



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MS JUSTICE J.M.KHAZI
CRIMINAL APPEAL NO.912 OF 2023

BETWEEN:

SRI. NARENDRA BABU. N
S/O NARASIMHA MURTHY
AGED ABOUT 43 YEARS,
R/AT NO.201, MAHADEVI
RESIDENCY 6TH CROSS,
LB SHASTRINAGAR, HAL POST,
BENGALURU - 560 017

...APPELLANT

(BY SRI. ABHISHEK N V, ADVOCATE)

AND:

SRI. RAJESH
S/O LATE VENKATESH,
AGED ABOUT 33 YEARS,
R/AT NO.235, 3RD CROSS,
NEAR HANUMANTHA TEMPLE,
BILESHIVALE COLONY, HANUMANTHANAGAR
SHIVARAMAKARANTHA NAGAR POST,
BENGALURU - 560 077

...RESPONDENT

Digitally
signed by
REKHA R

Location: High
Court of
Karnataka

THIS CRL.A IS FILED UNDER SECTION 378(4) OF CR.PC
PRAYING TO a) SET ASIDE THE ORDER DATED 21.03.2023,
PASSED BY THE HON'BLE XVI ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, BENGALURU, IN
C.C.NO.26915/2022, DISMISSING THE CASE FOR NON-
PROSECUTION AND ACQUITTING THE ACCUSED AND
CONSEQUENTLY RESTORE THE CASE IN C.C.NO.26915/2022
FOR FURTHER PROCEEDINGS, IN THE INTEREST OF JUSTICE
AND EQUITY; b) PASS ANY SUCH OTHER ORDER OR
DIRECTIONS THAT THIS HON'BLE COURT DEEMS FIT, IN THE
INTEREST OF JUSTICE AND EQUITY.



THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by the complainant, challenging the dismissal of the complaint filed by him against respondent/accused for the offence punishable under Section 138 of N.I.Act, contending that respondent/accused borrowed hand loan of Rs.4,80,000/- and towards repayment of the same issued cheque . When it was presented for encashment, it was dishonoured on the ground "Drawer's signature differs". After issuing legal notice, when respondent/accused failed to pay the amount due, complaint was filed. Without providing reasonable opportunity, the trial Court has dismissed the complaint on the ground that complainant is not diligent in prosecuting the complaint.

2. Heard arguments and perused the record.
3. As evident from the complaint averments and the material placed on record, appellant filed the complaint against respondent/accused for the offence



punishable under Section 138 of N.I. Act. According to him, respondent/accused borrowed a sum of Rs.4,80,000/- and issued the subject cheque. However, when presented for realization, it was returned unpaid on the ground that the signature of the drawer found on the cheque differs from his specimen signature.

4. The order sheet indicate that on 29.04.2022, complaint was filed. On the same day, the learned Magistrate has taken cognizance and posted the case to 22.06.2022, for recording sworn statement. From there it was posted to 02.08.2022. On that date, complainant has given his sworn statement and documents are marked. The trial Court has ordered that there is *prima facie* material to proceed against the respondent/accused and issued summons returnable by 12.10.2022. Though duly served with summons, respondent/accused failed to appear. On that day, the trial Court has referred the matter to Lok Adalath and given the date as 12.11.2022. On 12.11.2022, the conciliation is held and when the matter is not settled, it was sent back to the Court.



5. On 13.01.2023, once again the trial Court has issued summons to the respondent/accused, returnable by 21.02.2023. On that day, once again summons was re-issued returnable by 21.03.2023. However, in the order sheet, it is not noted as to whether the summons is served on the accused or not. After observing that complainant is absent and there is no representation for the complainant, the trial Court has dismissed the complaint for non-prosecution.

6. If on 21.03.2023, the summons was returned unserved, the trial Court ought to have given an opportunity to take further steps against the respondent/accused. In fact on 12.10.2022, when the respondent/accused was served and the case was posted for settlement before the Lok Adalath, there was no need for the trial Court once again to issue summons. It ought to have taken coercive steps against the respondent/accused. In the above facts and circumstances, this Court is of the considered opinion that



the learned Magistrate has erred in dismissing the complaint and as such the impugned order is liable to be set aside and accordingly, I proceed to pass the following:

ORDER

- (i) Appeal is allowed.
- (ii) The impugned judgment and order dated 21.03.2023 passed in C.C.No.26915/2022 on the file of XVI ACMM, Bengaluru is set aside.
- (ii) The complainant is directed to appear before the trial Court on 15.02.2024 without waiting for further notice from the trial Court.
- (iii) The complainant shall take steps against the respondent/accused and the trial Court shall proceed in accordance with law.

Sd/-
JUDGE