



NC: 2026:KHC:46027
CRL.RP No. 310 of 2024

CNR: KAHC010114342024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T
CRIMINAL REVISION PETITION NO. 310 OF 2024
(397(Cr.PC)/438(BNSS))

BETWEEN:

1. M/S INDIAN ESTATES
REGISTERED OFFICE AT NO. 638,
2ND FLOOR, K.M.F. DAIRY ROAD,
SIDDARTHA NAGAR, MYSORE - 570 011
PROP. SRI C M PAWAN
2. SRI C M PAWAN,
S/O GOPALAPPA,
AGED ABOUT 35 YEARS,
MANAGING PARTNER
M/S INDIAN ESTATES, NO.638,
2ND FLOOR, K.M.F. DAIRY ROAD,
SIDDARTHA NAGAR, MYSORE - 570 011.

...PETITIONERS

(BY SRI. GOVINDARAJ FOR
SRI. NEHRU P, ADVOCATE)

AND:

1. MR SHREE KUMAR
S/O LATE ABASAMA,
AGED ABOUT 42 YEARS,
RESIDING AT NO.302, SHIVA SHREE
GARDEN APARTMENTS-I, 1ST MAIN,
4TH CROSS, BEML 5TH STAGE,

Digitally signed
by
NAGARATHNA
M
Location: High
Court of
Karnataka





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RAJARAJESHWARINAGAR,
BENGALURU - 560 098.

...RESPONDENT

(BY SRI. K V SHYAMAPRASADA,ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ENTIRE IMPUGNED ORDER AND JUDGMENT PASSED BY THE XVI ADDL.C.M.M., BENGALURU CITY IN C.C.NO.33564/2018 DATED 20.03.2023 AND THE ORDER OF JUDGMENT DATED 06.12.2023, PASSED BY LEARNED LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (CCH-60), BENGALURU CITY IN CRL.A.NO.510/2023 AND ACQUIT THE PETITIONERS.

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 the learned counsel Sri. Govindaraj for Sri. Nehru P, learned counsel for revision petitioners and Sri. K V Shyampradasa, Advocate for respondent.

2. This Criminal Revision Petition is filed by the revision petitioners under Section 397 read with Section 401 of Code of Criminal Procedure, now under Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) to set aside the judgment of conviction and order of



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sentence passed by the learned XVI Additional Chief Metropolitan Magistrate, Bengaluru City, dated 20.03.2023 and confirmed by the learned LIX Addl. City Civil & Sessions Judge (CCH-60), Bengaluru in Crl.Appeal No.510/2023 dated 06.12.2023.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. The brief facts of the case of the complainant before the trial Court are that the respondent/complainant filed a complaint against the revision petitioners under Section 200 of Cr.P.C., for the offence punishable under Section 138 of N.I. Act, on the ground that the second petitioner is the partner of first accused partnership concern. The first accused represented by second accused had agreed to sell 3 acres of coffee estate bearing Plot No.A-4, Sy.No.29/P situated at Indian Coffee Estates, Anughatta, Belur, Hassan District to the complainant and his wife. The sale consideration agreed between the



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accused and complainant was Rs.15,00,000/- (Rupees Fifteen lakhs only) per acre totalling to Rs.45,00,000/- (Rupees Forty five lakhs only), with registration. The accused has demanded initial payment of 30% towards the sale consideration. The accused has agreed to receive Rs.13,50,000/- (Rupees Thirteen lakhs fifty thousand only) from the complainant. The complainant and his wife Smt. Chethana Hegde have jointly paid Rs.1,00,000/- (Rupees One lakh only) on 09.12.2015 through cheque and Rs.12,50,000/- (Rupees Twelve lakhs fifty thousand only) on 24.12.2015 towards part payment of agreed sale consideration. The accused has encashed both cheques and executed agreement of sale in favour of the complainant. The complainant and his wife were ready and willing to purchase the property as per the agreed terms subject to property being free from encumbrance, litigation and marketable titles. Thereafter, the accused failed to execute the sale deed in spite of several demands made by the complainant. Thereafter the complainant



