



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE RAJESH RAI K

CRIMINAL REVISION PETITION NO. 425 OF 2023

BETWEEN:

MULLOOR HANEEF MUHAMMED
AGED ABOUT 35 YEARS,
S/O HASANABBA,
RESIDING AT H.NO 3-124,
NITTE HOUSE FISHERIES ROAD,
MULLOOR VILLAGE, BENGRE,
UDUPI TALUK & DISTRICT-574 106.

...PETITIONER

(BY SMT. HALEEMA AMEEN, ADVOCATE)

AND:

SHEIKH MAYYADI ISMAIL
AGED ABOUT 35 YEARS,
S/O LATE ISMAIL,
RESIDING NEAR A1-ARAFAT COTTAGE,
NEAR BOARD SCHOOL, YERMALTENKA,
UDUPI TALUK, UDUPI DISTRICT-574 119.

...RESPONDENT

(BY SRI. K.C. NITHIN GOWDA, AMICUS CURIAE)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF
CONVICTION DATED 06.03.2019 IN CC 1859/2016 PASSED BY
THE IV ADDITIONAL CIVIL JUDGE AND JMFC, UDUPI AND THE
ORDER OF PRINCIPAL DISTRICT AND SESSIONS COURT,
UDUPI DISTRICT, UDUPI, CONFIRMING THE SAME BY ITS
ORDER 02.01.2021 IN CRIMINAL APPEAL 67/2019, AND
ACQUIT THE PETITIONER/ACCUSED FOR OFFENCE
PUNISHABLE U/S 138 OF NI ACT AND SET HIM FREE.





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

CORAM: HON'BLE MR JUSTICE RAJESH RAI K

ORAL ORDER

Though the matter was listed for admission, at the consent of both the parties, the matter is taken up for final disposal.

2. In this revision petition, the revision petitioner/accused has assailed the judgment dated 02.01.2021 passed by the Court of Principal District and Sessions Judge, Udupi (hereinafter referred to as 'the First Appellate Court') in Crl.A.No.67/2019, whereby the First Appellate Court had dismissed the appeal filed by the revision petitioner and confirmed the judgment of conviction and order of sentence passed by the Court of IV Addl. Civil Judge and JMFC, Udupi (for short 'the trial Court') in C.C.No.1859/2016 dated 06.03.2019.

3. Parties are referred to as per ranking before the trial Court.



4. The factual matrix of the prosecution case, in brief, is as follows:

The accused and the complainant are known to each other and in the year 2015, the accused borrowed a sum of Rs.2,00,000/- from the complainant as hand loan and the said amount was paid by the complainant to the accused. To discharge the said liability, the accused had issued a cheque bearing No.14680 drawn on HDFC Bank dated 17.08.2015 for a sum of Rs.2,00,000/- as per Ex.P1. When the complainant presented the said cheque, the same returned with an endorsement 'Funds Insufficient'. The same was intimated to the accused by the complainant by issuing a legal notice dated 28.08.2015. Despite, the accused failed to reply to the notice or to repay the hand loan. Hence, the complainant filed the private complaint under Section 200 of Cr.P.C against the accused for the offence punishable under Section 138 of the Negotiable Instrument Act (for short 'the NI Act') before the trial court.

5. In order to prove the case before the trial court, the complainant examined himself as PW.1 and got marked 5 documents as Ex.P1 to P5. However, the accused neither



examined any witness nor got marked any documents on his behalf.

6. After assessment of oral and documentary evidence, the trial Court convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced as under:

"ORDER

*Acting Under Sec.255(2) Cr.P.C.,
accused is convicted.*

*Accused shall pay a sum of
Rs.4,05,000/and in that, a sum of
Rs.4,00,000/shall be paid to the
complainant and **Rs.5,000/**to the state.*

*In default, accused shall undergo SI for
a period of six months."*

7. Aggrieved by the said judgment, the accused approached the First Appellate Court in Crl.A.No.67/2019. The First Appellate Court, after re-assessment of entire evidence on record dismissed the appeal filed by the accused by confirming the judgment of conviction and order of sentence passed by the trial Court. Challenge to the same is *lis* before this Court.



