



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.1022 OF 2018
(397(Cr.PC) / 438(BNSS))

BETWEEN:

1. SRI MURALIDHAR SHETTIGAR
S/O VASU SHETTIGAR
AGED ABOUT 45 YEARS,
2. SMT. ANITHA
W/O MURALIDHAR SHETTIGAR
AGED ABOUT 40 YEARS,

BOTH ARE R/A GROUND FLOOR
BALIGA TOWERS, UDUPI - 576 101
DHAKHSINA KANNADA DISTRICT.

...PETITIONERS

(BY SRI. KHADRI S A, ADVOCATE)

AND:

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signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA

M/S HEMADRI ENTERPRISES PRIVATE LIMITED
NO.62/2, RICHMAND ROAD,
BANGALORE - 560 025
(VIDE ORDER DATED 23.6.2014
CHANGED TO RELIANCE PROLIFIC
TRADERS PVT LTD.,
NO.74, 2ND FEROZE ESTATE BUILDING
CUNNINGHAM ROAD,
BANGALORE - 560 052
BY ITS ATTORNEY HOLDER
SRI A K VISHWANATH.

...RESPONDENT

(BY SRI A.M.VIJAY, ADVOCATE)



THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 30.01.2016, SENTENCE, CONVICTION AND FINE PASSED BY LEARNED V ADDITIONAL SMALL CAUSES JUDGE AND 24TH ACMM, BANGALORE (SCCH-20) IN C.C.NO.37585/2008, AT ANNEXURE-B, AND ORDER DATED 10.07.2018, CONFIRMING THE IMPUGNED JUDGMENT, CONVICTION AND FINE PASSED IN CR.A.NO.25006/2016, AT ANNEXURE-A ON THE FILE OF THE LEARNED LVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYO HALL UNIT, BANGALORE (CCH-58) BY ALLOWING THE ABOVE RP AND ACQUIT THE PETITIONERS FROM THE ALLEGE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENT ACT.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri Khadri S.A., learned counsel for the revision petitioner and Sri A.M. Vijay, learned counsel for the respondent.

2. Revision Petitioner is the accused who suffered an order of conviction dated 30.01.2016, for the offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.37585/2008, on the file of V Additional Smalla Causes Judge and XXIV Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru, confirmed in Criminal



Appeal No.25006/2016, dated 10.07.2018, on the file of LVII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru.

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

3.1. A private complaint under Section 200 of Code of Criminal Procedure came to be filed with the jurisdictional Magistrate contending that the complainant being the company in the name of M/s. Himadri Enterprises Private. Ltd., which has changed its name as M/s Reliance Prolific Trading Private Ltd, had a transaction with M/s. Yashaswini Real Estate Construction and Service. Sri Muralidhar Shettigar, being the managing partner of accused No.1, Smt. Anitha, being the another partner of accused No.1.

3.2. As per the negotiations between the complainant and the accused, complainant wanted to have land in a place called Shivalli at Udupi Taluk for construction of a Mall. In that regard, accused on being contacted by complainant, assured that lands will be procured after talking to the concerned



landowners and an agreement came to be entered in that regard on 09.08.2007.

3.3. There is also a memorandum of understanding and sum of Rs.20,00,000/- was received by the accused.

3.4. However, the land which was shown by the accused was not free from encumbrance and there were litigations in respect of portion of the land. Therefore, the transaction of agreement of sale got terminated.

3.5. Towards the repayment, two cheques marked at Ex.P6 and Ex.P7 were issued by the accused, which on presentation came to be dishonored. Thereafter legal notice was issued and there was no compliance to the callings of notice. Therefore, action was sought against the accused.

3.6. First accused being the partnership firm, it was represented by managing partner namely, accused No.2. Accused No.3 is the another partner.



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

5. In order to prove the case of the complainant, Sri A.K. Vishwanatha was examined as PW1 and nineteen documents were placed on record which were exhibited and marked as Exs.P1 to P19, comprising of copy of the general power of attorney in favour of PW1, agreement dated 09.08.2007, memorandum of understanding, receipt, termination notice, original cheques, letter, postal cover, bank endorsements, copy of the legal notice, Registered Postal Acknowledgement due, receipts and postal acknowledgments.

6. As against the material evidence placed on record, on behalf of the complainant, accused No.2 examined himself as DW1 and placed on record two documents namely, sale deed dated 17.09.2007 and signature of accused No.2 therein.

