



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL REVISION PETITION NO. 212 OF 2024

BETWEEN:

1 . M/s. LALITHA ENTERPRISES,
A PROPRIETOR CONCERN,
NO.19, 13TH MAIN, 2ND STAGE,
9TH BLOCK, BDA LAYOUT,
NAGARABHAVI,
BENGALURU - 560 072,
REP BY ITS PROPRIETOR,
SANJAY T.H.

2 . SANJAY T.H.,
S/O HALASWAMY,
AGED ABOUT 37 YEARS,
PROPRIETOR OF
M/s LALITHA ENTERPRISES,
A PROPRIETOR CONCERN,
NO.19, 13TH MAIN, 2ND STAGE,
9TH BLOCK, BDA LAYOUT,
NAGARABHAVI,
BENGALURU - 560 072.

ALSO HAVING ADDRESS AT
TALE BRANDS, SHOP NO.G1-34,
INORBIT COMPLEX, NO.75,
NEXT TO SATYA SAI HOSPITAL,
WHITEFIELD,
BENGALURU - 560 066.

...PETITIONERS

[BY SRI MUNISWAMY GOWDA S.N., ADVOCATE (PH)]

Digitally signed by
GEETHAKUMARI
PARLATTAYA S
Location: High
Court of Karnataka



AND:

S DHANPAL,
S/O LATE SAGADEVA NAIDU,
AGED ABOUT 75 YEARS,
R/AT NO.113, 6TH 'C' MAIN,
REMCO LAYOUT,
VIJAYANAGAR 2ND STAGE,
BENGALURU - 560 040.

...RESPONDENT

[BY SRI RAMESHA H.E., ADVOCATE (PH)]

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO 1.SET ASIDE THE COMMON JUDGMENT AND ORDER DATED 06.01.2024 PASSED BY THE LEARNED LXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AT BENGALURU IN CRL.A.NO.26/2021 AND CRL.A.NO.416/2022 CONFIRMING THE JUDGEMENT OF CONVICTION AND MODIFYING THE SENTENCE AND AWARD OF COMPENSATION PASSED AGAINST THE PETITIONERS DATED 02.03.2020 IN C.C.NO.18680/2016 BY THE LEARNED XXIII ADDL. CHIEF METROPOLITAN MAGISTRATE AT BENGALURU AND CONSEQUENTLY ALLOW THE PRESENT PETITION AND ACQUIT THE PETITIONERS.

THIS PETITION IS COMING ON FOR DICTATING ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



ORAL ORDER

Challenging judgment dated 06.01.2024 passed by LXIII Additional District and Sessions Judge, Bengaluru, in Crl.A.no.26/2021 filed by petitioners and Crl.A.no.416/2022 filed by respondent confirming judgment of conviction and modifying sentence and award of compensation passed dated 02.03.2020 by XXIII Addl. Chief Metropolitan Magistrate, Bengaluru, in C.C.no.18680/2016, this revision petition is filed.

2. Sri SN Muniswamy Gowda, learned counsel for petitioners submitted that revision petition was by petitioner (accused) challenging concurrent erroneous judgments, convicting them for offence punishable under Section 138 of Negotiable Instruments Act, 1881, (**'NI Act'**, for short).

3. It was submitted, present proceedings are initiated in pursuance of private complaint filed by respondent (complainant) under Section 200 of Code of Criminal Procedure, 1978 ('CrPC' for short) alleging that accused no.2 was friend of complainant's son Jagadeesh and doing business in supply of computers, printers, laptops, mobile phones etc. to BESCOM in name of Lalitha Enterprises - accused no.1. Accused



no.2 also carried on business in name of Telebrands, Bengaluru and was supplying material to Gyms etc. It was alleged in April, 2014, accused no.2 had offered partnership to complainant's son and asked him to invest Rs.35,00,000/- in Firm. With intention to support his son, complainant paid said amount as follows:

