

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF JANUARY 2014

BEFORE

THE HON'BLE MR.JUSTICE PRADEEP D. WAINGANKAR

CRIMINAL REVISION PETITION NO.526/2009

BETWEEN:

1. M/S VADIRAJ PHARMACEUTICAL
DISTRIBUTORS, A REGISTERED FIRM
REPRESENTED BY ITS PARTNER
S. SURESH SHET, HAVING ITS OFFICE
AT VADIRAJ COMPLEX
1ST FLOOR, KADRI
MANGALORE.
2. SRI SURESH SHET
SON OF LATE SANJEEV SHET
AGED ABOUT 59 YEARS
RESIDING AT VADIRAJ
SHIVABAGH ROAD, KADRI
MANGALORE CITY 575 003.

...PETITIONERS

(BY SRI. B. SHARATH KUMAR, ADV.,)

AND:

MRS. SHYAMALA VENUGOPAL
WIFE OF P. VENUGOPAL
AGED ABOUT 43 YEARS
RESIDING AT APT. B, 1ST FLOOR
M.C.P.L. COMPLEX, FALNIR
MANGALORE-2.
REPRESENTED BY HER GENERAL
POWER OF ATTORNEY P.VENUGOPAL
AGED ABOUT 50 YEARS
SON OF LATE DR. N.S. MENDON.

... RESPONDENT

(SERVED AND UNREPRESENTED)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 3.12.2003 PASSED IN CASE C.C. NO. 30/2001 ON THE FILE OF THE JMFC-IV COURT, MANGALORE AND ALSO THE ORDER DATED 24.3.2009 PASSED IN CRL.A 2/2004 ON THE FILE OF THE II-ADDL. SESSIONS JUDGE, DAKSHINA KANNADA, MANGALORE AND DISMISS THE COMPLAINT GRANTING COSTS TO THE PETITIONER AND ALSO GRANT TO THE PETITIONER SUCH OTHER AND FURTHER RELIEFS THAT MAY BE DEEMED NECESSARY TO MEET THE END OF JUSTICE.

THIS CRL.RP HAVING BEEN HEARD AND RESERVED FOR PRONOUNCEMENT OF ORDERS, THIS DAY, **PRADEEP D. WAINGANKAR J.**, PRONOUNCED THE FOLLOWING

O R D E R

In this Criminal Revision Petition under Section 397 r/w Section 401 of Cr.P.C., the petitioners have called in question the order dated 24.03.2009 in Criminal Appeal No.2/2004 on the file of the II Additional Sessions Judge, Dakshina Kannada, Mangalore and order dated 03.12.2003 in C.C.No.30/2001 on the file of the JMFC (IV-Court), Mangalore.

2. The revision petitioners herein were the accused before the Magistrate in C.C.No.30/2001 and the respondent was the complainant. The complainant filed a complaint before the Magistrate contending that the complainant-Smt. Shyamala Venugopal had deposited a sum of Rs.1,00,000/- with the accused No.1-a Registered Partnership Firm represented by accused No.2-S.Suresh Shet, who is a partner, on 19.01.1996, for which the accused issued a receipt No.8686 in favour of the complainant. The accused had agreed to pay the interest thereon at the rate of 24% per annum to the complainant every month. The accused No.2-S.Suresh Shet has been paying the interest every month till 18.06.1997. Thereafter, he failed to pay the interest. As such, the complainant demanded the return of the entire deposit amount with interest. Ultimately, in the first week of November 1997, the accused agreed to repay a sum of Rs.1,10,000/- towards the deposit and interest till the period of 18.11.1997. Accordingly, accused issued a cheque for

Rs.1,10,000/-, dated 19.11.1997 drawn on Karnataka Bank, Pachanady branch, Mangalore, in favour of the complainant with representation that the cheque would be honoured when presented for encashment. The complainant presented the cheque for encashment through her bank on 19.11.1997, which came to be dishonoured for the reason "Exceeds Arrangement". Thereafter, on 26.11.1997, the complainant received a letter from accused No.2 expressing his inability to mobilize the funds on 19.11.1997 and he sought for one month's time for repayment of amount and had also asked the complainant to represent the cheque for honour once again on 19.12.1997 along with another cheque for Rs.2,000/-, dated 17.12.1997 given to the complainant towards interest for a period of one month. The complainant again presented both the cheques for collection through Karnataka Bank, Pachanady Branch, Mangalore. Both the cheques came to be dishonoured on presentation for the reasons "Operation Stopped". Since both the cheques were dishonoured, the

