IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.200004 OF 2021

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

BETWEEN:

BHEEMASHANKAR S/O SHARANAPPA CHALWADI,
AGE: 38 YEARS, OCC: DRIVER,
R/O SIDDARTHANAGAR, KALABURAGI-585102.

…PETITIONER

(BY SRI NANDKISHORE BOOB, ADVOCATE)

AND:

THE STATE THROUGH,
STATION BAZAR PS, KALABURAGI,
NOW REPRESENTED BY ADDL. SPP,
HCKB AT KALABURAGI.

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

…RESPONDENT

(BY SRI JAMADAR SHAHABUDDIN, HCGP)

THIS CRL.RP. IS FILED U/S 397 R/W 401 OF CR.P.C PRAYING TO ALLOW THIS REVISION PETITION AND SET ASIDE THE JUDGMENTS OF CONVICTION AND ORDERS OF SENTENCE PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, KALABURAGI IN CRIMINAL APPEAL NO.48/2018 DATED

04.11.2020 AND LEARNED PRL. CIVIL JUDGE AND JMFC COURT, KALABURAGI IN C.C.NO.08/2009 DATED 16.07.2018 WHICH ARE ANNEXED AS ANNEXURES- A AND B RESPECTIVELY, IN VIEW OF THE REASONS AS STATED ABOVE.

THIS PETITION, COMING ON FOR ARGUMENTS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

(PER: HON'BLE MR. JUSTICE V SRISHANANDA)

Heard Sri Nandkishore Boob, learned counsel for the petitioner and Sri Jamadar Shahabuddin, learned High Court Government Pleader for the respondent/State.

2. The revision petitioner is accused No.3, who suffered an order of conviction for the offence punishable under Section 419 of the Indian Penal Code and ordered to undergo rigorous imprisonment of three years and to pay fine of Rs.10,000/- with default sentence of simple imprisonment for six months which confirmed in Criminal Appeal No.48/2018.

3. Facts in the nutshell for disposal of the revision petition are as under:

Accused has been chargesheeted for the offence under Section of 419 IPC on the ground that present revision petitioner along with accused Nos.1 and 2 with a common intention, secured the ROR extract of the land belonged to one Basavantraya and with a *mala fide* intention, affixed the photograph of accused No.1 on the said ROR extract and accused No.1 offered the said document as a surety document for the benefit of the bail order of accused Nos.2 and 3 in C.C.No.1511/2003. When there was jumping of the bail, when the surety proceedings were initiated and notice came to the land owner, Basavantraya, who is the real owner of the land was surprised and on enquiry, it is noticed that no doubt the ROR extract belonged to said Basavantraya but the photograph that was found on the ROR extract at the time of accepting the surety in C.C.No.1511/2003 is not that of Basavantraya but it was that of accused No.1.

4. After receipt of such complaint, the matter was thoroughly investigated and chargesheet came to be filed.

5. On receipt of the chargesheet, the presence of accused Nos.1 to 3 was sought to be secured but since accused Nos.1 and 2 were not available, split-up chargesheets were filed against them and trial preceded only against accused No.3.

6. Accused pleaded not guilty. Therefore, trial was held.

7. After due trial, accused was convicted, as he was the beneficiary of the said surety affidavit in C.C.No.1511/2003.

8. Being aggrieved by the said judgment of conviction and order of sentence, accused filed an appeal before the District Court in Criminal Appeal No.48/2018.

9. Learned Judge in the First Appellate Court after securing the records, heard the arguments on both sides

and on re-appreciation of the material evidence in a cumulative manner, confirmed the judgment of conviction and order of sentence.

10. Being further aggrieved by same, accused is before this Court.

11. Sri Nandakishore Boob, learned counsel for the revision petitioner reiterating the grounds urged in the petition vehemently contended that both the Courts have not properly appreciated the material evidence on record resulting in miscarriage of justice.

12. He would further contend that as on the date of commission of the offence, since accused was in custody, he cannot be held responsible for the offence under Section 419 of IPC.

13. Alternatively, he would contend that in the event this Court upholding the order of conviction, sentence of rigorous imprisonment may be set aside by

enhancing the fine amount reasonably and sought for allowing the revision petition to that extent.

14. *Per contra,* Sri Jamadar Shahabuddin, learned High Court Government Pleader supports the impugned judgments and sought for dismissing the petition.

15. Having heard the arguments on both sides, this Court perused the material on record meticulously.

16. On such perusal of the material on record, it is pertinent to note that in order to get the benefit of the bail order in C.C.1511/2003, the ROR extract of the land belonging to one Basavantraya, who is examined before the Court as P.W.6 in C.C. No.8/2009, accused No.1 affixed the photograph and offered the said document as surety document, whereby it is accused No.2 and the present petitioner who are the beneficiaries.

17. Admittedly, the present petitioner therefore cannot claim that he was in custody and therefore he is nowhere responsible for the alleged offence.

18. The case of the prosecution predominantly rested on the ROR extract furnished by accused No.1 to get accused Nos.2 and 3 enlarged on bail in C.C.No.1511/2003.

19. As such, there is no patent factual error or error of jurisdiction in passing the order of conviction by the learned Trial Magistrate which has been rightly appreciated by the learned Judge in the First Appellate Court as well while dismissing the appeal of revision petitioner.

20. Even after consideration of the material facts in the light of the grounds urged in the present petition, this Court does not find any legal infirmity or perversity so as to set aside the order of conviction.

21. Having said thus, since the accused was in custody and it is the mischief that has been played by the accused No.1, taking note of those aspects of the matter, if the accused is directed to undergo simple imprisonment for the day till the raising of the Court by ordering payment of enhanced fine amount of Rs.25,000/-, ends of justice would be met.

22. Accordingly, following:

ORDER

(a) The Criminal Revision Petition is allowed in part.

(b) While maintaining the judgments of conviction for the offence under Section 419 of IPC, sentence ordered by the Trial Magistrate and confirmed by the First Appellate Court is modified by directing the revision petitioner to undergo simple imprisonment for the day till the raising of the Court and to pay enhanced fine amount of Rs.25,000/- on or before 31.07.2025.

(c) Failure to pay the enhanced fine amount, the order of imprisonment passed by the Trial Magistrate and confirmed by the First Appellate Court stands restored automatically.

(d) Office is directed to return the Trial Court records with a copy of this order forthwith for issue of the modified conviction warrant.

Sd/-
(V SRISHANANDA)
JUDGE

RSP
List No.: 1 Sl No.: 57
CT:PK