HC-KAR
NC: 2026:KHC:37572
CRL.RP No. 1150 of 2016
CNR: KAHC010407582016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

CRIMINAL REVISION PETITION NO. 1150/2016

BETWEEN:

SRI. K. M. JAGADEESHA
S/O LATE MANJAPPA GOWDA
@ MANJE GOWDA,
AGED ABOUT 51 YEARS,
R/O KUSUGOLLI,
GUNAVANTHE POST,
KOPPA TALUK – 577 132

...PETITIONER

(BY SRI. LOHITASWA BANAKAR, ADVOCATE)

AND:

SRI. K. P. RAMESH
S/O LATE PUTTE GOWDA,
AGRICULTURIST AND BUSINESSMAN,
R/O GOLIKOPPA
KOPPA TALUK – 577 132

...RESPONDENT

(BY SRI. K PRASANNA SHETTY, ADVOCATE)

THIS CRIMINAL REVISION PETITION FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE DATED 02.08.2014 PASSED BY THE CIVIL JUDGE AND JMFC, KOPPA IN C.C.NO.52/2011 AND THE ORDER DATED 03.03.2016 PASSED

BY THE II ADDL. S.J., CHIKKAMAGALURU IN CRL.A.NO.110/2014.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL ORDER

This revision petition is preferred by petitioner/accused challenging the judgment of conviction and order of sentence dated 3rd March 2016 passed in Criminal Appeal No.110/2014 by the II Addl. Sessions Judge, Chikkamagalur, confirming the judgment of conviction and order of sentence dated 2nd August 2014 passed in C.C.No.52/2011 by the Civil Judge & JMFC, Koppa, whereby the trial Court convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I. Act' for short) and sentenced him to pay a fine of Rs.3,000/-, in default to undergo Simple Imprisonment for a period of 10 days and further ordered the accused to pay compensation amount of Rs.3,00,000/- to the complainant. Petitioner is seeking to set aside the impugned judgments rendered by the trial Court as well as the appellate Court and consequently acquit the accused for the offence punishable under Section 138 of the N.I. Act.

2. For the sake of convenience, the parties shall be referred to as per their ranking before the trial Court.

3. Brief facts leading to filing of this petition are as follows:

It is the case of the complainant that himself and the accused are well acquainted with each other. On 11.7.2005 accused borrowed a sum of Rs.3,00,000/- from the complainant by issuing a written undertaking for repayment of the said amount. Accused assured that the loan amount would be returned within two months. Thereafter, the accused one or the other way avoided repayment of the loan. After repeated requests from the complainant, the accused issued post dated cheque bearing No.822635 dated 17.7.2010 for Rs.3,00,000/- in the month of January-2010.

3.1 Complainant presented the said cheque to the bank for encashment. To his shock and surprise, the said cheque was dishonoured with an endorsement that "funds insufficient". Complainant intimated this fact to the accused, who did not respond to the same and has not paid the amount. Hence, left with no other alternative, the complainant got issued a legal notice dated 25.8.2010 by way of RPAD and Certificate of Posting calling upon the accused to repay the dishonoured cheque amount within 15 days from the date of receipt of the said notice. The legal notice was delivered to the accused, but he did not give any reply. Since the dishonoured cheque amount was not paid pursuant to the legal notice, complainant filed the complaint against the accused under Section 200 of the Code of Criminal Procedure for the offence punishable under Section 138 of the N.I. Act.

3.2 Upon presentation of the complaint, the trial Court took cognizance of the offence under Section 138 of the N.I. Act and issued summons to the accused. In response to the same, the accused appeared before the Court and pleaded not guilty and claimed to be tried.

4. In order to substantiate the case, the complainant filed an affidavit in lieu of evidence as PW1 and reiterated all the averments in the complaint and got marked Exs.P1 to P15. After recording the evidence of the complainant, the statement of the accused was recorded under Section 313 of Cr.P.C. Accused denied the version of the complainant. He led his evidence examining himself as DW1 and other witnesses as DWs.2 to 4 and got documents marked as Exs.D1 to D5.

