HC-KAR

NC: 2026:KHC:62072
WP No. 8451 of 2022

CNR: KAHC010183492022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

WRIT PETITION No.8451 OF 2022 (GM-RES)

BETWEEN:

S.KRISHNA
S/O K N SRINIVASAMURTHY,
AGED ABOUT 49 YEARS,
RESIDING AT#19, 14TH CROSS
1ST K BLOCK, RAJAJINAGAR,
BENGALURU -560 086

...PETITIONER

(BY SRI M.S.SHYAM SUNDAR, SENIOR ADVOCATE
FOR SMT.VANDANA.P.L, ADVOCATE)

AND:

H CHETHAN
S/O T H HANUMANTHU,
AGED ABOUT 49 YEARS,
RESIDING AT NO.90, 10TH CROSS,
1ST MAIN ROAD, 2ND STAGE,
WEST OF CHORD ROAD,
BENGALURU -560 086

...RESPONDENT

(BY SRI D.R.RAVISHANKAR, SENIOR ADVOCATE FOR
SRI SARAVANA.S, ADVOCATE)

Digitally signed by R MANJUNATHA
Location: HIGH COURT OF KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 CODE OF CRIMINAL PROCEDURE PRAYING TO ALLOW THE INSTANT PETITION AND QUASH THE MEMORANDUM OF PRIVATE COMPLAINT DATED 09.11.2021 VIDE P.C.R.

19816/2021 FILLED BY THE RESPONDENT AND THE RESULTANT CRIMINAL PROCEEDINGS IN CC NO.33744/2021 FOR THE OFFENCES PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT 1881 ARRAIGNING THE PRESENT PETITIONER AS THE ACCUSED, PENDING ON THE FILES OF THE HON'BLE XXII ADDL. CHIEF METROPOLITAN MAGISTRATE AT BENGALURU (ANNEXURE-A AND B).

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri M.S.Shyam Sundar, learned Senior Advocate for the petitioner and Sri D.R.Ravishankar, learned Senior Advocate for the respondent.

2. Petitioner herein is the accused in C.C No.33744/2021 for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Prayer in the writ petition is as follows:

> *"Allow the instant petition and quash the memorandum of private complaint dated 09.11.2021 vide PCR No.19816/2021 filed by the respondent and the resultant criminal proceedings in C.C.No.33744/2021 for theoffences punishable under Section 138 of the Negotiable Instruments Act, 1881 arraigning the present petitioner as the accused, pending on the files of the XXII Additional*

Chief Metropolitan Magistrate at Bengaluru (Annexure-A and B).”

4. The grounds urged on behalf of the petitioner in support of the prayer is that, there is a complaint lodged by the petitioner herein as to the loss of cheque and other documents.

5. The respondent/complainant is none other than his erstwhile business partner.

6. It is further contended on behalf of the petitioner that police after thorough investigation filed the charge sheet for the offence punishable under Section 406 and 420 of the Indian Penal Code against the respondent.

7. As such, there is no legally recoverable debt which is a *sine qua non* for prosecution under Section 138 of the Negotiable Instrument Act. Therefore, continuation of the criminal complaint is nothing but abuse of process of law and thus sought for quashing of the proceedings.

8. *Per contra*, Sri D.R.Ravishankar, learned Senior Advocate representing the learned counsel for respondent would contend

that this Court based on the charge sheet filed against the respondent herein pursuant to the complaint filed by the petitioner herein cannot take as gospel truth in holding that there is no legally recoverable debt at all. At the most it is a defence available to the petitioner in the pending trial for the offence under Section 138 of the Negotiable Instruments Act. Thus, sought for dismissal of the petition.

9. Having heard both sides this Court noted that the respondent who is the complainant in the pending criminal trial for the offence under Section 138 of the Negotiable Instruments Act enjoys the presumption under Section 139 of the said Act.

10. However, it is to be noted that such presumption is a rebuttable presumption.

11. When once the cheque is issued and the same is dishonoured, it is for the accused- petitioner herein to rebut the presumption by placing necessary evidence on record.

12. In the considered opinion of this Court, filing of the charge sheet pursuant to the complaint filed by the present petitioner is a defence that needs to be urged before the Trial Magistrate. It is for the Trial Magistrate to consider the same in accordance with law and would be sufficient enough to rebut the presumption available to the complainant.

13. If such rebuttal evidence is placed on record, it is always open for the respondent/complainant to place such other evidence on record as is held in the case of ***Rajesh Jain vs. Ajay Singh*** reported in ***(2023) 10 SCC 148***.

14. Accordingly, the following:

ORDER

i. Petition ***dismissed***.

ii. Filing of the charge sheet pursuant to the complaint filed by the petitioner herein shall be pleaded as a defence in the pending trial which shall be considered by the learned Trial Magistrate in accordance with law.

iii. Further, taking note of the fact that case is pending before the Trial Magistrate since the year 2021, learned Trial Magistrate is hereby directed to dispose of the same as early as possible.

iv. Needless to emphasize that parties shall co-operate for the same.

Sd/-
(V SRISHANANDA)
JUDGE

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List No.: 1 Sl No.: 64
CT:VRR