



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.814 OF 2021

BETWEEN:

C. NIRANJAN YADAV
S/O. CHANDRAPPA
AGED ABOUT 40 YEARS
RESIDING AT GANDHI NAGAR
4TH CROSS, B-BLOCK
SHIVAMOGGA-577 201.

NOW RESIDING AT VINOBA NAGAR
SHIVAMOGGA-577 201.

...PETITIONER

(BY SRI SATEESH CHANDRA K. V., ADVOCATE)

AND:

D. RAVI KUMAR
S/O. D. THIMMAPPA
AGED ABOUT 40 YEARS
RESIDING AT D. NO.9/27
SRIDEVI TALKIES ROAD
DHARMAVARAM-515 671.

...RESPONDENT

(BY SRI G. LAKSHMEESH RAO, ADVOCATE)

* * *

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CR.P.C. PRAYING TO SET ASIDE THE SENTENCE AND CONVICTION ORDER PASSED IN CRL.A. NO.131 OF 2019 DATED 12.03.2021 PASSED BY THE I ADDITIONAL SESSIONS JUDGE, AT SHIVAMOGGA, AND CONVICTION ORDER PASSED BY THE COURT OF THE J.M.F.C-III, AT SHIVAMOGGA, IN C.C. NO.17 OF 2016 DATED 14.05.2019 FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE N.I. ACT.

THIS CRIMINAL REVISION PETITION IS COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

Heard Sri Sateesh Chandra K.V., learned counsel for the revision petitioner, and Sri G. Lakshmeesh Rao, learned counsel for the respondent.

2. The accused who suffered an order of conviction under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act') in Criminal Case No.17 of 2016 confirmed in Criminal Appeal No.131 of 2019 has preferred this revision petition.

3. The facts in brief which are utmost necessary for disposal of this revision petition are as under:

A complaint came to be filed under Section 200 of the Code of Criminal Procedure, 1908 (for short, 'Cr.P.C.') alleging the commission of offence under Section 138 of the Act by contending that the accused sought financial assistance from the complainant in a sum of Rs.65,000/- and towards repayment of the same, a cheque bearing No.956788 dated 16-12-2013 in a sum of Rs.65,000/- was



issued by him, drawn on State Bank of Mysuru, Shivamogga Branch. The said cheque on presentation came to be dishonoured with an endorsement '*funds insufficient*'. Legal notice issued to the accused returned with an endorsement '*Not claimed*'. Thereafter, the complainant sought for action.

4. Learned trial Magistrate after following the necessary formalities, secured the presence of the accused and recorded the plea. The accused pleaded not guilty. Therefore, the trial was held.

5. In order to prove the case of the complainant, the complainant got examined himself as PW1 and placed on record six documents which are executed and marked as Exs.P1 to P6. Cross-examination of PW1 did not yield any positive material so as to rebut the presumption.

6. The accused's statement as is contemplated under Section 313 of the Cr.P.C. was recorded, wherein the accused has denied all the incriminating circumstances.



7. As against the evidence placed on record by the complainant, the accused got examined himself as DW1 and placed on record two documents as Exs.D1 and D2 which are the certified copies of private complaint filed by the accused against one Praveen Kumar and another person in P.C.R No.868 of 2013 and certified copy of the objections filed to 'B' report in the said private complaint.

8. On conclusion of the recording of the evidence on both sides, the learned trial Magistrate heard the parties and considering the rival contentions of the parties, found that the material evidence placed on record by the accused was not sufficient to rebut the presumption available to the complainant under Section 139 of the Act and convicted the accused and imposed a fine of Rs.75,000/- and out of the same, a sum of Rs.65,000/- was ordered to be paid as compensation and balance sum of Rs.10,000/- towards defraying expenses of the State.



9. Being aggrieved by the same, the accused preferred an appeal before the District Court in Criminal Appeal No.131 of 2019.

10. The learned Judge in the First Appellate Court after securing the records, hearing the parties in detail, dismissed the appeal of the accused by judgment dated 12-3-2021.

11. Thereafter, the accused is before this Court in this revision petition.

12. Sri Sateesh Chandra K.V., learned counsel for the revision petitioner, reiterating the grounds urged in the revision petition, contended that the material on record, especially, with regard to issuance of notice and non-service thereof, both the Courts have not properly appreciated the admission made by PW1 in the cross-examination whereunder, the complainant has categorically admitted that he accompanied the Postman and got a shara returned stating that '*Not claimed*' even



though the accused was not residing in the said address whereby, the learned trial Magistrate ought not to have taken cognizance of the offence punishable under Section 138 of the Act.