5. On the basis of the materials placed on record and the evidence adduced, the trial Judge framed the following points for consideration:

1) *Whether the complainant proves beyond reasonable doubts that, the accused has issued the cheque bearing No.822635 dated 17.7.2010 drawn on Indian Bank, Peenya Industrial Estate Branch, Bangalore for Rs.3,00,000/- to the complainant towards legally recoverable debt and thereby the accused has committed an offence punishable under section 138 of N.I. Act?*

2) *If so, to what extent the accused is liable?*

3) *What order?"*

6. On the basis of the evidence adduced by both the complainant and the accused and on examining the same including the materials placed on record, the trial Court came to a conclusion that the cheque was issued in favour of the complainant and the complainant has discharged the burden of proof. That the accused had issued Ex.P1-cheque towards a legally recoverable debt and that the accused did not produce any documentary evidence for having returned the said amount. He did not agree with the evidence produced by the accused and accordingly, answered in favour of the complainant, convicted the accused under Section 255(2) of Cr.P.C., for

the offence punishable under Section 138 of N.I. Act and imposed a fine amount of Rs.3,000/- to be payable to the State and in default, accused to undergo simple imprisonment for a period of 10 days. The learned trial Judge also passed an order directing the accused to pay compensation amount of Rs.3,00,000/- to the complainant.

7. Aggrieved by the judgment of the learned trial Judge, the accused preferred an appeal in Crl.A.No.110/2014 before the learned II Additional Sessions Judge at Chikkamagaluru. The matter was taken up for consideration by the Appellate Court and upon summons being served to the respondent herein, arguments were heard and the Appellate Court formulated the following points for determination:

> *"1) Whether the appellant/accused proves that there is no enforciable debt or liability to issue cheque for Rs.3,00,000/- in favour of the complainant dated 11.07.2005?*
>
> *2) Whether the appellant further proves that the complainant has not issued the notice within the*

stipulated period as contemplated under section 138 of N.I Act.

3) Whether the appellant/accused further proves that the judgment of conviction and sentence passed by the trial court, is illegal, opposed to law, evidence on record and liable to be set aside?

4) What order?"

8. Upon carefully analyzing the materials placed on record including the judgment of the trial Court, the Appellate Court decided the points formulated in the negative and did not find favour with the appellant therein who is the accused and consequently, found favour with a case made out by the respondent-complainant, thereby dismissed the appeal with cost of Rs.500/- and confirmed the judgment of conviction and sentence in CC No.52/2011 on the file of Civil Judge & JMFC, Koppa, dated 02.08.2014.

9. These two judgments rendered by the trial Court and the Appellate Court are challenged before this Court by the petitioner, who is the accused before the trial Court.

CONTENTIONS OF PETITIONER/ACCUSED

10. Learned counsel for the petitioner Sri.Lohitaswa Banakar vehemently contends that both the Courts have erred in law and on facts and have not taken into consideration the materials placed before the trial Court, including the documents produced as Exhibits and marked in the evidence. Hence, the said judgment requires to be set aside. It is also contented by learned counsel for the petitioner that the conviction and sentence passed by the trial Court is erroneous and contrary to law and the documents placed on record. Learned counsel further contends that the trial Court and the Appellate Court have committed an error and illegality by coming to a conclusion that the petitioner availed a loan of Rs.3,00,000/- by appreciating Ex.P1. Learned counsel further contends that both the Courts have failed to take into consideration the defence of the petitioner that as on the date of the said alleged loan having been given, the petitioner was in his hometown at Gunavanthe on

11.07.2005 at 12.02 p.m. and it cannot be possible that the petitioner has executed Ex.P12. Therefore, this aspect of the matter has not been properly considered by both the Courts and has delivered erroneous judgments.

11. Learned counsel further contends that on 11.07.2005, petitioner was working in a company named KAR Mobiles. To establish and prove the same, he has got marked Exs.D2 & D3, which has been conveniently ignored by both the Courts while passing the impugned judgments. It is further contented by learned counsel for the petitioner that the Courts below have committed error by not appreciating the evidence of the HR manager of KAR Mobiles, who has clearly stated that the petitioner-accused was working in the general shift in the said company-KAR Mobiles from 08.30 a.m. to 04.30 p.m. and to that effect, the attendance register has been maintained as per the biometric methodology. The trial Court and the Appellate Court have not considered these crucial aspects of the evidence placed on record including

the documents produced to show that the petitioner was in the general shift from 08.30 a.m. to 04.30 p.m. where there was no question of the petitioner executing Ex.P12 on 11.07.2005. It is also contented by learned counsel for the petitioner that the petitioner was working in the said company KAR Mobiles on 11.07.2005 till 04.30 p.m. and there was no possibility of the petitioner travelling and reaching from Bangalore to Koppa as it requires 6 to 8 hours and the case made out by the complainant is imaginary and cannot be believed. This aspect has been ignored by the trial Court and the Appellate Court.

