



CNR: KAHC010556232024

NC: 2026:KHC:45417
CRL.RP No. 1346 of 2024
C/W CRL.RP No. 395 of 2024

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. 1346 OF 2024
C/W
CRIMINAL REVISION PETITION NO. 395 OF 2024

IN CRL.RP No. 1346/2024

BETWEEN:

1. MR. NAGESH B POOJARY
AGED ABOUT 61 YEARS
SON OF LATE BABU POOJARY
RESIDING AT FLAT NO.303,
CHAITHANYA APARTMENT
BHOJA RAO LANE
NEAR GUJARATHI SCHOOL
ALAKE KODIALBAIL POST
MANGALORE - 575 003
(REP BY HIS GPA HOLDER
MRS. SHRELATHA NAGESH,
AGED ABOUT 51 YEARS,
W/O NAGESH B POOJARY
BY VIRTUE OF GPA EXECUTED ON 16.04.2016
AND AUTHENTICATED BY
MRS.MOHINI HOLLA
NOTARY MANGALORE AS PER NOTARIAL
REG NO.1258/16

...PETITIONER

(BY SRI. PRASAD K.R. RAO, ADVOCATE FOR
SRI. PADMANABHA HOLLA S., ADVOCATE AND
SRI. G. HANUMANTHA REDDY, ADVOCATE)



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AND:

MRS. SADHANA S ANCHAN
AGED ABOUT 62 YEARS
W/O MR SATHISH K AMIN,
RESIDING AT FLAT NO.202,
ARJUN APARTMENT , WARE HOUSE ROAD
KODIAL GUTHU
MANGALORE -575 003

...RESPONDENT

(BY SRI. JEEVAN K., ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.P.C. (FILED U/S 438 R/W 442 BNNS) BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO A) SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 12/12/2023 PASSED IN CRL. APPEAL NO. 118/19 AND ENHANCE THE COMPENSATION AMOUNT TO TWICE THE AMOUNT OF THE CHEQUE AND ENHANCE THE PERIOD OF CONVICTION TO TWO YEARS AS PROVIDED UNDER SEC. 138 OF THE N.I. ACT ETC.

IN CRL.RP NO. 395/2024

BETWEEN:

MRS SADHANA S ANCHAN
AGED ABOUT 61 YEARS,
W/O SATHISH K ANCHAN
R/AT FLAT NO.202, ARJUN APARTMENTS
WARE HOUSE ROAD, KODIALGUTHU,
D K MANGALURU - 575 003

...PETITIONER

(BY SRI. JEEVAN K., ADVOCATE)



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AND:

1. MR NAGESH B POOJARY
AGED 60 YEARS,
S/O LATE BABU POOJARY

REPRESENTED BY HIS GPA HOLDER
AND WIFE MRS SHREELATHA NAGESH
AGED 47 YEARS,
W/O NAGESH B POOJARY
R/AT FLAT NO.303,
CHAITANA APARTMENTS
BHOJA RAO LANE,
ALAKE D K
MANGALURU - 575 003

...RESPONDENT

(BY SRI. PRASAD K.R. RAO, ADVOCATE FOR

SRI. PADMANABHA HOLLA S., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY
THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS
HONBLE COURT MAY BE PLEASED TO SET ASIDE THE
JUDGMENT PASSED BY THE IV ADDITIONAL DISTRICT AND
SESSIONS JUDGE, D.K. MANGALURU IN
CRL.A.NO.128/2019 DATED 12.12.2023 AND ALSO THE
JUDGMENT OF CONVICTION DATED 08.07.2019 IN
C.C.NO.700/2016 DATED 08.07.2019 PASSED BY THE
LEARNED JMFC V COURT, MANGALURU AND TO DIRECT
THE ACQUITTAL OF THE ACCUSED/PETITIONER.

