IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 1221 OF 2019

(397(Cr.PC) / 438(BNSS))

C/W

CRIMINAL REVISION PETITION NO. 1222 OF 2019

IN CRL.RP No. 1221/2019

BETWEEN:

AKBAR AHAMED
AGED ABOUT 48 YEARS,
S/O LATE NASSIR AHAMMED,
MERCHANT,
RESIDING AT GOPALANAGAR,
CHIKKAMAGALURU-577 101,

PRESENTLY AT BAHAR MANZIL,
60 FEET ROAD,
BESIDE SAHARA SHAADI MAHAL,
NEHRU NAGAR,
CHIKKAMAGALURU-577 101.

…PETITIONER

(BY SRI. ARJUN REGO, ADVOCATE FOR
SRI. REGO LPE, ADVOCATE)

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

AND:

STATE OF KARNATAKA,
BY TOWN POLICE,
MARKET ROAD,
JYOTHINAGAR,
CHIKKAMAGALURU – 577 101.
BY STATE PUBLIC PROSECUTOR,

HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

…RESPONDENT

(BY SRI. K NAGESHWARAPPA, HCGP)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 23/7/2019 PASSED IN CRIMINAL APPEAL NO153/2017 ON THE FILE OF THE HON'BLE II ADDITIONAL DISTRICT & SESSIONS JUDGE AT CHIKKAMAGALURU AND TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 6/9/2017 PASSED IN CC NO. 137/2012 BY THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE & CHIEF JUDICIAL MAGISTRATE, CHIKKAMAGALURU.

IN CRL.RP NO. 1222/2019

BETWEEN:

AKBAR AHAMED
AGED ABOUT 48 YEARS,
S/O LATE NASSIR AHAMMED,
MERCHANT,
RESIDING AT GOPALANAGAR,
CHIKKAMAGALURU-577 101,

PRESENTLY AT BAHAR MANZIL,
60 FEET ROAD,
BESIDE SAHARA SHAADI MAHAL,
NEHRU NAGAR,
CHIKKAMAGALURU-577 101.

...PETITIONER

(BY SRI. ARJUN REGO, ADVOCATE FOR
SRI. REGO LPE, ADVOCATE)

AND:

STATE OF KARNATAKA,
BY TOWN POLICE MARKET ROAD,
JOYTHI NAGAR CIRCLE
CHIKKAMAGALURU – 577 101.
BY ITS INSPECTOR.

...RESPONDENT

(BY SRI. K NAGESHWARAPPA, HCGP)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.P.C. TO SET ASIDE THE JUDGMENT AND ORDER DATED 23/7/2019 PASSED IN CRIMINAL APPEAL NO154/2017 ON THE FILE OF THE HON'BLE II ADDITIONAL DISTRICT & SESSIONS JUDGE AT CHIKKAMAGALURU AND TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 6/9/2017 PASSED IN CC NO.138/2012 BY THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE & CHIEF JUDICIAL MAGISTRATE, CHIKKAMAGALURU.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED ON 19.02.2025 COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH

CAV ORDER

1. These two petitions are connected to each other as the petitioner/accused in both the cases is one and the same and the respondent as well. Hence, both the cases are taken up together for consideration.

2. These Criminal Revision Petitions are filed by the petitioner/accused, being aggrieved by the judgments of conviction and orders on sentence dated 06.09.2017 in C.C.Nos.137/2012 and 138/2012 on the file of the Principal Senior Civil Judge and C.J.M., Chikkamagaluru and its confirmation judgments and orders dated 23.07.2019 in Crl.A.Nos.153/2017 and 154/2017 on the file of the II Additional District and Sessions Judge at Chikkamagaluru, seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused No.1 is convicted for the offences punishable under Sections 406, 420, 465, 468, 471 read with Section 34 of Indian Penal Code (for short 'IPC').

3. The ranks of the parties in the Trial Court henceforth will be considered accordingly for convenience.

Factual matrix of the case:

4. It is the case of the prosecution that accused Nos. 1 and 2 had availed loan from Shriram Transport Finance Company Limited, M.G.Road, Chikkamagaluru on 15.02.2008 to purchase two lorries bearing Reg.Nos.KA-18-A-2392 and KA-18-A-1966. After purchasing the said lorry, without clearing the loan, the accused is stated to have fabricated and created the hypothecation (for brevity, 'HP') cancellation letter and also Form No.35 for the purpose of cheating. Submitting the letters to the concerned RTO and got the HP cancelled and thereafter, the accused are stated to have sold the said Lorries to a third party.

5. Based on the private complaint lodged by the complainant, the Court took cognizance and registered the case against the accused. The Trial Court after considering the documents on record, held that the accused found guilty of the offences stated supra and rendered the conviction. Being aggrieved by the same, appeals were filed before the Appellate Court. The Appellate Court confirmed the conviction rendered by the Trial Court in both the cases and dismissed the appeals.

6. To prove the case of the prosecution, the prosecution examined 12 witnesses as PWs.1 to 12 and got marked 73 documents as Exs.P.1 to 73.

