



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 7704 OF 2019

BETWEEN:

KUMARASWAMY H T
S/O TAMMANNAGOWDA
AGED ABOUT 36 YEARS
R/O TOOBINAKERE KAAVALU VILLAGE
HIREESAIVE HOBLI
CHANNARAYAPATNA TALUK
HASSAN DISTRICT - 573 124.

...PETITIONER

[BY SRI K R LINGARAJU, ADVOCATE (VC)]

AND:

MANJUNATHA
S/O RAMEGOWDA
AGED ABOUT 46 YEARS
R/O TOOBINAKERE KAAVALU VILLAGE
HIREESAIVE HOBLI
CHANNARAYAPATNA TALUK
HASSAN DISTRICT - 573 124.

...RESPONDENT

(RESPONDENT - SERVED)

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING TO SET
ASIDE THE ORDER DATED 20.03.2019 IN C.C.NO.878/2018
PASSED BY THE III ADDITIONAL CIVIL JUDGE,
CHANNARAYAPATNA VIDE ANNEXURE-D BY RECALLING ORDER

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



DATED 16.03.2019 AND RESTORE THE FILE TO ITS ORIGINAL STAGE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 20.03.2019 passed by III Additional Civil Judge, Channarayapatna in CC no.878/2018 on an application for recalling order dated 16.03.2019, this petition is filed. Restoration of petition on file is also sought.

2. Sri K R Lingaraju, learned counsel for petitioner submitted that this was complainant's petition. It was submitted that alleging commission of offence by respondent punishable under Section 138 of Negotiable Instruments Act **(Act)**, petitioner had filed a private complaint, later registered as C.C. no.878/2018. Likewise in respect of another cheque proceedings in C.C. no.879/2018 between same parties was pending. On settlement of claim of petitioner under other cheque, petitioner-complainant had instructed for advancement of petition and for dismissal as settled out of Court. However,



due to inadvertence, instead of filing memo in CC no.879/2018 his counsel got CC no.878/2018 dismissed as withdrawn as settled out of Court. On realizing same, an application for recalling of order was filed on same day. Under impugned order, same was rejected. It was submitted reason assigned was lack of provision for recalling. To secure ends of justice as withdrawal was due to bonafide mistake, learned counsel prayed for allowing petition.

3. Notice was issued. Respondent-accused has been served and unrepresented. Thus, petition is unopposed.

4. Heard learned counsel and perused impugned order.

5. Filing of advancement application and memo for withdrawal by petitioner and dismissal of petition as settled out of Court by trial Court on 16.03.2019 are not in dispute. However, on very same day an application for recalling of order was filed on ground of bonafide mistake. Same was rejected under impugned order.

6. Memo for withdrawal having been filed under mistake of fact by counsel and an application for recalling of said order



having been filed on very same day, trial Court would not be justified in rejecting same on technical grounds. Technicalities cannot come in way of Court passing appropriate orders to secure ends of justice, especially when application for recalling was filed without any delay on very same day immediately after realizing mistake. Allowing petition does not appear to cause any hardship to respondent.

7. In view of above, petition is **allowed**. Order dated 20.03.2019 as well as order dated 16.03.2019 are set aside. Proceedings in CC no.878/2018 are restored to file at same stage it was prior to 16.03.2019. After issuing summons to accused, trial Court to proceed in accordance with law. To enable early conclusion petitioner-complainant is directed to appear before trial Court on 06.07.2026.

8. Registry to transmit copy of this order to trial Court by then.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 SI No.: 33