



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 7TH DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 888 OF 2015 (A)**

BETWEEN:

SRI S CHANDRASHEKAR
S/O SRI. M. SEETHARAM
AGED ABOUT 37 YEARS
R/AT NO.9, 3RD CROSS,
HOSAHALLI, VIJAYANAGAR,
BANGALORE-40

...APPELLANT

(BY SRI. VIJAYKUMAR PRAKASH., ADV.)

AND:

1. M/S R N S TRAVELS
C/O LAKSHMI NARAYANA SHETTY
NO.330/905/1, 9TH CROSS,
SHSTRINAGAR, BANGALORE-560042
BY ITS PROPRIETOR.

SRI. M. RAJANNA
S/O SRI. MALLAIAHA
AGED ABOUT 40 YEARS
R/AT NO.59 N.R. COLONY,
BASAVANAGUDI, BANGALORE-560004

ALSO AT:
SRI. M.RAJANNA
S/O SRI. MALLAIAH
AGED ABOUT 40 YEARS
R/AT HANDARAHALLI,
K.G. DEVIPATTA



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

HULIYURDURGA HOBLI
KUNIGAL TALUK
TUMKUR DISTRICT-572130

...RESPONDENT

(BY SRI. B KESHA MURTHY., ADV.)

THIS CRL.A. IS FILED U/S.378(4) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 27.6.2015 PASSED BY THE LIX ADDL. CITY CIVIL AND S.J., BANGALORE CITY IN CRL.A.NO.280/2015 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 138 OF N.I.ACT AND CONSEQUENTLY RESTORE THE JUDGMENT OF CONVICTION RENDERED DATED 30.1.2015 PASSED BY THE XXII A.C.M.M., BANGALORE CITY IN C.C.NO.19393/2012 BY ALLOWING THIS APPEAL.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant/Complainant has preferred this appeal against the judgment of Acquittal passed by the LIX Addl. City Civil and Sessions Judge, Bengaluru City, in Crl.A.No.280/2015 dated 27.06.2015.
2. For the sake of convenience, the parties herein are referred to as per their rank before the trial Court.



CNR: KAHC010332862015

3. Brief facts leading to this appeal are that, the appellant/complainant had filed a complaint under Section 138 of NI Act for dishonor of cheque of Rs.10,00,000/-. The respondent/accused appeared before the Trial Court. After evidence and arguments, the Trial Court has convicted the accused for the commission of offence under Section 138 of NI Act and sentenced to pay a fine of Rs.10,05,000/-. Being aggrieved by the judgment of conviction and order on sentence, the accused had preferred appeal before the LIX Addl. City Civil and Sessions Judge, Bengaluru City in Crl.A.No.280/2015. Same came to be allowed on 27.06.2015. Being aggrieved by the judgment of Acquittal, the Complainant/appellant has preferred this appeal.

4. The learned counsel for the appellant before submitting the arguments on merits, has pointed out that the trial Court has committed an error in accepting the evidence of the accused by way of affidavit, which is not permissible under law. To substantiate his argument, the



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

learned counsel relied on the decision reported in 2010(3) SCC 83, **MANDVI CO-OPERATIVE BANK LIMITED vs NIMESH B. THAKORE (2010) 3 SCC 83** and also the decision of Co-ordinate Bench of this Court in **W.P.No.3519/2024 (GM-RES)** decided on 19.07.2024 in the case of **MRS. ZAHEDA INAMDHAR vs. FATIMA HASSINA SAYEEDHA** and sought to remand the case to the Trial Court with a direction directing the accused/respondent to adduce his evidence and proceed with the case in accordance with law.

5. As against this, the learned counsel for the respondent would submit that, since the Appellate Court has acquitted the accused on merits, the question of remitting the matter to the Trial Court does not arise and sought for dismissal of the appeal.

6. I have heard the arguments on both sides and perused the materials on record. At this stage, the only question that arises for my consideration is:



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

1) *Whether the appellant has made out ground to remand the case to the Trial Court for disposal in accordance with law?*

2) *What order?*

7. My answer to the above points are as under:

1) *Affirmative*

2) *As per Final Order.*

8. I have examined the materials placed before this Court. The appellant being the complainant, had filed a complaint under Section 138 of NI Act for dishonoring of cheque of Rs.10,00,000/-. After trial, the Trial Court has convicted the accused for the offence under Section 138 of NI Act and sentenced to pay fine amount of Rs.10,05,000/-. Being aggrieved by the judgment of conviction and order of sentence, the respondent/accused had preferred the appeal before the Appellate Court in Crl.A.No.280/2015. The Appellate Court has allowed the appeal on merits. But the Appellate Court has not discussed about the acceptance of evidence of the accused



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

by way of an affidavit. For the first time the Appellant's Counsel has raised this point before this Court which is purely a question of law.

