



CNR: KAHC010234152026

NC: 2026:KHC:51150
CRL.RP No. 565 of 2026
C/W CRL.RP No. 558 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 565 OF 2026

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

C/W

CRIMINAL REVISION PETITION NO. 558 OF 2026

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

IN CRL.RP No. 565/2026

BETWEEN:

1. SRI. CHINMAY HEGDE
S/O. T.G.HEGDE,
AGED ABOUT 39 YEARS,
R/ AT NO.A-43, BYASANI SKYWAY
1ST CROSS, MOUNTAIN ROAD 1ST STAGE,
JAYANAGAR-560011.

PRESENTLY RESIDING AT
SRI. CHINMAY HEGDE,
S/O. T.G.HEGDE,
AGED ABOUT 39 YEARS,
183/A KUBERA NIVASA, 9TH CROSS,
BALAJI LAYOUT, MARIKAMBA TEMPLE,
VAJARAHALLI, KANAKAPURA MAIN ROAD,
BANGALORE-560062

...PETITIONER

(BY SRI. SHANKAR M NAIK.,ADVOCATE)

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AND:

1. SRI. ANANTH KOMAR
S/O NOT KNOWN APPELLATE
R/O BRIGADE PALM SPRINGS
APARTMENT NO.313, TOWER NO.2, 24TH MAIN,
J.P. NAGAR, 7TH PHASE, PUTTENAHALLI,
BENGALURU-560078.
REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER MR. SATHISH HEBBAR

...RESPONDENT

(BY SRI. YASHODHAR HEGDE.,ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.P.C (U/S 438 R/W 442 BNSS) BY THE ADVOCATE FOR THE PETITIONER PRAYING TO a) SET ASIDE THE JUDGEMENT AND ORDER OF CONVICTION AND SENTENCE PASSED BY THE XVIII ADDL.CMM, DTD 04.03.2020, IN C.C.NO.24537/2016 AND CONSEQUENTLY CONFIRMING THE SAME IN CRL.A.NO.579/2020 BY THE 1ST APPELLANT COURT LXIII ADDL. CITY CIVIL SESSIONS JUDGE, BENGALURU (CCH64) VIDE ORDER DTD 06.02.2026 AND ETC.,

IN CRL.RP NO. 558/2026

BETWEEN:

1. SRI. HIMAMSHU JOSHI
S/O. C.S.JOSHI,
ABOUT 41 YEARS,
M UNIVERSE TRAVERSING LLP,
RESIDING AT NO. 10, UTARAUDA BUILDING
BAGESHWAR, UTTARKHAND-263632

...PETITIONER

(BY SRI. SHANKAR M NAIK.,ADVOCATE)

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S/O NOT KNOWN APPELLATE
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APARTMENT NO.313, TOWER NO.2, 24TH MAIN,
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BENGALURU-560078.
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
MR. SATHISH HEBBAR

...RESPONDENT

(BY SRI. YASHODHAR HEGDE.,ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.P.C (U/S 438 R/W 442 BNSS) BY THE ADVOCATE FOR THE PETITIONER PRAYING TO a) SET ASIDE THE JUDGEMENT AND ORDER ON CONVICTION AND SENTENCE PASSED BY THE XVIII ADDL. CMM, DATED 04.03.2020 IN CC NO.24537/2016 AND CONSEQUENTLY CONFIRMING THE SAME IN CRL.A NO.580/2020 BY THE 1ST APPELLANT COURT LXIII ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-64) VIDE ORDER DATED 06.02.2026 AND ETC.,

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

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

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ORAL ORDER

These are the Criminal Revision petitions filed under Section 438 and 442 of the Bharatiya Nagarika Suraksha Sanhita 2023 (in short BNSS, 2023) (old Section 397 of the Code of Criminal Procedure, 1973) (in short 'Cr.P.C') by accused No. 2 and 3 respectively challenging the judgment of conviction and order of sentence passed in CC No.24537/2016 on the file of XVIII Additional Chief Metropolitan Magistrate, Bengaluru, (in short 'the trial Court') and the common judgment passed in Criminal Appeal Nos.579/2020 (filed by accused No.2) and 580/2020 (filed by accused No.3) on the file of LXIII Additional City Civil and Sessions Judge, Bengaluru (in short 'the appellate court') and prayed for setting aside both the aforesaid judgments and to acquit them.

2. Parties would be referred with their ranks, as they were before the trial Court for sake of convenience and clarity.

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3. The complainant has filed the complaint under Section 200 Cr.P.C before the trial Court against the accused persons; accused No.1, the LLP represented by accused No.2 & 3 alleging the offences punishable under Section 138 of Negotiable Instruments Act, 1881 (in short 'N.I. Act') praying for convicting the accused persons for the aforesaid offence and punish them with imprisonment of 2 years and to impose fine of Rs.72,52,600/- in accordance with 138 of the NI Act with interest at 18% p.a. and to grant compensation in favour of the complainant under Section 357 of Cr.P.C. and for such other reliefs.

4. After recording the sworn statement of the complainant, the trial court has taken cognizance of the offence punishable under Section 138 of the N.I. Act and thus issued summons to the accused persons. After appearance of accused persons, they pleaded not guilty of the offence alleged against them. Then, trial was

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conducted in accordance with law. The accused persons have denied the contention of the complainant in the statement recorded under Section 313 Cr.P.C. Accused No.2 has let in defence evidence.