8. I have heard Smt. Haleema Ameen, the learned counsel for the revision petitioner and Sri K.C. Nithin Gowda, learned Amicus Curiae for the respondent.

9. The primary contention of the learned counsel for the revision petitioner/accused is that the trial Court and the First Appellate Court grossly erred while convicting the accused for the offence punishable under Section 138 of the N.I. Act without appreciating the evidence in right perspective. She further contended that the trial has not extended the opportunity to cross-examine the complainant so also to lead the defence evidence of the accused to prove his defence. She also contended that the complainant has totally failed to prove his lending capacity of Rs.2,00,000/- by placing sufficient documents. With these submissions, she prays to allow the revision petition.

10. *Per contra*, learned Amicus Curiae for the respondent contended that the trial Court and the First Appellate Court after meticulously examining the entire evidence on record, passed a well-reasoned judgments which do not call for any interference at the hands of this Court. He



further contended that, in spite of granting sufficient opportunities to the accused, he failed to cross-examine the complainant or to lead any defence evidence. As such, the evidence of the complainant is unchallenged. He also contended that the revision petitioner/accused had not replied the legal notice issued by the complainant. In such circumstance, he failed to rebut the initial presumption arising under Sections 118 and 139 of the N.I. Act. Accordingly, he prays to dismiss the revision petition.

11. As could be gathered from the records, the issuance of the cheque in question and the signature of the accused on the cheque-Ex.P1 is not in dispute. It is the contention of the learned counsel for the revision petitioner that a huge sum of Rs.2,00,000/- as advanced by the complainant by way of cash without executing any documents and the said transaction was not reflected in the income tax return and also the complainant has not stated whether he is an income tax assessee. However, as rightly contended by the learned Amicus Curiae, the accused has neither replied the legal notice issued by the complainant nor examined himself to rebut the initial presumption by placing probable defence. On perusal of the evidence on record,



the accused failed to cross-examine the complainant in spite of granting sufficient opportunities by the trial Court. In such circumstance, the evidence of the complainant is remained unchallenged. Though the complainant has not placed any other documents except Ex.P1-cheque for having lent the amount of Rs.2,00,000/-, that itself is not a ground to discard his testimony since the accused failed to rebut the initial presumption by way of probable defence. Such being the position, I am of the considered view that, both the Courts below have rightly passed the judgments which do not call for any interference at the hands of this Court.

12. The alternative contention of the learned counsel for the petitioner is that the fine amount imposed by the trial Court is exorbitant i.e., the cheque amount is of Rs.2,00,000/- and the fine amount imposed by the trial Court is of Rs.4,05,000/-, which is more than the cheque amount. Hence, she prays to impose a reasonable fine amount. In the peculiar facts and circumstances of the case, considering the aspect that the accused neither cross-examined the complainant nor led the defence evidence, in my considered view, the fine amount imposed by the trial Court which was upheld by the First



Appellate Court is required to be modified/reduced.

Accordingly, I proceed to pass the following:

ORDER

- i. The Criminal Revision petition is ***allowed in part.***
- ii. The judgment of conviction dated 06.03.2019 passed by the Court of IV Addl. Civil Judge and JMFC, Udupi in C.C.No.1859/2016, which was confirmed by the First Appellate Court i.e., Principal District and Sessions Judge, Udupi in CrI.A.No.67/2019 dated 02.01.2021 is hereby modified.
- iii. The revision petitioner/accused shall pay the fine of Rs.3,05,000/- instead of Rs.4,05,000/- as imposed by the trial Court and in default of payment of fine, he shall undergo simple imprisonment for a period of six months.
- iv. Out of the said fine amount, Rs.3,00,000/- shall be paid to the complainant as compensation and remaining Rs.5,000/- shall be submitted to the State Treasury.



- v. The Registry is directed to send the trial Court records along with the copy of this order to the concerned Court, forthwith.
- vi. The KSLA/Registry is directed to pay a sum of Rs.15,000/- as honorary to the learned Amicus Curiae, Sri K.C. Nithin Gowda, for assisting the Court in this revision petition.

SD/-
(RAJESH RAI K)
JUDGE

HKV
List No.: 1 Sl No.: 7