IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 23RD DAY OF DECEMBER, 2020
PRESENT

THE HON'BLE MR.JUSTICE P.N.DESAI

CRIMINAL APPEAL NO.200083/2014

BETWEEN:

MOHAN KUMAR S/O SHANKAR RATHOD
AGE: 34 YEARS OCC: AGRICULTURE
R/O: GDA COLONY IIIRD PHASE,
FILTERBEDS, PLOT NO.44,
DIST: GULBARGA .... **APPELLANT**

(BY SRI A. VIJAY KUMAR, ADVOCATE)

AND:

SYED MOHD ALI
S/O SYED SAMSHODDIN
AGE: 48 YEARS OCC. BUSINESS
H.NO.5-993/20/52
PLOT NO.52, OMER COLONY
AZADPUR ROAD,
GULBARGA. **... RESPONDENT**

(BY SRI. FAIZUDDIN K. ZARDI AND SRI. ALEEMUDDIN SIDDIQUE, ADVOCATES)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378 (4) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO CALL FOR RECORDS IN C.C.NO.2088/2012 ON THE FILE OF THE IVTH ADDL. CIVIL JUDGE AND JMFC, AT GULBARGA AND BE PLEASED TO SET ASIDE THE JUDGMENT PASSED THEREIN DATED 11.03.2014 AND BE PLEASED TO ALLOW AND CONVICT THE ACCUSED IN ACCORDANCE WITH LAW AND GRANT COMPENSATION ON TO APPELLANT AS AVAILABLE IN LAW.

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

JUDGMENT

This appeal lays challenge to the judgment of acquittal passed in C.C.No.2088/2012 dated 11.03.2014 by the IV Addl. Civil Judge and JMFC Court, Gulbarga.

02. The appellant was the complainant and respondent was the accused before the Trial Court. They will be referred as complainant and accused as per their respective ranks before the Trial Court for convenience in this judgment.

03. The brief case of the complainant before the Trial Court was that, the complainant and accused are conversant to each other. They are good friends. It is further case of the complainant that on 15.07.2011 accused approached the complainant in respect of hand-loan of Rs.9,80,000/- for his business needs and other necessities. In view of good relationship,

complainant advanced the loan on assurance of the accused that he will repay the loan within a month. But the accused did not return the amount inspite of repeated request. Then the accused issued a cheque dated 21.11.2011 bearing No.339579 of State Bank of Hyderabad, Super Market, Gulbarga for a sum of Rs.9,80,000/- to the complainant in discharge of said debt or loan. The complainant presented the said cheque for collection to bank, but it was returned dishonoured with a endorsement as "funds insufficient". On the request of accused the cheque was again presented on 07.12.2011. But again the said cheque was returned dishonored for very same reason.

04. The accused did not give proper answer to complainant in this regard, hence complainant issued legal notice dated 21.12.2011, which was returned with endorsement that the notice was refused. Therefore, complainant filed compliant against the accused for the

offence punishable under Section 138 of Negotiable Instruments Act, 1881 (*Hereinafter for short referred as "N.I.Act"*.).

05. The accused appeared. After recording plea of the accused, the complainant got examined himself as PW.1 and one witness was examined on his behalf as PW.2. He got marked seven documents as Exs.P.1 to 7. After recording 313 Cr.P.C. statement the accused gave a defence evidence of himself as DW.1 and got examined one witness on his behalf as DW.2, but no documents were marked on his behalf.

06. After hearing both the sides, the learned IV Addl. Civil Judge and JMFC Court, Gulbarga acquitted the accused. Aggrieved by the same this appeal is filed on the following grounds:-

a) That the impugned judgment of the Trial Court is not sustainable and liable to be set-aside.

b) The accused has not led evidence to discharge the presumption in favour of complainant.

c) The defence of the accused was not probable.

d) The Trial Court failed to consider the presumption under Sections 139 and 118 of "N.I. Act".

e) No evidence is adduced to probabalise the defence.

f) The Trial Court has not properly appreciated the decisions referred.

