HC-KAR
NC: 2026:KHC:60311
CRL.P No. 2407 of 2025
CNR: KAHC010106042025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 2407 OF 2025 (482(Cr.PC) / 528(BNSS)-)

BETWEEN:

SRI. RAMANJANEYA
S/O VENKATARAMANAPPA
AGED ABOUT 57 YEARS,
R/O KADAGANAHALLI VILLAGE,
D.N. DODDI POST, LAKKUR HOBLI,
MALURU TALUK,
KOLAR DISTRICT-563131

...PETITIONER

(BY SRI. S VISWESWARAIAH.,ADVOCATE)

AND:

SRI. RAMASWAMY
S/O LAKSHMANA
AGED ABOUT 59 YEARS,
R/O KADAGANAHALLI VILLAGE,
D.N. DODDI POST, LAKKUR HOBLI,
MALURU TALUK,
KOLAR DISTRICT-563131

...RESPONDENT

(BY SRI. MOHANA C., ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 CR.PC (FILED U/S 528 BNNS) PRAYING CALL FOR THE ENTIRE RECORDS AND TO SET ASIDE THE IMPUGNED ORDER PASSED BY THE LEARNED MAGISTRATE IN C.C NO. 647/2013 DATED 21.09.2024 ON THE FILE OF THE HONBLE II ADDL. CIVIL JUDGE AND JMFC, AT MALUR PRODUCED AT ANNEXURE-A, BY ALLOWING THE PETITION AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs;

   a) Call for the entire records and to set aside the impugned order passed by the learned magistrate in C.C No. 647/2013 dated 21.09.2024 on the file of the Honble II Addl. Civil Judge and JMFC, at Malur produced at annexure-a, by allowing the petition.

   b) Grant such other and further reliefs as are just even including the costs of this petition in the interest of justice and equity.

2. The respondent had filed a private complaint under Section 200 of Cr.P.C. read with Section 138 of N.I.Act alleging that the cheque which has been issued by the petitioner had been dishonoured for insufficiency of funds. In the said proceedings, an application came to be filed by the respondent under Section 311 of the CrPC for reopening the stage of evidence of the respondent, who is a complainant

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therein, and marked an unregistered agreement of sale dated 09.06.2011.

3. The said application came to be opposed by the petitioner on the ground that the agreement is unregistered and stamp duty is not paid, requiring the application to be dismissed. Pursuant thereto, the application under Section 311 came to be allowed on costs of Rs.500/- on 21.09.2024. It is challenging the same the petitioner is before this Court.

4. The submission of learned counsel for the petitioner is that the concerned document has been typed out on a document sheet of Rs.2/- value and there is no stamp duty which has been paid on the said agreement and it was therefore required that the learned Magistrate ought to have impounded the document determining the stamp duty payable on the said document and levy penalty the said document before marking the document in evidence.

5. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***G.M.Shahul Hameed vs. Jayanthi R.Hedge*** [AIR 2024 SC

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3339] more particularly para 18 thereof which is reproduced hereunder for easy reference:

> ***18.*** *On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the Trial Court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a 'decision' on the question of admissibility or, in other words, the Trial Court not having 'decided' whether the GPA was sufficiently stamped, section 35 of the 1957 Act cannot be called in aid by the respondent. For section 35 to come into operation, the instrument must have been "admitted in evidence" upon a judicial determination. The words "judicial determination" have to be read into section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by section 35. However, in a case of "no judicial determination", section 35 is not attracted.*

6. His submission by relying on ***Shahul Hameed*** is that the trial court is required to deliberate on the admissibility by applying the judicial mind and in the absence of judicial determination, the document could not have been admitted when the issue raised was as regard the sufficiency of stamping of the said document. On that ground, he submits that there being a clear objection raised by the petitioner at the time when Section 311 application had been filed, as also when the document was marked in evidence, the aspect of impounding the document ought to

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have been considered and necessary orders passed by a learned Magistrate, the same not having been done, this Court is required to intercede in the matter and set aside the order of marking.

