



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL APPEAL NO.250 OF 2023 (A)

BETWEEN:

SRI. H. S. MANJUNATH,
AGED ABOUT 49 YEARS,
R/O NO. 79468, HULLIKATTE COMPLEX,
KSRTC BUS STAND ROAD,
NEAR RAGHAVENDRA SCHOOL,
DAVANAGERE - 577 004.

...APPELLANT

(BY SRI. R. SHASHIDHARA, ADVOCATE)

AND:

VEENA,
W/O LATE K. S. VIJAYAKUMAR,
MAJOR IN AGE,
R/O NO. 1724/26,
BEHIND JAYLINGESHWARA TEMPLE,
PB ROAD, DAVANAGERE - 577 003.

...RESPONDENT

(BY SRI. JAVEED S, AMICUS CURIAE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4) OF CRIMINAL PROCEDURE CODE PRAYING TO MAY BE PLEASSED TO A. SET ASIDE THE ORDER PASSED BY THE LEARNED III ACJ AND JMFC AT DAVANAGERE IN C.C.NO.5346/2021 DATED 10.10.2022.





THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. Thought the matter is listed for Admission, with the consent of learned counsel for the respective parties, taken up for final disposal.
2. Heard Sri. R. Shashidhara, learned counsel for the appellant and Sri. S. Javeed, learned Amicus Curiae and perused the material on record.
3. On perusal of the order sheets, it appears that on 18.11.2020, the complaint was registered for the offence punishable under Section 138 of the Negotiable Instruments Act by the complainant. The matter was set down for sworn statement on 11.02.2021. After recording the sworn statement, the learned Magistrate took cognizance and registered the case. Thereafter, the matter was posted for taking steps on 23.03.2021. The Trial Court



dismissed the complaint on 10.10.2022 for not taking steps.

4. It is the submission of learned counsel for the appellant that steps was taken on 15.11.2021. On perusal of the order sheet, it appears that the Endorsement of the Office for having paid the process fee is on 19.04.2022. On 08.07.2022, one more shara noted on the order sheet that summons served by RPAD, addressee "not claimed". Thereafter, on 05.08.2022, the matter was adjourned to 09.09.2023 and on 09.09.2023, due to unavoidable circumstances, the learned counsel for the complainant did not appear before the Trial Court. Considering the non-representation, the matter was posted on 10.10.2022. On 10.10.2022, the case was called out and the case was dismissed for not having taken steps which is unsustainable. It is further submitted that, the Trial Court instead of issuing Non-Bailable Warrant, further directed the complainant to take steps which is erroneous and the order is liable to be set aside.



5. Having heard the learned counsel for the appellant and also on perusal of the order sheet, it appears that the Trial Court committed an error. Once the addressee has not claimed the summons from the Court, it is necessary to issue Non Bailable Warrant. However, the order sheet did not disclose the issuance of Non Bailable Warrant against the accused. Assigning the reasons that the complainant did not take steps and dismissed the complaint which appears to be erroneous and the order of dismissal is required to be set aside.

6. In the light of the observations made above, I proceed to pass the following:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The Order dated 10.10.2022 passed in C.C. No.5346/2021 by the learned III ACJ and JMFC, Davanagere, is hereby set-aside.
- (iii) The Trial Court is directed to proceed with the case considering the Order sheet dated 08.07.2022, in accordance with law.



- (iv) The learned counsel for the respective parties are directed to appear before the Trial Court on 16.11.2023 without further intimation.
- (v) The assistance rendered by the learned Amicus Curiae is appreciated and the said appreciation is placed on record.

**Sd/-
JUDGE**

SNC
List No.: 1 Sl No.: 39
CT: BHK