ABC 2025(I) 621 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Vikram Nath & Sandeep Mehta, JJ.)

Criminal Appeal No. ……. of 2024

(Arising Out of Special Leave Petition (Crl.) No. 11002-11009 of 2024)

(From Karnataka High Court)

Decided on : 04 March 2025

M.S. NAGABHUSHAN - ***Appellant(s).***

Versus

D.S. NAGARAJA - ***Respondent(s).***

Law Covered :- ***(A) Negotiable Instruments Act, 1881 – Section 138 – Bharatiya Nyaya Sanhita, 2023 – Section 281 – Legally Enforceable Debt – Security Cheques – Continued Occupation of Premises Without Rent – Impact on Debt Validity – Post-dated cheques were issued towards refund of security deposit under a lease agreement – Respondent-complainant failed to vacate the flat and continued occupation without rent for nearly five years – Held, issuance of cheques was conditional upon handing over vacant possession – Failure to vacate rendered the underlying debt unenforceable – Prosecution under Section 138 not maintainable in such circumstances. (Paras 18-24)***

(B) Negotiable Instruments Act, 1881 – Section 138 – Bharatiya Nyaya Sanhita, 2023 – Section 281 – Cross-examination Admissions – Effect of – Admitted Continued Possession & Non-payment of Rent – Respondent-complainant in cross-examination admitted non-vacation of flat and non-payment of rent – Also admitted cheques were issued as security – Held, such admission demolishes the presumption of legally enforceable debt – Criminal liability under Section 138 NI Act unsustainable. (Paras 17-22)

(C) Code of Criminal Procedure, 1973 – Section 386 – Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 427 – Appellate Powers – Enhancement of Sentence Without Factual Basis – Legality of – Appellate court enhanced compensation from Rs.3,00,000/- to Rs.9,00,000/- despite trial court finding partial repayment and deductions towards arrears – High Court affirmed the same without accounting for deductions and possession dispute – Held, enhancement without factual and legal justification is improper – Appellate and High Court orders set aside – Trial court's order restored. (Paras 23-25)

Facts **:-** *The dispute arose from a lease-cum-rent agreement between the appellant and the respondent, where the respondent deposited ₹9,00,000 as security. Upon expiry of the lease, the appellant issued four post -dated cheques as security for refund. However, the respondent failed to vacate the flat and continued occupying it for nearly five years without paying rent or maintenance. He then presented the cheques, which were dishonoured due to insufficient funds. Criminal complaints were filed under Section 138 NI Act. The trial court found partial repayment and directed a reduced compensation of ₹3,00,000, but appellate and High Courts enhanced this to ₹9,00,000. The Supreme Court noted that the respondent admitted to non-vacation, cheques were issued as security, and no enforceable debt existed for the full amount. The appellate and High Court orders were quashed, and the trial court judgment was restored.*

Law of Relief **:-** ***Respondent's continued occupation and non-payment of rent negated the presumption under Section 138 NI Act.***

Counsel **:-** ***For Appellant(s)*****:** *Harisha S.R., Adv.*

For Respondent(s)**:** *A. Lakshminarayanan, Adv.*

JUDGMENT

Abhay, J.**:-**1. Leave granted.

2. The challenge in these appeals is laid to the common judgment and final order dated 8th July, 2024, passed by the learned Single Judge of the High Court of Karnataka at Bengaluru (hereinafter, being referred to as 'High Court'), whereby the criminal revision petitions (The Criminal Revision Petitions filed by the appellant herein includes CRP No. 447 of 2018, 448 of 2018, 449 of 2018, 450 of 2018, 451 of 2018, 452 of 2018, 453 of 2018, 454 of 2018, 466 of 2018, 467 of 2018, 468 of 2018 and 469 of 2018. However, it is pertinent to note that the present appeals are filed only against the judgment and order in Criminal Revision Petitions No. 447-454 of 2018) filed by the appellant (hereinafter, being referred to as 'appellant-accused') herein were dismissed.

