HC-KAR

NC: 2026:KHC:64258
CRL.A No. 1200 of 2016

CNR: KAHC010504492016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1200 OF 2016 (A)

BETWEEN:

1. H.K. CHANDRASHEKAR
   S/O LATE KALAPPA
   AGED ABOUT 44 YEARS
   OCC: COFFEE PLANTER
   HULLURICOPPA VILLAGE
   SOMWARPET TALUK
   KODAGU DISTRICT-571236

...APPELLANT

(BY SRI. PRATHEEK CHANDRAMOULI, ADV. FOR
SRI. K. A. CHANDRASHEKARA, ADV.)

AND:

1. S.U. MOHAMMED
   S/O LATE UNNIKUTTY
   AGED ABOUT 53 YEARS
   OCC: BUSINESS
   ULUGULI VILLAGE
   SUNTICOPPA HOBLI
   SOMWARPET TALUK
   KODAGU DISTRICT-571237

...RESPONDENT

(BY SRI. M. T. NANAIAH, SENIOR COUNSEL A/W
SRI. B. N. BALASUBRAMANYA, ADV.)

CRL.A. FILED U/S 378(4) CRPC BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 05.07.2016 PASSED BY THE LEARNED I ADDL. DIST. AND S.J.,

Digitally signed by
LAKSHMINARAYAN N
Location: High Court
of Karnataka

KODAGU AT MADIKERI, IN CRL.A.NO.48/2015 AND RESTORE THE ORDER OF CONVICTION AND SENTENCE DATED 08.06.2015 PASSED BY THE LEARNED PRL. CIVIL JUDGE AND JMFC, SOMWARPET, IN C.C.NO.762/2010 FOR THE OFFENCE P/U/S 138 OF N.I ACT AND COMPENSATE ADEQUATELY THE APPELLANT/COMPAINANT U/S 357 OF CODE OF CRL. PROCEDUCE.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant/Complainant has preferred this appeal against the Judgment of acquittal dated 05.07.2016 passed in Crl.A.No.48/2015 by the I Addl. District and Sessions Judge, Kodagu, Madikeri. As the Appellate Court has reversed the judgment of conviction and order on sentence dated 08.06.2015 passed in CC.No.762/2010 by the Principal Civil Judge and JMFC, Somwarpet.

2. For the sake of convenience, the parties herein are referred as per their status before the trial Court.

3. Brief facts leading to this appeal are that, the Complainant has filed the complaint under Section 200 of Cr.PC for the offence punishable under Section 138 of Negotiable Instruments Act. It is alleged in the complaint that, the accused borrowed a sum of Rs.4,00,000/- as loan from the complainant for his legal necessities and towards repayment of the said amount, he issued a post-dated Cheque dated 15.10.2008 bearing No.614139 drawn on Canara Bank, Suntikoppa Branch for Rs.4,00,000/- in favour of the complainant. When the complainant presented the said Cheque for encashment through his banker M/s. Vyavasaya Seva Sahakara Nimayita, Somwarpet, it was dishonoured and returned along with endorsement "*Account Closed*". The complainant got issued a legal notice dated 28.11.2008 through registered post acknowledgment due calling upon the accused to pay the dishonoured cheque amount of Rs.4,00,000/-, within 15 days from the date of receipt of notice. The notice was duly served on the accused, but the accused did not

comply with the demand made in the said notice. Hence, the complainant has filed complaint against the accused.

4. After taking cognizance, case was registered and summons was issued. In response summons, accused appeared before the Court and enlarged on bail. Substance of plea was recorded. Accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, Complainant examined himself as PW1 and 8 documents were marked as Exs.P1 to P8. On closure of prosecution side evidence, statement of accused under Section 313 of Cr.P.C. was recorded, accused has denied all the incriminating circumstances appearing in the evidence. He has chosen to adduce evidence on his behalf and himself examined as DW1 and one more witness examined as DW2. Two documents are marked as Exs.D1 and D2.

6. Having heard the arguments on both sides, the trial Court has convicted the accused for the offence under Section 138 of NI Act and sentenced to undergo simple imprisonment for 1 year and to pay fine of Rs.8,00,000/-. Being aggrieved by the judgment of conviction and order and sentence, the appellant had preferred appeal before the I Addl. District and Sessions Judge, Kodagu, Madikeri. first in Crl.A.No.48/2015. Same came to be allowed. Being aggrieved by the Judgment of Acquittal, the appellant/complainant has preferred this appeal.

7. I have heard the arguments on both sides and perused the records. This Court has noticed that Smt.Usha Kumari has adduced her evidence as DW2. The learned Magistrate has not put his signature on the deposition of DW2. The trial Court has failed to comply the mandatory provisions of Sections 274 and 277 of the Code of Criminal Procedure, 1973. Since the learned Magistrate has not complied the mandatory provisions of

Sections 274 and 277 of Code of Criminal Procedure, 1973, the evidence of DW2 cannot be called as evidence. Hence, it is just and proper to provide an opportunity to the accused to adduce evidence of DW2. The learned Magistrate is directed to comply the mandatory provisions of Sections 274 and 277 of Code of Criminal Procedure, 1973. Accordingly, I proceed to pass the following:

O R D E R

(i) Appeal is **allowed;**

(ii) The Judgment of Conviction and order on sentence dated 08.06.2015 passed in CC.No.762/2010 by the Principal Civil Judge and JMFC., Somwarpet and the Judgment of acquittal dated 05.07.2016 passed in Crl.A.No.48/2015 by the I Addl. District and Sessions Judge, Kodagu, Madikeri, are hereby **set aside**;

(iii) The case is remitted to the Court of Principal Civil Judge and JMFC at Somwarpet in CC.No.762/2010 with a direction to record the evidence of DW2 and by

following the procedure as contemplated under Sections 274 and 277 of the Code of Criminal Procedure, 1973; Thereafter, the trial Court shall dispose of the case in accordance with law;

(iv) Both parties are directed to appear before the Principal Civil Judge and JMFC., Somwarpet, on 11.01.2027, without seeking any further notice from the said Court;

(v) The trial Court is directed to dispose of the case within 6 months from the date of appearance of the parties, as the matter is of the year 2010;

(vi) It is submitted that the accused has deposited the amount of Rs.4,00,000/- before the trial Court. The trial Court is directed to deposit the same in Fixed Deposit in the name of the Court in any nationalized bank for a period of 1 year under auto renewal scheme if it is not deposited the bank.

The Registry is directed to send the Trial Court Records along with copy of this judgment to the concerned Court.

Pending IA.I/2018 stands ***disposed of.***

Sd/-
(G BASAVARAJA)
JUDGE

DHA
List No.: 1 Sl No.: 32