



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO.467 OF 2023

BETWEEN:

SRI C. VENKATESH
S/O. CHINNA VENKATAPPA
AGED ABOUT 47 YEARS
RESIDING V-PALYA, HIREGUNTANOOR
CHITRADURGA TALUK AND DISTRICT.

...PETITIONER

(BY SMT. HALEEMA AMEEN, ADVOCATE)

AND:

SRI ASIF ROSHAN
S/O. LATE B.P. ISMAIL
AGED ABOUT 49 YEARS
RESIDING AT HALEEMA MANZIL
MANDIR CROSS ROAD
BAJPE, MANGALURU TALUK
DAKSHINA KANNADA.

...RESPONDENT

(BY MISS GLANCIA S. D'SOUZA, ADVOCATE, FOR
SRI CHIDANANDA KEDILAYA)

* * *

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER ON SENTENCE DATED 18.10.2021 IN CRIMINAL CASE NO.662 OF 2013 BY THE COURT OF J.M.F.C. (V COURT), MANGALURU, D.K., AND JUDGMENT DATED 7-1-2023 IN CRIMINAL APPEAL NO.151 OF 2021 BY THE COURT OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT D.K., MANGALURU, AND ACQUIT HIM OF THE OFFENCE.

THIS CRIMINAL REVISION PETITION IS COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Smt. Haleema Ameen, learned counsel appearing for the petitioner, and Ms. Glancia S. D'souza, learned counsel for Sri Chidananda Kedilaya, learned counsel appearing for the respondent.

2. The petitioner-accused has filed this petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') praying to set-aside the judgment dated 7-1-2023 passed by the I Additional District and Sessions Judge, D.K., Mangaluru, (for short, 'First Appellate Court') in Criminal Appeal No.151 of 2021 and also to set-aside the judgment of conviction and order on sentence dated 18-10-2021 passed by the Judicial Magistrate First Class (V Court), Mangaluru, D.K. (for short, 'trial Court') in Criminal Case No.662 of 2013 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act').



3. For the sake of convenience, the parties are referred to as per their rankings before the trial Court. The petitioner is the accused and the respondent is the complainant.

4. The brief facts of the complainant's case are as under:

The accused was a long-standing business associate of the complainant. In the month of July-2008, the accused was in urgent need of money for the purpose of his business transactions and hence, he contacted the complainant and requested him to provide a sum of Rs.4,60,000/-. As the complainant had immense faith in the accused, the complainant transferred Rs.4,60,000/- to the account of the accused by three separate installments and in consideration thereof, the accused issued two cheques dated 7-1-2013 and 4-2-2013 drawn on Corporation Bank, Davangere Road, Chithradurga, for Rs.4,60,000/- and Rs.3,45,166/-, respectively. The first cheque was issued towards the repayment of the principal



amount and the second cheque was issued towards the damages suffered by the complainant. The complainant presented the said cheques through his banker Vijaya Bank, Kankanady, Mangaluru, and the same were returned dishonoured with endorsements "Funds Insufficient" vide Memo dated 10-1-2013 and 7-2-2013, respectively. Thereafter, the complainant issued legal notice dated 8-2-2013 calling upon the accused to pay the cheques amount within fifteen days from the date of receipt of the notice. Though the notice was served on the accused, the accused neither paid the cheques amount, nor replied to the notice. Hence, the complainant filed a private complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of N.I. Act.

5. After institution of the complaint, the trial Court recorded the sworn statement of the complainant, took cognizance under Section 190(1)(a) of Cr.P.C., secured the presence of the accused and recorded his plea.



6. The complainant, in order to prove his case, examined himself as PW1 and examined his friend, Sri P. Zakariya as PW2 and also relied upon the documents as Exs.P1 to P12. The accused did not enter the witness box and did not mark any documents on his behalf.

7. After hearing the complainant and the accused, 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.8,10,166/-. Out of the fine amount, Rs.8,05,166/- was ordered to be paid as compensation to the complainant and Rs.5,000/- to the State as fine amount.

8. 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 Criminal Appeal No.151 of 2021. In turn, 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 petitioner has contended that since the complainant, Sri C. Venkatesh, and his friend, Sri P. Zakariya (PW2), who were engaged in mining business at Chitradurga, did not have their Bank accounts, they were using the cheque books of the accused and in that context, the complainant misused two cheques of the accused. Therefore, the complainant never lent any loan to the accused and the complaint does not disclose the exact date of hand loan availed by the accused. Further, the complainant has failed to prove the ingredients that the debt in question was legally recoverable debt and the trial Court has wrongly raised presumption without noticing that the provisions of Section 138 of N.I. Act does not attract at all. On all these grounds, she prays to allow the revision petition.

10. Learned counsel for the respondent has contended that the accused has admitted issuance of



cheques at Ex.P1 and Ex.P2 and his signatures on the cheques. Further, the accused did not enter the witness box and no material was placed on record to establish that he never borrowed loan from the complainant. Hence, the trial Court as well as the First Appellate Court have rightly convicted the petitioner for the offence under Section 138 of N.I. Act. Thus, she prays to dismiss the revision petition.