11.1 It is also contented by learned counsel for the petitioner that both the Courts have ignored the financial lending capacity of the complainant to lend such a huge amount, as the respondent-complainant was a defaulter to the Bank. It is also contented that the petitioner at no point, admitted receiving the amount of Rs.3,00,000/-, as claimed in the complaint. It is the vehement contention of learned counsel that the cheques were given about 9 years back for an earlier transaction and one blank signed cheque was given on Indian Bank along with the signed stamp paper, which has been misused by the respondent-complainant. It is the further contention of learned counsel for the petitioner that the trial Court and the Appellate Court have not appreciated the evidence adduced with regard to the petitioner having repaid the entire loan amount. It is also contented by learned counsel that when the respondent-complainant threatened the petitioner of using the blank signed stamp paper and blank cheque, which were given for the purpose of security for the loan of Rs.70,000/- 9 years back, the petitioner had lodged a complaint on 07.07.2010 to Deputy Superintendent of Police, Koppa, which is marked as Ex.D1. The same is not appreciated by both the Courts. Learned counsel further contends that the respondent having kept quiet without recovering the loan amount as per the document for a period of more than 9 years, could not have filed the complaint on the basis of an old cheque for a transaction which is time barred and belated. Therefore, the complaint itself is not maintainable and ought to have been dismissed on the ground of delay and having been barred by the limitation.

11.2 It is further contented by learned counsel for the petitioner that the Appellate Court having not considered all these aspects with regard to there being no debt and no liability for the petitioner to make good the payment and also the fact that the amount so claimed is time barred in view of delay of more than 9 years and having not taken into consideration the evidence adduced on behalf of the petitioner, has committed a serious illegality in dismissing the appeal and confirming judgment of the trial Court. It is also contended that the trial Court and the Appellate Court have come to a wrong conclusion with regard to the guilt of the petitioner-accused. Therefore, he seeks to allow the appeal and consequently, set aside the judgments rendered by the trial Court and the Appellate Court.

11.3 Learned counsel for the petitioner relies upon the following citations/authorities in support of his case:

i. Purandara Rai Vs. Naveendra Naik - Crl.A.No.473/2019

ii. Sasseriyil Joseph vs Devassia - 2001CRILJ24

iii. The Bidar Urban Co-operative Bank Ltd., vs. Mr.Girish - Crl.A.No.200057/2016

CONTENTIONS OF RESPONDENT/COMPLAINANT

12. *Per contra*, learned counsel Sri.K.Prasanna Shetty appearing for the respondent vehemently contends that the complainant gave a sum of Rs.3,00,000/- as loan to petitioner on 11.07.2005 after a lot of reminders and insistence, repaid the loan by way of post dated cheque. The complainant was examined as PW1 and he has got marked Exs.P1 to P15. The complainant was doing areca nut business and was getting income of Rs.50,000/- to Rs.1,00,000/- per month. The loan amount which was repaid by the accused by way of a cheque - Ex.P1 has been admitted and since the cheque was dishonoured,

complaint was registered. The only defence made out by the petitioner-accused is that he was attending a duty on 11.07.2005 at 08.05 a.m. but he has not produced any material when he left the company on that day. It is the contention of the petitioner-accused that he has not executed Ex.P1 and the evidence is not sufficient to establish the fact that the accused had not come to Kusugoli Village and executed Ex.P1. It is further contented by the learned counsel for the respondent-complainant that the signature on Ex.P1 has been admitted by the accused, but disputes the contents of Ex.P1 on the ground that the handwriting cheques does not belong to him.

13. Learned counsel further contends that on the contrary, no cogent evidence is adduced by the accused to disprove the presumption in favour of the complainant or to rebut the said presumption, rather the accused has admitted the signature. No doubt, he has disputed the contents in Ex.P1. Therefore, he contends that when there

is a presumption under Section 139 of the N.I. Act in favour of the holder of the cheque, under Section 118 of the N.I. Act, there is a consequent presumption regarding the instrument and the contents of it. The petitioner-accused has not made out any good ground to set aside the concurrent findings rendered by the trial Court as well as the appellate Court.

14. The only defence taken is that the cheque is barred by the law of limitation. Learned counsel further contends that Ex.D3 which is produced by the accused is not acceptable for the reason that there is no proper certification under Section 65B of the Indian Evidence Act, 1872. So also, it is contented that the evidence of DW1 to DW4 on behalf of the accused also cannot be believed as it does not corroborate the case made out by the accused. On these grounds, learned counsel seeks to dismiss the petition.

