



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.619 OF 2021

BETWEEN:

SRI A M HARISH GOWDA @ A M HARISHA
S/O LATE ARASEGOWDA
AGED ABOUT 49 YEARS
R/A MURUGAN WORKSHOP ROAD
SREERAMA BLOCK
J R NAGAR TOWN
MYSURU DISTRICT-571 602

...PETITIONER

(BY SRI PRAVEENKUMAR K S, ADVOCATE)

AND:

SRI CHALUVARAJU H S
S/O LATE SANNA NAIKA
AGED ABOUT 52 YEARS
R/A DODDAHANASOGE VILLAGE
CHUCHANAKATTE HOBLI
K R NAGARA TALUK
MYSORE DISTRICT-571 602

...RESPONDENT

(BY SRI A LOURDU MARIYAPPA ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 02.02.2021 PASSED IN CRLA.NO.218/2016 BY THE VIII ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU SITTING AT HUNSUR THEREBY DISMISSING THE APPEAL FILED BY THE PETITIONER AND CONFIRMING THE JUDGMENT AND THE ORDER OF CONVICTION AND SENTENCE DATED 26.10.2016 PASSED BY





THE SENIOR CIVIL JUDGE AND JMFC, KRISHANRAJANAGAR IN C.C.NO.278/2016 THEREBY CONVICTING THE PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I ACT AND SENTENCING HIM TO PAY FINE OF RS.4,00,000/- WITH DEFAULT CLAUSE.

THIS CRL.RP, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Praveen Kumar K.S., learned counsel for the revision petitioner and Sri A Lourdu Mariyappa, learned counsel for the respondent.

2. Accused who has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act ('Act' for short) in C.C.No.278/2016, dated 26.10.2016 on the file of Senior Civil Judge, K.R. Nagar, which was confirmed in Crl.A.No.218/2016, on the file of VIII Additional District and Sessions Judge, Mysuru, sitting at Hunsur, has preferred the present revision petition.

3. Facts in brief which are utmost necessary for disposal of the revision petition are as under:

A complaint came to be lodged by the respondent under Section 200 of Negotiable Instruments Act contending that on 25.03.2015, accused for his legal necessities borrowed a sum



of Rs.2,00,000/- with a promise to repay the same within a short period of time and towards the repayment, issued a cheque bearing No.048182 in a sum of Rs.2,00,000/- drawn on Navanagara Urban Co-operative Bank Ltd., K.R. Nagar Branch, dated 29.04.2015, which on presentation came to be dishonored with an endorsement 'Funds Insufficient.'

4. Legal notice as contemplated under the Act has been issued to the accused and the same was served on the accused. There was neither compliance nor reply from the accused. Therefore, complainant was constrained to file a complaint before the learned Trial Judge.

5. Cognizance of the offence was taken and presence of the accused was secured by the learned Magistrate and plea was recorded. Accused pleaded not guilty and therefore, trial was held.

6. In order to prove the case of the complainant, complainant got examined himself as P.W.1 and placed on record five documentary evidence, which were exhibited and marked as Exs.P.1 to P.5, comprising of cheque, bank



endorsement, legal notice, postal receipt and postal acknowledgement.

7. Thereafter, the accused did not choose to lead any rebuttal evidence. Hence, accused statement as contemplated under Section 313 of Cr.P.C., was recorded, wherein accused denied all the incriminating circumstances.

8. Learned Trial Magistrate after hearing the parties, convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act and awarded fine of Rs.4,30,000/- of which, sum of Rs.4,00,000/- was ordered to be paid as compensation to the complainant and Rs.30,000/- as defraying expenses of the State.

9. Being aggrieved by the same, accused preferred an appeal before the District Court in Crl.A.No.218/2016.

10. Learned Judge in the First Appellate Court secured the records and heard the parties in detail and dismissed the appeal and confirmed the order of conviction and sentence, passed by the learned Trial Judge.



11. Being further aggrieved by the same, accused is before this Court on the following grounds:

- *The Petitioner is innocent of the alleged offence and he has not at all committed any offence as alleged by the Respondent and he is innocent of the alleged offence.*
- *The courts below failed to appreciate the defence taken by the Petitioner, without application of mind straight away passed the impugned Judgment. As such same is liable to be set aside.*
- *The court below has failed to appreciate that as held by the Apex court it is mandatory that the person who alleges having lent loan to any person he has to produce the documents like pass book, IT returns to show that he lent such sufficient loan etc. On mere issuance of cheque court below not has drawn a presumption that such alleged cheque was issued for any legally recoverable debt or liability. In the instant case the Complainant has not discharge such burden cast upon him.*
- *The courts below come to the wrong conclusion that, the accused was in due to the complainant as on the date of issuance of cheques as alleged in the complaint. In the absence of any material to show that the accused was in due of that much of huge amount at the relevant point of time and without appreciate fact about financial transaction, the court below convicted the Petitioner.*



