IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.583/2016

SRI GOPALAIAH — **APPELLANT(S)**

VERSUS

K. MANJUNATH — **RESPONDENT(S)**

O R D E R

1. **Heard learned counsel for the parties.**

2. **This appeal is directed against the judgment and order of remand passed by the High Court[1] dated 10.10.2013 in Criminal Appeal No.228 of 2009[2].**

3. **The appellant was prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881[3] on account of dishonor of two cheques drawn on Vijaya Bank, Vidyanagar Branch. One cheque was of Rs.8,00,000/- (Rupees Eight lakhs) and the other was of Rs.50,000/- (Rupees Fifty Thousand). Both cheques returned unpaid with endorsement 'insufficient funds' in the account. The complainant served the requisite notice of demand on the accused. Despite service of notice, the requisite amount was not paid. As a result, the respondent filed a complaint.**

4. **The defense of the accused-appellant was that though**

[1] High Court of Karnataka at Bangalore
[2] Criminal Appeal No.228 of 2009 : K. Manjunath vs. Sri Gopalaiah
[3] N.I. Act

the two cheques bore the signature of the drawer, those were delivered to one Srinivas. One was a blank cheque given by way of security for return of Rs.50,000/- taken from Srinivas, and the other was a cheque of Rs.50,000/- issued to return the money taken from him. It was the case of the appellant that those cheques were passed on by Srinivas to the complainant who misused the same.

5. The complainant besides appearing as a witness produced the relevant documents to indicate that the necessary ingredients of the offence punishable under Section 138 of N.I. Act were satisfied. However, the Trial Court acquitted the appellant by holding that except oral evidence, no documentary evidence was produced to show that the complainant had advanced Rs.8.50 lacs to the accused, particularly when Section 269SS of Income Tax Act proscribes receipt of loan of amount exceeding Rs.20,000/- by cash. It, accordingly, concluded that the complainant failed to prove existence of a legally enforceable debt. Apart from above, the Trial Court observed that the accused already had funds therefore needed no money.

6. Aggrieved by the order of the Trial Court, the complainant went in appeal. The High Court clubbed

multiple appeals including the appeal of the respondent herein (i.e., Criminal Appeal No.228 of 2009) and decided them by a common judgment and order dated 10.10.2013. Paragraph 17 of the impugned judgment which deals with the appeal of the respondent is extracted below:

> "17. Regarding Crl.A. No.228/09: This appeal is directed against the judgment in C.C. No.417/2006 dated 12.02.2009 on the file of the Addl.Civil Judge (Jr.Dn.) Devanahalli acquitting the respondent/accused Gopalaiah of the offence punishable under section 138 of the N.I. Act. Records reveal the complainant sought prosecution of the respondent on the allegation that the accused had approached him for loan of Rs.8,50,000/- in the month of November 2005 promising to repay the same with interest within three months. After expiry of the period, when the complainant approached the accused, he voluntarily, issued impugned cheques on 13.02.2006 for Rs.8,00,000/- and Rs.50,000/- respectively. Cheques on presentation were dishonored for insufficiency of funds by the bank on 25.02.2006 through its intimation served on 09.03.2006. The complainant issued statutory notice about the dishonor of the cheque which the accused received but failed to pay the amount instead the accused issued a reply notice on 23.03.2006 contending he has not availed loan from the complainant. He took up specific plea that the complainant is a stranger to him. He (accused) had issued two cheques

to one Srinivas. Srinivas misused the cheque and without authority passed on to the complainant. Therefore, he denied the liability to pay the amount to the complainant. In the trial, that ensued, the complainant tendered evidence as PW1 and examined two witnesses K.B. Shankar as PW2 and Raghavendrachar as P.W.3 and relied on impugned cheques C1, C2, the bank endorsements C3, notice copies C4 and C5 reply notice sent by the accused C8. The accused tendered evidence as DW1 and examined one witness as DW2. He relied on D1 sale deed and passbook D2. The learned trial Judge analyzing the evidence opined that even though the complainant has tendered evidence as PW1 supporting his contention that he lent money to the accused and examined the manager of the bank – as PW2 and 3. The defense of the accused that he had issued cheque to Srinivas and not to the complainant for Rs.80,000/- in the month of April 2005 has not been rebutted by the complainant. The learned trial Judge also noticed from the evidence of the accused that the accused had sufficient money with him because he and his brother had entered into an agreement of sale of their immovable property and received Rs.7,50,000/- on 24.10.2005. The accused had further received Rs.16,00,000/- in the month of January 2006 as seen from D1 and D2. Thus, the learned trial Judge has opined since the accused had sufficient money with him at the relevant period the burden had shifted on the complainant to establish that the accused had borrowed money. In para 10 of his judgment the trial judge has opined that the complainant has

> **tended ocular evidence regarding payment of Rs.8,50,000/- to the accused without any document. The complainant has not discharged the burden of proof. The learned trial Judge further opined the accused has established he is earning Rs.1,50,000/- to Rs.2,00,000/- from agriculture and also from vending milk earns Rs.20000/- to 30000/- p.m. On that basis opined the accused would not have borrowed money from the complainant. Relying on the decision in the case of Shivamurthy vs. Anantharaju reported in ILR 2008 Kar. 4629 learned Judge has opined burden rests on the complainant and Complainant has failed to prove payment of amount, presumption under section 139 of the N.I. Act cannot be raised. On that basis the accused has been acquitted. As rightly contended by the appellant's counsel the learned trial Judge has not analyzed the evidence tendered by the complainant to record finding as to whether or not the evidence establishes the ingredients constituting the offence punishable under section 138 of the N.I. Act"**

7. **While deciding the appeal(s) the High Court framed two questions for it to jointly dispose of several appeals. Those questions were as follows:**

    (a) Whether in an action under Section 138 of the N.I. Act for dishounour of cheque, the complainant is required to establish his financial capacity to lend money?