7. On conclusion of recording of evidence, learned Trial Magistrate heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record convicted the accused.



8. Before the Trial Court, sum of Rs.2,00,000/- was paid by the accused to the complainant and the same has not been even taken into account and accused was convicted and order of the Trial Court reads as under:

"Acting U/Sec 255(2) of Cr.P.C, accused Nos.2 and 3 being the Managing Partner and Partner of accused No.1 firm, are hereby convicted and sentenced to undergo simple imprisonment for one year for the offence punishable U/Sec 138 of N.I. Act.

Acting U/Sec 357(3) of Cr.PC, accused Nos.2 and 3 are directed to pay a compensation of Rs.40,00,000-00 to the complainant towards the loss suffered by it.

Out of the total compensation amount of Rs.40,00,000-00, a sum of Rs.1,00,000-00 shall be deposited to the State as fine amount.

In default of the aforesaid compensation/fine amount, accused shall further undergo simple imprisonment for a period of six months.

Bail bond if any executed by the accused are stands cancelled.

Supply free copy of this Judgment to the accused immediately".

9. Being aggrieved by the same, it is accused No.2 and 3 who have filed the appeal though there is no explanation forthcoming as to why accused No.3 did not file the appeal.



10. Learned judge in the First Appellate Court after securing the records heard the arguments of the parties in detail and dismissed the appeal filed by accused No.2 and accused No.3 by considered judgment dated 10.07.2018.

11. Being further aggrieved by the same, accused No.1 has filed the present revision petition on the following grounds:

- *That, the Judgment, sentence and fine passed by trial court as well as order passed by learned Sessions Judge in Crl. Appeal is against material documents available on record, the same are illegal, unwarranted, infirm and unsustainable in the eye of law, hence the same is liable to be set aside by this Hon'ble court.*
- *That, PW-1 is having no authority from respondent Hemadri Enterprises to file the complaint before the trial court nor he has filed any power of attorney at the time of filing of complaint and even at the time of adducing evidence Hemadri Enterprises was not in existence by that time, and PW-1 was not working under respondent has filed his evidence by way of affidavit personally, no application seeking permission to adduce evidence on behalf of respondent company was also not filed. But PW-1 has marked 19 documents, on going through the said documents, there is any existence of Yeshashwini Real Estate construction and service limited or Hemadri Enterprises private limited or the*



petitioner No.2 and 3 are the partners and their firm is registered under companies Act. There is no any such company. In spite of that, after cancellation of MOU and agreement, the respondent, PW-1 has created the allege company and filed complaint against three accused persons, that is Yeshashwini Real Estates and Constructions, the name of company as accused No.1, which in fact not approved by the competent authority, nor the same is in existence Murulidhar Shettigar the accused No.2, who is just real estate agent, and accused No.3 who is house wife of accused No.2. There is no any documents produced by PW-1 before the trial court to show that, accused No.2 and 3 are partners of Yeshashwini Real Estate and Constructions and service nor produce any resolution to show that, 2nd petitioner is partner authorize to establish Yeshashwini real Estate company for which 1st petitioner is Managing partner to operate the Bank account of company on behalf of 2nd petitioner. In the cross examination of PW-1 himself has admitted that, they have not produced any document to show that, petitioners are the partners of Yeshashwini Real Estate and Constructions and services. For which 2nd petitioner Smt. Anitha is a partner and she has signed to any of the papers. In the cross examination of PW-1 also has admitted that, with Smt. Anitha, they have not made any negotiation or transaction. He also admits that, over the cheque the signature of accused No.3 is not available. To whom, they have



not paid any amount personally nor she has given any cheque to the complainant. As such the accused No.3 is not either a partnership in the company nor she has received any money nor she has signed to the MOU nor any paper nor any cheque, as such there is no subsistence of any liability between Hemadri Enterprises and accused No.3 Anitha and 1st petitioner. The trial court failed to look in to aforesaid facts has come to wrong conclusion and convicted the accused No.2 and 3 and pass sentence and convicted to undergo simple imprisonment for one year and also directed to pay compensation of Rs.40 Lakhs to the complainant towards loss suffered by it for the cheque created for Rs.10 Lakhs each, and in default directed to undergo simple imprisonment for a period of 6 months which is unknown to law. Hence the impugned judgment, conviction and fine is arbitrary and against all cannons of law, hence the same is liable to be set aside by this Hon'ble court.

