

KABC010212232022



IN THE COURT OF THE LXII ADDL.CITY CIVIL & SESSIONS
JUDGE (CCH-63), BENGALURU.

DATED: THIS THE 15TH DAY OF JUNE, 2026.

P R E S E N T:-

Sri. Raghavendra S. Channabasappa, B.A., LL.B (Spl).,
LXII Additional City Civil & Sessions Judge,
Bengaluru City.

CRIMINAL APPEAL No. 469/2018

APPELLANT : M/s Krish Food Technologies (P) Ltd
Earlier having its office at No. 2-21
Dr. Marigowda road, New hosur road
(Near Lalbagh North Gate)
Bangalore 560 027

presently having its office at No. 15/A
Sri MS Krishna Rao Road, Basavangudi
Bengaluru 560 004
Represented by its Managing Director
Sri S.M.Satyanarayana

(By Sri. Sathyanarayana S.Chalke, Advocate)

- V/S -

RESPONDENT: M/s Govind Foods
No. 93/2, Shivaji road, Shivaji Putla
Gandhi nagar, Kolhapur 416 119

represented by its Proprietor and
authorised signatory, Mr. Hanumantha
@ Hanumantha Wagh

(By Sri.I, Advocate.)

J U D G M E N T

This appeal is preferred by the appellant/ complainant being aggrieved by the judgment passed by the learned XXIV Addl. Small Causes Judge and XXII ACMM (SCCH 26) Bengaluru dated 22.02.2018 in CC No. 16650/2016 convicting the appellant to pay fine of Rs.6,70,000/- and in default to undergo S.I. for 3 months for the offence punishable U/s.138 of N.I. Act. The complainant prays to sentence the accused to pay fine of Rs. 13,31,134/- in addition to the sentence of imprisonment for a period of two years.

2. The learned counsel for the appellant/complainant vehemently contended that the judgment and order on sentence dated 22.02.2018 passed by the learned Magistrate in C.C. No.16650/2016 is inadequate insofar as the quantum of sentence is concerned and therefore warrants interference by this Appellate Court.

3. It is submitted that the learned Magistrate, after recording a clear finding that the accused had committed the offence punishable

under Section 138 of the Negotiable Instruments Act, imposed only a fine of Rs.6,70,000/- and in default directed the accused to undergo simple imprisonment for three months. According to the appellant, the sentence imposed is wholly disproportionate to the facts and circumstances of the case.

4. The learned counsel contended that Section 138 of the Negotiable Instruments Act empowers the Court to impose imprisonment up to two years or fine which may extend to twice the amount of the cheque or both. However, the Trial Court failed to exercise the said discretion judiciously and failed to take into consideration the object behind the enactment of Section 138 of the Negotiable Instruments Act.

5. It is further argued that the accused has wrongfully withheld the amount due to the complainant and compelled the complainant to undergo prolonged litigation for several years. The complainant has incurred substantial expenditure towards legal proceedings and has suffered financial hardship due to non-payment of the cheque amount.

6. The learned counsel further submits that the Trial Court ought to have considered the conduct of the accused throughout the

proceedings. Despite issuance of statutory notice and sufficient opportunities, the accused failed to honour his commitment and contested the matter without any justifiable grounds. Therefore, the sentence imposed by the Trial Court does not adequately meet the ends of justice.

7. It is argued that the punishment prescribed under Section 138 of the Negotiable Instruments Act is intended not only to punish the drawer of the dishonoured cheque but also to ensure credibility and sanctity of commercial transactions. Therefore, imposition of only the cheque amount as fine defeats the very object of the legislation.

8. The learned counsel further contended that while awarding sentence, the Court is required to consider the nature of the transaction, the amount involved, the period during which the complainant was deprived of the money and the conduct of the accused. The learned Magistrate failed to assign adequate reasons as to why the maximum permissible fine was not imposed despite recording a finding of guilt.

9. It is further submitted that the cheque amount involved in the case is Rs.6,65,567/- and therefore the Trial Court ought to have

imposed fine up to twice the cheque amount, namely Rs.13,31,134/-, and awarded appropriate substantive imprisonment so as to serve the object of deterrence and to compensate the complainant adequately.

