HC-KAR

NC: 2026:KHC:63734
CRL.A No. 229 of 2015

CNR: KAHC010189092015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 229 OF 2015 (A)

BETWEEN:

1. SRI.ARUN KASHI
   SON OF VENKATACHALA,
   KASHI, AGED ABOUT 31 YEARS,
   RESIDING AT NO.31, SURABHI,
   3RD CROSS, VIGNANNAGAR,
   NEW THIPPASANDRA POST,
   BANGALORE-560055

...APPELLANT

(BY SRI. S M ANEES AHAMED.,ADVOCATE)

AND:

1. SMT. S. JANAKI REDDY
   WIFE OF CHANDRA REDDY
   AGED ABOUT 49 YEARS,
   RESIDING AT NO.273, P R COMPLEX,
   HOUSE NO.7, 1ST FLOOR,
   SHANKER NAG ROAD,
   VIRATANAGAR, BOMMASANDRA,
   BENGALURU-560068

...RESPONDENT

(BY SRI. MELANIE SEBASTIN.,ADVOCATE)

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

CRL.A. FILED U/S.378(4) CR.P.C BY THE ADV., FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGEMENT DATED 5.6.2014, PASSED BY THE FTC-III, BENGALURU, IN CRL.A.NO.25091/2012 AND UPHELD THE JUDGEMENT AND CONVICTION DATED 28.6.2012 OF THE PRL. CIVIL JUDGE & JMFC, BENGALURU IN C.C.NO.30668/2007 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 138 OF N.I. ACT.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment of acquittal passed by the Presiding Officer and Addl. Sessions Judge, FTC-III, Mayo Hall Unit, Bengaluru in Crl.A No.25091/2012 dated 05.06.2014.

2. The brief facts leading to this appeal are that the complainant Sri Arun Kashi, has lodged complaint under Section 200 of Cr.P.C for the offence punishable under Section 138 of NI Act. The case was registered in CC No.30668/2007 on the file of XIV Additional Chief Metropolitan Magistrate, Bengaluru. The accused has appeared before the Court and plea was recorded. Accused pleaded not guilty and claimed to be tried.

3. To prove the guilt of the accused, complainant examined himself as PW1 and 13 documents were marked as Exhibits P1 to P13. On closure of prosecution side

complainant side evidence, statement under Section 313 of Cr.P.C was recorded. The accused has totally denied the evidence of PW1. However, he has adduced her evidence as DW1, by way of affidavit.

4. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence punishable under Section 138 of NI Act and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.16,00,000/-. Being aggrieved by this judgment of conviction and order on sentence, the accused has preferred appeal before the Fast Track Court-III, Mayo Hall Unit, Bengaluru, in Criminal Appeal No.25091/2012. The appeal came to be allowed. Being aggrieved by this judgment, the appellant/complainant has preferred this appeal.

5. The learned counsel for the appellant would submit that the trial Court has committed an error in receiving the evidence of DW1 by way of affidavit, which is not permissible under law. Hence, sought to remand the

case to the trial Court with a direction to provide opportunity to the accused to adduce her oral evidence.

6. To substantiate his argument, the learned counsel relied on the decision of the Hon'ble Apex Court in the case ***MANDVI CO-OPERATIVE BANK LIMITED v. NIMESH B. THAKORE*** reported in ***(2010) 3 SCC 83*** and also the decision of Co-ordinate Bench of this Court in **W.P.No.3519/2024 (GM-RES)** decided on 19.07.2024 in the case of **MRS. ZAHEDA INAMDHAR vs. FATIMA HASSINA SAYEEDHA** and sought to remand the case to the Trial Court directing the accused/respondent to adduce his oral evidence and proceed with the case in accordance with law.

7. Learned counsel for the respondent remained absent. Hence the arguments of respondent taken as nil.

8. I have examined the materials placed before this Court.

9. The trial Court has received the evidence of DW1 by way of affidavit, which is not permissible under

law in view of the decisions relied by the learned counsel for the appellant. Hence, I proceed to pass the following:

ORDER

i. Appeal is allowed.

ii. The judgment of conviction and order on sentence passed by the XIV Additional C.M.M, Bangalore in CC No.30668/2007 dated 28.06.2012 and the judgment passed by the Presiding Officer and Addl. Sessions Judge, FTC-III, Mayo Hall Unit, Bengaluru in Criminal Appeal No.25091/2012 dated 05.06.2014, are set aside.

iii. The case is remitted to the XIV Additional C.M.M, Bengaluru in CC No.30668/2007 with a direction to provide opportunity to the respondent/accused to adduce his oral evidence instead evidence by way of affidavit and thereafter the trial Court shall proceed with the case in accordance with law.

iv. The appellant/complainant is directed to appear before the trial Court on 18.12.2026 without seeking any notice.

v. The trial Court is directed to secure the presence of respondents/ accused and proceed with the case in accordance with law.

Registry is directed to send the copy of the judgment along with the TCR to the trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

KBM
List No.: 1 Sl No.: 39