HC-KAR

NC: 2026:KHC:21133
CRL.RP No. 1055 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1055 OF 2018

BETWEEN:

SRI. ABOOBKKAR N.B,
AGED 57 YEARS
RESIDING AT NO.162/A,
1ST FLOOR, 6TH MAIN, K.G.E. LAYOUT,
NEW BEL ROAD, BENGALURU - 560 094.

...PETITIONER

(BY SRI. SACHIN MADEV HEGDE, ADVOCATE FOR
SRI. SACHIN B.S, ADVOCATE)

AND:

SMT. SUMAN
AGED ABOUT 42 YEARS
WIFE OF SHRI.PRASHANTH,
RESIDING AT NO.23/1, PRASHANTH NILAYA,
1 CROSS, SUBRAMANYA NAGAR,
BENGALURU - 560 021.

...RESPONDENT

(BY SRI. K. KRISHNA PRASAD, ADVOCATE)

Digitally signed by SHARADAVANI B
Location: High Court of Karnataka

THIS CRL.P IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 01.09.2018 IN CRIMINAL APPEAL NO.1746/2017 PASSED BY THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY AND THEREBY SET ASIDE THE JUDGEMENT

DATED 25.11.2016 IN C.C.NO.4701/2016 ON THE FILE OF THE XIII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU AND THEREBY ACQUIT THE PETITIONER FOR THE CHARGES FRAMED.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Heard Sri. Sachin Mahadev Hegde, learned counsel for Sri. B.S. Sachin for the petitioner. None appears for the respondent.

2. Petitioner is the accused who suffered an order of conviction in CC No.4701/2016 confirmed in Criminal Appeal No.1746/2017.

3. Facts of the case are as under :

3.1 A private complaint under Section 200 of Code of Criminal Procedure came to be filed alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act by contending that

accused is the family friend of the complainant who borrowed a sum of Rs.2,00,000/- as hand loan with a promise to repay the same and towards the repayment issued a cheque bearing No.000126 dated 05.01.2016 in a sum of Rs.2,00,000/- drawn on HDFC Bank, Jayanagara Branch, Bangalore, which on presentation came to be dishonoured with an endorsement 'payment stopped by the drawer'.

3.2 Legal notice was issued calling upon to make good the amount which was not complied. Therefore, action was sought.

3.3 Learned Trial Magistrate after completing necessary formalities and on due trial, convicted the accused, which was confirmed by the First Appellate Court.

4. Thereafter, accused is before this Court in this revision petition.

5. Sri. Sachin Mahadev Hegde, learned counsel for the petitioner reiterating the grounds urged in the petition

would contend that the complaint averments are incorrect, in fact accused and complainant were partners running a partnership for business and in that regard, a signed cheque was with the complainant which has been misused and as such, there was no legally recoverable debt and thus sought for allowing the revision.

6. He would further contend that complainant having sold the building which was the subject matter of the partnership business and when accused demanded his share of profit, the cheque has been misused.

7. He also emphasizes that probative value of Exhibits D1 to D4 is not taken into consideration by the learned Trial Judge and non-replying to the legal notice is taken note of by the Trial Magistrate without considering the probative value of Exhibits D1 to D4 and thus sought for allowing the revision petition.

8. In the light of argument put-forth on behalf of the petitioner this Court perused the material on record meticulously.

9. On such perusal of the material on record, it is noticed that Exhibit P1-Cheque belongs to the accused and signature found therein is that of the accused.

10. Pertinently, the defence taken by the accused was dealt in extenso by the learned Trial Magistrate in paragraph Nos.23 to 25 as under :

> *"23. The very fact that the accused failed to reply to the legal notice, it leads to an inference that the accused has admitted the allegation made against him in the said demand notice. If the complainant has made false claim in respect to his cheque, then he would have rebut the same by sending reply. But as stated above, the accused failed to cause any reply to the demand notice by taking his defence as taken during the course of cross-examination. Thus, he failed to rebut the presumption which arose infavour of the complainant. Hence, the defence taken by the accused is not probable one to dispel the burden which arose in favour of the complainant tinder Section. 139 of Negotiable Instruments Act,*

