

Accused: T.V.Nataraj vs T.V.Nataraj on 6 January, 2022

IN THE COURT OF LXXIII ADDL.CITY CIVIL &
SESSIONS JUDGE, MAYOHALL UNIT, BANGALURU.
(CCH.74)

PRESENT:

Sri.Yamanappa Bammanagi, B.A., LL.B., (Spl.,)
LXXIII Addl.City Civil & Sessions Judge,
Mayohall Unit, Bangaluru.

Dated this the 6th day of January, 2022.

Crl. Appeal No.25086/2020

Appellant/

Accused:

T.V.Nataraj,
S/o.Venkataramappa,
aged about 41 yrs,
R/at.Opp.Muniswamappa Building,
Eedga Road, Thigulara Street,
Varthur, Bangaluru-87.

(By Sri.M.N.Ramesha - Adv.)

V/S

Respondent/

Complainant:

G.Gopal Reddy,
aged about 48 yrs,
R/at.No.03, Puttamma Garden,
Kumbena Agrahara,
Kadugodi, Bangaluru-66.

(By Sri.M.S.Harinath - Adv.)

JUDGMENT

Being aggrieved by the judgment and sentence, passed by the learned XXXIV ACMM, Bangaluru, in CC Crl.A. No.25086/2020 No.59165/2017, dated 04.02.2020, convicting the appellant for the offence punishable under Section 138 of N.I.Act, sentencing him to pay fine of Rs.10,05,000/-, in default of payment of fine amount, the accused shall undergo simple imprisonment for 3 months. Further ordered that, out of fine amount the accused shall pay Rs.5,000/- to the State Ex-Chequer. Further trial court has directed to the appellant to pay compensation of Rs.10,00,000/- to the complainant, being aggrieved by the said order, the appellant is before this court, challenging the legality and correctness of judgment and sentence of trial court.

2. Brief facts of the case:

It is the case of the appellant that, the present respondent has filed complaint against the present appellant u/S 200 of Cr.P.C. for the offence punishable u/S 138 of the N.I. Act. It is alleged in the complaint that, the accused is known to the complainant and the accused had approached the complainant for financial help of Crl.A. No.25086/2020 Rs.8,00,000/- for the purpose of construction of his house in first week of October 2015, since the complainant knew that the accused was under need of money, hence the complainant has paid hand loan of Rs.8,00,000/- to the accused on 1st week of October 2015 by way of cash, at the time of taking loan the accused has promised to repay the said hand loan within one year from the date of loan, after completion of one year the complainant had demanded the accused for repayment of hand loan of Rs.8,00,000/-, on repeated demand, the accused has issued two cheques bearing No.066519, dated 7.11.2016 for sum of Rs.4,00,000/- and cheque No.066520, dated 7.11.2016 for sum of Rs.4,00,000/-, both drawn on State Bank of India, Mahadevapura Branch, Bangaluru, in favour of complainant towards payment of hand loan, believing the words of the accused, the complainant has presented the said cheques for encashment on 22.11.2016, but said cheques were returned with a bank endorsement dated 22.11.2016 "Account Closed". Thereafter, the complainant Crl.A. No.25086/2020 had approached the accused and brought the notice on dishonour of cheque, but accused did not heed the request of the complainant, hence the complainant got issued legal notice dated 16.12.2016 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of notice. Due to typographical error it is mentioned in the notice as State Bank of Mysore instead of State Bank of India, hence the complainant got issued corrigendum notice dated 7.1.2016 to the earlier notice dated 16.12.2016, the corrigendum notice was received by the counsel for the accused, even after receipt of the same, the accused failed to pay cheques amount. Hence, the complainant has filed a complaint against the accused for the offence punishable u/S 138 and 142 of N.I. Act.

3. On being satisfied with the material placed before it, the trial court has taken cognizance for the offence punishable u/S 138 of the N.I. Act, issued summons u/S 204 of Cr.P.C. In pursuance of the summons, the accused has appeared before the trial court, Crl.A. No.25086/2020 the trial court enlarged the accused on bail, thereafter, plea was recorded, the accused pleaded not guilty and claimed to be tried.