2. Brief facts relevant and essential for the disposal of the appeals are noted hereinbelow.

3. The appellant-accused and respondent (hereinafter, being referred to as 'respondent-complainant') entered into a lease-cum-rent agreement on 12th May, 2014 for Flat No. 206, 2nd Floor, SAN VIL Apartment, 6th & 7th Cross, 50 Feet Main Road, Balaji Nagar, Mallathahalli Extension, Bangalore-560056 (hereinafter, referred to as

'subject flat') owned by the appellant-accused. The respondent-complainant deposited a sum of Rs.9,00,000/- with the appellant-accused by way of 'security deposit'. The rent for the subject flat was settled at Rs.2,500/- per month as per the rent agreement which was valid for a period of 11 months and was to terminate on 11th April, 2015, whereupon the appellant-accused would be required to refund the security deposit of Rs.9,00,000/- and collect the keys and receive vacant possession of the said flat from the respondent-complainant. Upon completion of 11 months, the respondent-complainant issued a notice dated 18th June, 2015, to the appellant-accused, imploring him to refund the security deposit amount. However, the appellant-accused could not arrange the said amount and thus, he issued four post-dated cheques to the respondent-complainant. The details of the cheques are mentioned hereinbelow: -

Serial No.	Cheque No.	Date	Cheque Amount
1	681821	20.08.2015	Rs.2,00,000/-
2	681822	20.10.2015	Rs.2,00,000/-
3	681827	20.12.2015	Rs.2,00,000/-
4	681826	20.02.2016	Rs. 3,00,000/-

5. The respondent-complainant presented the above cheques with his bank and the same came to be dishonoured with the endorsement 'funds insufficient'. Thereupon, the respondent-complainant filed four separate complaints (Criminal Complaint Nos. 26639 of 2015, 1235 of 2016, 5198 of 2016 and 11151 of 2016) against the appellant-accused before the learned XXII Additional Chief Metropolitan Magistrate, Bangalore City (hereinafter, being referred to as 'trial Court'). The trial Court, *vide* judgment dated 9th November, 2016, convicted the appellant-accused in all the four complaints for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter, being referred to as 'NI Act') and sentenced him to pay a total fine amount of Rs.3,00,000/- with simple interest @ 6% per annum from the date of the cheques till realisation thereof. It was directed that out of the said fine amount, the respondent-complainant would be entitled to a sum of Rs.2,95,000/- as compensation and the remaining amount of Rs.5,000/- would be forfeited to the State Exchequer. The appellant-accused was directed to pay the said amount to the respondent-complainant within a period of 30 days from the date of the order and in default, he would

have to undergo simple imprisonment for a period of one year.

6. Being aggrieved by the judgment of the trial Court, the appellant-accused (Criminal Appeal Nos. 1429 of 2016, 1430 of 2016, 1431 of 2016 and 1432 of 2016) as well as the respondent-complainant (Criminal Appeal Nos. 411 of 2017, 412 of 2017, 414 of 2017 and 415 of 2017) preferred four appeals each, before the learned LXVII Additional City Civil & Sessions Judge, Bengaluru City (hereinafter, referred to as 'appellate Court'). The appellate Court *vide* separate judgments dated 6th March, 2018, dismissed the appeals filed by the appellant-accused and partly allowed the appeals filed by the respondent-complainant, affirming the conviction of the accused-appellant and enhancing the compensation amount to Rs.9,00,000/-. In default, the appellant-accused was directed to undergo imprisonment for one year.

7. Being aggrieved, the appellant-accused instituted multiple revision petitions (The Criminal Revision Petitions filed by the appellant herein includes CRP No. 447 of 2018, 448 of 2018, 449 of 2018, 450 of 2018, 451 of 2018, 452 of 2018, 453 of 2018, 454 of 2018, 466 of 2018, 467 of 2018, 468 of 2018 and 469 of 2018. However, it is pertinent to note that the present appeals are filed only against the judgment and order in Criminal Revision Petitions No. 447-454 of 2018), in the High Court, against the rejection of his appeals and the confirmation of his conviction and also, against the enhancement of the amount of compensation from Rs.3,00,000/- to Rs.9,00,000/- by the appellate Court. The High Court, *vide* common judgment dated 8th July, 2024, dismissed all the revision petitions filed by the appellant-accused and upheld his conviction under Section 138 of the NI Act. Further, the High Court also directed the appellant-accused to pay fine amount of Rs.9,00,000/- to the respondent-complainant on or before 31st July, 2024 (less the amount, if any, already deposited). In default, the appellant-accused was directed to undergo simple imprisonment for a period of two years. However, the amount of Rs.5,000/-, awarded by the trial Court towards defraying expenses to the State, was set aside.