15. Learned counsel for the respondent has relied upon the following judgments in support of his case:

i) Sumit Singla Vs. Kala Mandir Saree and Jewellers – ILR 2022(2) Punjab and Haryana 1014

ii) A.V.Murthy Vs. B.S.Nagabasavanna – AIR 2002 SC 985

iii) Rajeev Kumar Vs. The State NCT of Delhi & Anr. – 2024:DHC:7074

iv) S. Natarajan Vs. Sama Dharman and Anr – (2021) 6 SCC 413

v) K. Hymavathi Vs. The State of Andra Pradesh and Anr. - 2023 INSC 811

vi) Ramakrishnan Vs. Parthasaradhy – 2003(2) KLT 613

vii) Sri.Sudhakar Reddy C.B. Vs. Smt. Pushpa – Crl.R.P.No.256/2022

viii) M/s. M.K.Enterprises and Anr. Vs. Kumari Varsha Pole – Crl.R.P.No.375/2021

ix) Sri.Sudhir Kumar Vs. Smt. Geetha – Crl.A.No.1065/2015

x) Nazir Hussain Vs. Smt. D.T.Yeshodamma – Crl.R.P.No.983/2014

xi) Sri. Krishnappa Vs. Sri.Munivenkatappa – Crl.P.No.1639/2021

16. I have heard learned counsel for both the parties.

17. The facts that arise for consideration before this Court are:

> *"1. whether the petitioner – accused has made out any ground for interference of the judgments rendered by the Trial Court as well as the Appellate Court and*
>
> *2. whether the impugned orders passed by both the Courts deserve to be set aside?"*

18. It is not in dispute that the complainant had advanced certain loan amounts to the accused and it is also the case of the accused that after receipt of the loan amount, he has repaid the amount to the complainant along with the extra amount, which was the interest towards the loan. It is also not in dispute that both the

complainant and the accused were far-related to each other. It is not in dispute that the accused had given the cheque at Ex.P1 to the complainant. The signature on the cheque is admitted, but the contents of the cheque in Ex.P1 is disputed by the accused. It is also not in dispute that the Ex.P12 is also admitted by the accused for having given to the complainant. It is the contention of the accused that Ex.P12, which is a consideration receipt dated 11.07.2005 is a document, which is barred by law of limitation and the same cannot be looked into.

19. Be that as it may, the evidence of the accused reveals that 6-7 years ago, he had borrowed some amount and three empty cheques were issued in favour of the complainant. Along with that, the accused has also issued a blank signed stamp paper. Therefore, it is apparent that some transaction has taken place between both the accused and the complainant. The issuance of legal notice is not in dispute. The reply notice to the said legal notice is also not in dispute. Upon the complaint being filed, the

accused has taken a defence that there was no legally valid debt or liability and that the cheque so presented is time barred cheque including denial of the consideration receipt at Ex.P12.

20. Once the complaint is filed under Section 138 of the N.I. Act, there are certain requirements to be fulfilled under Section 138(a) and the legal notice to be issued under Section 138(b). In pursuance to the legal notice in not making any payment with regard to the demands made, the complainant is entitled to prefer a complaint. As soon as the compliant is filed and on satisfaction of the requirement as contemplated under Section 138 of the N.I. Act, Section 139 comes into play. There is presumption in law which acts in favour of the complainant. Therefore, it becomes a duty of the accused to rebut such presumption cast in favour of the complainant by virtue of enactment itself. Section 118 of the N.I. Act talks about the presumption of the Negotiable Instruments with regard to consideration, with regard to

the date mentioned in the instrument, with regard to the time of acceptance and with regard to holder being a holder in due course. All these are provided under Sections 118(a) to 118(g) of the N.I. Act.

21. Once these presumptions come into play in favour of the complainant, the onus shifts upon the accused to rebut such presumption and in case the presumption is rebutted by the accused by placing cogent material on record to the satisfaction of the Court, then the pendulum again shifts to the complainant to answer such rebuttal if any made out by the accused.

22. In the present case on hand, the accused has admitted the signature in the cheque - Ex.P1. He has admitted the issuance at Ex.P12 and the signature therein. It is only the defence of the accused that though the loan was taken, it was paid long back i.e., over the nine years and the cheque that is now claimed was given by way of security and not for enforcement of any legally recoverable

debt. Therefore, it is not enforceable and could not be presented for encashment as there is no legally recoverable debt.

23. It is also seen that the accused has taken a plea that he was not available for execution of Ex.P12 as he was working in a company 'KAR Mobiles'. He has produced Ex.D3 to substantiate his case but that alone will not help the accused.