- *That, on plain reading of complaint in CC.No.37585/2008 filed on 27.8.2008 it has written that, the complainant is M/S.Hemadri Enterprises private limited, represented by its duly constituted Attorney Sri.A.K. Vishwanath. As per the order dated 30.6.2014, that name has replaced as Reliance Prolific Traders private limited not represented by any person.*
- *That, Ex-P1 is the General Power of Attorney which is not original. To the Xerox copy notarized and*



submitted. That is in the name of Reliance prolific private limited in favour of A.K.Vishwanath, Shivashankar Prabhu and Viresh Maski, to negotiate with the owners signed the papers and appeared before the registrar and other necessary, Acts, deeds, etc. But not to prosecute the case before the trial court against petitioners. The stamp paper is dated 17.5.2013, signed on 11.6.2013 before the Notary Public at Bombay. Whereas, the complaint has filed on 27.8.2008, as such from 27.8.2008 till 11.6.2013, for 5 years, there is no authority from the Complainant to the PW-1 A.K.Vishwanath to file complaint, in the name of Hemadri Enterprises or adduce evidence on his behalf. And said power of attorney is not filed by the complainant, but the same is in respect of land transaction in respect of immovable properties and make to sign execute agreement of sale and to purchase or take on lease, on take on tenancy any property and to appear before the Sub Registrar and to obtain license and other NOCs or khatha or mutation entries, etc on behalf of Reliance Prolific Traders Private limited. As per Ex-P1 which is Zerox copy, executed by one K.Sridhar. Whereas, agreement of sale and memorandum of understanding Hemadri enterprises private limited, having their office at Mangala Vihar, Patel Colony Gujrath. And also their office at Richmond Road, Bangalore-560025. In fact as per Ex-P2 agreement has executed between Yeshashwini Real Estate constructions and services, in the



capacity, the 1st petitioner/accused No.2 as compiler and Hemadri Enterprises, in the last page of agreement dated 9.8.2007, there is a list of 15 land owners with Survey numbers and extent totally 4 acres 36 guntas 10 cents. Which Hemadri Enterprises agreed to purchase and after all approvals, as initial warranty sum Rs.20 Lakhs has paid, with a condition No.3 that, amount shall be adjusted in the final sale consideration to be given to the complier and that, till the completion of entire sale proceedings, the said sum of warranty money shall be a charge against the compiler. But in the mean time, as per Ex-P9 Hemadri Enterprises suffered loss and there was no money for them to clear the sale proceed amount to land owners, and have sold the same to Reliance prolific Traders, on 21.3.2008, as per Ex-P5 terminated agreement dated 9.8.2007. As a result of which whatever the warranty amount paid to land owners through accused No.2, they have forfeited, at the time of agreement and MOU, the Hemadri Enterprises who took two blank cheques, as per Ex-P6 and P7, has misused for their own fault and on the very same day present with his banker obtained endorsements, on 14.7.2008, and on 29.7.2008 legal notice has send and filed the complaint on 6.10.2008 after the statutory period as stipulated under section 138 of NI Act. In fact till 23.6.2014 though Hemadri Enterprises has not in existence, though there is no authority for the PW-1 to prosecuted the case, in spite of that, filed a false complaint before the trial



court, till 20.6.2014 on that day, without any appropriate documents filed an application for substitution of name of complainant from Hemadri Enterprises to Reliance Prolific Traders Private Limited. Though strong objections has filed by accused No.2, the trial court has allowed their application without any appropriate order from the competent court of law. Hence the trail court failed to looked in to aforesaid facts, has come to wrong conclusion and pass the conviction, sentence and fine. Which is against provisions of section 138 of NI Act apart from section 142 of the Act.

- *In the cross examination of PW-1, he has admitted that, he has not produce any SPA at the time of filing of complaint from Hemadri Enterprises private limited which clearly shows that, without any authority PW-1 has filed the complaint, against accused persons before the trial court, as such the trial court has wrong in passing the impugned judgment, conviction and fine, when Hemadri Enterprises has not authorized PW-1 to file the complaint before the trial court. Hence the impugned judgment, conviction as well as fine is liable to be set aside by this Hon'ble court. He also admits that, though Hemadri Enterprises was not in function from 23.4.2009, he has prosecuted the case before the trial court till 21.6.2014 on the day by passing the order trial court permitted to change the name as Reliance Prolific limited. He also admitted that, he*



has not produce any document to show that, Hemadri Enterprises has change the Reliance Prolific Traders Private Limited. He also admitted that, he has not produce any document to show Hemadri Enterprises and Reliance Prolific traders private limited are one and the same, the trial court failed to looked in to aforesaid facts has come to wrong conclusion that, both are one and the same, as such the impugned judgment, conviction and fine is against material documents available on record, hence the same is liable to be set aside by this Hon'ble court.

