



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

CRIMINAL APPEAL NO. 2062 OF 2022 (A)

BETWEEN:

SMT. SRIDEVI
W/O. MANJAPPA,
AGED ABOUT 40 YEARS,
R/AT NO 54, CHIMNEY HILL,
NAVY LAYOUT,
NEAR SAPTHAGIRI,
ENGINEERING COLLEGE,
BANGALORE - 560057

...APPELLANT

(BY SRI. MANJUNATH B. R., ADVOCATE)

AND:

SHASHI KUMAR P.,
S/O PRATHAP K. S.,
AGED 31 YEARS,
R/AT NO 651,
5TH CROSS,
HEBBAL 1ST STAGE,
MYSURU - 570016.

ALSO R/AT NO. 175,
NINGAIHANKERE,
HEBBAL 1ST STAGE,

Digitally
signed by
SUMA B N
Location:
HIGH
COURT OF
KARNATAKA



METAGALLI POST,
METAGALLI, MYSORE - 570016

...RESPONDENT

(BY SRI. MANJUNATH R., ADVOCATE FOR
SRI.GADILINGAPPA G M., ADVOCATE)

THIS CRL.A FILED U/S 378(4) CR.PC PRAYING TO SET
ASIDE THE JUDGMENT PASSED BY VI ADDL.DISTRICT AND
SESSIONS JUDGE, BENGALURU RURAL DISTRICT AT
BENGALURU IN CRL.A.NO.6/2021 DATED 30.08.2022 AND
CONFIRM THE JUDGMENT DATED 01.02.2021 PASSED BY IN
C.C.NO.1721/2018 ON THE FILE OF THE CHIEF JUDICIAL
MAGISTRATE, BENGALURU RURAL DISTRICT AT BENGALURU
FOR THE OFFENCE P/U/S 138 OF THE N.I ACT.

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

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL



ORAL JUDGMENT

This appeal is against the judgment and order dated 30.08.2022 passed in Crl.A.No.6/2021 on the file of the VI Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru (hereinafter be referred to as first appellate Court), by which the first appellate Court while allowing the appeal filed by the accused/respondent herein under Section 374 (3) of Cr.P.C, to set aside the judgment of conviction and sentence passed by trial Court in CC No. 1721/2018 dated 01.02.2021 and has consequently acquitted the accused/respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter be referred to as 'NI Act' for short).

2. Learned counsel for the appellant taking this Court through the record submits that the complainant/appellant herein had lent a sum of Rs.5,00,000/- to the accused/respondent during the month of May 2015. In repayment of part of the said



amount, accused/respondent had issued a cheque bearing No.396247 dated 15.12.2017 for a sum of Rs.2,00,000/- drawn on Karnataka Bank, Vijayanagar 2nd stage, Mysuru. When the said cheque was presented, the same was returned with endorsement 'Funds Insufficient' on 18.12.2017. Thereafter, complainant/appellant herein had issued a notice dated 26.12.2017 to the accused/respondent herein. The accused/respondent had not complied with the demand made, the complainant/appellant had filed the complaint under Section 138 in NI Act.

3. The trial Court on appreciation of evidence had passed the judgment of conviction sentencing the accused/respondent to pay fine of Rs.5,000/- and the compensation of Rs.3,16,000/- to the complainant/appellant.

4. Being aggrieved accused/respondent has preferred an appeal under Section 374 (3) of Cr.P.C.



5. Learned counsel for the appellant submits that the first appellate Court is merely on the ground of non-service of notice, has held that there was no cause of action for filing of the complaint and has accordingly allowed the appeal setting aside the judgment of conviction passed by the trial Court and has consequently acquitted the accused/respondent. He submits that the appellant has now filed an application in I.A.No.2/2022 under Section 391(1) of Cr.P.C seeking production of additional documents. That on return of the cheque, notice was issued to the address namely No.651, 5th cross, Hebbal I Stage, Mysuru, which is the last known address of the accused. That the accused himself had given a police complaint on 24.04.2018 against the complainant/appellant herein. In a statement produced along with the said application, the accused himself has given the said address which has been further reiterated by him. The accused had also earlier given another complaint on 30.06.2017. Even in the said complaint, the



accused had given the same address. Therefore, he submits that at relevant point of time the address of the accused was as mentioned in the notice and in the cause title of the complaint. It is only to wriggle out of the liability, the accused had contended that his address is different from the one shown in the notice. He submits that the said documents were not available with the complainant during the trial and as the same were misplaced and were traced now subsequently, he seeks for an opportunity for leading evidence. Hence, prays for allowing of the present appeal.

6. Learned counsel for the respondent on the other hand submits that the accused/respondent had vehemently contended and denied the service of notice. The accused had taken up a stand of his address bearing No.175, Ningaiahnakere, Hebbal, Kumbara Koppalu and he had also produced the document in this regard. He submits that complainant was not aware of the stand taken by the accused and was not having produced the



documents at relevant point of time, cannot seek to fill in the lacuna at this belated stage. Hence, prays for dismissal of the appeal and the application.

