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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL 2023

BEFORE

THE HON'BLE JUSTICE RAJENDRA BADAMIKAR

CRL.R.P No. 964 OF 2019

BETWEEN

D.B.JATTI,

...PETITIONER

(BY SRI A.C. CHETHAN, ADVOCATE)

AND

M/S JAMNADAS DEVIDAS,

…RESPONDENT

(BY SRI M.S NARAYAN, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C TO SET ASIDE THE JUDGMENT OF THE II ADDITIONAL SMALL CAUSES JUDGE AND XXVIII A.C.M.M., AT BENGALURU CITY DATED

30.11.2016, IN C.C.NO.48039/2010 (ANNEXURE-A) CONVICTING THE PETITIONER HEREIN UNDER SECTION 138 OF THE N.I ACT AND SET ASIDE THE JUDGMENT OF THE 64TH ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DATED 02.05.2019 IN CRL.A.NO.1509/2016 (ANNEXURE-B) CONFIRMING THE JUDGMENT OF THE TRAIL COURT.

THIS CRL.RP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.03.2023, COMING ON FOR 'PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This revision is filed by the petitioner challenging the concurrent findings of judgment of conviction and order of sentence dated 30.11.2016 passed by the 2nd Additional Small Causes Court and 18th Additional CMM, Bengaluru, in C.C. No.48039/2010 and confirmed by the 64th Additional City Civil and Sessions Judge, Bengaluru in Criminal Appeal No.1509/2016 vide order dated 02.05.2019.

2. For the sake of convenience, the parties herein are referred with their original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to the case are that, the complainant has lodged a complaint under Section 200 of Cr.P.C. against the accused/revision petitioner herein for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 ('N.I. Act' for short). It is the contention of the complainant that for the purpose of running business of M/s. Jatti Projects Inc , which is a proprietary firm, the accused has borrowed a sum of Rs.10.00 Lakhs by executing On-demand Promissory Note on 19.04.2007 and he has also agreed to repay the same with interest as and when demanded. It is also alleged that the said amount was paid by the complainant through a cheque bearing No.891164 dated 07.04.2007 drawn on M/s. The Catholic Syrian Bank Limited, Ghandhinagar Branch, Bengaluru. In discharge of the said debt, the accused has issued a cheque for Rs.10.00 Lakhs and also promised to pay the interest on later date. It is also alleged that the accused has paid interest from 09.04.2007 till 09.01.2009 and he

is required to pay interest due from 10.01.2009 and he has issued the cheque for Rs.10.00 Lakhs towards part payment of liability.

4. It is further contended that, when the complainant has presented the said cheque for encashment, the same was dishonoured and he has issued legal notice on 08.10.2010, but the accused has neither paid the cheque amount nor replied to the notice and hence, a complaint came to be lodged. After lodging complaint, the learned Magistrate has recorded the sworn statement of the complainant and after appreciating the materials, he has taken cognizance and issued process against the accused.

5. The accused has appeared before the learned Magistrate and was enlarged on bail. The accusation was read-over and explained to him and he pleaded not guilty. To prove the guilt of accused, the power of attorney holder

of complainant was examined as PW.1 and placed reliance on 13 documents marked at Exs.P1 to P.13.

6. After conclusion of evidence of complainant, the statement of accused under Section 313 of Cr.P.C. came to be recorded and the case of accused is of total denial. He asserted that, the complainant is not known to him and signed cheque was with one Manoj Gera and from him the complainant has received it and filed this false case. Accused got examined himself as DW.1 and one witness was examined as DW.2. The accused has also placed reliance on Exs.D1 to D5. The hand-writing expert Smt C.V. Jayadevi was also examined as CW.1 and Ex.C1 was marked in her evidence.

7. After hearing arguments and after appreciating the oral and documentary evidence, the learned Magistrate found that the complainant is able to discharge his burden by proving the guilt of accused beyond all reasonable doubt and convicted the accused for the offence under

Section 138 of N.I. Act by imposing sentence of fine of Rs.10.05,000/- with default cause.

8. Being aggrieved by this judgment of conviction, the accused has approached the learned 14th Additional City Civil and Sessions Judge, Bengaluru, in Criminal Appeal No.1509/2016. The learned Sessions Judge after re-appreciating the oral as well documentary evidence, dismissed the appeal by confirming the judgment of conviction and order of sentence passed by the learned Magistrate. Being aggrieved by the concurrent findings, the revision petitioner/accused is before this Court by way of this revision.

