



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION No.1360 OF 2016
C/W CRIMINAL REVISION PETITION No.944 OF 2016

IN CRL.RP No.1360/2016

BETWEEN:

1. SRI H T AKASH
S/O. TARESH,
AGED ABOUT 34 YEARS,
R/AT HADIGE VILLAGE AND POST,
HANUBALU HOBLI,
SAKALESHPURA TALUK,
HASSAN DISTRICT -34

...PETITIONER

(BY SRI PRATHEEP K C, ADVOCATE)

AND:

1. DHARNESH
S/O. LATE CHANDRASHEKAR,
AGED ABOUT 39 YEARS,
R/AT CPC COLONY,
BELLEGADDE, SAKALESHPURA,
SAKALESHPURA TALUK,
HASSAN DISTRICT- 34

...RESPONDENT

(BY SRI R SHASHIDHARA, ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 CR.P.C PRAYING TO MODIFY THE JUDGMENT IN C.C.NO.289/2015 ON THE FILE OF CIVIL JUDGE AND JMFC, SAKALESHPURA DATED 01.08.2015 AND JUDGMENT IN CRL.A.NO.135/2015 DATED 01.06.2016 ON THE FILE OF V ADDL. DIST. AND S.J., HASSAN TO THE EXTENT OF QUANTUM OF COMPENSATION GRANTED TO THE PETITIONER AND





SENTENCE RESPONDENT/ACCUSED TO PAY A SUM OF RS.9,40,000/- BEING DOUBLE OF THE CHEQUE AMOUNT.

IN CRL.RP No.944/2016

BETWEEN:

1. MR DHARNESH
S/O LATE CHANDRASHEKAR,
AGED ABOUT 40 YEARS,
R/O CPC COLONY, BELLEGADDE,
SAKALESH PURA TALUK,
HASSAN DISTRICT - 573 201.

...PETITIONER

(BY SRI SHASHIDHARA R, ADVOCATE)

AND:

1. MR H T AKASH
S/O TARESH,
AGED ABOUT 34 YEARS,
R/O HADIGE VILLAGE AND POST,
HANUBALLU HOBLI,
SAKALESH PURA TALUK,
HASSAN DISTRICT - 573 201.

...RESPONDENT

(BY SRI PRATHEEP K C, ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION PASSED BY THE CIVIL JUDGE AND JMFC AND SAKALESH PURA IN C.C.NO.289/2013 DATED 01.08.2015 VIDE ANNEXURE-A AND SET ASIDE THE JUDGMENT DATED 01.06.2016 PASSED BY THE V ADDL. DIST. AND S.J., AT HASSAN IN CRL.A.NO.135/2015 DATED AND CONSEQUENTLY ALLOW THIS APPEAL AND PASS AN ORDER OF ACQUITTAL OF THE PETITIONER.

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL ORDER

These two revision petitions are filed by the accused and the complainant respectively, challenging the Order passed in C.C.No.289/2013 dated 01.08.2015 on the file of the Civil Judge and JMFC, Sakaleshpura, confirmed in Crl.A.No.135/2015 dated 01.06.2016 on the file of the V Addl. District and Sessions Judge, Hassan, whereby, accused has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to pay fine of Rs.4,70,000/-, with default sentence of simple imprisonment for a period of two years.

2. Parties are referred to as complainant and accused as per their ranking before the Trial Court, for the sake of convenience.

3. Facts in brief which are utmost necessary for disposal of these two revision petitions are as under:

A complaint came to be filed by the complainant under Section 200 of the Code of Criminal Procedure to take action against the accused for the offence punishable under Section



138 of the Negotiable Instruments Act, 1881, by contending that accused borrowed hand loan in a sum of Rs.4,70,000/- on 20.01.2013 from the complainant with a promise to repay the same in a short period. Towards repayment of the same, accused issued a cheque, which on presentation came to be dishonoured with an endorsement 'insufficient funds'.

4. Legal notice was issued which was not complied with by the accused and therefore, complainant sought for action.

5. Learned Trial Magistrate after completing the necessary formalities, summoned the accused and recorded the plea. Accused pleaded not guilty and therefore, trial was held.

6. In order to prove his case, complainant got himself examined as P.W.1 and placed on record seven documents exhibited and marked as Exs.P.1 to P.7, comprising of dishonoured cheque, bank challans, endorsement, legal notice, postal receipt and acknowledgment. Detailed cross examination of P.W.1 did not yield any positive material so as to disbelieve the case of the complainant nor to dislodge the



presumption available to the complainant under Section 139 of the Negotiable Instruments Act, 1881.

7. Thereafter, learned Trial Judge recorded the statement of the accused as is contemplated under Section 313 of the Code of Criminal Procedure, wherein, the accused denied all the incriminatory materials.

8. Subsequent thereto, arguments were heard and accused was convicted, as there was no rebuttal evidence placed on record by the accused.

9. Being aggrieved by the same, accused preferred an appeal before the District Court.

10. Learned Judge in the First Appellate Court after securing the records, heard the parties in detail and on re-appreciation of the material on record, dismissed the appeal.

11. Being further aggrieved by the same, accused is before this Court challenging the validity of the order of conviction. Complainant has also filed revision petition seeking enhancement of fine amount.



12. It is pertinent to note that complainant did not file an appeal seeking enhancement of fine amount before the first appellate Court and straight away filed the revision petition before this Court for the first time.

13. Having heard the arguments of both sides, this Court perused the material on record, meticulously.

14. On such perusal of the material on record, issuance of the cheque by the accused and signature found therein is not in dispute. Further, accused has not stepped into the witness box to rebut the presumption that is available to the complainant under Section 139 of the Negotiable Instruments Act, 1881.

15. Taking note of these aspects of the matter and the oral and documentary evidence placed on record on behalf of the complainant, the cheque amount of Rs.4,70,000/- was ordered to be paid to the complainant failing which accused was sentenced to undergo simple imprisonment for a period of two years. On re-appreciation of the material on record, this Court is of the considered opinion that the impugned orders do not



call for interference by this Court, that too in the revision jurisdiction.

16. Likewise, since the complainant did not chose to file any revision seeking enhancement of the fine before the First Appellate Court, entertaining the request of the complainant for the first time to enhance the fine, would not arise.

17. In view of the foregoing discussion, the following:

ORDER

- (i) Both the criminal revision petitions are ***dismissed.***
- (ii) Time is granted for the accused to pay the balance fine amount till 15th November 2024, failing which, the sentence ordered by the learned Trial Magistrate shall stand get restored, automatically.
- (iii) Office is directed to the return the Trial Court Records along with copy of this Order, forthwith.

**Sd/-
(V SRISHANANDA)
JUDGE**