IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL REVISION PETITION NO.13 OF 2020

BETWEEN:

A V POOJAPPA
S/O SRI. VENKATAPPA,
AGED ABOUT 54 YEARS,
5TH WARD HOSAHALLO ROAD,
BAGEPALLI TOWN-561207,
CHIKKABALLAPURA DISTRICT.

...PETITIONER

(BY SRI.MAHESH KIRAN SHETTY.S, ADVOCATE)

AND:

DR S.K.VAGDEVI
W/O SRI. H.V.SHIVASHANKAR,
AGED ABOUT 36 YEARS,
PROPRIETRIX, SURAKSHA PETRO SERVICES,
REP BY HER SPECIAL POWER OF ATTORNEY HOLDER,
SRI. H V SHIVASHANKAR,
S/O LATE H M VENKATARAVANAPPA,
AGED ABOUT 45 YEARS,
R/AT NO. 2090, 4TH CROSS,
JUDICIAL LAYOUT, GKVK POST,
BANGALORE-65

…RESPONDENT

(BY SRI.ANGAD KAMATH, AMICUS CURIAE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.PC BY THE ADVOCATE FOR THE PETITIONER PRAYING TO SET ASIDE THE ORDER OF JUDGMENT OF CONVICTION AND SENTENCE DATED 16.03.2018 IN C.C.NO.6303/2015 ON THE FILE OF THE SMALL CAUSES XXVI ACMM AT BENGALURU AND THE JUDGMENT

PASSED BY THE LOWER APPELLATE COURT CONFIRMING THE JUDGMENT AND MODIFYING THE SENTENCE PASSED BY THE LX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE BENGALURU (CCH61) IN CRL.A.NO.662/2018 DATED 07.11.2019.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.03.2025, THIS DAY ORDER WAS PRONOUNCED THEREIN AS UNDER:

CORAM: HON'BLE MS JUSTICE J.M.KHAZI

CAV ORDER

In this petition filed under Section 397 r/w 401 Cr.P.C, accused has challenged his conviction and sentence for the offence punishable under Section 138 of N.I Act imposed by the trial Court, which is confirmed by the Sessions Court, but it partly allowed appeal reducing the sentence.

2. For the sake of convenience, parties are referred to by their ranks before the trial Court.

3. It is the case of the complainant that accused is known to her and her family since past several years. In this background, in the first week of April 2012, accused requested the complainant to advance hand loan of ₹5,50,000 for his urgent personal requirement. Taking into

consideration the request of the accused, complainant advanced hand loan of ₹5,50,000 on 10.04.2012 i.e, transferred a sum of ₹5 lakhs to the account of the accused through RTGS and paid the remaining ₹50,000/- in cash. Accused promised to repay the same during February 2013. On the demand made by the complainant accused issued cheque dated 25.02.2013 for a sum of ₹5,50,000/-. However, when complainant presented the cheque for realisation, it was returned dishonoured as "Funds insufficient". In this regard, complainant got issued a legal notice dated 13.03.2013. Despite receipt of the notice, accused has neither paid the amount nor sent any reply, and hence the complaint.

4. After due service of summons, accused appeared before the trial Court and contested the case by pleading not guilty.

5. In order to prove the allegations against accused, complainant examined her power of attorney holder as PW-1 and got marked Exs.P1 to 8.

6. During the course of his statement under Section 313 Cr.P.C accused has denied the incriminating evidence led by the complainant.

7. Accused has not led any defence evidence.

8. The trial Court convicted the accused and sentenced him to pay fine of ₹7,20,000 with default sentence of imprisonment and directed that out of the fine amount, a sum of ₹7,15,000/- be paid to the complainant by way of compensation.

9. Aggrieved by the same accused went in appeal before the Sessions Court in Crl.A.662/2018. Though the Session Court confirmed the conviction of the accused, it reduced to the fine amount to ₹5,55,000/- and directed a sum of ₹5,50,000/- paid to the complainant by way of compensation.

10. Unfortunately complainant has not challenged the order of the Sessions Court reducing the fine amount.

11. Aggrieved by the concurrent findings of the trial Court and Sessions Court, the accused has come up with this petition contending that the judgment and sentence passed by both Courts are illegal, improper, capricious and not in accordance with law. It is therefore liable to be set aside. Complainant failed to prove the proprietorship of Suraksha Petro services. The Courts below have not appreciated this aspect. They have gravely erred in not understanding the statutory importance of Section 118 and 139 of N.I. Act and by mis-applying the same to the evidence on record resulted in convicting the accused. The presumption under Section 118 and 139 of the N.I Act is wrongly applied. The reasons assigned are not convincing. The impugned judgment and order are perverse, capricious and liable to be set aside and hence the petition.