complainant got issued a legal notice to the accused on 24.12.1997 enlightening him about the dishonour of the cheques. The notice was served upon the accused on 27.12.1997. However, the accused have failed to pay the cheque amount in response to the legal notice. As such, the complainant filed a complaint against the accused for the offence under Section 138 of N.I. Act. The accused having pleaded not guilty to the charge, the complainant examined her Power of Attorney Holder and husband-P.Venugopal as PW1 and 3 other witnesses as PW2 to PW4. The complainant relied upon as many as 21 documents which were marked as Exs.P1 to P21. The accused No.2-S.Suresh Shet, on the other hand, got himself examined as DW1 and marked Exs.D1 and D2. Upon hearing the counsel appearing for both the parties and on appreciation of the evidence, learned Magistrate by his order 03.12.2003 convicted the accused for the offence punishable under Section 138 of N.I. Act and sentenced to pay a fine of Rs.1,000/- and in default, to undergo Simple Imprisonment for

three months apart from ordering to pay compensation of Rs.1,60,000/- to the complainant. Aggrieved by the judgment of conviction and sentence passed by the Magistrate, an appeal was preferred by the accused in Criminal Appeal No.2/2001 on the file of II Additional Sessions Judge, Dakshina Kannada, Mangalore. The learned Sessions Judge upon re-appreciation of evidence by his order dated 24.03.2009 dismissed the appeal while confirming the judgment of conviction and sentence passed by the Magistrate.

3. Questioning the legality and correctness of the orders passed by both the Courts below, this revision petition is preferred.

4. Upon hearing the learned counsel for the petitioners and learned counsel for the respondent and upon perusal of the records, the point that arises for my consideration is:

“Whether the judgment of conviction and sentence challenged herein calls for my interference?”

5. My finding is in the negative for the following reasons.

6. The entire case made out by the complainant in her complaint before the Magistrate is borne out from the documentary evidence apart from the oral evidence of PW1-the Power of Attorney Holder of the complainant, who is none other than her husband. Apart from the oral evidence of PW1, the complainant has produced all the necessary documents to constitute an offence under Section 138 of N.I. Act. Ex.P1 is the General Power of Attorney executed by the complainant-Shyamala Venugopal in favour of her husband-P.Venugopal in order to conduct this case in Court of law. Ex.P3 is a Certificate dated 15.10.2001 issued by the Central Bank of India, Kaprigudda Branch, Mangalore, wherein it is stated that a cheque drawn by Mrs. Shyamala Venugopal and Mr. P. Venugopal, OD A/c No.3, cheque bearing No.4742 for M/s. Vadiraja Pharmaceutical Distributors, has been debited to the Account on

20.01.1996 and paid through clearing. Ex.P4 is the Passbook issued by the Central Bank of India to show that the complainant-Shyamala Venugopal and her husband-P.Venugopal had joint Account in the Central Bank of India. Ex.P5 is a deposit receipt issued by accused No.1-M/s. Vadiraj Pharmaceutical Distributors, on 19.01.996 for having received an amount of Rs.1,00,000/- from the complainant. Ex.P6 and Ex.P8 are the two cheques issued by partners of accused No.1 for Rs.1,10,000/- and for Rs.2,00,000/- dated 19.11.1997 and 17.12.1997 respectively in favour of the complainant-Shyamala Venugopal. Ex.P7 is the Bank memo issued by Karnataka Bank for having dishonoured the cheque. Ex.P9 is the letter addressed to the complainant by the accused seeking time to arrange the funds after cheques came to be dishonoured on presentation for the first time. Ex.P10 is the RPAD cover wherein the notice as per Ex.P9 was received by the complainant. Ex.P11 is the Bank memo to show both the cheques were again dishonoured.

Ex.P12 and P13 is the Debited Advice pertaining to the dishonour of both the cheques. Ex.P14 is the office copy of the legal notice issued to the accused on behalf of the complainant in forming the factum of dishonour of the cheque and calling upon the accused to pay the cheque amount within the stipulated period of time. Ex.P15(a) is a Postal Acknowledgment by the accused for having received the legal notice sent by RPAD. Ex.P16 is a Postal Acknowledgment for having sent the very same notice by Under Certificate of Posting. Apart from the evidence of PW1 and all these documentary evidence, the complainant has also examined her concerned Bank Manager. Thus, the evidence placed on record by the complainant both oral and documentary is sufficient to hold that the accused committed an offence punishable under Section 138 of N.I. Act. Learned Magistrate upon going through the oral and documentary evidence has rightly convicted the accused for the offence punishable under Section 138 of N.I. Act by his judgment dated 03.12.2003. Learned Magistrate

also on re-appreciation of the entire evidence agreed with the conclusion reached by the Magistrate and thereby dismissed the appeal. The findings of both the Courts below are based on the evidence on record, as such question of interfering with the impugned judgment of conviction and sentence by this Court does not arise. There is no merit in the revision petition.

Hence, Criminal Revision Petition is **dismissed**.

Sd/-
JUDGE

PMR