



CNR: KAHC010216502016

NC: 2026:KHC:1593
CRL.A No. 370 of 2016

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 8TH DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 370 OF 2016 (A)**

BETWEEN:

1. M/S SHUBASHREE ENTERPRISES
#108, " SHREE CHAKRA",
EAST PARK ROAD, 8TH CROSS ROAD,
MALLESHWARAM, BANGALORE-560003
REP. BY ITS MANAGER
SRI. S.P. RAVISHANKAR

...APPELLANT

(BY SRI. HITESH GOWDA B.J., ADV. FOR
SRI. DIWAKARA K., ADV.)

AND:

1. MR. SRIRAMA GUPTA
PROPRIETOR
SREE KOLLAPURI TRADERS
#10, NEAR RAMAKRISHNA HOSPITAL,
LAKSHMI NAGAR, SIRA,
TUMKUR DISTRICT-572101.

AND ALSO AT:
MORBAGLU VILLAGE,
GUDIBANDAMANDAL,
MADAKASIRA TALUK,
ANANTHAPURA DISTRICT,
ANDHRA PRADESH-515001.

...RESPONDENT

(BY SRI. KRISHNAREDDY B C., ADV.)

THIS CRL.A. IS FILED U/S.378(4) CR.P.C PRAYING TO
SET ASIDE THE ORDER DATED 10.06.2014 PASSED BY THE



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XLII ADDL.C.M.M., BANGALORE CITY IN C.C.NO.15157/2009 -
ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE
P/U/S 138 OF N.I.ACT.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The Complainant/appellant has preferred this appeal against the judgment dated 10.06.2014 passed in CC No.15157 of 2009 by the XLII Additional Chief Metropolitan Magistrate, Bangalore City (for short the "trial Court") whereby the trial Court acquitted the accused. Being aggrieved by the order of acquittal, the complainant preferred appeal in Criminal Appeal No.747 of 2014 before the LXIII Additional City Civil & Sessions Judge, Bangalore City (for the . Bangalore City (for short "the first appellate Court"). Vide Order dated 06.01.2016, the first appellate Court dismissed the appeal, as not maintainable.

2. For the sake of convenience, the parties herein are referred to as per the status and rank before the trial Court.

3. Brief facts, leading to this appeal are that the appellant/complainant has filed complaint against the accused



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for the offence punishable under Section 138 of Negotiable Instruments Act. It is alleged by the complainant that on 31.01.2008, accused approached the complainant-Enterprises through one R.N. Nataraj and T.N. Venkatesh for a loan of Rs.15.00 lakh to meet his immediate business commitments. As per the assurance given by the accused and his accomplice, the complainant-Enterprises, lent a sum of Rs.15.00 lakh to the accused on the same day by way of cheque bearing No.172500 dated 31.01.2008 drawn on Central Bank of India, Malleshwaram branch, Bangalore. Accused agreed to repay the amount along with interest at the rate of 18% per annum and executed an on-demand promissory note for the same and the other two persons, i.e. Nataraj and Venkatesh, have signed on the said on-demand promissory note as witnesses. Apart from this, accused has also issued an undated cheque bearing No.594106 drawn on ICICI Bank Ltd., Yeshwanthpur Branch, Bangalore, duly signed by him as a Proprietor of Sri Kollapuri Traders and promised to clear the loan within six months. After expiry of six months, complainant demanded the accused to clear the loan amount. However, the accused was postponing



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repayment, on one or the other pretext. During February 2009, complainant again contacted the accused and demanded for repayment of loan amount. At that time, accused instructed the complainant to present the cheque given by him. As per instructions, complainant presented the cheque bearing No.594106 on 07.03.2009 through his Banker. The same came to be returned unpaid with remark "account closed". Being aggrieved by the same, complainant got issued legal notice to accused on 01.04.2009 calling upon him to clear the cheque amount. In the said notice, due to typographical error, the cheque number was mentioned as '94106' instead of '594106'. Accordingly, complainant again sent a letter of rejoinder on 30.04.2009. Said letter of rejoinder was also sent to Anantpur, Andhra Pradesh where the accused resides and the same was duly served on the accused. In spite of service of said notice and letter of rejoinder, accused not at all bothered to repay the amount. Hence complainant was constrained to file the complaint against the accused.

4. The trial Court has taken cognizance against the accused for the offence punishable under Section 138 of



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Negotiable Instruments Act and issued summons. The accused appeared before the Court and was enlarged on bail. Substance of plea was recorded. Accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, Complainant-R.P. Ravishankar has been examined as PW1, 23 documents were marked as Exhibits P1 to P23. On closure of complainant's side evidence, statement of accused under Section 313 of Cr.PC. was recorded. Accused has totally denied the incriminating evidence appearing against him. However, during the course of cross-examination of PW1, the accused got marked one document as Exhibit D1. Having heard the arguments on both sides, the trial court, by order dated 10.06.2014 acquitted the accused of the offence punishable under section 138 of Negotiable Instruments Act. Being aggrieved by the judgement of acquittal, the complainant preferred the appeal before the LXIII Additional City Civil & Sessions Judge, Bangalore city in Criminal Appeal No.747 of 2014. The first appellate Court, has dismissed appeal as not maintainable in law. Being aggrieved by the dismissal of the



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appeal by the first appellate Court, the complainant is before this court in this appeal.

5. Sri Hitesh Gowda B.J., learned Counsel appearing for the appellant/complainant would submit that in view of proviso to Section 372 of Cr.PC, the appeal is maintainable before the Sessions court. In this regard, he has relied on the decision of the Hon'ble Supreme Court in the case of CELESTIUM FINANCIAL v. A GNANASEKARAN ETC. reported in 2025 SCC ONLINE SC 1320 and sought to remand the case to the Sessions court for disposal in accordance with law, on merits.

6. Sri Krishna Reddy B.C., learned Counsel appearing for the respondent, fairly submitted that he has no objection to remand the case to the Sessions Court.

7. On perusal of materials placed before this Court, it is seen that the first appellate Court has not discussed anything on merits and has dismissed the case as not maintainable. In view of the decision of Supreme Court in the Case of A CELESTIUM FINANCIAL (supra), the complainant can prefer



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appeal before the Sessions Court. Accordingly, the complainant has made out a case to remand the case to the Sessions Court with a direction to the first appellate Court to dispose of the case in accordance with law, and on merits. Accordingly, I pass the following:

ORDER

- i) Appeal is allowed;
- ii) Order dated 06.01.2016 passed by the LXIII Additional City Civil & Sessions Judge, Bangalore City in Criminal Appeal No.747 of 2014 is set aside;
- iii) Appeal is remitted back to the Court of LXIII City Civil & Sessions Judge, Bengaluru city, with a direction to provide opportunity to both the parties to submit their arguments on merits. Thereafter, the first appellate Court shall dispose of the case in accordance with law;



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- iv) Both the parties are directed to appear before the first appellate Court on **06.10.2026**, without seeking any further notice in this regard;
- v) The first appellate Court shall dispose of the case within six months from the date of appearance of the parties, as the matter is of the year 2009. It is made clear that this court has not expressed any opinion on the merits of the case.

Sd/-
(G BASAVARAJA)
JUDGE