24. To establish whether the petitioner has rebutted the presumption cast in favour of the complainant, it would be relevant to extract the portion of the judgment in the case of ***Sumit Singla's*** case supra, in paragraph Nos.18, 19 and 26, the Punjab and Haryana Court has held as under:

> *"18. This Court, in a recent case Sultan Singh vs. Tej Partap 2022(1) RCR (Criminal) 712, dealt with, in detail, an identical matter wherein the following issue were formulated for adjudication:*

> *i) Whether issuance of a cheque for repayment of a time barred debt would amount to a written promise to pay the said debt within the meaning of section 25(3) of the Indian Contract Act, 1872?*
>
> *ii) In case, answer to the first question is in favour of the person in whose favour the cheque has been issued, then would the said promise, by itself, create any "legally enforceable debt", as stated in section 138 of the Negotiable Instruments Act, 1881?*
>
> *iii) Whether in the facts and circumstances of the present case, the present petition under section 482 CrPC, 1973 would be maintainable?*
>
> *iv) Whether in the present case, the petitioner has been able to prove as to what would be the starting point of the period of limitation, so as to establish that the cheque was issued after the expiry of the period of limitation?"*

19. While referring to case law extensively, issue no. (i) and (ii), as reproduced above, have been decided as under:

> *"29. Thus, after considering the relevant provisions as well as the judgments of various Courts on issue no. (i) and (ii), this Court conclusively holds that the issuance of a cheque in repayment of a time barred debt amounts to a written promise to pay the said debt within the meaning of section 25(3) of the Contract Act and the said promise by itself would create a legally enforceable debt or liability, as contemplated by section 138 of the Negotiable Instruments Act. Thus, issue no. (i) and (ii) are hereby answered in favour of the person in whose favour the cheque has*

been issued. Thus, on the said finding alone, the first argument of the learned counsel for the petitioner stands rejected."

xxxxx

"26. Consequently, in light of ratio of judgments rendered in Sultan Singh's case (supra), K.K. Ramakrishnan's case (supra) and Shapoor Freedom Mazda's case (supra), the contentions put forth on behalf of petitioner regarding debt being time-barred and that dishonour of a cheque issued after more than 6 years of advancement of loan would not attract provisions of Section 138 of the Act, having been issued qua a debt not enforceable by law, cannot be accepted. Rather, it can safely be held that as on 6.7.2018 when the cheque was issued by the petitioner for paying off the loan advanced on 14.12.2011, the same was issued in acknowledgment of a debt, and upon its dishonour would make the drawer liable to be proceeded against under Section 138 of the Act. This Court does not find the present case to be such where inherent powers under Section 482 Cr.P.C. should be invoked for quashing the complaint or for setting aside the summoning order."

25. In the case of ***Rajeev Kumar's*** case supra, in paragraph Nos.21, 23, 31, 32 and 37, the Delhi High Court has held as under:

> *"21. The law relating to a time-barred debt and the revival by virtue of furnishing a cheque by the drawer, is well settled. This is based upon the concept that a promise to pay wholly or in part a debt which cannot be enforced by the creditor being barred by the law of limitation, is a valid agreement, if it is made in writing and signed by the person. This is encapsulated in Section 25(3) of the Indian Contract Act, 1872 ('the ICA') which when read along with Illustration (e), crystallizes the concept clearly. The said provisions are extracted as under:*
>
> > *"25. Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. --An agreement made without consideration is void, unless--*
> >
> > *...*
> >
> > *(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part By:MANISH KUMAR CRL.L.P. 212/2021 10 of 24 a debt of which the creditor might*

have enforced payment but for the law for the limitation of suits.

...

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract."

23. The Supreme Court in A.V. Murthy v B.S. Nagabasavanna (2002) 2 SCC 642 recognized the application of Section 25(3) of the ICA while disallowing a dismissal of a complaint under section 138 of NI Act, at the behest of a complainant, where a cheque had been given for a liability which was time-barred. The relevant portion is extracted as under:

"5. As the complaint has been rejected at the threshold, we do not propose to express any opinion on this question as the matter is yet to be agitated by the parties. But, we are of the view that the learned Sessions Judge and the learned Single Judge of the High Court were clearly in error in quashing the complaint proceedings. Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, By:MANISH KUMAR CRL.L.P.

212/2021 13 of 24 made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant case, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31-3-1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the respondent."