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



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CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Sri. Prasad K Rao, learned counsel for Sri. Padmanabha Holla S., and Sri. G. Hanumantha Reddy, learned counsel for the petitioner, and Sri. Jeevan K., learned counsel for respondent in both the petitions.

1. Crl.R.P.No.1346/2024 is filed by the Revision petitioner-complainant, whereas Crl.R.P No.395/2024 is filed by the Revision petitioner-accused, challenging the concurrent findings passed by the trial court and the first appellate court.
2. For the sake of convenience, parties are referred to as per their rankings before the trial court.
3. Brief facts of the complainant's case are as under:
The complainant filed a complaint against the accused for the offence punishable under Section 138 of N.I Act on the ground that he had advanced loan



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of Rs.7,50,000/- on 07.08.2014, 01.09.2014 and 07.10.2014. In consideration thereof, the accused had also executed an agreement in favour of the complainant and assured to return an amount of Rs.3,50,000/- within six months and balance amount of Rs.4,00,000/- within a period of one year from date of the said agreement. In consideration of the said transaction, the accused had also issued two cheques bearing No.272176 for a sum of Rs.3,50,000/- and cheque bearing No.272177 for a sum of Rs.4,00,000/- in favour of the complainant. On presentation of the cheques, same were returned with a shara as 'funds insufficient' in the account of the accused. Therefore, the complainant issued a legal notice calling upon the accused to pay the amount due under the cheques. Though notice was served on the accused, she failed to repay the amount due under the cheques. Therefore, the complainant filed a private complaint under Section



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

4. After institution of the complaint, the trial court recorded the cognizance of the complaint under Section 190(1)(a) of the Cr.P.C, secured the presence of the accused and recorded her plea. The accused pleaded not guilty under claim not to be tried.
5. To prove his case, the complainant examined the GPA holder as PW1 and another witness as PW2 and relied upon 17 documents marked as Ex.P1 to Ex.P17. On behalf of the defense, no witnesses were examined.
6. 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 her with fine of Rs.7,55,000/-. In



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default of payment of fine, she shall undergo simple imprisonment for a period of six months.

7. Being aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused preferred an appeal before the first appellate court in Crl.A.No.108/2019 and the complainant being aggrieved by the inadequate compensation granted by the trial court preferred Crl.A.No.118/2019 before the first appellate court. In turn, the first appellate court confirmed the judgment of conviction and sentence passed by the trial Court in both the cases. Hence, these revision petitions.
8. The complainant filed Crl.R.P.No.1346/2024 seeking for enhancement of compensation and the grant of compensation on the ground of double the cheque amount and Crl.R.P.No.395/2024 is filed by the accused to set aside the concurrent findings passed by both the trial court and the first appellate court.



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9. Sri. Prasad K Rao, learned counsel for the petitioner vehemently contended that there are no special reasons were assigned by the trial court and the first appellate court for imposing double the cheque amount. Further, no reasons were forthcoming in the order of the first appellate court while confirming the sentence. Taking note of the fact that the incident is of the year 2014, the imposition of double the cheque amount has to be avoided in the facts and the circumstances of the case.
10. In support of his contention, counsel for the complainant, relied upon the judgment of the Co-ordinate bench dated 19.07.2024 passed in CrI.R.P. No. 1414/2021.
11. Learned counsel for the accused vehemently contended that there was no amount due to the complainant and that there was no legally enforceable debt or liability. It is also contended that



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the accused disputed the issuance of cheques, transaction etc. However, the trial court convicted the accused by drawing presumption under Sections 118 and 139 of the N.I Act.

12. The counsel further contended that the judgment passed by the Co-ordinate bench in Crl.R.P.No.1414/2021 is not applicable to the facts and circumstances of the present case. As in the said criminal revision petitions, the trial court order for double the cheque amount and same was confirmed by the first appellate court. Whereas in the instant case, neither the trial court nor the first appellate court have ordered for double the cheque amount. Therefore, the counsel prays to dismiss the criminal revision petition filed by the complainant and prays to allow the criminal revision petition filed by the accused.