4. In order to prove his case the complainant was examined as P.W.1 and got marked Ex.P.1 to P.11, the learned counsel for the accused has cross-examined P.W.1. On 25.07.2019 statement of accused was recorded U/sec.313 of Cr.P.C. Thereafter, the accused was examined himself as D.W.1 and got marked Ex.D.1 to Ex.D.6 and D.W.1 was cross examined by the learned counsel for complainant. After hearing the argument of the learned counsel for the complainant and accused, the trial court has recorded the order of conviction, convicting the appellant/accused for the offence punishable u/S 138 of the N.I. Act, with default clause, being aggrieved by the said judgment and order of conviction, the accused is before this court, challenging the correctness and legality of the said judgment order of conviction on the following:-

Crl.A. No.25086/2020 "GROUNDS I. The impugned judgment and sentence passed by the trial court is against the law and all probabilities of the case. The trial court has wrongly come to conclusion that accused has committed offence u/S 138 of N.I. Act.

II. No opportunity was given to the accused to establish his defence and defence taken by the accused was not considered. The trial court failed to consider the fact that the complainant and accused have worked together in the company and they were residing in a house together before the transaction in the year 2002 to 2010 and after marriage he left the house of the complainant, at that time the accused has left one petty box which was contained marriage invitation card, some clothes, passbook of SBI, cheque book and photos and the trial court failed to consider the fact that the Crl.A. No.25086/2020 complainant has misused the cheque left by the accused in the house of complainant.

III. The trial court failed to consider the fact that the appellant has denied his

signature and contents of cheque.

IV. The trial court failed to consider the fact that the complainant has got issued legal notice on 16.12.2016 to the appellant and the appellant has

given tenable reply, after receipt of the legal notice the respondent has given corrigendum notice dated 7.1.2017. The said reply notice has not been marked by the complainant.

V. The trial court failed to consider the contradiction and omission in the evidence of complainant and come to wrong conclusion. Thus, the judgment and order of conviction passed by the trial court is not sustainable under law and facts. With this, the appellant prayed for allowing the appeal."

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5. On admitting the appeal, this court has passed the order, on the application filed by the appellant u/S 389 (1) of Cr.P.C., and suspended the operation and execution of the trial court order and issued notice to the respondent. The respondent appeared through counsel and received TCR, heard argument on both side. In support of his argument the learned counsel for the appellant has furnished written argument on 2.11.2021. In support of his argument the learned counsel for the appellant relied on the decisions reported in:

1. 2015 AIR SCW 64 in case of K.Subramani v/s K.Damodar Naidu.

2. AIR 2008 SC 1322 in case of Krishnajanardhan Bhat v/s Dattatreya.G.Hegde.
3. 2014 AIR SCW 2158 in case of John.K.Abrahim v/s Saimon.C.Abrahim and others.
4. ILR 2007 KAR 2709 in case of M.Senguttuvan v/s Mahadevaswamy.

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5. 2016 (4) KCCR 2891 in case of Prabhakar Murthy v/s S.G.Shankaraiah.
6. 2013 (3) KCCR 1940 in case of Smt.Lakshmi Subramanya v/s B.V.Nagesh.
7. 2021 (1) KCCR 237 in case of M/s.National Agricultural Co-

- operative
Federation of India Ltd. v/s
M/s.Disha Impex (Pvt.), New
Delhi.
8. 2015 0 Supreme Court (BOM)
524 in case of Rajendra
Pangam v/s Paresh.B.Nayak
and another.
9. AIR 2012 (1) KAR 411 in case
of M.Vishwanath v/s
Ramaswamy and others.
10. 2013 (3) KCCR 2126 SC in
case of Anss Rajashekar v/s
Augustus Jeba Anth.
11. (2019) 5 SCC 418 in case of
Basalingappa v/s Budi
Basappa.

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6. I have perused impugned judgment and order of the trial court, re-appreciated oral and documentary evidence, led by both the parties before the trial court, considered material placed before the court, considered the arguments of the learned counsel for the parties. On perusal of the same, the points that would arise for my consideration are as follows:-

1. Whether complainant proves that he has discharged initial burden to have a benefit u/S 139 of the N.I. Act?
2. Whether complainant proves the existence of legally recoverable debt and accused has issued cheque towards discharge of legally recoverable debt?

3. Whether the complainant proves that he has issued notice to the accused as required u/S 138 of N.I. Act?

4. Whether accused proves that he has rebutted the presumption on preponderance of probabilities?

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5. Whether the appellant/ accused made out grounds to show that the order of conviction and sentence recorded by the trial court, in C.C. No.59165/2017, dated 04.02.2020, is deserves to be set-aside and call for the interference of this court?

6. What order?

7. My answer to the above points are as follows:-

Point No.1: In the Affirmative, Point No.2: In the Affirmative, Point No.3: In the Affirmative, Point No.4: In the Negative, Point No.5: In the Negative, Point No.6: As per final order, for the following:-

REASONS

8. POINT Nos.1 to 3: These points are interconnected to each other, in order to avoid repetition, I proposed to answer these points commonly. The rank of the parties is referred as they were referred before the trial court.