(emphasis supplied)

31. In the opinion of this Court, the provisions of Section 25(3) of ICA are squarely applicable. A cheque as per section 6 of the NI Act is a "bill of exchange", which in turn is defined in section 5 of the NI Act as an instrument in writing signed by the maker directing payment of certain sum of money to a certain person. The maker of the cheque is the 'drawer' and the person to be paid is the 'drawee' as per section 7 of the NI Act.

32. Therefore, a priori the cheque itself becomes a promise made in writing signed by the *person to pay wholly or in part debt, which otherwise, may not be payable due to law of limitation. Per section 25(3) of the ICA, this would be an agreement in itself. Section 139 presumption under the NI Act which presumes that the cheque is in discharge in whole or part liability of any debt or liability would therefore, actually come into play. The contrary position of the accused that no debt or liability subsists having extinguished by the law of limitation, would be then unmerited and untenable, since a fresh agreement comes into operation by the tendering of the cheque. By issuing the cheque, the drawer is acknowledging a legally enforceable liability and he ought not be entitled to claim that the debt had become barred by limitation.*

37. The furnishing of a cheque of a time-barred debt effectively resurrects the debt itself by a fresh agreement through the deeming provision under section 25(3) of ICA. The original debt therefore, through section 25(3) of the ICA, becomes legally enforceable to the extent of the amount the cheque has been given. This resonates also with practical considerations. Persons who have chosen to escape liability, can draw a cheque, in order to clear an earlier debt upon persuasion by *the creditor. By the act of drawing a cheque, the promisor i.e. the drawer, is effectively stating that he has a liability to pay the drawee. Drawing of the cheque in itself, is acknowledgment of a debt or liability. It is the resurrection or the revival of the prior debt which would trigger the provisions under section 138 of NI Act. To deny a complainant/drawee of invoking the penal provisions under section 138 of NI Act, despite the categorical premise of section 25(3) of the ICA recognizing a fresh agreement to pay, would be an unfortunate disentitlement."*

26. The Hon'ble Apex Court in the case of ***K. Hymavathi***'s case supra, in paragraph Nos.10 and 16 has held as under:

10. From a perusal of the legal position enunciated, it is crystal clear that this Court keeping in perspective the nature of the proceedings arising under the NI Act and also keeping in view that the cheque itself is a promise to pay even if the debt is barred by time has in that circumstance kept in view the provision contained in Section 25(3) of the Contract Act and has indicated that if the question as to whether the debt or liability being barred by limitation was an *issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties since the question of limitation is a mixed question of law and fact. It is only in cases wherein an amount which is out and out non-recoverable, towards which a cheque is issued, dishonoured and for recovery of which a criminal action is initiated, the question of threshold jurisdiction will arise. In such cases, the Court exercising jurisdiction under Section 482 CrPC will be justified in interfering but not otherwise. In that light, this Court was of the view that entertaining a petition under Section 482 CrPC to quash the proceedings at the stage earlier to the evidence would not be justified. 16. The provision would indicate that in respect of a promissory note payable at a fixed time, the period of limitation being three years would begin to run when the fixed time expires. Therefore, in the instant case, the time would begin to run from the month of December, 2016 and the period of limitation would expire at the end of three years thereto i.e. during December, 2019. In that light, the cheque issued for Rs.10,00,000/- which is the subject matter herein is dated 28.04.2017 which is well within the period of limitation. The complaint in CC No.681 of 2017 was filed in the Court of the Chief*

Metropolitan Magistrate on 11.07.2017. So is the case in the analogous complaints. Therefore, in the instant case not only the amount was a legally recoverable debt which is evident on the face of it, the complaint was also filed within time. Hence there was no occasion whatsoever in the instant case to exercise the power under Section 482 to quash the complaint. In that view, the order impugned dated 12.02.2019 passed by the Page 17 High Court in Criminal Petition Nos.12652, 12670, 12675, and 12676 of 2018 is not sustainable.

27. In the case of ***Ramakrishnan's*** case supra, the Kerala High Court held as follows in paragraph Nos.20 and 22:

20. In this context, it deserves mention that Section 138 was incorporated into the statute book primarily with the object of enhancing "the acceptability of cheque in settlement of liabilities." It was with this object in view that the drawer of a cheque was said to be made liable "for penalties in case of bouncing of cheque due to insufficiency of funds in the accounts......" If this object of the statute is kept in view the explanation cannot be liberally construed. It would only mean that the liability or debt should not arise out of a transaction *which is illegal. It should be not a cheque to meet a liability under a wagering contract which shall not be legally enforceable. Otherwise, the object with which Section 138 was enacted shall be defeated.*

