HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1460 OF 2023 (A-)

BETWEEN:

1. SRI. HARSHAVARDHAN AITHAL
S/O MAHABALESHWAR AITHAL,
AGED ABOUT 56 YEARS,
R/AT EKADANTA, SHRINGAR
KELARKALABETTU, SANTHEKATTE
UDUPI 576 105

...APPELLANT

(BY SRI. HAREESH BHANDARY T.,ADVOCATE)

AND:

1. SRI. UMESH SHETTY
S/O GOPAL SHETTY,
AGED ABOUT 37 YEARS,
R/AT PADUMUNDU,
HEBBAGILUMANE
SHIRIYARA VILLAGE
SAIBARAKATTE POST
UDUPI TALUK 576 213

2. SMT. SHAKUNTALA
W/O V.N. SUVRNA
AGED ABOUT 38 YEARS
R/AT BAIDASHREE
ASHRVADA NAGAR
KELARKALABETTU POST AND VILLAGE
UDUPI 576 105

3. SRI. SATISH A NAYAK
S/O ANANDA KRISHNA NAYAK
AGED ABOUT 58 YEARS,
PANCHAJANYA APARTMENT
BADAGABETTU ROAD,

Digitally signed by
LAKSHMINARAYAN N
Location: High Court of
Karnataka

PARKALA POST UDUPI 576 107

…RESPONDENTS

CRL.A FILED U/S 378(4) CR.PC BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 29.05.2023 MADE IN C.C.NO.3664/2018 BY THE COURT OF IV ADDL. JUDICIAL MAGISTRATE FIRST CLASS,UDUPI AND CONVICT THE ACCUSED / RESPONDENT NO.1 TO 3 FOR THE OFFENCE P/U/S 138 OF N.I ACT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. This appeal is filed by the appellant/complainant being aggrieved by the judgment of acquittal dated 29.05.2023 passed in C.C.NO.3664/2018 by the IV Additional Judicial Magistrate First Class, Udupi (for short "the trial Court").

2. The Hon'ble Supreme Court in the case of CELESTIUM FINANCIAL v. A GNANASEKARAN ETC. reported in 2025 SCC ONLINE SC 1320, at paragraph 10 of the judgment, has observed as under:

> "*10. As already noted, the proviso to Section 372 of CrPC was inserted in the statute book only with effect from 31.12.2009. The object and reason for such*

insertion must be realised and must be given its full effect to by a court. In view of the aforesaid discussion, we hold that the victim of an offence has the right to prefer an appeal under the proviso to Section 372 of CrPC, irrespective of whether he is a complainant or not. Even if the victim of an offence is a complainant, he can still proceed under the proviso to Section 372 and need not advert to sub-section (4) of Section 378 of Cr.PC."

3. In the light of the Hon'ble Supreme Court's recent clarification of the legal position, it is now evident that the appellant, being the complainant under Section 138 of Negotiable Instruments Act, 1881, is also entitled to file an appeal against the judgment of acquittal passed by the trial Court before the Sessions Court, since he is considered to be a victim. If this Court were to proceed to hear and decide the appeal at this stage, it could deprive the parties of an available forum, i.e. this Court, for further challenge.

4. Similar view has been taken by the High Court of Andhra Pradesh in CHARBEL INDIA V. STATE OF ANDHRA PRADESH reported in 2025 SCC ONLINE AP 2815; by the High Court of Madhya Pradesh in MANORAMA KANKANE v. NARENDRA KUMAR SHUKLA rendered in Criminal Appeal

No.5910 of 2025 decided on 03rd July, 2025; and in the case of M/S. LATA KISAN SEWA KENDRA v. PRITAM SINGH reported in 2025 SCC ONLINE MP 4818; and in SMT. URMIT MADRAH v. SAMARPAN JAIN rendered Criminal Appeal No. 11872 of 2022 decided on 21st July, 2025; the decision of High Court of Chattisgarh in NEELAM SAHU v. NARADNAGWANSHI rendered in ACQA No. 340 of 2018 decided on 16th July, 2025; and in SMT. KIRTI KURIAN v. AJAY SINGH rendered in ACQA No. 198 of 2019 decided on 16th July, 2025; the judgment of this Court in the case of SIDAGONDAPPA v. SHAFI AHAMAD rendered in CRL.A. No. 20021/2018 decided on 31st July, 2025 and in SRI T.H. LENKAPPA v. SRI SANJAY AND ANOTHER rendered in Criminal Appeal No.146 of 2015 decided on 23rd July, 2025; the decision of High Court of Delhi in the case of D.K. ASSOCIATES v. SHANKAR AND ANOTHER rendered in Criminal Appeal No.694 of 2016 decided on 13th November, 2025 and the decision rendered by the Co-ordinate Bench of this Court in the case of M/S. ANANYA ENTERPRISES v. SRI G.S. GOPALAKRISHNA rendered in Criminal Appeal No.100171 of 2016 decided on 24th November, 2025. An overall assessment of the aforestated decisions reveals that the decision of the

Hon'ble Supreme Court in the case of CELESTIUM FINANCIAL (supra) has been relied upon by this Court, as well as other High Courts across the country.

5. Considering the above, it is deemed fit that the present appeal be transferred to the concerned appellate Court of Sessions and be considered as an appeal under the proviso to Section 413 of BNSS, 2023 (formerly Section 372 of Cr.PC) and numbered accordingly. Accordingly, I proceed to pass the following:

O R D E R

i. Registry is directed to transfer the entire record of the case, including the requisitioned copies of the trial court Records, to the concerned Principal District & Sessions Judge, who may assign it to the concerned Appellate Court having the jurisdiction and for which purpose, it would be listed before the Principal District & Sessions Judge;

ii. The concerned transferee court is directed to issue Court notice to both the parties to appear before the concerned Court, and the concerned Court, thereafter, shall proceed with the case in accordance with law;

iii. In case there are applications pending for condonation of delay or any other pending applications, the same also be transferred to be considered by the learned Judge of transferee Court, in accordance with law;

iv. Considering the fact that the matter has been pending for considerable time, the Appellate Court is requested to make an endeavour to dispose of the matter as expeditiously as possible;

v. The appellant is permitted to carry out necessary amendment in the cause-title and also the provisions thereof;

vi. It is made clear that this Court has not made any observation as to the merits of the case and all rights and contentions of the parties are left open to be agitated before the Court concerned.

6. In the light of the above observation and directions, appeal stands disposed of.

Sd/-
(G BASAVARAJA)
JUDGE

DHA
List No.: 2 Sl No.: 99