

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2021

BEFORE

THE HON'BLE MR.JUSTICE N.K.SUDHINDRARAO

CRL. R. P.No.1083/2015

C/W

CRL.R.P.No.1084/2015 AND CRL. R. P.No.1085/2015

IN CRL.R.P No.1083/2015:

BETWEEN:

MR.K S AMEER JAN
AGED ABOUT 57 YEARS
S/O ABDUL KARREM
No.57/5-B, #31;
ASHWATH KATTE ROAD END
O.G.ROAD, B.T.M. I STAGE
BANGALORE – 560 029.

...PETITIONER

(BY SRI MANJUNATHA H R, ADVOCATE)

AND:

MR.MAQBOOL AHMED
S/O ANWAR SAB,
AGED ABOUT 35 YEARS
No.399, 3RD MAIN, 3RD CROSS
OPP.AYESHA MASJID
MANGAMMANAPALYA
BANGALORE – 560 038.

...RESPONDENT

(BY SRI V SRINIVASAN, ADVOCATE – THROUGH V.C)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT PASSED IN CRL.A.No.175/2015 DATED 9.9.2015 ON THE FILE OF THE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE., BANGALORE CITY AND CONSEQUENTLY SET ASIDE THE JUDGMENT PASSED IN C.C.No.4319/2008 DATED 9.1.2015 ON THE FILE OF 13TH ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BANGALORE.

IN CRL.R.P No. 1084/2015:

BETWEEN:

MR.K S AMEER JAN
AGED ABOUT 57 YEARS
S/O ABDUL KARREM
No.57/5-B, #31;
ASHWATH KATTE ROAD END
O.G.ROAD, B.T.M. I STAGE
BANGALORE – 560 029.

...PETITIONER

(BY SRI MANJUNATHA H R, ADVOCATE)

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No.399, 3RD MAIN, 3RD CROSS
OPP.AYESHA MASJID
MANGAMMANAPALYA
BANGALORE – 560 038.

...RESPONDENT

(BY SRI V SRINIVASAN, ADVOCATE – THROUGH V.C)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT PASSED IN

CRL.A.No.176/2015 DATED 9.9.2015 ON THE FILE OF THE HON'BLE COURT OF LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE., BANGALORE CITY AND CONSEQUENTLY SET ASIDE THE JUDGMENT PASSED IN C.C.No.4325/2008 DATED 9.1.2015 ON THE FILE OF THE HON'BLE 13TH ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BANGALORE.

IN CRL.R.P No.1085/2015:

BETWEEN:

MR.K S AMEER JAN
AGED ABOUT 57 YEARS
S/O ABDUL KARREM
No.57/5-B, #31;
ASHWATH KATTE ROAD END
O.G.ROAD, B.T.M. I STAGE
BANGALORE – 560 029.

...PETITIONER

(BY SRI MANJUNATHA H R, ADVOCATE)

AND:

MR.MAQBOOL AHMED
S/O ANWAR SAB,
AGED ABOUT 35 YEARS
No.399, 3RD MAIN, 3RD CROSS
OPP.AYESHA MASJID
MANGAMMANAPALYA
BANGALORE – 560 038.

...RESPONDENT

(BY SRI V SRINIVASAN, ADVOCATE – THROUGH V.C)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT PASSED IN CRL.A.No.177/2015 DATED 9.9.2015 ON THE FILE OF THE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE.,

BANGALORE CITY AND CONSEQUENTLY SET ASIDE THE JUDGMENT PASSED IN C.C.No.4323/2008 DATED 9.1.2015 ON THE FILE OF 13TH ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BANGALORE.

