



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 200102 OF 2025

(378(Cr.PC)/419(BNSS))

C/W

CRIMINAL APPEAL NO. 200096 OF 2025

CRIMINAL APPEAL NO. 200097 OF 2025

CRIMINAL APPEAL NO. 200098 OF 2025

IN CRL.A No. 200102/2025

BETWEEN:

Digitally signed by
SHIVALEELA
DATTATRAYA
UDAGE
Location: HIGH
COURT OF
KARNATAKA

SRI.RAVINDRA
S/O SRI. KALLAYYA SWAMY,
AGED ABOUT 48 YEARS,
OCCUPATION BUSINESS,
R/O HOUSE NO.8-11-590,
VENKATESHWARA COLONY,
NEAR NATIONAL COLLEGE,
BIDAR-585 401.

...APPELLANT

(BY SRI. RAVI B PATIL., ADVOCATE)

AND:

SRI. SHIVAKUMAR @ SHIV
S/O GURULINGAPPA @ GURAYYAMATHAPATI,
AGED ABOUT 45 YEARS,



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

OCCUPATION BUSINESS,
R/O PLOT NO.306, PHASE NO.2,
A K ENCLAVE APARTMENT 8-2-350,
A. NO.3 BANJARA HILLS,
HYDERABAD-500034, TELANGANA STATE
MOBILE: 9581888890

...RESPONDENT

(BY SRI. MANVENDRA REDDY., ADVOCATE)

THIS CRL.A IS FILED U/S. 378 (4) OF CR.P.C (OLD) U/S 419(4) BNSS (NEW) PRAYING TO A) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF ACQUITTAL DATED 20-01-2025 PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE, BIDAR IN CRIMINAL APPEAL NO.37/2024; B) CONFIRM THE ORDER OF CONVICTION AND IMPOSITION OF FINE DATED 20-04-2024 PASSED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND J.M.F.C BIDAR IN C.C NO. 41/2023 AND C) DIRECT THE ACCUSED TO PAY THE FINE AS ORDERED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND J.M.F.C, BIDAR IN C.C NO.41/2023.

IN CRL.A NO. 200096/2025

BETWEEN:

SRI. RAVINDRA
S/O SRI KALLAYYA SWAMY,
AGED ABOUT 48 YEARS,
OCCUPATION BUSINESS,
R/O HOUSE NO.8-11-590,
VENKATESHWARA COLONY,
NEAR NATIONAL COLLEGE,
BIDAR-585 401

...APPELLANT

(BY SRI. RAVI B. PATIL.,ADVOCATE)

AND:

SRI. SHIVAKUMAR @ SHIV
S/O GURULINGAPPA @ GURAYYA MATHAPATI,
AGED ABOUT 45 YEARS,



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

OCCUPATION BUSINESS,
R/O PLOT NO.306, PHASE NO.2,
A K ENCLAVE APARTMENT 8-2-350,
A. NO.3 BANJARA HILLS
HYDERABAD, 500034
TELANGANA STATE
MOBILE: 9581888890

...RESPONDENT

(BY SRI. MANVENDRA REDDY., ADVOCATE)

THIS CRL.A. FILED U/S. 378 (4) OF CR.P.C U/S 419 (4) OF BNSS(NEW), PRAYING TO A) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF ACQUITTAL DATED 20-01-2025 PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE, BIDAR IN CRIMINAL APPEAL NO.36/2024; B) CONFIRM THE ORDER OF CONVICTION AND IMPOSITION OF FINE DATED 20-04-2024 PASSED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND J.M.F.C., BIDAR IN C.C NO.42/2023 AND C) DIRECT THE ACCUSED TO PAY THE FINE AS ORDERED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND J.M.F.C., BIDAR IN C.C. NO.42/2023.

