Sri Dattatraya vs Sharanappa on 7 August, 2024

Author: B.V. Nagarathna

Bench: B.V. Nagarathna

2024 INSC 586

REPOR

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3257 OF 2024
(@ SLP (CRIMINAL) NO. 13179 OF 2023)

SRI DATTATRAYA … APPELLANT

VERSUS

SHARANAPPA … RESPONDEN

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. Leave granted.

2. The instant appeal was originally preferred as a petition before this Court, which is moved against the impugned Judgment dated 03.03.2023 in Criminal Appeal No. 200139 of 2019 by the High Court of Karnataka at Kalaburagi whereby the learned Single Judge affirmed the acquittal of the Respondent in Complaint Case No. 468 of 2014 moved for the offence punishable under (hereinafter referred to as “NI Act 1881”). 16:40:11 IST Reason:

> 3. The factual backdrop giving rise to the present challenge is that the Appellant is the original complainant who claims to know the sole Respondent for the last six years and that he had borrowed INR 2,00,000/- (Rupees Two Lakhs only) from the Appellant on account of family necessities and accommodation. Against the said loan the Respondent issued a cheque bearing No. 015639 which was drawn on the Bank of India, as a guarantee against repayment. He was to repay the said loan amount within a period of six months thereof. An agreement to this effect was also signed between the parties.
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> 4. However, since the Respondent failed to repay the loan despite repeated requests, the Appellant presented the concerned cheque for encashment on 22.10.2013, but nevertheless, as per the Bank Memo dated 24.10.2013, the cheque was dishonoured on account of “insufficient funds”.

5. Aggrieved from the said dishonour of cheque, a Demand Notice dated 31.10.2013 was sent by the Appellant to the Respondent, whereby, the Counsel on behalf of the Appellant alleged that the Respondent had intentionally cheated him and had not made any efforts to discharge his liability. Accordingly, the Respondent was said to have committed offences punishable under Section 138 of the NI Act 1881 and Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC 1860").

6. Thereupon, the Respondent moved a Reply Notice dated 11.11.2013 whereby he claimed that the accusations made by the Appellant are false and bereft of pertinent details of the loan transaction, inter alia, the date and time of advancement of the said debt, which as claimed, was never advanced.

7. Unsatisfied with the response of the Respondent through the said Reply Notice, Appellant moved a Private Complaint No. 991 of 2013 under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC 1973"). The said complaint came to be registered as CC/468/2014 before Judicial Magistrate First Class at Gulbarga. As part of the proceedings before the Trial Court, the Appellant examined himself as PW-01, while the Respondent examined himself as DW-01. However, the latter did not mark any documents from his side. It was the Respondent's plea that the concerned cheque was issued in favour of one Mr Mallikarjun in the year 2012 for security purposes, however, he did not return the same to the Respondent, and instead had left the village. While dealing with the said contention, the Trial Court observed that the Respondent had failed to explain as to how the cheque landed in the hands of the Appellant, and for what purpose was the cheque issued to Mr Mallikarjun.

8. It was also revealed as part of the statement during cross-examination of the Appellant that the cheque was originally, not given to the Appellant as security cheque.

Instead, the same was allegedly given to the Appellant after the Respondent had thereby failed to repay his liability as existing against the Appellant after a period of six months. The Court further observed that the Agreement marked by the Appellant to assist his case does not include signature of the Respondent as against the terms of the agreement, but a signature is made by the Respondent on the stamp paper itself, and the same is not sustainable in the eyes of law. The Court also went on to scrutinize the Income Tax Returns of the Appellant, from where it was revealed that the Appellant failed to declare the alleged loan transaction as part of his returns to the Income Tax Department. Accordingly, vide its Judgment dated 18.10.2019, the Trial Court adjudicated in favour of the Respondent, resultantly dismissing the complaint moved by the Appellant and acquitting the Respondent.

9. Aggrieved by the decision of Trial Court, the Appellant moved the High Court of Karnataka in Criminal Appeal No. 200139 of 2019, which went on to observe that, admittedly, there was a contradiction in the statement of the Appellant as to when the cheque was issued in his favour.

Furthermore, as was laid down in the decision of this Court in Rangappa v. Sri Mohan1, the 1 (2010) 11 SCC 441.

presumption under Section 139 of the NI Act 1881 is a rebuttable one. The contention of the Respondent as to the financial capacity of the Appellant to grant a loan in his favour was to be discharged by him, and being unable to do so, it shall be presumed that a loan transaction had not taken place. Accordingly, the findings of the Trial Court were affirmed in the impugned Judgment dated 03.03.2023.