7. Heard Sri. Arjun Rego, learned counsel for Sri. Rego LPE, learned counsel for the petitioner and Sri. K. Nageshwarappa, learned High Court Government Pleader for the respondent – State.

8. It is the submission of learned counsel for the petitioner in both the cases that the findings of the Courts below in recording the conviction are perverse, illegal and opposed to the facts and law on record. Therefore, the findings of the Courts below are required to be set aside.

9. It is further submitted that the Trial Court committed error in not considering the judgment of the Hon'ble Supreme Court in the case of [1]***Priyanka Srivastava Vs. State of U.P.,*** wherein the Hon'ble Supreme Court issued guidelines, under which circumstances, the private complaint has to be filed. Even though, the affidavit has not been filed by stating the reasons as to why the police complaint has not been filed,

[1] *AIR 2015 SC 1758*

the Trial Court did not consider the said material facts and proceeded to take cognizance and passed an order which is erroneous and illegal.

10. It is further submitted that the accused even though stated to have fabricated and created HP and Form No.35 for the purpose of obtaining hypothecation cancelled by the RTO, the disputed documents have not been properly assessed and analyzed to determine as to whether those documents have been fabricated by the accused or not.

11. It is further submitted that the Courts below have acted upon the expert opinion and arrived at a conclusion that the accused has forged the signature of P.W.7-Sharathchandra without considering the evidence of expert properly. As per the evidence of expert-Shankarappa, he had not obtained the signature of the accused in his presence. P.Ws. 3 and 4 stated to be the seizure mahazar witnesses have turned hostile in respect of seizure of hypothecation letters stated to be forged by the accused.

12. It is further submitted that in spite of several lacunae in appreciating the evidence and applying the principle of law, both the Courts have committed error in rendering the conviction. Therefore, the said conviction has to be set aside.

13. Per contra, the learned High Court Government Pleader for the respondent – State vehemently justified the concurrent findings and further he submitted that the Trial Court after having perused the evidence on record, both oral and documentary, arrived at a conclusion that though the accused had disputed the signatures found on the documents viz., Exs.P.39, 62, 72 and 73, the facts remain that the expert who examined those documents along with the specimen writings and signatures of the accused produced the certificates in the form of opinion and the said opinions are marked as Ex.P.64 and 66 respectively, would indicate that the accused had fabricated those documents by forging the signature of Sharathchandra who was working in the Shriram Transport Finance and got the hypothecation cancelled at the RTO office. Hence, the findings of the Courts below in rendering the conviction are proper and appropriate. Therefore, interference

may not be necessary. Making such submissions, the learned High Court Government Pleader prays to dismiss the petitions.

14. Having heard learned counsel for the parties and also perused the findings of the Courts below in recording the conviction, it is relevant to have a cursory look upon the evidence of the witnesses and also documents on record.

15. It is stated that the accused had obtained loan from Shriram Transport Finance Company Limited for the purpose of purchasing two Lorries. The hypothecation agreement was entered into between the accused and the Finance Company. The accused was irregular in making the repayment of loan. P.W.7-Sharath Chandra, Officer of the said finance institution went to the RTO office and obtained B-Extract. He learnt that the HP had been cancelled on production of the documents stated to be given by the said financial institution. On seeing those documents, he learnt that his signatures have been forged on the alleged documents, thereafter, on his behalf, P.W.1 lodges a complaint before the Magistrate. The Magistrate refers the matter to the respondent jurisdictional police and the

jurisdictional police registered the FIR and conducted the investigation and submitted the charge sheet in both the cases.

16. Now it is relevant to refer the evidence of finance officer viz., Sharathchandra, Expert-Shankarappa and also RTO officials viz., Shanthakumar and Shivasiddeshwara.

17. As per the evidence of Sharathchandra, he had not issued any no objection certificate to cancel the hypothecation from the Finance Institution. He further stated that he has not affixed his signature on the documents produced before the RTO for cancellation of hypothecation.

18. The Investigating Officer collecting the specimen signature and handwriting of the accused and the signature of Sharathchandra and send those signatures and documents for the FSL to obtain opinion from the Expert. The Expert, after examining those documents along with the disputed signatures, submitted the reports as per Ex.P.64 and 66 in both the cases and opined that the signatures found on the documents Ex.P.39, 62, 72 and 73 and the specimen signature of the accused are one and the same.

19. The officials of RTO office stated in their evidence that on production of the documents by accused, they got cancelled the HP of the vehicles. Though the accused had contended that he had not affixed his signature found on the disputed documents, the facts remain that he being a possessor of those documents and also beneficiary thereof, he had to explain as to how those documents have come into his possession. Mere denial of those documents would not sufficient to rebut the presumption. In the light of the analysis, made above, I am of the considered opinion that the findings of the Courts below is proper and appropriate and I decline to interfere with the findings of the Courts below.

20. In the light of the observation made above, I proceed to pass the following:

ORDER

The Criminal Revision Petitions stand dismissed.

Sd/-
(S RACHAIAH)
JUDGE

JS
List No.: 19 Sl No.: 5