NC: 2026:KHC:17655
CRL.RP No. 392 of 2023

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 392 OF 2023

(397(Cr.PC) / 438(BNSS))

BETWEEN:

SRI C T VINAY KUMAR
S/O THIMMANNA R,
AGED ABOUT 28 YEARS,
R/AT 1ST MAIN, 2ND CROSS,
MASTHAMMA TEMPLE ARCH,
JOGIMATTI ROAD,
BEHIND CHITRADURGA FORT,
CHITRADURGA- 577501.

...PETITIONER

(BY SRI. K P BHUVAN., ADVOCATE)

AND:

Digitally signed by R MANJUNATHA
Location: HIGH COURT OF KARNATAKA

PRAKASH M
S/O MUTTU,
AGED ABOUT 31 YEARS,
R/AT NO 336, 1ST MAIN,
6TH CROSS, NEAR CABLE OFFICE,
LAKSHMI LAYOUT, GARVEBHAVI PALYA,
HOSUR MAIN ROAD,
BENGALURU- 560068.

...RESPONDENT

(BY SRI. JAGANNATHA M P., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO SET ASIDE BOTH THE JUDGEMENT i.e., JUDGEMENT DATED 15.07.2022 PASSED IN CRIMINAL APPEAL NO. 2106/2019 ON THE FILE OF THE LVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE BANGALORE CITY, AND IN SO FOR AS CONFIRMING THE CONVICTION PASSED BY THE TRIAL COURT AND DIRECTED TO PAY THE RS.3,10,000/- TO THE RESPONDENT/COMPLAINANT. IN DEFAULT THEREOF THE ACCRUED SHALL UNDERGO SI FOR 6 MONTHS. OUT OF RS.3,10,000/-, A SUM OF RS.5000/- IS ORDERED TO BE CONFISCATED TO THE STATE, AND CONFIRMED THE TRIAL COURT JUDGMENT. JUDGEMENT DATED 04.09.2019 IN C.C. NO. 6522/2018 ON THE FILE OF THE XV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU IN CONVICTING THE PETITIONER/ACCUSED FOR THE OFFENCES U/S 138 OF N.I. ACT BY IMPOSING THE FINE AMOUNT OF RS.3,10,000/-. IN DEFAULT UNDERGO SIMPLE IMPRISONMENT OF 6 MONTHS., AND ETC.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Heard Sri. K.P. Bhuvan, learned counsel for the petitioner and Sri. Jagannathan, learned counsel for the respondent

2. Accused who suffered an Order of conviction in CC No.6522/2018 for the offence punishable under Section 138 of the Negotiable Instruments Act, confirmed in Crl. Appeal No.2106/2019 is a revision petitioner.

3. Facts in the nutshell which are utmost necessary for disposal of the present revision petition are as under;

3.1 A private complaint under Section 200 of Code of Criminal Procedure alleging the commission of the offence under Section 138 of the Negotiable Instruments Act is filed by the respondent contending that in the month of September 2016, accused being the friend of the complainant, borrowed a sum of Rs.3,00,000/- as financial assistance with a promise to repay the same shortly.

3.2 Despite the repeated demands, the loan amount was not repaid and a cheque bearing Nos.944739 and 944740 in a sum of Rs.1,50,000/- each dated 10.10.2017 drawn on State Bank of India, Hongasandra Branch, Bangalore which came to be issued which on presentation returned with an endorsement 'funds insufficient'.

3.3 Statutory notice as contemplated under Section 138(B) of the Negotiable Instrument Act was issued by the complainant and there was no response to the said notice nor there was any reply and therefore sought for action against the accused.

3.4 Learned Trial Magistrate, after securing the presence of the accused, recorded the plea. Accused pleaded not guilty. Therefore, trial was held.

3.5 In order to prove the case of the complainant, he got examined himself as PW1 and based on records, nine documentary evidence which were exhibited and marked as Exhibit P1 to Exhibit P9 comprising of Original

dishonored cheques, bank endorsements, legal notice, postal receipt, postal acknowledgment card, Bank Account Extract and Hand Loan Agreement.