Crl.A. No.25086/2020 It is case of the complainant that the accused is known to the complainant and the accused had approached the complainant for financial help of Rs.8,00,000/- for the purpose of construction of his house in first week of October 2015, since the complainant knew that the accused was under need of money, hence the complainant has paid hand loan of Rs.8,00,000/- to the accused on 1st week of October 2015 by way of cash, at the time of taking loan the accused has promised to repay the said hand loan within one year from the date of loan, after completion of one year the complainant had demanded the accused for repayment of hand loan of Rs.8,00,000/-, on repeated demand, the accused has issued two cheques bearing No.066519, dated 7.11.2016 for sum of Rs.4,00,000/- and cheque No.066520, dated 7.11.2016 for sum of Rs.4,00,000/-, both drawn on State Bank of India, Mahadevapura Branch, Bangaluru, in favour of complainant towards payment of hand loan, believing the words of the accused, the complainant has presented the Crl.A. No.25086/2020 said cheques for encashment on 22.11.2016, but said cheques were returned with a bank endorsement dated 22.11.2016 "Account Closed". Thereafter, the complainant had approached the accused and brought the notice on dishonour of cheque, but accused did not heed the request of the complainant, hence the complainant got issued legal notice dated 16.12.2016 calling upon the accused to pay the cheque amount within 15 days from the date of receipt of notice. Due to typographical error it is mentioned in the notice as State Bank of Mysore instead of State Bank of India, hence the complainant got issued corrigendum notice dated 7.1.2016 to the earlier notice

dated 16.12.2016, the corrigendum notice was received by the counsel for the accused, even after receipt of the same, the accused failed to pay cheques amount. Hence, the complainant has filed a complaint against the accused for the offence punishable u/S 138 and 142 of N.I. Act.

9. In order to prove his case, the complainant has produced documents which have been marked at Ex.P.1 to Crl.A. No.25086/2020 Ex.P.11. Ex.P.1 & P.2 are the original cheques issued by the accused in the name of complainant, Ex.P.3 & P.4 are the bank challans, Ex.P.5 is the bank endorsement issued by the SBI showing the reasons for dishonour of cheques, Ex.P.6 is the legal notice issued by the complainant through Advocate to the accused by RPAD, Ex.P.7 are the three postal receipts, Ex.P.8 is the postal acknowledgement, Ex.P.9 and P.10 are the bank statements and Ex.P.11 is the income tax returns.

10. On being satisfied with the above documents, the trial court has issued summons to the accused U/sec.204 of Cr.P.C. In pursuance of the summons, the accused appeared through counsel and plea was recorded by reading substances of accusation, in the language known to the accused.

11. The defence of the accused is that the complainant and accused are known to each other and they were worked together in the company till 2010. Further the accused was residing in the house of Crl.A. No.25086/2020 complainant from 2000 to 2010, in the year 2010 the accused got married and left the house of complainant in the month of August 2010. At that time, the accused left one small petty box in the house of complainant. In the said box the accused has left marriage invitation card, clothes, passbook, cheque book and marriage photos. In the year 2014 the accused and his wife gone to the house of the complainant and demanded the amount taken by the complainant, on account of which there was a quarrel between the complainant and the accused. Thereafter, the complainant has lodged the complaint against the accused and his wife before the Kadugodi Police Station. On the receipt of complaint the Kadugodi Police had enquired about the complaint.

12. Further the accused has taken defence that in the year 2006 the account was closed and bank has issued endorsement for having closed the account of the accused. After closing the account, some unused cheque were kept in the box which was left in the house of the complainant Crl.A. No.25086/2020 and said cheques were misused by the complainant by forging the cheque. Further accused has denied the signature and writing on Ex.P.1 and P.2. Thus, the accused has denied the loan claimed by the complainant and cheques in question Ex.P.1 and P.2 are old cheques which are left unused after closing the account. Thus there was no transaction between the accused and complainant.

13. In support of his defence, accused has produced 6 documents which have been marked at Ex.D.1 to D.6. Ex.D.1 is the information given by the SHO, Kadugodi Police under RTI Act, Ex.D.2 is the endorsement issued by the police, Ex.D.3 is the complaint lodged by the accused for misusing the cheques, Ex.D.4 is the certified copy of statement given before the Mahadevapura Police Station and Ex.D.5 and D.6 are the statements of account.