THESE CRIMINAL REVISION PETITIONS COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These Criminal Revision Petitions are directed against the Judgment and order dated 09.09.2015 passed by the appellate court in respective Criminal Appeals, wherein the appeals came to be dismissed thereby confirming the judgment and order passed by the trial court in respective criminal cases. The details of the cases are mentioned in the following table:-

Sl. No.	Revision Petition before this Court	Crl.A. No. filed by whom and result	C.C. No. filed by whom, DD/ result / sentence imposed to the accused
1.	1083/2015 filed by Accused – K.S. Ameer Jan	175/2015 -Filed by Accused – K.S.Ameer Jan DD 09-09-2015 Appeal dismissed	4319/2008 Complainant Maqbul Ahmed DD 9-01-2015 Acting under Section 255(2) of Cr.P.C. the accused is convicted for the offence

			punishable under Section 138 of Negotiable Instruments Act. Accused shall pay fine of Rs.2,30,000/- and in default of payment of fine, accused shall undergo simple imprisonment for 6 months. and out of the fine amount, the complainant is entitled for Rs.2,25,000/- as compensation amount and Rs.5,000/- shall be remitted to the State.
2.	1084/2015 filed by Accused – K.S. Ameer Jan	176/2015 -Filed by Accused – K.S.Ameer Jan DD 09-09-2015 Appeal dismissed	4325/2008 Complainant Maqbul Ahmed DD 9-01-2015 Acting under Section 255(2) of Cr.P.C. the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act. Accused shall pay fine of Rs.1,05,000/- and in default of payment of fine, accused shall undergo simple imprisonment for 6 months. and out of the fine amount, the complainant is entitled for Rs.1,00,000/- as compensation amount and Rs.5,000/- shall be remitted to the State.
3.	1085/2015 filed by Accused – K.S. Ameer Jan	177/2015 -Filed by Accused – K.S.Ameer Jan DD 09-09-2015	4323/2008 Complainant Maqbul Ahmed DD 9-01-2015 Acting under Section 255(2) of Cr.P.C. the accused is

		Appeal dismissed	convicted for the offence punishable under Section 138 of Negotiable Instruments Act. Accused shall pay fine of Rs.3,05,000/- and in default of payment of fine, accused shall undergo simple imprisonment for 6 months. and out of the fine amount, the complainant is entitled for Rs.3,00,000/- as compensation amount and Rs.5,000/- shall be remitted to the State.
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2. In order to avoid confusion and overlapping, the parties are addressed in accordance with their rankings and status as stood before the trial court. Since the complainant and the accused are common in all the cases, they are taken up for common disposal.

3. In order to avoid wastage of judicial time, the facts of the case of the complainant in all the cases are extracted from the certified copy of the

judgment passed in Criminal case which read as under:

In CC No.4319/2008

"The brief facts of the case of the complainant in CC No.4319/2008 are, that since the complainant and accused were close friends, the complainant has got good reputation in the public and also he is in good financial status. The accused taking undue advantage of the same, he has approached the complainant in the month of October 2007 for advancement of hand loan of Rs.6,25,000/- to meet out his financial stringency, as his children are handicapped. Then the complainant believing on good faith, upon the accused, he had advanced the said loan amount of Rs.6,25,000/- to the accused the same has been received by the said accused and at that time, out of the said loan amount to discharge the part of the loan amount, he had issued 3 cheques bg.No.771682 dated 15-9-2007 for Rs.1,00,000/-,cheque bg.No.771681 dated 19-9-2007 for Rs.1,00,000/- and cheque bg.No.771684 dated 1-10-2007 for Rs.25,000/- all the three cheques drawn on Canara Bank, BTM Layout Branch, Bangalore, totally of Rs.2,25,000/- i.e.Exs.P1 to P3 as per the instructions given by the said accused for presentation of the aid cheques after the due date mentioned in the said disputed cheques Ex.P1 to P3. When the complainant presented the said three cheques in Indian Overseas Bank, Bommanahalli Branch, Bangalore, for encashment, the said cheques were dishonoured with an endorsement as 'funds insufficient' on 6-10-2007. Consequently, the complainant got issued legal notice to the

accused on 26-10-2007 through RPAD and UCP. The notice sent through RPAD was returned with an endorsement as 'not claimed intimation delivered'. But the said notice sent through UCP was duly served upon the accused. Hence, there is deemed service of notice. In spite of service of legal notice, the accused neither replied nor repaid the cheque amount within stipulated time."

