

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2021

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL APPEAL NO. 604 OF 2021

BETWEEN:

Sri. Smith Ollukaran Joseph
S/o O.L. Joseph
Aged about 44 years
R/at No.44/1, 8th Cross
Swimming Pool Extension
Malleswaram
Bengaluru – 560003.

...Appellant

(By Sri. Madhusudhan .N, Advocate for
Smt. T.R. Rajeshwari - Advocate)

AND:

Sri. R. Venkatesh
S/o A. Ramana
Aged about 42 years
R/at No.34, 'E' Main, 4th Cross
Muneshwara Block
Near Makalamaramma Temple
Palace Guttahalli
Malleswaram
Bengaluru – 560 003.

...Respondent

This Criminal Appeal is filed under Section 377 of Cr.P.C praying to set aside the impugned judgment dated 29.02.2020 passed by the XIII-Addl. Chief Metropolitan Magistrate, Bangalore in C.C.No.23051/2017 and consequently convict the respondent for the offence punishable under Sec.138 of N.I. Act.

This Criminal Appeal coming on for Orders, through video conference this day, the Court delivered the following:

J U D G M E N T

Learned counsel Shri Madhusudan N. appears for the appellant through video conferencing and represents the counsel Smt. T.R. Rajeshwari who is on record for the appellant.

2. This appeal is filed by Sri. Smith Ollukaran Joseph who is the appellant herein challenging the judgment of conviction and order of sentence rendered by the Trial Court in C.C.No.23051/2017 dated 29.02.2020 whereby the accused is convicted for offences punishable under Section 138 of the NI Act, which is incorporated in the operative portion of the

order. The appellant herein has initiated the present appeal being aggrieved by the order dated 29.02.2020 passed by the Trial Court in C.C.No.23051/2017 partly convicting the appellant for offences under Section 138 of the NI Act and sentencing him to pay a fine of Rs.1,00,000/-.

3. When once the conviction judgment has been rendered by the Trial Court, it is the jurisdiction vested with the next appellate court to entertain an appeal. But the appellant without approaching the next appellate court, has approached this court challenging the judgment of conviction and order of sentence for offences under Section 138 of the NI Act.

4. Hence, the office has raised an objection regarding maintainability of the present appeal before this court. Hence, the question of maintainability of the present appeal before this court is the moot point for consideration in the present appeal.

The appellant in the first instance, ought to have challenged the judgment of conviction and order of sentence before the jurisdictional court having power or domain to entertain the appeal, since the present appeal would only be maintained before the next jurisdictional appellate court and not before this court.

5. Hence, the learned counsel for the appellant seeks to withdraw this appeal with liberty to approach the jurisdictional appellate court in accordance with the relevant provisions of the Cr.P.C. He further submits that the delay which has occurred by the appellant not approaching the jurisdictional appellate court at the first instance, may be condoned.

6. The submission made by the learned counsel is placed on record. The appellant is permitted to withdraw the appeal as not pressed. Consequently, the learned counsel for the appellant is permitted to file the said appeal before the jurisdictional First Appellate

Court having jurisdiction to entertain the appeal at the first point of time for the offences punishable under Section 138 of the NI Act. If the appellant files necessary application in accordance with law seeking condonation of delay, the same may be considered by the said court, in accordance with law.

7. Accordingly, the appeal is disposed of.

8. Registry is directed to return the entire appeal papers to the appellant with due identification, for him to approach the First Appellate Court having jurisdiction to deal with this matter.

**Sd/-
JUDGE**

KS