



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 956 OF 2016

BETWEEN:

N. MALA @ N. MALA SHIVAKUMAR,
AGED 42 YEARS,
W/O SRI. SHIVAKUMAR,
R/AT: #10, MEGHA HARSHITA,
ANJANEYA KRUPA, 12TH CROSS,
12TH MAIN, III PHASE,
GIRINAGAR, BENGALURU - 560 085.

...PETITIONER

(BY SRI. SATYANARAYANA CHALKE, ADVOCATE)

AND:

SMT. VEDA MURTHY,
AGED 42 YEARS,
W/O SRI. N.K. MURTHY,
R/AT: NO.125, 12TH CROSS,
II PHASE, GIRINAGAR,
BENGALURU - 560 085.

...RESPONDENT

(BY SRI. MALLIKARJUN K.N, ADVOCATE FOR
SRI. SAMPATH A, ADVOCATE)

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signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND
SENTENCE DATED 25.08.2015 IN C.C.NO.30288/2014 PASSED
BY THE XVIII A.C.M.M., BANGALORE CONVICTION THE



PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I. ACT AND SET ASIDE THE ORDER DATED 28.06.2016 IN CRL.A.NO.1210/2015 PASSED BY THE LVIII ADDL. CITY CIVIL AND S.J., BANGALORE AND ACQUIT THE PETITIONER.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri. Satyanarayana Chalke. S, learned counsel for the revision petitioner and Sri. Mallikarjun, learned counsel for the respondents.

2. Revision petition is filed by the accused who suffered an order of conviction for the offence punishable under Section 138 of the Negotiable Instrument Act in C.C.No.30288/2014 confirmed in Crl. Appeal No.1210/2015.

3. Brief facts of the case which are utmost necessary for the disposal of the present revision petition are as under:



A complaint came to be lodged under Section 200 Cr.P.C alleging the commission of the offence under Section 138 of the Negotiable Instrument Act by contending that, accused borrowed a sum of Rs.10,00,000/- as hand loan on 02.07.2014 and in order to repay the same a cheque in a sum of Rs.10,00,000/- dated 20.09.2014 was drawn on Axis Bank, Banashankari Branch was issued which on presentation came to be dishonored with an endorsement as "Account Closed". There was no compliance to calling of the legal notice, resulting in taking action by the complainant against the accused.

4. Learned Trial Magistrate after completing the necessary formalities, summoned the accused and recorded the plea. Accused pleaded not guilty and therefore trial was held.

5. In order to prove the case of the complainant, the complainant got examined himself as PW.1 and one more witness namely Sri. B.L. Shridhar as PW.2 and



produced eleven documentary evidence which were marked as Ex.P1 to Ex.P11, infact Ex.P10 and Ex.P11 were confronted to PW.1 in his cross-examination and therefore it is marked as Ex.P10 and Ex.P11.

6. Detail cross-examination of the PW.1 and PW.2 did not yield any positive materials, except for the fact that contents of Ex.P11 were admitted by the PW.1 in the cross-examination.

7. Learned Trial Magistrate recorded the accused statement as contemplated under Section 313 of Cr.P.C. wherein the accused has denied all the incriminatory materials. Accused placed written submission but did not choose to place any material on record nor examined herself or any witness on her behalf to rebut the presumption available to the complainant under Section 313 of Cr.P.C.

8. Thereafter, learned Trial Magistrate heard the parties in detail and convicted the accused and imposed



the fine amount of Rs.6,80,000/- of which, sum of Rs.6,60,000/- was ordered to be paid as compensation amount to the complainant and balance Rs.20,000/- towards defraying expenses of the State.

9. Being aggrieved by the same, the complainant filed an appeal in Crl.A.No.1232/2015, so also the accused filed an appeal in Crl.A.No.1210/2015.

10. Both the appeals were heard by the learned Judge in the First Appellate Court and after considering the material on record, re-appreciated the material evidence and dismissed both the appeals.

11. Complainant did not chose to further challenge the order passed by the learned Trial Magistrate confirmed by the First Appellate Court and therefore insofar as the complainant is concerned, said Order became final.

12. Accused filed the present revision petition challenging the Order passed by the Trial Magistrate confirmed by the First Appellate Court in awarding the fine



amount of Rs.6,80,000/- as against the Cheque amount of Rs.10,00,000/-.

13. Learned counsel Sri. Sathyanarayana Chalke for the revision petitioner reiterating the grounds urged in the revision petition vehemently contended that the probative value of Exs.P10 and P11 is not properly appreciated by the learned Trial Magistrate so also the learned Judge in the First Appellate Court, resulted in miscarriage of justice.

14. It is pointed out that Ex.P11 - Complaint came to be lodged with the Additional Commissioner of Police on 18.07.2014 itself and therefore, the question of the accused handing over the Cheque to the complainant towards the repayment of the alleged hand loan on 20.09.2014 would not arise at all which has been not properly appreciated.

