IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE R. NATARAJ

CRIMINAL PETITION NO. 2304 OF 2021 (482(Cr.PC) / 528(BNSS))

BETWEEN:

ABDUL KHADER @ MOHAMMED KHADER
S/O BASHEER SAB
AGE ABOUT 38 YEARS
TRANSPORT BUSINESS
R/O NALLUR VILLAGE
CHANNAGIRI TALUK
DAVANGERE DISTRICT - 577002

...PETITIONER

(BY SRI. HIREMATHAD MAHESHIAH RUDRAYYA, ADVOCATE)

AND:

JANAPRIYA SOUHARDA MULTIPURPOSE
CO-OPERATIVE LTD.,
NO.59, 100 FEET ROAD,
HUDCO COLONY, VINOBANAGAR
SHIVAMOGGA
REP BY ITS CHIEF EXECUTIVE OFFICER
S. JAGADISH
S/O SHIVAPPA
AGE ABOUT 32 YEARS

...RESPONDENT

(BY SRI. M.V.PARAMESWARAPPA, ADVOCATE)

Digitally signed by HEMALATHA J
Location: HIGH COURT OF KARNATAKA

THIS CRL.P IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE ORDER DATED 05.02.2021 BY TAKING THE COGNIZANCE IN P.C.R.NO.211/2020 BY THE J.M.F.C.-III COURT, SHIVAMOGGA CONSEQUENTLY QUASH CRIMINAL PROCEEDINGS IN

C.C.NO.78/2021 FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF N.I. ACT, PENDING BEFORE THE J.M.F.C.-III COURT, SHIVAMOGGA UPON THE PRIVATE COMPLAINT OF THE RESPONDENT.

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

CORAM: HON'BLE MR. JUSTICE R. NATARAJ

ORAL ORDER

The petitioner has challenged the proceedings initiated against him by the respondent, in C.C.No.78/2021 before the JMFC-III, Shivamogga, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (henceforth referred to as 'the NI Act').

2. The petitioner contends that the respondent filed PCR No.211/2020 against the petitioner alleging an offence punishable under Section 138 of the NI Act. The respondent claimed in the private complaint that the petitioner was the owner of a bus bearing registration No.KA-17-B-0546 and is also a member of the respondent. On 03.11.2016 he approached the respondent for financial assistance to the tune of Rs.8,00,000/- and that on 10.03.2017, the respondent advanced loan of Rs.7,00,000/- in account bearing

No.3400132. He also executed various loan documents and agreed to repay the loan in 36 installments along with interest. It was claimed by the respondent that the petitioner did not pay the loan amount and therefore, he became a chronic defaulter. It was alleged that the petitioner after being persuaded, issued a post-dated cheque bearing No.764707, dated 20.08.2020 drawn on Vijaya Bank, Nallur for Rs.8,63,963/-. The said cheque was dishonored due to insufficient funds on 14.09.2020. The respondent therefore issued a notice of demand, which was not complied with by the petitioner and hence, it initiated prosecution of the petitioner for an offence under Section 138 of the NI Act. The trial Court after recording the sworn statement of the respondent took cognizance of the aforesaid offences and issued process. The petitioner being aggrieved by the same is before this Court.

3. The learned counsel for the petitioner submitted that the petitioner had earlier raised a loan of Rs.6,00,000/-, which was paid off. He thereafter raised another loan of Rs.6,00,000/- and certain cheques were drawn towards security for repayment of the said loan. He contends that the

said loan of Rs.6,00,000/- was also cleared and the cheques that were given in respect of second loan of Rs.6,00,000/- is misutilized by the respondent to now claim that the respondent had advanced loan of Rs.7,00,000/-. He therefore contends that the prosecution launched against the petitioner deserves to be halted.

4. The learned counsel for the respondent however contended that the petitioner had raised a loan of Rs.7,00,000/- in the year 2017 and had executed documents agreeing to repay the same in 36 installments. He therefore contends that the question whether the petitioner has cleared the loan or not and whether the cheque in question was given to be retained as security for the earlier loan or not are all questions of fact which are to be established by the petitioner before the trial Court and not in a petition under Section 482 of the Code of Criminal Procedure, 1973.

5. I have considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondent.

6. The petitioner's defence is that the cheque in question was given an security for repayment of a loan of Rs.6,00,000/- that the petitioner had availed from the respondent. It is his case that he has repaid the loan of Rs.6,00,000/- and that the respondent is misutilising the cheque to claim that a sum of Rs.7,00,000/- was sanctioned and released in the year 2017. This is certainly a defence that is available for the petitioner before the trial Court. This Court cannot go into the question whether the petitioner was liable to the respondent or not and whether the cheque that was submitted for encashment by the respondent was in respect of a loan that was already closed by the petitioner.

7. In that view of the matter, no indulgence is warranted in this criminal petition and accordingly, this petition is ***dismissed***. The petitioner is entitled to raise all contentions before the trial Court.

Sd/-
(R. NATARAJ)
JUDGE

BKN
List No.: 1 Sl No.: 16