



CNR: KAHC010016722021

NC: 2026:KHC:44804
CRL.RP No. 32 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO. 32 OF 2021

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

BETWEEN:

MR. ANANDA DASA
S/O SHIVAPPA DASA,
AGED ABOUT 54 YEARS,
RESIDING AT SANTHALIKE HOUSE,
DHARMASTHALA VILLAGE,
BELTHANGADY TALUK - 574214.

...PETITIONER

(BY SRI. KATTIMANI POOJA MANOHAR, ADVOCATE)

AND:

MR. D S MANJUNATHA
S/O LATE SHEENAPPAYYA,
AGED ABOUT 53 YEARS,
RESIDING AT SUSMA NILAYA,
JODUSTHANA, DHARMASTHALA VILLAGE,
BELTHANGADY TALUK-574214.

...RESPONDENT

(BY SRI. CHANDRASHEKAR, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 24.08.2020 PASSED BY THE VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE CRL.A..NO.6/2018 CONFIRMING THE JUDGMENT AND ORDER DATED 30.12.2017 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, BELTHANGADY, D.K., IN C.C.NO.425/2016 (CONVICTING THE PETITIONER FOR OFFENCE P/U/S 138 OF N.I ACT AND ACQUIT THE PETITIONER OF CHARGES LEVELED AGAINST HIM.

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Location: High
Court of
Karnataka



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THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Smt. Kattimani Pooja Manohar, learned counsel for the petitioner and Sri. Chandrashekar, learned counsel for respondent.

The petitioner has filed this petition under Section 397 r/w 401 Cr.P.C., 1973 praying to set-aside the judgment of conviction and order on sentence dated 30.12.2017 passed in C.C.No.425/2016 by learned Prl. Civil Judge and JMFC, Belthangady, Dakshina Kannada and also the judgment dated 24.08.2020 passed in CrI.A.No.6/2018 by learned VI Addl. District & Sessions Judge, Dakshina Kannada, Mangaluru.

2. For the sake of convenience, the parties will be referred as per their rankings before the trial Court. The petitioner is 'accused' and the respondent is the 'complainant' before the trial Court.

3. Brief facts of the prosecution case are as under:-



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The respondent/complainant filed a private complaint under Section 200 Cr.P.C. against the petitioner/accused for the offence punishable under Section 138 of N.I. Act on the ground that he had advanced the loan of Rs.6,00,000/- to the accused for his necessity. The accused in order to repay the loan, issued two cheques for a sum of Rs.3.00 lakh each in favour of the complainant. On presentation of the said cheques, same were returned with a shara 'funds insufficient' in the account of the accused. Therefore, on 24.11.2015, the complainant called upon the accused to pay the amounts due under the cheques. In spite of service of legal notice, the accused neither paid the amount due under the cheques nor replied to the legal notice. Hence, the complainant filed a private complaint under Section 200 Cr.P.C. for the aforesaid offence. After institution of the complaint, the trial Court recorded the sworn statement of the complainant, took cognisance under Section 190(1)(a) of Cr.P.C., secured the presence of the accused and recorded his plea. The accused pleaded not guilty and claimed to be tried.



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4. The complainant in order to prove his case, examined himself as PW.1 and relied upon in all eight documents as per Exs.P1 to 8. For the defence, Exs-D1 and D2 were marked. On the basis of the oral and documentary evidence on record, the trial Court convicted the accused for the offence punishable under Section 138 of N.I. Act and sentenced him to pay a fine of Rs.6,00,000/- and in default of payment of fine, he shall undergo simple imprisonment for a period of six months. Being aggrieved by the judgment of conviction and order of sentence passed by the trial Court in C.C.No.425/2016, the accused preferred an appeal before the first appellate court in Crl.A.No.6/2018 before learned VI Addl. District & Sessions Judge, Dakshina Kannada, Mangaluru. In turn, the first appellate court confirmed the judgment of conviction and order of sentence passed by the trial Court. Hence, the revision petition.