In CC No.4323/2008

"The brief facts of the case of the complainant in CC No.4323/2008 are, that since the complainant and accused were close friends, the complainant has got good reputation in the public and also he is in good financial status. The accused taking undue advantage of the same, he has approached the complainant in the month of October 2007 for advancement of hand loan of Rs.6,25,000/- to meet out his financial stringency, as his children are handicapped. Then the complainant believing on good faith, upon the accused, he had advanced the said loan amount of Rs.6,25,000/- to the accused the same has been received by the said accused and at that time, out of the said loan amount to discharge the part of the loan amount, he had issued cheque bg.No.545397 dated 3-6-2007 for Rs.3,00,000/- i.e.Ex.P1. As per the instructions given by the said accused for presentation of the said cheque after the due date mentioned in the said disputed cheque Ex.P1. When the complainant presented the said cheque in Indian Overseas Bank, Bommanahalli Branch, Bangalore, for encashment, the said cheque was dishonoured

with an endorsement as 'funds insufficient' on 18-10-2007. Consequently, the complainant got issued legal notice to the accused on 26-10-2007 through RPAD and UCP. The notice sent through RPAD was returned with an endorsement as 'not claimed intimation delivered'. But the said notice sent through UCP was duly served upon the accused. Hence, there is deemed service of notice. In spite of service of legal notice, the accused neither replied nor repaid the cheque amount within stipulated time."

In CC No.4325/2008

"The brief facts of the case of the complainant in CC No.4325/2008 are, that since the complainant and accused were close friends, the complainant has got good reputation in the public and also he is in good financial status. The accused taking undue advantage of the same, he has approached the complainant in the month of October 2007 for advancement of hand loan of Rs.6,25,000/- to meet out his financial stringency, as his children are handicapped. Then the complainant believing on good faith, upon the accused, he had advanced the said loan amount of Rs.6,25,000/- to the accused the same has been received by the said accused and at that time, out of the said loan amount to discharge the part of the loan amount, he had issued cheque bg.No.771638 dated 25-9-2007 for Rs.1,00,000/- i.e.,Ex.P1. As per the instructions given by the said accused for presentation of the said cheque after the due date mentioned in the said disputed cheque Ex.P1. When the complainant presented the

said cheque in Indian Overseas Bank, Bommanahalli Branch, Bangalore, for encashment, the said cheque was dishonoured with an endorsement as 'funds insufficient' on 28-9-2007. Consequently, the complainant got issued legal notice to the accused on 26-10-2007 through RPAD and UCP. The notice sent through RPAD was returned with an endorsement as 'not claimed intimation delivered'. But the said notice sent through UCP was duly served upon the accused. Hence, there is deemed service of notice. In spite of service of legal notice, the accused neither replied nor repaid the cheque amount within stipulated time."

4. The learned trial judge took cognizance of the offence in all the cases and issued summons to the accused. Accused appeared before the trial court through his counsel and got released on bail. The substance of accusation was read over to the accused, he pleaded not guilty and claims to be tried.

5. Learned trial Judge was accommodated with the oral evidence of PW1-Maqbul Ahmed, PW2-H.M. Manjunath and documentary evidence of Exs.P1

to P9 on behalf of complainant in CC No.4319/2004; oral evidence of PW1-Maqbul Ahmed and PW2-H.M. Manjunath and documentary evidence of Exs.P1 to P8 for complainant in CC No.4325/2018 and oral evidence of PW1-Maqbul Ahmed and PW2-H.M. Manjunath and documentary evidence of Exs.P1 to P7 in CC No.4323/2004. However, no oral or documentary evidence is adduced or produced by the accused in all the cases.