7. Learned counsel for the respondent would oppose the same. He refers to Section 33 of the Karnataka Stamp Act, 1957, which is reproduced hereunder for easy reference:

> ***33. Examination and impounding of instruments.***
>
> *(1)Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
>
> *(2)For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the [State of Karnataka] [Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 1.11.1973] when such instrument was executed or first executed:*
>
> *Provided that,-*
>
> *(a)nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any*

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proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b)in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3)For the purposes of this section, in cases of doubt, the Government may determine,-

(a)what offices shall be deemed to be public offices; and

(b)who shall be deemed to be persons in charge of public offices.

8. By relying on clause (a) to the proviso to subsection (2) of Section 33, he submits that insofar as proceedings before a Magistrate or a Judge of a Criminal Court are concerned, there would be no requirement for him to examine or impound a particular document and as such, his submission is that a document relied upon in criminal proceedings, even if not adequately stamped would be marked in evidence and, as such, there is no infirmity committed by the learned Magistrate in not impounding the inadequately stamped document in a criminal proceeding.

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9. Heard Sri.S.Visweswaraiah, learned counsel for the petitioner and Sri.Mohana V., learned counsel for the respondent and perused papers.

The short question that would arise for consideration is whether in any proceedings before the learned Magistrate or a Judge of a criminal court, a document could be marked in evidence even if insufficiently stamped when objected to by the accused or any other party?

10. In the present case, the petitioner has challenged the order dated 21.09.2024 passed by the learned Magistrate allowing the application filed by the respondent under Section 311 of the Cr.P.C. seeking recall of the complainant for further examination and production of the agreement of sale dated 09.06.2011.

11. The principal contention of the petitioner is that the agreement of sale, being insufficiently stamped, could not have been admitted in evidence without being examined and impounded in accordance with Section 33 of the Karnataka Stamp Act, 1957. Reliance is placed on the decision of the Hon'ble Supreme Court in **G.M. Shahul Hameed v.**

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Jayanthi R. Hedge, AIR 2024 SC 3339, to contend that the objection regarding sufficiency of stamp duty requires judicial consideration.

12. Section 33 of the Karnataka Stamp Act provides for examination and impounding of instruments. However, clause (a) of the proviso to sub-section (2) thereof carves out an exception in respect of proceedings before a Magistrate or a Judge of a Criminal Court, other than proceedings under Chapter XII or Chapter XXXVI of the Cr.P.C. The said proviso provides that a Magistrate or a Judge of a Criminal Court is not required to examine or impound an instrument if he does not think fit to do so.

13. The expression "if he does not think fit so to do" contemplates an exercise of judicial discretion by the Court. Where an objection is raised regarding the sufficiency of stamp duty, the Court may consider the objection and determine whether the instrument requires examination or impounding in the circumstances of the case. The decision relied upon by the petitioner emphasises the significance of judicial determination where an objection regarding sufficiency of stamp duty is raised.

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14. However, it is necessary to notice that the relief sought in the present petition is confined to setting aside the order dated 21.09.2024 allowing the application under Section 311 of the Cr.P.C. The petitioner has not independently challenged the marking of the agreement of sale in evidence or sought any specific relief in respect of its admission.

15. It is not in dispute that, pursuant to the impugned order, the complainant has already been recalled and examined, and the agreement of sale dated 09.06.2011 has already been marked in evidence. The Matter is now stated to be posted for judgment in the 1st week of November 2026. In these circumstances, setting aside the order allowing the application under Section 311 of the Cr.P.C. would not serve any purpose, as the relief sought has already become infructuous.

16. The question regarding the sufficiency of stamp duty payable on the agreement of sale, and the consequence thereof, does not arise for adjudication in the present petition, since the marking of the document in evidence has not been challenged.

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17. Accordingly, the petition is **dismissed** as having become infructuous.

18. It is made clear that this Court has not expressed any opinion on the admissibility or evidentiary value of the agreement of sale dated 09.06.2011, or on the merits of the complaint under Section 138 of the Negotiable Instruments Act.

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(SURAJ GOVINDARAJ)
JUDGE

PRS
List No.: 1 Sl No.: 16