22. The matter appears to have been considered by their Lordships of the Supreme Court in A.V. Murthy v. B.S. Nagabasavanna (2002 (2) SCC 642). On a perusal of the judgment, we find that the matter was considered by the Supreme Court in the context of the provisions contained in the Negotiable Instruments Act as well as those of the Contract Act. However, the issue of limitation was left open. But what deserves mention is that even though the learned Sessions Judge had quashed the proceedings as the limitation in recovering the money had expired and the order had been upheld by the Karnataka High Court, yet, their Lordships had reversed the decision. This is indicative of the fact that the accused was not entitled to escape liability to suffer penalty merely on account of the fact that the limitation for recovery of the amount had expired before the date of the issue of the cheque. When examined in this light, the dismissal of the SLP in Joseph's case cannot be said to be the enunciation of law which may be binding under Article 141. In fact, a perusal *of the order shows that it was wholly on "the facts of the case as available on the records" that their Lordships had dismissed the Special Leave Petition.*

28. A co-ordinate Bench of this Court in the case of ***Krishnappa's*** case supra has dealt with the similar issue of whether a time barred debt attracts an offence under Section 138 of the N.I. Act, in paragraph No.11, which reads as under:

> *11. The other submission of the learned counsel for the petitioner is that the loan admittedly was advanced on 01-07-2014 and the cheque was issued on 13-01-2019 and even as per Section 25(3) of the Indian Contract Act, 1872, the complainant having not taken any action for close to 5 years, the transaction becomes time barred and the cheque so issued on a time barred debt becomes unenforceable. The learned counsel to buttress this submission places reliance upon a judgment rendered by a learned single Judge of the Kerala High Court reported in 2001 Cri.L.J. 24.*

29. Though the learned counsel for the petitioner has relied upon the judgment in the case of

K. Hymavathi's case supra, the contention that there is no legally enforceable debt is relied upon by the judgment of ***Sasseriyil Joseph Vs. Devassia – 2001 CRILJ 24*** and the judgment in the case of ***The Bidar Urban Co-operative Bank Ltd., Vs. Mr.Girish – Crl.A.No.200057/2016.*** The contention that the cheque amount sought to be recovered is a time barred cheque and that it is not legally recoverable debt. He relies upon paragraph No.30, 32, 34 so also 39 to contend that it is not a legally recoverable debt, which is a time barred claim and there is no promise to attract a criminal liability under Section 138 of the N.I. Act, which reads as under:

> *"30. The Kerala High Court in a decision reported in 2001 Crl.L.J 24 in case of Sasseriyal Joseph Vs Devassia, held that section 138 of the *N.I Act is attracted only if there is legally recoverable debt and it cannot be said that time barred debt is legally recoverable debt. The said Judgment rendered by Kerala High Court in Sasseriyil Joseph's case was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.1785/2001 *the Hon'ble Supreme Court*

by Judgment dated:10-09-2001 affirmed the said view of Kerala High Court and it is held as under:

> *"We have heard learned counsel for the petitioner. We have perused the judgment of the High Court of Kerala in Criminal Appeal No. 161 of 1994 confirming the judgment/order of acquittal passed by the Addl. Sessions Judge, Thalassery in Criminal Appeal No. 212 of 1992 holding inter alia that the cheque in question having been issued by the accused for due which was barred by limitation the penal provision under Section 138 of the Negotiable Instruments Act is not attracted in the case.*
>
> *On the facts of the case as available on the records and the clear and unambiguous provision in the explanation to Section 138 of the Negotiable Instruments Act the judgment of the lower appellate Court as confirmed by the High Court is unassailed.*
>
> *Therefore, the special leave petition is dismissed.*
>
> *(underlined by me)*

32. Further the High Court of Andhra Pradesh in case of Girdhari Lal Rathi Vs P.T.V Ramanujachari and another reported in 1997 (2) Crimes 658 held that, in the case of cheque issued for time barred debt was dishonoured, the accused cannot be convicted under section 138 of Negotiable Instrument Act on the ground that the debt was not legally recoverable.

34. The High Court of Madras in case of M.P Farooq Vs K. Sasikumar decided on 16-12-2019 in Appeal Nos.4088/2018, 750/2017 in CS No.75/2017 and Crl.O.P No.27379/2016, Crl.M.P. No.13939 & 13940/2016 & 15581/2017 relying on the decision of Kerala High Court referred supra with regard to payment of time barred debt, held that there must be a distinct promise to pay either wholly or in part of the same. Further the promise must be in writing either signed by the person concerned or by his duly appointed agent. To put in short, unless a specific contract in the form of novation is created with regard to payment of time barred debt, section 25(3) of the Indian Contract Act cannot be invoked.