IN CRL.A NO. 200097/2025

BETWEEN:

SRI. RAVINDRA
S/O SRI KALLAYYA SWAMY,
AGED ABOUT 48 YEARS,
OCCUPATION BUSINESS,
R/O HOUSE NO.8-11-590,
VENKATESHWARA COLONY,
NEAR NATIONAL COLLEGE,
BIDAR-585 401

...APPELLANT

(BY SRI. RAVI B PATIL., ADVOCATE)

AND:

SRI. SHIVAKUMAR @ SHIV
S/O GURULINGAPPA @ GURAYYA MATHAPATI,



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

AGED ABOUT 45 YEARS,
OCCUPATION BUSINESS,
R/O PLOT NO.306, PHASE NO.2,
A K ENCLAVE APARTMENT 8-2-350,
A. NO.3 BANJARA HILLS,
HYDERABAD-500034, TELANGANA STATE
MOBILE: 9581888890

...RESPONDENT

(BY SRI. MANVENDRA REDDY., ADVOCATE)

THIS CRL.A IS FILED U/S. 378 (4) OF CR.P.C (OLD),
U/S 419 (4) OF BNSS, PRAYING TO A) ALLOW THE APPEAL
AND SET ASIDE THE ORDER OF ACQUITTAL DATED
20.01.2025 PASSED BY THE LEARNED PRINCIPAL
DISTRICT AND SESSIONS JUDGE BIDAR IN CRIMINAL
APPEAL NO.35/2024; B) CONFIRM THE ORDER OF
CONVICTION AND IMPOSITION OF FINE DATED 20.04.2024
PASSED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND
J.M.F.C BIDAR IN C.C NO.1158/2023 AND C) DIRECT THE
ACCUSED TO PAY THE FINE AS ORDERED BY THE LEARNED
ADDITIONAL CIVIL JUDGE AND J.M.F.C., BIDAR IN C.C NO.
1158/2023.

IN CRL.A NO. 200098/2025

BETWEEN:

SRI. RAVINDRA S/O SRI KALLAYYA SWAMY,
AGED ABOUT 48 YEARS,
OCCUPATION BUSINESS,
R/O HOUSE NO.8-11-590,
VENKATESHWARA COLONY,
NEAR NATIONAL COLLEGE, BIDAR-585 401

...APPELLANT

(BY SRI. RAVI B. PATIL., ADVOCATE)

AND:

SRI. SHIVAKUMAR @ SHIV
S/O GURULINGAPPA @ GURAYYA MATHAPATI,
AGED ABOUT 45 YEARS,



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

OCCUPATION BUSINESS,
R/O PLOT NO.306, PHASE NO.2,
A K ENCLAVE APARTMENT 8-2-350,
A. NO.3 BANJARA HILLS,
HYDERABAD-500034
TELANGANA STATE
MOBILE: 9581888890

...RESPONDENT

(BY SRI. MANVENDRA REDDY., ADVOCATE)

THIS CRL.A IS FILED U/S. 378 (4) OF CR.P.C (OLD) U/SEC 419(4) OF BNSS, PRAYING TO A) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF ACQUITTAL DATED 20.01.2025 PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE BIDAR IN CRIMINAL APPEAL NO.34/2024; B) CONFIRM THE ORDER OF CONVICTION AND IMPOSITION OF FINE DATED 20.04.2024 PASSED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND J.M.F.C., BIDAR IN C.C NO.43/2023 AND C) DIRECT THE ACCUSED TO PAY THE FINE AS ORDERED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND J.M.F.C., BIDAR IN C.C NO. 43/2023.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA



ORAL JUDGMENT

All these appeals arise out of the judgment passed by the Principal District and Sessions Judge, Bidar in Criminal Appeal No.37/2024 connected with Criminal Appeal Nos.36/2024, 35/2024 and 34/2024 dated 21.01.2025 (for short "the appellate Court").

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

3. Brief facts leading to these appeals are that, the complainant-M.Ravindra S/o Kallayaswami filed a complaint under Section 138 of NI Act, as to the dishonour of cheques. After taking cognizance by the learned Additional Civil Judge and JMFC, Bidar (for short "the trial Court"), cases were registered in C.C.Nos.41/2023, 42/2023, 43/2023 and 1158/2023.

4. To prove the case, the complainant examined one witness as PW1 and marked 15 documents as Exhibits P1 to P15. On closure of prosecution side evidence, statement under Section 313 of CrPC was recorded.



