IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO.604 OF 2023

BETWEEN:

SRI. CHEPUDDIRA POONACHA MUTHANNA
RETD. COLONEL,
S/O LATE POONACHA,
AGED ABOUT 62 YEARS,
R/AT HOME ESTATE ATHUR VILLAGE
AND POST (VIA) POLLIBETTA
VIRAJPET TALUK
KODAGU DISTRICT

...APPELLANT

(BY SRI. HARSHA G, ADVOCATE FOR
SRI. SACHIN B S, ADVOCATE)

AND:

1. M/S. BITFOX ENTERPRISES/PROPRIETORSHIP/
PRIVATE LIMITED
THROUGH THE DIRECTOR/
AUTHORIZED REPRESENTATIVES

SMT. DURGI
DIRECTOR/ PROPRIETRESS/
AUTHORIZED REPRESENTATIVE,
M/T BITFOX ENTERPRISES/PROPRIETORSHIP/
PRIVATE LIMITED

2. SRI. OM SANWARIA
DIRECTOR/PROPRIETOR/
AUTHORIZED REPRESENTATIVE

M/S. BITFOX ENTERPRISES/ PROPRIETORSHIP/
PRIVATE LIMITED

Digitally signed by REKHA R
Location: High Court of Karnataka

BOTH OF THE RESPONDENT NO.1 AND 2
R/AT G-202, KONARK ORCHID
VAGHOLI, PUNE - 412 207, MAHARASHTRA

ALSO AT:

CITY VISTA, 15A, FOURTH FLOOR,
FOUNTAIN ROAD, KHARADI
PUNE - 411 014, MAHARASHTRA

ALSO AT:

A-16, MADIPUR COLONY,
WEST DELHI - 110 063

…RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4) OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 10.02.2023 IN PCR NO.395/2021 ON THE FILE OF THE COURT OF CIVIL JUDGE AND JMFC PONNAMPET, AND CONSEQUENTLY RESTORE THE COMPLIANT IN PCR NO.395/2021 ON THE FILE OF THE COURT OF CIVIL JUDGE AND JMFC PONNAMPET, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by the complainant, challenging the dismissal of the complaint filed by him against respondents/accused for the offence punishable under Section 138 of N.I.Act, contending that the cheques issued by the respondents/accused towards repayment of legally recoverable debt came to be dishonored. After issuing

legal notice and on failure of respondents/accused to pay the amount due, he filed complaint under Section 200 Cr.P.C. The trial Court posted the matter for sworn statement of complainant. Due to his ill health, complainant could not appear before the Court and record his sworn statement. On 10.02.2023, the trial Court dismissed the complaint for default. The absence of complainant was not intentional. If the complaint is not restored, complainant would be put to great hardship and prays to allow the appeal.

2. Heard arguments and perused the record.

3. It is the case of the complainant that respondents being the Directors/Proprietors/Authorized representative of M/s Bit Fox Enterprises are wholesale purchasers of I-phones. Their business method is to take investments from individuals, purchase I-phones at wholesale rates and sell to retail dealers with huge profit. With that profit, money invested be returned along with goods such as washing machines, laptops, computers,

electronic items, mobile phones, two wheelers and cars or cash back schemes. In this regard complainant invested Rs.5. lakhs, which was promised to be repaid with profit of Rs.50,000/-. During 2020, complainant expressed his interest in purchasing a car worth Rs.48 lakhs. He was promised that accused would arrange for a cash back in a month and delivery of car within two months. Accordingly, complainant remitted Rs.48 lakhs. However, accused have neither returned the money nor delivered the car. When insisted upon, accused have issued cheque for Rs.48 lakhs, under the signature of accused No.1. However, when presented, the same was dishonored for insufficient funds.

4. From the order sheet it is evident that from 18.08.2022, five adjournments have been granted for sworn statement of the complainant. Ultimately, on 10.02.2023, the complaint was dismissed for default, on the ground that the complainant has not turned up.

5. It is being challenged in the present appeal contending that due to ill health, he could not appear. It appears complainant is a retired Colonel. When complaint was filed he is shown to be 60 years. Even though no documents are produced to show that when the complaint was dismissed, the complainant was suffering from ill health, having regard to the fact that the cheque amount is Rs.48 lakhs, this Court is of the considered opinion that one more chance be given to the complainant to prosecute the complaint. Since by the time complaint was dismissed, accused had not appeared, no prejudice would be caused to them. Of course they would get reasonable opportunity to prove their defence.

6. For the above reasons, the impugned order is liable to be set aside and matter requires remand for disposal in accordance with law and accordingly, I proceed to pass the following:

ORDER

(i) Appeal is allowed.

(ii) The impugned order dated 10.02.2023 passed in PCR.No.395/2021 on the file of Civil Judge & JMFC., Ponnampet, Kodagu-Madikeri District is set aside.

(ii) The complainant is directed to appear before the trial Court on 21.08.2023 without waiting for further notice from the trial Court.

(iii) The trial Court is directed to decide the case in accordance with law, after providing reasonable opportunity to both parties.

Sd/-
JUDGE

RR
List No.: 1 Sl No.: 35