14. On perusal of the oral and documentary evidence led by the complainant and accused, it is clear that, issuance of cheques are not in dispute, but accused Crl.A. No.25086/2020 has denied the

signatures on Ex.P.1 and P.2. Though accused has denied the signatures appeared on Ex.P.1 and P.2 Original Cheques, but bank endorsement discloses the reasons for dishonour of cheques are "Account Closed".

15. Now it is relevant to extract cross of P.W.1, dated 24.1.2019, page-7, para-11 and 12, which reads thus:

"11. □
□ -5 □
-4 □ 066517 14.10.2005
□ □ i -5
¢ . -5 30.06.2006
. £ □ □ .066519
066520 .

12. £ □ 2 □ ¥ f 2005 □ ¥
¥ 2015-16 i § .
i . □ □ ' f ¥ § x
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. "

16. The suggestion made by the learned counsel for the accused during the cross-examination of P.W.1 extracted supra, clearly establishes that cheques in question are belongs to the account maintained by the accused. It is also proves the fact that accused has issued cheques knowing fully well that he has closed his account, because accused has received intimation from the bank for having closed the account for non-using of the account as per Ex.D.5.

17. The defence of the accused was that he was residing in the house of complainant before his marriage, in the year 2010 he left from the house of complainant and while leaving the house of the complainant the accused has left one petty box with some article like clothes, pass book, marriage photos and cheques book. Thus, the complainant has misused the cheques left in the box in his CrI.A. No.25086/2020 house. But, no action was taken by the accused before presentation of cheque for encashment.

18. Ofcourse the accused has lodged the complaint as per Ex.D.3 before the Mahadevapura Police Station for misuse of cheques by the complainant. I have gone through the Ex.D.3 it is clear that accused has lodged the complaint against the complainant for misuse of cheques, after recording the statement under NCR No.69/2017 the matter was closed. That apart, the said complaint was lodged on 24.1.2017 only after receipt of demand notice issued by the complainant to the accused. Till notice u/S 138 of N.I. Act, the accused did not taken any action against the complainant. This clearly shows that in order to avoid the payment of cheque amount the accused has lodged the complaint against the complainant. Hence, Ex.D.1 to D.4 are not reliable documents, because these documents

only came into existence after issuing the demand notice u/S 138 of N.I. Act.

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19. Ex.D.5 clearly establishes that accused has closed his account, after closing the account the accused has intentionally issued Ex.P.1 and P.2. The defence of the accused is that he do not know when he has closed his bank account. Further he contended that the bank account was closed due to non-operation of account. Since, accused is account holder in a particular bank, hence, the version of the accused cannot be reliable that he do not know the closing of account.

20. Ex.P.9 Bank Statement clearly establishes the payment of loan of Rs.8,00,000/- to the accused by the complainant and Ex.P.9 and P.10 are account statements clearly establishes that the complainant had transaction with the accused and paid a loan involved in the case. Further it is clear from Ex.P.11 Income Tax Returns for the year 2015-2016, 2016-17, 2017-18 and 2018-19. These documents clearly establishes that the complaint had a source of income and he was able to advance the loan amount to the accused.

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21. The accused has denied the signatures on Ex.P.1 and P.2. I have perused the oral and documentary evidence led by the complainant and accused, it is clear that the defence of denial of signature on Ex.P.1 and P.2 is not supported by any evidence or documents produced by the accused. If, the accused really relied on the defence that the signature appeared on Ex.P.1 and P.2 are not belongs to him, then he has to prove his defence by producing the documents, which are appears to be came into existence in undisputed time or the accused has to prove by examining expert witness as permitted under the law. Nothing has been done by the accused in support of his defence. Even accused did not denied the cheques which are belongs to him. Thus, it is clear that, mere denial is not sufficient to hold that accused has rebutted the presumption atleast on preponderance of probabilities.

22. Ex.P.5 is the bank endorsement, which has got presumptive value u/S 146 of N.I. Act. Ofcourse, the presumption u/S 146 of N.I. Act is rebuttable Crl.A. No.25086/2020 presumption, but there is no document to rebut the presumption, produced by the accused in support of his defence. Thus, when complainant has discharged his initial burden by proving the fact of issuance of cheque and signature on it. Under such circumstances, it is well settled law that the complainant is entitled to have a shelter u/S 139 of N.I. Act.

23. When issuance of cheques Ex.P.1 & P.2 are not in dispute, then the complainant is entitle to have shelter U/sec.118 and 139 of the N.I. Act as held in the decision reported in (2010) 11 SCC 441 in case of Rangappa v/s Sri.Mohan. The Hon'ble Apex Court has held thus:

"Once issuance of cheque and signature thereon are admitted, the presumption of legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption. Though accused need not adduced his own

evidence and can rely upon the materials submitted by the CrI.A. No.25086/2020 complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption."

