HC-KAR
CNR: KAHC010569892022

NC: 2026:KHC:60736
CRL.P No. 12282 of 2022
C/W CRL.P No. 12284 of 2022
CRL.RP No. 1460 of 2022
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.12282 OF 2022
C/W
CRIMINAL PETITION NO.12284 OF 2022
CRIMINAL REVISION PETITION NO.1460 OF 2022
CRIMINAL REVISION PETITION NO.1466 OF 2022

IN CRL.P NO.12282/2022:

BETWEEN:

1. K. MOIDIN, S/O K. KASIM,
AGED ABOUT 65 YEARS,
PROPRIETOR-IDEAL TRAVELS,
MILAGRES, MANGALURU,
R/AT IDEAL GARDEN,
MISSION COMPOUND,
FALNIR CROSS ROAD,
MANGALURU-575001.

...PETITIONER

(BY SRI. ANANDARAMA K., ADVOCATE)

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

AND:

1. M/S. PRESIDENCY BUILDERS AND DEVELOPERS,
B-ZONE I BUILDING, BENDOORWELL,
MANGALURU-575001
REPRESENTED BY ITS GPA HOLDER
AND LEGAL OFFICER
N. RAJESH ADIGA,
S/O N. RAMACHANDRA ADIGA,
AGED ABOUT 50 YEARS.

...RESPONDENT

(BY SRI. SACHIN B.S., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 14.10.2022 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN CRL.RP.NO.14/2022 (ANNEXURE A) ENHANCING THE SENTENCE IMPOSED ON THE ACCUSED/PETITIONER HEREIN VIDE JUDGMENT DATED 24.11.2021 PASSED BY THE COURT OF JMFC (V COURT), MANGALURU, IN C.C.NO.1496/2015 CONVICTING THE ACCUSED/PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT AND CONSEQUENTLY DISMISS THE CRIMINAL REVISION PETITION NO.14/2022.

IN CRL.P NO.12284/2022:

BETWEEN:

1. K. MOIDIN,
   S/O K. KASIM,
   AGED ABOUT 65 YEARS,
   PROPRIETOR-IDEAL TRAVELS,
   MILAGRES, MANGALURU,
   R/AT IDEAL GARDEN,
   MISSION COMPOUND,
   FALNIR CROSS ROAD,
   MANGALURU-575001.

...PETITIONER

(BY SRI. ANANDARAMA K., ADVOCATE)

AND:

1. M/S. PRESIDENCY BUILDERS AND DEVELOPERS,
   B-ZONE I BUILDING, BENDOORWELL,
   MANGALURU-575001,
   REPRESENTED BY ITS GPA HOLDER
   AND LEGAL OFFICER,
   N. RAJESH ADIGA,
   S/O N. RAMACHANDRA ADIGA,
   AGED ABOUT 50 YEARS.

...RESPONDENT

(BY SRI. HARSHA G., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 14.10.2022 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN CRL.RP.NO.15/2022 (ANNEXURE-A) ENHANCING THE SENTENCE IMPOSED ON THE ACCUSED/PETITIONER HEREIN VIDE JUDGMENT DATED 24.11.2021 PASSED BY THE COURT OF JMFC (V COURT), MANGALURU, IN C.C.NO.1497/2015 CONVICTING THE ACCUSED/ PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT AND CONSEQUENTLY DISMISS THE CRIMINAL REVISION PETITION NO.15/2022.

IN CRL.RP NO.1460/2022:

BETWEEN:

1. K. MOIDIN,
   S/O K. KASIM,
   AGED ABOUT 65 YEARS,
   PROPRIETOR-IDEAL TRAVELS,
   MILAGES, MANGALURU,
   R/AT IDEAL GARDEN,
   MISSION COMPOUND,
   FALNIR CROSS ROAD,
   MANGALURU-575 001.

...PETITIONER

(BY SRI. ANANDARAMA K., ADVOCATE)

AND:

1. M/S. PRESIDENCY BUILDERS AND DEVELOPERS,
   B-ZONE I BUILDING, BENDOORWELL,
   MANGALURU-575001,
   REPRESENTED BY IS GPA HOLDER
   AND LEGAL OFFICER,
   N. RAJESH ADIGA

S/O N. RAMACHANDRA ADIGA,
AGED ABOUT 50 YEARS.