10. The Appellant has thereupon moved this Court in challenge to the said impugned judgment on the grounds that as the signature on the concerned cheque was admitted by the Respondent, the Appellant was able to successfully raise a presumption under Section 139 of the NI Act 1881 and as per the submissions of the Respondent, he had failed to rebut the said presumption. He also put forth that the reliance on the decision in Rangappa (supra) by the High Court was misplaced, and even going by the standard of preponderance of probabilities, the Respondent failed to discharge his onus.

11. Having heard the learned Senior Advocate for the Appellant as well as the learned Counsel on behalf of the Respondent, it is imperative to deliberate over the position of law apropos the applicable provisions of the NI Act 1881, and others, if any.

12. Earlier, a case of dishonour of a cheque was dealt through provisions of Section 420 read with Section 415 of the IPC 1860. To enhance the acceptability of cheques as well as to provide for adequate safeguards to prevent harassment of honest drawers through painting the liability arising out of dishonour of a cheque with a punitive brush, an amendment to the NI Act 1881 was brought about by introducing Chapter VIII. Thence, seeking to promote credibility in transactions through the medium of banking channels and operations as well as their efficacy. Section 138 of the NI Act 1881 is reproduced below as:

> “138. Dishonour of cheque for insufficiency, etc., of funds in the account.
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> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years’, or with fine which may extend to twice the amount of the cheque, or with both:
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> Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

13. This Court in ICDS Ltd. v. Beena Shabeer and Another2, has held that proceedings under Section 138 of the NI Act 1881 can be initiated even if the cheque 2 (2002) 6 SCC 426.

was originally issued as security and was subsequently dishonoured owing to insufficient funds. The failure to honour the concerned cheque is per se deemed as a commission of an offence under Section 138 of the NI Act 1881.

14. The NI Act 1881 enlists three essential conditions that ought to be fulfilled before the said provision of law can be invoked. Firstly, the cheque ought to have been presented within the period of its validity. Secondly, a demand of payment ought to have been made by the presenter of the cheque to the issuer, and lastly, the drawer ought to have had failed to pay the amount within a period of 15 days of the receipt of the demand. These principles and pre-requisites stand well established through Judgment of this Court in Sadanandan Bhadran v. Madhavan Sunil Kumar3. There is an explicit limitation of 30 days, beginning from period when the cause of action arose, prescribed by the 3 (1998) 6 SCC 514.

statute vide Section 142(b) of the NI Act 1881 to initiate proceedings under Section 138 of the NI Act 1881.

15. Furthermore, this Court expounded that the issuance of cheque towards a liability, the presentation of the cheque within the prescribed period, its return on account of dishonour, notice to the accused, and failure to pay within 15 days thereof, stand as sine qua non for an offence under Section 138 of the NI Act 1881 as per the decision in K. Bhaskaran v. Sankaran Vaidhyan Balan and Another4. The same was subsequently reiterated in numerous judgments of this Court as well as that of the High Courts.

16. While referring to the period of limitation of one month of filing a complaint for the purpose of Section 138 of the NI Act 1881, the same is to begin after the drawer of the cheque has failed to discharge his liability to the presenter within the prescribed period of 15 days as per the Proviso (c)

to Section 138 of the NI Act 1881. A co- joint reading of Sections 138 and 142 of the NI Act 1881 4 (1999) 7 SCC 510.

makes it clear that the cause of action only arises after the failure of the drawer to pay, subsequent to the receipt of the notice, and the complainant is restricted from initiating multiple complaints against the concerned drawer at different stages contemplated prior.

17. Furthermore, in light of such object encapsulated in the Amendment to Chapter VIII, the Parliament by virtue of Section 143 of the NI Act 1881 prescribed procedure of summary trial enlisted in provisions of Sections 260 to 265 of the CrPC 1973 to be adopted during proceedings under Section 138 of the NI Act 1881. Therefore, it can be observed that the court shall adopt a liberal approach with regard to attendance of an accused person and until an accused's presence is indispensable, a court can allow for an exemption, in case of existence of any exceptional circumstances. Moreover, issuance of a non- bailable warrant in case of absence of the accused, at the first instance, shall, due to any circumstance, be avoided.

18. As the presumption contemplated by virtue of Section 118 of the NI Act 1881 entails, Section 139 was similarly introduced to provide for a presumption that the holder of cheque had received the concerned issued cheque towards discharging of the liability of the drawer, either in whole or in part. Therefore, at this juncture, it is ideal to make a reference to Section 118 of the NI Act 1881, which is reproduced as:

> "118. Presumptions as to negotiable instruments Until the contrary is proved, the following presumptions shall be made:—
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> (a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date;
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> (c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
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> (d) as to time of transfer: —that every transfer of a negotiable instrument was made before its maturity;
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> (e) as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;
>
> (f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;

