P6. It is also the contention of the learned counsel for the complainant that Rs.25,00,000/- referred to in Ex.P6 was paid to the Bharat Dayanand through demand draft. It is pertinent to note that during cross examination of PW-1, the witness was cross examined at length regarding the manner in which the loan of Rs.25,00,000/- was paid. PW-1 asserted that the same was paid through demand draft. However, he admits that in Ex.P6 there is no reference to payment of the amount through demand draft nor any document is produced to evidence the fact that the amount was paid to Bharat Dayanand through demand draft. It is also pertinent to note that during cross-examination of PW-1, witness was specifically asked as to whether the bank passbook



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or account books were produced to evidence lending of the amount. It is admitted that, no such documents are produced to evidence the contention of the complainant. Witness stated that there is one more agreement where there is reference to payment of the amount to Bharath Dayanand through demand draft. But admittedly, no such documents are produced before the Trial Court or before this Court. Witness further asserts during cross examination that there was a Board Resolution for payment of Rs.25,00,000/- to Bharat Dayanand. Even such Resolution is not produced before the Court for the reasons best known to him. Similarly, witness asserts that he has taken the acknowledgement from Bharat Dayanand for having received Rs.25,00,000/-, which is also not forthcoming.

23. It is pertinent to note that, it is the specific contention of the complainant that Rs.25,00,000/- was paid under Ex.P6 to Bharat Dayanand and the accused in these cases, undertook to pay the said amount and accordingly issued 3 cheques i.e., 1 cheque for Rs.9,00,000/- and 2 cheques for Rs.8,00,000/- each. It is the contention of the accused that no such agreement as per Ex.P6 was executed and no amount of Rs.25,00,000/- as contended by the complainant was paid to



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Bharat Dayanand and the accused have never undertaken to repay the amount either individually or collectively. However, the accused admit their signatures, found on Ex.P1 cheques marked in the above cases. It is the settled position of law that once the accused admits issuance of the cheque with their signature, the presumption under Section 139 of NI Act would arise and the burden shifts on the accused to rebut the legal presumption.

24. Learned counsel for the respondent placed reliance on the decision of the Hon'ble Apex Court in **Basalingappa (supra)** to contend that in order to rebut the legal presumption under section 139 of NI Act, the accused is not required to step into the witness box, but he can rely on the evidence and the materials that are produced by the complainant for the purpose of raising a probable defence. The Hon'ble Apex Court in paragraph No.25 summarizes the principles enumerated on the subject in various decisions as under:

"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:



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 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 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 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."

25. This decision makes the position of law very clear that the accused may not have to enter the witness box to depose regarding his defence. If he is successful in raising a probable defence on the basis of the materials that are placed before the Court by the complainant, the same is sufficient to rebut the presumption.



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26. Learned counsel for the appellant contended that Ex.P6 is an admitted document, which is seriously disputed by the learned counsel for the respondents. During cross-examination of PW-1, the witness was cross examined thoroughly regarding execution of Ex.P6. The tenor of cross examination of the witness do not suggest that the accused have admitted execution of Ex.P6.

27. Ex.P6 is the agreement dated 21.12.2020 said to have been executed between the complainant Company as first party and the accused in these cases as second party. As per the terms of the agreement, the first party along with Anuj Cargo Movers Bengaluru are purchasing the industrially converted land bearing Sy.No.26/2 situated at Bidaragere village, KasabaHobli, Anekal Taluk, Bengaluru Rural District, measuring 5.14 acres from the second party. The second party i.e. the accused availed loan from Bharat Dayanand and in order to clear the loan and to release the title deeds of the above properties, second party requested first party i.e. the complainant to lend a sum of Rs.25,00,000/- Accordingly, Rs.25,00,000/-was lent by first party paying the same to Bharat Dayananda. But strangely, Bharat Dayananda is not a party to



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this agreement. Moreover, there is reference to a tripartite agreement between first party, second party and the said Bharat Dayananda to enable the first party to release the loan amount directly to Bharat Dayananda on behalf of the second party and to collect the title deeds pertaining to the property referred to above. The said tripartite agreement has not seen the light of the day, till date. The recitals in Ex.P6 makes it clear that the amount of Rs.25,00,000/- was never paid to Bharat Dayananda under this agreement. But it was paid under the separate tripartite agreement entered into between three parties and there is no reasonable explanation as to why the same is not to be produced before the Trial Court by the complainant to substantiate his contention.

