**(2010) 07 KAR CK 0036**

**In the Karnataka High Court**

**Case No :** Criminal Appeal No. 1189 of 2007

Sri Shivappa Reddy APPELLANT

Vs

Sri. C.K. Jagannath RESPONDENT

**Date of Decision :** 15-07-2010

**Acts Referred:**
Negotiable Instruments Act, 1881 (NI) — Section 136, 138

**Citation :** (2011) 3 BC 125 : (2010) CriLJ 4759 : (2010) 4 KCCR 2876 : (2011) 7 RCR(Criminal) 2165

**Hon'ble Judges :** A.S. Pachhapure, J

**Bench :** Single Bench

**Advocate :** H.P. Leeladhar and Co, for the Appellant; P. Prasanna Kumar, for C.H. Jadhav, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.S. Pachhapure, J.—The appellant has challenged the acquittal of the respondent for the charga undar Section 138 of the Negotiable Instruments Act (hereinafter referred to as the ''Act'' for short) on a trial held by the JMFC, Anekal.

2. The facta relevant for the purpose of this appeal are as under:

Both the parties ara residents of the same village and are known to each other. the appellant vho is the Complainant in the Trial court submitted a Complaint stating that the accused borrowed a hand loan of Rs. 1,20,000/- agreeing to repay the amount within three months and as such, the complainant paid the amount of RS. 1,20,000/- in the month of September 2003 and on the vary same day, the accused issued a cheque bearing No. 078259-560015068 drawn on Canara Bank, Chandapur Branch, Anekal Taluk dated 2.12.2003 towards repayment of the loan advanced. Accordingly, the Complainant presented the cheque for encashment on 2.12.2003 and it returned with an endorsement of ''insufficient funds''. The accused on enquiry requested to re-present the cheque and accordingly, it was again presented on 4.3.2004 and it was returned vith the same endorsement, in the circumstances, the Complainant issued a legal notice dated 12.3.2004 calling upon the accused to pay the amount and the said notice was not complied vith, though served. In the circumstances, the Complainant approached the Trial court for action u/s 138 of the Negotiable instruments Act.

3. The accused appeared and his plea vas recorded. The Complainant was examined as P.V.I and in his evidence Exts.P1 to P5 were marked. The statement of the accused was recorded u/s 313 Cr.P.C. He has taken the dafanca of total denial and examined a witness D.W.1 and got marked Ext.D1. The Trial Court after hearing the Counsel for both the parties and on appreciation of the material on record, acquitted the accused and aggrieved by the order of acquittal, this appeal has been preferred.

4. I have heard the learned Counsel for the appellant and also the respondent.

5. The point that arises for my consideration in this appeal is:

Whether the judgment and order acquitting the respondent for the charge u/s 136 of the Negotiable Instruments Act is legal and valid?

6. It is the contention of the learned Counsel for the appellant that the cheque Ext.P1 has been issued by the accused in his individual capacity and there is a presumption u/s 139 of the Act that he has issued the said cheque towards repayment of the debt and as the accused did not comply the legal notice after return of the cheque for insufficient funds, he submits that the accused has committed an offence u/s 138 of the Act and the Trial Court has committed an error in granting an order of acquittal.

7. Per contra, the learned Counsel for the respondent submits that the cheque Ext.P1 does not pertain to the account of the accused and in this regard, he has examined D.W.1 who is the Ex-President of the Chandapur Milk Producers Cooperative Society and that the accused was the Secretary of the said Society and as the cheque has been issued by the accused in his individual capacity and as the account is in the name of the Society, the provisions of Section 138 of the Act are not attracted and the Trial Court was justified in granting an order of acquittal.

8. As could be seen from the cheque at Ext. P1, there is no mention on the cheque that it pertains to the account of the Milk Producers Cooperative Society. But anyhow, it is an admitted fact that the cheque has been issued by the accused who was the Secretary of the said Cooperative Society, But as could be seen from the signature on the cheque, there is nothing to show that the cheque has been issued in his capacity as the Secretary of the Cooperative Society to establish that the account bearing No. 12107 pertains to the Milk Producers Cooperative Society. The accused has examined D.W.1 who was the Ex-President of the said Society for the period from 2001 to 2005. At that time, the accused was also the Secretary of the said Society and D.W.1 states that the Bank account No. 12107 is of the Milk Producers Cooperative Society and any cheque

 

issued by the Society is to be signed both by the President and the Secretary and Ext. P1 does not bear his signature. Ext.D1 is the Pass Book pertaining to account No. 12107 and the nana of the holder of the account is Milk Producers cooperative society, chandapur and it is not in the name of the accused.

9. So a cooperative society is an independent person and the accused has issued the cheque of the Cooperative Society in his personal capacity and handed over the sane to the Complainant. The account is not in his name. so in the absence of an account in the name of the accused, in his individual capacity, any cheque of the Cooperative Society cannot be said to be the cheque of the accused pertaining to his account in the Bank. In this context, if the provisions of Section 139 of the Act are looked into, which reads:

138. Dishonour of cheque for insufficiency etc., of funds in the account, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of monay to another person from out of that account for the discharge, in vhola or in part of any dabt or other liability, is returned by the bank unpaid, aithar bacauaa of the amount of money standing to the cradit of that account is insufficient to honour the chaqua or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemad to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine, which may extend to twice the amount of the cheque, or with both.

(The underline is mine)

10. so a perusal of Section 138 of the Act reveals that the cheque must be drawn by the accused on an account maintained by him with the banker and here in the case on hand, the accused has draw the cheque which was not in his nana but was in the nama of Milk Producers Cooparativa Society. Therefore, the provisions of Section 138 of the Act are not fulfilled and this fact vas considered by the Trial Court while granting an order of acquittal. Though there is material against the accused for the offence u/s 420 IPC, there is no allegation in the Complaint in this regard so as to constitute an offence u/s 420 IPC. In that view of the matter, I am of the opinion that the Trial court has not committed any illegality in granting an order of acquittal. Hence I answer the point in affirmative and proceed to pass the following order:

The appeal is dismissed.

 