9. Heard the arguments advanced by the learned counsel for revision petitioner/accused and the learned counsel for respondent/complainant. Perused the records.

10. Learned counsel for revision petitioner/accused would contend that, admittedly there is material alteration in the date of the cheque, which is evident from the

evidence of handwriting expert-CW.1, which is an undisputed fact and it is also evident from Ex.D1, which is the notarized xerox copy of the cheque (Ex.P1). It is asserted that, CW.1-handwriting expert was not cross-examined and the report of CW.1 was not challenged regarding material alternation in the date on the cheque and as such, the cheque becomes invalid under Section 87 of the N.I. Act. He would also contend that the complainant did not lodge any complaint and the proceedings were through Power of Attorney holder and there is no evidence that the Power of Attorney holder is having knowledge of the proceedings. He would also contend that the complainant has not produced any document regarding Money Lending Licence. Hence, he would contend that both the courts below have failed to appreciate these aspects and hence, he would seek for allowing the revision by setting aside the impugned judgment of conviction and order of sentence passed by both the Courts below.

11. Per contra, learned counsel for the respondent/ complainant would support the judgment of conviction and order of sentence passed by both the Courts below. He would contend that the signature on the cheque and that the cheque belongs to the accused are undisputed facts. He would also contend that Ex.D1 and Ex.P1 are one and the same and alternations which were noticed in Ex.P1 are also found in Ex.D1, which establishes that the accused has materially altered the cheque prior to issuance of the same to the complainant and he had knowledge of material alteration. Hence, he would contend that now in view of the knowledge of material alternations, the accused cannot take advantage of Section 87 of the N.I. Act. He would also contend that the accused is not prepared to explain his possession of Ex.D1 and alterations found in Ex.P1 and subsequent alteration in Ex.D1 were not found in Ex.P1, which disclose that, even thereafter the accused has made certain alteration in Ex.D1, which is the copy of Ex.P1. He would contend that the accused has

not given any explanation as to how he came in possession of the copy of Ex.P1 and hence, he would assert that since the cheque and signature have been admitted, there is presumption in favour of the complainant and accused is required to rebut the presumption, which he has failed to do so. Hence, he would assert that both the Courts below have appreciated all these aspects in detail and arrived at just decision which does not call for any interference. Hence, he would seek for dismissal of the revision petition.

12. After having heard the arguments and after perusing oral as well as documentary evidence, now the following point would arise for my consideration:-

Whether the judgment of conviction and order of sentence passed by the trial Court and confirmed by the appellate Court are erroneous and arbitrary, and suffers from any infirmity so as to call for any interference by this Court?

13. The complainant has filed a complaint under Section 138 of N.I. Act and he is the holder of the cheque in due course. The disputed cheque is at Ex.P1 and signature of the accused on the said cheque is undisputed. It is also admitted that the said cheque is dishonoured. Since the signature on the cheque is admitted, the presumption under Sections 139 and 118 of N.I. Act is in favour of the complainant. The accused is required to rebut the said presumptions.

14. According to the accused, he has certain transactions with one Manoj Gera, who is a financial consultant. According to the accused, he has issued the disputed cheque to DW.2-Manoj Gera. It is further asserted by the accused that Manoj Gera had advanced loan to accused and towards security, he had obtained cheque (Ex.P1), which is used by the complainant unlawfully. Hence, he disputes his liability under Ex.P1 towards complainant. In the statement recorded under Section 313 of Cr.P.C., all along the accused asserted that

he knew the complainant and he has no transaction with the complainant. But quite contrary to the same, in the cross-examination of PW.1, a suggestion was made on behalf of accused that Manoj Gera had mediated in respect of financial transaction between the complainant and accused. If accused had no financial transaction with complainant, these suggestions would not have been made. Apart from that, Ex.P1 is dated 15.09.2010 and Ex.P3 is the *On-demand Promissory Note dated 09.04.2007.* It is the specific contention of the complainant that on 07.04.2007 itself, the amount was advanced through cheque and for the said transaction, Ex.P3 is executed by the accused. Interestingly, the accused has not given any explanation either in the cross-examination of PW.1 or in his evidence regarding Ex.P3. He has not even disputed Ex.P3. Ex.P2 is the endorsement issued by HDFC Bank regarding dishonor of the cheque. Ex.P4 is the legal notice and Ex.P5 is the postal receipt and Exs.P6 and 7 are postal

