



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 4838 OF 2022

BETWEEN:

- 1 . MR.RUKHIYA RASHEEDULLA
@ RUKHIYA RASHEEDULLAH
W/O LATE RASHEEDULLAH
SUDHAKAR SUVARNA
AGED ABOUT 63 YEARS
- 2 . MR. MOHAMMED SAHIL
S/O LATE RASHEEDULLA
SUDHAKAR SUVARNA
AGED ABOUT 30 YEARS
- 3 . MRS.TANVEER
D/O LATE RASHEEDULLAH
SUDHAKAR SUVARNA
AGED ABOUT 32 YEARS

ALL ARE RESIDING AT
NO.502, 11TH MAIN,
3RD CROSS
BHCS LAYOUT
SUBRAMANYAPURA
UTTARAHALLI
BANGALORE - 560 061.

...PETITIONERS

(BY SRI B.K.SAMPATH KUMAR, SR. COUNSEL FOR
SRI SURAJ SAMPATH, ADVOCATE)





CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

AND:

MRS.M.DEVIKA
W/O M N REDDY ASHWATH
AGED ABOUT 46 YEARS
R/AT NO.217/2018, 6TH MAIN,
ANNAPOORNESHWARI LAYOUT
ULLAL MAIN ROAD
BANGALORE - 560 056.

...RESPONDENT

(BY SRI R.P.SOMASHEKARAIHAH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C., PRAYING TO
QUASH ORDER DATED 08.11.2021 PASSED BY HONBLE XXXVI
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BANGALORE
IN PCR NO. 15555/2021 CC NO. 31063/2021 VIDE ANNEXURE
C AND ETC.,

THIS PETITION IS COMING ON FOR '*Dictating
Orders*', THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 08.11.2021 passed by XXXVI
Additional Chief Metropolitan Magistrate, Bangalore in CC
no.31063/2021 in pursuance of PCR no.15555/2021 filed by
respondent (complainant) for offences punishable under
Section 138 of Negotiable Instruments Act, 1881 (**NI Act**) read



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

with Section 420 of Indian Penal Code, 1860 (**IPC**), this petition is filed.

2. Sri Suraj Sampath, learned counsel for petitioners submitted that petitioners were accused no.2 to 4 in complaint filed by respondent (complainant) alleging that Rasheedulla Sudhakar Suvarna alias Ashit (accused no.1) was running Fiddlers Green Resto-Bar (**Resto-Bar**), a unit of Brimful Hospitality LLP (**LLP**) situated at HRBR Layout, Bengaluru. In complaint, it was stated that accused no.2 was his wife and accused no.3 and 4, their children. In March 2020, accused no.1 and 2 were in need of funds for marriage of accused no.3 and 4 and approached complainant with intention to sell or transfer rights of Resto-Bar for consideration of Rs.75,00,000/-. Apart from same, and as business was dull during Covid-19 lockdown, funds were needed for business also.

3. Therefore, complainant advanced amounts either directly or through friends and associates on various dates and modes, totalling to Rs.35 Lakhs for Resto-Bar and Rs.20 Lakhs to accused no.1 and 2. Several additional payments were made



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

towards proposed business at request of accused. Apart from above, accused no.3 had used complainant's Credit Card on various occasions for marriage-related purchases. Thus, as on 17.01.2021, complainant had paid Rs.55 Lakhs in total for takeover of Resto-Bar, duly acknowledged by accused no.1.

4. As per agreement dated 03.12.2020 for take over of Resto-Bar, possession of establishment was to be handed over on or before 10.02.2021. But, after marriage of accused no.4, accused no.1 and 2 expressed their inability to transfer possession and agreed to refund amounts received. In pursuance thereof, accused no.1 in presence of other accused, issued cheque no.0004641 dated 05.04.2021 for Rs.55,00,000/- along with promissory note dated 17.01.2021, cheque no.000465 dated 05.04.2021 for Rs.13,50,000/- executed along with Promissory Note dated 22.06.2020, cheque no.000391 dated 05.04.2021 for Rs.6,50,000/- along with Promissory Note dated 15.10.2020 drawn on ICICI Bank, Indiranagar Branch, Bengaluru, in favour of complainant, by issuing separate cheques by accused persons.



