HC-KAR

NC: 2026:KHC:11804
CRL.RP No. 661 of 2022

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. 661 OF 2022

BETWEEN:

R.B. ELECTRONICS
REP. BY ITS PROPRIETOR
BALAJI. P.R.
AGED ABOUT 45 YEARS
NO.203, KAMRAJ ROAD
OPP GANESH TEMPLE
BENGALURU - 560 042.

...PETITIONER

(BY SMT. K.B. JAYALAKSHMI, AMICUS CURIAE
V/O DTD:15.04.2025 NOTICE TO RESPONDE IS H/S)

AND:

M/S. LEOCH BATTERIES (I) PVT. LTD.,
REP. BY ITS AUTHORIZED PERSON,
S. PARAMESH
S/O LATE SIDDALINGAPPA
AGED ABOUT 32 YEARS
PLOT NO. A 53 (B)
2ND MAIN ROAD
PEENYA 2ND STAGE
INDUSTRIAL AREA
BENGALURU - 560 058.

...RESPONDENT

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO ALLOW THIS REVISION PETITION BY SETTING ASIDE THE JUDGMENT PASSED BY THE LEARNED LXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE BENGALURU DATED 15.02.2022 PASSED IN CRL.A.NO.25038/2020 IN CONFIRMING THE JUDGMENT AND CONVICTION PASSED BY THE LEARNED XXXIV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU DATED 04.01.2020 IN C.C.NO.53399/2018 AND ACQUIT THE PETITIONER ACCUSED FOR THE ALLEGED OFFENCE.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused is before this Court in this Criminal Revision petition filed under Section 397 R/w Section 401 of Cr.P.C, with a prayer to set aside the judgment and order dated 04.01.2020 passed in C.C.No.53399 of 2018 by the Court of XXXIV Addl. Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru and the judgment and order dated 15.02.2020 passed in Crl.A.No.25038 of 2020 by the Court of LXXIII Addl. City Civil & Sessions Judge, Mayo Hall Unit, Bengaluru.

2. Heard the learned *Amicus Curiae* on behalf of the petitioner. Respondent, who is served in the matter has remained unrepresented before this Court.

3. The respondent herein had initiated proceedings against the petitioner before the jurisdictional Court of Magistrate in C.C.No.53399 of 2018 for offence punishable under Section 138 of N.I. Act. It is the case of the respondent Company that it had supplied power batteries to the petitioner

and towards part payment of the material supply, the cheques in question bearing no.871182 dated 31.08.2017 for a sum of ₹.9,30,900/- and bearing no.871179 dated 31.08.2017 for a sum of ₹.8,73,921/- both drawn on Canara Bank was issued in favour of the complainant Company and the said cheques when presented for realisation were dishonoured by the drawee bank with a shara "Funds insufficient". Thereafter, the complainant had got issued legal notice to the petitioner, which was duly served. Instead of repaying the amount covered under the cheques in question the petitioner had issued a reply notice raising untenable defence. It is under these circumstances, the complainant had approached the jurisdictional Court of Magistrate and had filed a private complaint against the petitioner for the offence punishable under Section 138 of the N.I. Act.

4. In the said proceedings, the Trial Court had convicted the petitioner for offence punishable under Section 138 of N.I. Act and sentenced the petitioner to pay fine of ₹.21,09,821/- and in default to undergo simple imprisonment for a period of 3 months. The said judgment and order of

conviction and sentence passed by the Trial court in C.C.No.53399 of 2018 was confirmed by the Appellate Court in Criminal Appeal No.25038 of 2020. It is under these circumstances, petitioner is before this Court.

5. Learned *Amicus Curiae* appearing for the petitioner having reiterated grounds urged in the petition submits that, the demand made in the statutory legal notice is for payment of ₹ 55,00,000/- whereas the amount covered under the cheques in question is only ₹.18,04,821/-. Therefore, the legal notice issued to the petitioner cannot be said to be in compliance of the requirement of Section 138 of the N.I. Act. She submits that, the complainant is a Company which is represented by Mr.S.Paramesh, who is allegedly the authorized representative of the Company. However, no documentary evidence was placed before the Courts below to show that the Company had authorized aforesaid S. Paramesh to represent the Company. The Courts below were therefore not justified in entertaining the complaint and convicting the petitioner for the alleged offence.

