

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 15TH DAY OF OCTOBER, 2024****BEFORE****THE HON'BLE MR JUSTICE V SRISHANANDA****CRIMINAL REVISION PETITION NO. 1103 OF 2024****Between:**

Smt. Vaishnavi C.R.
W/o Kiran G.S., D/o Rajaram
Aged about 34 years
R/at No.196, Raja Nivasa
A-1 Block, 10th Cross
IIIrd Main, Vijayanagara
III Stage, Mysuru – 570017

Also R/at C/o Rajaram
R/at No.11, 5th Cross
1st Stage, Gokulam
Mysuru – 570002

...Petitioner

(By Sri Ramesha K.R., Advocate)

And:

Smt. Dr. K.Krishna Kumari
W/o S.Krishna
Aged about 61 years
R/at Door No.2606
5th Cross, 18th Main
II Stage, Vijayanagara
Mysuru – 570017.

...Respondent

(By Sri Milash Arrol Noronha, Advocate)

This Criminal Revision Petition is filed under section 397 read with 401 Cr.P.C., praying to set aside the judgment / order dated 11.07.2024 passed by the learned IV Additional District and Sessions Judge, Mysuru in CrI.A.No.36/2024 in



confirming the judgment and sentence dated 23.11.2022 passed by the Learned V JMFC, Mysuru in C.C.No.1383/2021 and convicted the petitioner in the above case.

This Criminal Revision Petition, coming on for admission, this day, order was made therein as under:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri Ramesha K R, learned counsel for the revision petitioner/accused and Sri Milash Arrol Noronha, learned counsel for the respondent/complainant.

2. The accused who suffered an order of conviction for the offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.1383/2021 and ordered to pay a sum of Rs.8,10,000/- out of which Rs.8,05,000/- is ordered to be paid as compensation and balance sum of Rs.5,000/- towards defraying expenses of the State, which was confirmed in Criminal Appeal No.36/2024, has preferred the present revision petition.



3. The facts in brief which are necessary for disposal of the revision petition are as under;

A complaint came to be lodged under Section 200 of Cr.P.C., alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act on the ground that the complainant is acquainted with the accused and he borrowed a sum of Rs.8,00,000/- as loan on six occasions from 21.10.2020 to 30.12.2020. The said amount was agreed to be repaid within a period of 2 months along with interest @ 1.5% per month. Despite lapse of two months, the accused did not repay the said amount. Therefore, on demand issued an account payee cheque bearing No.214728 dated 12.03.2021 drawn on Oriental Bank of Commerce, Jayalakshmipuram Branch, Mysuru, in a sum of Rs.8,00,000/- was issued by accused, which on presentation came to be dishonored with an endorsement '*funds*



insufficient'. Notice of dishonor of cheque was issued to the accused. But the registered cover has not been claimed by the accused and therefore the complainant had filed the complaint to take action against the accused.

4. The learned trial Magistrate on completing necessary formalities, took cognizance of the offence under Section 138 of N.I.Act and summoned the accused. The accused entered appearance and engaged the services of an advocate. Plea was recorded. The accused pleaded not guilty. Therefore the trial was held.

5. In order to prove the case of the complainant, complainant got examined herself as PW1 and placed on record 9 documents which are marked as Exs.P1 to P9 comprising of original dishonored cheque, bank memo, copy of the legal notice, postal receipts, unserved postal covers, notice copies and bank account extracts.



6. The accused failed to cross examine PW1 nor placed any rebuttal evidence on record. Therefore learned trial Judge heard the matter on merits and convicted the accused and imposed sentence as referred to supra.

7. Being aggrieved by the same, the accused preferred an appeal in Crl.A.No.57/2023. Learned Judge in the first appellate court accepting the reasons and the grounds urged in the said appeal memo allowed the appeal and permitted the accused to cross examine PW1 and conclude trial in a time bound manner. Despite obtaining such an order, the accused failed to cross examine PW1 nor further participated in the trial, thereby learned trial Magistrate was constrained to pass the order convicting the accused.

8. Being aggrieved by the same, the accused again preferred an appeal before the District Court in Crl.A.No.36/2024.



9. Learned judge in the first appellate court after securing the records and hearing the parties in detail and dismissed the appeal of the accused. Being aggrieved by the same the accused is before this Court in this revision petition.

10. Sri Ramesha K R, learned counsel for the petitioner reiterating the grounds urged in the revision petition, vehemently contended that there was no sufficient and proper opportunity granted to the accused to participate in the trial resulting in miscarriage of justice and sought for remitting the matter to the trial court for fresh disposal.

11. In support of his contention, he placed on record the judgment of the Hon'ble Apex Court in the case of ***Dr. Jainendrakumar Vijaykumar Badjate vs. State of Maharashtra***¹ wherein it is held as under:

¹ AIR 1990 SUPREME COURT 1224



"2. We find that Criminal Appeal No.24 of 1986 has been decided without the learned counsel of the appellant (accused) who was appointed by the Court not being present. We do not wish to enter into the question as to why the counsel was not present. That is a matter which can be considered by appropriate authorities, if they think fit. In the circumstances, however, we set aside the judgment of the High Court and direct that Criminal Appeal No.25 of 1986 shall be heard afresh by the High Court. The appellant states that he will engage his own counsel at his own costs."

12. Per contra, Sri Milash Arrol Noronha, learned counsel for the respondent/complainant supported the impugned order by contending that when once an opportunity was granted by the first appellate court in Crl.A.No.57/2023, the accused should have been diligent in utilizing such opportunity and participated in the trial. But absolutely there is no reason forth coming on record muchless good reason for not participating



in the trial after the remand order passed in Crl.A.No.57/2023. Therefore the accused cannot complain before this court that there was no sufficient opportunity granted to the accused and sought for dismissal of the revision petition.

13. Having heard learned counsel for the parties, this court perused the material on record meticulously.

14. On such perusal of the material on record, it is crystal clear that the accused suffered an order of conviction on an earlier occasion which was subject matter of the appeal in Crl.A.No.57/2023. Learned Judge in the first appellate court accepted the contentions urged on behalf of the accused and remitted the matter to the trial Magistrate for fresh disposal in accordance with law.



15. Even after said order of remand, the accused did not participate in the trial and cross examine PW1 nor placed any defence evidence on record.

16. Under such circumstances, learned trial Magistrate was constrained to pass judgment on 23.11.2022 convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and imposing fine of Rs.8,10,000/- against the cheque amount of Rs.8,00,000/-.

17. Learned Judge in the first appellate court re-appreciated the said aspect of the matter and has rightly rejected the appeal filed by accused.

18. This court having perused the material on record noted that there was no challenge in statement made by the complainant on oath and no defence evidence, the trial Magistrate therefore



justified in raising presumption available to the complainant under Section 139 of N.I.Act and convicted the accused is just and proper which has been rightly re-appreciated by the learned Judge in the first appellate court.

19. Insofar as principles of law enunciated in the judgment of the Hon'ble Apex Court in the case of Dr. Jainendrakumar as referred to supra is concerned, same has no application in the facts and circumstances of the case inasmuch as in the case on hand a opportunity granted to accused was willfully not utilized by the accused.

20. Thus viewed from any angle, this court does not find any grounds whatsoever much less good ground to admit the petition for further consideration.

21. For the foregoing reasons the following order is passed:



ORDER

The grounds urged in revision petition are merit less. Accordingly admission is declined. Consequently revision petition is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

KMV
List No.: 1 Sl No.: 60