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

5. As per accused instructions, complainant presented cheque no.000461 dated 05.04.2021 for Rs.55,00,000/-. But returned dishonoured on 16.04.2021 with endorsement 'Funds Insufficient'. Thereafter attempts made to contact accused were unsuccessful. Even after issuance and service of notice of demand for payment, accused failed to repay and instead sent reply disputing liability under cheque.

6. Having borrowed money by promising to transfer Resto-Bar and later resiling from same, issuing cheque towards repayment and failing to ensure same are honoured, disclosed intention to cheat complainant and offences under Section 138 of NI Act and Section 420 of IPC. On 14.09.2021, sworn statement of complainant was recorded and Exs.P1 to P14 were marked. On 08.11.2021, learned Magistrate took cognizance and issued process to petitioners in CC no.31063/2021. Aggrieved thereby, this petition is filed.

7. It was submitted, private complaint was filed on cause of action of dishonour of cheque no.0004641 dated 05.04.2021 for Rs.55,00,000/- drawn on account of M/s.



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

Comfort Cell (**Firm**) issued by accused no.1, whereas accused no.1 had died on 04.02.2021 (about two months prior to date of cheque). It was submitted, even though death of accused no.1 was informed in reply notice dated 29.06.2021, complainant had arrayed dead person as accused in Private Complaint. Consequently, order taking cognizance and issuance of process was apparently without application of mind, especially when petitioners were not even partners of Firm. Thus, it was apparent that complaint was filed with intention to harass petitioners and to extort amount.

8. It was submitted, impugned proceedings were not maintainable without arraigning Firm on whose account cheque in question was issued. Admittedly, Exs.P12 and P14 were executed only by accused no.1 and not his family members, while petitioners were neither signatories nor joint account holders. It was submitted, this Court in **Smt. Veenashri v. Sri Shankar [2022:KHC:35359]** and **Minal Sameer Sata v. Vandana Wind Energy Private Limited** reported in **LAWS (KAR) 2023 (6) 1043**, quashed proceedings on ground that accused was not signatory to cheque as well as that cheque



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

issued was drawn on joint account but signed only by her husband.

9. Further, relying on ratio laid down by Hon'ble Supreme Court in **Annapurna B. Uppin v. Malsiddappa** reported in **AIR 2024 SC 2015**, it was submitted, arraignment of legal heirs of deceased drawer of cheque was impermissible. On said grounds, sought for quashing of proceedings.

10. Sri RP Somashekariah, learned counsel for complainant opposed petition. Insofar as contention about claim being based on cheque issued by dead person, it was submitted, cheque issued was a post-dated cheque. It was submitted, since cheque was issued towards personal debt, proceedings could be continued against legal heirs of drawer of cheque. On said grounds, prayed for dismissal of petition.

11. Heard learned counsel and perused material on record.



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

12. This petition is by accused challenging order taking cognizance as well as entire proceedings in private complaint for offences punishable under Section 138 of NI Act and Section 420 of IPC.

13. Main ground urged for challenge is non-arraignment of Partnership Firm even when cheque in question belonged to Firm. Indisputably, impugned proceedings are on account of dishonour of cheque belonging to Firm. Referring to ratio laid down in its earlier decision in case of **Aneeta Hada v. Godfather Travels & Tours (P) Ltd.**, reported in **(2012) 5 SCC 661**, Hon'ble Supreme Court in case of **Himanshu v. B. Shivamurthy**, reported in **(2019) 3 SCC 797**, held:

"13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."

14. Further, it is not in dispute that petitioners are not signatories to cheque in question. Hon'ble Supreme Court in



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

case of **Alka Khandu Avhad v. Amar Syamprasad Mishra**,
reported in **(2021) 4 SCC 675** has held:

"10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."

15. Same is followed in **Smt.Veenashri** and **Minal Sameer Sata's** cases (supra). Consequently, initiation of proceedings against non-signatories and as per ratio in **Annapurna B. Uppin's** cases (supra) even against legal heirs of drawer of cheque would not be tenable. In view of above, impugned proceedings would not sustain. Hence, following:

ORDER

Petition is **allowed**; proceedings in CC no.31063/2021 in pursuance of PCR no.15555/2021 on file of XXXVI Additional



CNR: KAHC010237602022

NC: 2026:KHC:39540
CRL.P No. 4838 of 2022

Chief Metropolitan Magistrate, Bangalore for offences punishable under Section 138 of NI Act and Section 420 of IPC are *quashed*, reserving liberty to complainant to avail recourse to such other remedies, if available in law.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

AV
List No.: 1 Sl No.: 49