28. Learned counsel for the respondents drawn my attention to Ex.D1, the copy of the registered sale deed. This document was tendered to PW-1 during cross-examination and on his admission the same is marked. This sale deed is dated 19.12.2020. As per this document, the accused in these cases as vendors sold 5.14 acres of land in Sy.No.26/2 situated at Bidragere village, Kasaba Hobli, Anekal Taluk, Bengaluru Rural District which is referred to in Ex.P6, in favor of the complainant



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M/s Mahaveera Transport Private Limited and M/s Anuj Cargo Movers, by receiving the entire consideration amount of Rs.4 crores. There is reference to an agreement to sell dated 16.10.2019 entered into between the parties. The purchaser agreeing to purchase and the vendors agreeing to sell and it is stated that while executing the agreement to sell, the purchasers have paid the entire consideration of Rs.4 crores to the vendor, as detailed in the sale deed. All the payments were either through cheque or RTGS or demand draft or through online transfer. Thus, under the admitted registered sale deed dated 19.12.2020, marked as Ex.D-1, the accused in these 3 cases sold 5.14 acres of land in favour of the complainant and another by receiving the entire sale consideration amount of Rs. 4 crores. There is no explanation as to why the agreement Ex.P6 came to be executed two days later, that is on 21.12.2020. It is not explained as to what was the necessity for the complainant who already paid Rs. 4 crores under the agreement to sell dated 16.10.2019 to pay Rs.25,00,000/- once again to Bharat Dayanand. The recitals found in Ex.P6 is quite contrary to the recitals in the admitted registered sale deed Ex.D1. Under such circumstances, it is to be held that the accused are successful in



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probablizing their defence that the cheques Ex.P1 were not issued towards discharge of legally enforceable debt. When the accused are successful in probabalizing their defence, the legal presumption under Section 118 and 139 of NI Act gets rebutted and the burden again shifts on the complainant to prove lending of the amount by placing cogent materials, without relying on the legal presumption under Sections 118 and 139 of NI Act.

29. The discussions held above discloses, that the complainant even though contended that Ex.P6 was executed and Rs.25,00,000/- was paid through the demand draft to Bharath Dayanand at the request of these accused, has not probabalized the same. The recitals in Ex.P6 even if accepted, do not suggest that the amount of Rs.25,00,000/- was paid under the agreement. The recitals in the document states that, there is a tripartite agreement to which Bharat Dayanand was also a party and the amount of Rs.25,00,000/- was paid, but the said agreement was never produced before the Court. Even though it is the contention of the complainant, that amount of Rs.25,00,000/- was paid through demand draft after passing a Resolution by the Board of Directors, no such documents are forthcoming. Even the bank statements to evidence the fact of



lending the amount are not produced before the Court. Under such circumstances, it cannot be held that the complainant has proved lending of the amount and existence of legally enforceable debt. When the accused is successful in rebutting to legal presumption and when the complainant fails to prove lending and existence of legally enforceable debt, the accused is entitled for acquittal.

30. Learned counsel of the appellant placed reliance on the decision of the Hon'ble Apex Court in **Rajesh Jain v/s Ajay Singh**⁴ to contend that, in view of the presumption under Section 139 of NI Act, the burden shifts on the accused to prove his defence. The accused has not issued any reply nor have they stepped into the witness box to depose regarding their defence and under such circumstances, they are liable for conviction.

31. I have gone through the decision rendered by the Hon'ble Apex Court. The position of law with regard to the legal presumption under Section 139 of NI Act, shifting of the burden on the accused on admitting issuance of cheque with his signature to take the defence and to probabalize the same and on probabalizing the defence by the accused, again shifting the

⁴ AIR 2023 SC 5018



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burden on the complainant to prove lending of the amount is reiterated by the Hon'ble Apex Court. However, on the merits of the case, the Court held that the accused was not successful in rebutting the legal presumption or probabalizing the defence. The conduct of the accused was commented that he has not stepped into the witness box to depose regarding his defence and therefore, the appeal was allowed and the accused was convicted. But the facts in the present cases are entirely different. The accused are successful in probabalizing their defence by cross-examining PW1 and by producing Ex.D1. Under such circumstances, it cannot be said that adverse inference could be drawn against the accused for not stepping into the witness box to depose before the Trial Court. It is not the requirement of law in all the cases that the accused are required to step into the witness box and depose regarding their defence, when the materials placed by the complainant itself creates a serious doubt in the mind of the Court about the contention taken by the complainant.

32. Learned counsel for the appellant while addressing the argument contended that he is having the xerox copies of the demand draft for having lent the amount to the accused by



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paying it to Bharat Dayanand. It is also his contention that learned counsel who was representing the complainant before the Trial Court had not conducted the trial properly and therefore, no adverse inference could be drawn against the complainant. Even if such submissions are to be accepted, there must be a specific ground made in the memorandum of appeal while preferring the appeal. No such grounds are made out in the appeal. The appellant has never produced any additional documents along with the memorandum of appeal or at the time of addressing the arguments, in accordance with law. Under such circumstances, the contention raised by the complainant cannot be accepted.

33. I have gone through the impugned judgments passed by the Trial Court. It has taken into consideration the materials on record and has arrived at a right conclusion that the complainant is not successful in proving the guilt of the accused beyond reasonable doubt. By acquitting the accused, the presumption of innocence of the accused gets strengthened and I do not find any compelling reasons to set aside the impugned judgments of acquittal.



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34. In view of the discussion held above, I am of the opinion that the appellant has not made out any grounds to allow the appeals.

35. Accordingly, I answer the above point in the Negative and proceed to pass the following:

ORDER

Appeals are ***dismissed.***

Sd/-
(M.G. UMA)
JUDGE

SPV

List No.: 2 Sl No.: 1