HC-KAR

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. 381 OF 2018

BETWEEN:

MR. A.E. MANOJ KUMAR
S/O MR. ARCOT RAMACHANDRAN
AGED ABOUT 42 YEARS
PROPRIETOR
M/S ARYAN MOTORS
NO.82, BANASWADI MAIN ROAD
BENGALURU - 560 043.

...PETITIONER

(BY SMT. SUZANNE MARIA VAZ, AMICUS CURIAE)

AND:

MS. S. RAJALAKSHMI
D/O LATE DR. K. SRINIVASA DESIKAN
AGED ABOUT 41 YEARS
RESIDING AT NO.26, BAIRAVA NILAYA
5TH CROSS, SIR M.V. NAGAR
KALKERE MAIN ROAD
RAMAMURTHY NAGAR
BENGALURU - 560 016.

...RESPONDENT

(BY SRI B.M. LOKESH, ADV.)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO 1.SET ASIDE THE JUDGMENT DATED 06.09.2016 AND JUDGMENT DATED 21.12.2017 PASSED IN CRL.APPEAL NO.25056/2016 OF THE HON'BLE XIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-22), BANGALORE, BY ALLOWING THE REVISION PETITION.2.OR CONSIDERING THE ERROR APPARENT REMAND BACK THE CASE IN C.C.NO.26383/2013 FROM THE FILE OF THE HON'BLE XIV A.C.M.M.,

BANGALORE FOR FRESH TRIAL SO TO OVER COME THE ADVERSE INFERENCE DRAWN.

THIS PETITION, COMING ON FOR FINAL HEARING, 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 CrP.C, with a prayer to set aside the judgment and order of conviction and sentence passed in C.C.No.26383/2013 dated 06.09.2016 by the Court of XIV Addl. Chief Metropolitan Magistrate, Mayo Hall, Bengaluru and the judgment and order 21.12.2017 passed in Criminal Appeal No.25056/2016 by the Court of XIII Addl. City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru.

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

3. It is the case of the respondent that petitioner had issued the cheque in question bearing no.093920 dated 12.11.2012 for a sum of ₹.7,33,000/- drawn on Vijaya Bank,

HBR Layout, Bengaluru in in her favour towards repayment of the amount that the petitioner was due to pay to her. The said cheque when presented for realisation was dishonoured by the drawee bank with an endorsement "payment stopped by drawyer". Subsequently, the legal notice that was got issued on behalf of the respondent was served on the petitioner and in spite of service of legal notice, the amount covered under the cheque in question was not repaid and on the other hand, a reply was issued raising untenable defence. It is under these circumstances, respondent had initiated proceedings against the petitioner for offence punishable under Section 138 of Negotiable Instruments Act in C.C.No.26383/2013.

4. In the said proceedings, the Trial Court had convicted the petitioner and sentenced him to pay fine of ₹.14,66,000/- and in default to undergo simple imprisonment for a period of one year. The said judgment and order of conviction and sentence passed in C.C.No.26383/2013 by the Court of XIV Addl. Chief Metropolitan Magistrate, Mayo Hall, Bengaluru was confirmed by the Appellate Court in Criminal

Appeal No.25056/2016, which was dismissed on 21.12.2017. It is under these circumstances petitioner is before this Court.

5. Learned *Amicus curiae* appearing on behalf of the petitioner having reiterated the grounds urged in the petition submits that the amount that was liable to be paid by the petitioner was not definite and crystallized and therefore it cannot be said that the cheque in question was issued towards legally recoverable debt. She submits that, the petitioner is only required to put forward a probable defence and in the present case such a defence and in the present case though the petitioner has put forward a probable defence, the Courts below have failed to appreciate the same and have erred in convicting and sentencing him for offence punishable under Section 138 of N.I. Act. In support of her arguments, she has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **M.S. NARAYANA MENON @ MANI V STATE OF KERALA & ANOTHER - (2006) 6 SCC 39**.

6. *Per contra*, learned counsel for the respondent has argued in support of the impugned judgment and order and has prayed to dismiss the petition.

7. According to the complainant, she was working with the petitioner as financial controller and the petitioner used to borrow money from her for his business purpose and she had paid the said amount using her credit card. Though petitioner had repaid partial amount of the amount borrowed he was due to pay a sum of ₹.5,82,000 and a further sum of ₹.1,18,026/- towards credit card interest. In addition to the aforesaid amount, petitioner also was due to pay her salary for the month of February, 2012, which amounted to ₹.33,000/-. Legal notice dated 07.08.2012 (Ex.P27) was therefore issued to the petitioner by an advocate. Ex.P28 and 29 are the postal acknowledgments for having served Ex.P27 legal notice on the petitioner. Petitioner had issued a reply to the aforesaid legal notice dated 07.08.2012 under which a claim was made for a total payment of ₹ 7,33,026. The copy of the reply given by the petitioner to the aforesaid legal notice is marked as Ex.P30. Perusal of Ex.P30 would go to show that under the said reply the petitioner had forwarded the cheque in question for a sum of ₹.7,33,000/- drawn in favour of the respondent towards repayment of the claim made by her under legal notice at

Ex.P27. The said cheque on presentation for realisation was dishonored by the drawee bank.

8. Ex.P27 would clearly go to show that, the basis for the claim of Rs7,33,026/- made in the said legal notice has been mentioned in detail and in response to the said legal notice, the cheque in question was forwarded by the petitioner. Under the circumstances, I do not find any merit in the contention urged by the learned *Amicus curiae* that the amount that was liable to be paid by the petitioner was not crystallized.

9. It is trite that, the defence put forward by the accused to rebut the presumption that arises against him under Section 139 R/w Section 118 of Negotiable Instruments Act is required to be only probable and not plausible. In the case on hand, the defence set up by the petitioner is that he had repaid the entire amount borrowed by him from the petitioner and therefore, it cannot be said that the cheque in question was issued towards legally recoverable debt. In support of his defence he has produced Ex.D1- Books of Account and Ex.D2 which is a letter dated 13.09.2013 forwarding the audit report of his firm. The said documents would in no way help the

defence set up by the petitioner having regard to Ex.P27 and Ex.P30 which clearly go to show that the cheque in question was issued towards discharge of the claim made by the respondent in legal notice Ex.P27.

10. Ex.P.33, 34 and 36 which are the communications between the parties would also go to show that the petitioner has admitted his liability and he had requested the respondent to come to his office and receive the payment covered under the cheque in question after the same was dishonoured. The Trial Court as well as the Appellate Court having appreciated the oral and documentary evidence available on the record have rightly held that the petitioner had not rebutted the presumption that arose against him and accordingly have convicted him for the offence punishable under Section 138 of N.I Act. I do not find any illegality or irregularity in the concurrent finding of guilt recorded by the Courts below against the petitioner.

11. It is trite that the scope of interference in exercise of its revisional jurisdiction by this Court against concurrent

findings is very limited. Under the circumstances, I do not find any good reason to entertain this petition.

12. Accordingly, the petition is dismissed.

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

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

NMS
List No.: 2 Sl No.: 1