11. On perusal of the complaint, oral testimonies of PWs.1 and 2 and the documents relied upon by the complainant, it appears that the accused had borrowed a sum of Rs.4,60,000/- and Rs.3,45,166/- from the complainant and in consideration thereof, he issued two cheques, i.e. Ex.P1 for a sum of Rs.4,60,000/- and Ex.P2 for a sum of Rs.3,45,166/- drawn on Corporation Bank, Davanagere Road, Chithradurga, and when the complainant presented the said cheques for encashment, the same were returned with endorsements "Funds Insufficient" vide Memo dated 10-1-2013 and 7-2-2013,



respectively. Hence, the complainant issued legal notice vide Ex.P5 calling upon the accused to pay the amount due under the cheques and in spite of issuance of legal notice, the accused neither replied to the legal notice, nor paid the amount due under the cheques.

12. The complainant has produced cheques in question as per Exs.P1 and P2, which bears the signature of the accused as per Exs.P1(a) and P2(a), Exs.P3 & P4 are the Bank endorsements, Ex.P5 is the copy of legal notice, Ex.P6 is the postal acknowledgment, Ex.P7 is the statement of accounts, Exs.P8 to P11 are the deposit challans and Ex.P12 is the statement of the accused. The accused has admitted issuance of Exs.P1 & P2-cheques and his signature on the cheques. However, he had contended that since the complainant and his friend, Sri P. Zakariya (PW2), were running mining business at Chitradurga, they were not holding Bank accounts and they were using the cheque books of the accused and in that context, they have misused the cheques and thereby,



the accused denied the transactions as alleged by the complainant. Therefore, the accused has disputed the transactions with the complainant and service of notice upon him.

13. As per the provisions of N.I. Act, once a cheque is signed and handed over to the complainant by the accused, it would attract presumption under Section 139 of N.I. Act in the absence of any *contra* evidence to show that the cheques were not issued in discharge of legally enforceable debt.

14. So far as service of notice upon the accused is concerned, the complainant has furnished Ex.P5-legal notice and Ex.P6-postal acknowledgment. It shows that the complainant issued legal notice and the same was returned as 'served' on the accused.

15. As per the presumption available under Section 11 of the Post and Telegraph Act, 1901, if any parcel is addressed to a particular addressee, it shall be deemed



that, the parcel sent to the addressee is served on him. Now, in the present case, the complainant sent legal notice vide Ex.P5 to show that he issued the said notice soon after dishonour of the cheques. Therefore, under Ex.P5, the complainant called upon the accused to pay the amount due under the cheques. Contrary to this evidence, the accused has not placed any rebuttal evidence. Therefore, the complainant has complied with the legal requirements of Section 138 of N.I. Act with regards to issuance of the legal notice on the accused.

16. Now, the burden shifts on the accused to disprove the case of the complainant, but the accused has not placed any material to show that the notice was not issued to him.

17. As per the contention of the accused, the cheques were used by the complainant and his friend, Sri P. Zakariya (PW2), as they did not hold any Bank accounts and they used the cheque books for unlawful gain. However, no complaint was lodged by the accused



with the jurisdictional Police in this regard, or to the concerned Manager of the Bank.

18. Whenever execution of the negotiable instruments is admitted, then, the Court may draw presumption under Section 118 of the Negotiable Instruments Act, 1881, which reads as under:

"118. Presumptions as to negotiable instruments.— *Until the contrary is proved, the following presumptions shall be made:—*

(a) **of consideration**—*that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

(b) **as to date**—*that every negotiable instrument bearing a date was made or drawn on such date;*

(c) **as to time of acceptance**—*that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*



(d) ***as to time of transfer***—that every transfer of a negotiable instrument was made before its maturity;

(e) ***as to order of indorsements***—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) ***as to stamps***—that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) ***that holder is a holder in due course***—that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

19. If the cheque was issued in relation to other transactions, including towards security, it shall be construed as that was issued towards legally enforceable



debt or liability. Therefore, there is a presumption that negotiable instruments is supported by consideration and the cheque was issued in connection with discharge of liability.

20. In the present case, the complainant has proved that on the relevant date, he lent money to the accused and in consideration thereof, the accused issued Exs.P1 & P2-cheques in favour of the complainant. Further, the accused has not placed any material before the Court to prove under which circumstance he issued the cheques in favour of the complainant. The accused has clearly admitted his signatures on the cheques. When one person signs and delivers to another a negotiable instrument, either wholly blank or nothing written thereon, is an incomplete negotiable instruments, he thereby gives *prima-facie* authority to the holder thereof to make or complete, as the case may be, upon it negotiable instrument, for any amount satisfied therein and not exceeding the amount covered by the stamp, the person



signing on the negotiable instruments shall not be denied by such instrument under Section 20 of N.I. Act. Therefore, the holder of the cheque by invoking Section 20 of N.I. Act filled up the cheque and presents for encashment. Thus, the trial Court has drawn presumption under Section 118 of N.I. Act, so as to consideration, as to date, as to time of acceptance, as to time of transfer and as to order of endorsements, as to stamps and that, holder is a holder in due course. Thereby, the complainant has proved the transactions and requirements under Section 138 of N.I. Act. Thus, the trial Court and the First Appellate Court have rightly convicted the accused for the offence punishable under Section 138 of N.I. Act. Hence, no interference is called for in this matter and there is no merit in the petition.

21. Accordingly, the criminal revision petition stands ***dismissed.***



**NC: 2026:KHC:30647
CRL.RP No. 467 of 2023**

In view of the dismissal of the main revision petition,
pending interlocutory applications, if any, shall stand
dismissed.

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

KVK
List No.: 1 Sl No.: 26