

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE N.K. SUDHINDRARAO

CRIMINAL REVISION PETITION No.772/2017

BETWEEN:

SRI. N. JAGADEESH,
S/O LATE S. NAGARAJA RAO,
AGED ABOUT 64 YEARS,
MIG-19 APARTMENTS,
B. LALITHA NAYAK LAYOUT,
M.C.ROAD, MANDYA-571 401

..PETITIONER

(BY SMT.SMITHA PRAKASH, ADVOCATE
FOR SRI.G.R.PRAKASH, ADVOCATE)

AND:

SMT. P.A. CHONDAMMA
W/O LATE PK AIYANNA
AGED 57 YEARS
C/O CHALUVAIAH COMPOUND,
III CROSS, ASHOKNAGAR,
MANDYA-571 401

..RESPONDENT

(BY SRI.VEERESHA K., ADVOCATE
FOR SRI.H.B.CHANDRASHEKAR, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S
397 R/W SECTION 401 CR.P.C. BY THE ADVOCATE FOR
THE PETITIONER PRAYING TO SET ASIDE THE JUDGMENT
DATED 25.03.2017 IN CRIMINAL APPEAL No.18/2016
PARTIALLY MODIFYING/UPHOLDING THE JUDGMENT

DATED 11.02.2016 PASSED IN C.C.NO. 973/2009 ON THE FILE OF PRL. CIVIL JUDGE AND J.M.F.C., MANDYA AND BE PLEASED TO ACQUIT THE PETITIONER OF THE ALLEGED OFFENCES BY ALLOWING THE ABOVE REVISION PETITION.

THIS CRIMINAL REVISION PETITION COMING ON FOR FURTHER DICTATION THIS DAY THROUGH VIDEO CONFERENCING, THE COURT MADE THE FOLLOWING:

ORDER

This Criminal Revision Petition is filed by the petitioner under Section 397 read with Section 401 of Cr.P.C. aggrieved by the judgment dated 25.03.2017 in CrI.A.No.18/2016 passed by the V Additional District and Sessions Judge, Mandya, partially modifying the judgment dated 11.02.2016 passed by the Principal Civil Judge and JMFC, Mandya, in C.C.No.973/2009.

2. Heard learned counsel for petitioner through VC and learned counsel for respondent who appeared before court.

3. In order to avoid confusion and overlapping, parties are addressed in accordance with their ranks and status before the trial Court.

4. The substance of the complaint is extracted from the certified copy of the Judgment of the trial Court which reads as under:

"Accused was working as a Post Master in Post office, Mandya and he is known to the complainant, since from the date when her husband was alive. In order to meet the marriage expenses of his daughter, accused has approached this complainant seeking loan of Rs.1,50,000/-. Accordingly, during the 2nd week of June 2008, complainant lent Rs.1,50,000/- to the accused, to be paid at the interest of Rs.1.5% p.m. and in turn the accused has promised to repay the loan within 5-6 months. Later on, accused failed to fulfill his promise and when the complainant demanded him for money, he did not

turned up, but he has issued a cheque for Rs.1,50,000/- on 24/12/2008 bearing No.849484, drawn on Indian Bank, Mandya branch. As per the request of the accused, complainant has presented the cheque after a week, but it came to be dishonoured as insufficient funds through Syndicate Bank, Mandya Branch. When this was communicated to the accused, he did not respond and hence, complainant issued a legal notice on 16/01/2009, but no payment was made within stipulated time. Rather, accused has issued reply notice stating that, the said cheque was lost by him and the same was misused by this complainant. Accused failed to repay the loan amount within 15 days from the date of service of notice. Thereby, accused has committed an offence punishable under Section 138 of N.I. Act. Hence, complainant has filed this case against the accused."

5. After receipt of summons the accused appeared through his counsel.

6. The learned trial Judge was accommodated with oral and documentary evidence as under:

PW-1-P.A.Chondamma
DW-1-N.Jagadeesh

Ex.P-1-Cheque
Ex.P-1(a)- Signature of the accused
Ex.P-2 to P-4- Endorsements issued by the bank authorities.
Ex.P-5- Copy of the legal notice
Ex.P-5(a)- Postal receipt
Ex.P-6-Postal acknowledgements
Ex.P-7- Reply notice.

