

**(2017) 12 KAR CK 0017**  
**In the Karnataka High Court**  
**Case No : 1066 of 2014**

**Sri. K.B. Ravindra, S/o Late Sri. Bajjgowda Vs Sri. Lokesh (Alias)  
Ravi, S/o. Sri.Boregowda,**

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**Date of Decision : 06-12-2017**

**Acts Referred:**

[Negotiable Instruments Act, 1881](#), [Section 138](#) - Dishonour of cheque for insufficiency, etc., of funds in the account

**Citation : (2017) 12 KAR CK 0017**

**Hon'ble Judges : Budihal R.B.**

**Bench : SINGLE BENCH**

**Advocate : Chikkanagoudar. L.S, Showri. H.R**

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**Judgement**

1. This is an appeal preferred by the appellant/complainant being aggrieved by the judgment and order of acquittal dated 17.10.2014 passed in C.C.No.11727/2011 by the XIII Addl. Chief Metropolitan Magistrate at Bengaluru.
2. The appellant/complainant challenged the judgment and order of the Court below on the grounds mentioned in para (a) to (n) in the memorandum of appeal and he has challenged the legality and correctness of the said judgment and order of the Court below.
3. By the judgment and order of acquittal passed by the Court below, the respondent/accused has been acquitted for the alleged offence punishable under

Section 138 of the N.I. Act.

4. Brief facts of the case of the complainant

before trial Court, is that he filed a private complaint, which was ultimately registered as C.C.No.11727/2011 with the allegations that the accused and his brother Umesh approached the complainant in the last week of May, 2010 and requested for hand loan of Rs.5,50,000/- that the same is required to meet the marriage expenses of their cousin sister and promised to repay the same within six months and for that they are ready to execute On Demand Promissory Note Agreement on stamp paper till execution as security for the prompt repayment of the said loan. Besides accused also promised to issue post-dated cheque on Vijaya Bank, Malleshwaram Branch, with the authority to the complainant to fill up his name, the loan amount both in words and in figures including date. Taking into consideration the relationship of the complainant with accused and his brother and believing their words and promise held out by the accused and having received from the accused the duly executed On Demand Promissory Note Agreement on stamp paper, besides receiving blank cheque in their favour drawn on Vijaya Bank, Malleshwaram Branch, Bengaluru bearing No.067425 dated 02.12.2010 for Rs.5,50,000/-, the complainant gave the hand loan in a sum of Rs.5,50,000/- to the accused.

5. The further averments in the private

complaint goes to show that the accused executed On Demand Promissory Note Agreement on stamp paper

given by way of security for due performance of the prompt repayment of the aforesaid hand loan taken and whereas the aforesaid post-dated cheque was given by the accused. The further allegation made in the complaint is that when the cheque was presented for encashment, it was dishonoured with the endorsement of the bank that "funds insufficient". The further case is that subsequently, the complainant has issued legal notice to the three addresses of the accused persons and two notices were returned as per the shara of the postal authority "No such person in the said address" and one notice was returned as "not claimed". Hence, the case came to be filed before the trial Court. The accused appeared before the trial Court and has denied the case of the complainant. Then, the complainant examined himself and three witnesses in support of his case and he has also marked documents as per Ex.P1 - P18. On the side of the accused, two witnesses were examined as DW1 and DW2 and also produced documents Ex.D1 to D9.

6. After hearing arguments on both the sides, ultimately, the trial Court was of the opinion that complainant failed to prove his case. Accordingly, acquitted the respondent/accused for the said offence. Being aggrieved by the same, the appellant is before this Court in this appeal.

7. Heard the arguments of the learned counsel appearing for the appellant/complainant and also the learned counsel for the respondent/accused.

8. The learned counsel appearing for the

appellant/complainant made the submission that the issuance of the cheque and the signature are not in dispute. But, the contention of the other side is that no such amount was borrowed nor it was required to perform the marriage of cousin sister of the accused persons. Learned counsel submitted that whenever the cheque is issued, the signature on the said instrument has to be proved and the said burden is on the accused person. It is also submitted by the learned counsel that there is no transaction in favour of the complainant as contemplated under Sections" 118 and 139 of the N.I Act regarding passing of the consideration and the cheque issued is in discharge of the existing debt. The counsel made the submission that so far as accused is concerned, neither he replied to the notice nor he has entered into the witness box during the course of the trial to establish his defence regarding the memorandum of understanding is concerned. It is the contention of the learned counsel appearing for the complainant/appellant that it is in between the complainant and Umesh, brother of the accused and it is not in between the complainant and the respondent/ accused Lokesh. He also made the submission that even looking to the oral evidence of the parties, the cross examination of witnesses DW1 and DW2 clearly goes to show that the said cheques are not in connection with the milk dairy business but, it is in respect of discharge of loan amount borrowed by the accused persons. Counsel submitted that so far as evidence of PW2 and PW3 is concerned, it was not at all discussed in the

judgment of the Court below and even the Court has not at all referred to the documents Ex.P1 to P18 produced by the complainant before the trial Court. Counsel submitted that when the oral evidence of DW1 Sri.H.B. Shakregowda was referred, it was believed that the amount was not required to perform the marriage of his daughter. The trial Court ought to have considered the oral evidence adduced on the side of the complainant also, which is not done in this case. Regarding Ex.D2 is concerned, learned counsel made the submission, that he has admitted the signature on the said document. But looking into his oral evidence, he has denied the contentions of the said document Ex.D2. Therefore, only on admission of his signature on the said document, the trial Court is not right in its findings to come to the conclusion that the cheque is in respect of the milk dairy business furnished as a security and it is not in discharge of the alleged loan transaction as contended by the complainant. Learned counsel also made the submission that the oral as well as documentary evidence adduced by the parties were not at all referred to by the Court in detail. Without considering this material, the lower court wrongly proceeded to hold that the complainant has not proved his case beyond all reasonable doubt. Hence, he submitted that the judgment and order of acquittal passed by the Court below is not in accordance with the materials placed on record. Hence, he submitted to allow the appeal and to set aside the judgment and order of acquittal passed by the Court below and to

convict the respondent/accused for the offence punishable under Section 138 of N.I Act as prayed for in the private complaint.