24. On the basis of undisputed fact as extracted supra and on perusal of the oral and documentary evidence it is clear that complainant has proved that he has discharged initial burden by producing the documents Ex.P.1 to P.10 and proved the issuance of cheques, signatures, existence of transaction between the complainant and accused. Thus, on basis of material placed before the court and on admitted facts it can be safely held that cheques in question were issued towards discharge of legally recoverable debt and same were dishonoured for closing the account. Hence, I hold that complainant is entitled to have a shelter u/S 118 and Section 139 of N.I. Act. With the above observation, reasons assigned and relying on the decisions referred supra, I answer points No.1 to 3 in the Affirmative.

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25. POINTS No.4 & 5: These two points are interconnected to each other, in order to avoid repetition, I proposed to answer these two points commonly. It is specific defence of the accused that he was residing with complainant in his house when accused was working in the company along with complainant, at that time accused has left his petty box in the house of complainant with cheque book, marriage invitation card and passbook and cheque book, but the complainant has misused the cheque by presenting the same for encashment even though there was no money transaction between the complainant and accused.

26. In support of his defence accused has not produced any single document to show that he has left petty box with cheques book, pass book and other materials in the house of complainant. Ofcourse, it is not in dispute that accused was residing in the house of complainant in the year 2010 and prior to that, but since 2010 till issuing of demand notice the accused did not take CrI.A. No.25086/2020 any steps for the petty box left in the house of the complainant. It is only after issuance of demand notice u/S 138 of N.I. Act, the accused came with the defence that he has left the petty box with cheques book in the house of complainant. Ex.D.1 to D.4 are came into existence on 24.1.2017 after receipt of legal notice. Till then there was no action taken by the accused against the complainant for misuse of cheques left by the accused in the house of complainant. Thus, the accused failed to rebut the presumption atleast on preponderance of probabilities. Looking to the facts and circumstances of the case and material placed before the court, it is clear that the appellant is not entitled to have shelter under the law laid down in the decisions relied on by the appellant.

27. I have gone through the reasonings given by the trial court for awarding the compensation u/s 357 of Cr.P.C. On going through the same, it is clear that trial court has considered the facts and circumstances of the case and awarded the compensation to the complainant.

CrI.A. No.25086/2020 On perusal of the observation made, reasoning assigned by the trial court, for awarding the compensation, I am of the opinion that the trial court has awarded the compensation in accordance with the principle laid down by the Hon'ble Apex Court in the decision

reported in (1988) 4 SCC 551 in case of Hari Singh v/s Sukbhir Singh.

The lordships have held that; power given to the court to direct for payment of compensation is intended to do something for the victim. The provision was held to be a step forward in our criminal justice system. The lordships have made the observation in the said decision at para No.10, which reads thus;

"It empowers the court to award compensation to victim while passing judgment of conviction, in addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of accused. It may be noted that this power of courts to award CrI.A. No.25086/2020 compensation is not a ancillary to other sentence but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We therefore, recommend to all courts to exercise this power liberally, so as to meet the ends of justice in a better way."

28. Hence, on going through all the circumstances of the case, I am of the opinion that, the trial court has considered the admitted facts and oral and documentary evidence, led by both the parties, with reference to fact in dispute. Hence, I hold that the trial court rightly hold the guilty of the accused of offence punishable u/s 138 of N.I. Act. With these reasons, conviction order, recorded by the CrI.A. No.25086/2020 trial court is confirmed, and does not warranted the interference of this court. Hence, I answer points No.4 & 5 in the Negative.

29. POINT No.6: In view of the discussion made on point Nos.1 to 5, I proceed to pass the following:-

ORDER Acting u/S 386 of Cr.P.C.

the appeal preferred by the appellant/accused is hereby dismissed.

Consequently, the judgment and order of conviction and sentence, dated 04-02-2020, passed by learned XXXIV ACMM, Mayohall Unit, Bangaluru, in CC No.59165/2017, is hereby confirmed.

The suspension order, dated 05.03.2020, passed by this court, on the application filed u/S 389 of Cr.P.C. stands canceled.

CrI.A. No.25086/2020 No order as to costs.

Office is directed to send TCR to the trial court with copy of the judgment.

(Dictated to the Stenographer, on computer, after computerization, corrected and pronounced by me in the Open Court, this the 6th day of January, 2022) (Yamanappa Bammanagi) 73rd Addl. CC & SJ, M.H.Unit, Bangaluru. (CCH-74) 30 CrI.A. No.25086/2020