



CNR: KAHC010198792016

NC: 2026:KHC:52427
CRL.A No. 81 of 2016

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 22ND DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO.81 OF 2016 (A)**

BETWEEN:

SRI N PURUSHOTTAM
S/O B NANJAPPA,
AGED ABOUT 35 YEARS,
R/O. AROHALLI,
NEAR GOKUL COLLEGE,
TALUKA DISTRICT: KOLAR - 563101

...APPELLANT

(BY SRI. VEERANNA G. TIGADI.,ADVOCATE)

AND:

SRI CHAND PASHA
S/O KADARSAB,
AGED ABOUT 52 YEARS,
COCOON MARKET, KUVEMPU NAGAR,
NEAR PARK, KEELUKOTE EXTENSION,
KOLAR TOWN - 563101

...RESPONDENT

(RESPONDENT SERVED AND UNREPRESENTED.)

CRL.A. FILED U/S.378(4) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE IMPUGNED JUDGMENT PASSED BY THE PRL. DIST. AND S.J., KOLAR, DATED 31.12.2014 IN CRL.A.NO.29/2012 RESTORING THE JUDGMENT OF CONVICTION PASSED BY THE II ADDL. CIVIL JUDGE AND JMFC, KOLAR IN C.C.NO.402/2007 DATED 02.07.2012-ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE U/S 138 OF N.I. ACT.



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THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

Appellant/complainant has preferred this appeal against the judgement of acquittal dated 31.12.2014 passed in Criminal Appeal No.29 of 2012 by the Principal District & Sessions Judge at Kolar (for short "the appellate Court").

2. Brief facts leading to this appeal are that the complainant/appellant filed complaint under Section 200 of Cr.PC, against the accused for commission of offence under Section 138 of Negotiable Instruments Act as to dishonour of Cheque dated 15.02.2007 issued by the accused for Rs.20,00,000/-. After taking cognizance by the II Addl. Civil Judge & JMFC, Kolar (for short "the trial Court") case was registered in CC No.402 of 2007. Accused appeared before the trial Court and was enlarged on bail. Substance of accusation was recorded. Accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, complainant himself got examined as PW1 and examined one more witness as



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PW2. Seven documents were marked as Exhibits P1 to P7 and statement of accused was marked as Exhibit C1. On closure of complainant side evidence, statement of accused under Section 313 of Cr.PC was recorded. Accused has denied the evidence appearing against him and has adduced his defence evidence as DW1, by way of affidavit. Having heard the arguments on both sides, the trial Court convicted the accused for the offence under Section 138 of Negotiable Instruments Act and sentenced him to pay a fine of Rs.20.00 lakh. Being aggrieved by this judgment of conviction and sentence, accused/respondent has preferred appeal before the appellate Court in Criminal Appeal No.29 of 2012 which came to be allowed by acquitting the accused vide order dated 31.12.2014. Being aggrieved by the judgement of acquittal passed by appellate Court, the complainant has preferred this appeal.

3. Sri Veeranna G. Tigadi, learned Counsel appearing for the applicant/complainant submits that the appellate Court has failed to appreciate the evidence on record in accordance with law and facts. Additionally, the learned Counsel would submit that the both the Courts have failed to appreciate the fact that



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the evidence was adduced on behalf of the accused, and the same is not admissible in the eye of law in view of the judgement of the Hon'ble Supreme Court in the case of M/S. MANDVI CO-OPERATIVE BANK LIMITED v. NIMESH B. THAKORE reported in (2010)3 SCC 83 and sought for remanding the case to the trial Court with the direction to the accused/respondent to adduce evidence in accordance with law.

4. Despite service of notice, respondent remained absent and unrepresented.

5. On perusal of material placed before this Court, it is clear that the accused/respondent-Chand Pasha has adduced his evidence by way of affidavit which is not permissible under law. Considering the facts and circumstances of the case and keeping in mind decision in the case of M/S. MANDVI CO-OPERATIVE BANK LIMITED (supra), I am of the opinion that the appellant has made the ground to remand the case to trial Court with direction to the Court to provide an opportunity to the accused/respondent to adduce oral evidence in spite of affidavit evidence. Accordingly, I proceed to pass the following:



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ORDER

- i) Appeal is allowed;
- ii) Judgement of conviction and order on sentence dated 2.07.2012 passed in CC No.402 of 2007 by the II Additional Civil Judge and JMFC, at Kolar, is set aside;
- iii) Judgement of acquittal dated 31.12.2014 passed in Criminal Appeal No.29 of 2012 by the Principal District & Sessions Judge at Kolar, is set aside.
- iv) The case is remitted to the trial Court with the direction to provide an opportunity to the accused/correspondent to adduce Oral evidence instead of affidavit evidence;
- v) The trial Court is directed to issue notice to the parties, and after appearance of parties, the trial Court shall dispose of the matter as expeditiously as possible, within six months



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from the date of receipt of the copy of this order, as the matter is of the year 2007;

vi) It is made clear that this Court has not expressed any opinion on the merits or demerits of the case.

Registry is directed to send the trial court records along with a copy of this judgment to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn
LIST NO.: 1 SL NO.: 81