HC-KAR

NC: 2026:KHC:62501
CRL.RP No. 1183 of 2026

CNR: KAHC010506832026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

CRIMINAL REVISION PETITION NO. 1183 OF 2026

BETWEEN:

SRI. RADHAKRISHNAN,
S/O. BHASKARAN PILLAI,
AGED ABOUT 63 YEARS,
R/AT NO.41, HARMONY CLASSIC ORCHARDS,
PHASE-1, BEHIND MEENAKSHI TEMPLE,
BANNERGHATTA MAIN ROAD,
BENGALURU - 560 076.

...PETITIONER

(BY SRI KRISHNA S. VYAS, ADVOCATE)

AND:

SRI. MADANLAL AGARWAL,
S/O. DILIPCHAND AGARWAL,
AGED ABOUT 64 YEARS,
PROPRIETOR,
M/S. ANUJ CARGO MOVERS,
OFFICE AT G-8, ELEGANCE ROYALLE,
NO.16, 2ND CROSS, SINDHI COLONY,
BEHIND VISL HOUSE, J.C. ROAD,
BENGALURU - 560 002.

...RESPONDENT

(BY SRI A.S. GUPTA, ADVOCATE)

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THIS CRL.RP IS FILED U/S 397 R/W 401 CR.PC (FILED U/S 438 R/W 442 BNSS) PRAYING TO A. SET ASIDE THE JUDGMENT DATED 04/10/2025 PASSED BY THE LXVII ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, CCH-68, IN CRL.A.NO.658/2024, PRODUCED AS ANNEXURE-D, ONLY INSOFAR AS IT ALLOWS THE APPLICATION FILED BY THE RESPONDENT UNDER SECTION 391 OF CR.P.C., PRODUCED AS ANNEXURE-C, AND REMANDS C.C.NO.8472/2022 TO THE XIII ADDL. CHIEF METROPOLITAN MAGISTRATE, BENGALURU, FOR FRESH DISPOSAL.

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

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL ORDER

1. This is the revision petition filed under Section 438 read with Section 442 of the Bharatiya Nagarika Suraksha Sanhita, 2023 (in short, 'BNSS') corresponding to Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.PC')], praying for setting aside the Judgment dated 04.10.2025 in Criminal Appeal No.657/2024 on the file of LXVII Addl. City Civil and Sessions Judge, Bengaluru City, CCH-68 (in short, 'the appellate Court') in allowing the application filed under Section 391 of Cr.PC and remand the matter to the trial

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Court for fresh disposal; to dismiss the application under Section 391 of Cr.PC and to set aside the further proceedings initiated in CC No.9877/2022 on the file XIII Addl. Chief Metropolitan Magistrate, Bengaluru (in short, 'the trial Court') and for such other reliefs.

2. The parties would be referred with their ranks, as they were before the trial Court for the sake of convenience and clarity.

3. The complainant has filed the private complaint under Section 200 of Cr.PC against the accused before the trial Court praying for taking cognizance against him for the offence punishable under Section 138 of NI Act.

4. After taking cognizance, issuing summons, accused appeared and after recording evidence of the complainant, recording statement under Section 313 of Cr.PC hearing arguments, finally, the trial Court convicted the accused for the offence punishable under Section 138 of NI Act, sentencing him to pay a sum of ₹8,10,000/- and

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out of which ₹8,00,000/- shall be payable as compensation to the complainant.

5. After the said judgment of conviction and order of sentence, the accused has preferred the appeal before the appellate Court.

6. During pendency of the appeal, the complainant has filed the application under Section 391 of Cr.PC.

7. After hearing both sides, the appellate Court has set aside the Judgment of conviction and order of sentence and also allowed the application filed under Section 391 of Cr.PC on behalf of the complainant and remanded the matter to the trial Court for fresh disposal in accordance with this law and directed both parties to appear before the trial Court on 10.11.2025.

8. After passing such order, as it is the parties have appeared before the trial Court and further examination-in-chief of the complainant was recorded and the case is at the stage of cross-examination.

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9. On perusal of the Judgment of the appellate Court, it is maintained that the appellate Court has not assigned any reason to set aside the Judgment of conviction and order of sentence, but only because it is allowing the application under Section 391 of Cr.PC, the Judgment of conviction and order of sentence was set aside as if it is the regular appeal in civil cases.

10. With this background, the Section 391 of Cr.PC is to be looked into, it is as follows:

> *"Appellate Court may take further evidence or direct it to be taken.- (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate. (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal. (3) The accused or his pleader shall have the right to be present when the additional evidence is taken. (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."*

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11. According to this section, in the appeal the appellate Court if it thinks that the additional evidence is necessary, it shall record its reasons for it or may direct that evidence shall be recorded by the Magistrate or may record the additional evidence by itself. If the appellate Court is District Court and he directs that the Magistrate shall record the evidence then when additional evidence is taken by the Magistrate he shall certify such evidence to the appellate Court to dispose of the appeal. Taking of additional evidence under Section 391 of Cr.PC is subject to the provisions of Chapter XXIII.

12. The plain reading of Section 391 of Cr.PC made it clear that the appellate Court cannot set aside the judgment of the trial Court only because the application under Section 391 of Cr.PC is filed before it. Furthermore, the appellate Court has no power to remand the matter to the trial Court for fresh disposal in accordance with law under Section 391 of Cr.PC. However, such power vests with the appellate Court under Section 386(b) of Cr.PC.

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Under this provision, the appellate Court may reverse the finding and sentence and order to be retried by a Court of competent jurisdiction subordinate to such appellate Court are committed for trial. Thus, the powers of demand or remittance is under Section 386(b) of Cr.PC and not under Section 391 of Cr.PC.

13. As discussed earlier, the appellate Court has not at all assigned any reason for setting aside the Judgment of conviction. It has only considered the application filed under Section 391 of Cr.PC with 6 documents. Even the reason for allowing such application is also not given. Only the consequence of allowing such application is mentioned at para - 15 of the appellate Court judgment and remanded the matter.

14. The above discussion reveals that the judgment of appellate Court is grossly erroneous, not at all in accordance with law and *capricious* and thus requires interference.

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15. Without assigning any reason for allowing the application under Section 391 of Cr.PC and setting aside the judgment of conviction of the trial Court, the appellate Court has allowed the appeal and allowed the application under Section 391 of Cr.PC. Hence, the matter requires re-appreciation by the appellate Court. Hence, this Court passes the following:

ORDER

i. The revision petition is allowed in part. The judgment of the appellate court in setting aside the judgment of trial Court and allowing the application under Section 391 of Cr.PC is set aside.

ii. The matter is remitted back to the appellate Court to pass suitable order on application under Section 391 of Cr.PC and if the appellate Court comes to the conclusion that the application deserves to be allowed; then follow the procedure prescribed under Section 391 of Cr.PC and to assign suitable reason for allowing the appeal or dismissal of the appeal on the point of conviction and order of sentence.

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iii. With these observations, the matter is remitted back to the appellate Court.

iv. Both parties shall appear before the learned LXVII Addl. City Civil and Sessions Judge, Bengaluru City on 09.12.2026 without Court notice.

v. The appellate Court is directed to dispose the appeal and application under Section 391 of Cr.PC as early as possible within the outer limit of 3 months from 09.12.2026.

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(GEETHA K.B.)
JUDGE

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List No.: 2 Sl No.: 9