- *The learned Magistrate failed to appreciate there is no cogent evidence or independent witness in respect of liability of Accused on quantum of amount mentioned in the cheques between the parties to this proceedings and came to the wrong conclusion passed the impugned order, there by resulted miscarriage of Justice.*
- *The courts below come to the wrong conclusion that, the accused was in due to the complainant as on the date of issuance of cheques as alleged in the complaint. In the absence of any material to show that the accused was in due of that much of huge amount at the relevant point of time and without appreciate fact about stale cheques, the court below convicted the Petitioner.*
- *The learned Magistrate failed to appreciate there is no cogent evidence or independent witness in respect of liability of Accused on quantum of amount mentioned in the cheque between the parties to this proceedings and came to the wrong conclusion passed the impugned order, there by resulted miscarriage of Justice.*
- *The Courts below was not applied its judicial mind and failed to appreciate the contention taken by the Petitioner in respect of the hand writing found in the cheque in question is not belonging him to and thereby disputing the hand writing found there on in the alleged cheques. As such that being the true state of affairs, the Court below slipped in to error passed the impugned order. Hence same is liable to set aside.*
- *Both the courts below failed to appreciate the rebuttable presumption and the contradictions, omissions and*



admissions in the evidence on record without proper appreciation of the same, come to wrong conclusion. As such the Judgment and order of conviction and sentence passed by the both the Courts below is liable to be set aside.

➤ *Thus, viewed from any angle, the impugned order of Judgment and order of conviction and sentence passed by the both the Courts below is even otherwise illegal, erroneous and deserves to be set aside.*

12. Learned counsel for the accused Sri Praveen Kumar K.S., reiterating the grounds urged in the revision petition, contended that both the Courts have not properly appreciated the material evidence on record and wrongly convicted the accused and imposed the improper fine and therefore, sought for allowing the petition.

13. Per contra, Sri A. Lourdu Mariyappa supported the impugned judgments.

14. Having heard the parties, this Court perused the material on record meticulously. On such perusal of the material on record, there is no dispute with regard to Ex.P.1 cheque belonging to the accused and the signature found therein is that of the accused.



15. Therefore, the initial burden cast on the complainant has been discharged by the complainant for invoking the presumption available under Section 138 of the Act.

16. In the cross-examination, not only the financial capacity of the complainant, but also absence of legally recoverable debt have been suggested to the complainant by the accused. Complainant has denied such suggest. No contra evidence is placed on record by the accused to establish his defence by placing cogent evidence though he got examined himself as D.W-1.

17. In fact, defence of the accused is that the cheque that has been issued is in favour of one Prabhakar which has been misused by the complainant to file a false case against the accused.

18. It is pertinent to note that said Prabhakar is not even examined on behalf of the accused, nor any material like counterfoil or cheque issuing register is placed on record so as to establish that the cheque has been issued in favour of Prabhakar.



19. No positive action is also taken by the accused like filing a police complaint or issuing a legal notice or filing the civil proceedings in respect of the alleged misuse of the cheque.

20. Under such circumstances, the learned Trial Magistrate was justified in drawing the presumption in favour of the complainant and convicting the accused.

21. Learned Judge in the First Appellate Court after revisiting into the factual aspects of the matter confirmed the order of conviction and sentence passed by the learned Trial Judge by dismissing the appeal.

22. As such with regard to finding of guilt of accused and his conviction needs no interference.

23. However, it is noticed that both the Courts have misdirected themselves on two aspects. Firstly, there is no foundation made by the complainant to seek for double the cheque amount as fine amount in the complaint averments or in the evidence.



24. Admittedly, cheque is dated 29.04.2015 and thereafter, the conviction order came to be passed on 26.10.2016.

25. Under the circumstances, imposing double the cheque amount as fine is uncalled for. Further, it is also noticed that trial Court has ordered that a sum of Rs.30,000/- is to be paid as the defraying expenses to the State.

26. Admittedly, the *lis* is between the two private parties and therefore, no State machinery is involved. Further, learned Trial Magistrate has no power to impose fine more than double the cheque amount.

27. In the case on hand, the Magistrate has imposed the fine of Rs.4,30,000/- which is beyond the jurisdiction of the Trial Magistrate under the Act.

28. Said aspect of the matter is totally ignored by the learned Judge in the First Appellate Court while mechanically dismissing the appeal. Therefore, a case is made out by the accused for interference in the sentence.

29. Sri A. Lourdu Mariyappa, learned counsel for the respondent at this juncture contended that the amount of



cheque being Rs.2,00,000/-, as per the Section 80 of the Act, interest at the rate of 18% is to be ordered. Therefore, reasonable amount of fine is to be made and compensation is to be paid to the complainant and therefore, imposing double the cheque amount as fine is justifiable.

30. Taking note of the fact that the conviction order has been passed in the year 2016 and appeal came to be disposed of in the year 2021, reducing the fine amount to sum of Rs.3,25,000/- would meet the ends of justice.

31. Further, imposing the fine of Rs.30,000/- payable to the State needs to be set aside.

Accordingly, the following:

ORDER

- (i) Criminal revision petition is allowed in part.
- (ii) While maintaining the conviction of the accused for the offence punishable under Section 138 of Negotiable Instruments Act, the fine amount ordered by the Trial Magistrate, confirmed by the First Appellate Court, is hereby modified into sum of Rs.3,25,000/-, which is to be paid by the



accused on or before 10.07.2024, inclusive of fine amount, if any, already been deposited by the accused, before the Trial Court or First Appellate Court.

- (iii) Failure in payment of fine amount, the accused shall undergo simple imprisonment for a period of six months.
- (iv) On deposit entire fine amount of Rs.3,25,000/- is to be paid as compensation to the complainant.
- (v) Amount in deposit is ordered to be returned to complainant under due identification.
- (vi) Office is directed to communicate this order to the Trial Court forthwith.

**Sd/-
JUDGE**