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

Accused denied the evidence of PW1 and adduced his evidence as DW1 by way of affidavit and marked three documents as Exhibits D1 to D3.

5. Having heard the arguments on both sides, the trial Court convicted the accused for the offence under Section 138 of the NI Act and passed the sentence thereon. Being aggrieved by the judgment of conviction and order on sentence the accused preferred appeals before the appellate Court in Criminal Appeal No.37/2024 connected with Criminal Appeal Nos.34/2024, 35/2024 and 36/2024. The appellate Court allowed all the appeals and set aside the judgment passed by the trial Court and acquitted the accused for the offence under Section 138 of NI Act. Being aggrieved by the judgment of acquittal passed by the Principal District and Sessions Judge, Bidar, appellant has preferred these Criminal Appeals.

6. Learned counsel appearing on behalf of the appellant has reiterated the grounds urged in the memorandum of appeal. Additionally, he would submit



that the trial Court has committed an error in receiving the affidavit evidence of DW.1 instead of oral evidence, which is not permissible under law. In appeal, even the appellate Court has not observed the same and has acquitted the accused. To substantiate his argument, he relied on the decision of the Hon'ble Apex Court in the case of **MANDVI CO-OPERATIVE BANK LTD. v. NIMESH B. THAKORE** reported in **(2010)3 SCC 83** and sought for remanding the case to the trial Court with a direction to the accused to adduce his oral evidence instead of affidavit evidence.

7. As against this, the learned counsel appearing on behalf of the respondent would submit that the appellate Court has properly appreciated the evidence on record and that there are no grounds to remand the case to the trial Court and sought for dismissal of this appeal.

8. Having heard the arguments on both sides, the following points would arise for consideration:



- i. Whether the appellant has made out grounds to remand the case to the trial Court with a direction to provide an opportunity to the accused to adduce his oral evidence?
- ii. What order?

Regarding Point No.1:

9. I have examined the materials placed before this Court. The accused-Shivkumar alias Shrinivas has adduced his evidence as DW1 by way of affidavit which is not permissible in law. The Hon'ble Supreme Court, in the case of **MANDOVI CO-OPERATIVE BANK LIMITED** (supra), has held that the receiving of evidence by way of by the affidavit is illegal. Without expressing any opinion, on the merits of the case, keeping in mind the aforesaid decisions, I am of the opinion that the complainant/appellant has made out ground to remand the case to the trial Court with a direction to provide opportunity to the respondent/accused to adduce his oral evidence instead of filing evidence by way of affidavit. Accordingly, the appellant/complainant has made out a ground



**NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER**

to remand the case to the trial Court with a direction to provide an opportunity to the accused/respondent to adduce his oral evidence. Hence, I answer Point No.1 in the affirmative.

Regarding Point No.2:

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

ORDER

- i. Criminal Appeals are allowed;
- ii. The judgment of conviction and order on sentence passed by the Additional Senior Judge, Bidar in C.C.Nos.41/2023, 42/2023, 1158/2023 and 43/2023 dated 20.01.2025 and the judgment of acquittal passed by the Principal Civil Judge and JMFC, Bidar in Criminal Appeal No.37/2024, Criminal Appeal Nos.34/2024, 35/2024 and 36/2024, are set aside;
- iii. The cases are remitted back to the trial Court with a direction to provide an opportunity to the accused to adduce his oral evidence in accordance with law;



NC: 2026:KHC-K:2818
CRL.A No. 200102 of 2025
C/W CRL.A No. 200096 of 2025
CRL.A No. 200097 of 2025
AND 1 OTHER

- iv. Both parties are permitted to adduce further evidence, if any, before the trial Court;
- v. It is made clear that, this Court has not expressed any opinion on the merits of the case;
- vi. The trial Court shall proceed with the case in accordance with law;
- vii. The both parties are directed to appear before the trial Court on 23.04.2026 without seeking any further notice;
- viii. The trial Court shall dispose of the case as early as possible, as the matter;

Registry is directed to send the copy of this judgment along TCR to the trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

TIN
List No.: 1 Sl No.: 47 CT-BH