



CNR: KAHC010081002024

NC: 2026:KHC:54556
CRL.RP No. 263 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

CRIMINAL REVISION PETITION NO. 263 OF 2024

BETWEEN:

GIRISH,
S/O GOVINDA,
AGED ABOUT 44 YEARS,
R/AT H NO.2-110,
BLOCK NO.3, NANDAGUDDE,
CHANTHAR, BRAHMAVARA,
UDUPI TALUK AND DISTRICT - 574 118.

...PETITIONER

(BY SRI PRASAD B.S., ADVOCATE)

AND:

M/S. SRI GOKULAM CHITS AND
FINANCE CO. PVT. LTD.,
SRI. GOKULAM TOWERS NO.66,
ARCOT ROAD, CHENNAI - 24,
BRANCH OFFICE AT DOOR NO.8/B/1,
1ST FLOOR SANIL PLAZA,
MISSION HOSPITAL ROAD,
UDUPI TALUK AND DISTRICT - 574 118.

...RESPONDENT

(BY SRI SURESH CHOTTEYANDA S., ADVOCATE)

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THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO a) SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED AND JUDGMENT AND ORDER OF CONVICTION DATED 18.11.2023 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, UDUPI IN CRL.A. NO.102/2022 FOR THE OFFENCE P/U/S 138 OF N.I. ACT, ETC.

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

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL ORDER

This is the revision petition filed by the revision petitioner/accused under Section 397 r/w 401 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') challenging the judgment of conviction passed in CC No. 188/2013 on the file of III Addl. Civil Judge and JMFC, Udupi dated 16.09.2021 and the confirmation of the said judgment in Criminal Appeal No.102/2022 on the file of Principal District and Sessions Judge, Udupi dated on 18.11.2023.

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2. The parties would be referred with their ranks as they were before the Tribunal for the sake of convenience and clarity.

3. The complainant has filed the complaint under Section 200 Cr.P.C., before the trial Court, alleging the offence punishable under Section 138 of Negotiable Instruments Act, 1988 (in short 'NI Act') contending that on 09.11.2012, principal borrower Kiran H.K. has subscribed to the chit with complainant in chit group No.J2F/2492/JMM/05; but failed to pay the chit amount, the accused stood as surety for the payment of the subscription of the chit amount by the principal borrower. On 09.11.2012 on behalf of principal borrower, the accused being the surety has issued the cheque bearing No.061720 drawn on ING Vysya Bank, Udupi for a sum of Rs.1,59,600/- towards full and final settlement of the chit subscription of the principal borrower; when it was presented for encashment, it became dishonored as

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"Account closed" and it was intimated to the accused by issuing legal notice dated 03.12.2012, calling upon him to pay the cheque amount. The said notice was served on the accused on 07.12.2012. Even then the accused has not made payment. Hence, the private complaint was filed on 21.01.2013.

4. After recording the sworn statement of the complainant, the criminal case is registered against the accused for the offence punishable under Section 138 of the NI Act.

5. After issuance of NBW several times and proclamation against the accused, ultimately he appeared before the Court and he pleaded not guilty of the offence alleged against him. Thereafter, the complainant again adduced his evidence by way of affidavit; however, even after giving sufficient opportunities, accused has not cross examined the complainant. When that stage was closed, he filed application to recall the complainant and even after it was allowed, accused has not made any efforts to



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cross-examine the complainant or to appear before the Court to answer the questions that would be put to him under Section 313 Cr.P.C., or lead any defence evidence.

6. Considering these aspects, the trial Court convicted the accused by placing reliance on the judgment of Hon'ble Apex Court to the effect that recording a statement of the accused is not mandatory in the case of present nature.

7. Aggrieved by the said judgment of conviction, the revision petitioner has filed the appeal before the appellate Court. After hearing both sides, the appellate Court dismissed the appeal by confirming the judgment of conviction and order of sentence passed by the trial Court. Being aggrieved by the same, revision petitioner is before this Court.

8. The learned counsel, Sri B.S. Prasad for the revision petitioner would submit that no opportunity is given to the accused to put forth his defence by cross-examining the complainant. Even Statement of accused

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under Section 313 Cr.P.C., was not recorded by the trial Court. Hence there is lacuna in passing the judgment. These facts were not appreciated by the appellate Court. The learned counsel for the revision petitioner would further submit that the claimant was suffering from Lumbar disc prolapsed at the relevant point of time and was under the treatment and thus could not appear and contest the case. Hence, prayed for allowing the revision petition.

9. The learned counsel, Sri Suresh Chotteyanda S. for the respondent would submit that sufficient opportunity was given to the accused to cross-examine PW1 and to put forth his defence, but he has not utilised those opportunities. Furthermore, there are concurrent findings by the trial Court and the appellate Court that the accused has committed the offence alleged against him. Accused has not produced any material to show that he was not keeping well at the time of cross-examination to

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PW1 and when the Court notice served upon him to attend the Court to answer questions to be put under Section 313 Cr.P.C. Hence, there is no merit in the revision petition and prayed for dismissal of the revision petition.

10. Having heard arguments of both sides, verifying the revision petition papers, the trial Court and the appellate Court records, the point that arises for consideration is :

"Whether the revision petitioners establish perversity or grossly erroneousness in the judgment of the trial court and appellate court or the judgment of the trial court and appellate court is glaringly unreasonable or wholly unreliable or untenable and the judgment of the trial court and appellate court considered immaterial or irrelevant material or no material or non-consideration of any relevant material or judicial discretion has been exercised arbitrarily or capriciously ?"

