



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 446 OF 2014 (A)

BETWEEN:

DR.M.J.MOHAN
AGED ABOUT 49 YEARS
S/O JAYARAM
SECRETARY
VENKATESHA EDUCATION
SOCIETY, ARMS STRONG ROAD
BANGALORE-560056

...APPELLANT

(BY SRI. SANDESH P. NADIGER, ADVOCATE)

AND:

ANIL KUMAR B.R.
MAJOR
CHAIRMAN, S.A.V.E.
C-1, KASA LAVELLE-1
LAVALLE ROAD
BANGALORE-560001
AND ALSO RESIDING AT
NO.95, M M ROAD
FRAZER TOWN
BANGALORE-560005.

...RESPONDENT

(BY SRI. MUNIRAJU D.S., ADVOCATE)

THIS CRL.A. IS FILED U/S.378(4) CR.P.C BY THE ADV.,
FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY
BE PLEASED TO SET ASIDE THE ORDER DATED:1.3.2014
PASSED BY THE XIII ADDL. CMM, BANGALORE, IN
C.C.NO.8398/2007 - ACQUITTING THE RESPONDENT/ACCUSED
FOR THE OFFENCE P/U/S 138 OF N.I. ACT.



THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

Appellant/claimant has preferred this appeal against the order passed by the XIII Additional Chief Metropolitan Magistrate, Bangalore (for short "the trial Court") in CC No.8398 of 2007 dated 01st March, 2024, whereby the trial Court has discharged the accused under section 256 of Code of Criminal Procedure.

2. Sri Sandesh P. Nadiger, learned Counsel for the appellant would submit that the trial Court has taken cognizance against the accused/respondent under section 138 of Negotiable Instruments Act, 1881 and case was registered in CC No.8398 of 2007 and summons were issued to the accused. In response to summons, accused appeared before the Court and accused was released on bail. Thereafter, NBW was issued to the accused on several occasions. On 25th October 2013, accused was present and filed recall application. The same was allowed. Memo filed reporting settlement. Then case was posted



to 01st March, 2014. On that day, the Court passed an order that the accused and complainant were absent and complainant advocate present. But settlement was not reported. Hence accused discharged under section 256 of Code of Criminal Procedure. Learned Counsel for the appellant/complainant would submit that though the respondent/accused undertook to pay the amount, he has not complied with the same. Hence, the order passed by the trial Court is not sustainable and accordingly, the learned counsel seeks to allow the appeal.

3. Respondent Counsel remained absent. There is no representation for the respondent. Hence, argument on behalf of respondent is taken as nil.

4. I have examined the materials placed before me. The appellant has filed complaint under section 138 of Negotiable Instruments Act, 1881 and case was registered in PCR No.18 of 2007. After taking cognizance, case was registered in CC No.8398 of 2007 and summons were issued to the accused. Certified copy of the order sheet, which is not legible, reveals that on 11th March 2008, accused was released on bail upon executing bond of Rs.1,00,000/- with one surety



for the likesum. Then case was posted to 26th May 2008. On that day, accused was absent and NBW was issued against the accused. Thereafter, from time to time NBW was issued to the accused till 22nd September, 2008. On 22nd September, 2008, accused was absent and exemption petition was filed. Counsel for the complainant was not present. Hence, case was posted to 02nd March, 2009. Thereafter, vide Notification No.ADM 1 (A) 1072/08, the case was transferred to XIX Additional Chief Metropolitan Court, Bengaluru. Then the case was posted to 02nd March, 2009. Thereafter, NBW was issued to the accused. On 08th July 2009, case was advanced and was taken on Board. Accused was present and NBW was recalled with fine of Rs.1,000/-. Then, the case was posted to 04th September, 2009. On 04th September, 2009, the accused remained absent and NBW was issued. Thereafter, case was adjourned from time to time till 08th January, 2010. On 8th January, 2010 Exemption petition was filed and the same was allowed. Then case was posted to 21st January 2010. On that day, the Presiding Officer was on leave and hence case was adjourned to 08th March, 2010. Thereafter, case was posted to 13th April, 2010 and further on 22nd April, 2010. On 22nd April, 2010, on



behalf of both the parties, application under section 147 of Code of Criminal Procedure was filed in which it is stated that accused has agreed to pay sum of Rs.2,60,000/- to the complainant towards due amount in respect of Cheque dated 03rd June, 2006, and the case was posted on 26th May, 2010. Then case was posted to 26th May, 2010. On that day, there was no representation. Hence case was posted to 23rd August, 2010. Thereafter, NBW was issued to the accused from time to time till 01st March, 2014. On 01st March, 2014, Court has passed the order as under:

"01.03.2014

Complainant absent

Accused absent.

*Complainant advocate PT to report settlement.
Settlement... (writing not clear)..*

*Settlement neither reported settlement not
reported. Hence accused discharged under Section 256
of Cr.P.C."*

5. On perusal of the order sheet, as also the Application filed under Section 147 of Negotiable Instruments Act by both the parties, it is crystal clear that the trial Court has not passed



any order on the Application filed under 147 of NI Act. The trial Court has not assigned any reasons for not passing any order on the said application. Though NBW was issued against the accused, same was not returned. However, the trial Court has not taken any steps to see whether NBW was executed or not. The trial Court has passed the order without following the due procedure contemplated under Code of Criminal Procedure and also under Karnataka Criminal Rules of Practice. Viewed from any angle, the impugned order passed by the trial Court is not sustainable. Accordingly, I proceed to pass the following:

ORDER

- i) Appeal is allowed;
- ii) Order dated 01st March, 2014 passed in CC No.8398 of 2007 by the XIII Additional Chief Metropolitan Magistrate, Bengaluru, is set aside;
- iii) CC No.8398 of 2007 on the file of XIX Additional Chief Metropolitan Magistrate, Bengaluru, shall be restored to its file;
- iv) The complainant/appellant shall appear before the trial Court on 01st December, 2025, without seeking for further notice;



- v) The trial Court is directed to take necessary steps to secure the accused and thereafter proceed with the case in accordance with law;
- vi) Registry to send the copy of this order along with the trial Court records to the concerned Court for taking necessary action.

Sd/-
(G BASAVARAJA)
JUDGE

Inn
List No.: 1 Sl No.: 117