6. As the criminal cases ended in allowing of the complaint in all the cases and convicting the accused for the offence punishable under Section 138 of N.I Act, by imposing sentence as stated above, accused preferred Criminal appeals before the appellate court as specifically mentioned in the above table which came to be dismissed and the same are challenged by the accused in these revision petitions.

7. Learned counsel Mr.H.R.Manjunath, appearing for revision petitioner/accused in all the cases submitted that accused has made application before the trial court under Section 91 of Cr.P.C. seeking direction to the complainant to produce his income tax returns pertaining to the alleged transaction and another application under Section 45 of the Indian Evidence Act for comparing the signature of the accused with other manuscript portion on the cheques as it was the contention of the accused that the other portion of cheque except the signature have been filled by the complainant by mis using the instruments and the said applications came to be dismissed. Against which, three revision petitions were filed. However, as there was no stay order, the learned trial judge disposed of the criminal cases holding the accused guilty for the offence

punishable under Section 138 of N.I. Act and sentenced him.

8. Learned counsel further submits that the complainant and accused are partners with mutual trust and confidence prevailing on him, accused handed over the cheques for purchase of vehicle, but the complainant fabricated the same by writing his name on the cheque and mis used them and there is no liability.

9. Learned counsel for accused would further submit that revision petitions cannot be prosecuted because the main cases are adjudicating before the trial court. In this connection, learned counsel for complainant submitted that the revision petitions were dismissed for non-prosecution and later they were not prosecuted by the accused before the appellate court.

10. Learned counsel for complainant Mr. Srinivasan V submits that the cheques were issued in discharge of legally recoverable debt and he has proved all the aspects of drawing of cheques, issuance of cheques and payment of debt. He was accommodated with the cheques on different dates and learned trial judge and appellate judge have held the accused guilty of having committed the offence under Section 138 of NI Act.

11. Learned counsel for petitioner/accused submits that, accused could not of complainant complete the cross examination and also he could not adduce his defence evidence. Thus, there is no opportunity to him. In the circumstances of the case, accused had a good case on merits and sought for an opportunity to establish his case.

12. Learned counsel for complainant submits that he has not used the opportunity provided by the court and also failed to adduce his evidence in all the three cases.

13. In the circumstances of the case, the concept of principles of natural justice would be that, opportunity is to be offered and not that the court shall go on pending opportunity till opportunity is exhausted. It is reasonable that the requisite opportunity provided, it has reasonably utilised. However in the normal aspect of principles of natural justice, one more opportunity may be given to the petitioner/accused to cross examine the complainant and also to adduce his defence evidence before the trial court but not without conditions. Thus, for the purpose of remand, the judgment of the trial court and appellate court in each of the cases deserve to be

set aside and the matters deserve to be remanded to the trial court with conditions.

13. For the foregoing reasons, the revision petitions are allowed. The judgments and order passed in all the petitions by the trial court and appellate court are set aside and the matters are remanded to the trial court for reconsideration afresh with the following conditions:

(i) The accused in each of the cases shall deposit 50% of the fine amount before the trial court on or before 30th October 2021 or if any amount is already deposited and in case, if it is less than 50%, the deposit shall be completed to meet the quantum of 50%.

(ii) In case of such deposit, the complainant in all the cases are entitled to withdraw the amount by executing indemnity bond in each of the cases;

(iii) Both the complainant and the accused shall not wait for further notice from the trial

court and on the other hand, they shall appear before the trial court on **15th November 2021** and place their appearance the complainant shall offer himself for cross examination by the accused and petitioner/accused shall cross examine the complainant at the first opportunity available. Further, the accused shall tender his evidence before 6-12-2021.

(v) The matter shall be disposed of in accordance with law by the Trial Court within 15 days thereafter

(vi) In case of violation of any of the conditions whether regarding deposit, appearance, completion of the respective part of the evidence, the benefit of this order shall stands revoked automatically.

**Sd/-
JUDGE**

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