With these main contentions the appellant has prayed to allow the appeal.

07. Heard Sri. A. Vijaykumar, learned counsel for the appellant and Sri. Faizuddin K. Zardi, advocate for learned counsel for the respondent.

08. The learned counsel for the appellant submitted that issuance of cheque and signature on cheque is not denied by the accused. Presumption under Negotiable Instruments Act is available to complainant. The presumption is not rebutted by the accused either in the cross-examination or in the defence evidence. The defence of the accused is that there was no legally enforceable debt, the source of amount is not proved, cheque is given as a security for chitt transaction, repaid the entire amount, but cheque not returned back. The learned counsel argued that no documents were produced to show that complainant was running any chitt business or chitt transaction with accused. In the cross-examination of PW.1 there is a suggestion regarding purchasing of plot by complainant that itself shows the income and the capacity of the complainant to lend the loan. Misuse of cheque defence is not proved. Stop payment notice was not given. Notice was sent to the address and house number of the

accused and the notice is served. The learned counsel relied upon the judgments of the Hon'ble Supreme Court reported in 1) ***AIR 2020 SC 945*** in the case of ***APS Forex Services Pvt. Ltd., vs. Shakti International Fashion Linkers and others***, 2) ***2019 CRI.L.J 3227 (SC)*** in the case of ***Bir Singh vs Mukesh Kumar,*** 3) ***2019 (4) AKR 562*** in the case of ***H. G. Nagaraja vs. H. Suresh Naika***. With these main contentions he prayed to set-aside the acquittal judgment and convict the accused.

09. Against this learned counsel for the respondent - accused argued that there are no additional or other documents were taken by the complainant when huge amount was alleged to have been given as a loan only on the basis of cheque. The accused was a student. Why cheque was issued to him. No source of income of complainant was produced. In fact the complainant was running a chitt business

wherein there were fifty members and one has to pay Rs.1,000/- each month. On the third month itself the accused got B.C. prize money of Rs.47,000/-. So, the cheque was issued for Rs.50,000/- as a B.C. amount. The plot was sold by the complainant to the accused, but the amount was not given, as the possession was not handed-over. The blank cheque issued by accused was misused. There was no registered sale deed about the plot. The dispute is regarding plot but not for the cheque. When the cheque amount was given to complainant is not stated. The Trial Court has properly appreciated the evidence. The accused has also examined one witness. So, considering the grounds of realities and the plot selling business this blank cheque was misused. The learned counsel relied upon the decision of the Hon'ble Supreme Court reported in 1) ***AIR 2008 SC 1325*** in the case of ***Krishna Janardhan Bhat vs Dattatraya G. Hegde***, 2) ***2012 (3) KCCR 2057*** in the case of ***Veerayya vs. G. K. Madivalar***, 3) ***ILR***

2008 KAR 4629 in the case of ***Shiva Murthy vs Amruthraj***. With these main contentions the accused counsel prayed to dismiss the appeal.

10. From the above materials, evidence and arguments the points that would arise for my consideration are as under:-

01. Whether the learned Trial Court has appreciated the evidence before the court in the light of the sound principles regarding appreciation of evidence in cases arising out of 'Cheque Bounce" under Negotiable Instruments Act, 1881?

02. Whether the Judgment passed by the Trial Court in C.C.No.2088/2012 dated 11.03.2014 is illegal, perverse and needs interference by this Court?

11. My answer to the above points is as under for the reasons given below.

12. The undisputed contentions as borne out from the records are that, the issuance of cheque - Ex.P.1 in question is admitted by the accused. The accused has not denied his signature on cheque nor he has disputed that the cheque does not belong to him. It is also undisputed that the cheque in question dated 15.07.2011, when presented to the bank by complainant, it was returned with endorsement that "amount insufficient". Issuance of demand notice by the complainant to the accused is also proved as discussed by the Trial Court in Para Nos.13, 14, 15 and 16. The Trial Court has discussed Ex.P.4 - legal notice and the evidence of DW.1 - Syed Mohd. Ali. The learned Trial Judge considering Section 27 of General Clauses Act, 1897 raised the presumption. Further as per Section 114 of the Evidence Act, a presumption is made and it is held that the demand notice is served in accordance with law on the accused.