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13. In the light of the submissions made by the learned counsels for both the complainant and accused, and on perusal of judgments of the trial court and first appellate court and other materials on record, the following points that would arise for court consideration are as under:

a) Whether the revision petitioners in both petitions 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?

b) Whether both the courts have failed to grant compensation double the cheque amount to the complainant and insofar as the accused, the judgment of conviction and order of sentence passed by the trial court and first appellate court are perverse and call for interference by this court?

14. Admittedly, the complainant filed a private complaint under Section 200 of Cr.P.C., against the accused for the offence punishable under Section 138 of N.I Act. In order to substantiate the complainant's case, GPA holder of the complainant examined as PW.1 and she



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relied upon 17 documents. Ex.P1 is the GPA executed by the complainant. Exs.P2 and P3 are cheques, which bears the signature of accused, marked as Ex.P2(a) and 3(a). Ex.P4 and Ex.P5 are the bank memos and Ex.P6 demonstrates that the complainant issued legal notice calling upon the accused to pay due amount. Ex.P7 is the postal receipt. As per Ex.P8 postal acknowledgment, legal notice issued to the accused was served upon her. Ex.P9 is the reply notice issued by the accused to the counsel for the complainant. Ex.P10 is the agreement, Exs.P11 to P13 are the statements of account of the complainant, Ex.P14 is the savings account pass book. Exs.P15 and P16 are the statement of account of the complainant. Ex.P17 is the bank endorsement. These documents clearly demonstrate that as on the date of transaction, the complainant had sufficient amount in his account. Ex.P10 is the agreement clearly demonstrates that



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both the complainant and accused had entered into agreement wherein the accused had borrowed loan of Rs.7,50,000/- from the complainant and issued Exs.P2 and P3 cheques in favour of the complainant. Ex.P4 and P5 are the bank memos clearly demonstrates that when those cheques were presented for encashment, same were returned with a shara as ' funds insufficient' in the account of the accused.

15. On perusal of cross-examination of both PW.1 and PW.2, nothing has been elicited to describe their testimony. The accused did not enter into the witness nor rebut the claim of the complainant.
16. On perusal of these aspects and contents of Ex.P1 to 17, it appears that the accused had borrowed a sum of Rs.7,50,000/- from the complainant and in consideration thereof, she had issued Exs.P2 and P3 cheques for a sum of Rs.7,50,000/- and hence the



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complainant presented the cheques for encashment and the same were returned with a shara as 'funds insufficient' in the account of the accused.

17. On perusal of all these documents, it is clearly demonstrated that the accused has not disputed the issuance of cheques, her signatures found in Ex.P2 and Exhibit P3 and service of legal notice upon her. She has not disputed the transaction in question. Therefore, in view of the presumption available under Section 139 of the N.I. Act, the complainant has complied with the legal requirements under Section 139 of N.I.Act. Though the burden of proof shifted on the complainant, to disprove the presumptions, the accused should bring on record to disprove the case of the complainant, but the accused did not enter the witness box and no documents is relied upon her.



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18. Therefore, the trial court as well as the first appellate court is now drawing presumption that the cheques were issued to prove the legally enforceable debt and accordingly, convicted the accused for the offence punishable under Section 138 of N.I.Act.
19. The present revision petition has been filed by the petitioner/accused challenging the concurrent findings of the trial court as well as first appellate court.
20. 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.



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21. Insofar as enhancement of compensation as contended by the complainant is concerned, the trial court as well as the first appellate court, more particularly, the appellate court in Crl.A.118/2019 at paras 19 and 20 have discussed with regard to the contents raised by the complainant and has rightly declined to award compensation double the cheque amount. Hence, there is no merit consideration in both criminal revision petitions.

22. Accordingly, I proceed to pass the following:

ORDER

The criminal revision petitions are ***dismissed***.

Pending IA(s), if any, stands disposed of.

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

SKS