- *The petitioners submits that, as a security two cheques have obtained from accused No.2 by Executive of Hemadri Enterprises, after termination of contract voluntarily created Ex-P6 and P7 and presented with his banker by writing the amount and name of Hemadri Enterprises Private Limited, without any subsistence of legal enforceable debt, PW-1 has admitted in his cross examination that, handwriting in the two cheques written by PW-1. As such Security cheques has misused by PW-1 on 21.3.2008, and after long delay on 14.7.2008 after a lapse of 3 months 14 days presented those cheques with their banker obtained endorsement and issued legal notice on 20.9.2008, through their counsel and filed the complaint on 6.10.2008 after stipulated period. As such PW-1 who is employee at Hemadri Enterprises, without any authority, was aware of transaction with accused No.2 after the closer of Hemadri Enterprises*



created the documents and filed a complaint, thereafter got an appointment at Reliance Prolific Traders Private Limited and taking undue advantage of transaction created the documents and presented the case before the trial court, the trial court failed to look into aforesaid facts, and mis-understand the case of petitioners and transaction between the parties and pass the impugned judgment, conviction and sentence. Which is bad in the eye of law, and against material documents available on record.

- *The petitioners have produced before the trial court, in fact the agreement of sale executed between land owners and Hemadri Enterprises and payment of advance amount, from Rs.2 Lakhs to Rs.1 Lakh to land owners, the originals are with Hemadri Enterprises, wherein there is clear whisper that Rs.1 Lakh has paid out Rs.20 Lakhs to Santhosh Kumar on 17.9.2007, out of Rs. 15 Lakhs, likewise different amount to tune of Rs.20 Lakhs was paid by the accused No.2 to the land owners and remaining 14 persons as per annexure annexed with Ex-P2.*
- *The trial court after perusal of documentary evidence as well as oral evidence has raised one point for their consideration.*

Point No.1:-Whether complainant proves that, the accused have committed an offence punishable under section 138 of NI Act?

Point No.2:-What order?



- *The trial court without looking in to the case of parties has come to wrong conclusion and pass affirmative finding on point No.1, thereby pass conviction, sentence and fine which is arbitrary and against material documents available on record and favorable order to complainant.*
- *That, when the appeal has filed challenging the impugned judgment of conviction, sentence and fine passed by the learned V Addl Small Causes Judge and 24th Addl Chief Metropolitan Magistrate court of small causes Mayo Hall unit Bangalore, in C.C.No.37585/2008, dated 30.1.2016, before the LVII Addl City Civil and Sessions Judge, Mayo Hall Bangalore, in Crl.Appeal No.25006/2016, on various grounds and argued their case, and produce certain citations, and prayed to set aside the impugned judgment, sentence and fine, the learned Sessions Judge raised 4 points for their consideration which are as follows:-*
 1. *Whether Ex-P6 and P7 cheques were issued by Accused persons/appellants in favour of complainant in discharge of legally enforceable debt?*
 2. *Whether the complainant/respondent has succeeded in proving the ingredients constituting the offence U/Sec 138 of NI Act against the accused persons?*
 3. *Whether the findings arrived at by the learned trial judge need interference?*



4. *What order?*

- *After hearing the counsel for petitioners, the 1st appellate court come to wrong conclusion and pass affirmative findings on point No.1 and 2 and negative finding on point No.3 thereby dismiss the appeal filed by appellant and confirmed the judgment and sentence passed by trial court, on 30.1.2016 in CC.No.37585/2008.*
- *The order of first appellate court is illegal, and against material documents available on records. The impugned judgment conviction, sentence and fine passed by trial court and confirmed by first appellate court is contrary to law, evidence and material placed by the respondent as well as defense in cross examination, as well as in chief examination, as such the same is liable to be set aside and reversed by this Hon'ble court and acquitted by this Hon'ble court.*
- *That, the 1st appellate court failed to appreciate the case of petitioners and cross examination of PW-1 and documents produced by both the parties. Though there is no any documents produced by respondent either before the trail court or first appellate court, has come to wrong conclusion that, PW-1 has denied the suggestions in the cross examination and dismiss the appeal which is against material documents and cross examination of PW-1.*
- *That, the 1st appellate court erred in holding that, complainant has succeeded in doing Ex-P6 and P7*