11. The finding of this Court on above point is in **Affirmative** for the following :

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REASONS

12. The present case is filed alleging the offence under Section 138 of the N.I. Act.

13. The revisional jurisdiction of this Court is very limited. In this regard, this Court places reliance on the Judgment of the Hon'ble Apex Court in the case of ***Kuntegowda v/s Thurubaiah in Criminal Appeal No.3654/2026, (Arising out of Special Leave Petition (Criminal) No.2247 of 2024 dated 04.08.2026*** reported in ***2026 SCC OnLine SC 1485***. In the aforesaid judgment, the Hon'ble Apex Court at paragraph Nos.7.1. to 7.3 has discussed the revisional jurisdiction of this Court, which reads as follows:

"7.1 This Court, in the State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659 observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in

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the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2 Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of record. In State of Kerala vs. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following:

"5.... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or

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propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence...."

7.3. The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

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ii. The lower court has passed the impugned order after considering an immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously."

14. Thus, only if the judgment of the trial Court confirmed by appellate Court is perverse or grossly erroneous, are grossly unreasonable, or wholly unreliable, or wholly untenable, or the trial Court considered an immaterial or irrelevant, material or no material or not at all relevant material or judicial discretion has been exercised arbitrarily and capriciously, the revisional Court can interfere with such judgment.

15. The alleged offence in this case is the offence under Section 138 of NI Act; to attract the offence under Section 138 of NI Act, the complainant has to satisfy the following ingredients:

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(i) that there is legally enforceable debt;

(ii) that the cheque was drawn from the account of bank for the discharge in whole or in part of any debt or other liability;

(iii) that 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;

(iv) that cheque so issued has been returned due to insufficiency of funds;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

16. If the aforementioned ingredients are satisfied, then there shall be a presumption under section 139 of the

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N.I. Act. Always, the cheque is a bill of exchange and thus there shall be a presumption under Section 118 of the NI Act. But the presumptions available under Section 118 and 139 of the NI Act are rebuttable presumptions.

17. It is the contention of the complainant that accused stood as a surety for the chit subscription of the principal borrower - Kiran, who failed to pay the said amount. Thus as accused stood as surety, he has issued the cheque dated 09.11.2012 towards full and final settlement of the account of principal borrower - Kiran. However, when the said cheque was presented for encashment 10.11.2012, it was returned with an endorsement "Account closed" on 10.11.2012. Even after service of legal notice dated 03.12.2012, accused has not given any reply to the legal notice nor complied with it. The complaint filed on 21.01.2013.

18. To substantiate this contention, complainant produced the dishonored cheque, endorsement issued by the bank, legal notice, postal acknowledgment, ledger

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account extract of the principal subscriber with pro-note executed by the principal subscriber and bank statement. These documents produced by the complainant clearly establish its case that in the chit subscription case by the principal subscriber, accused stood as surety and to discharge the obligation of surety, he has issued the subject cheque in favour of the complainant, which was dishonored.

19. Under Section 118 of NI Act, there is presumption in favour of the holder of the cheque that it was issued for consideration and it bears the date on which it was issued. Thus, these presumptions establish that the accused has issued the cheque for consideration.

20. Under Section 139 of the NI Act, there is statutory presumption in favour of the complainant that there exists legally recoverable debt and the cheque was issued towards discharge of whole or partial debt or

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liability. These facts are not disputed by the accused by cross-examining the complainant's witness.

21. The contention of the revision petitioner is that he was not keeping well and thus could not appear before the Court. He has produced the Medical Certificate dated 18.11.2022 that he required 10 days rest for Lumbard disc prolapsed. He has produced the copies of discharge summary, outpatient prescription chits. Even though they are not admissible in law; but perusal of them reveals that only for 3 days the accused was hospitalized in the month of May-2020 and there are no other documents to substantiate his contention. The accused appeared before the trial Court in the year 2019. The case was posted for cross-examination in the month of January 2020. It was taken as closed and because of the application of accused on 03.03.2021, again he was permitted to cross-examine. But, since then accused never appeared before the trial Court. This shows the conduct and attitude of the accused.

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Even after giving sufficient opportunities, he never appeared.

22. When the case was posted for recording the statement under Section 313 Cr.P.C., the Court notices were issued to accused through police and even after service of notice, he has not appeared before the trial Court. Even after granting 3 - 4 adjournments, the accused has not appeared before the trial Court and thus by dispensing the statement of accused under Section 313 Cr.PC as per the guidelines issued by Hon'ble Apex Court reported in AIR 2014 SC 2528, statement of accused under Section 313 Cr.P.C., was dispensed with rightly. Then the trial Court convicted the accused and imposed a fine of Rs.1,64,600/-, out of which Rs.1,59,600/- was directed to be paid to the complainant.

23. The appellate Court, upon a detailed consideration of all these aspects, rightly confirmed the said judgment. As the revision petitioner has failed to produce any credible material to substantiate his

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contention of illness during the relevant period, the impugned judgments suffer from no illegality or perversity warranting interference. The documents produced by him were in support of the application filed by him seeking to condone the delay in filing the appeal and not in support of his above contention in this revision petition. Even then, those documents were dealt in detail; but accused has not produced the evidence to show that he was prevented from sufficient cause in not appearing before the trial Court. Furthermore, the accused has not produced any evidence to rebut the presumptions available in favour of the complainant under Sections 118 and 139 of NI Act. Hence, finding no merit in the revision petition, this Court passes the following;

ORDER

The revision petition is dismissed.

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**(GEETHA K.B.)
JUDGE**