



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1414 OF 2021

BETWEEN:

MR. FRANCIS ZAVIER W.,
S/O WILLIAM GABRIEL,
AGED ABOUT 52 YEARS,
R/AT SATHYASADANA COMPLEX,
OPPO-SPRING FIELD APARTMENT,
SARJAPURA ROAD,
BENGALURU - 560 102,
AND ALSO LAND IN SY.NO.17/11B,
SITE NO.17, OPPO-CARMEL RAM RAILWAY STATION,
NEAR SPATHAGIRI SCHOOL,
BENGALURU - 560 003.

...PETITIONER

(BY SRI. ISMAIL MUNEEB MUSBA.,ADVOCATE)

AND:

SRI. M M MATHEW,
S/O LATE M M MATHEW,
AGED ABOUT 56 YEARS,
R/AT NO.C-8, WEST TRITY ACRES,
BELLANDUR GATE,
SARJAPURA ROAD,
BENGALURU - 560 034.

...RESPONDENT

(BY SRI. GAONKAR DINESH NEELKANT.,ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.PC PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 26.02.2021, PASSED BY THE HONBLE LXIV ADDL.CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU IN CRL.A.NO.2267/2018 AND THE IMPUGNED JUDGMENT AND





ORDER DATED 15.10.2018, PASSED BY THE HONBLE XIX A.C.M.M. AT BENGALURU IN C.C.NO.5905/2016, PRODUCED HERETO AS ANNEXURE-A AND B RESPECTIVELY AND CONSEQUENTLY ACQUIT THE ACCUSED AND DISMISS THE COMPLAINT FILED BY THE RESPONDENT/COMPLAINANT HEREIN.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri.Ismail Muneeb Musba, learned counsel for the revision petitioner and Sri.Sudarsan G for Sri.Gaonkar Dinesh Neelkant., learned counsel for the respondent.

2. The present revision petition is filed by the accused challenging the validity of the order of conviction and sentence passed in CC No.5905/2016 dated 15.10.2018 on the file of XIX Additional Chief Metropolitan magistrate, Bengaluru which was confirmed in Criminal Appeal No.2267/2018 dated 26.02.2021 on the file of LXIV Additional City Civil & Sessions Judge, for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. At the outset, Sri.Ismail Muneeb Musba, learned counsel for the revision petitioner submitted that in the



event this Court confirming the order of conviction, it may consider the reduction of the sentence, as the learned Trial Magistrate has imposed the double the cheque amount without assigning any reasons in the impugned judgment which has been blindly confirmed by the learned judge in the First Appellate Court.

4. In other words, the revision petitioner is now restricted his revision only with regard to the sentence imposed.

5. Sri.Sudharshna, representing the counsel for the respondent. However, tried to impress upon the Court that even though, there are no special reasons assigning the judgment of the Trial Magistrate with regard to imposition of the double the cheque amount nor any reasons are forthcoming in the order of the First Appellate Court, while confirming the sentence, taking note of the fact that the incident is of the year 2013, the imposition of the double the cheque amount is justified in the facts and circumstances of the case.



6. Having heard the parties with regard to the sentence, this Court perused the material on record meticulously.

7. On such perusal of the material on record, as clearly found from material on record to uphold the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

8. Having said thus, it is noticed that the learned Trial Magistrate has imposed double cheque amount and out of the same, a sum of Rs.2,90,000/- is ordered to be paid as the compensation to the complainant and the balance is a sum of Rs.10,000/- towards the defraying expenses of the State. The same is confirmed by the learned judge in the First Appellate Court.

9. On careful perusal of both judgments, no special reasons are forthcoming for imposing the fine of Rs.3,00,000/- which is double the cheque amount. While, the learned Trial Magistrate has not assigned any reasons whatsoever much less the special reason, the learned



judge in the First Appellate Court did not even the address the said issue as could be seen from para Nos.22 and 23 of the judgment of the First Appellate Court.

10. A feeble attempt is no doubt made by the learned counsel for the complainant before this Court to justify the same on the ground that the transaction is in the year 2013.

11. It is a settled principles of law and requires no emphasis, that the role of the Court in convicting an accused is different from the role of the Court while passing the appropriate sentence in a given case.

12. The statue no doubt invests the power in the learned Trial Magistrate to impose double the fine amount, if the facts and circumstances of such case, do warrant imposition double the cheque amount as the fine.

13. It is equally settled principles of law and requires no emphasis that every decision should be based on reasons in as much as reasoning in the heartbeat of a judgment. In the case on hand, no reason whatsoever is



forthcoming for the imposition of the double the cheque amount by the Trial Magistrate much less special reasons. So also learned judge in the First Appellate court has not assigned any reason to confirm the sentenced imposed by the Trial Magistrate.

14. Being the judge in the First Appellate Court, was duty bound not only to consider the merits of the case insofar as the order of conviction, but also a point ought to have raised with regard to sufficiency of sentence. Learned judge in the First Appellate Court failed to do so in the case on hand.

15. Therefore, this Court while considering the prayer of the revision petitioner did bestow its attention to the said aspect of the matter, in view of the principles of law enunciated by the Hon'ble Apex Court in the case of ***Amit Kapoor vs. Ramesh Chander & Anr.*** reported in ***(2012)9 SCC 460***. Accordingly, in the considered opinion of this Court, if the fine amount is reduced from Rs.3,00,000/- to a sum of Rs.2,25,000/- ends of justice could be made.



16. Having said thus, the complainant would be entitled to an entire sum of Rs.2,25,000/- as compensation and the fine amount imposed the learned Trial Magistrate and confirmed by the First Appellate Court in a sum of Rs.10,000/- towards the defraying expenses of the State, also needs to be set aside as the *lis* is privy to the parties and no State machinery is involved.

17. Accordingly, the following:

ORDER

- i. Criminal Revision Petitions are ***allowed in part.***
- ii. While maintaining the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, the fine amount ordered by the learned Trial Magistrate in a sum of Rs.3,00,000/- confirmed by the First Appellate Court is reduced to sum of Rs.2,25,000/-.



- iii. Entire amount of Rs.2,25,000/- is to be paid as compensation to the complainant on or before 15.08.2024 Failing which the accused/revision petitioner shall undergo simple imprisonment for a period of **one** year.
- iv. Amount in deposit is order to be withdrawn by the complainant.
- v. Fine amount of Rs.10,000/- ordered by the Trial Magistrate confirmed by the First Appellate Court towards the defraying expenses of the State is hereby set aside.

Sd/-
(V SRISHANANDA)
JUDGE