

**(2010) 10 KAR CK 0021**  
**In the Karnataka High Court**  
**Case No : Criminal Appeal 178 of 2008**

Sri N. Mohan Swamy

APPELLANT

Vs

Sri P. Devappa

RESPONDENT

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**Date of Decision :** 23-10-2010

**Acts Referred:**

**Citation :** (2010) 10 KAR CK 0021

**Hon'ble Judges :** Huluvadi G. Ramesh, J

**Bench :** Single Bench

**Advocate :** S. Balan and Assts, for the Appellant; F.X. and Co., for the Respondent

**Final Decision :** Allowed

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## Judgement

Huluvadi G. Ramesh, J.—This is a complainant's appeal being aggrieved by the order of acquittal passed by the II Addl. District & Sessions Judge, Mangalore in CrI.A 172/2004 on 26.10.2007 reversing the order passed by the JMFC V, Mangalore in CC 3510/2003 on 31.5.2004.

2. In connection with the dishonour of the cheque presented for Rs. 60,000/-, complaint came to be filed against the accused for nonpayment even after due notice. Learned Magistrate after inquiry, convicted the accused and ordered to pay compensation Rs. 78,000/- to the complainant. In this appeal preferred by the accused, the appellate court dismissed the complaint while setting aside the order of conviction. Hence, this appeal by the complainant.

3. According to the complainant, by an erroneous approach the appellate court has set aside the well reasoned order passed by the learned Magistrate on 31.5.2004.

4. According to the accused, he had borrowed Rs. 10,000/- and he had made payment of Rs. 9,500/-. Once again he borrowed Rs. 10,000/- and he went on making payment in installments. When the complainant asked to pay interest, expressing difficulty the accused did not make payment. Except the interest part,

the accused had made the entire payment. Further according to the accused, at the time of borrowing on the first occasion, two signed cheques were received and, when he borrowed for the second time, stating that the earlier cheques issued had been misplaced or lost, another two cheques were collected by the complainant. In all, the complainant had collected four signed cheques from the accused. It is stated, there is no transaction between the complainant and the accused towards which a cheque for Rs. 60,000/- was given.

5. According to the complainant, the accused has issued the cheque duly signed and that has been admitted and, question of denying the said fact stating that he had borrowed only Rs. 20,000/- and not Rs. 60,000/- cannot be accepted. When the issuance of cheque is admitted, the burden is on the accused to disprove the same.

6. When once authority is given to the complainant by issuing blank cheques, might be the complainant must have filled up those cheques, and, whether it was given towards security or towards a legally enforceable debt is immaterial. So far as payment of amount is concerned, even according to the accused, he had made the entire payment except the interest part of it. In the case on hand, the accused has handed over four cheques. Further, the counsel representing the accused has relied upon the case of Nityanand Vs. Jamuna Prakash, to contend that when blank cheques were received by the complainant from the accused and when he caused legal notice, he was duty bound to mention the cheque number in the legal notice, and for non-mentioning of the same, it would be difficult for the accused to ascertain against which cheque, the case has been filed.

7. In the present case, it is not as if all the cheques-filled up and duly signed, were given. The cheques were duly signed. Of course, the amount has been filled up later. Even assuming the case of the accused that he had made the entire payment and only interest part of it was due, which he was unable to pay, when as per the agreement, if any or understanding he was liable to make payment, taking liberty the complainant must have filled up one of the cheques and presented for realization, it must be treated as a legally enforceable debt. May be there is over-claim by the complainant in filling up the amount.

8. In the circumstances, while allowing the appeal in part, the accused is sentenced to make payment of Rs. 30,000/- in four months to the complainant, in default, he shall undergo simple imprisonment for one month.