cheques issued by accused with the complainant, in discharge of legal enforceable debt and not made out their case has set out in their defense. The petitioners submits that, he has produce Ex-P2 the agreement dated 9.8.2007, there is a clear whisper that, there is Rs.20 Lakhs paid to Yeshashwini Real Estate is a warranty money shall be adjusted in the final installment of payment. And the same is paid to 15 land owners whose names have entered in annexure annexed to agreement dated 9.8.2007, remaining all documents which are all created documents. The first appellate court has come to wrong conclusion and dismiss the appeal.

- *21That, the first appellate court erred in holding that, Ex-P1 to P19 documents is crystal clear that, the complainant has presented the cheques with in prescribed time, the same is were written for want of sufficient funds, in the account of the accused, and caused to issue statutory notice, but the accused failed to repay the amount covered under the dishonored cheques and that, and Ex-P1 to P19 shows that, complainant has duly complied with statutory formalities has required under section 138 of NI Act. The petitioners submits that, the complainant is company filed the complaint through PW-1 without authorization, and transactions is in respect of purchase of land from land owners, with different piece of lands from 15 persons at the rate of Rs.4,75,000-00 per cent fixed by respondent representatives by paying advance amount of Rs.5*



lakh to 1 Lakh got the sale agreement in favour of complainant, later on they themselves project misused the security cheque of 1st petitioner and filed the false suit without their being any legally enforceable debt. The 1st petitioner court failed to appreciate the aforesaid facts, has come to wrong conclusion and pass affirmative findings on point

- *No.1 and 2, which is bad in the eye of law. Hence the same is liable to be set aside by this Hon'ble court.*
- *That, the first appellate court erred in holding that, the accused No.2 and 3 being the partners of accused No.1 firm, are guilty of offence under section 138 of NI act, and hence ought to be convicted their under. The appellant submits that, the accused No.1 is a Yeshaswhini Real; Estate and constructions and services, and allege to be a partnership firm and te partners are accused No.1 and accused 2. The respondent being a big company have not produce any document to show that, the accused No.1 is a company for which, the accused No.2 and 3 are the partners. In the absence of any material documents, the first appellate court come to wrong conclusion and held that, petitioners are partners of accused No.1 firm. The respondents have not produced any resolution or memorandum of article to show that, the accused no.2 and 3 are the partners having authority to operate the bank of account of accused No.1. The 1st appellate court have come to wrong conclusion and passed the impugned order which is bad in the eye of law, hence the same is liable to be*



set aside by this Hon'ble court. In fact, the accused No.2 is just a real estate agent, not cheated the respondent. Who misused the security cheques and filed to aforesaid facts.

- *That, the first appellate court erred in holding that, having reward to the hardship and expenses incurred by complainant in recovering the amount due from the accused and considering the facts that, the land transactions have taken place in 2007, the compensation amount of Rs.40 Lakhs ordered by the trail court is just and proper. The petitioners submit that, the accused No.2 is just real estate agent and commission agent, entitle to get 2% commission if the transactions is get success. He is not a owner of any of the land. He is a middle man arranged a meeting between purchasers and sellers. Through him respondents paid advance amount to the land owners after agreement of sale. Thereafter, without any reasonable cause failed to perform their part of contract and drop the project. And for their own fault respondents filed a false complaint against petitioners, who have recovered some amount and paid to company. Out of said transaction the first appellant suffered huge loss by way of consumption of time, money, man power and other means. The 1st appellate court failed to looked in to aforesaid facts, has come to wrong conclusion on point No.3 and passed the conviction, sentence and fine, which is bad in the eye of law, hence the same is liable to be set aside by this Hon'ble court and reverse the same.*