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came to know that the property in question was under litigation and the accused is not in a position to sell the property in favour of the complainant and his wife. Therefore, the accused had issued cheque bearing No.000021 for Rs.13,50,000/- towards the principal amount and cheque bearing number 000020 for a sum of Rs.1,35,000/- towards interest on 28.10.2016 are drawn on HDFC Bank, Kuvempunagar branch, Mysore in favour of the complainant towards the repayment of the advance amount. Hence, the complainant presented the cheque for encashment on 28.10.2016. But the same was returned with shara "funds insufficient" in the account of the accused. Therefore, the complainant got issued legal notice on 23.11.2016 calling upon the accused to pay amount due towards cheques. Though the notice was served on the accused, the accused neither repaid the amount nor replied to the legal notice. Therefore, the complainant filed a private complaint under Section 200 of



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Cr.P.C for the offence punishable under Section 138 of N.I.Act.

5. After Institution of the private complainant under Section 200 of Code of Criminal Procedure, the trial Court recorded sworn statement of the complainant, took cognizance under Section 190 (1)(a) of Code of Criminal Procedure, secured the presence of the accused and recorded the plea of the accused. The accused pleaded not guilty and claimed to be tried.

6. The complainant, in order to prove his case examined himself as PW.1 and documents marked at Exs.P1 to P26. The accused/petitioner No.2 was examined as DW.1.

7. On the basis of oral and documentary evidence on record, the trial Court convicted the accused for the offence punishable under Section 138 of the N.I.Act and sentenced them to pay fine amount of Rs.18,00,000/- (Rupees Eighteen lakhs only) in default of payment of fine,



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the accused shall undergo simple imprisonment for a period of one year.

8. Being aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused had preferred an appeal before the first appellate Court in Criminal Appeal No.510/2023. The first appellate Court confirmed the judgment of conviction and order on sentence passed by the trial Court. Hence, this revision petition.

9. Learned counsel for the revision petitioners has contended that the judgment of conviction and order on sentence passed by the trial Court as well as the first appellate Court are not in accordance with law. It was contended that The complainant has failed to prove the requirements of Section 138 of N.I. Act, as the accused has disputed the cheques in question.

10. It was further contented that the cheques in question were issued in respect of agreement of sale



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transaction. However the complainant has misused the cheque and presented for encashment which had been issued for security purpose. It was contended that the trial Court and the first appellate Court have failed to consider the fact that the cheques were issued in respect of some other transaction. Hence, he prayed to allow the revision petition.

11. Learned counsel for the respondent vehemently contended that the accused has admitted issuance of cheque transactions, signature found in cheques and therefore, the trial Court had drawn presumption under Sections 118 and 139 of N.I.Act and rightly convicted the revision petitioners. Hence, the first appellate Court also rightly confirmed the findings of the trial Court. Thus, the counsel prayed to dismiss the criminal revision petition.

12. In the light of the submissions made by learned counsel for both parties and on perusal of the judgment of the trial court and first appellate court and other materials



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available on record, the following points that would arise for court consideration are as under:

a) Whether the revision petitioners have proved that there is an error apparent on the face of the record in the judgments of the trial court as well as first appellate court in convicting the accused for the offence under Section 138 of Negotiable Instruments Act?

b) Whether the judgment of conviction and order on sentence passed by the trial Court and which is confirmed by the first appellate Court are perverse and do not calls for interference by this Court?

