



CNR: KAHC010379582022

NC: 2026:KHC:52698
CRL.A No. 1520 of 2022

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 23RD DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 1520 OF 2022 (A)**

BETWEEN:

1. SRI NAGARAJ P
AGED ABOUT 55 YEARS
S/O LATE PATALAPPA
PROPRIETOR,
SRI VENKATESHWARA ENTERPRISES
AT: NO.B-09, HMT INDUSTRIAL ESTATE,
HMT POST, JALAHALLI,
BENGALURU-560013.

...APPELLANT

(BY SRI. SATYANARAYANA CHALKE S.,ADVOCATE)

AND:

1. M/S EMERALD SUITS
(A BOUTIQUE APARTMENT)
NO.B-3, 5TH BLOCK, KHB COLONY,
17TH MAIN, 2ND CROSS, KORAMANGALA,
BENGALURU-560095
REPRESENTED BY ITS PROPRIETOR
MRS. KUSUMA BIYANI.
2. MRS. KUSUM BIYANI
PROPRIETOR OF M/S EMERALD SUITS,
C/O M/S CIANTO LADIES BEAUTY PARLOUR,
NO.66/2, 15TH CROSS, NEAR MES COLLEGE,
MALLESHWARAM, BENGALURU-560003.

...RESPONDENTS

(BY SRI. JAGANNATHAN P.,ADVOCATE FOR R1 & R2.)



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CRL.A FILED U/S.378(4) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 18.07.2022, IN C.C.NO.5220/2018, ORDER PASSED BY THE LEARNED XVIII A.C.M.M., BENGALURU AND ETC.

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 XVIII Addl.C.M.M, Bangalore in C.C No.5220/2018 dated 18.07.2022.

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

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 cheques of Rs.30,00,000/-. The respondents/accused appeared before the Trial Court. After evidence and arguments, the Trial Court has



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acquitted the accused of the offence under Section 138 of NI Act.

4. To prove the guilt of the accused the complainant himself examined as PW1. 14 documents were marked as Ex.P1 to P14. On closure of complainant side evidence, statements of the accused under Section 313 of Code of Criminal Procedure was recorded. The accused have totally denied the evidence of PW1. Accused No.2-DW1, adduced her evidence by way of affidavit.

5. Having heard the arguments on both sides, the trial Court acquitted the accused Nos.1 and 2. Being aggrieved by the judgment of acquittal the appellant has preferred this appeal.

6. The learned counsel for the appellant before submitting that 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 learned counsel relied on the decision reported in



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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 oral evidence and proceed with the case in accordance with law.

7. As against this, the learned counsel for the respondent would submit that, the trial Court has acquitted the accused on the merits of the case. Hence, there is no need to remand the case.

8. A perusal of the materials placed before this Court, it is clear that Mrs.Kusuma J. Biyani has adduced her evidence as DW1 by way of affidavit, without assigning any reasons, the Trial Court has accepted the affidavit evidence, which is not permissible under law.



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9. 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 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



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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 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



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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. 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



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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 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."

10. 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."



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11. Since the trial Court has committed an error in receiving the evidence of the accused by way of affidavit, the matter has to be remitted to the trial Court with a direction to provide opportunity to the accused to adduce oral evidence. It is made clear that this Court has not expressed any opinion on the merits of the case. 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 Order of this Court, I proceed to pass the following:

ORDER

(i) Appeal is **allowed**;

(ii) The judgment of acquittal passed by the XVIII Addl.C.M.M, Bangalore in CC.No.5220/2018 dated 18.07.2022, is set aside;



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(iii) The case is remitted back to the trial Court with a direction to provide an opportunity to the accused to adduce oral evidence and after recording the evidence, the trial Court is directed to dispose of the case in accordance with law, within 4 months from the date of appearance of parties;

(v) Both parties are directed to appear before the Trial Court on 04.11.2026, 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