HC-KAR

NC: 2026:KHC:11109
CRL.RP No. 169 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 169 OF 2021

BETWEEN:

1. DHARANENDRA KUMAR
AGED ABOUT 72 YEARS
S/O GUMANNA SHETTY
R/AT BANDASALE HOUSE
SHIRTHADY VILLAGE AND POST
MOODABIDRI TALUK
D.K. DISTRICT - 574 236.

2. ARAVIND KUMAR
AGED ABOUT 77 YEARS
S/O S. JINARAJ SHASTRY
R/AT SHIRTHADY BEEDU HOUSE
SHIRTHADY VILLAGE AND POST
MOODABIDRI TALUK
D.K. DISTRICT - 574 236.

...PETITIONERS

(BY SRI NISHIT KUMAR SHETTY, ADV.)

AND:

STATE OF KARNATAKA BY
INSPECTOR OF POLICE F.S.C.O.D
BANGALORE, REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BANGALORE - 560 001.

...RESPONDENT

(BY SRI ANOOP KUMAR M.V, HCGP;
V/O DTD 13.02.2026 PETITION AGAINST
P-2 IS DISMISSED AS ABATED)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVCITION DATED 20.11.2019 PASSED BY THE CIVIL JUDGE AND J.M.F.C., MOODABIDRI, D.K. DISTRICT IN C.C.NO.62/2004 AND THE

JUDGMENT AND ORDER DATED 29.01.2021 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN CRL.A.NO.207/2019.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused no.1 is before this Court in this criminal revision petition filed under Sections 397 read with 401 of Cr.PC with a prayer to set aside the judgment and order dated 20.11.2019 passed in CC.No.62/2004 by the Court of Civil Judge & JMFC, Moodbidri, D.K. District, and the judgment and order dated 29.01.2021 passed in Crl.A.No.207/2019 by the Court of III Addl. District & Sessions Judge, D.K. Mangaluru.

2. Heard the learned Counsel for the parties.

3. Petitioner herein along with another was charge-sheeted for the offences punishable under Sections 408, 468, 471, 477A, 201 read with 34 of IPC and were tried for the said offences before the jurisdictional Court of Magistrate in CC.No.62/2004.

4. It is the case of the prosecution that petitioner who was working as Secretary of Shirthadi Service Co-operative Society along with accused no.2 who was working as President of the said Society, during the check period from 08.05.1978 to 10.12.1979 had submitted 127 loan applications in the name of fictitious persons to SCDCC Bank and considering the said loan applications, total loan amount of Rs.16,38,250/- was sanctioned by SCDCC Bank which was allegedly misappropriated by accused nos.1 & 2, and thereby they had committed the charge-sheeted offences.

5. According to the prosecution, there was a surcharge proceedings initiated against the Society and even in the audit report of the society, the alleged fraud committed by the accused was noted. It is under these circumstances, PW-4 who was the then Secretary of SCDCC Bank had submitted the complaint (Ex.P-38) enclosing certain annexures to the said complaint (Exs.P-32 to P-37). Based on the complaint received from PW-4, initially FIR was registered against eight persons. However, after completing investigation, charge sheet was filed only against accused nos.1 & 2 who were working as Secretary and President of the aforesaid Society.

6. The prosecution in order to prove its charges against the accused, in all had examined 17 charge-sheet witnesses as PW-1 to PW-17 and had got marked 253 documents as Exs.P-1 to P-253. However, on behalf of the defence, no oral evidence was adduced. Four documents were got marked as Exs.D-1 to D-4 by the defence.

7. The Trial Court after the hearing arguments addressed on both sides and on appreciating the oral and documentary evidence placed on record, convicted and sentenced accused nos.1 & 2 for the charge-sheeted offences. The said judgment and order of conviction passed by the Trial Court against accused nos.1 & 2 was challenged by them before the Court of III Addl. District & Sessions Judge, D.K. Mangaluru in Crl.A.No.207/2019 which was partly allowed by judgment and order dated 29.01.2021 and the judgment and order of the Trial Court in so far as it relates to convicting and sentencing accused nos.1 & 2 for the offence punishable under Section 201 IPC was set aside, while the judgment and order of conviction and sentence in so far as the other offences was confirmed. It is under these circumstances, accused nos.1 & 2 have approached this Court in this criminal revision petition.