...RESPONDENT

(BY SRI. SACHIN B.S., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 14.10.2022 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN CRL.A. NO.177/2021 (ANNEXURE-A) AND REVERSE THE JUDGMENT DATED 24.11.2021 PASSED BY THE J.M.F.C.-V COURT, MANGALURU, IN C.C.NO.1497/2015 (ANNEXURE-B) CONVICTING THE ACCUSED/PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT AND ACQUIT THE ACCUSED/PETITIONER.

IN CRL.RP NO.1466/2022:

BETWEEN:

1. K. MOIDIN,
   S/O K. KASIM,
   AGED ABOUT 65 YEARS,
   PROPRIETOR-IDEAL TRAVELS,
   MILAGRES, MANGALURU,
   R/AT IDEAL GARDEN,
   MISSION COMPOUND,
   FALNIR CROSS ROAD,
   MANGALURU-575001.

...PETITIONER

(BY SRI. ANANDARAMA K., ADVOCATE)

AND:

1. M/S. PRESIDENCY BUILDERS AND DEVELOPERS,
   B-ZONE I BUILDING, BENDOORWELL,
   MANGALURU- 575001,
   REPRESENTED BY ITS GPA HOLDER
   AND LEGAL OFFICER,

N. RAJESH ADIGA,
S/O N. RAMACHANDRA ADIGA,
AGED ABOUT 50 YEARS.

...RESPONDENT

(BY SRI. SACHIN B.S., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 14.10.2022 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN CRL.A.NO.176/2021 (ANNEXURE-A) AND REVERSE THE JUDGMENT DATED 24.11.2021 PASSED BY THE J.M.F.C. - V COURT, MANGALURU IN C.C.NO.1496/2015 (ANNEXURE-B) CONVICTING THE ACCUSED/PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT AND ACQUIT THE ACCUSED/PETITIONER.

THESE PETITIONS COMING ON FOR ADMISSION THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. These petitions are filed against the conviction and confirmation as well as enhancement made in the proceedings initiated against the petitioner under Section 138 of the Negotiable Instruments Act (‘NI Act’ for short).

3. The factual matrix of the case of the complainant/respondent before the Trial Court in all the criminal cases filed invoking Section 200 of Cr.P.C. for the offence punishable under Section 138 of NI Act, is that specific pleading was made that there was a transaction between the complainant and the accused and with regard to the liability, the accused had issued the subject matter of cheques for an amount of Rs.5,00,000/-, Rs.6,00,000/- and Rs.19,00,000/- and the cheques which were issued were bounced. Hence, notice was issued and demand was made and there was no compliance and hence, invoked the jurisdiction to penalize the petitioner under Section 138 of the NI Act. The Trial Court having considered the material available on record and also the defence which was set up by the petitioner herein, convicted and sentenced the petitioner in respect of criminal petition in C.C.No.1496/2015 and C.C.No.1497/2015 and ordered to pay an amount of Rs.6,10,000/- in C.C.No.1496/2015 and Rs.5,10,000/- in C.C.No.1497/2015 i.e., Rs.10,000/- in addition to the cheque amount of Rs.5,00,000/- and Rs.6,00,000/- and ordered to pay the said amount within two

months, failing which shall undergo simple imprisonment for a period of two months.

4. The same is challenged before the Revisional Court by the accused as well as the complainant for enhancement. The Revisional Court dismissed the appeals filed by the accused and allowed the revision petitions filed by the complainant enhancing the amount to the tune of Rs.10,20,000/- as against Rs.6,10,000/- and Rs.8,50,000/- as against Rs.5,10,000/- and enhanced the sentence for a period of six months in case of default.

5. Being aggrieved by the dismissal of the appeals as well as allowing of the revision petitions, the present petitions are filed before this Court.