12. In support of his arguments, learned counsel for accused has relied upon the following decisions:

(i) G.H. Abdul Kadri Vs. Mr.Mohammed Iqbal (***Abdul Kadri***)[1]

[1] *Crl.R.No.1323/2019 c/w 1338/201, 1342/2019, 1403/2019, 1405/2019 & 1352/2019 Dt: 24.05.2022*

(ii) Rajaram, S/o Sriramulu Naidu (Since deceased) Through LRs. Vs. Maruthachalam (Since deceased) through LRs. (***Rajaram***)[2]

(iii) Sri.Dattatraya Vs. Sharanappa (***Dattatraya***)[3]

(iv) Sushil Kumar Churiwala Vs. Akshay Bansal (***Sushil Kumar Churiwala***)[4]

(v) Nagappa Vs. N.H.Omprakash (***Nagappa***)[5]

13. On the other hand, learned Amicus Curiae representing the complainant submitted that the substantial portion of loan amount in a sum of ₹5 lakhs was paid by transferring the said amount to the account of the accused through RTGS. At the request of accused remaining some of ₹5 lakhs was paid in cash. On dishonour of the cheque, when legal notice was sent to the accused through RPAD and it is duly served. Accused has not chosen to send any reply and he has also not complied with the same. At the trial, during the cross-examination of PW-1, he has taken up a defence that ₹5 lakhs transferred to the account of accused through RTGS was the loan taken from him and it was returned to him.

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[2] *2023 Livelaw (SC) 46*
[3] *Crl.A.No.3257/2024 (SLP (Crl)No.13179/2023)*
[4] *Crl.RP.No.1043/2022 DD: 10.12.2024*
[5] *Crl.RP.No.1140/2021 DD: 17.02.2025*

However, except the suggestion, the accused has not led any evidence to prove his defence. He also submitted that the Sessions Court without any justifiable cause has unnecessarily reduced the amount and sought for dismissal of the petition.

14. In support of arguments, learned Amicus Curiae for complainant has relied upon the following decisions:

(i) Eknath Shankarrao Mukkawar Vs. State of Maharashtra (***Eknath***)[6]

(ii) Sahab Singh and Ors. Vs. State of Haryana (***Sahab Singh***)[7]

(iii) Damodar S.Prabhu Vs. Sayed Babalal H (***Damodar***)[8]

(iv) R.Vijayan Vs. Baby and Anr. (***R.Vijayan***)[9]

15. Heard arguments and perused the record.

16. In the light of the ratio in the decisions relied upon by the learned Amicus Curiae representing the complainant, it is necessary to examine whether the trial Court and First Appellate Court are justified in holding that

[6] *(1977) 3 SCC 25*
[7] *(1990) 2 SCC 385*
[8] *(2010) 5 SCC 663*
[9] *(2012) 1 SCC 260*

the allegations against accused are proved. It is also necessary to examine whether the First Appellate Court is justified in reducing the fine amount.

17. The fact that cheque in question is drawn on the account of accused, maintained with his banker and it bears his signature is not in dispute. Therefore, the presumption under Section 139 of N.I Act that the cheque was issued towards repayment of any legally recoverable debt or liability is attracted, placing the initial burden on the accused to rebut the presumption and establish the circumstances in which the cheque came to be issued or reached the hands of complainant.

18. The accused has not sent reply to the legal notice spelling out his defence at the earliest available opportunity. In this regard during the course of cross-examination of PW-1 by making a suggestion to him he has claimed that notice was not served on him. However, accused is not disputing his address to which the legal notice was sent. In fact in the complaint also same address is given. As per Section 27 of General Clauses Act, when

any document is required to be served by post, the service shall be deemed to be effected by properly addressing, preparing and posting by registered post a letter containing the document. It is proved to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

19. In the present case the acknowledgement at Ex.P8 indicate that the legal notice is duly served on him on 21.03.2013 As noted earlier, by not sending reply to the legal notice, the accused has not spelt out his defence at the earliest available opportunity. However, during the course of cross-examination of PW-1 by making a suggestion that the ₹5 lakhs paid through RTGS to the accused was the amount taken from him and it was returned, the accused has taken up defence that he had lent ₹5 lakhs to the complainant and it was returned to him. Therefore, burden is on him to establish that complainant had borrowed ₹5 lakhs from him and it was returned through RTGS.

