



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 16TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 846 OF 2022 (A)

BETWEEN:

1. M/S MFAR CONSTRUCTIONS PVT LTD
HAVING REGISTERED OFFICE AT
NO.8 AND 8A, AVS COMPOUND
80 FEET ROAD, 4TH BLOCK
KORAMANGALA
BANGALORE-560034

REPRESENTED BY ITS SR VP TECHNICAL
BRIG R N TRIVEDI
SON OF LATE SHRI DEI DUTT TEWARY
AGED ABOUT 71 YEARS

...APPELLANT

(BY SRI RAVI CHANDAN R K, ADVOCATE)

AND:

1. M/S CANOPY ESTATES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT NO.969
5TH A CROSS, HRBR, 1ST BLOCK
KALYAN NAGAR
BANGALORE-560043
REPRESENTED BY ITS MANAGING DIRECTOR
MR SYED YASIR RIZVI
2. MR SYED YASIR RIZVI
MANAGING DIRECTOR
M/S CANOPY ESTATES PRIVATE LIMITED
HAVING OFFICE AT NO.969
5TH A CROSS, HRBR I BLOCK
KALYAN NAGAR
BANGALORE-560 043

Digitally
signed by R
MANJUNATHA
Location:
HIGH COURT
OF
KARNATAKA



3. MR ZAHIRUDDIN AHMED
DIRECTOR
M/S CANOPY ESTATES PRIVATE LIMITED
HAVING OFFICE AT NO.969
5TH A CROSS, HRBR I BLOCK
KALYAN NAGAR
BANGALORE-560043.

...RESPONDENTS

THIS CRL.A. IS FILED UNDER SECTION 378(4) CR.P.C
PRAYING TO SET ASIDE THE ORDERS OF DISMISSAL FOR NON
PROSECUTION AND DEFAULT DATED 18.10.2021 PASSED BY
THE XXXVI ADDITIONAL CHIEF METROPOLITAN MAGISTRATE
AT BENGALURU.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. This appeal is filed by the appellant/
complainant being aggrieved by the dismissal of complaint
vide order dated 18.10.2021 passed in C.C.No.7674/2018
by the XXXVI Additional Chief Metropolitan Magistrate At
Bengaluru (for short "the trial Court")

2. The Hon'ble Supreme Court in the case of
CELESTIUM FINANCIAL v. A GNANASEKARAN ETC.



reported in 2025 SCC ONLINE SC 1320, at paragraph 10 of the judgment, has observed as under:

"10. As already noted, the proviso to Section 372 of Cr.P.C. was inserted in the statute book only with effect from 31.12.2009. The object and reason for such insertion must be realised and must be given its full effect to by a court. In view of the aforesaid discussion, we hold that the victim of an offence has the right to prefer an appeal under the proviso to Section 372 of Cr. P.C., irrespective of whether he is a complainant or not. Even if the victim of an offence is a complainant, he can still proceed under the proviso to Section 372 and need not advert to sub-section (4) of Section 378 of Cr. P.C."

3. In the light of the Hon'ble Supreme Court's recent clarification of the legal position, it is now evident that the appellant, being the complainant under Section 138 of Negotiable Instruments Act, 1881, is also entitled to file an appeal before the Sessions Court. If this Court were to proceed to hear and decide the appeal at this



stage, it could deprive the parties of an available forum, i.e. this Court, for further challenge.

4. Considering the above, it is deemed fit that the present appeal be transferred to the concerned appellate Court of Sessions. Accordingly, I pass the following:

ORDER

- i. Registry is directed to transfer the entire record of the case to the concerned Principal District & Sessions Judge, who may assign it to the concerned Appellate Court having the jurisdiction and for which purpose, it would be listed before the Principal District & Sessions Judge;
- ii. The concerned transferee court is directed to issue Court notice to both the parties to appear before the concerned Court, and the concerned Court, thereafter, shall proceed with the case in accordance with law;
- iii. In case there are applications pending for condonation of delay or any other pending applications, the same also be transferred



- to be considered by the learned Judge of transferee Court, in accordance with law;
- iv. Considering the matter has been pending for considerable time, the Appellate Court is requested to make an endeavour to dispose of the matter as expeditiously as possible;
 - v. The appellant is permitted to carry out necessary amendment in the cause-title and also the provisions thereof;
 - vi. It is made clear that this Court has not made any observations as to the merits of the case and all rights and contentions of the parties are left open to be agitated before the Court concerned.

5. In the light of the above observation and directions, appeal stands ***disposed of***.

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

MR, List No.: 1 SI No.: 5