HC-KAR

NC: 2026:KHC:54646
CRL.A No. 56 of 2015

CNR: KAHC010153182015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 56 OF 2015 (A-)

BETWEEN:

SRI. MAHABOOB SAB,
S/O JAMALSAB BALEBHAI,
AGED ABOUT 68 YEARS,
AGED ABOUT 68 YEARS,
R/AT NO.560-A, 2ND A CROSS,
MUTHYALANAGAR,
BANGALORE - 560 054.

...APPELLANT

(BY SRI. KALYAN KUMAR H S., ADVOCATE)

AND:

SRI. PUNDALIK R MITRA,
S/O RUDRAPPA MITRA,
AGED ABOUT 62 YEARS,
RETD. OFFICE SUPERINTENDENT,
BLOCK EDUCATION OFFICE,
MADIKERI,
NOW RESIDING AT
NEAR MASJID,
BEHIND RADHAKRISHNA THEATRE,
MATADAHALLI,
BANGALORE - 560 032.

...RESPONDENT

(BY SRI. C.S. HIREMATH., ADVOCATE)

Digitally signed by REKHA R
Location: High Court of Karnataka

CNR: KAHC010153182015

THIS CRL.A. IS FILED UNDER SECTION 378(4) CR.P.C PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED:21.10.2014, IN CRIMINAL APPEAL NO.414/2013 ON THE FILE OF THE FAST TRACK-XII, BANGALOE CITY, BY ALLOWING THIS APPEAL FILED BY THE APPELLANT/COMPLAINANT BY CONFIRMING THE ORDER OF THE 13TH ACMM, BANGALORE, IN C.C.NO.147/2011 DATED:31.07.2013 AND ETC.,

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

Appellant's counsel absent.

2. The Court notice not returned.

3. Respondent's counsel present.

4. This case is pertaining to the year 2015.

5. The appellant counsel's argument is taken as Nil.

6. The appellant/complainant has preferred this appeal against the judgment of acquittal dated 21.10.2014 passed by Fast Track-XII Court, Bengaluru City, in Crl.A.No.414/2013.

7. The complainant/appellant had filed a complaint under Section 138 of N.I.Act, after taking cognizance case was registered in C.C.No.147/2011. The substance of plea was recorded, accused pleaded not guilty and claimed to be tried.

8. To prove the guilt of the accused, complainant got himself examined as PW-1 and got 7 documents marked as Exs.P1 to 7. On closure of complaint's side evidence, statement under Section 313 of Cr.P.C was recorded. Accused has denied the evidence of PW-1 and adduced his evidence as DW-1 by way of affidavit and 6 documents were marked as Exs.D1 to 6.

9. Having heard the arguments of both sides, trial Court has convicted the accused for offence under Section 138 of N.I.Act and ordered to pay a fine of Rs.1,00,000/-. Being aggrieved of order of conviction and order of sentence, the accused has preferred an appeal before the Fast Track-XII Court, Bengaluru City in Crl.A.No.414/2013. The same came to be allowed on 21.10.2014. Being aggrieved by this judgment and order of acquittal, appellant/complainant has preferred this appeal.

10. I have heard the arguments of respondent's counsel and perused the materials placed before this Court.

11. On perusal of the materials, this Court has noticed that the accused has adduced evidence as DW-1 by way of affidavit instead of examination-in-chief, which is not permissible under law, in view of decisions in ***MANDVI CO-OPERATIVE BANK LIMITED Vs. NIMESH***

B.THAKORE[1] and ***ZAHEDA INAMDHAR Vs. DR.FATIMA HASSINA SAYEEDHA***[2].

12. Since the trial Court has committed an error in receiving affidavit evidence instead of examination-in-chief orally, I proceed to pass the following:

ORDER

(i) Appeal is ***allowed***.

(ii) The judgment of conviction and order and sentence passed by the XIII Additional Chief Metropolitan Magistrate, Bengaluru, in C.C.No.147/2011 dated 31.07.2013 and the judgment and order passed by the Fast Track-XII, Bengaluru, in Crl.A.No.414/2013 dated 21.10.2014 are set aside.

(iii) The case is remitted back to the trial Court, with a direction to provide opportunity to

[1] (2010) 3 SCC 83
[2] W.P.No.3519/2024 DT:19.07.2024

the accused to adduce his oral evidence instead of affidavit and thereafter, the trial Court is directed to proceed with the case in accordance with law.

(iv) It is made clear that this Court has not expressed any opinion on the merits of the case.

(v) The trial Court is directed to secure the presence of parties and thereafter, shall proceed with the case in accordance with law.

Registry is directed to send the copy of this order along with trial Court to the concerned trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

RR
List No.: 1 Sl No.: 1