13. Now, the grounds on which the learned Trial Court has acquitted the accused are that a) without there being any additional document or without any security such a huge amount was paid. b) Source of payment of huge amount was not proved by complainant. c) The persons in whose presence the loan was advanced is not proved. So, on these grounds the learned Trial Judge come to conclusion that without proving execution of any other document as a security for the said loan, handing over loan of huge amount without interest and in violation of Section 269 (ss) of Income Tax Act, the contention of the complainant are not tenable. Hence, he acquitted the accused. In my considered view such a finding of the Trial Court is without any legal basis and contrary to the evidence on record.

14. It is settled principles of law that once the cheque is issued and signed by the accused and if it is

returned dishonored stating that the amount in account is "insufficient", then there is a statutory presumption is in favour of the holder of the cheque that the cheque which was issued for enforcement of debt or liability is dishonored. The burden to rebut the presumption is on the accused. The accused can rebut such presumption either by cross-examining the complainant and showing before the Court the evidence in cross-examination probabalise the defence of the accused or the case of the complainant is not proved. Secondly, the accused can also lead defence evidence to rebut the presumption.

15. The defence of the accused in this case is that there is no legally enforceable debt or liability by him as contended by the complainant. There is no source of income to the complainant to pay the amount shown in the cheque. No documents like surety bond, promissory note or other security documents were taken, when such huge amount was stated to have been

given as a hand-loan. The accused further defence is that cheque is given as a security for chitt transaction. His main contention is that he has repaid the entire cheque amount and not taken back the cheque.

16. In the light of the case of complainant and defence of the accused, the evidence in this case will have to be appreciated. PW.1 - Mohan Kumar - complainant in his examination-in-chief has reiterated the complaint averments. He has stated about the loan borrowed by the accused. He has also produced the cheque - Ex.P.1 which is admittedly signed by the accused. Exs.P.2 and 3 are the Bank Endorsements showing that the said cheque was returned with endorsement as funds insufficient. Ex.P.4 is the demand notice. Ex.P.5 is the postal receipt. Ex.P.6 is the un-served postal receipt. Ex.P.7 is the bank pass book. So, all these documents clearly indicate the complainant has proved ingredients of Section 138 of

"N.I.Act". Though PW.1 was cross-examined there is nothing in his evidence so as to rebut the presumption under Section 139 of "N.I.Act". The Trial Court has quoted the extracts of some of his deposition of PW.1 regarding he has not obtained on demand promissory note, separate agreement and complainant not doing any other work except agricultural work, he is completed degree in the year 2013 and on that basis came to the conclusion that he has no source of income to give hand-loan. This observation and finding is totally wrong and not based on any legal presumption or decisions. A suggestion is made in the cross-examination of PW.1 that he has purchased the plots, this is not denied. He has also stated that he has sold his plots for Rs.10,50,000/- and that amount was with him. The said evidence is also not denied. Even in his cross-examination he has stated at Para No.9 that his father has got 35 to 40 acres of agricultural lands and he has got 10 acres of lands bearing Sy.Nos.60 and 85

and he is a agriculturist. The said evidence elicited in the cross-examination by the accused.

17. Therefore, the stray sentences picked up from the evidence of complainant referred by the Trial Court will not help the accused. On the other hand it help the complainant to show that he has got sufficient income to purchase the plots to give loan out of the money which he received by selling the plots. He has got agricultural lands. The Trial Court has also wrongly appreciated the evidence of Manager of the Bank - PW.2 wherein he has stated that the complainant has not withdrawn the amount on 15.07.2011, then the accused case appears to be not true. Such a inference is not based on any material, when it is not the case of complainant that he has withdrawn the amount from the bank and given it to the accused, then the observation of Trial Court in this regard is not tenable.