> (g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him." Chapter XIII of the NI Act 1881, of which Section 118 is a part, lays down special rules for evidence to be adduced within the scheme of the Act herein. As the text of the said provision showcases, it raises a rebuttable presumption as against the drawer to the extent that the concerned negotiable instrument was drawn and subsequently accepted, indorsed, negotiated, or transferred for an existing consideration, and the date so designated on such an instrument is the date when the concerned negotiable instrument was drawn. It is also further presumed that the same was transferred before its maturity and that the order in which multiple indorsements appear on such an instrument, that is the deemed order thereon. Lastly, the holder of a negotiable instrument is one in its due course, subject to a situation where the concerned instrument while being obtained from a lawful owner and from his or her lawful custody thereof through undertaking of an offence as contemplated under any statute or through the means of fraud, the burden to prove him or her being a holder in due course, instead, lies upon such a holder.

19. Accordingly, to begin with, the bare provision of Section 139 of the NI Act 1881 is reproduced herein below:

> "139. Presumption in favour of holder—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability." The aforesaid presumption entails an obligation on the court conducting the trial for an offence under Section 138 of the NI Act 1881 to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability. The use of expression "shall presume" ameliorates the conundrum pertaining to the right of the accused to present evidence for the purpose of rebutting the said presumption.

Furthermore, the effect of such presumption is that, upon filing of the complaint along with relevant documents, thereby prima facie establishing the case against the drawer, the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption, and as established in Laxmi Dyechem v. State of Gujarat and Others5, based on preponderance of probabilities.

20. While describing the offence envisaged under Section 138 of the NI Act 1881 as a regulatory offence for largely being in the nature of a civil wrong with its impact confined to private parties within commercial transactions, the 3-Judge Bench in the decision of Rangappa (supra) highlighted Section 139 of the NI Act 1881 to be an example of a reverse onus clause. This is done so, as the Court expounds, in the light of Parliament's intent, which can be culled out from the peculiar placing

of act of dishonour of cheque in a statute having criminal overtones. The underlying object of such deliberate placement is to inject and enhance 5 (2012) 13 SCC 375.

credibility of negotiable instruments. Additionally, the reverse onus clause serves as an indispensable "device to prevent undue delay in the course of litigation". While acknowledging the test of proportionality and having laid the interpretation of Section 139 of the NI Act 1881 hereof, it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. This is in light of the observations laid down by a co-ordinate Bench in Hiten P. Dalal v. Bratindranath Banerjee6, whereby it was clarified that the rebuttal ought not to be undertaken conclusively by an accused, which is reiterated as follows:

> "23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, 'after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists' [Section 3, Evidence Act].

6 (2001) 6 SCC 16.

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'." Therefore, it may be said that the liability of the defence in cases under Section 138 of the NI Act 1881 is not that of proving its case beyond reasonable doubt.

21. In light of the aforesaid discussion, and as underscored by this Court recently in the decision of Rajesh Jain v. Ajay Singh7, an accused may establish non-existence of a debt or liability either through conclusive evidence that the concerned cheque was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities.

22. Since a presumption only enables the holder to show a prima facie case, it can only survive before a court of law subject to contrary not having been proved to the effect that a cheque or negotiable instrument was not issued for a consideration or for discharge of any existing or 7 (2023) 10 SCC 148.

future debt or liability. In this backdrop, it is pertinent to make a reference to a decision of 3-Judge Bench in Bir Singh v. Mukesh Kumar8, which went on to hold that if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section 139 of the NI Act 1881, even if there is no admission to the effect of execution of entire contents in the cheque.

23. It is therefore apposite to make a reference to the provision of Section 140 of the NI Act 1881, which ruminates mens rea to be immaterial while dealing with proceedings under Section 138 of the NI Act 1881. The said legislative wisdom of the Parliament which is imbibed in the bare text of the provision is reproduced as below:

> "140. Defence which may not be allowed in any prosecution under section 138—It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section." 8 (2019) 4 SCC 197.

24. Through this legal fiction adopted by the legislature vide Amendment Act of 1988 to the NI Act 1881 it has barred the drawer of a cheque, which was dishonoured, to take a defence that at the time of issuance of the cheque in question he or she had no reason to believe that the same will be dishonoured upon being presented by the holder of such a cheque, especially and specifically for the reasons underlined in Section 138 of the NI Act 1881.

25. A comprehensive reference to the Sections 118, 139 and 140 of the NI Act 1881 gives birth to a deemed fiction which was also articulated by this Court in K.N. Beena v. Muniyappan and Another9 as follows:

> "Under section 118, unless the contrary was proved, it is to be presumed that the negotiable instrument (including a cheque) had been made or drawn for consideration. Under section 139 the court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in complaints under section 138, the court has to presume that the cheque had been issued for a debtor's liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. The Supreme Court in the 9 (2001) 8 SCC 458.

case of Hiten P. Dalal v. Bratindranath Banerjee has also taken an identical view."