    (b) Will not presumption under Section 139 of the

N.I. Act accrues to the benefit of the complainant unless the accused rebuts that presumption?

8. **After considering the law laid down by this Court in several decisions including a three-Judge Bench decision in Rangappa versus Sri Mohan[4], the High Court concluded that the presumption mandated by Section 139 include the existence of a legally enforceable debt or liability and to raise that presumption, the N.I. Act nowhere requires that complaint must contain averments about proof of capacity of the lender. Besides above, the High Court observed that Section 269SS refers to the recipient of money and not the lender.**

9. **Based on the above conclusions, the High Court remanded the matter for the Trial Court to decide it afresh after considering the evidence brought on record.**

10. **Aggrieved by the order of remand, on behalf of the appellant it is submitted that the High Court failed to consider that there was no good reason for the appellant to borrow money when he had proved that he was possessed of sufficient funds for having sold a parcel of land. It has also been submitted that**

4 [4] (2010) 11 SCC 441

presumption under Section 139 of the N.I. Act is a rebuttal presumption. As there was no need to borrow, and no documentary evidence of any loan transaction was produced, the accused by denial of receipt of loan had rebutted the presumption, therefore, there was no justification to interfere with the order of acquittal passed by the Trial Court.

11. ***Per contra*, on behalf of the complainant – respondent it has been submitted that the stand taken by the accused was not consistent. Before the Trial Court the stand taken by the accused was to the effect that the cheque was issued to Srinivas in lieu of hand loan of Rs.50,000/- taken by the accused; and, on 29th October 2005, Srinivas' loan was returned but he did not return the cheque by stating that they got misplaced, later, he handed over the cheques to the complainant, who misused the same. The stand in the reply to the notice of demand was different. There it was stated that blank cheques, without signing, were handed over to Srinivas to negotiate a property. In such circumstances, the statutory presumption was not rebutted as the same could only be by leading cogent and reliable evidence. It was submitted that once it is proved that the cheque was drawn, and it returned**

unpaid on account of insufficient funds in the account, the burden to prove that the cheque was not issued to discharge a legally enforceable debt lies on the drawer. Such presumption arises not only under Section 139 of the N.I. Act but also under Section 118 (a) of the Act. In that light it was submitted that since the trial court proceeded by wrongly putting the burden on the complainant to prove legally enforceable debt, the High Court was justified in remanding the matter to the trial court for a fresh consideration.

12. **We have accorded due consideration to the rival submissions and have perused the materials on record.**

13. **As the order passed by the High Court is one of remand, it would not be appropriate for us to appreciate evidence and thereby express opinion on the merits of the case. Suffice to state that once the execution of the cheque is admitted, the presumption under Section 118 (a)[5] of the NI Act, that the cheque in question was drawn for consideration, and the presumption under Section 139[6], that the holder of the**

[5] **Section 118. Presumptions as to negotiable instruments.-**
Until the contrary is proved, the following presumptions shall be made:-
(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.

[6] **Section 139. Presumption in favour of holder:-**

cheque received the said cheque in discharge of a legally enforceable debt or liability, arise against the accused. Further, any breach of Section 269SS of the Income Tax Act, 1961 is subject to a penalty under the provisions of that Act i.e., Section 271D. Neither Section 269SS nor Section 271 D of the Income Tax Act, states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the N.I. Act or rebut the presumptions under sections 118 and 139 of the N.I. Act, because such a person, assuming him/her to be the payee/ holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction in cash above Rs. 20,000 is illegal and void and therefore does not fall within the definition of legally enforceable debt cannot be countenanced[7].

14. **No doubt, the presumption under Section 139 of the N.I. Act is rebuttable but mere denial is not sufficient to rebut the presumption. To rebut such**

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.

[7] [7] See: 2025 SCC OnLine SC 2069: Sanjabi Tari v. Kishore S. Borcar & Anr., para 20

presumption the accused, *inter alia*, would have to explain the circumstances in which the cheque in question came to be issued and as to how it came to be with the payee thereof. Circumstance that the payee had no funds to create a legally enforceable debt of the amount equivalent to the cheque is a circumstance, if proved, which may help in dislodging the presumption.

15. **In the instant case, it appears, the complainant had led evidence to show his capacity to lend. However, the trial court did not properly consider the evidence on record.**

16. **In such circumstances, we are of the view that the High Court committed no error in remanding the matter to the Trial Court. The appeal is, therefore, dismissed. The Trial Court shall proceed expeditiously bearing in mind that this complaint relates to the year 2006.**

17. **All pending applications shall stand disposed of.**

……………………………………………………J
[MANOJ MISRA]

……………………………………………………J
[VIJAY BISHNOI]

NEW DELHI
JULY 16, 2026

ITEM NO.103 COURT NO.11 SECTION II-E

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(S). 583/2016

SRI GOPALAIAH Appellant(s)

VERSUS

K. MANJUNATH Respondent(s)

Date : 16-07-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE VIJAY BISHNOI

For Appellant(s) : Mr. Anand Sanjay M Nuli, Sr. Adv.
Mr. Ashritsai Torgal, Adv.
Mr. Abhishekh Singh, Adv.
M/S. Nuli & Nuli, AOR

For Respondent(s) :Mr. Rahul Sharma, Adv.
Mr. S. Santanam Swaminadhan, Adv.
Ms. Aarthi Rajan, AOR
Ms. Abhilasha Shrawat, Adv.
Mr. Kartik Malhotra, Adv.
Mr. Aman Rawat, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is dismissed in terms of the signed order which is placed on the file.

2. Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA) (SAPNA BANSAL)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)