24. Further at one stretch the accused taken up the defence that he came to know that the complainant has sold the building and as such he had insisted the complainant to pay his share of profit along with the expenses incurred by him towards processing fee to raise loan at Balaji Finance. But the complainant not settled his amount, on the other hand the complainant has presented his disputed cheque for encashment through her banker and the said fact was informed to him through the Bank Manager over telephone and as such he has given stop payment instruction to the Bank Manager stating that he has not given any cheque infavour of any person. To substantiate the said fact the accused though produced document like Ex.D4 letter issued by the Bank authorities, but the complainant has denied the genuinity of the said document. When such being the case, burden is on the accused to prove the said document by examining the author of the said document as required under law and further the accused has not produced any evidence before this court to show that when he had given such stop payment instruction in respect to the disputed cheque and the reason for such giving stop payment instructions, whether the bank authorities have followed his instructions by following all the procedural formalities. Because, if really the accused had such stop payment instructions, then certainly there must be some evidence before this court to show that the reason for giving such stop payment instruction. Though accused has taken up the defence that since he has not given any

of his cheque infavour of the complainant towards discharge of any debt or liability and as such he had given the said stop payment instruction to the bank authority. But to substantiate the fact he has produced any iota of evidence before this court to show that he had given stop payment instructions to bank authorities on such ground. Merely producing the letter allegedly issued by the Bank authority does not suffice to say that the accused had given 'stop payment' instructions to the Bank. On the other hand, the accused has to prove the said fact by examining the author of the document by calling him as his witness along with necessary documents. Because, it is for the accused to explain before this court that there was genuine reason for giving such stop payment instructions. But as aforesaid discussion, the accused not proved the said aspects by calling the author of the said document i.e., Ex.D4 document before this court as his witness and examined the correctness of the said document by proving the fact of giving such stop payment instruction for the reason as stated by him. But mere giving stop payment instruction is not sufficient, on the other hand, burden is on the accused to prove the fact that he has given such stop payment instructions not for the reason that there was no sufficient funds in his bank account, but for the other bonafide reason. But in the case on hand, as per the evidence of accused during his cross-examination, there was no sufficient amount in his bank account for honoring of the cheque on the date of its presentation, as he has clearly admitted the said fact during his cross-examination. The accused during his

cross-examination. This clearly reflects the malafide intention of the accused in giving such stop payment instructions, that he has given such instructions only to avoid liability of repayment of the debt. Hence, the defence taken by the accused with regard to the issuance of stop payment instruction to the bank authorities is not tenable one.

25. Hence, with all these reasons this court is of the opinion that though accused has made an attempt to dispel the burden which arose infavour of the complainant under Section. 139 of Negotiable Instruments Act by taking the defence denying the loan transaction in between himself and the complainant contending that he never borrowed any loan from the complainant and he never issued the disputed cheque infavour of the complainant and on the other hand, those cheques were given to the complainant in blank just to facilitated the complainant to meet the processing fees to raise loan at Bank or financial institution for the purpose of construction of apartment of which they have under taken, but he failed to prove the said defence with necessary cogent and convincing evidence. On the other hand, the complainant has proved the fact that there was much acquaintance in between the complainant and accused and they are well know person. On such acquaintance, the accused by borrowing loan of Rs.2,00,000/- from the complainant had given this disputed cheque in her favour towards discharge of the said debt of Rs.2,00,000/-. The records discloses that the

disputed cheques on its presentation for encashment by the complainant was returned unpaid and dishonoured for the reason Payment stopped by drawer' and despite of issuance of demand notice and inspite of due intimation to the accused, it is the accused only not collected the post and complied the demands of notice and settled the amount covered under the cheque in time. Hence, the complainant has maintained this complaint."

11. Further, the complainant enjoyed the presumption under Section 139 of the Negotiable Instruments Act.

12. To rebut the said presumption, accused has stepped into the witness box and placed on record four documents namely sale agreement, letter bank challan and another letter.

13. Those documents coupled with the oral testimony of DW1 was not sufficient enough to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act.

14. More so, when DW1 has categorically admitted that there was no sufficient amount kept in the bank for the bankers to act on the 'stop payment' instructions. He denied that the stop payment instructions was concocted for the purpose of the case.

15. Further, DW1 also admits that no action has been taken against the complainant by the accused after the amount was paid and the cheque was not returned.

16. These aspects of the matter would be sufficient enough to maintain the order of conviction recorded by the Trial Magistrate confirmed by the First Appellate Court.

17. As such, having regard to the limited powers of the revisional Jurisdiction, this Court does not find any good grounds to interfere with the Order of Trial Magistrate confirmed by the First Appellate Court.

18. Accordingly, following order :

ORDER

Criminal Revision Petition is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

SNC
List No.: 2 Sl No.: 4