20. Except making this suggestion, the accused has not led any evidence to prove that he was the lender and complainant was the borrower and the loan taken from him was returned through RTGS. However, the conduct of accused in not sending any reply taking such defence and also not leading any evidence to prove the same, this Court is very sure that for the sake of defence, the accused has taken such a defence without any substance. The accused has also not led any evidence to prove his defence. Of course as held in *Rangappa Vs. Mohan (**Rangappa**)*[10] and Basalingappa Vs Mudibasappa (**Basalingappa**)[11], the accused need not lead evidence and he may rely on the evidence by the complainant to prove his defence. However, in the present case there is nothing in the evidence led by the complainant, which is useful to the accused, on which he could rely upon.

21. Both the trial Court as well as the Sessions Court on appreciation of oral and documentary evidence placed on record have rightly held that the allegations

[10] *(2010) 11 SCC 441*
[11] *(2019) 5 SCC 418*

against accused are proved. The conclusion arrived at and findings given by them are consistent with the evidence placed on record and this Court finds no perversity in the same calling for interference.

22. Having regard to the fact that on facts the allegations against accused are held to be proved, the decisions relied upon by the accused are not applicable to the case on hand.

23. Now, coming to the question whether the First Appellate Court is justified in reducing the fine amount. It is relevant to note that under Section 138 of the N.I Act, the Courts are given a discretion so far as the punishment is concerned, which may be imprisonment for a term which may extend to two years or with fine, which may extend to twice the amount of cheque or with both. In the present case the trial Court taking into consideration the loan amount, time taken for conclusion of the trial and using its discretion the trial court sentenced the accused to pay fine of ₹7,20,000/- and directed payment of ₹7,15,000 to the complainant by way of compensation. However, the

Sessions Court without assigning any justifiable reasons has reduced the fine to ₹5,50,000/-. The loan was of the year 2012. By the time the Session Courts disposed of the appeal on 07.11.2019, already seven years have elapsed. Considering the same, even the fine of ₹7,20,000/- imposed by the trial Court was on the lower side. Without proper application of mind, unnecessarily the Sessions Court has reduced the fine.

24. While imposing the punishment, the Courts are required to examine the following aspects:

1. The quantum of the loan
2. The defence taken by the accused, more particularly whether he has taken a false defence and failed to prove the same.
3. Whether the accused has dragged on the matter unnecessarily and thereby delayed the disposal of the case at the stage of trial, appeal, revision and before the Hon'ble Supreme Court.
4. Whether the transaction relates to business between the parties or the parties are business

class who would have utilized the amount for their business and flourish, or

5. In other cases, the returns the loan amount would have brought, if it was kept in a fixed deposit in a nationalised bank etc,

25. Of course, this list is not exhaustive and there may be other justifiable reasons for fixing the quantum of fine.

26. Unfortunately, in the present case, the complainant has not challenged the order of the Sessions Court reducing the fine amount and therefore, in the present revision the same could not be modified, restoring the fine imposed by the trial Court. However, the trial Court as well as the Sessions Court shall keep in mind the grounds on which to fix the fine amount.

27. In the result the petition fails and accordingly the following:

ORDER

1. Petition filed by the accused under Section 397 r/w 401 Cr.P.C is dismissed.

2. The impugned judgment and order dated 16.03.2018 in C.C.No.6303/2015 on the file of Judge, Court of Small Causes and XXVI ACMM, Bengaluru and judgment and order dated 07.11.2019 in Crl.A.No.662/2018 on the file of LX Addl.City Civil and Sessions Judge, Bengaluru are confirmed.

3. The Registry is directed to send back the trial Court as well as Sessions Court records along with copy of this judgment forthwith.

Appreciation is placed on record for the valuable assistance rendered by the learned Amicus Curiae representing the respondent/accused. The fees of learned Amicus Curiae is fixed at Rs.5,000/-. The High Court Legal Services Committee is directed to pay the same.

Sd/-
(J.M.KHAZI)
JUDGE

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