5. Learned counsel for the petitioner/accused contended that the judgment of conviction and order of sentence passed by the trial Court as well as first appellate court are not in accordance with law. The complainant has failed to prove the



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requirement of Section 138 of NI Act, as the accused has disputed the cheques in question. It is further contended that the complainant had no financial capacity to lend the loan and there was no legally enforceable debt. Learned counsel further contended that the complainant received five cheques from the accused, presented the cheques for encashment and he returned three other cheques, however, the complainant did not return the two cheques to the respondent. Infact, the cheques had been issued for security purpose, instead the complainant misused the cheques and presented for encashment. The trial Court and the first appellate Court have failed to consider the fact that the petitioner has also not mentioned the date of advancement of the loan either in the complaint or in the legal notice. It is further contended that there was no amount due to the complainant and therefore, there was no legally enforceable debt or liability. On all these grounds, the learned counsel prayed to allow the revision petition.

6. Per-contra, learned counsel for the respondent/complainant vehemently contended that the trial



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court and the first appellate court considering the oral and documentary evidence on record has rightly convicted the revision petitioner. Further more, the accused has not replied to the legal notice and he never stepped into the witness box. Further, the accused has not complied with the order of the first appellate Court by depositing 20% of the fine amount and he also failed to deposit 50% of the fine amount as ordered by this Court and hence, learned counsel prayed to dismiss the revision petition.

7. In the light of the submissions made by the learned counsel for the revision petitioner and learned counsel for respondent and on perusal of the judgment of the trial court and first appellate court, the following points would arise for court's consideration:-

1. Whether the revision petitioner has proved that there is apparent error on the face of the record in the judgment of the trial Court as well as first appellate Court in convicting the accused for the offence punishable under Section 138 of NI Act?



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2. Whether the judgment of conviction and order on sentence passed by the trial Court as well as the first appellate Court are perverse and calls for interference by this Court?

8. Admittedly, the complainant filed a private complaint under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of N.I. Act. In order to substantiate the contention of the complainant, he himself got examined as PW.1 and relied upon in all eight documents as per Exs.P1 to P8. Exs.P1 and P2 are the two cheques issued by the accused for a sum of Rs.3,00,000/- each, signature of the accused is marked as Ex-P1(a) and Ex.P2(a). Exs-P3 and 4 are the bank memos, wherein, the reasons for return of the cheques is shown as 'funds insufficient' in the account of the accused. Ex-P5 is the legal notice dated 24.11.2015, wherein the complainant called upon the accused to pay the amounts due under the cheques. Ex-P6 is the postal receipt for having issued the legal notice. Ex-P7 is the postal acknowledgment,



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wherein, the signature of the accused finds place. Ex-P8 is the copy of the complaint.

9. PW.1 was cross-examined. In the cross-examination, nothing has been elicited from the mouth of PW.1 to dis-believe his testimony. On the contrary, in the suggestion, the accused himself admits that there was transaction between him and the complainant and the cheques in question were issued towards security purpose.

10. To rebut the claim of the complainant, the accused neither stepped into the witness box nor led any evidence.

11. On perusal of the oral testimony of PW.1 and the documentary evidence at Ex-P1 to P8, it appears that accused borrowed a sum of Rs.3.00 lakhs each from the complainant totalling to Rs.6.00 lakhs and in consideration thereof, he issued cheques Ex-P1 and P2 for a sum of Rs.3.00 each. Hence, the complainant presented the said cheques for encashment through its banker and the cheques were dishonoured for 'funds insufficient' in the account of the accused and inspite of service of legal notice, he failed to pay the amount due under