- *That, the trial court has committed a grave error in accepting and acting upon make believe evidence of PW1, who is Ex-employee of Hemadri Enterprises of Jam Nagar, as such his evidence is not trust worthy, an interested evidence and also there is an improvement, hence the evidence of the said witnesses is unacceptable inadmissible under the law. In spite of that, the trial court comes to wrong conclusion and pass the conviction, sentence and fine, whereas, the 1st appellate court set aside the order of imprisonment of one year. As such the order of trial court is not a well resend order, hence the same is liable to be set aside by this Hon'ble court.*
- *That, the finding of the trial court as well as first appellate court is perverse, since the trial court as well as appellate court has acted solely upon conjectures and surmises.*
- *That, the trial court is wrong in accepting the defense to prove that, defense contenting in the same manner as the complainant has to discharge his Burdon of proof.*
- *That, the approach and logic in the impugned judgment and conviction and fine as well as first appellate court order is suggestive of the aspect of that, the trial court has labored under the impression that, the advantage of unfounded suspicious should go to the complainant ignoring the time honoured basic principles of criminal jurisprudence that, the benefit of reasonable doubt should go to the petitioners."*



12. Sri S.A. Khadri, learned counsel for the revision petitioner reiterating the grounds urged in the revision petition would contend that there is no material on record to establish that accused No.1 is a partnership firm.

13. He would further contend that such a partnership firm was never in existence and accused No.3 has not signed the cheque in question is not liable to pay any amount. Therefore, he is entitled for an order of acquittal.

14. Sri Khadri would further contend that out of the 4 acres 36 cents of the land that was shown to the complainant, only 1 acre 50 cents lands were having the Court cases. Therefore, rejection of the total land by the complainant by issuing the termination notice is incorrect which has not been rightly appreciated by both the Courts and sought for allowing the revision petition.

15. Sri Khadri, would also contend that mere admission of the accused No.2 in the cross examination about the pending litigation in respect of 1 acre 50 cents of the land could not *ipso facto* result in cancellation of the agreement marked at Ex.P2. Therefore, there was no liability on the part of the first accused and thus, sought for allowing the revision petition.



16. Further, he invited the attention of the Court that no special reasons are forthcoming in the judgment of the Trial Court or in the judgment of the First Appellate Court with regard to the imposition of double the cheque amount especially when sum of Rs.2,00,000/- was paid by the accused before Trial Court which is not in dispute and the same has not even been considered by both the Courts and thus, sought for allowing the revision petition.

17. Sri Khadri, also contended that imposition of Rs.1,00,000/- as the fine towards the State as defraying expenses by the Trial Magistrate, confirmed by the First Appellate Court suffers from serious legal infirmity inasmuch as there was no State machinery was involved in the private *lis* and thus, sought for allowing the revision.

18. Per contra, Sri A.M. Vijay, learned counsel for the respondent/complainant supports the impugned judgments.

19. He would contend that in the case on hand, it is the petitioner who assured the complainant that necessary lands would be procured for establishing the Mall in Shivali Village, Udupi Taluk and obtained sum of Rs.20,00,000/- which has been accepted by him in the witness box and ultimately when



the transaction would not go through, demand made by the complainant to return the amount is not complied by the petitioner and thus sought for dismissal of the revision petition.

20. Sri A.M. Vijay would further contend that under the provisions of Section 80 of the Negotiable Instruments Act, if there is no interest fixed in the negotiable instrument, 18% interest will have to be paid. Therefore, imposition of double the cheque amount by the learned Trial Magistrate taking note of the fact that the cheques were issued in the year 2007 is justified.

21. Having heard the arguments of both sides this Court perused the material on record meticulously.

22. On such perusal of the material on record, it is noted that cheques marked at Exs.P6 and P.7 belongs to the petitioner.

23. Admittedly, M/s. Yashaswini real estate construction and service registered as a partnership firm for which the second accused has signed as managing partner is not made as a party either before the First Appellate Court or before this Court. Explanation in this regard by the Counsel for the petitioner is that no such firm existed.



24. If it is so, why second accused has signed as a managing partner by affixing the seal is a question that remains unanswered.

25. Sri Khadri, however, tried to impress upon the Court that the seal is also prepared by the complainant and the second accused has only affixed the signature in Exs.P6 and P7, apart from the agreement and other documents, cannot be countenanced in law for more than one reason. Firstly, petitioner is an educated person and has signed the Exs.P6 and P7 and other documents in English. Secondly, he had the services of an Advocate before the Trial Court and he has placed his evidence on record. In such evidence, there is no explanation forthcoming with regard to the same.

26. If there is any misuse of the cheques as is contented on behalf of the petitioner, there should have been positive action on the part of accused No.2 for having misused his signed cheques. No such action has been taken by the petitioner.