15. He also pointed out that in the complaint itself, the accused has stated that she has been forced to issue several signed blank cheques and among those cheques



one Cheque has been misutilized vide Ex.P1 in the case which has not been rightly considered by both the Courts and sought for allowing the revision petition.

16. He also argued that the police filed 'B' final report pursuant to the said complaint and which is now been further pursued by filing objections to the 'B' Final report. It is further submitted that the learned Trial Magistrate without accepting the 'B' report directed the investigation agency to further investigate the matter and the matter is now pending.

17. Therefore, he contended that the conduct of the revision petitioner in approaching the police much before the Ex.P1 came to be presented before the Court itself shows that there was a valid defence for him to oppose the complaint averments even without stepping into the witness box in terms of the principles of law enunciated in the case of ***Rohitbhai Jivanlal Patel vs. State of Gujarat and Another*** reported in ***(2019) 18 SCC 106***.



18. Per contra, the learned counsel Sri. Mallikarjun K.N. representing the counsel Sri. Sampath A. for the respondent supports the impugned order.

19. Having heard the parties in detail, this Court perused the material on record meticulously. On such perusal of the material on record, it is crystal clear that the Cheque in question belonging to the accused/revision petitioner. Signature found therein is also not in dispute. Theory that has been put forwarded by the accused is that the cheque in question along with several other cheques have been forcibly extracted from the custody of the revision petitioner by the complainant.

20. In order to establish the same, the prime document on which the accused placed on reliance is Exs.P10 and 11. Ex.P10 is the FIR registered by the Byatarayanapura Police subsequently transferred to Girinagar Police pursuant to Ex.P11. Contents of Ex.P11 shows that there is an allegation made by the revision petitioner against the respondent that the cheques in



question were extracted by Smt. Shobha who in turn handed over to the complainant and the complainant thereafter misused the same.

21. To establish the said aspect of the matter, neither accused got examined herself nor summoned Smt. Shobha.

22. No doubt, in a given case, based on the answers elicited in the cross-examination alone, an accused may establish before the Court that the presumption raised in favour of the complainant stands rebutted by following the principles of law enunciated in ***Rohitbhai's*** case supra.

23. To test the said aspect of the matter in the present case, this Court bestowed its attention to the answers elicited in the cross-examination of PWs.1 and 2. On such perusal of material on record, it is crystal clear that the suggestions made to the PW1 has been denied by PW1. Except admitting Ex.P10 and Ex.P11, no other



favourable material is forthcoming on record. Admittedly, the police after thorough investigation filed the 'B' report and the learned Trial Magistrate has ordered for the further investigation. It is for the police to file appropriate report pursuant to the said order of the Trial Magistrate directing the further investigation.

24. It is always open for the revision petitioner to pursue the matter one way or the other based on the further report to be filed by the police and if the allegations leveled against the revision petitioner, Shobha and others stands established, respective accused in the said complaint will have to necessarily face the consequences thereof. Reserving such liberty for the revision petitioner to pursue the complaint lodged by her against the respondent and others, this Court is only required to find out whether the mere filing of the complaint would be sufficient enough to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act.



25. On such perusal of the material on record, this Court is of considered opinion that the answers elicited in the cross-examination of PWs1 and 2 are not sufficient to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act especially when the Cheque is belonging to the revision petitioner and the signature found therein is that of the revision petitioner.

26. Therefore, the Order of conviction recorded by the Trial Magistrate confirmed by the First Appellate Court needs no interference that too having regard to the scope of the revisional jurisdiction of this Court.

27. Insofar as the sentence is concerned, the learned Trial Magistrate himself has taken into consideration the payments that too have been made by the revision petitioner to the respondent and awarded a sum of Rs.6,80,000/- as the fine amount after giving deduction to the payment made by the revision petitioner



to the respondent and has ordered Rs.20,000/- out of the fine amount towards defraying expense of the State.

28. Since lis is privy to the parties and no State machinery is involved, awarding sum of Rs.20,000/- towards defraying expenses of the State would not arise and the same needs interference. Accordingly, in view of the foregoing discussions, following Order is passed:

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 the Negotiable Instruments Act, the fine amount awarded by the Trial Magistrate confirmed by the First Appellate Court in a sum of Rs.6,80,000/- with default sentence is modified and the revision petitioner is directed to pay fine amount of Rs.6,60,000/- and entire sum of Rs.6,60,000/- is ordered to be paid as



compensation to the complainant on or before 31.01.2025 failing which default sentence ordered by the Trial Magistrate shall be undergone by the revision petitioner.

(iii) Fine amount of Rs.20,000/- awarded by the Trial Magistrate confirmed by the First Appellate Court towards defraying expenses of the State is hereby set-aside.

Office is directed to return the Trial Court Records with copy of this Order forthwith.

Sd/-
(V SRISHANANDA)
JUDGE

RL,SNC
List No.: 1 Sl No.: 49
CT: BHK