8. Accused no.2 has died during the pendency of this revision petition, and therefore, this petition as against him was dismissed as abated.

9. Learned Counsel for accused no.1 having reiterated the grounds urged in the Memorandum of Revision Petition, submits that though FIR was filed against eight persons, charge sheet is filed in the present case only as against accused nos.1 & 2 without mentioning any reason for dropping the other accused in the charge sheet. The entire case of the prosecution reveals around Exs.P-32 to P-38 and the said documents are missing in the present case. PW-1 to PW-7 are all officials of the society or the bank which has sanctioned the loan. Their evidence only shows that loan was sanctioned, but it does not prove the allegation of misappropriation of sanctioned loan by accused nos.1 & 2. PW-8 to PW-15 are the alleged borrowers of the loan. PW-8 to PW-11 have not supported the case of the prosecution. There is lot of inconsistencies in the deposition of PW-12 to PW-15 and portion of their statement recorded by the Investigation Officer has been marked as Exs.D-1 to D-4. However, the accused were denied an opportunity of confronting these statements to the Investigation Officer since

the prosecution had failed to examine him. The evidence of PW-16 & PW-17 is of no assistance to the prosecution since the said witnesses were not completely examined before the Trial Court. Under the circumstances, the Trial Court as well as the Appellate Court were not justified in convicting the accused for the charge-sheeted offences. In support of his arguments, he has placed reliance on the following judgments:

(i) SHEILA SEBASTIAN VS R.JAWAHARAJ & ANOTHER - (2018)7 SCC 581;

(ii) VANDANA VS STATE OF MAHARASHTRA - (2025) INSC 1098;

(iii) THE STATE VS PEDDAHANUMAPPA & OTHERS - 2004 CRL.LJ. 2255;

(iv) HIRIANNA SHETTY VS THE STATE OF MYSORE - 1971 SCC OnLine KAR 267;

(v) PARVEEZ PASHA VS THE STATE BY TILAK PARK - CRL.REV.PET.No.155/2012 - DISPOSED OF ON 06.07.2022.

10. Per contra, learned HCGP has argued in support of the impugned judgment and order of conviction and sentence passed by the courts below and submits that prosecution has proved the charges beyond reasonable doubt against the accused. The evidence of PW-1 to PW-7 would go to show that accused nos.1 & 2 had conspired with each other and had

forwarded the fictitious loan applications in the name of 127 persons. He submits that PW-8 to PW-15 also have stated that they were not signatories to the loan application and they had not approached the society for any loan. He submits that non-examination of the Investigation Officer has not prejudiced the case of the accused since the prosecution had proved the charge sheet allegations based on oral and documentary evidence which were placed on record. He submits that two courts have concurrently held against the petitioners, and therefore, the scope of this Court to interfere with the concurrent findings is very limited. Accordingly, he prays to dismiss the petition.

11. The prosecution in order to prove its charges against the accused, has in all, examined 17 charge-sheet witnesses in the present case as PW-1 to PW-17.

12. PW-1 was the Supervisor of SCDCC Bank, Moodabidri Branch, during the year 1978-79 and the society in question was coming within the jurisdiction of the aforesaid bank in which PW-1 was the Supervisor. This witness has stated that accused nos.1 & 2 were the Secretary and President of the

Society during the check period. This witness has also spoken about verification of the statement submitted by accused no.1 which is produced at Ex.P-1. The contents of Ex.P-1 are not in dispute. As per Ex.P-1, 20 members are said to have taken loan during the aforesaid check period.