18. The learned counsel for the appellant has relied upon decision of the Hon'ble Supreme Court reported in ***2019 CRI.L.J 3227 (SC)*** in the case of ***Bir Singh vs Mukesh Kumar.*** wherein at Para Nos.36, 37, 38, 39, 40 and 41 it is held as under :-

> *"36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*
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> *37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*
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> *38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount*

and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

39. It is not the case of the respondent - accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent - accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant - complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that

the respondent - accused should have given or signed blank cheque to the appellant - complainant, as claimed by the respondent - accused, shows that initially there was mutual trust and faith between them."

19. The learned counsel for the appellant has also relied upon another decision of the Hon'ble Supreme Court reported in ***AIR 2020 SC 945*** in the case of ***APS Forex Services Pvt. Ltd., vs. Shakti International Fashion Linkers*** and others at Para No.7 it is held as under:-

"7. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the N.I. Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques

were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence".

20. The learned counsel also relied upon the decision of the learned Single Judge of this Court reported in ***2019 (4) AKR 562*** in the case of ***H. G. Nagaraja vs. H. Suresh Naika,*** at Para Nos.8, 9, 10 and 11, it is held as under:-

"8. Be that as it may. Even as could be seen from the defence taken by the accused during the course of cross- examination that the complainant has no financial capacity to lend such huge amount and the said cheque was issued to one Ravindranath for security purpose and the same was misused by the complainant and filed a false complaint, the said defence itself clearly goes to show that the said cheque has been issued from the account of the accused and it bears his signature and it is his specific case that the said cheque has been issued to one Ravindranath for the purpose of security. When accused admits the signature, then under such circumstances the Court has to draw a presumption mandated under Section 139 of the N.I. Act. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Rangappa Vs. Sri.Mohan reported in (2010) 11 SCC 441, wherein at paragraph 16 it has been observed as under:-

16. All of these circumstances led the High Court to conclude that the accused had not raised a probable defence to rebut the statutory presumption. It was held that:

"6. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.

What is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court. The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered. ..."

Hence, the High Court concluded that the alleged discrepancies on part of the complainant which had been noted by the trial court were not material since the accused had failed to raise a probable defence to rebut the presumption placed on him by Section 139 of the Act. Accordingly, the High Court recorded a finding of conviction.

9. On going through the said paragraph it reveals that Section 139 of the N.I. Act mandates the Court to draw a presumption that the said cheque has been issued in discharge of debt or liability. However, the accused is permitted to rebut the said presumption on preponderance of probabilities to show that the complainant was not having any capacity to lend money and there was no legally recoverable debt or

liability and the said cheque has been issued for the purpose of security. It is for the accused to prove his defence, when once he has taken a specific contention that the said cheque has been issued to one Ravindranath for the purpose of security and the same has been misused by the complainant, burden is on the accused to prove the same.

10. Even though during the course of cross-examination of PW.1 it has been suggested that the said cheque has been issued as a security to Ravindranath and the same has been misused, the said suggestion has been denied. Apart from that neither the accused has stepped into the witness box nor produced any document. Even he has not given any reply to the notice issued by the complainant as per Ex.P3. If really he has not availed the loan from the complainant and the complainant has misused the cheque Ex.P1, then under such circumstances, immediately after receipt of the legal notice as per Ex.P3 he could have given reply stating the said fact. Keeping silent over the said notice, it draw a presumption that he was not having any grievance after receipt of the said notice and even after coming to know after receipt of the legal notice, the said cheque has been bounced for insufficient funds, then under such circumstances at-least he could have filed a complaint alleging that the cheque which has been issued as a security to one Ravindranath has been misused. The conduct of the accused also does not substantiate his case. When the presumption has been drawn under Section 139 of the N.I. Act about the

legally recoverable debt and the said presumption has not been rebutted by cogent and acceptable evidence, then under such circumstances, the case of the complainant stands proved and accused is liable to be convicted under Section 138 of the N.I. Act. Without looking into the said fact the trial Court only on the basis of the contention of the accused that a huge amount has been advanced and the complainant is not having any capacity to lend such huge amount and on that count, the trial Court has acquitted the accused. But as could be seen from the cross-examination of PW1, in his evidence it has been elicited that per month he is getting a salary of Rs.5,000/- to Rs.15,000/- and he is working as a Cinema Representative and per day he is running four shows and he has taken the house on a lease by giving Rs.5,00,000/- and it has also been elicited that he is having a only son and he is working in Bengaluru. All these materials even draw the attention of this Court that the complainant is having capacity to lend the said amount.

