HC-KAR

NC: 2026:KHC:5351
CRL.RP No. 402 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 402 OF 2024

BETWEEN:

MAHESH BABU K
S/O KENCHAPPA M
AGED ABOUT 42 YEARS
RA/T D.NO.685, 5TH CROSS
M.G. KOPPAL, HEBBAL
2ND STAGE, VIDYANAGAR
MYSURU - 570 003.

...PETITIONER

(BY SRI KUMARA K.G, ADV.)

AND:

GURULINGAPPA H.K
S/O LATE KEMPEGOWDA
AGED ABOUT 69 YEARS
R/AT NO.656, 4THC ROSS
M.G. KOPPAL
MYSURU - 570 000.

...RESPONDENT

Digitally signed by NANDINI M S
Location: HIGH COURT OF KARNATAKA

(BY SRI CHIDAMBARA G.S, ADV.)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE ORDER PASSED BY THE III ADDL.SESSIONS JUDGE AT MYSURU IN CRL.A.NO.138/2023 DATED 31.01.2024 AND JUDGMENT PASSED BY THE HONBLE X ADDL.CIVIL JUDGE AND J.M.F.C AT MYSURU IN C.C.NO.421/2018 DATED 15.03.2023A AND ACQUIT THE PETITIONER OF THE CHARGE UNDER SEC.138 OF N.I ACT BY ALLOWING THIS CRL.RP, IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused is before this Court in this revision petition filed under Sections 397 read with 401 of CrPC with a prayer to to set aside the judgment and order of conviction and sentence dated 15.03.2023 passed by the Court of X Addl. Civil Judge & JMFC, Mysuru, in CC.No.421/2018 and the judgment and order dated 31.01.2024 passed by the Court of III Addl. Sessions Judge, Mysuru, in Crl.A.No.138/2023.

2. Heard the learned Counsel for the parties.

3. Petitioner and the respondent-complainant had initiated proceedings against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I.Act') in CC.No.421/2018 before the jurisdictional Court of Magistrate at Mysuru.

4. It is the case of the respondent that petitioner and he are acquainted to each other and on 23.08.2016, petitioner had borrowed hand loan of Rs.1,50,000/- for his domestic necessities. Towards repayment of the said amount, the cheque in question bearing No.048006 dated 23.11.2017 drawn on

State Bank of Mysore, Metagalli Industrial Area Branch, Mysuru, was issued in favour of the petitioner and on presentation of the said cheque for realisation the same was dishonoured with a shara 'funds insufficient'. Thereafter, a legal notice was got issued on behalf of the respondent which was duly served on the petitioner on 18.12.2017. Inspite of service of notice, the petitioner had failed to repay the amount covered under the cheque in question, and therefore, the respondent had initiated proceedings against the petitioner for the offence punishable under Section 138 of the N.I.Act in CC.No.421/2018.

5. In response to the summons received in the said proceedings, petitioner who had appeared before the Trial Court had claimed to be tried. The respondent-complainant in order to substantiate his case had examined himself as PW1 and had marked the seven documents as Exs.P1 to P7. On behalf of defence, no oral or documentary evidence was placed on record. The Trial Court, after hearing the arguments addressed on both sides, convicted the petitioner for the offence punishable under Section 138 of the N.I.Act and

sentenced him to pay fine of Rs.2,25,000/- and in default to undergo simple imprisonment for a period of six months. The said judgment and order of conviction and sentence passed by the Trial Court in CC.No.421/2018 was confirmed in Crl. Appeal No.138/2023 by the Court of III Addl. Sessions Judge, Mysuru vide judgment and order dated 31.01.2021. It is under these circumstances, petitioner is before this court.

6. Learned Counsel for the petitioner having reiterated the grounds urged in the petition, submits that the Trial Court has failed to properly appreciate the material available on record. The presumption that arose against the petitioner was rebutted successfully. Therefore, the Courts below were not justified in convicting the petitioner for the offence punishable under Section 138 of the N.I.Act.

7. Per contra, learned Counsel for the respondent has argued in support of the impugned judgment and order and prays to dismiss the petition.

8. The complainant in order to substantiate his case has examined himself before the trial Court as PW-1 and the

cheque in question was marked as Ex.P1. The signature of the petitioner in the cheque in question is marked as Ex.P1(a) and the cheque return memo is marked as Ex.P2. Copy of the legal notice issued to the petitioner is marked as Ex.P3 and the postal acknowledgment is marked as Ex.P6. Though the petitioner had disputed before the Trial Court that he was not served with any legal notice prior to initiating proceedings against him for offence punishable under Section 138 of N.I.Act, Ex.P6 - postal acknowledgment would clearly go to show that the legal notice - Ex.P3 was served on the petitioner. The signature of the petitioner found at Ex.P1(a) has not been disputed by him nor has he disputed that the cheque in question was drawn on the bank account maintained by him in State Bank of Mysuru, Metagalli Industrial Area Branch, Mysuru. Therefore, a presumption arises against the petitioner as provided under Section 139 read with Section 118 of N.I.Act, and unless the petitioner rebuts the said presumption successfully, he is liable to be convicted for the offence punishable under Section 138 of the N.I.Act.

9. Petitioner has taken a defence that the writings found in the cheque in question do not belong to him. However, he has failed to prove such a defence by leading any evidence in support of his defence. Even otherwise, the Hon'ble Supreme Court in the case of **BIR SINGH VS MUKESH KUMAR - (2019)4 SCC 197**, has held that paragraph 34 as under:

> "34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

10. Therefore, the presumption that arose against the petitioner as aforesaid stood unrebutted before the Trial Court. The Trial Court having appreciated the aforesaid aspects of the matter, has rightly convicted the petitioner for the offence punishable under Section 138 of the N.I.Act, and I do not find any illegality or irregularity in the said judgment and order of conviction passed against the petitioner by the courts below. Even the sentence imposed against the petitioner by the courts below is just and proportionate. Under the circumstances, I am

of the opinion that this revision petition does not merit consideration. Accordingly, the petition is dismissed.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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