10. The learned counsel therefore submits that the sentence awarded by the Trial Court is manifestly inadequate and calls for enhancement. Accordingly, he prays that the appeal be allowed, the sentence imposed by the Trial Court be modified, and the accused be directed to pay fine of Rs.13,31,134/- being twice the cheque amount together with appropriate substantive imprisonment in accordance with law

11. The respondent/accused appeared through counsel and opposed the appeal. The respondent/accused has contended that the appeal itself is not maintainable and is devoid of merits. It is submitted that the learned Magistrate, instead of acquitting the accused, convicted him for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo imprisonment for two years and imposed fine of Rs.6,70,000/-.

12. It is further contended that the appellant has not made out any special circumstances warranting enhancement of sentence.

The respondent also denied the allegations regarding legally recoverable debt, issuance of cheque and execution of the cheque. According to the respondent, the sentence imposed by the trial Court is not just and proper and call for interference and also he filed Crl.A No. 374/2018 challenging the sentence dated 22.02.2018 by the learned Magistrate and sought for acquittal.

13. Heard the arguments on both sides.

14. The point that arises for determination is:

"Whether the appellant/complainant has made out sufficient grounds to interfere with the sentence imposed by the learned Magistrate and to enhance the compensation and sentence awarded against the respondent/accused?"

15. My finding on the above point is in the **Negative** for the following:

REASONS

16. The records disclose that the learned Magistrate, after full-fledged trial, found the respondent guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and imposed sentence accordingly. The grievance of the appellant is confined only to the adequacy of the sentence and compensation awarded.

17. It is settled principle of law that the power of the appellate Court to enhance sentence must be exercised cautiously and only when the sentence imposed by the trial Court is manifestly inadequate, grossly disproportionate, arbitrary or contrary to law.

18. A careful perusal of the impugned judgment reveals that the learned Magistrate has considered the nature of the transaction, the cheque amount involved, the circumstances of the case and thereafter imposed sentence by directing payment of fine of Rs.6,70,000/- together with imprisonment.

19. Merely because Section 138 of the Negotiable Instruments Act provides that the accused may be punished with imprisonment extending to two years or with fine extending to twice the amount of the cheque or with both, it cannot be construed that imposition of fine equivalent to double the cheque amount is mandatory in every case.

20. The expression "may extend to twice the amount of the cheque" only prescribes the upper limit of punishment and leaves discretion to the Court to impose appropriate sentence depending upon the facts and circumstances of each case.

21. The appellant has failed to demonstrate that the discretion exercised by the learned Magistrate is arbitrary, capricious or perverse. No material is placed before this Court to show that the sentence imposed is shockingly inadequate warranting appellate interference.

22. Though the appellant has relied upon the presumption available under Section 139 of the Negotiable Instruments Act, the said presumption has already been considered by the trial Court while recording conviction. The present appeal being confined to enhancement of sentence, the question of presumption under Section 139 does not advance the case of the appellant any further.

23. The object of Section 138 of the Negotiable Instruments Act is compensatory in nature with an element of deterrence. The trial Court has already convicted the respondent and imposed sentence. In the absence of exceptional circumstances, enhancement of sentence cannot be ordered merely at the instance of the complainant seeking maximum punishment.

24. At the outset, it is pertinent to note that the learned trial Judge, upon proper appreciation of the oral and documentary evidence, has already recorded a finding of guilt against the

accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The accused has been convicted and sentenced to pay fine/compensation and, in default, to undergo imprisonment for the period specified by the trial Court.

25. The grievance of the complainant-appellant is only with regard to the quantum of sentence and compensation awarded by the trial Court.

26. Section 138 of the Negotiable Instruments Act provides that the drawer of the cheque shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both. The expression "may extend to twice the amount of the cheque" only prescribes the **maximum limit of punishment** and does not mandate that in every case involving dishonour of cheque, the Court must invariably impose double the cheque amount as fine or compensation.

27. The question of sentence depends upon the facts and circumstances of each case, the conduct of the accused, the nature of the transaction, the amount involved, the object sought to be

achieved under the Act, and the principles governing proportionality in sentencing.