- "a) Cheque no.000121 dated:08.10.2014 for Rs.3 lakhs,*
- b) Cheque no.000122 dated:09.10.2014 for Rs.3 lakhs,*
- c) Cheque no.000124 dated:29.10.2014 for Rs.3 lakhs,*
- d) Cheque no.000126 dated:06.11.2014 for Rs.2 lakhs,*
- e) Cheque no.000127 dated 13.11.2014 for Rs.1 lakh,*
- f) Chequeno.000129 dated 06.01.2015 for Rs.2.2 lakhs,*
- g)Cheque no.000139 dated 08.08.2015 for Rs.3 lakhs,*
- h) Cheque no.000141 dated:10.08.2015 for Rs.3 lakhs,*
- i) Cheque no:000142 dated:12.08.2015 for Rs.2 lakhs,*
- j)Cheque no.000143 dated:24.08.2015 for Rs.50,000/-,*

*All above cheques drawn on Karur Vysya Bank Ltd.,
Rajajinagar Branch, Bengaluru;*

- k) Cheque no.092690 dated:09.09.2015 for Rs.25,000/-*
- &*
- l) Cheque no.092691 dated: 11.09.2015 for Rs.24,000/-,*
drawn on Corporation Bank, RPC Layout Branch,
Bengaluru;

- m) Cheque no.000123 dated:17.03.2015 for Rs.1 lakh,*
drawn on Karur Vysya Bank Ltd., Rajajinagar Branch,
Bengaluru;
- n) Rs.6 lakhs paid in cash on 20.04.2015 and*
- o) Rs.4,81,000/- paid in cash on 30.09.2015.*

In all, Rs.35 lakhs paid to accused no.2."

4. It was further alleged when complainant found that his son did not get share in profit, he enquired with accused no.2, but did not find proper response. Suspecting intention of



accused no.2, he demanded repayment of Rs.35,00,000/-. On repeated demands, on 27.03.2016, accused had issued post-dated cheque bearing no.000105 dated 02.04.2016 drawn on HDFC Bank, Atpar Branch, Bengaluru, for Rs.35,00,000/-, which when presented returned dishonored with endorsement '*payment stopped by drawer*' and even when demand notice dated 11.05.2016 got issued by complainant was served on 12.05.2016, accused no.2 failed to repay amount within time and thereby committed offence punishable under Section 138 of NI Act.

5. On appearance, accused denied defence and sought trial. Therefore complainant examined himself and his son as PWs.1 and 2 and got marked Exs.P.1 to 17. Thereafter incriminating material was explained to accused no.2, which was denied and his statement under Section 313 of Cr.P.C. was recorded. Thereafter accused no.2 in defence evidence deposed as DW1. It was submitted, accused had adopted various defences, especially, disputing alleged payment stated to have been made in cash as per entries (m) and (n) mentioned in schedule of payment claimed by complainant on ground that



same would appear doubtful when all other payments were made by cheque. And though complainant claimed to have arranged said money by pledging gold etc. which was not supported by documents; contending that cheques were given as security for chit transaction as well as contending that cheques were stolen and disputed financial capacity of complainant to lend such money, etc. without proper consideration, trial Court convicted accused for offence punishable under Section 138 of NI Act. Even appeal filed thereagainst was dismissed without re-appreciation, leading to this revision.

6. It was therefore, contended that impugned judgments suffered from perversity calling for interference. In support of his submission, learned counsel relied upon decision of Hon'ble Supreme Court in ***APS Forex v. Shakti International Fashion Linkers Pvt. Ltd.***, reported in **(2020) 12 SCC 724** and of this Court in case of ***Umesh D.M., v. Manjunath M.***, reported in **(2024) SCC OnLine Kar. 3635**, for proposition that once accused disputed financial capacity of complainant to lend money, onus to establish financial capacity



would shift back to complainant and on failure to establish same, trial Court ought to have dismissed complaint. It was further submitted, complainant also sought to rely upon payment made on his behalf by Mahalingappa N, without proper basis. Therefore, payment as per schedule mentioned in complaint was doubtful. Consequently, impugned judgments called for interference.