acknowledgements. Though admittedly it does not bear the signature of accused, but the address on Ex.P7 is not disputed. Hence, prima facie there is material evidence to show that there was financial transaction between the complainant and accused to the tune of Rs.10.00 Lakhs. The accused is required to rebut this transaction. But, his simple case is that, he issued the cheque to Manoj Gera i.e, DW.2. But, DW.2, who was examined on behalf of accused, has turned hostile and denied the fact that he had any transactions with accused. Nothing was elicited in the cross-examination of DW.2 on behalf of the counsel for accused.

15. Now the main argument advanced by the learned counsel for revision petitioner is that, the date on the cheque-Ex.P1 is manipulated and the original date was removed and subsequent date as 15.09.2010 was inserted. It is also the specific assertion of the complainant that the accused has also paid interest on various dates, but these aspects are not specifically

denied. As regards the date, the learned counsel for revision petitioner has placed reliance on the evidence of CW.1, who was examined and she has specifically stated in her evidence that the date on the cheque was manipulated. According to her evidence and report-Ex.C1, the previous figure was 10 and on '0', the figure '5' was written and there is no change in the month. She has opined that there are erase and addition and alternation of the previous figures and present figures in the original cheque-Ex.P1 and she has also specifically deposed that there is also alternation in the Photostat copy of the cheque i.e.,Ex.D1. Hence, prima facie it is evident that there is material alteration in the original cheque (Ex.P1) and it is covered under Section 87 of the N.I. Act. When there is material alternation, the burden normally stands rebutted as the Negotiable Instrument itself becomes void in view of Section 65 of the Contract Act. In this context, learned counsel for revision petitioner has placed reliance

on the judgment reported in ***AIR 1986 AP 120 [Jayantilal Goel Vs.Smt. Zubeda Khanum]***.

16. There is absolutely no dispute of the fact that there is material alternation in the date on Ex.P1 as well as in Ex.D1. But, interestingly, Ex.D1 is the copy of Ex.P1 and there additional aiternation is made by inserting the figure as '9', which is not in Ex.P1. Hence, prima facie it is evident that subsequently Ex.D1 was also manipulated after a xerox copy of the same was obtained. But, at the same time, it is also important to note here that Ex.D1 was got confronted by the accused during the course of cross-examination of PW.1 and got it marked**.** Though it is argued that it was available in the records and produced by the complainant, neither such evidence is forthcoming nor it was marked in 'P' series, that too during the cross-examination of PW.1. Then it is for accused to explain as to how he came in possession of Ex.D1. It is also argued that, in Ex.D1 also the bank seal is visible. That itself discloses that after bouncing of the cheque it was xeroxed

and in that event, it is evident that accused had knowledge of bouncing of the cheque and he obtained xerox copy of the cheque. It is for him to explain as to how he obtained xerox copy of the cheque. Further, it is evident that when the cheque was issued, it was already tampered, as the date was altered and it was within the knowledge of accused, which is evident from Ex.D1 itself. In this context, learned counsel for respondent has placed reliance on the judgment of the Apex Court in ***Appeal (Crl.) 1110-1111 of 2001 [Veena Exports Vs. Kalavathy]*** where, in similar circumstances, the Apex Court has observed as under:

> *"The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alternation are disentitled to complain against such alternation. Eg: If the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material*

alteration thereto. Further, even if the payee or the holder of the cheque made the alternation with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alternation was made by the drawer himself as whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed."

17. It is observed that, if the payee or holder of the cheque made alteration with the consent of drawer on cheque, such alteration cannot be a ground to resist right of payee or holder thereof. It is further observed that a party who consents to alternations as well as the party who made alternations are disentitled to complain against such alternations. In the instant case, by producing Ex.D1 and getting it marked, the accused himself has established that the alternation was within his knowledge and surprisingly he gets xerox copy of the same, wherein the same alteration is seen as found in Ex.P1, which establish

that it was accused who has altered the cheque prior to its issuance. Hence, in view of the judgment of the Apex Court referred to supra in ***Veena Exports's*** case, the principles enunciated in the judgment reported in ***Jayanthilal Goel's*** case (supra) cannot be made applicable to the case in hand.

