

IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30<sup>TH</sup> DAY OF MAY 2011

BEFORE  
THE HON'BLE MR.JUSTICE A.S.PACHHAPURE

CRIMINAL APPEAL NO.2605/2009

BETWEEN:

Shri. Gurushiddeshwar  
Co-op Bank Ltd.,  
Dajibanpeth,  
Hubli Represented by  
Its Manager Shri Raja P. Naik. ... APPEALLANT

[By Sri.Jyothi P. Desai, Adv.,)

AND:

Sri. Anantraj C. Bilagi,  
Moorusaviramath Road,  
Mahaveer Gali,  
Hubli.

... RESPONDENT

(By Sri. Girija S. Hiremath, Adv.)

This Criminal Appeal is filed U/s.378(1) of Cr.P.C. by the advocate for the appellant praying that this Hon'ble Court to call for the records from the court of judicial magistrate First Class II court Hubli in C.C.No.2120/2007 and set aside the judgment dated 06.03.2009 passed by the Judicial Magistrate First Class II Court, Hubli in C.C.No.2120/2007, by convicting the respondent herein for the offence having committed as per the provisions of section 138 of Negotiable Instrument Act for dishonor of cheque .

This appeal coming on for admission this day, the court delivered the following:

JUDGMENT

The appellant has challenged the order of acquittal of the respondent by the J.M.F.C. II Court Hubli, in C.C.No.2120/2007 for the offence punishable under Section 138 of Negotiable Instrument Act (Hereinafter called as " the Act" for short)

2. The facts relevant for the purpose of this appeal are as hereunder:

The complainant bank sanctioned a loan to the accused and towards the repayment of loan amount the accused is said to have issued the cheque-Ex.P.1 on 02.07.2007 for a sum of Rs.2,00,000/-, drawn on Corporation Bank, Hubli, in favour of the complainant bank and said to have assured that the cheque will be honoured when it is presented.

On presentation of the said cheque for encashment, it was returned with an endorsement of insufficient funds. A notice was issued by the complainant to the respondent demanding the amount of Rs.2,00,000/- and it was not complied. Under these circumstances, the appellant filed the complaint before the trial court under Section 200 Cr.P.C. to take action for the offence under Section 138 of Act.



3. During the trial, the complainant examined P.W.1 and in the evidence got marked Ex.P.1 to P.8. The statement of the respondent was recorded under Section 313 Cr.P.C. He has taken a defence of total denial.

4. After hearing the learned counsel for the parties and on appreciation of materials on record the trial court has acquitted the accused for the offence under Section 138 of Act. Aggrieved by the said judgment and order, the present appeal has been filed.

5. I have heard the learned counsel for both the parties.

6. The point that arise for my consideration is:

“ Whether the appellant has made out any justifiable grounds to warrant interference in the acquittal of the accused for the offence under Section 138 of the Act?”

7. The allegations in the complaint reveal that the complainant sanctioned a loan in the name of the accused Sri. Anantraj(anant) Bilagi. To me it is a personal loan account of the accused. But as it could be seen from the cheque produced at Ex.P.1, it has been drawn in favour of the Gurusiddeshwar Co-



operative Bank Ltd., Hubli and the payment is towards the loan account of B.A. Bilagi. So when the loan account is that of B.A.Bilagi the accused herein whose name is Anant Bilagi cannot be personally held responsible, unless there are allegations in the complaint to prove the personal liability of the accused.

8.Ex.P.7 is the extract of the ledger. As could be seen from its contents, it reveal that M/s.B.A.Bilagi Metal Merchant, M.G.Market, Hubli, had taken the loan from the complainant bank and the accused is the Managing Partner of the said Firm. But unfortunately the complainant has not stated in the complaint that M/s. B.A.Bilagi, Metal Merchant, had opened an account and that the loan was sanctioned in the name of the said firm and towards payment of this liability accused has issued the cheque in question. So the allegation made in the complaint as regards the loan account of the accused, there is no material placed on record by the complainant to show that there is such a loan account in the name of the accused. So in these



circumstances, there is the question of interference in the order of acquittal.

9. Though the learned Counsel contended that accused has not entered the witness box, it is relevant to note that the initial burden is upon the complainant to prove the case by placing material facts before the court. But the facts, which have been placed on record reveal that, there is no loan account in the name of the accused. In that view of the matter, I am of the opinion that the appellant has not made out any justifiable grounds to warrant inference.

10. This is an appeal against acquittal and the Appellate Court will be slow to interfere with such orders and even if a second view is possible, the one accepted by the trial Court cannot be disturbed. Though the loan account was in the name of the partnership firm, the firm is not made as a party. Further, there is no allegation that the firm had taken the loan. Therefore, the accused is not personally responsible towards the payment of loan amount mentioned in the cheque, as it pertains to a



firm. In that view of the matter, there is no merit in this appeal. The appeal is accordingly dismissed.

Misc.Crl.15590/2009 for special leave does not survive for consideration. Hence, it is rejected.

**Sd/-  
JUDGE**

Rms/