7. Heard and perused the records.

8. The only question that arises for consideration is, *"Whether the first appellate Court is justified in allowing the appeal on the premise of non-service of notice contemplated under Section 138 of NI Act?"*

9. Envelope purportedly containing the notice which was issued subsequent to return of cheque for insufficient funds is marked as Ex.P5. The address of the accused found on the said envelope containing notice is "K.P.Shashikumar S/o Prathap, #651, 5th Cross, Hebbal 1st Stage, Mysuru". In the cross-examination of PW.1, specific denial is made with regard to service of notice. The suggestion made and the answer to the same are as under:



"ಆರೋಪಿ ನಾನು ಕಳುಹಿಸಿಕೊಟ್ಟ ನಿವಿ.3 ನೋಟೀಸ್‌ನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದಾನೆ. ನಾನು ಕಳುಹಿಸಿಕೊಟ್ಟ ನಿವಿ.3 ಅರೋಪಿಗೆ ತಲುಪಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಿವಿ.5 ರ ಮೇಲೆ ವಿಳಾಸ ಆರೋಪಿಯ ವಿಳಾಸ ಅಲ್ಲ ಎಂದರೆ ಸುಳ್ಳು. ಆರೋಪಿ ವಿಳಾಸ ಮನೆ ನಂ.175, ನಿಂಗಯ್ಯನಕೆರೆ, ಹೆಬ್ಬಾಳ 1ನೇ ಹಂತ, ಮೈಸೂರು ಎಂದರೆ ಸರಿಯಲ್ಲ."

10. In furtherance to the aforesaid suggestion in the cross-examination, the accused/respondent had entered the witness box, lead his evidence and has produced documents in Ex.D1-Aadhar card, Ex.D2-Driving licence, Ex.D3-election identity card, Ex.D4-pan card and Ex.D5-copy of complaint given by the accused. The address of accused shown in the aforesaid three documents is "No.175, Ningaiahnakere, Hebbal 1st stage, Metagalli Post, Mysore, Karnataka-570016."

11. Interestingly, during the cross-examination of accused, the complainant has suggested with regard to accused having filed a complaint before the Metagalli Police Station and confronted him with the copy of the said complaint which is marked as Ex.D5. Even the said complaint bears the address of the accused as



"Shashikumar S/o Prathap, 27 years, D175, Ningaiahnakere, Hebbal, Kumbarakoppalu, Mysore".

12. Thus, according to the documents furnished by the accused at Ex.D1 to Ex.D3, as well as the document confronted by the complainant as per Ex.D5, the address of the accused is No.175 Ningaiahnakere, Kumbarakoppalu, Metagalli Post, Mysore, Karnataka and not No.651, 5th cross, Hebbal 1st Stage, Mysore.

13. Thus, the specific defence set up by the accused/respondent and the evidence led by him in this regard by producing the documentary evidence indicate that the address to which the notice at Ex.P3 (Envelope Ex.P5) was different from the address which is proved by the accused. Therefore, it was incumbent upon the complainant/appellant herein to have rebutted the said evidence by leading acceptable and cogent evidence.

14. Complainant/appellant does not seem to have taken any step in this regard before the trial Court. Even



in the appeal filed by the accused/respondent the specific ground urged in the appeal is non-service of notice. No efforts seem to have been made by the complainant/appellant herein to produce such documents before the first appellate Court either.

15. However, along with the present appeal, the complainant has filed an application under Section 391(1) of Cr.P.C as noted above seeking production of additional document. Paragraph No.5 of the affidavit accompanying the said application reads as under:

"5. I state that I could not produce the aforesaid letter and police complaint documents before the trial Court as I could not trace them and hand over the same to my counsel to produce the same before the trial Court as the said documents were misplaced at residence and recently during October 2022, the said documents were traced at my residence and as such I could not find the same before to passing of the judgment by the trial Court. Hence, this application."

16. Settled principle of law is that production of document though permissible, the exercise of such power has to be cautious and with due care, it cannot be a



matter of routine. The Apex Court in the case of ***Ajitsinh Chehuji Rathod vs. State of Gujarat & Anr.*** reported in ***(2024) 1 S.C.R. 1083*** at paragraph No.9 has held as under:

"9. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391 CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice."

17. The facts narrated above and the reasons assigned at paragraph No.5 of the application noted, do not provide the ground for allowing the said application, inasmuch as it is not the case of the complainant/appellant that she did not have these documents during the trial and even at the time of appeal. A cryptic statement of said documents having been lost and found later cannot be the ground to fill in the lacuna. Even if the said documents were lost, the said documents according to the



complainant/appellant were the complaints given by the accused/respondent before the jurisdictional police. Nothing prevented the complainant/appellant to have applied and obtained the said documents from the said police station when the accused/respondent had specifically disputed the service of notice and had produced a document regarding accused residing in a different address.

18. For the aforesaid reasons and analysis, this Court does not find any justification in allowing the application. If done, it may amount to giving an opportunity for the appellant to fill in the lacuna. Accordingly, application is rejected, appeal fails.

Hence, the appeal stands ***dismissed***.

Sd/-
(M.G.S. KAMAL)
JUDGE