6. The complainant in the present case is a private Limited Company and the cause title of the judgment in C.C.No.53399 of 2018 reflects that complainant Company is represented by its authorized representative S. Paramesh S/o Siddalingappa, who has been examined in the present case as PW1. However, no material was produced before the Court to show that, the complainant Company had authorized aforesaid S. Paramesh to represent it. PW1 during the course of his deposition except stating that he is the authorized representative of the Company he has not stated in what manner and capacity he is related to the Company. When the complainant is the Company, it can be represented either by its General Power of Attorney or by its authorized representative. In a case where the Company is represented by its authorized representative, there has to be a resolution passed by the Board of Directors of the Company authorising the authorised representative to represent the Company.

7. In the case on hand, neither in the complaint nor in the course of deposition, it is stated that the Board of Directors of the complainant Company had authorised aforesaid, S.

Paramesh (PW1), to represent the Company. PW1 has not produced the copy of authorization letter or the copy of the resolution of the Board of Directors of the Company, authorizing him to represent the Company. The Coordinate Bench of this Court under similar circumstances in the case of **GEORGE JOSEPH AND ANOTHER v. HMT INTERNATIONAL Ltd., - CRIMINAL REVISION PETITION NO.129 OF 2013 DTD. 28.10.2014** has held that the authorized representative of the Company should have an authorization by the Board of the Company to represent him. In the said case, the Court having found that the complainant Company was not represented either by its General Power of Attorney holder or by a person in whose favour the Board of Directors had passed a resolution to represent the Company had acquitted the accused.

8. Learned *Amicus Curiae* has brought to the notice of this Court that the legal notice issued to the petitioner on behalf of the respondent was also not in compliance of requirement of Section 138(b) of the N.I. Act. In the complaint as well as in the legal notice, it is stated that during the course

of transaction between the parties, the petitioner was totally due to pay a sum of ₹.55,00,000/- to the respondent Company. In the legal notice issued on behalf of the complainant Company, after the cheques in question were dishonoured, demand is made for payment of the entire amount of ₹.55,00,000/- which allegedly the petitioner was due to pay to the complainant instead of making a demand for payment of the amount of ₹.18,04,821/- which is amount covered under the cheques in question.

9. The Hon'ble Supreme Court in the case of **KAVERI PLASTICS V. MAHDOOM BAWA BAHRUDEEN NOORUL - 2025 SCC ONLINE SC 2019** in paragraph nos.8 and 9 has observed as follows:

> *"8. From the aforestated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under section 138 of the Negotiable Instruments Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under section 138 of the*

Negotiable Instruments Act would fall flat as bad in law. The notice to be issued under proviso (b) to section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1. A failure in above regard, namely when the cheque amount is not mentioned in the proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.

9. When the provision is penal and the offence is technical, there is no escape from holding that the "said amount" in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of *which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement. It has to be held that in order to make a valid notice under the proviso (b) to section 138 of the Negotiable Instruments Act, it is mandatory that "said amount" to be mentioned therein is the very amount of cheque, and none other."*

10. Under the circumstances, the legal notice at Ex.P6 issued on behalf of the complainant to the petitioner cannot be said to be in compliance of the requirements of Section 138(b) of the N.I. Act and therefore, the proceedings initiated against the petitioner based on the said notice is not a valid proceeding. The Trial Court as well as the Appellate Court have erred in not noticing this aspect of the matter. In addition to the aforesaid, material on record would also go to show that, petitioner had successfully rebutted the presumption that arose against it as provided under Section 139 R/w Section 118 of the N.I. Act. The petitioner had set up a defence that after the year 2016 there was no transaction between the parties and since the power batteries, which were supplied by the respondent complainant were of substandard quality, 623 power batteries were returned by the petitioner to the

respondent Company under delivery challan at Ex.D7. PW1 has admitted the same in his cross-examination. According to the petitioner, the amount towards the returned power batteries were not deducted by the complainant. Even this important aspect of the matter has not been properly appreciated by the Courts below. Under the circumstances, I am of the opinion that, the Courts below were not justified in convicting the petitioner for the offence punishable under Section 138 of the N.I. Act.

11. Accordingly, the following:-

ORDER

i. Criminal Revision Petition is allowed.

ii. The impugned judgment and order of conviction and sentence passed by Courts below are set aside.

iii. The petitioner is acquitted of the offence punishable under Section 138 of the N.I. Act and his bail bonds if any, stands cancelled.

iv. The amount in deposit if any, shall be refunded to the petitioner.

The service of learned *Amicus Curiae* is placed on record and her legal fee is fixed at Rs.20,000/-.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

NMS
List No.: 1 Sl No.: 24