13. Learned counsel also pointed out that misuse of the cheque issued in favour of one Praveen Kumar, Advocate, the accused has taken necessary action by filing a private complaint against said Praveen Kumar and yet another person and such a positive action on the part of the accused has been totally ignored by both the Courts and wrongly convicted the accused and therefore, sought for allowing the revision petition.

14. *Per contra*, Sri G. Lakshmeesh Rao, learned counsel for the respondent, supports the impugned judgment.

15. Having heard the parties in detail, this Court perused the material on record meticulously.



16. On such perusal of the material on record, the signature found on the cheque is that of the accused is not in dispute. In so far as the circumstance under which the cheque has reached the hands of the complainant is concerned, it is a definite stand of the accused that one Praveen Kumar, Advocate, along with anti-social elements came to the house of the accused and forcibly snatched Ex.P1-cheque from the hands of the accused and the same was handed over to the complainant for presentation to the Bank and under such circumstances, the cheque came to be dishonoured.

17. It is also specific case of the accused that notice is not properly served and therefore, the trial Court ought not to have taken cognizance of the offence. In this regard, a specific admission has been obtained in the cross-examination of PW1, which reads as under:

"ನಾನು ನೋಟೀಸು ನೀಡಿದ ವಿಳಾಸದಲ್ಲಿ ಆರೋಪಿತ ವಾಸವಾಗಿರದೆ ಇದ್ದ ಕಾರಣಕ್ಕಾಗಿ ನಾನೇ ಪೋಸ್ಟ್ ಮ್ಯಾನ್ ಜೊತೆಯಲ್ಲಿ ಸೇರಿಕೊಂಡು ಇಂಟಿಮೇಷನ್ ಡೆಲಿವರ್ಡ್ ಎಂದು ಬರೆಸಿದ್ದೇನೆಂದರೆ ಸರಿ."



18. To appreciate the improper service of notice and what is the effect of such improper service of notice while taking cognizance of the offence under Section 138 of the Act, it is just and necessary for this Court to cull out Sections 138 and 142 of the Act, which read as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceed the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-



- a) *the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- b) *the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- c) *the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

142. Cognizance of offences.-*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*

- a) *no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;*



b) *such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;*

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

c) *no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."*

19. On close reading of Sections **138 and 142** of the Act, the intention of legislature is clear and without there being any ambiguity. The purpose of issue of prior notice before the complaint would be filed before the jurisdictional Magistrate is loud and clear in the language, which has been employed in the aforesaid provisions in as much as the requirements of issue of prior notice is to protect a *bonafide* drawer of the cheque. A properly



served legal notice is a must for maintainability of a case of cheque bounce as is held in the case of ***SHAKTI TRAVEL AND TOURS v. STATE OF BIHAR AND ANOTHER*** reported in ***(2002) 9 SCC 415***. Fifteen days time should be given by the payee when the cheque issued by the drawer has been dishonoured for any one of the reasons that has been contemplated for dishonour of the cheque by the Banks.

20. There is no bar for the Magistrate to act on the endorsement by the Postal Authority like '*Not claimed*' while taking cognizance. After taking cognizance, the question of improper service of notice practically loses its significance in as much as if the drawer is of the opinion that if the cheque is dishonoured on any of the technical reasons or the cheque is of the misuse, the drawer is entitled to take necessary action against the complainant.

21. Often a question may arise as to what is the purpose of issue of demand notice. Admittedly, the prior notice as is contemplated under the statute referred to



supra is to protect a *bonafide* or honest drawer. It was not the intention of the legislature that the moment a cheque is bounced, drawer of such cheque cannot be presumed as dishonest in each and every case. At times, there may be genuine reasons for non-honouring the cheque by the banker of the drawer. Therefore, to protect such drawer, who is honest enough in honouring its commitments, should be given a chance to rectify the mistake on account of dishonour of the cheque.

22. Therefore, the drawer of the cheque is notified about his omissions and commissions by issuance of notice referred to under the statute, given fifteen days time.

23. View of this Court in this regard is supported by the judgment of the Hon'ble Apex Court in the case of **CENTRAL BANK OF INDIA AND ANOTHER V. SAXONS FARMS** reported in **(1999) 8 SCC 221** and also the judgment rendered by the Co-ordinate Bench of this Court in the case of **CHIKKACHOWDAPPA v. S.M. SEETHARAM** reported in **LAWS(KAR)-2013-6-4**.