Therefore in view of the principles stated in those decisions the argument of the learned counsel for the appellant that the said cheque can be construed as a promise to pay time barred debt is also not tenable.

39. In view of the principles stated in the above referred decision and discussion, it is evident that the penal provision of Section 138 of the N.I.Act is applicable only to the cheques which are issued for the discharge in whole or in part, of any debt or other liability, which according to

Explanation must be a legally enforceable debt or other liability. A cheque given in discharge of a time barred debt will not constitute an unconditional undertaking or promise in writing either expressly or impliedly so as to attract the criminal offence under section 138 of N.I Act. This was elaborated in SASSERIYIL JOSESPH's case (supra) which is affirmed by the Hon'ble Supreme Court as stated above. A cheque given in discharge of a time barred debt will not constitute a promise in writing not even an implied promise so as to attract a criminal liability under Section 138 of N.I Act."

30. Having considered the submissions and the judgments relied upon by both the counsel, the facts and circumstances of the present case will have to be kept in mind to decide as to whether the respondent-complainant has made out a valid case and whether there is any legally enforceable debt.

31. There is no dispute to issuance of a cheque for loan having been taken, the signature is admitted in Ex.P1 and so also Ex.P12, which is a receipt. Therefore, in my

opinion once there is presumption laid in favour of the respondent-complainant, the onus is heavy on the accused to rebut such presumption though the plea is taken that it is a time barred debt, the accused having admitted the loan, the signature on the cheque and the receipt having been issued has not been able to rebut the presumption in favour of the complainant. These aspects have been elaborately discussed by the Trial Court as well as the Appellate Court and have come to the conclusion that it is legally recoverable debt and has convicted the accused for the aforesaid offences under Section 138 of the N.I. Act, which upon the challenge made has been rejected by the Trial Court being not satisfied by the contentions put forth by the petitioner herein.

32. In this connection, a reference may be made to a decision of this Court in the case of ***Pradeep Vs. Lohit in Crl.R.P.No.100141/2019 dated 18.12.2020,*** wherein, at paragraph Nos.19 and 20, it is held as under:

19.xxxx

Section 139 of NI Act, reads as follows:

> ***139. Presumption in favour of holder:*** *It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.*

20. In view of the above presumption, the cheque is presumed to be issued for discharge in whole or part towards debt or other liability, unless the contrary is proved by the accused that there never exists any debt or legally recoverable liability and the same will have to be established by cogent material evidence. In the present case on hand merely by making statement that cheque at Ex.P1 was stolen, no cogent evidence either oral or documentary is placed before the Court. There is resumption acting in favour of the Complainant in view of Section 118 and 139 of NI Act. The burden of proof contrary that there exists any subsisting legally recoverable debt or liability is in favour of the accused and its rebuttal has to be proved by producing cogent material evidence but not by making suggestion or mere denial. In the present case on careful examination of entire material evidence on the case and documents produced no worthwhile material has been adduced by the accused to disprove the case and rebut the presumption in favour of the Complainant. Complainant has fulfilled necessary requirement to attract provisions of Section 138 of NI Act and in view of the non-rebuttal *of presumption under Section 139 of NI Act to prove to the contrary that there exists legally recoverable debt, trial Court and Apex Court have rightly held that accused guilty and accordingly conviction of accused for the aforesaid offence is in accordance with law and facts and circumstance of the case. Hence, I answer Point No.1 in the negative as accused has not rebutted the presumption under Section 139 of NI Act.*

33. Having perused the judgment of the Trial Court and the Appellate Court and the submissions of both counsel and the judgments relied upon by both the parties, having dealt with the question which was formulated herein, I do not find any grounds or valid reasons with the judgments rendered by the Trial Court and the Appellate Court and the matter to be set aside. Accordingly, I pass the following:

ORDER

i) This petition is hereby ***dismissed***.

ii) Judgments rendered in C.C.No.52/2011 dated 02.08.2014 on the file of the Civil Judge and JMFC, Koppa and

Crl.A.No.110/2014 dated 03.03.2016 on the file of the II Additional Sessions Judge, Chikkamagaluru, stand confirmed.

iii) Ordered accordingly.

iv) The amount in deposit before the concerned Court shall be immediately released in favour of the respondent – complainant on proper identification.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

DS,MDS
List No.: 1 Sl No.: 39