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the cheques nor he repaid the loan. In the present case, the complainant has produced the cheques in question, bank endorsement, legal notice, postal receipt and acknowledgment. On perusal of the material placed on record, it is clear that the accused has not disputed the issuance of cheques and service of legal notice on him. In view of the presumption available under Section 139 of N.I. Act, the complainant has complied with the legal requirements under Section 138 of N.I. Act. Now, the burden shifts on the accused to disprove the case of the complainant. On perusal of the evidence on record, the accused has contended that the cheques were issued for security purpose and that though he repaid the loan long back, the cheques which were issued to the complainant, were not returned by the complainant and thereby the complainant has misused the cheques in question. But the accused failed to prove this aspect. Therefore, the fact remains that the accused never discharged the loan borrowed from the complainant and therefore, the execution of the Negotiable instrument viz., Exs-P1 and P2 is admitted and the Court may draw presumption under Section 139 of N.I. Act. Therefore, the trial court and the



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first appellate court have drawn presumption that the cheques were issued towards the legally enforceable debt. Whether the accused issued cheques for repayment of the loan as security or towards discharge of the present transaction, it makes not difference under Section 138 of N.I. Act and the legal consequence is the same, without any distinction.

12. The present revision petition has been filed by the petitioner challenging the concurrent findings of the trial court as well as first appellate court.

13. The "scope of revision" refers to the limited authority of a higher Court to review judgment of the trial Court and the First Appellate Court, focusing on correcting errors in jurisdiction or gross legal/factual flaws rather than re-examining the merits of the case. This power is exercised sparingly and is intended to set right a patent defect, not to function as an automatic second appeal. The specific grounds and limitations vary between civil and criminal proceedings. Revisions can address situations where the decision is grossly inaccurate, not supported by evidence, or where relevant evidence was ignored. Therefore, the revision is not a fresh trial



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and there is bar on re-examining evidence and substantiated the real findings recorded by the Courts below.

14. The Hon'ble Apex Court in the case of **MUNNA DEVI v. STATE OF RAJASTHAN AND ANOTHER** reported in **(2001) 9 SCC 631** while discussing the scope of Section 397 of the Cr.P.C. at paragraph No.3 has held as under:

"3. xxx xxx xxx. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged." xxxx

15. The Hon'ble Apex Court in the case of **STATE OF TAMIL NADU v. R. SOUNDIRARASU AND OTHERS** reported in **(2023) 6 SCC 768** at paragraph No.79 has held as under:

"79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is



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not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

16. Further, the Hon'ble Apex Court in the case of **STATE OF MAHARASHTRA v. SUJAY MANGESH POYAREKAR** reported in **(2008) 9 SCC 475** at paragraph No.16 has held as under:

"16. xxx xxx xxx. Now it is well settled that revisional jurisdiction can be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal."

17. Therefore, the revisional jurisdiction should be exercised in exceptional cases, when there is a glaring defect in the proceedings or there is a manifest error of point of law and consequently, there has been a flagrant miscarriage of justice.

18. In the present case, the trial Court as well as the first appellate Court considering the oral and documentary



evidence on record and the peculiar facts and circumstances of the case has rightly convicted the petitioner for the offence punishable under Section 138 of N.I. Act, which does not require any interference by this Court. Hence, there is no merit in the contention of the revision petitioner.

Accordingly, I pass the following:-

ORDER

1. The revision petition filed by the petitioner is ***dismissed.***
2. The judgment of conviction and order on sentence dated 30.12.2017 passed in C.C.No.425/2016 by learned Prl. Civil Judge and JMFC, Belthangady, Dakshina Kannada and also the judgment dated 24.08.2020 passed in Crl.A.No.6/2018 by learned VI Addl. District & Sessions Judge, Dakshina Kannada, Mangaluru are hereby confirmed.



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3. Registry is directed to send a copy of this judgment to the trial Court alongwith trial Court records forthwith.

In view of dismissal of the main petition, pending inter-locutory applications, if any, stand disposed of.

**Sd/-
(VENKATESH NAIK T)
JUDGE**

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List No.: 1 Sl No.: 49