HC-KAR

NC: 2026:KHC:59413
CRL.A No. 383 of 2015

CNR: KAHC010243232015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 383 OF 2015 (A)

BETWEEN:

1. MR. BABU REDDY
   S/O OBAIAH REDDY
   HINDU
   AGED ABOUT 41 YEARS
   RESIDING AT NO.12
   BELLANDUR GATE
   SARJAPUR MAIN ROAD
   AGARA POST
   BANGALORE-560 034.

...APPELLANT

(BY SRI. K.MURTHY, ADVOCATE)

AND:

Digitally signed by LAKSHMINARAYAN N
Location: High Court of Karnataka

1. MR. ASHOK KUMAR H.
   S/O ANANTHA REDDY
   HINDU
   AGED ABOUT 35 YEARS
   R/O KAIKONDRAHALLI VILLAGE
   CARAMALEROM POST
   VARTHUR HOBLI
   BANGALORE EAST TALUK
   BANGALORE-560 036.

...RESPONDENT

(BY SRI. H.S.SATHISH KUMAR, ADVOCATE)

THIS CRL.A. FILED U/S. 378 (2)(b) AND (4) OF CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 16.02.2015, PASSED BY THE PRESIDING OFFICER, FAST TRACK COURT-XIV, BANGALORE CITY, IN CRIMINALAPPEAL NO.443/2013 AND CONFIRM THE JUDGEMENT DATED 07.08.2013 PASSED IN C.C.NO.9292/2009 BY THE XIII ADDL. CHIEF METROPOLITAN MAGISTRATE, BANGALORE - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 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 passed by the Fast Track Court-XIV, Bengaluru City in Criminal Appeal No.443/2013 dated 16.02.2015.

2. The brief facts leading to this appeal are that, the complainant/appellant-Babu Reddy filed a complaint under Section 200 of Cr.P.C. for the offence under Section 138 of N.I. Act. The accused appeared before the trial Court and contested the case. To prove the case of the complainant, complainant himself was examined as PW.1 and another witness as PW.2 and nine documents were marked as Exhibits P1 to P9. On

closure of complainant's said evidence, statement under Section 313 Cr.P.C. was recorded. Thereafter, on behalf of accused, accused was examined himself as DW.1 and two witnesses were examined as DWs.2 and 3 and one document was marked as Exhibit D1. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence under Section 138 of N.I. Act and imposed a fine of Rs.7,05,000/-.

3. Being aggrieved by this judgment of conviction and order on sentence, accused preferred an appeal before the Fast Track Court-XIV, Bengaluru City in Criminal Appeal No.443/2013. The same came to be allowed and accused was acquitted as per judgment dated 16.02.2015. Being aggrieved by this judgment of acquittal, the complainant/appellant has preferred this appeal.

3. I have heard the arguments on both sides. This Court has noticed that the accused has adduced evidence DWs.1 to 3 by way of affidavit. The trial Court has committed an error in receiving the affidavit of DWs.1 to 3 instead of oral evidence. The Appellate Court has also not considered the

same. In view of the judgment of Hon'ble Apex Court ***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, accused cannot adduce his evidence by way of an affidavit. It is not permissible under law. Hence, the matter has to be remitted to the trial Court with a direction to provide an opportunity to the accused to adduce oral evidence instead of evidence by way of affidavit.

4. Accordingly, I proceed to pass the following:

ORDER

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

(ii) The judgment passed by the XIII Addl. Chief Metropolitan Magistrate, Bengaluru in C.C.No.9292/2009 dated 07.08.2013 and the judgment of acquittal passed by the Fast Track Court-XIV, Bengaluru City in Criminal Appeal No.443/2013 dated 16.02.2015 are set aside;

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

(iv) After providing an opportunity to both sides, trial Court is directed to dispose of the case in accordance with law;

(v) Both parties are directed to appear before the trial Court on **25.11.2026** without seeking any further notice from the trial Court;

(vi) The trial Court is directed to dispose of the case as early as possible as the matter is of the year 2009.

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

Sd/-
(G BASAVARAJA)
JUDGE

PGG
List No.: 1 Sl No.: 2