26. Furthermore, on the aspect of adducing evidence for rebuttal of the aforesaid statutory presumption, it is pertinent to cumulatively read the decisions of this Court in Rangappa (supra) and Rajesh Jain (supra) which would go on to clarify that accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 CrPC 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the concerned statutory presumption.

27. Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the Appellant as against his

cross-examination relatable to the time of presentation of the cheque by the Respondent as per the statements of the Appellant. This is to the effect that while the Appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross- examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the Respondent, after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the Appellant to the effect of having advanced a loan to the Respondent. Even further the Appellant has not been able to showcase as to when the said loan was advanced in favour of the Respondent nor has he been able to explain as to how a cheque issued by the Respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the Appellant.

28. Admittedly, the Appellant was able to establish that the signature on the cheque in question was of the Respondent and in regard to the decision of this Court in Bir Singh (supra), a presumption is to ideally arise. However, in the above referred context of the factual matrix, the inability of the Appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act 1881. The Respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

29. The Trial Court had rightly observed that the Appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the Respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the Appellant, creates another set of doubt in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the Appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act 1881.

30. Moreover, affirming the findings of the Trial Court, the High Court observed that while the signature of the Respondent on the cheque drawn by him as well as on the agreement between the parties herein stands admitted, in case where the concern of financial capacity of the creditor is raised on behalf of an accused, the same is to be discharged by the complainant through leading of cogent evidence.

31. The instant case pertains to challenge against concurrent findings of fact favouring the acquittal of the respondent, it would be cogent to delve into an analysis of the principles underlining the exercise of power to adjudicate a challenge against acquittal bolstered by concurrent findings. The following broad principles can be culled out after a comprehensive analysis of judicial pronouncements:

> i) Criminal jurisprudence emphasises on the fundamental essence of liberty and presumption of innocence unless proven guilty. This presumption gets emboldened by virtue of concurrent findings of acquittal. Therefore, this court must be extra-

cautious while dealing with a challenge against acquittal as the said presumption gets reinforced by virtue of a well-reasoned favourable outcome. Consequently, the onus on the prosecution side becomes more burdensome pursuant to the said double presumption.

ii) In case of concurrent findings of acquittal, this Court would ordinarily not interfere with such view considering the principle of liberty enshrined in Article 21 of the Constitution of India 1950, unless perversity is blatantly forthcoming and there are compelling reasons.

iii) Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal. However, where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an oppugnant view. [Vide State of Uttar Pradesh v. Dan Singh10]

iv) To adjudge whether the concurrent findings of acquittal are 'perverse' it is to be seen whether there has been failure of justice. This Court in Babu v. State of Kerala11 clarified the ambit of the term 'perversity' as "if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/admissible material. The finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality." 10 (1997) 3 SCC 747.

11 (2010) 9 SCC 189.

v) In situations of concurrent findings favoring accused, interference is required where the trial court adopted an incorrect approach in framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced by the accused in rebutting a legal presumption. [Vide Rajesh Jain v. Ajay Singh12]

vi) Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or fallacies in re- appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non- adherence to the principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside. Say in cases where the court severed the connection 12 (2023) 10 SCC 148.

between accused and criminality committed by him upon a cursory examination of evidences. [Vide State of Punjab v. Gurpreet Singh and Others13 and Rajesh Prasad v. State of Bihar14]

32. Upon perusal of the aforementioned principles and applying them to the facts and circumstances of the present matter, it is evident that there is no perversity and lack of evidence in the case of the respondent- accused. The concurrent findings have backing of detailed appraisal of evidences and facts, therefore, do not warrant interference in light of above enlisted principles. In a similar set of facts as in the present case, involving criminal liability arising out of dishonour of cheque, this Court in M/s Rajco Steel Enterprises v. Kavita Saraff and Another15 dejected from

reversing the concurrent findings of acquittal of accused therein and underscored the principle of non-interference, 13 (2024) 4 SCC 469.

14 (2022) 3 SCC 471.

15 2024 SCC OnLine SC 518.

unless such findings are perverse or bereft of evidentiary corroboration or lacks question of law.

33. In furtherance of the aforesaid principles and the reasons ascribed thereof, the present challenge to the aforesaid impugned judgment dated 03.03.2023 by the High Court of Karnataka at Kalaburagi is bereft of any merits and does not call for any interference of this court.

34. The instant appeal is dismissed and the findings of the High Court in the impugned judgment dated 03.03.2023 are affirmed.

35. Pending applications, if any, also stand disposed of.

……J. (B.V. NAGARATHNA) ……J. (AUGUSTINE GEORGE MASIH) NEW DELHI;

AUGUST 07, 2024.