13. PW-2 was the Branch Manager of SCDCC Bank during the relevant period and he has stated that accused nos.1 & 2 were the Secretary and President of the Society during the said period. This witness has also stated that Ex.P-3 to P-25 are the records forwarded by accused no.1 in the capacity of Secretary of the Society for sanction of loan.

14. PW-3 was working as the Manager of SCDCC Bank, Karkala Branch, during the period 1970-76 and 1980-86. This witness has stated that he had received statements from accused no.1 which are marked as Exs.P-26 to P-31 and he also has stated that the said statements were signed by accused no.1 in his capacity as Secretary of the Society.

15. The evidence of PW-1 to PW-3 would go to show that accused nos.1 & 2 were the Secretary and President of the Society during the check period and applications for sanction of

loan were forwarded by accused no.1 in his capacity as Secretary of the Society to SCDCC Bank.

16. PW-4 was the Secretary of SCDCC Bank from September 1977 to May 1980. This witness has also spoken about receipt of loan applications from the Society which were forwarded by accused no.1. Ex.P-38 is the complaint lodged by this witness which had resulted in registration of FIR against eight persons including accused nos.1 & 2 who were subsequently charge-sheeted. He has spoken that the details of the applicants for loan etc., were mentioned in the schedule which was separately annexed to the complaint. The said schedules are marked as Ex.P-32 to Ex.P-37. This witness also has stated about the manner in which the loan was disbursed by SCDCC Bank to the Society and he has stated that the Secretary of the Society after obtaining applications from its members seeking loan, had to verify the said applications and place such applications before the Board of Directors, who have to approve the loan applications and then the Secretary has to forward the loan applications to SCDCC Bank. The SCDCC Bank, thereafter verifies the loan applications and forward the said applications to the Head Office of SCDCC Bank at Mangaluru, where the said

applications are placed before the Board of Directors of SCDCC Bank for approval of the loan. After the loan is sanctioned by the Head Office, the same is released through the branch office of SCDCC Bank and the Secretary of the Society was required to produce bond and debit slips equivalent to the loan released which was required to be distributed by the Society in favour of the applicants/borrowers.

17. PW-5 was the Supervisor of the Moodabidri Branch, SCDCC Bank, in the year 1974-75 and he has spoken about the receipt of documents at Exs.P-50 to P-52 under which loan was advanced to the Society.

18. PW-6 was also working as Supervisor in the branch of SCDCC Bank at Moodabidri during 1975-76 and he has spoken about receiving statement of the Society as per Ex.P-49.

19. PW-7 states that he had worked in SCDCC Bank in various capacities from the year 1964 to 2001 and he had retired as the Managing Director of the said bank. This witness also has spoken about the manner in which the applications are received from the Society, by the branch office of SCDCC Bank and the processing of the said applications at various stages by

the branch office of SCDCC Bank and also the head office of SCDCC Bank at Mangaluru.

20. The evidence of PW-4 & PW-7 with regard to the processing of loan applications and sanction of loan corroborates with each other.

21. The evidence of PW-1 to PW-3, PW-5 & PW-6 are not helpful to the case of the prosecution in any manner to prove the charges against the accused.

22. The evidence PW-4 & PW-7 would go to show that it was the accused no.1 who had forwarded the loan applications to SCDCC Branch at Moodabidri and these witnesses have also spoken that the said applications were subsequently forwarded to the Head Office of SCDCC Bank at Mangaluru, placed before the Board of Directors of SCDCC Bank, and thereafter, loan was sanctioned which was subsequently released to the Society. However, the evidence of these witnesses is not sufficient to hold that accused nos.1 & 2 had misappropriated the loan amount which was sanctioned by the Head Office of SCDCC Bank.