9. On perusal of materials placed before this Court after adducing the evidence of the complainant, the accused/respondent-M.Rajanna has adduced the evidence as DW1 by way of Affidavit, which is not permissible under law. Without assigning any reasons, the Trial Court has accepted the affidavit evidence, which is not permissible under law.

10. The Hon'ble Supreme Court in the case of **MANDVI CO-OPERATIVE BANK LIMITED** (*supra*), at paragraphs 49 to 52, has observed as under:

"49. Coming back to the first error in the High Court's reasoning, in the guise of interpretation it is not permissible for the Court to make additions in the law and to read into it something that is just not there. In Union of India V. Deoki Nandan Aggarwal this Court sounded the note of caution against the court usurping the role of legislator in the guise of



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

interpretation. The Court observed: (SCC p. 332, para 14)

"14..... It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught the legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

50. In Raghunath Rai Bareja v. Punjab National Bank while observing that it is the task of the elected representatives of the people to legislate and not that of the Judge even if it results in hardship or



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

inconvenience, the Supreme Court quoted in affirmation, the observation of Justice Frankfurter of the US Supreme Court which is as follows: (SCC p. 244, para 41)

"41. As stated by Justice Frankfurter of the US Supreme Court (see 'Of Law and Men: Papers and Addresses of Felix Frankfurter'):

Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great Judges have constantly admonished their brethren of the need for discipline in observing the limitations. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration.



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction.' "

51. In Duport Steels Ltd. v. Sirs Lord Scarman expounded the legal position in the following words: (WLR p. 168 G-H : All ER p. 534)

"But in the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes, and unmakes, the law: the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the Judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the Judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute."

52. In the light of the above we have no hesitation in holding that the High Court was in error in taking the view, that on a request made by the accused the Magistrate may allow him to tender his evidence on



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

affidavit and consequently, we set aside the direction as contained in sub-para (r) of para 45 of the High Court judgment. The appeal arising from SLP (Crl.) No. 3915 of 2006 is allowed."

11. Relying on the judgment of the Hon'ble Supreme Court in the case of **MANDVI CO-OPERATIVE BANK** (supra) the Co-ordinate Bench, of this Court in WP.No.3519/2024, has held as under:

"The proceedings of the Learned Magistrate who has permitted filing of evidence by way of an Affidavit by the accused is illegal and unsustainable."

12. Considering the facts and circumstances of the case and keeping in mind the aforesaid decisions of the Hon'ble Supreme Court and also the Co-ordinate bench of this Court, I answer Point No. 1 in affirmative.

Regarding Point No. 2:

13. For the aforesaid reasons and discussions, I proceed to pass the following:



CNR: KAHC010332862015

NC: 2026:KHC:48412
CRL.A No. 888 of 2015

ORDER

- (i) Appeal is **allowed**;
- (ii) The judgment of Conviction and Order on sentence passed by the XXII ACMM, Bengaluru in CC.No.19393/2012 dated 30.01.2025, is set aside;
- (iii) The judgment of Acquittal passed by the LIX Addl. City Civil and Sessions Judge, Bengaluru City in Crl.A.No.280/2015 dated 27.06.2015, is hereby set aside;
- (iv) The case is remitted back to the XXII ACMM, Bengaluru in CC.No.19393/2012 with a direction to provide an opportunity to the accused to adduce his oral evidence and after recording the evidence, the Trial Court is directed to dispose of the case in accordance with law, within 6 months from the date of receipt of this order;



CNR: KAHC010332862015

**NC: 2026:KHC:48412
CRL.A No. 888 of 2015**

(v) Both parties are directed to appear before the Trial Court on 28.09.2026, without seeking any further notice;

(vi) Registry is directed to send the copy of this judgment along with Trial Court Records to the concerned Court forthwith.

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

DHA
LIST NO.: 1 SL NO.: 41