IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 01ST DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S. RACHAIAH

CRIMINAL REVISION PETITION NO.100315 OF 2023

C/W

CRIMINAL REVISION PETITION NO.100314 OF 2023

IN CRL.RP NO.100315/2023:

BETWEEN:

SRI. BHAGAWAN RAM
DHULARAM SUTHAR
AGE: 34 YEARS, OCC: BUSINESS,
R/O: RAISAR VILLAGE AND POST, TEHSIL SHERGARH,
DIST: JODHAPUR, RAJASTHAN STATE-342002.
PRESENTLY R/O: PLOT NO.14,
NITYANAND COLONY,
NEAR AMRUTA VIDHYALAY BHAVANI NAGAR,
MANDOLI ROAD, TILAKWADI,
BELAGAVI-590006.

...PETITIONER

(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE)

AND:

SRI. HAMIRARAM ADURAM SUTHAR
AGE: 51 YEARS, OCC: BUSINESS,
R/O: FLAT NO.T-3, TRINETRA APARTMENT,
SOMAWAR PETH, TILAKWADI,
BELAGAVI-590006.

...RESPONDENT

(BY SMT. POOJA SAVADATTI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/SEC. 397 R/W 401 OF CR.P.C. SEEKING TO SET ASIDE THE JUDGMENT DATED 20.06.2023 IN CRL. A NO. 282/2022 PASSED BY THE IV ADDL. DISTRICT AND SESSIONS JDUGE AT BELAGAVI, ONLY IN

SO FAR IT RELATES TO DIRECTING THE PETITIONER TO DEPOSIT 20 PERCENT OF THE CHEQUE AMOUNT i.e., Rs.6,00,000/- FOR THE OFFENCE PUNISHABLE U/S 138 NI ACT, BY ALLOWING THE REVISION PETITION AS PRAYED FOR WITH COST.

IN CRL.RP NO.100314/2023:

BETWEEN:
SRI. BHAGAWAN RAM
DHULARAM SUTHAR
AGE: 34 YEARS, OCC: BUSINESS,
R/O: RAISAR VILLAGE AND POST, TEHSIL SHERGARH,
DIST: JODHAPUR, RAJASTHAN STATE-342002.
PRESENTLY R/O: PLOT NO.14,
NITYANAND COLONY,
NEAR AMRUTA VIDHYALAY BHAVANI NAGAR,
MANDOLI ROAD, TILAKWADI,
BELAGAVI-590006.

…PETITIONER
(BY SRI. HANUMANTHAREDDY SAHUKAR, ADVOCATE)

AND:

SRI. HAMIRARAM ADURAM SUTHAR
AGE: 51 YEARS, OCC: BUSINESS,
R/O: FLAT NO.T-3, TRINETRA APARTMENT,
SOMAWAR PETH, TILAKWADI,
BELAGAVI-590006.

…RESPONDENT
(BY SMT. POOJA SAVADATTI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/SEC. 397 R/W 401 OF CR.P.C. SEEKING TO SET ASIDE THE JUDGMENT DATED 20.06.2023 IN CRL.A NO. 281/2022 PASSED BY THE IV ADDL. DISTRICT AND SESSIONS JDUGE AT BELAGAVI, ONLY IN SO FAR IT RELATES TO DIRECTING THE PETITIONER TO DEPOSIT 20 PERSENT OF THE CHEQUE AMOUNT i.e., Rs.5,00,000/- AND ETC.,

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED ON 06.12.2023 BEFORE THE DHARWAD BENCH, COMING ON FOR PRONOUNCEMENT OF ORDER, BEFORE THE PRINCIPAL BENCH OF BENGALURU, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Criminal Revision Petition No.100315/2023 and Criminal Revision Petition No.100314/2023 are filed by the petitioner / accused against the judgment dated 20.06.2023 in Criminal Appeal No.282/2022 and Criminal Appeal No.281/2022 respectively on the file of the IV Additional District and Sessions Judge, Belagavi, wherein the Appellate Court directed the petitioner to deposit 20% of the cheque amount.

2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case:

3. The complainant has filed two cases against the accused in C.C.No.179/2020 and C.C.No.180/2020 respectively before the JMFC-VIII, Belagavi. The Trial Court recorded the conviction and directed the accused to pay fine of Rs.33,00,000/- and Rs.27,00,000/- respectively and in default to pay the fine, he was directed to undergo simple imprisonment for one year and three months. Being aggrieved by the same, appeals were preferred by

the accused along with applications under Section 391 of the Code of Criminal Procedure (for short 'Cr.P.C.'). The applications filed under Section 391 of Cr.P.C. were allowed. The matters were remanded to the Trial Court with a direction to give opportunity to the accused to lead defence evidence to mark the documents produced by the accused. The Appellate Court directed the accused to deposit 20% of the fine amount as stipulated under Section 148 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act').

4. Heard Shri Hanumanthareddy Sahukar, learned counsel for petitioner and Smt.Pooja Savadatti, learned counsel for respondent in both the revision petitions.

5. It is the submission of the learned counsel for petitioner that directing the petitioner to deposit 20% of the cheque amount before the Trial Court after disposal of the appeals is against the provisions of law and therefore, the said orders in both the appeals are not maintainable and they are required to be set aside.

Making such submission, learned counsel for petitioner prays to allow the revision petitions.

6. *Per contra,* learned counsel for respondent vehemently submitted that Section 148 of the N.I. Act is *pari materia* with Section 143-A of the N.I. Act. The Appellate Court is also empowered to impose such condition and there is no infirmity in such orders and moreover, against such orders, revision petitions are not maintainable. Making such submission, learned counsel for respondent prays to dismiss the revision petitions.

7. Whether the order of imposing condition to deposit the cheque amount can be ordered by the Appellate Court while disposing of the appeals is the question which requires to be considered.

8. Before adverting to the other facts, it is relevant to refer to Section 148 of the N.I. Act, which reads thus:-

> *"148. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the*

appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143.A.

(2) The amount referred to in sub-section (1) shall be deposited days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.".

On reading of the above said provision, it makes it clear that the order of directing the appellant to deposit interim compensation shall be made during the pendency of the appeal. In the present case, the Appellate Court directed the petitioner to deposit 20% of the fine amount as a compensation after disposal of the appeal. Therefore, the said order cannot be sustained.

9. In view of the observations made above, I proceed to pass the following:-

ORDER

(i) Both the Criminal Revision Petitions are *allowed.*

(ii) The order dated 20.06.2023 in Criminal Appeal No.282/2022 and Criminal Appeal No.281/2022 on the file of the IV Additional District and Sessions Judge, Belagavi, directing the petitioner to deposit 20% of the fine amount, in both the cases, are set aside.

(iii) The liberty is reserved to the complainant to file necessary application before the Trial Court under Section 143-A of N.I Act for necessary deposit.

Sd/-
JUDGE

BSS