28. The Hon'ble Supreme Court in **R. Vijayan vs. Baby and Another, (2012) 1 SCC 260**, has held that;

the primary object of Section 138 proceedings is compensatory in nature. The Court observed that while awarding sentence, the Courts should normally ensure that the complainant is adequately compensated. However, the quantum of compensation and sentence is left to the judicial discretion of the Court depending upon the facts of each case. The Supreme Court did not lay down any principle that double the cheque amount must invariably be awarded in every prosecution under Section 138 of the Act.

29. Similarly, in **Kaushalya Devi Massand vs. Roopkishore Khore, (2011) 4 SCC 593**, the Hon'ble Supreme Court observed that;

`the offence under Section 138 is primarily a civil wrong given criminal overtones to enhance the credibility of commercial transactions. The emphasis should ordinarily be on compensating the complainant rather than imposing excessive imprisonment. The sentence imposed should be just, reasonable, and proportionate to the circumstances of the case.`

30. Further, in **Meters and Instruments (P) Ltd. vs. Kanchan Mehta**, (2018) 1 SCC 560, the Hon'ble Supreme Court reiterated that;

`the object of the provision is mainly compensatory and punitive aspects are intended to ensure the efficacy of the banking system and credibility of negotiable instruments. The Courts are required to adopt a pragmatic approach while determining the appropriate sentence.'

31. In the present case, the learned trial Judge has exercised judicial discretion and imposed fine/compensation together with imprisonment as permissible under law. The records do not disclose any perversity, arbitrariness, illegality, or failure to exercise jurisdiction while determining the sentence.

32. Merely because Section 138 provides that fine may extend to twice the cheque amount, it cannot be construed that every conviction must necessarily result in imposition of double the cheque amount and maximum imprisonment. Such an interpretation would defeat the discretionary power vested in the Court by the legislature.

33. The complainant-appellant has not demonstrated any exceptional circumstances warranting enhancement of the sentence

imposed by the trial Court. No material is placed before this Court to establish that the sentence awarded is grossly inadequate, manifestly unjust, or shockingly disproportionate requiring appellate interference.

34. On the contrary, the sentence imposed by the learned trial Court appears to be just, reasonable, and commensurate with the facts and circumstances of the case. The learned trial Court has taken into consideration the nature of the transaction, the amount involved, and the object underlying Section 138 of the Negotiable Instruments Act while imposing the sentence.

35. Therefore, this Court is of the considered opinion that there is no legal basis to interfere with the discretion exercised by the learned trial Judge. The prayer of the complainant-appellant seeking enhancement of compensation to double the cheque amount and imposition of maximum imprisonment cannot be granted as a matter of course.

36. Accordingly, the findings recorded by the learned trial Court holding the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act are affirmed. The sentence imposed by the learned trial Court is found to be proper,

legal, and justified. No grounds are made out for enhancement of sentence or compensation.. Accordingly, point for consideration is answered in the '**Negative**'. In the result this Court proceed to pass the following :-

ORDER

The Criminal Appeal filed U/Sec.374(3)(a) of Cr.P.C is hereby dismissed.

Consequently, the judgment and order of conviction passed by the XXIV Addl. Small Causes Judge and XXII ACMM (SCCH 26) Bengaluru dated 22.02.2018 in C.C. No.16650/2016 is hereby confirmed.

Office is hereby directed to send the certified copy of this Judgment to the trial Court and also T.C.R.

(Dictated to the SG I directly on Computer, script thereof is revised, corrected, signed and then pronounced by me in the open court on this the **15th day of June, 2026.**)

(Raghavendra S. Channabasappa)
LXII Addl. City Civil & Sessions Judge,
(CCH-63), Bengaluru.

Judgment pronounced in open court, vide separate order;

ORDER

The Criminal Appeal filed U/Sec.374(3)(a) of Cr.P.C is hereby dismissed.

Consequently, the judgment and order of conviction passed by the XXIV Addl. Small Causes Judge and XXII ACMM (SCCH 26) Bengaluru dated 22.02.2018 hereby confirmed.

Office is hereby directed to send the certified copy of this Judgment to the trial Court and also T.C.R.

(Raghavendra S.
Channabasappa)
LXII Addl. City Civil & Sessions Judge,