9. Per contra, the learned counsel for the respondent/accused during the course of his argument made the submission that the accused persons not entered into the witness box is not vital to the case of the accused. He made the submission that in so far as oral evidence is concerned, he held out his case by way of cross-examination of the witness on the side of the complainant. Counsel submitted that while going through the document Ex.D2 wherein the complainant admitted the signature on the said document, which was confronted to him during the course of cross-examination itself goes to show that the cheque was issued in connection with the milk dairy business and it is not in respect of discharge of the alleged loan transaction. He also made the submission that when the complainant has admitted his signature on the document Ex.D2, it is for him to explain why he put his signature without knowing the contents of the document. He also submitted that when the cross-examination of DW1 itself establishes the defence of the accused persons, examination of the accused was not necessary during the course of the trial. Hence, he made the submission that lower Court has rightly considered the entire material aspects on record and rightly came to the conclusion in holding that the complainant has not proved his case beyond all reasonable doubt. In support of his contention, learned

counsel appearing for the respondent/accused relied upon the decisions filed along with the Memo dated 06.12.2017, which are totally 7 in number. Lastly, he made the submission that there is no merit in this appeal and the same is to be rejected.

10. I have perused the grounds urged in the memorandum of appeal, judgment and order of acquittal passed by the Court below, oral evidence of the parties adduced before the trial Court by both the sides and the documents produced by the parties, so also considered the oral submission of the learned counsel on both the sides, which is referred above and the decisions relied upon by the learned counsel appearing for the respondent/accused in support of his contentions.

11. Looking to the judgment of the Court below, the Court below was little confused regarding the examination of witnesses on the side of the defence. Though it is an admitted fact that the accused-Lokesh has not at all entered into the witness box, but in the judgment at page No.8, it is observed by the Court below that "on the other hand, the PW1 has not disputed with respect to signature. But on perusal of the same, it appear that Ex.P13 and P14 have been executed by accused No.1 Lokesh and Ex.D5 has been signed by accused No.2 B.Umesh". Regarding this observation of the Court below that there is only one accused in the case i.e. Lokesh and there is no 2nd accused by name B.Umesh in this case, the observation made by the Court below regarding B.Umesh as

accused No.2 in the case is not correct. On page No.10 also, it is observed by the Court below that "on the other hand, as per the specific case made out by the complainant, the DW1, who is none other than the brother of the accused, he himself has been examined as DW1 and the accused has been examined as DW2". This itself clearly goes to show that there is no application of mind by the Court below with regard to the materials placed and who has been examined in the case. When Lokesh-accused has not entered into the witness box, question of making the observation that accused has been examined as DW2 does not arise at all. Therefore, to that extent, learned counsel appearing for the appellant/complainant is justified in making the submission that the trial Court has not properly considered the materials placed on record, both oral and documentary. Apart from that, looking to the judgment of the Court below, nowhere it has discussed about the documents produced by the complainant at Ex.P1 to P18. Even with regard to the oral evidence of PW2 and PW3 are concerned, the Court has not at all touched their oral evidence. Only on the basis of the evidence of PW1-complainant, the Court has arrived at certain conclusion. It is the definite case of the complainant that he paid the money of Rs.5,50,000/- in the presence of the witnesses PW2 and PW3. In support of that, he examined these two witnesses before the Court. Whether the case of the complainant is believed or not, whether the oral evidence of two witnesses PW2 and PW3 is believed or not, the Court has not made any

such discussion in the judgment arrived at by it. Even with regard to other documents are concerned on the side of the defence also goes to show that it is the main contention of the accused person that he need not examine himself before the Court in view of the admission made by the complainant itself in the document Ex.D2. Learned counsel for the respondent/accused during the course of the argument drew the attention of this Court to the document Ex.D2 before this Court. Even with regard to that in entire judgment, there is no reference and what is the relevancy of the said document Ex.D2 is also not discussed. Regarding the other documents are concerned i.e., Memorandum of Understanding as per Ex.D5 and P18 are concerned, there is no proper discussion by the Court below.

Therefore, looking to the judgment and order of the Court below, it is without referring to each and every aspect of the matter produced by the parties before the Court below. Looking to these aspects of the matter, I am of the opinion that matter requires remand of the case to the lower court, with a direction to consider entire materials both oral and documentary on both sides and dispose of the matter afresh giving liberty to both the sides for producing the additional evidence, if any, both oral and documentary and then to dispose of the matter to do substantial justice to both the parties in the case.

12. Hence, the appeal is allowed. The judgment and order of acquittal passed by the Court below, which is challenged in this appeal is hereby set aside. Matter

is remanded back to the court below, with a direction to consider all the materials oral as well as documentary produced by both sides and give an opportunity to both sides to adduce additional evidence, if any, either oral or documentary, then to dispose of the matter afresh in accordance with law. In so far as the merits of the case is concerned, the Court has not expressed any opinion and trial Court should not be influenced by observation made in this judgment and it has to independently hear the matter afresh and dispose of the same in accordance with law. Since the matter is of the year 2011 and since the learned counsel on both sides are present before the Court, both parties are directed to appear before the concerned Court on 06.01.2018. The concerned trial court need not issue notice to either the complainant or the accused persons.