HC-KAR

NC: 2026:KHC:63131
CRL.A No. 362 of 2016

CNR: KAHC010224982016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 362 OF 2016 (A)

BETWEEN:

1. RAVI KUMAR
   S/O LATE GOVINDASWAMY
   AGED ABOUT 55 YEARS
   R/AT # 28/3
   MUTHYALAMMA TMEPLE STREET
   SEPPINGS ROAD CROSS
   BANGALOER-560 001

...APPELLANT

(BY SRI. J. PRAKASH, ADVOCATE)

AND:

1. SMT.D.VALLI
   AGED ABOUT 50 YEARS
   R/O 223/1, 3RD MAIN
   OMBR LAYOUT
   CHIKKABANASAWADI
   BANGALORE-560 043
   PRESENTLY AT
   MEENAKSHI NILAYAM
   RAGHAVENDRA STREET
   R.S.PALAYA, M.S.NAGAR POST
   BENGALURU-560 043

...RESPONDENT

(RESPONDENT SERVED AND UNREPRESENTED [ABSENT])

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

THIS CRL.A. IS FILED U/S 378(4) CR.P.C. BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 02.01.2016 PASSED IN CRL.A.NO.705/2014 BY THE LX ADDL. CITY CIVIL AND SESSIOND JUDGE, CCH-61 AT BANGALORE AND CONSEQUENTLY ALLOW THE COMPLAINT VIDE C.C.NO.10193/2009 ON THE FILE OF THE XV ACMM AT BANGALORE AND CONVICT THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHBLE UNDER SECTIONS 138 OF N.I ACT.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellant/complainant has preferred this appeal against the judgment of acquittal dated 02.01.2016 in Crl.A.No.705/2014 passed by the LX Additional City Civil and Sessions Judge, Bengaluru (CCH-61).

2. Brief facts leading to this appeal are that, the complainant/appellant had filed a complaint under Section 138 of N.I. Act and a case was registered in the C.C.No.10193/2009. Accused appeared before the trial Court

and after trial, the trial Court has convicted the accused-Smt.D.Valli, who is respondent in this case, for the offence under Section 138 of N.I. Act and to pay a fine of Rs.2,10,000/-

3. Being aggrieved by this judgment of conviction and order on sentence, the accused/respondent preferred an appeal before the LX Additional City Civil and Sessions Judge at Bengaluru (CCH-61) in Crl.A.No.705/2014, which came to be allowed as per judgment dated 02.01.2016. Being aggrieved by this judgment of acquittal, the complainant/appellant has preferred the present appeal.

4. Learned counsel for the appellant would submit that the respondent/accused has adduced her evidence as DW.1 and another witness as DW.2 before the trial Court by way of affidavit which is not admissible in evidence. In this regard, he has relied on the decision of the Hon'ble Apex Court in ***M/s.Mandvi Co-operative Bank Limited vs. Nimesh B.Thakore*** reported in ***(2010) 3 SCC 83*** and the decision of Co-ordinate Bench of this Court in ***W.P.No.3519/2024*** decided on 19.07.2024 and sought to remand this matter to the trial Court for disposal in accordance with law.

5. Despite service of notice, respondent remained absent and unrepresented.

6. I have carefully examined the materials placed before this Court. The accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, the complainant-Ravi Kumar has examined himself as PW.1 and 10 documents were marked as Exs.P1 to P10. On closure of complainant's side evidence, statement under Section 313 of Cr.P.C. was recorded. The accused/respondent has totally denied the evidence of PW.1. However, adduced the evidence of DWs.1 and 2 by way of affidavit which is not permissible under law as per the decision of Hon'ble Apex Court in the case of ***M/s.Mandvi Co-operative Bank Limited*** *(Supra)* reported in ***(2010) 3 SCC 83*** and the decision of Co-ordinate Bench of this Court in ***W.P.No.3519/2024*** decided on 19.07.2024.

7. This Court has also noticed that the trial Court has not properly recorded the statement of the accused while asking question No.2 in statement recorded under Section 313 of Cr.P.C. The trial Court has recorded the statement under

Section 313 of Cr.P.C. in a typed format which is not filled by the learned Presiding Officer. The learned Magistrate has blindly and mechanically, without following proper procedure and without application of mind, has recorded this statement under Section 313 of Cr.P.C. which is not permissible under law. The recording of statement under Section 313 of Cr.P.C. is not an empty formality. It is pertinent to refer to the judgment of Hon'ble Apex Court in the case of KALICHARAN AND OTHERS vs STATE OF UTTAR PRADESH passed in Crl.A.No.122 of 2021 on 14.12.2022, wherein it has mentioned that questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought

on record against him. He will not be able to properly defend himself. On these two lapses committed by the learned Magistrate, the matter has to be remitted to the Court of Magistrate with a direction to direct the accused/respondent to provide an opportunity to adduce the oral evidence instead of affidavit evidence. The appellate Court has also not observed anything in this regard, and mechanically has acquitted the accused. Both Courts have failed to appreciate the evidence on record in accordance with law and facts.

8. Accordingly, I proceed to pass the following:

ORDER

(i) The appeal is ***allowed***;

(ii) The judgment of conviction and order on sentence passed by the XV Additional CMM, Bengaluru, in C.C.No.10193/2009 dated 26.05.2014 and the judgment passed by the LX Additional City Civil and Sessions Judge, Bengaluru (CCH-61) in Criminal Appeal

No.705/2014 dated 02.01.2016 are hereby set aside;

(iii) The matter is remitted to the XV Addl. Chief Metropolitan Magistrate, Bengaluru with a direction to provide an opportunity to the accused/respondent to adduce oral evidence instead of affidavit;

(iv) The complainant is also permitted to adduce additional evidence, if any;

(v) The trial Court is directed to record the statement of the appellant under Section 313 of Cr.P.C. in accordance with law.

(vi) The appellant is directed to appear before the trial Court on **17.12.2026** without seeking any notice from the trial Court;

(vii) Trial Court is directed to secure the presence of respondent/accused and proceed with the case in accordance with law;

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

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

Sd/-
(G BASAVARAJA)
JUDGE

PGG
List No.: 1 Sl No.: 3