7. On other hand, Sri H.E.Ramesha, learned counsel for complainant opposed revision petition on ground that it was filed against concurrent findings based on appreciation of entire material on record. It was submitted, despite opportunity and taking contention, accused did not produce any documents in support of his contention. Besides, during cross-examination of PW.1, accused had admitted receipt of Rs.24,19,000/- and had sought to dispute only payments made in cash on ground that it was unusual and therefore doubtful when all other payments were made by cheque.

8. It was submitted, Hon'ble Supreme Court in case of ***Georgekutty Chacko v. M.N. Saji*** in ***2025 SCC OnLine SC 2204***, had held that written statement not uncommon in



money transactions that some part of it to be paid in cash and such person not possessing any document to establish such payment. But, same would not lead to conclusion that amount claimed to have been paid in cash cannot be acceptable. It was submitted, Exs.P.11 to 17 were produced specifically to substantiate manner in which complainant had arranged money to make cash payment. Thus, there was no merit in challenge and sought dismissal of revision petition.

9. Heard learned counsel and perused impugned judgments and record.

10. This revision petition is by accused challenging concurrent judgments convicting him for offence punishable under Section 138 of NI Act on ground of perversity of findings.

11. Accused disputed payment claimed made by cash, not only disputing financial capacity, but also on ground that payment of Rs.35 Lakhs made by complainant was in 15 installments of which 13 were by cheque and only 2 were by cash that too for large sum of Rs.10.81 Lakhs without explanation and without any corroborative material. However,



Hon'ble Supreme Court in **Georgekutty Chacko's** case (supra) has held merely on ground that payments made included few payments by cash would not render them unbelievable. Said observation though made in an appeal against decree in a civil suit, same would apply even to proceedings under NI Act.

12. In fact, during recording of complainant's evidence as PW-1 about source of money for such payment, complainant produced Exs.P11 to P17 to substantiate that he had obtained Rs.5,70,000/- from sale of immovable property and added Rs.30,000/- available with him to pay Rs.6 Lakhs in cash on 10.04.2015. Insofar as other payment i.e., Rs.4,81,000/-, he had stated that same was by pledging gold ornaments and documents, such as, sale deed, gold pledged receipts etc. were produced. Under above circumstances, rejection of defence adopted by accused disputing cash payment as well as financial capacity of complainant would be in accordance with law. Reliance on **APS Forex** is for proposition that on accused disputing financial capacity of complainant to make payment, onus would shift back to complainant to establish such payment.



13. However, in later decision, Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar*** reported in **2025 SCC OnLine SC 2069**, clarified that **APS Forex** was not an authority for proposition that presumption available to complainant under Section 139 of NI Act would cease on accused disputing financial capacity of complainant. Consequently, **APS Forex** and **Umesh D.M.** would not lend much assistance to accused, especially, when complainant produced contemporaneous material to substantiate source of money for making cash payment.

14. Besides above, it is seen that in course of cross-examination of PW.1, it was suggested that complainant had paid only Rs.24,19,000/-, thereby admitting all other payments than payment in cash. When accused admitted complainant to have made payment of Rs.24 Lakhs, dispute about his capacity to pay Rs.10 Lakhs would be in vain.

15. Further, when complainant had not included payment made under Ex.P17 - cheque no.120205 issued by one Mahalingappa as made on his behalf to be part of payment



of Rs.35 Lakhs, it would be futile to urge contention disputing payment under above cheque. Thus, none of contentions urged would inure to accused.

16. It is also seen that while passing impugned judgments, both Courts have arrived at well-reasoned conclusions after appreciation of entire material on record, which as stated above are in accordance with law.

Consequently, no ground for interference made out.

Revision Petition is ***dismissed***.

Sd/-
(RAVI V HOSMANI)
JUDGE

Psg*/AV/GRD
List No.: 1 Sl No.: 19