6. The main contention of the learned counsel for the petitioners is that the Trial Court accepted the defence that cheques were not issued in respect of the case which was pleaded by the complainant and acquitted in one case for the claim made by the complainant for an amount of Rs.19,00,000/-, but convicted and sentenced in respect of

these two criminal proceedings in coming to the conclusion in answering point Nos.1 to 4 that Exs.P1 and P8 both issued by the accused are admitted in discharge of the amount received by him as advance amount for selling the passenger bus to the complainant i.e., the admission given by the accused. As the complainant had dropped the idea of purchasing the bus, the accused had issued Exs.P1 and P8 for Rs.6,00,000/- and Rs.5,00,000/- along with interest for Rs.1,00,000/- on the lumpsum amount and thereby the accused is in due for a sum of Rs.11,00,000/-. The accused admits his liability on Exs.P1 and P8 both in the notice at Ex.P.18 at paragraph No.6 and in the affidavit in lieu of examination in chief at paragraph No.4. Considering the admission in Ex.P.18 as well as chief evidence, the Trial Court comes to the conclusion that admitted facts need not be proved and hence, ordered to pay the said amount. The same is challenged before this Court.

7. The main contention of the learned counsel for the petitioners is that even though there is an admission in Ex.P.18 legal notice at paragraph No.6 and so also in the chief examination, the same is not an admission. The pleaded

liability is not proved and liability is in respect of other transaction. The learned counsel in support of his arguments relies upon the judgment of the Bombay High Court in the case of **NAVNEETDAS NARAYANDAS BARSHIKAR v. BACCHUBHAI MULJI TANNA AND ANOTHER** reported in **2012 (1) MWN (Cr.) (DCC) 87 (Bom)** and particularly brought to the notice of this Court paragraph Nos.20 and 21, wherein discussion was made with regard to the payment and also admitted transaction in respect of different transaction and not in respect of the issuance of the cheque. The learned counsel also brought to the notice of this Court the observation made by the Bombay High Court that the complainant has neither produced any cogent legal evidence in that respect, nor produced any accounts, nor produced any bills/receipts showing the dealing between the complainant and accused in respect of the business transaction pertaining to the disputed cheque in question, and hence, it is crystal clear that the complainant failed to prove and establish beyond reasonable doubt, that at the time of issuance of the disputed cheque in question, there existed any legally enforceable debt/liability

against the accused and the disputed cheque in question, was issued by the accused to the complainant towards the discharge of said legally enforceable debt/liability, partly or in whole.

8. The learned counsel also brought to the notice of this Court the judgment of the Apex Court in the case of **YOGENDRA PRATAP SINGH v. SAVITRI PANDEY AND ANOTHER** reported in **(2014) 10 SCC 713** and brought to the notice of this Court paragraph No.30, wherein the Apex Court discussed with regard to Section 138 of NI Act. The offence under Section 138 is made effective only on fulfillment of the eventualities contained in clauses (a), (b) and (c) of the proviso. The learned counsel would contend that when the same was not proved, mere issuance of cheque and dishonour thereof would not constitute an offence by itself under Section 138 of the NI Act. The learned counsel relying upon the principles laid down in the judgments would vehemently contend that the Trial Court committed an error in convicting and sentencing the petitioner and so also the Revisional Court has committed an error in enhancing the amount and both the

Courts failed to take note of the very ingredients of Section 138 of NI Act and committed an error.

9. Per contra, the learned counsel for the respondent would submit that there is no dispute with regard to the issuance of the cheques at Exs.P1 and P8 dated 14.10.2015. The learned counsel would submit that issuance of cheques is not disputed and liability is also not disputed. When the cheques were presented, the same were bounced is also not disputed. Demand of notice is also not disputed and not complied with the demand. The learned counsel would contend that in order to invoke Section 138 of the NI Act, essentials are fulfilled. The learned counsel also vehemently contend that in the reply notice Ex.P.18, which was referred by the Trial Court, the accused categorically admitted in paragraph No.6 with regard to the issuance of cheque and liability to the tune of Rs.11,00,000/-. The learned counsel also contend that when the liability is admitted, the very contention of the learned counsel for the petitioner and the principles laid down in the judgments of Bombay High Court and Supreme Court will not come to the aid of the petitioner and hence, the very

contention that both the Courts have committed an error cannot be accepted.