23. Though the material evidence available on record would go to show that it was accused no.1 who had forwarded the loan applications to the branch office of SCDCC Bank, there is no material to show that signature of the applicants are forged signatures. The evidence of an expert is not available in this case. PW-16 was only partly examined by prosecution and this witness had not tendered himself for cross-examination, and therefore, the prosecution had failed to prove that the loan applications forwarded by accused no.1 were forged and were in the name of fictitious persons. Even the evidence of PW-8 to PW-15 is not helpful to prove the said allegations against accused no.1. PW-4 has stated that recovery proceedings was initiated against the borrowers. It is also come on record that the State Government had subsequently waived the loan dues.

24. PW-4 is the person who had set the law in motion in the present case. During the course of his deposition, it has come on record that he had prepared certain schedules regarding the particulars of the applicants for the loan and the amount of loan sanctioned to the applicants, etc. It has also come on record that he had prepared a schedule which also would go to show that three Directors of the Society also had borrowed loan

amounting to Rs.36,350/-. Ex.P-38 is the copy of the complaint given by PW-4 and the schedules as mentioned in the deposition of PW-4 were marked as Exs.P-32 to P-37. In paragraph 12 to 23 of his deposition, it is stated as under:

> "12. When I examined, the extent of loan borrowed by loanee as certified by Sri Dharmasamrajya, a sum of Rs.6 lakhs 80 thousand 950 was outstanding from the loanees (6,80,950) with reference to confirmation of loans obtained 16 persons were either fixtious or staying out-side the jurisdiction of the said society. They were 15 in number and their loan particulars has been furnished by me in schedule A to my complaint.
>
> 13. 4 persons who were dead were shown to have borrowed a loans of Rs.41,800/-. The loan details has been furnished in schedule 'B' enclosed to the complaint. Sri Dharmasamrajya and family in all 5 had borrowed Rs.66,300/- which they disputed having borrowed. The details are furnished in schedule 'C' of the complaint.
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> 14. The schedules prepared by me enclosed to the complaint filed with abstract. Abstract is Ex.P32, Ex.P32(a) is the signature. A schedule is Ex.P33. In a schedule i.e., in Ex.P.33 fictious and non-existence persons in the jurisdiction of the society listed and their particulars are given. Ex.P33(a) is my signature.

15. Schedule 'B' is detailed by me, marked as Ex.P.34. Ex.P34(a) is my signature. This discloses that the persons who were dead and to whom loans have been sanctioned by the society.

16. Ex.P35 name as 'C' schedule which discloses loan particulars of Dharmasamrajya and his family members. Ex.P35(a) is my signature.

17. 'D' schedule, shows loans borrowed by 3 directors of the society amounting to Rs.36,350/- which they disputed as to their borrowing which is marked as Ex.P36. Ex.P36(a) is my signature.

18. 'E' schedule refers to the particulars of 36 persons who are disputing the loan borrowed, to the extent of Rs.3,80,700/-, it is marked as Ex.P37 and Ex.P37(a) is my signature.

19. Sri P.K.Srinivas Rao, Ex-President of society was also alleged as 8th accused in my complaint. He had signed bonds for Rs.34,750/- and Rs.57,000/- on 29.6.78 falsely claiming as he was one of the Director of the society, but he was actually not the director of the society since 1976.

20. Sri Dharmasamrajya has counter-signed bonds, as a witness. Dharmasamrajya was aware of the fact that Sri P.K.Srinivas Rao was not a Director of the said society on the relevant date.

21. The Secretary of the society and other persons stated in my complaint have joined together

intentionally, willfully, destroyed and suppressed documents at the society. Because of suppression and destroying of the documents amount of loan referred above could not be recovered by the bank.

22. At the time of filing of the complaint, A1 who is the Secretary of the Society was absconded. On account of his absconding and also the non-availability of the documents of the society, misappropriation to an amount of Rs.3,80,950/- has taken place in the said society and this misappropriation has been caused by the accused persons before the court and other persons whose names are stated by me, in the complaint. The names which have referred as they are also involved in committing the offence has been approved by the investigating authority and the charge sheet is filed only against these two accused persons who are before this Court.