8. Being aggrieved by the aforesaid judgment of the High Court, the appellant-accused is before us, with the present set of appeals by special leave.

9. Learned counsel for the appellant-accused urged that the cheques in question were given in relation to the lease-cum-rent agreement executed by the appellant-accused in favour of the

respondent-complainant for letting out his flat for a period of 11 months. In pursuance of the said agreement, the respondent-complainant deposited a sum of Rs.9,00,000/- as security deposit with the appellant-accused. The subject flat was to be vacated by the respondent-complainant on completion of 11 months, i.e., on 11th April, 2015 only whereafter the appellant-accused would be under an obligation to refund the security deposit of Rs.9,00,000/- and collect the keys of the flat. The appellant-accused had issued four post-dated cheques by way of security in favour of the respondent-complainant, who had acknowledged the receipt thereof but refused to hand over the keys till the date of the last cheque. He urged that the respondent-complainant did not vacate the subject flat and started threatening the appellant-accused, by demanding a huge amount. The respondent-complainant misused the post-dated cheques and instituted the four malicious complaints (Criminal Complaint Nos. 26639 of 2015, 1235 of 2016, 5198 of 2016 and 11151 of 2016) under the NI Act against the appellant-accused.

10. Learned counsel for the appellant-accused urged that during the trial, the respondent-complainant admitted in his cross-examination that he had not vacated the flat and continued to occupy the same without paying any rent or maintenance charges. He submitted that the appellant-accused was ultimately compelled to institute a suit, S.C. No. 1988 of 2016, under the Karnataka Rent Act, 1999 seeking ejectment of the respondent-complainant from the subject flat and for damages. The said suit came to be partly decreed by learned XVIII Additional Judge, Small Causes Court, Bengaluru, *vide* judgment dated 27th September, 2019, and the respondent-complainant was directed to quit, vacate and hand over the vacant possession of the subject flat to the appellant-accused within two months from the date of the judgment.

11. The respondent-complainant was actually evicted from the subject flat only on 8th January, 2020 pursuant to action taken in the execution petition, Execution Petition No. 1894 of 2019, filed by the appellant-accused. He urged that the respondent-complainant admittedly continued to occupy the flat owned by the appellant-accused without paying any rent for nearly 5 years and, hence, the conviction of the appellant-accused for failing to refund the cheques given for covering the security deposit amount is absolutely unjustified because the case set up by the respondent-complainant does not satisfy the parameters of a legally enforceable debt against

the appellant-accused so as to make him liable for the offence punishable under Section 138 of the NI Act.

12. On these grounds, learned counsel appearing for the appellant-accused implored this Court to accept the appeals, by setting aside the impugned judgments passed by the Courts below and thus, acquit the appellant-accused.

13. E-converso, learned counsel appearing for the respondent-complainant vehemently and fervently opposed the submissions advanced on behalf of the appellant-accused. He urged that the appellant-accused is unjustifiably trying to confuse the issue of rent of the subject flat with the dishonour of cheques whereas both have no corelation whatsoever. Indisputably, the respondent-complainant had paid a sum of Rs.9,00,000/- to the appellant-accused by way of security deposit when the subject flat was taken on rent. Upon completion of tenure of the rent agreement, since the security deposit amount was not refunded, the appellant-accused issued four disputed post-dated cheques to the respondent-complainant. These cheques were presented by the respondent-complainant in his bank to cover his rightful claim and the same came to be dishonoured on account of insufficient funds. Hence, as per the learned counsel for respondent-complainant, the appellate Court and the High Court were totally justified in confirming the conviction of the appellant-accused and in enhancing the amount of compensation from Rs.3,00,000/- (as awarded by the trial Court) to Rs.9,00,000/-.

14. On these grounds, the learned counsel for respondent-complainant urged that the present appeals are liable to be dismissed, and the decision of the appellate Court and the High Court, enhancing the amount of compensation payable to respondent-complainant should be upheld.

15. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned judgments and the material placed on record.