11. Be that as it may. When a presumption has been drawn under Section 139 of the N.I. Act, the said presumption is that there exists legally recoverable debt or liability. Then under such circumstances, the trial court until it is rebutted, it ought not to have gone to the said facts and ought not to have acquitted the accused. The reasons arrived at by the Court below are not based upon any cogent and acceptable evidence and as such the same is liable to be set aside and the accused is liable to be convicted.

21. There is also a decision of the Hon'ble Supreme Court reported in ***AIR 2019 SC 1876 Rohitbhai Jivanlal Patel vs State of Gujarat and another***, wherein at Para Nos.19 it is held as under:-

> "***19***. *Hereinabove, we have examined in detail the findings of the Trial Court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the Trial Court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the Trial Court. The observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of fact etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally*

enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been of irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs.22,50,000/- and seven cheques being of Rs.3,00,000/- each leading to a deficit of Rs.1,50,000/-, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs.22,50,000/-) was distinctly stated by the accused - appellant in the aforesaid acknowledgement dated 21.03.2017."

22. So, in the light of the above principles, if the evidence of complainant is considered and in the light of defence taken by the accused then it is crystal clear that the complainant has proved his case and an offence under Section 138 of N.I.Act against the accused is made out by the complainant by legally admissible evidence.

23. The defence of the accused is considered in the light of the above referred decisions, then it is crystal clear that the accused defence is neither probabale nor tenable. The accused has simply stated that the complainant was running a chitt fund business and he was member of it. He has issued a blank cheque for the prize of chit fund a sum of Rs.50,000/-. The complainant has promised him to return the cheque, but he did not return the cheque. Accused has further stated that he has purchased one plot from complainant for Rs.3,00,000/-, but he was not given possession. So,

for that purpose there is a dispute. This is accused defence. But no documents are produced to show that there was any chitt fund business run by the complainant. If at all the complainant has not returned the cheque why no intimation was given to the bank to stop payment. No criminal case is filed against the complainant in this regard. No action is taken for filing this complaint if at all this is a false case. So, the accused in his exanimation-in-chief never rebuts any statutory presumption arising in favour of complainant. In the cross-examination he has admitted that he has no documents to show that complainant was running a chitt fund business. He has also admitted that he has not filed any suit seeking possession of the land sold by the complainant. He has also stated that he do not know whether the plots were sold by the complainant are still in existence or not. He has clearly admitted that Ex.P.1 - cheque belongs to him and Ex.P.1(a) is his signature. So, his evidence will not help to the accused

in any way to rebut the presumption in favour of the complainant.

24. The accused examined one S. Mohan Kumar as DW.2. The said witness also states that he is also member of Chitt B.C. Business and very strangely states in examination-in-chief that accused has paid entire B.C. amount. He further states that himself and accused asked complainant to return the cheque, the complainant returned his cheque but he do not know whether the cheque issued by the accused was returned to him or not. So, this evidence in examination-in-chief falsifies the defence of the accused. DW.2 has also admitted that he do not know the name and address of members of the chitt fund business. He do not know the cheque number given by him. He do not remember the date and month when he has given cheque to the complainant. He has no documents to show about payment of B.C. (chitt) amount. He cannot say the date

and month when the accused has given the cheque to the complainant. He has not attended any panchayat regarding cheque given by the accused in favour of the complainant. He has clearly stated he do not know anything about this case. He do not know what is amount of cheque involved in this case. So, this type of evidence of DW.2 totally falsify the defence of the accused.

