

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**DATED THIS THE 29TH DAY OF JUNE 2012**

**BEFORE**

**THE HON'BLE MR. JUSTICE ANAND BYRAREDDY**

**CRIMINAL REVISION PETITION No.525 OF 2007**

BETWEEN :

Sri. B.A.Ravishankar,  
Son of Sri.Annaiah Setty,  
Aged about 33 years,  
Residing at A.K. Gopal Colony,  
Opposite M.V.J. College,  
Channasandra Main Road,  
Kadugodi Post,  
Bangalore-560 067.

...PETITIONER

( By Shri. Giridhar .H, Advocate  
for M/s. Bopanna and Giri, Advocates )

AND:

Sri. A. Ramaswamy,  
Aged about 53 years,  
Son of Sri.N. Appanna,  
Residing at Nagondanahalli,  
Near Flour Mill,  
Whitefield Post,  
Bangalore-560 067.

...RESPONDENT

( By Shri. B.J.Janardhana Reddy, Advocate )

This Criminal Revision Petition is filed under Section 397

Criminal Procedure Code, 1973, by the advocate for the petitioner praying that this Hon'ble Court may be pleased to set aside the judgment and order dated 24.11.2006 made by the Judge, Fast Track Court-II, Bangalore City in Criminal Appeal No.719/2004 confirming the order of conviction of the petitioner for the offence under Section 138 of N.I.Act by the XIV Additional Chief Metropolitan Magistrate, Bangalore, in C.C.No.27158/2002 on 2.8.2004.

This Criminal Revision Petition is coming on for Admission, this day, the court made the following:

**ORDER**

Heard the learned counsel for the petitioner. The petition is considered at the stage of admission having regard to the facts and circumstances.

2. The petitioner was accused before the Trial Court whereby an offence punishable under Section 138 of the Negotiable Instruments Act, 1880 (hereinafter referred to as "the Act", for brevity) was alleged. It was the case of the complainant that the accused had issued a cheque, dated 25 July 2002, for the sum of Rs.1,45,000/- drawn on UTI Bank, Magrath Road, Bangalore. When it was presented for encashment to the complainant banker, the same was returned with an endorsement that there was insufficient funds and payment had

been stopped by the drawer. After receipt of the endorsement, the complainant had issued statutory notice as contemplated under Section 138 of the Act and it followed up to the complaint since the accused had failed to comply the demand. The matter having been contested and the evidence tendered by the parties, the Court below had framed the following points for consideration:

1. Whether the complainant proves beyond reasonable doubt that the accused had issued a cheque for a sum of Rs.1,45,000/- dated 25.7.2002 bearing No.214311/560211002 drawn on UTI Bank, Magarath Road, Bangalore, in favour of the complainant.
2. Whether the complainant proves beyond reasonable doubt that he presented the cheque for encashment before his banker within time and it was returned as Insufficient Funds.
3. Whether the complainant proves beyond reasonable doubt that after receipt of the dishonour of cheque, he gave legal notice to the accused as required under Sec.138(b) of N.I. Act.

4. Whether the complainant proves beyond reasonable doubt that after receipt of the notice, the accused failed to pay the cheque amount within 15 days from the date of the said notice.

5. What order.

3. The Court below had answered all the above points in the affirmative and convicted the accused for the offence punishable under Section 138 of the Act and sentenced the petitioner to pay a fine of Rs.1,65,000/- out of which Rs.1,60,000/- was to be paid as compensation. That having been challenged in appeal, the Appellate Court had affirmed the findings of the Trial Court. It is that, which is challenged in the present petition.

4. The learned counsel while taking this Court through the record, since this Court expressed that it was not a fit case for admission, the counsel was heard at length on the grounds urged in the petition. The learned counsel for the petitioner would seek to urge that there was no consideration for the cheque amount that was indicated. The respondent had failed to discharge the

initial burden of establishing that there was a transaction in respect of the discharge of the liability under the said transaction which is said to have taken place. In the absence of which, it was not open for the petitioner to have claimed any such legally enforceable debt. The Courts below having overlooked this basic requirement, of the existence of legal liability, it cannot be said that the Courts were justified in accepting the case of the complainant. The very capacity of the complainant to have parted with such money itself is in doubt and that having been raised as a challenge to the respondent, there was no effort to establish that the respondent had the means to lend such amounts of money. The primary circumstance that the cheque had been signed and delivered in blank as security in respect of certain chit transaction between the brother of the petitioner and the wife of the respondent and that has been misused, has been negated by the Courts below and same circumstance having been confronted to the respondent in the course of the proceedings, the burden did shift on the respondent insofar as the establishment of the liability was concerned. The Courts below, however, have misconstrued the scope and effect of

Section 139 of the Act in negating the contention of the petitioner that the presumption under Section 139 of the Act stood rebutted, and therefore, the burden had shifted to the respondent to establish the legal liability. The petitioner having produced exhibits D1 to D7, which are the correspondence with the Banker of the petitioner and other correspondence exchanged as to the absence of any liability at the earliest point of time, have been lightly negated by the Courts below, and therefore, the conduct of the petitioner in having stopped the payment of the cheque which was issued in blank prevent the very mischief that was sought to be perpetrated by respondent-complainant in seeking to encash the cheque whereby the Courts below have not taken into account this point and the very handwriting on the cheque, whereby the details are indicated are also seriously challenged by the petitioner, the Court below have not thought it fit to refer the matter to handwriting expert and having embarked on a finding as to the correctness of the details found therein which have been interpolated by the respondent, results in a grave miscarriage of justice. These are all contentions which are urged by the petitioner before both the

Courts below and it cannot be said that the reasoning assigned by the Courts below is found faulting in silly manner. A close examination of the case would indicate that the Courts below have rightly applied the established principles of law in addressing the rival contentions and legal issues that are raised. There is one aspect, however, that require consideration. The Courts below have thought it fit to impose punishment of payment of fine as well as directing imprisonment of the petitioner. This exercise, of not only directing payment of fine on the cheque amount and convicting the petitioner to imprisonment, may indeed, result in the petitioner being punished twice over default.

5. The cheque amount was for a sum of Rs.1,45,000/-. The fine imposed is Rs.1,65,000/- and it is also directed that out of which Rs.1,60,000/- be paid as compensation to the respondent-complainant. Purportedly it is to compensate the respondent by way of interest on the cheque amount that the additional amount is directed to be paid as compensation over and above the cheque amount. If the date of cheque is taken

into consideration and even if nominal interest is calculated on the amount, as on date the interest payable on the cheque amount, is substantial. The fine amount, therefore, directed to be paid as compensation does not really compensate the respondent insofar as the interest that would have accrued on the amount, the illegal benefit of which apparently, was the petitioner. However, since the petitioner is before this Court, it would be improbable to enhance the fine. The petition, however, is dismissed as having no merits.

**Sd/-  
JUDGE**

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