16. It is evident from the record that the appellant-accused was prosecuted for the dishonour of four post-dated cheques totalling to an amount of Rs.9,00,000/- which were issued by him in favour of the respondent-complainant and on presentation, had been dishonoured with an endorsement 'funds insufficient'. In regard to the dishonour of these four post-dated cheques, the respondent-complainant instituted four separate complaints (Criminal Complaint Nos. 26639 of 2015, 1235 of 2016, 5198 of 2016 and 11151 of 2016). The trial Court

convicted the appellant-accused under Section 138 of the NI Act concluding that the specific plea taken by the appellant-accused that he had repaid a sum of Rs.5,00,000/- to the respondent-complainant was not controverted by the respondent-complainant by way of any rejoinder or counter to the reply notice submitted by the appellant-accused. The trial Court further accepted the evidence of the appellant-accused and his witnesses who supported the plea that a sum of Rs.5,00,000/- had been repaid to the respondent-complainant and the admission made by the appellant-accused in his reply notice that the balance amount of Rs.2,95,000/- (after deducting Rs. 80,000/- towards arrears of rent and painting charges, Rs. 15,000/- towards maintenance charges and Rs. 10,000/- for miscellaneous expenses) was due and the same, would be paid to the respondent-complainant within a month. Taking into account the aforesaid facts and circumstances, the trial Court while convicting the appellant-accused for the offence punishable under Section 138 of the NI Act confined the sentence of fine, to Rs.3,00,000/- with simple interest @ 6% per annum from the date of the cheques till realisation, to be paid by the appellant-accused to the respondent-complainant. From the said amount of Rs.3,00,000/-, a sum of Rs.5,000/- was directed to be forfeited to the State Exchequer towards defraying expenses. In default, the appellant-accused was directed to undergo simple imprisonment for a period of one year.

17. It is undisputed that the cheques in question were given by the appellant-accused to the respondent-complainant towards refund of the security deposit to the tune of Rs. 9,00,000/- made by the latter, when he had taken the flat owned by the appellant-accused on rent. The refund of the amount of security deposit was contingent upon the respondent-complainant handing over the vacant possession of the flat and returning the keys thereof to the appellant-accused. Upon completion of the tenure of the lease, the appellant-accused issued a legal notice calling upon the respondent-complainant to vacate and hand over the vacant possession of the subject flat, but the respondent -complainant did not vacate the same. As a consequence, the appellant-accused filed a suit, S.C. No. 1988 of 2016, seeking ejectment of the respondent-complainant from the subject flat and for damages. In the said suit, the respondent-complainant filed written statement but did not depose or produce any document. The suit was partly decreed in favour of the appellant-accused *vide* judgment and decree dated 27th September, 2019, and the respondent-complainant was

directed to quit, vacate and hand over the vacant possession of the subject flat to the appellant-accused within two months from the date of the order.

18. Despite the decree, the respondent-complainant failed to vacate the subject flat on which the appellant-accused, being the decree-holder, was compelled to institute execution proceedings, Execution Petition No. 1894 of 2019. The Small Causes Court, Bengaluru after perusing the bailiff report which stated that the respondent-complainant (judgment debtor) had locked the subject flat, *vide* order dated 2nd January, 2020, directed police assistance to break open the locks in order to ensure that the decree is satisfied and possession of the subject flat is handed over to the appellant-accused (decree holder). In compliance of the aforesaid order, the locks were broken and possession of the subject flat was handed over to the appellant-accused (decree holder) on 8th January, 2020.

19. Further, the respondent-complainant in his cross-examination, before the trial Court in the criminal complaints (Criminal Complaint Nos. 26639 of 2015, 1235 of 2016, 5198 of 2016 and 11151 of 2016) filed by him, has admitted that he had not vacated the subject flat till the date of his examination. For ready reference, the relevant portion of the cross-examination of the respondent-complainant is extracted hereinbelow: -

> **"It is correct to state that accused and his wife are joint owners of the house where I am residing. It is correct to state that even now also I am residing in the house which was mortgaged.** For the purpose of mortgage security, I had paid the amount of Rs. 2 lakhs, 4 lakhs and 3 lakhs at three times totalling to Rs. 9 lakhs. I paid said amount through cheque. Mortgage deed has not been executed concerning with payment made as stated above. Mortgage deed has not been executed between me and them. It is false to state that I have entered into lease agreement with them. It is false to state that every month I am paying Rs. 2,500/- as rent and Rs. 2,600/- as maintenance. It is correct to state that on 12.04.2015, I passed the message through phone to accused by mentioning I am vacating the house where I am residing. It is false to state that again on 22.05.2015, I passed the message to the accused that on (sic)0.05.2015, I vacated the house. **But I have not vacated it.** It is correct to state that on 18.06.2015, I wrote a letter to the accused. It is false to state that in the said letter, I mentioned that I will vacate the house if security