23. I have been further enquired by the police regarding complaint. Ex.P38 is the complaint given by me, before the Supt. of Police, D.K., Mangalore. Ex.P38(a) is my signature. In complaint Ex.P38(a) I have referred the names of 8 persons as accused against whom action is sought and they are 1. Aravind Kumar 2. Yellappa Hegde 3. Raviraj Mudya 4. Krishnappa Sheregara 5. Mards 6. Daranendra Kumar 7. Dharmasamrajya 8. P.K.Srinivas Rao."

25. Undisputedly, Exs.P-32 to P-38 are missing from the records in the present case. The Trial Court as well as the

Appellate Court, therefore, had no opportunity to look into this important piece of evidence which was the basis for initiating criminal proceedings against the accused. PW-8 to PW-11 who were the alleged applicants for loan have completely turned hostile to the case of the prosecution. In fact, PW-9 during the course of his cross-examination admits of borrowing loan. Though PW-8 to PW-11 who were treated as hostile witnesses were cross-examined by the Public Prosecutor, nothing material has been elicited from their mouth. PW-12 to PW-15 are also the alleged applicants of loan. During the course of examination of these witnesses, the discrepancy found in their statements was pointed out to them and their statements were marked by the defence as Exs.D1 to D4 in the present case.

26. Undisputedly, the Investigation Officer who has conducted the investigation and filed charge sheet in the present case was not examined by the prosecution and no good reason was assigned for non-examination of this material witnesses. Though prosecution has contended that non-examination of the Investigation Officer has not prejudiced the case of the accused, the said statement cannot be accepted for the simple reason that the accused were deprived of an

opportunity to put across the inconsistent and contradictory statements made by the witnesses to the Investigation Officer, more so which are marked as Exs.D1 to D4.

27. PW-16 is the Officer of Forensic Science Laboratory and PW-17 is the Investigation Officer who had partially conducted investigation in the present case. PW-16 as well as PW-17 were partially examined in chief and thereafter these witnesses had not appeared before the court to tender evidence. Therefore, the evidence of these two witnesses cannot be considered and they are liable to discarded.

28. The material on record would also go to show that, the prosecution had failed to place on record the audit report of the Society. It has also come on record that, proceedings were initiated against the Society as provided under Section 64 of the Karnataka Co-operative Societies Act, 1959. However, the said inquiry report also has not been placed on record by the prosecution in the present case. From the evidence of PW-1 to PW-7, all that can be gathered is that accused no.1 in his capacity as Secretary of the Society had forwarded loan applications to Branch office of SCDCC Bank, which inturn after

scrutiny by the branch office of SCDCC Bank, were placed before the Board of Directors of SCDCC Bank at Mangaluru for sanctioning of loan and after the loan was sanctioned, the same was released to the Society for disbursement to the borrowers. As stated earlier, the evidence of PW-1 to PW-7 is not sufficient to hold that accused nos.1 & 2 had misappropriated the said loan amount.

29. PW-4 during the course of his deposition, specifically states that all the eight accused named in the FIR had conspired together and had forwarded the loan applications in the name of fictitious persons and after the loan was sanctioned, the same was misappropriated by them. However, charge sheet is filed in the present case only as against accused nos.1 & 2 who were the Secretary and President of the Society and the other accused who were the Board of Directors of the Society were dropped in the charge sheet. The examination of the Investigation Officer was, therefore, necessary even to explain before the court why the charge sheet was not filed as against the other persons who were arrayed as accused in the FIR. According to PW-4, the particulars of allegations against the accused named in the FIR

were mentioned in the Schedule annexed to the complaint and as stated earlier, the complaint as well as the schedule annexed to the same, are missing in the present case.

30. The accused in the present case have been charge-sheeted for the offences punishable under Sections 408, 468, 471, 477A, 201 read with 34 IPC. In my considered opinion, the prosecution has failed to prove its charges against accused nos.1 & 2 beyond reasonable doubt on the basis of the oral and documentary evidence that was placed on record.

