

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 18TH DAY OF JANUARY 2016

BEFORE

THE HON'BLE MR. JUSTICE S.N. SATYANARAYANA

Crl.A. No.100209/2014

BETWEEN:

K.M.NANJUNDAPPA S/O MALLIKARUNAPPA,
AGED ABOUT YEARS,
R/O RAMANAGARA, H.B.HALLI,
BELLARY DISTRICT.

.. APPELLANT

(BY SRI.PRAVEEN TARIKAR & GANGADHAR J.M., ADVS.)

AND:

PUKRAJ SING PUROHIT,
S/O PARTINGI PUROHIT,
AGED ABOUT YEARS,
R/O BASANT (POST) TALUK BALI,
PAL DISTRICT, RAJASTHAN STATE.

...RESPONDENT

(BY SRI.SURESH P.HUDEDAGADDI, ADV.)

THIS APPEAL IS FILED UNDER SECTION 378(4) OF CR.P.C. SEEKING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 26.08.2014 PASSED BY THE LEARNED CIVIL JUDGE & JMFC, H.B.HALLI IN C.C.NO.355/05 FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENT ACT AND CONVICT THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENT ACT.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The complainant in C.C.No.355/2005 on the file of the JMFC, H.B.Halli has come up in this appeal, challenging dismissal of his complaint, which was filed under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instrument Act.

2. The brief facts leading to this appeal are as under:

The case of the appellant who is complainant in C.C.No.355/2005 is that, on 11.11.2004, the respondent herein who is a person known to him has borrowed a sum of Rs.2,60,000/- as hand loan. It is stated that the said amount was paid on the same day and on the very same day a cheque bearing No.950634 drawn on Tunga Bhadra Grameena Bank in favour of the complainant was received. It is the statement of the complainant that, at the time of issuing the said cheque and while taking the loan, the accused who is respondent herein assured him that there is sufficient funds available in his account to honour the

cheque, which is issued to him. In the entire pleadings, there is no reference as to the date on which the cheque was required to be deposited for realization. The statement of complainant is to the effect that the loan is given to the respondent for a short period and that it was assured to him by the respondent that it will be repaid within short time and at the time of taking loan itself, the respondent had issued aforesaid cheque with an assurance that there is sufficient funds available to honour the same.

3. It is seen that the cheque bearing No.950634, which is marked as Ex.P1 was presented by the complainant for realization on 24.01.2005 and the said cheque was returned with an endorsement that there was no sufficient funds. It is seen that statutory notice is issued to the accused on 01.02.2005, which has come back with an endorsement that the addressee left. Thereafter, the private complaint under Section 200 of Cr.P.C. is filed on the file of the JMFC, H.B.Halli, which is registered as P.C.No.6/2005 and subsequently, after

cognizance, the same was converted into C.C.No.355/2005.

4. In the said proceedings, when the complainant called upon to substantiate his claim, he adduced evidence as P.W.1 and he produced in all 8 documents, which are marked as Exs.P1 to P8, which are nothing but the cheque said to have been issued by the accused, endorsement for dishonour of cheque, postal receipt, certificate of posting, copy of legal notice, unserved cover, etc. However, in the entire evidence the complainant was not able to establish that there was financial transaction between himself and the accused with reference to payment of hand loan of Rs.2,60,000/- inasmuch as he was not able to establish that he had sufficient funds with him as on that day and also relevant documents to substantiate the loan transaction, except for relying upon the dishonoured cheque.

5. In the said proceedings, accused examined himself as D.W.1 and he produced in all 35 documents,

which are marked as Exs.D1 to D35. In the evidence he stated that though complainant is totally stranger to him and that he has never borrowed money and he has never issued the cheque, he would submit that he had chit transaction with one Fakkirayya and he had borrowed money from him to meet the expenses for medical treatment. He further stated that, at the time of borrowing money from Fakkirayya, he had issued several documents to him, one of them is the cheque, which is relied upon by the appellant herein. Though the accused stated that he borrowed money for his medical treatment from Fakkirayya, he did not examine the said Fakkirayya as witness.

6. With these material available on record, the learned JMFC, H.B.Halli dismissed the complaint of the appellant herein on the ground that he did not satisfactorily establish the transaction between himself and the accused. While doing so, the learned Magistrate highlighted inconsistency in the evidence of appellant

herein with reference to his annual income, the amount which is said to have been paid, mobilization of the amount and lack of supporting documents to substantiate the loan transaction between himself and the accused. When admittedly, appellant herein is a moneylender, to believe that he had lent out a sum of Rs.2,60,000/- just on the basis of a cheque without taking corresponding documents like, receipt for having paid the money and assurance for repayment in the form of on demand promissory note and other relevant documents with reference to surety and all other things would clearly indicate that he was not able to establish the said transaction. In this background it is seen that the complaint of the appellant herein is rejected in C.C.No.355/2005. As against which, this appeal is filed.

7. When this matter is at the stage of admission, the entire trial Court records in C.C.No.355/2005 is secured. The pleadings, evidence and documents available on record are meticulously looked into. On going through

the same, it is clearly seen that the appellant herein who is complainant before the learned Magistrate has failed to establish the transaction between himself and the respondent. Though in his evidence, it is stated that the respondent herein was in the habit of borrowing money from him regularly and that he was paying the same for a period of 10-15 years, he was not able to produce any document to substantiate that there was prior financial transaction between himself and the respondent. When admittedly the appellant herein is a licensed moneylender, it is expected of him to maintain the register with reference to financial transaction with borrowers by maintaining ledger account with reference to the money lent out and the rate of interest which he would be charging and recovery of the same and also with reference to the date of disbursement and also the mode of repayment, which are required to be maintained. None of those documents are produced. It is in fact surprising that the appellant herein who is the complainant has not even

taken on demand promissory note from the respondent-accused, when he has lent a sum of Rs.2,60,000/-.

8. According to the appellant himself he has not lent such big sum to anybody else. Further, it is his own admission that he has lent money to the respondent on several occasions, i.e., up to 10-15 times in the past 15 years. That for all such transactions he has collected documents, like, promissory note and other relevant documents. Though he would submit that in this transaction also he has all the documents to support the same, he has not filed any of those documents to show that there was continuous transaction between himself and the respondent-accused for past 15 years. In the absence of any material, the dismissal of the complaint by the Court below appears to be just and proper.

9. As against the reasonable finding given by the learned JMFC, H.B.Halli in rejecting the complaint filed by the appellant herein for the offence punishable under Section 138 of Negotiable Instrument Act against the

respondent-accused, no grounds are made out to admit this appeal to reconsider the said judgment. Accordingly, the appeal filed by the complainant in C.C.No.355/2005 is hereby dismissed.

Sd/-
JUDGE

MBS/-