

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 30TH DAY OF NOVEMBER, 2012

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

CRIMINAL REVISION PETITION No.2278 OF 2009

BETWEEN:

CHANDRASHEKHAR GANGAPPA DEMATTI
AGE 46 YEARS, OCC: BUSINESS
R/O SHEREGAR GALLI,
GURUVARAPETH, KITTUR-591 115
TQ:BAILHONGAL DIST BELGAUM

... PETITIONER

(By Sri. SRINAND A PACHHAPURE ADV.)

AND:

AMBIKA TRADING COMPANY
A PROPRIETARY BY ITS SPECIAL
P.A HOLDER, SRI VIJAY CHAUDARY
AGE MAJOR, OCC: BUSINESS,
R/O Bahrath Nagar, BELGAUM

... RESPONDENT

(By SMT. HEMALEKHA ADV. FOR
Sri. G BALAKRISHNA SHAstry ADV.)

THIS CRL.RP FILED U/S.397 R/W. 401 OF CR.P.C BY
THE ADVOCATE FOR THE PETITIONER PRAYING THAT
THIS HON'BLE COURT MAY BE PLEASED TO CALL FOR
RECORDS FROM COURTS BELOW AND SET ASIDE THE
JUDGMENT AND ORDER DATED 11/09/2009 PASSED BY

THE V ADDL. DISTRICT AND SESSIONS JUDGE,
BELGAUM, IN CRIMINAL APPEAL NO.181/2008 BY
CONFIRMING THE ORDER DATED 11.9.2008 PASSED BY
THE JMFC III COURT BELGAUM IN C.C.NO.521/2002.

This revision petition coming on for *Final Hearing* this day, the Court made the following:

O R D E R

There are concurrent findings of courts below
that accused has committed an offence punishable
under Section 138 of the N.I.Act.

2. I have heard learned counsel for parties.

3. In view of concurrent findings recorded by
the courts below, this Court in exercise of powers
under Section 401 of the Code of Criminal
Procedure cannot sit in second appeal. This court
can exercise revisional powers to interfere with
the orders of courts below if there is gross
miscarriage of justice and there is no evidence to
support the conviction at all.

4. The accused has not disputed that the cheque in question belonged to him. In the reply notice, he has stated that the cheque book which contained cheque in question was lost by him somewhere in the year 2000. He has not stated when and where he had lost the cheque. The accused had not lodged any complaint after losing cheque book. Even he had not intimated his banker to stop payment if alleged lost cheques were presented.

5. In the reply notice, accused has stated that complainant was a stranger to him. The complainant having come in possession of cheque book, misused the cheque to hoist a complaint against accused. During trial, accused has come out with a different story.

6. During trial, accused has sought to establish that cheque is not supported by

consideration. There were transactions between accused and complaint. The accused used to purchase art silk (Rayon) from complainant on cash basis. He had not purchased Art (Rayon) from complainant on cash basis. The accused had also made an unsuccessful attempt to establish that accused and his elder brother were together carrying on business after division of family properties, the amount due to complainant was paid by elder brother of accused.

7. Under Section 118 of the N.I.Act, there is a presumption that *the holder of a negotiable instrument is a holder in due course*. Under Section 139 of N.I. Act, it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

8. It is for the accused to rebut the presumption available in favour of complainant under Section 139 of N.I.Act. The accused can adduce evidence to rebut such presumption or he may rebut such presumption by depending on evidence adduced by complainant.

9. The complainant has adduced evidence to prove that there was transaction between accused and complainant and accused was purchasing Rayon from the shop of complainant on credit basis. The complainant has also produced statement of accounts to show that accused was purchasing Rayon on credit basis. The accused to rebut presumption available in favor of complainant has produced certain receipts which relate to the year 1999. The accused has failed to explain the circumstances under which the cheque, which admittedly belonged to accused, had

reached the hands of complainant. The accused has failed to rebut the presumption available in favour of complainant under Section 139 of N.I.Act.

10. In the circumstances, it is not possible to hold that the concurrent findings of courts below are based on no evidence. It is also not possible to hold that approach of courts below is perverse and illegal and the same has lead to miscarriage of justice.

11. There are no reasons to interfere with the impugned judgment. The revision petition is accordingly dismissed.

Sd/-
JUDGE

RK/-