18. Learned counsel has also placed reliance on the judgment of Co-ordinate Bench of this Court in ***Crl.R.P No.435/2014 dated 23.01.2015 [P.L. Thammanna Vs. D.G. Rohit].*** But, in the said case, the material alterations were attempted in the date column of the cheque and that was not pleaded and hence, it is held that it is void under Section 87 of the N.I. Act. But, as observed above, alternation was within the knowledge of the accused and when accused obtained Ex.D1 which is the copy of Ex.P1, the alternations were also seen therein. Hence, principles enunciated in the above cited judgment cannot be made applicable to the case in hand. He has further placed reliance on the judgment reported in ***2005***

Crl.L J. 576 [Amaravthi Chits Investments Vs.T.M.Vaidyanathan] of Madras High Court. In view of the Apex Court judgment in ***Veena Exports*** case referred above, the said principles will not come to the aid of accused/revision petitioner in any way.

19. The other contention of the learned counsel for revision petitioner is that, the complaint was signed and filed through his Power of Attorney, who had no knowledge and there is no assertion in this regard. In this regard, he placed reliance on the judgment reported in ***2014(11) SCC 790 [A.C. Narayanan Vs. State of Maharashtra and Another (Crl.A. No.73/2007) and G. Kamalakar Vs. Surana Securities Limited and Another (Crl.A. No.1437/2013)],***wherein the Apex Court has held that, filing complaint under Section 138 of N.I. Act through Power of Attorney Holder is perfectly legal and competent, but such Power of Attorney Holder or legal representative should have due knowledge about the transaction in question. There is no dispute regarding the said

preposition of law laid down by the Apex Court and though it is argued that the complaint was lodged only by the Power of Attorney holder, during the entire cross-examination of PW.1, who is power of attorney holder, his knowledge itself is not at all denied or disputed. Further, admittedly PW.1 is the Accountant of the complainant working under him. Under such circumstances, his knowledge itself is presumed and that has not been challenged. Under such circumstances, the principles enunciated in the above cited judgment will not come to the aid of revision petitioner in any way.

20. Learned counsel for respondent/complainant has placed reliance on an unreported judgment of the Apex Court in ***Crl. A. Nos. 1223-1235/2022 [P.Rasiya Vs. Abdul Nazer and Another],*** wherein the Apex Court has reiterated the principles that, once it is proved that the cheque was issued towards legally enforceable debt and once it is established that the cheque belongs to the accused and it bears his signature, drawing presumption

under Section 139 of the N.I. Act is mandatory, unless contrary is proved. Hence, drawing presumption under Section 139 of N.I. Act is mandatory and in the instant case, the accused has not placed on records any evidence to rebut the said presumption and he has also taken inconsistent and contrary defences in this regard.

21. In view of these facts and circumstances, it is evident that the complainant has discharged his burden of proving the fact that the cheque under Ex.P1 is issued towards legally enforceable debt. The accused has failed to rebut the said presumption available in favour of the complainant. Both the Courts below have appreciated all these aspects in detail and analysed the oral as well as documentary evidence in accordance with law. No illegality or infirmity is found with the judgment of conviction and order of sentence passed by the trial Court and confirmed by the Appellate Court. Both the Courts below have rightly convicted the accused and as such, the impugned judgment of conviction and order of sentence

does not warrant any interference by this Court. As such, the point under consideration is answered in the negative and as such, the petition being devoid of any merits, needs to be dismissed. Accordingly, I proceed to pass the following:

ORDER

i) The petition is **dismissed**.

ii) The judgment of conviction and order of sentence dated 30.11.2016 passed by the 2nd Additional Small Causes Court and 18th Additional CMM, Bengaluru, in C.C. No.48039/2010 and affirmed by the 64th Additional City Civil and Sessions Judge, Bengaluru, in Criminal Appeal No.1509/2016 vide order dated 02.05.2019, stands confirmed.

The Registry is directed to send back the TCRs to the concerned Courts below with a certified copy of this order.

Sd/-
JUDGE

KGR
CT:NR