Ex.D-1- Complaint given by the accused before police station.

Ex.D-2-Endorsement issued by Sub-Inspector of police.

Ex.D-3-Letter given by accused to the Manager of Indian bank.

7. The complainant herself got examined as P.W.1 and she produced seven documents which were marked as Exs.P.1 to P.7. Accused got himself examined as D.W.1 and he produced three documents which were marked as Exs.D.1 to D.3.

8. Upon conclusion of trial, learned trial Judge found the accused guilty and convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.50,000/-. In default to pay fine amount, to undergo simple imprisonment for two months. Accused was directed to pay a compensation of Rs.1,00,000/- and cheque amount of Rs.1,50,000/- to the complainant.

9. Being aggrieved accused preferred criminal appeal No.18/2016 and learned appellate court modified the order of sentence passed by the trial court as under:

The order of sentence of simple imprisonment of one year passed by the trial court is hereby set aside.

The appellant/accused is hereby sentenced to pay a fine of Rs.3,05,000/- in default of pay a fine accused shall undergo simple imprisonment for six months. Out of the fine amount if recovered Rs.3,00,000/- shall be paid to the complainant and Rs.5,000/- shall be confiscated to the state."

10. Being aggrieved, the accused has presented this revision petition.

11. Learned counsel for petitioner Smt.Smitha Prakash submits that the accused is a Central Government employee and complainant is a house wife and has no financial capacity to lend the amount of Rs.1,50,000/- nor the accused has borrowed any amount from her. It is also urged that while traveling in the bus, the cheque was lost. She further submitted that when complainant's husband was alive accused person was visiting their house as he resided

at Swarna Sandra colony, Mandya and previously he was residing at Lalitha Nayak extension. Even the signature is also denied by the accused. Further, the cheque is stated to have been lost when he was traveling in a bus and he has also lodged a complaint stating that his pass book and cheque book were lost.

12. Learned counsel for complainant/respondent denies the submission made by the learned counsel for petitioner and submits that the issuance of cheque is technically admitted and accused is taking inconsistent plea.

13. In this connection, it is the loss of cheque book and pass book that is pleaded. If the accused was operating the account, he should have led the evidence regarding obtaining of fresh pass book and cheque book. If the entire cheque book was lost he should have brought to the knowledge of the Banker.

The details of the proceedings regarding the complaint or consequences are not stated before the Court.

14. In the meanwhile, learned counsel for accused also submits that an amount of Rs.50,000/- is also deposited before the trial Court and Rs.1,00,000/- before this Court. In the circumstances, the accused having taken up a separate defence should have discharged the burden with reliable and acceptable evidence which did not happen.

15. In the over all circumstances of the case I find the contention of the accused regarding loss of cheque or cheque book while traveling in the bus and in the absence of explanation regarding the same, I find offence under Section 138 of the Negotiable Instruments Act is complete. Further there are no grounds to interfere. However it is necessary to

consider the operative portion of the Judgment passed by the trial court which is as under:

ORDER

The accused is convicted u/s 255(2) of Cr.P.C for the offence punishable u/s 138 of N.I Act.

Accused is sentenced to undergo simple imprisonment for one year and shall pay a fine of Rs.50,000/-. In default to pay fine amount, he shall undergo simple imprisonment for two months.

Acting u/s 357(3) of Cr.P.C accused is hereby directed to pay a compensation of Rs.1,00,000/- and Cheque amount of Rs.1,50,000/- to the complainant.

The fine amount, if paid shall be confiscated to state, after expiry of appeal period."

16. The offence punishable under Section 138 of the Negotiable Instruments Act is punishable with fine

upto double the cheque amount and also imprisonment which may extend to two years or with both.

17. In the facts and circumstances of the case I find the sentence imposed by trial court and modified by appellate court is too harsh and it is necessary to reduce the sentence by confirming the conviction. Thus, accused is sentenced to pay fine of Rs.1,65,000/- out of which Rs.1,60,000/- to be paid in the form of compensation to the complainant and fine of Rs.5,000/- payable to the State. Accordingly the sentence is modified.

In the result, revision petition is partly allowed.

**Sd/-
JUDGE**

Mgn/SBN