10. Having heard the learned counsel for the petitioner and the learned counsel for the respondent, these petitions are filed against the concurrent finding of the Trial Court and the Revisional Court i.e., conviction and sentence and modified by the Revisional Court. The Trial Court has given the finding with regard to the fact that issuance of cheque is not in dispute and liability is also not in dispute and even in the reply notice also admitted the liability to the tune of Rs.11,00,000/-. Insofar as Exs.P1 and P8 are concerned, there is no dispute at all for having issued the same and once the same is admitted in paragraph No.6 of Ex.P.18 reply notice and so also in the affidavit filed by the accused in examination in chief at paragraph No.4, the Trial Court comes to the conclusion that admitted facts need not be proved under Section 58 of the Evidence Act. The main contention of the learned counsel for the petitioner is that cheques Exs.P.1 and P8 are admitted, but not in respect of the pleaded liability is concerned. The liability is in respect of different transaction and hence, it is not an

admission. The learned counsel also relies upon the judgment of the Bombay High Court in the case of **Navneetdas Narayandas Barshikar** (supra), wherein the Bombay High Court while dealing with the issue involved between the parties is concerned, particularly in paragraph No.21 taken note of with regard to the liability is concerned. The Bombay High Court comes to the conclusion that it is crystal clear that the complainant failed to prove and establish beyond reasonable doubt, that at the time of issuance of disputed cheque in question, there existed any legally enforceable debt/liability against the accused and the disputed cheque in question, was issued by the accused to the complainant towards the discharge of said legally enforceable debt/liability. But in the case on hand, the very issuance of cheque is admitted and liability is also admitted, and particularly the statement is also made in respect of these two cheques are concerned to the tune of Rs.5,00,000/- and Rs.6,00,000/-. When such being the case, this judgment will not come to the aid of the petitioner since on the date of issuance, there was a liability and admitted the same.

11. The learned counsel of the petitioner also relied upon the Apex Court judgment in the case of **Yogendra Pratap Singh** (supra), wherein the Apex Court in paragraph No.30 discussed with regard to Section 138 of the NI Act. No doubt, Section 138 of the NI Act comprises of the main provision which defines the ingredients of the offence and the punishment that would follow in the event of such an offence having been committed. The offence under Section 138 of the NI Act is made effective only on fulfillment of the eventualities contained in clauses (a), (b) and (c) of the proviso. But in the case on hand, issuance of the cheque is not disputed and bouncing of the cheque is also not disputed and demand made within time is also not disputed. While giving the reply particularly in respect of these two cheques are concerned, categorically admitted that there is a liability. When such being the case, the essentials of clauses (a), (b) and (c) also complied. The contention of the learned counsel for the petitioner that it is in respect of the different transaction and admission is not in respect of these cheques, cannot be accepted. When a specific pleading was made in the reply

notice Ex.P.18 in paragraph No.6 that liability is admitted in respect of Exs.P1 and P8 is concerned, no need to deal with the matter in detail with regard to the said fact is concerned and hence, this judgment also will not come to the aid of the petitioner. When there is a clear admission on the part of the petitioner for having issued the cheque to the tune of Rs.5,00,000/- and Rs.6,00,000/- and when the liability is admitted, the contention of the petitioner that the pleading is different and hence, liability cannot be fastened on the petitioner cannot be accepted. The scope of these petitions are very limited. Both the Courts have given finding with regard to the factual aspects of the matter. The substantial issue with regard to the issuance of cheque is also not otherwise different and essentials of Section 138 of the NI Act also proved. When such being the case, I do not find any merit in the petitions to come to a other conclusion and hence, no ground is made out to entertain these petitions.

12. The learned counsel for the petitioner would contend that presumption under Section 138 of the NI Act is rebutted and the same is accepted by the Trial Court. Once the

admission is available on record, the very contention that presumption is rebutted cannot be accepted. If there was no admission, then the said submission of the learned counsel for the petitioner would be accepted. But here is a case of clear admission on the part of the petitioner with regard to the issuance of cheque and liability. When such admission is available on record, the contention that presumption is rebutted cannot be accepted.

13. In view of the discussions made above, I pass the following:

ORDER

The petitions are dismissed.

This Court has not made any observations with regard to the bouncing of cheque in other case, wherein the petitioner is acquitted and appeal is pending and this observation shall not influence the Court in dealing with the appeal, which is pending.

Sd/-
(H.P.SANDESH)
JUDGE

MD
List No.: 1 Sl No.: 8