HC-KAR

NC: 2026:KHC:11879
CRL.RP No. 380 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 380 OF 2020

BETWEEN:

SRI. K.J. MAHADEVAPRASAD
S/O K.P. JAYAPPA, AGED ABOUT 40 YEARS,
R/AT NO.03, 2ND FLOOR,
50 FEET ROAD, BESIDE VIJAYA BANK,
AVALAHALLI MAIN ROAD,
BANGALORE - 560 026.

...PETITIONER

(BY SRI. HARSHITH S, AMICUS CURIAE)

AND:

SMT. NETHRA SUBHAS PATIL
W/O SUBHASH N. PATIL, AGED ABOUT 40 YEARS,
R/AT NO.18N, SRINIVASA,
1ST B MAIN ROAD, 1ST N BLOCK,
RAJAJINAGAR, BANGALORE - 560 032.

...RESPONDENT

(BY SRI. B.M. HALASWAMY, ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND CONVICTION ORDER AND FINE AMOUNT OF RS.6,00,000/- PASSED BY THE XXIII A.C.M.M., AT BENGALURU IN C.C.NO.28571/2016, DATED 08.04.2019, BY CONVICTING THE PETITIONER AND ALSO THE JUDGMENT PASSED BY THE HONBLE LVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE CCH-57, BENGALURU IN CRL.A.NO.1153/2019 DATED 14.02.2020 AND ACQUIT THE PETITIONER IN THE ABOVE SAID CASE.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

Accused is before this Court in this revision petition filed under Section 397 read with 401 of Cr.P.C., with a prayer to set aside the judgment and order dated 08.04.2019 passed in CC No.28571/2016 by the Court of XXIII Additional CMM, Bengaluru City and the judgment and order dated 14.02.2020 passed in Criminal Appeal No. 1153/2019 by the Court of LVI Additional City Civil and Sessions Judge, Bengaluru.

2. Heard learned Amicus Curiae on behalf of the petitioner and learned counsel for respondent.

3. The respondent herein had initiated proceedings against the petitioner before the jurisdictional Court of Magistrate in CC No.28571/2016 for offence punishable under Section 138 of Negotiable Instrument Act ('NI Act' for short). It is the case of the respondent that petitioner

had borrowed a sum of Rs.15,00,000/- from her which was paid through bank transaction. Out of the said amount, petitioner had repaid an amount of Rs.7,00,000/- and towards the part payment of the balance amount of Rs.8,00,000/-, he had issued the cheque in question bearing No.000119 for a sum of Rs.6,00,000/- drawn on HDFC Bank, Basaveshwara Nagar branch, Bangalore, in her favour. When the said cheque was presented for realisation, the same was dishonoured by the drawee Bank, with a shara 'payment stopped by drawer'. It is under these circumstances, statutory legal notice was got issued on behalf of the respondent which was duly served on the petitioner. Since, the petitioner had failed to repay the amount covered under the cheque in question in spite of service of legal notice, the respondent had initiated proceedings against the petitioner before the jurisdictional Court of Magistrate in CC No. 28571/2016 for the offence punishable under Section 138 of NI Act. In the said proceedings, the trial Court had convicted the petitioner for offence punishable under Section 138 of NI Act and sentenced him to pay a fine of Rs.6,00,000/- and in default to undergo simple imprisonment for one year.

4. The said judgment and order of conviction and sentence passed by the trial Court in CC No.28571/2016 was confirmed by the Appellate Court by Judgment and Order dated 14.02.2020 passed in Criminal Appeal No. 1153/2019. It is under these circumstances, the petitioner is before this Court.

5. According to the complainant, petitioner was residing as a tenant in the premises belonging to his sister and therefore, he was acquainted to him. Petitioner allegedly had approached the complainant seeking financial assistance of Rs.15,00,000/- for the purpose of getting a house site allotted from Karnataka Housing Board in favour of his brother-in-law R.S. Mahesh. Respondent accordingly had paid a sum of Rs.15,00,000/- to the petitioner and the said transaction has been proved

by the respondent by producing Exhibit P8 to Exhibit P10 which are her bank statements and bank passbook. Thereby the transaction between the parties in the present case is proved. Complainant has examined herself as PW1 and she has reiterated the averments made by her in the complaint during the course of her deposition. Exhibit P1 is the original cheque issued by the petitioner towards part payment of the amount due by him. According to the complainant, out of Rs.15,00,000/- borrowed by the petitioner, he had repaid a sum of Rs.7,00,000/- through bank transaction and towards partial payment of the balance amount of Rs.8,00,000/-, he had issued the cheque in question for a sum of Rs.6,00,000/- which was dishonoured by the drawee bank when presented for realisation. The bank endorsements are produced as Exhibit P2 and Exhibit P3 and copy of the legal notice is produced as Exhibit P4. Exhibit P6 is the postal acknowledgment which shows that Exhibit P4 was served on the petitioner and Exhibit P7 is the reply notice issued on behalf of the petitioner. The signature of petitioner in Exhibit P1 is marked as Exhibit P1(a). Petitioner has not disputed his signature in the cheque-Exhibit P1 and he also has not disputed that the cheque Exhibit P1 was drawn on his bank account maintained by him in HDFC Bank, Basaveshwar Nagar branch. The said cheque was dishonoured by the drawee Bank when presented for realisation.

6. Under the circumstances, presumption as provided under Section 139 read with Section 138 of NI Act arises against the petitioner and unless he successfully rebut the said presumption by putting forward the defence, he is liable to be convicted for offence punishable under Section 138 of NI Act.

7. According to the petitioner, he had borrowed money from the sister of the complainant and as a security to the said transaction, the cheque in question was issued. It is the specific defence of the petitioner that

the entire amount which was borrowed by him from the sister of the respondent was repaid and the cheque in question which was issued as a security for the said transaction was subsequently misused by the complainant and the present proceedings was initiated against him.

8. Though, such a defence is set up by the petitioner, he has failed to probabilise the same by placing necessary oral and documentary evidence on his behalf. He has failed to prove before the Court that the amount which was borrowed by him from the respondent/complainant through bank transaction as reflected in Exhibit P8 to Exhibit P10 was repaid by him. Under the circumstances, the presumption that arose against the petitioner as provided under Section 139 read with 118 of NI Act stood unrebuted. It is under these circumstances, the trial Court has convicted the petitioner for offence punishable under Section 138 of NI Act. The Appellate Court having re-appreciated the oral and documentary evidence available on record has confirmed

the judgment and order of conviction passed by the trial Court. Even the order of sentence passed by the courts bellow against the petitioner is just and proper and the same does not call for interference. Under the circumstances, I am of the opinion that this revision petition lacks merits and is liable to be dismissed. Accordingly, the following:

ORDER

(a) Criminal Revision petition is dismissed.

Services of learned Amicus Curiae is placed on record and his legal fee is fixed at Rs.15,000/-.

The amount deposited by the petitioner is permitted to be withdrawn by the respondent/complainant.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

TSN
List No.: 1 Sl No.: 21