24. Having said thus, whether service of notice is a must for taking cognizance is the next moot question that would often arise for the trial Court while taking cognizance. Many times, the endorsement of the returned cover will be '*left*', '*not known*', '*not available in the house*,' '*house locked*', '*shop closed*', etc.,

25. Whether such endorsement which is often common on the returned covers would prevent the trial Court in proceeding with the taking of cognizance in a given case is also no longer *res integra*.

26. What is to be looked into is, whether the address of the accused which is known to the complainant has been properly mentioned on the registered cover. If it is sent to such registered address, responsibility of the complainant would end and it is for the accused to say as to why he could not receive the cover. Law in this regard is well settled by decisions rendered by the Co-ordinate Benches of this Court in the case of **FAKIRAPPA v.**



SHIDDALINGAPPA AND ANOTHER reported in **ILR 2002 KAR 181**, and **Chikkachowdappa** stated supra.

27. In the case on hand, it is the specific case of the accused that one Praveen Kumar, Advocate, came with anti-social elements and snatched Ex.P1-cheque from the hands of the accused. No doubt, on record, there is material in the form of Ex.D1 wherein, the certified copy of the complaint lodged by the accused against Praveen Kumar and another is found. Pertinently, the complainant is not a party-accused to the said private complaint. It is the specific stand of the accused that Praveen Kumar did handover that snatched cheque to the hands of the complainant as he suggested to PW1 in the cross-examination. If that is so, nothing prevented the accused to implead or arraign the present complainant as the accused in the said private complaint bearing P.C.R. No.868 of 2013.



28. Further, with regard to the address that has been found in the notice is concerned, DW1 in his cross-examination categorically admits that in the year 2013, he was staying in Gandhi Nagar along with his father, but he has improved his stand by stating that it was a rented house. When did he vacate the house at Gandhi Nagar, when he started living in Vinoba Nagar and whether he has intimated the said aspect of the matter to the complainant or in any official record, such change of address is effected is not forthcoming on record.

29. Presumption under the General Clauses Act, 1897, would go to show that if a person has addressed a registered letter to the last known address that was known to a particular person, it is deemed to have been served.

30. Under such circumstances, admission, i.e. obtained in the cross-examination attributable to the complainant is not that significant enough to hold that the entire case of the complainant is to be discarded. As is referred to supra, since the purpose of issuing notice is to



save the *bonafide* drawer of the cheque, nothing prevented the accused to pay the money after he appeared before the learned trial Magistrate or at least at the stage of the appeal, or at least before this Court.

31. Therefore, the arguments put forward on behalf of the revision petitioner that improper service of notice should result in dismissal of the complaint cannot be countenanced in law.

32. Since the misuse has not been properly established by not impleading the present complainant to the case, i.e. filed in P.C.R. No.868 of 2013 and the Police after thorough investigation, having filed 'B' final report in so far the private complaint that has been filed by the accused, this Court is of the considered opinion that the learned trial Magistrate and the learned Judge in the First Appellate Court were justified in raising the presumption in favour of the complainant as is found in Section 139 of the Act referred to supra and convicting the accused is just and proper.



33. In fact, the learned Judge in the First Appellate Court did consider the filing of the private complaint in paragraph Nos.22 and 23 of the impugned judgment.

34. Therefore, this Court, that too, in revisional jurisdiction does not find any ground whatsoever much less good ground to annul the findings recorded by the learned trial Magistrate and the learned Judge in the First Appellate Court that the accused is guilty of the offence punishable under Section 138 of the Act.

35. Having said thus, it is noticed that both the Courts have misdirected themselves in ordering a sum of Rs.10,000/- payable to the State as defraying expenses of the State. In view of the fact that the *lis* is *privy* to the parties and no State machinery is involved, to that extent, interference is necessary in this revision.

36. Accordingly, the following:



ORDER

- (i) Criminal revision petition is ***allowed-in-part.***

- (ii) While maintaining the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, awarding fine amount in a sum of Rs.75,000/- is reduced to Rs.65,000/-. The entire amount of Rs.65,000/- is ordered to be paid as compensation to the complainant, failing which, the accused shall undergo simple imprisonment for a period of six months.

- (iii) Awarding fine of Rs.10,000/- to the State towards defraying expenses is hereby *set-aside.*



- (iv) Accused is granted time till 25th July, 2024
to pay the balance fine amount.

Sd/-
JUDGE

KVK
List No.: 1 SI No.: 53