



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH
DATED THIS THE 25TH DAY OF MARCH, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL REVISION PETITION NO. 200018 OF 2025
(397(Cr.PC)/438(BNSS))**

BETWEEN:

TUKARAM DONGARU RATHOD
AGE: 55 YEARS, OCC: NIL
R/O NO.42, MARIGEMMADHEEBI
THANDA, KOTHIGUDDA VILLAGE
TQ: DEVADURGA, DIST: RAICHUR-584101

...PETITIONER

(BY SRI. GANESH NAIK., ADVOCATE)

AND:

ANANDA S/O RAMABAHADDUR
AGE: 30 YEARS,
OCC: PRIVATE EMPLOYEE
R/O DEVADURGA
TQ: DEVADURGA, DIST: RAICHUR-584101

...RESPONDENT

(RESPONDENT SERVED)

THIS CRL.RP IS FILED U/S 397 R/W SEC 401 OF CR.P.C (OLD) U/SEC 438 R/W SEC 442 BNSS, PRAYING TO CALL FOR AND EXAMINE THE RECORDS IN C.C NO. 2121/2021 AND SET ASIDE THE JUDGMENT PASSED BY THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DEVADURGA BY ITS JUDGEMENT ORDER DATED 24TH JANUARY 2023 AND FURTHER THE SAME BEING PARTLY ALLOWED IN PART AND CONFIRMED BY THE COURT PRINCIPAL DISTRICT AND SESSION JUDGE, RAICHUR IN CRL. APPEAL NO.17/2023 ORDER DATED 6TH NOVEMBER 2024.



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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL ORDER

The petitioner/accused has preferred this revision petition against the judgment of conviction and order on sentence passed by the Civil Judge and JMFC, Devadurga, in C.C.No.2121/2022 dated 24.01.2023, which was modified by the Principal District and Sessions Judge, Raichur in Crl.A.No.17/2023 dated 06.11.2024.

2. The parties are referred to as per their rank before the trial Court.

3. The brief facts leading to this revision petition are as follows:

The complainant filed a complaint stating that he is a farmer and works as a private employee in Khenad Pattin Sahakara Sangha, Devadurga. The accused is a government teacher. He came to the sangha and introduced himself as a school teacher. They have



maintained a good relationship for a period of two years. The accused approached the complainant and requested an advance of Rs.1,35,000/- as a hand loan for his family necessities stating that he would repay it within six months. Accordingly, the complainant advanced the amount of Rs.1,35,000/- to the accused. For that amount, the accused issued Cheque No.172676 drawn on the State Bank of India, Branch Devadurga, on 30.07.2016 for an amount of Rs.1,35,000/- to the complainant. The complainant presented the cheque for encashment on 04.08.2016 and it was returned with a remark "funds insufficient". Thereafter, the complainant issued a legal notice calling upon the accused to pay the cheque amount but he requested the complainant to grant him some time for repayment. At the request of the accused and after some days, he again presented the said cheque before his banker for encashment and again it was returned with an endorsement "funds insufficient". Hence, he got served another legal notice to the accused who neither replied nor



paid the cheque amount. Hence, the complainant filed a complaint before the JMFC Devadurga under Section 200 of Cr.P.C. Based on it, the trial Court took cognizance against the accused for the offence under Section 138 of the Negotiable Instruments Act and after completion of initial formalities ordered the conversion of the private complaint into a criminal case and summons were issued to the accused.

4. In response to the summons, the accused appeared before the trial Court and was released on bail. Thereafter, the substance of plea was recorded. The accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, the complainant examined himself as PW.1 and another witness was examined as PW.2. Six documents were marked as Exhibit P1 to Exhibit P6. On closure of the prosecution evidence, a statement under Section 313 of CrPC was recorded. The accused denied the evidence



appearing against him. The accused examined himself as DW.1.

6. On hearing the arguments, the trial Court convicted the accused for the offence under Section 138 of the NI Act and passed a sentence of simple imprisonment for a period of one year and to pay a fine of Rs.2,75,000/-. Out of the said amount, it further ordered payment of Rs.2,70,000/- as compensation to the complainant and Rs.5,000/- to the State as fine.

7. Being aggrieved by the judgment of conviction and order of sentence passed by the trial Court, the accused preferred an appeal before the Principal District and Sessions Judge, Raichur, which came to be partly allowed. The judgment of conviction passed by the trial Court was confirmed. However, the sentence of simple imprisonment of one year passed by the Principal Civil Judge and JMFC, Devadurga in C.C.No.2121/2021 dated 24.01.2023 was set aside and the order of payment of a fine in the amount of Rs.2,75,000/- was also set aside and



was modified to the extent of Rs.1,75,000/- and in default to undergo simple imprisonment for a period of one year. Further, the appellate Court passed an order to pay the amount of Rs.1,70,000/- to the complainant as compensation and the remaining amount of Rs.5,000/- is to be remitted to the Government.

8. Being aggrieved by the judgment of the appellate Court as well as the trial Court, the revision petitioner has preferred this revision petition.

9. The learned counsel appearing on behalf of the petitioner submits that though the revision petitioner has taken several grounds in the revision petition, the learned counsel for the revision petitioner has restricted his arguments to only for modification of the sentence passed by the trial Court pertaining to the default clause contending that same is contrary to the provision of Section 65 of IPC.

10. Despite service of notice the respondent remained absent and unrepresented.



11. Having heard the arguments of the revision petitioner 's counsel and upon perusal of the records, the following points would arise for our consideration:

- i. Whether the appellate Court was justified in passing the default sentence of one year of simple imprisonment for non-payment of Rs.1,75,000/-?
- ii. What order?

12. I have examined the materials placed before this Court.

13. On careful examination of the oral and documentary evidence placed by both parties, I do not find any legal or factual error in the judgment of conviction passed by the trial Court which is confirmed by the appellate Court.

14. With regard to the sentence passed by the appellate Court is concerned, the appellate Court has passed an order that the appellant/accused shall pay a fine



of Rs.1,75,000/- and in default thereof shall undergo simple imprisonment for a period of one year.

15. It is appropriate to mention the provision of Section 65 of the Indian Penal Code, 1860, which reads as under:

"Section 65:Limit to imprisonment for non-payment of fine, when imprisonment and fine are awardable. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine."

16. In view of the aforesaid provision, the appellate Court ought to have passed an order that in default of payment of Rs.1,75,000/-, the accused shall undergo imprisonment for a period of six months, i.e, one forth of the term of imprisonment as the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is punishable with imprisonment for up to two years or fine or with both.



17. The order of the appellate Court is not in consonance with the provisions of Section 65 of the Indian Penal Code. Hence, the same must be modified by this Court.

18. Accordingly, I answer point No.1 partly in the affirmative.

19. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

- i. The revision petition is partly allowed.
- ii. The judgment of conviction passed by the Principal Civil Judge and JMFC Devadurga in C.C.No.2121/2021 dated 24.01.2023, which was confirmed by the Principal District and Sessions Judge of Raichur in Criminal Appeal No.17/2023 dated 06.11.2024 is confirmed.



iii. The sentence passed by the Principal District and Sessions Judge, Raichur is modified as under:

- a. The revision petitioner/accused shall pay a fine of Rs.1,75,000/- and in default thereof, shall undergo simple imprisonment for a period of three months instead of one year. The remaining part of the order passed by the Principal District and Sessions Judge, Raichur remains unaltered.
- b. The Registry is directed to send a copy of this judgment along with the TCR to the trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

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List No.: 1 Sl No.: 60