25. Therefore, the findings of the learned Trial Court that the complainant has failed to prove the debt and the accused has substantiated his defence by preponderance of probability is totally illegal, perverse and not based on the evidence on record or the settled principles regarding appreciation of evidence. The decisions relied upon by the learned counsel for the accused reported in ***2012 (3) KCCR 2057*** in the case of ***Veerayya vs. G. K. Madivalar,*** the decision of the Hon'ble Supreme Court reported in ***AIR 2008 SC 1325***

in the case of ***Krishna Janardhan Bhat vs Dattatraya G. Hegde*** and another decision reported in ***ILR 2008 KAR 4629*** in the case of ***Shiva Murthy vs Amruthraj*** will not help the accused in any way. In the decision of this Court referred by the accused counsel, in that case the suit filed for recovery of cheque amount which was dismissed. Whether the complaint was premature or not was in question. The principles stated in the decision of ***Krishna Janardhan Bhat*** (*Supra*) was referred by the Hon'ble Supreme Court and this High Court in number of subsequent decisions. The principles stated in that decision has no application to the evidence and facts of this case. Therefore, that decisions in no way help the accused. In the light of the principles stated in the above referred decisions of the Hon'ble Supreme Court, if the present appeal, the judgment and evidence placed on record are considered then it is evident that the complainant has proved by legally admissible evidence that the accused has

borrowed loan of Rs.9,80,000/- and issued cheque - Ex.P.1 in discharge of the said debt or liability which is legally recoverable. The accused has failed to rebut statutory presumption in favour of complainant. The Trial Court has not appreciated the principles stated by the Hon'ble Supreme Court and this Court in the cases under Negotiable Instruments Act, particularly cheque bounce case. The Trial Court has failed to appreciate the burden of proof and drawing presumption. Only on untenable contentions and evidence, the Trial Court has acquitted the accused. Therefore, the judgment of the Trial Court is illegal, perverse and needs interference by this Court and liable to be set aside.

26. It is crystal clear that, the accused has committed an offence punishable under Section 138 of Negotiable Instruments Act and he needs to be sentenced accordingly.

27. The Section 138 of Negotiable Instruments Act, 1881 provides punishment both imprisonment which may extend two years or with fine which may extend to twice the amount of cheque, or with both.

28. The offences under Negotiable Instrument Act, are regulatory offences intend to give sanctity to the negotiable instruments. Keeping in mind the settled principles regarding imposition of sentence in cheque bounce case, in my considered view the accused needs to be imposed the fine double the cheque amount. In this case the cheque amount is Rs.9,80,000/-. The case of the year 2012. Now we are in the end of the year 2020. So, nearly eight years the case is pending. Therefore, in my considered view the imposition of double the cheque amount as a fine is a proper sentence. Hence, I answer the Points for consideration accordingly and proceed to pass the following:

ORDER

The Criminal Appeal filed under Section 378 (4) of Code of Criminal Procedure by the appellant / complainant is allowed.

The Judgment and order of acquittal passed in C.C.No.2088/2012 dated 11.03.2014 by the IV Addl. Civil Judge and JMFC Court, at Gulbarga. is hereby set aside.

The accused/respondent is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

The accused/respondent is sentenced to pay a fine of Rs.19,60,000/- (Rupees Nineteen Lakhs Sixty Thousand only) (i.e., double the cheque amount of Rs.9,80,000/- (Rupees Nine Lakhs Eighty Thousand Only)).

The accused/respondent shall deposit the fine amount within a period of 30 days from the date of this judgment/order, failing which he shall undergo simple imprisonment for a period of one year. If the fine amount is deposited, out of the fine amount a sum of Rs.19,50,000/- (Rupees Nineteen Lakhs Fifty Thousand Only) shall be paid to the appellant - complainant - PW.1 - Mohan Kumar s/o Shankar Rathod as compensation under Section 357 of the Code of Criminal Procedure, 1973. The remaining amount of Rs.10,000/- (Rupees Ten Thousand only) shall be credited to the State Account.

Send back the secured records of the Trial Court forthwith.

Sd/-
JUDGE

KJJ