HC-KAR

NC: 2025:KHC:56485
CRL.A No. 304 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 304 OF 2017 (A-)

BETWEEN:

1. C NAGARAJU
   AGED ABOUT 41 YEARS,
   S/O LATE CHIKKAMUNIYAPPA,
   #19 , V MAIN, PREMANAGAR,
   KEMPEGOWDA LAYOUT, LAGGERE
   BENGALURU-560068.

…APPELLANT

(BY SRI. G S PRASANNA KUMAR.,ADVOCATE)

AND:

1. T G RAMESH
   AGED ABOUT 57 YEARS,
   S/O GULIGOWDA,
   #349, A-BLOCK, II MAIN,
   VALMIKI ROAD, POORNACHANDRA,
   D-GROUP LAYOUT, BBMP WARD 92,
   BENGALURU.

   AND ALSO AT: SAPTHAGIRI INDUSTRIES,
   17/ 18, X CROSS, ANDRAHALLI MAIN ROAD,
   NEAR PEENYA, II STAGE, BENGALURU-560058

   AND ALSO AT: SAPTHAGIRI INDUSTRIES
   #1391, 18TH CROSS, 18TH MAIN
   D-GROUP SOCIETY LAYOUT,
   SRIGANDADHADA LAYOUT,
   BENGALURU – 560091.

   AND ALSO AT: OM SRI SAI ENGINEERING
   52,XVI CROSS, ANDRAHALLI MAIN ROAD,
   NEAR PEENYA II STAGE, BENGALURU – 560058.

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

…RESPONDENT

(BY SRI. MAHADEVASWAMY ,ADVOCATE)

CRL.A. FILED U/S 378(4) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT DATED 23.07.2016 PASSED BY THE XXII ADDL.C.M.M., BANGALORE IN C.C.NO.23436/2014 -ACQUITTING THE RESPONDENT/ ACCUSED FOR THE OFFENCE P/U/S 138 ON N.I ACT.

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 23.07.2016 passed in C.C No.23436/2014 by the XXII Additional Chief Metropolitan Magistrate, 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:

O R D E R

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

LNN
List No.: 2 Sl No.: 265