amount of Rs. 9 lakh is returned. It is correct to state that for the purpose of security I issued 4 post-dated filled cheques. It is false to state that as stated above after receiving the cheque, I told if Rs. 9 lakh is returned, then said cheques will be returned. It is false to state that on 26.08.2015, accused along with witnesses gave a sum of Rs. 5 lakhs in cash by coming to my house. **It is correct to state that from that day till this date I have not paid the rent amount and maintenance amount.** It is correct to state that I have issued notice upon accused as per Ex.P-3. It is correct to state that as per Ex.P-7, accused has sent the reply notice. Advocate shown the letter dated 18.06.2015 to the witness, for that witness states it is correct this is the letter which was written by me. Because witness identified said letter, same is marked as Ex.D-1 on behalf of accused. The contents of Ex.D-1 letter are true. It is false to state that thereafter without vacating the house of accused, even without paying the rent, I misused the cheques issued for the purpose of security. On showing the photocopy of rent agreement executed between the witness and accused concerning with the house, witness admitted the same but further stated it was created for the purpose of income tax. Same is marked as Ex.D-2 subject to proving the same." (emphasis supplied)

20. Hence, it is as clear as daylight that the respondent-complainant continued to occupy the subject flat, for a period of nearly 5 years beyond the last date of the rent agreement without paying any rent or maintenance amount.

21. In this background, the appellant-accused was definitely not liable to refund the entire security deposit amount of Rs.9,00,000/- covered by the post-dated cheques, to the respondent-complainant because he was entitled to deduct the amount of due rent and maintenance from the said amount. Hence, the respondent-complainant failed to lead evidence to conclusively establish that the entire amount under the post-dated cheques was a legally enforceable debt against the appellant-accused.

22. In wake of the above discussion, we are of the opinion that the judgment dated 6th March, 2018, passed by the appellate Court and the judgment dated 8th July, 2024 passed by the High Court, whereby compensation awarded by the trial Court was enhanced and the appellant-accused has been held liable to pay a sum of Rs.9,00,000/- as compensation to the respondent-complainant and in

default to undergo simple imprisonment, do not stand to scrutiny.

23. It is pertinent to note that the appellant-accused had previously approached this Court by filing special leave petitions (SLPs), SLP(Cr1.) No(s). 6701-6716 of 2022, against orders dated 19th April, 2022 and 16th June, 2022, passed by the High Court, wherein the application filed by the accused-appellant seeking extension of time to deposit 50% of the fine amount as awarded by the appellate Court for staying the operation of the appellate Court's judgment was dismissed. This Court, while issuing notice *vide* order dated 1st August, 2022, in the said SLPs, recorded that the appellant-accused had produced two demand drafts of a sum of Rs.2,10,000/- each, totalling to Rs.4,20,000/-. The said demand drafts were directed to be deposited with the learned Secretary General of this Court.

24. This Court *vide* order dated 8th August, 2023, disposed of the said SLPs directing the Registry to transmit the said demand drafts to the Chief Metropolitan Magistrate Court, Bangalore i.e., the trial Court, and the amount covered by the said drafts was ordered to be invested in an interest-bearing fixed deposit in a Nationalised Bank. Evidently, the amount deposited by the appellant-accused i.e., a sum of Rs.4,20,000/- (Two demand drafts of Rs.2,10,000/- each) as recorded in the order dated 1st August, 2022 passed by this Court, must also have generated interest.

25. Thus, while setting aside the judgments of the High Court and the appellate Court and restoring that of the trial Court, we direct that the sum of Rs. 3,00,000/- by way of compensation shall be paid to the respondent-complainant. The remaining amount over and above the sum of Rs.3,00,000/- awarded to the respondent-complainant by way of compensation, shall be reimbursed to the appellant-accused.

26. In view of the above discussion, the impugned judgments, dated 6th March, 2018 passed by the appellate Court and dated 8th July, 2024 passed by the High Court are hereby, quashed and set aside. The judgment dated 9th November, 2016 rendered by the trial Court is restored. The trial Court shall reimburse the amount in the above terms to ensure compliance of this judgment within a period of two months from today.

27. Thus, the appeals are partly allowed in the aforesaid terms.

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

***Result*:-** Appeals partly allowed. Trial court judgment restored. Excess amount to be reimbursed to appellant.