31. In Vandana's case supra, the Hon'ble Supreme Court in paragraph 14, has observed as under:

> "14. The settled principles are well known:
>
> (i) That the benefit of doubt follows when two view are reasonably possible;
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> (ii) That the suspicion however grave cannot substitute standard of legal proof; and
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> (iii) That the exclusive control of the alleged forged document must be proved when there is lack of direct evidence to connect the alleged forgery to the accused especially in a case where the alleged document has passed through the hands of several persons before forgery is detected. If the same is

not proved, at best, the evidence on record may arouse suspicion but they do not establish beyond reasonable doubt that the accused had forged, or knowingly used, or attempted to cheat by use of such forged documents."

32. This Court in Peddahanumappa's case supra, wherein the Investigation Officer was not examined, in paragraph 3, has observed as under:

> "3. The serious infirmity that has been recorded by the trial Court is that the Investigating Officer was not examined. Some other officer, who was to a limited extent dealing with this investigation, has been examined and certain reasons have been set out on behalf of the State as to why this had happened. Since the full facts are not before us, we do not desire to make any comments with regard to the non-examination of the Investigating Officer beyond pointing out that the Trial Court was right when it recorded a finding to the effect that the non-examination of the Investigation Officer is fatal to the prosecution. One of the submissions canvassed on behalf of the State is that in this case the other officer was examined and therefore, if the proving of any omissions or contradictions was to be done that this was feasible through the officer who has been examined and secondly what is contended is that the examination of the Investigating Officer in the majority of instances is

only a formality. We are unable to accept this last submission because the Investigating Officer is the principal architect and executor of the entire investigation. He is a crucial witness for purposes of establishing that there are omissions and contradictions but more importantly, it is always open to the defence to question the honesty and caliber of the entire process of investigation. It is well settled law that where an investigation is defective, insufficient or dishonest that these factors prove fatal to the prosecution. In the given instance, the accused was totally precluded from any opportunity of being able to establish the infirmities in the prosecution case and on this ground alone the order of acquittal will have to be confirmed."

33. In Hirianna Shetty's case supra, this Court in paragraph 10, has observed as under:

"10. It is clear from the above decisions that the examination of the Investigating Officer is necessary in order to bring on record the contradictions in the statement of witnesses and that such a right is a valuable right of the accused. Further, it is clear that non-examination of the Investigating Officer is a serious infirmity in the prosecution case in so far as it deprived the accused of the opportunity to show to the Court that witnesses were not reliable witnesses by proving contradictions in the earlier statement. Thus, in my opinion, the non-examination of the Investigating Officer in the case is a serious infirmity resulting in prejudice to the accused and therefore, the conviction and sentence imposed against him are liable to be set aside."

34. In the present case, PW-17 who had partially investigated the case was not completely examined, and therefore, his evidence is of no help to the prosecution. The other Investigation Officer who had conducted the investigation and filed charge sheet is not at all examined in the present case. The allegations against the accused in the present case are primarily required to be proved through documentary evidence. The documentary evidence which are placed on record in the present case were recovered and seized by the Investigation Officer who had conducted the investigation, and therefore, it becomes very much necessary to examine the Investigation Officers in the present case. Non-examination of the Investigation Officers is fatal to the case of the prosecution and this aspect of the matter has been completely overlooked by the courts below. Under the circumstances, I am of the opinion that the courts below were not justified in convicting and sentencing the petitioner for the charge-sheeted offences. Accordingly, the following order:

35. Criminal revision petition is allowed. The judgment and order dated 20.11.2019 passed in CC.No.62/2004 by the Court of Civil Judge & JMFC, Moodbidri, D.K. District, and the judgment and order dated 29.01.2021 passed in Crl.A.No.207/2019 by the Court of III Addl. District & Sessions Judge, D.K. Mangaluru, are set aside. The petitioner is acquitted of the charge-sheeted offences. His bail bonds, if any, stands cancelled. Fine amount deposited, if any, shall be refunded to the petitioner.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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