27. Further second accused who is examined as DW1, has specifically admitted in the cross examination about the



transaction and cases being pending in respect of the lands measuring about 1 acre 50 cents.

28. Therefore, it was not free from encumbrance. Thus, complainant terminating the contract by issuing the notice is just and proper.

29. DW1 has also admitted that he has received Rs.20,00,000/-. Towards the repayment, said cheques were issued.

30. Admittedly, cheques are dishonored. Thus, the contentions urged on behalf of the revision petitioner that there is no legally recoverable debt under Exs.P6 and P7 cannot be countenanced in law.

31. Further, as per Ex.P8 there is a letter correspondence by the Yashaswini Real Estate to M/s. Himadri Enterprises Private Limited. Relevant contents of the said letter are extracted hereunder for ready reference:

"Sir,

Sub: Termination of Agreement and repayment of advance received.

Ref: 1) MOU dated 25th June 2007 and Agreement dated 9th August 2007 entered with M/s. Himadri Enterprises Private Ltd.



- 2) *Your Letter dated 21st March 2008 intimating termination of the above Agreement.*

In furtherance to your letter of termination dated 21st March 2008 of the Agreement dated 9th August 2007 entered with you for procurement of certain lands mentioned therein, we had issued two different cheques each for Rs.10,00,000/- bearing No.23989 and 23990 both dated 21st March 2008 drawn on Udupi Co-operative town Bank Limited, Main Branch, Udupi towards the repayment of Rs.20,00,000/- received from you as advance as per the terms of the Agreement.

Subsequent to the above, we had also requested you to kindly withhold the presentation of the cheques till we arrange for funds. We regret to inform that due to certain constraints we have been unable to arrange for funds so far. However, we confirm that we shall without fail arrange the funds on or before 21st June 2008 and Demand Drafts for the said amount in lieu of the cheques. Otherwise you may present the cheques after 21st June 2008 for encashment.

we request you to consider our request and oblige.

32. Pertinently, in the said letter signed by accused No.2, there is a mention that he would arrange to refund the amount on or before 21.06.2008, failing which cheques marked



at Exs.P6 and Ex.P7 can be presented before the bank for encashment.

33. In the teeth of such admissions, the contentions now urged on behalf of the petitioner that he did not receive the money and the money was paid to the farmers cannot be countenanced in law.

34. Thus, the oral evidence and the documents placed on record by the accused is of no avail in rebutting the presumption available to the complainant under Section 139 of the Negotiable Instruments Act and the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act is just and proper.

35. However, since no role is played by accused No.3 Smt. Anitha, who is the wife of the second accused, the conviction order recorded by the learned Trial Magistrate, confirmed by the First Appellate Court insofar as third accused needs to be set aside.

36. Having said so, the learned Trial Magistrate had the power to impose double the cheque amount as fine amount. Whereas, the learned Trial Magistrate while ordering Rs.40,00,000/- lakhs as compensation which is equivalent to



the double the cheque amount had also imposed fine of Rs.1,00,000/- towards defraying expenses of the State.

37. Same cannot be countenanced in law, inasmuch as there is no State machinery involved in the case on hand and it was a *lis* between the complainant and the accused persons.

38. Therefore, said portion of the Trial Court Judgment which has been confirmed by the First Appellate Court needs interference and same is set aside.

39. Pertinently, sum of Rs.2,00,000/- paid by the accused to the complainant is not even taken into account by the learned Trial Judge.

40. Further, for imposing fine of Rs.40,00,000/- no special reasons are forthcoming. Therefore, taking note of the fact that the amount was paid by the complainant in the year 2007 which is not yet refunded by the accused. As such, if the fine amount is reduced to Rs.30,00,000/- instead of Rs.40,00,000/- ends of justice would be met.

41. Accordingly, the following:

ORDER

- (i) Revision petition is ***allowed in part.***
- (ii) Accused No.3 is acquitted.



- (iii) While maintaining the conviction of the accused No.1 and 2 for the offence punishable under Section 138 of the Negotiable Instruments Act, accused is directed to pay fine of Rs.30,00,000/- as against the fine amount of 40,00,000/- which was imposed by the learned Trial Magistrate, confirmed by the First Appellate Court.
- (iv) Time is granted till 30.06.2026 to pay the balance fine amount.

Sd/-
(V SRISHANANDA)
JUDGE

MR,
List No.: 2 Sl No.: 63