3.6 As against the material evidence placed on record, accused got examined himself as DW1 and placed on record two documents namely police endorsement and copy of the complaint published to the police.

3.7 Thereafter, learned Trial Magistrate heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record, convicted the accused and sentenced as under:

> *As per the provisions of Sec.255(2) Cr.P.C. the accused is hereby sentenced for the offence punishable u/s. 138 of NI Act, 1881. The accused shall liable to pay fine of Rs.3,10,000 (Rupees Three Lakhs Ten Thousand Only.) On deposit of fine amount the complainant is entitled for compensation of Rs.3,05,000/- (Rupees Three Lakhs Five Thousand only). The remaining balance amount of Rs.5,000/- shall be forfeited to the State.*
>
> *In default of payment of fine amount, the accused shall undergo simple imprisonment for six months.*
> *The personal bond executed by the accused is hereby stands cancelled. Cash surety of Rs.2000/- furnished by the accused shall be forfeited to the State after expiry of appeal period.*

3.8 Being aggrieved by the same, accused filed an appeal before the District Court in Criminal Appeal No.2106/2019.

3.9 Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of the material evidence on record, dismissed the appeal by considered judgment dated 15.07.2022.

3.10 Thereafter, accused is before this Court in this revision petition.

4. Learned counsel for the revision petitioner by reiterating the grounds urged in the petition, would vehemently contend that date of hand loan is not mentioned in the legal notice and therefore, there is no proper issuance of the notice calling upon the accused to pay the amount.

5. He would further contend that the cheques were misutilized by the complainant and in that regard, a

complaint was lodged to the police Exhibit D2 and police had given an endorsement vide Exhibit D1 and therefore, both the Courts erred in convicting the accused for offence under Section 138 of the Negotiable Instruments Act and sought for allowing the revision petition.

6. Per contra, Sri. Jagannatha M.P., learned counsel for the complainant/respondent would support the impugned judgment.

7. He would further contend that in Exhibit P9 which is the hand loan agreement, signature of the accused is very much available which has been proved by the complainant to raise the necessary presumption under Section 139 of the Negotiable Instruments Act.

8. Therefore the conviction of the accused is just and proper in the absence of any proper rebuttal evidence placed on record and thus sought for the dismissal of the revision petition.

9. Having heard the arguments of both sides, this Court perused the material on record meticulously.

10. On such perusal of the material law on record, it is not in dispute that cheques marked at Exs.P1 and P2 belongs to the accused. Signature found therein is that of the accused.

11. The case of the complainant is that complainant has lent the loan to the accused in a sum of Rs.3,00,000/- which is evident from placing the documentary evidence on record by way of Exhibit P9.

12. These material evidence is sufficient enough to raise the presumption available to the complainant under Section 139 of the Negotiable Instruments Act that towards the repayment of the illegally recovered debt, Exhibit P1 and Exhibit P2 came to be issued.

13. No doubt, it is a rebuttal presumption. To rebut the said presumption, accused got examined himself as DW1 and placed on record complaint lodged to the police vide

Exhibit D2 about the loss of cheques and the endorsement issued by the concerned police vide Exhibit D1. When the accused came to know that those lost cheques have been misused by the complainant after he received the summons from the jurisdictional Magistrate in respect of the present case, what prevented the accused to take further action against the complainant for the alleged misuse of the cheques is a question that remains unanswered.

14. He did not approach the police again pursuant to Exhibit D2 and inform them that the lost cheques have been misused by the complainant and therefore further investigation needs to be carried out in respect of Exhibit D2. No such attempt is made by the accused.

15. It is pertinent to note that no normal prudent person could keep if two cheques totaling to a sum of Rs.3,00,000/- is misused by a person with whom the petitioner had not no transaction at all.

16. Taking note of these aspects of the matter, when the defence of the misuse of the cheque fails, the presumption available to the complainant does not get rebutted.

17. As such, Order of conviction recorded by Trial Magistrate, confirmed by the First Appellate Court needs no interference that too in the revisional jurisdiction.

18. Accordingly, following order:

ORDER

Criminal Revision Petition is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

SNC
List No.: 1 Sl No.: 56