Admittedly, the complainant filed private complaint under Section 200 of Code of Criminal Procedure for the offence punishable under Section 138 of N.I.Act. The complainant, in order to substantiate his contention, complainant examined himself as PW.1 and relied upon in all 26 documents as per Exs.P1 to P26. Exs.P1 to P2 are original cheques issued by accused No.1 and the signature of accused No.2 are marked as Exs.P1(a) and P2(a) respectively. Exs.P3 and P4 are the bank memos. It appears that on presentation of Exs.P1 and P2 cheques,



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the same were returned with shara 'funds insufficient in the account of accused No.1. Ex.P5 clearly demonstrates that the complainant got issued legal notice, wherein the complainant called upon the accused to pay amount due under the cheques at Exs.P1 and P2. Exs.P6 to P9 are the postal receipts for having issued legal notice to the accused. Ex.P10 is the track result. Exs.P11 and P12 are the notices. Exs.P13 and P14 are postal covers. Exs.P15 and P16 are the receipts. Exs.P17 and P18 are the postal acknowledgment. They clearly demonstrated that after dishonour of cheques at Exs.P1 and P2, the complainant issued legal notice and same was served on the accused persons.

13. Insofar as transaction is concerned, the complainant relied upon Ex.P19-sale agreement. It bears the signature of accused which is marked as Ex.P19(a). In this case, the accused Nos.1 and 2 have clearly admitted the transaction, issuance of cheques at Exs.P1 and P2 and issuance of legal notice to the accused. The



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accused also admitted that they have not replied the legal notice issued by the complainant.

14. In order to rebut the claim of complainant, the accused/petitioner No.2 was examined as DW.1 and he has not furnished any documents in support of his defence.

15. On perusal of the oral testimony of PW.1 and the contents of Exs.P1 to P26, it appears that in respect of the agreement of sale transaction, the accused had issued two cheques. The transaction and the issuance of cheque have not been disputed by the accused persons. Therefore, the transaction in question is a legally recoverable debt. Hence, the complainant presented cheques for encashment to his banker and the cheques were dishonoured for the reason 'funds insufficient in the account of the accused'. In spite of issuance of legal notice, the accused failed to repay the amount due towards Exs.P1 and P2-cheques. Therefore, the trial Court



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based on the oral and documentary evidence on record, drawn presumption available under Sections 118 and 139 of the N.I.Act, as the complainant has complied with legal requirements under Section 138 of N.I. Act. Though the burden shifted on the accused to rebut the case of the complainant, the accused has failed to adduce any contra evidence to rebut the presumption.

16. On perusal of the evidence on record, the accused has contended that the cheques were issued for security purpose in connection with the agreement of sale transaction. In fact, the burden lies on the accused to prove the non-existence of transaction either by direct evidence or by probable evidence, so as to show that the existence of transaction was improbable, doubtful, or illegal. The accused has not produced any kind of evidence to show that the existence of transaction was improbable, doubtful or illegal. Therefore, the trial Court as well as the first appellate Court have drawn the presumption that the cheques were issued towards legally enforceable debt.



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Whether the accused issued the cheques for repayment of the amount arising out of the agreement of sale transaction as security or towards discharge of the transaction or other transaction, it makes no difference under Section 138 of N.I. Act, and the legal consequence is the same without any distinction. The present revision petitioners have filed this petition challenging the concurrent findings of the trial Court as well as the first appellate Court.

17. The scope of revision petition refers to the limited validity of the judgments of the trial court as well as first appellate court, focusing on correcting errors of the jurisdiction or gross perversity in factual findings, reexamining cross examinations. Therefore, the revision petition is not a fresh trial and there is a bar against reexamining the evidence and findings recorded by the courts below. Thus, I do not find any error in the concurrent finding of the trial Court and the first appellate court.



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18. Accordingly, I proceed to pass the following:

ORDER

- i. The criminal revision petition is ***dismissed***.
- ii. The judgment of conviction and order on sentence passed by the learned XVI Additional Chief Metropolitan Magistrate, Bengaluru City, dated 20.03.2023 and confirmed by the learned LIX Addl. City Civil & Sessions Judge (CCH-60), Bengaluru in Crl.Appeal No.510/2023 dated 06.12.2023, are hereby confirmed.
- iii. The Registry is directed to send the trial Court records to the trial Court, along with copy of this order, forthwith.
- iv. Pending interlocutory applications, if any, stands disposed of.
- v. The amount in deposit will be disbursed to the respondent/complainant on proper identification.

Sd/-
(VENKATESH NAIK T)
JUDGE