5. After hearing arguments of both sides, the trial Court has passed the judgment of conviction and order of sentence holding that accused No.1 to 3 are jointly and severally liable and sentenced to pay fine of Rs.50,20,000/- and in default, to undergo simple imprisonment for a period of 2 years, and directed that the complainant is entitled for Rs.50,00,000/- out of the fine amount and the remaining Rs.20,000/- is defrayed to the State for the expenses incurred in the prosecution.

6. Aggrieved by the said judgment of conviction, the accused No.2 & 3 have preferred appeals before the appellate Court in Criminal Appeal No.579/2020 and 580/2020 respectively. After hearing arguments of both sides, the appellate Court has dismissed the appeal by a

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common judgment confirming the judgment of conviction and order of sentence passed by the trial Court.

7. Aggrieved by the same, the revision petitioners (accused No.2 and 3) are before this Court.

8. Heard arguments of both sides.

9. Learned counsel for the revision petitioners-Sri Shankar M Naik would submit that there was Memorandum of Understanding (in short, 'MOU') dated 22.01.2025 between the complainant and accused No.1 as per Ex.P14. Accused No.2 is not the partner of accused No.1. Accused No.2 demonstrated the same by producing Exs.D.2 and D.3. Accused No.3 is the partner of accused No.1 but Exs.P2 to P4 i.e. cheques, were issued by accused No.2 in his individual capacity and not as a partner of accused No.1. Accused No.3 has not at all signed the said document. Hence, conviction of accused Nos.1 and 3 is not maintainable under law. Ex.P8, the

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notice is not a valid document because in Ex.P8, Rs.36,56,800/- along with interest was demanded. Thus, it is an omnibus demand and not a valid document. In this regard, learned counsel for the revision petitioners places reliance on the judgments of the Hon'ble Apex Court in the case of ***Suman Sethi vs. Ajay K and Anr.*** reported in **(2000) 2 SCC 380** and in the case of ***Kaveri Plastics vs. Mahadadu Bhava Behruddin Nuru.*** reported in **2025 INSC 1133** and in the case of ***Alka Khandu Avhad v. Amar Syamprasad Mishra & Anr.*** (Criminal Appeal No.258 of 2021 dated 8.3.2021) reported in **2021 INSC 164.**

9.1. Learned counsel for the revision petitioners would further submit that the cheques are dated 20.02.2026, 20.03.2016 and 20.04.2016 respectively. In the evidence, accused No.2 has produced Ex.D1 i.e., e-mail conversation between the complainant and accused No.2. In the said e-mail conversation at page No.2 dated 26.05.2016 at 16:17:29 is issued by the complainant to

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accused No.2 to his e-mail address. Accused No.2 admitted that his e-mail address mentioned in Ex.D1 is his e-mail address. Thus, notice was issued by the complainant to accused No.2. Thus, notice in writing was issued by the complainant on 26.05.2026 intimating the dishonour of the cheques to accused No.2 and he has also made mention of all these cheques and if the amount is not paid within 15 days, the complainant would take legal action. Thus, this is a legal notice in accordance with law. The complainant filed a private complaint on 27.07.2016 i.e., particularly after receipt of the said legal notice as per D.1-e-mail notice to accused No.2. Thus, the complaint is time-barred one and it will not come under the ambit of Section 138 of the N.I. Act. Further, no application to condone the delay under Section 142 of the N.I.Act is filed. When accused No.2 has issued the cheque in his individual capacity, convicting accused persons by invoking Section 141 of the N.I. Act is incorrect.

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10. Learned counsel for the complainant/respondent Sri Yashodhar Hegde would submit that Exhibit D.1 is not a notice in accordance with Section 138 of N.I. Act. Even if it is construed as legal notice, it is a defective notice because details of the cheques, the amount mentioned in those cheques are not mentioned in the said notice. Hence, the complainant has every right to cure the defect and accordingly, he has issued legal notice as per Exhibit P.8. In that circumstance, the date of service of the second legal notice would be the date of commencement of the cause of action.

10.1. In this regard, learned counsel for the respondent places reliance on the judgment of Delhi High Court in ***Raghuvir Goswami v. Nirmal Thakur*** reported in **(2006 (1) ALD (CRI) 43)**.

10.2. The learned counsel for the respondent would further submit that the transaction-MOU as per Exhibit P.14 is between the complainant and accused No.1 to 3. Accused No.2 and 3 representing the accused No.1, have

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signed the MOU. In Exhibit P.19, the e-mail conversation between the complainant and accused No.2, accused No.2 has given answers to all the queries put by the complainant before entering into MOU. At that time, he has stated that accused No.3 is his nominee and other two directors have already given resignation letter and it is in process of submitting to the authorities. Further, he has stated that he is directly holding 50% share and through nominees (accused No.3) he holds another 20%. Thus, it is the transaction between complainant and accused No.1 represented by its partners-accused No.2 & 3. Hence, Section 141 of the N.I. Act is attracted.

10.3. In this regard, the learned counsel for the respondent would submit that the judgment of Hon'ble Apex Court relied by the learned counsel for revision petitioners in ***Alka Khandu's*** case cited supra is entirely on a different footing. In that case, for as the liability of the husband, the cheque of the wife was issued. In that context, the Hon'ble Apex Court held that husband and

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wife are not association of individuals as mentioned in Explanation (a) to Section 141 of the N.I Act. However, he has placed reliance on the judgment of **Anil Sachar and Another v. Shree Nath Spinners Private Limited and Others** reported in **(2011) 13 Supreme Court Cases 148** wherein, at paragraphs 18 and 20, it is held that, when the cheque issued by Sister concern of the accused-Company-Munish Jain, who is the Director in both M/s.AT Overseas Ltd. and M/s. Shree Nath Spinners (P) Ltd; it covered under Section 141 of the N.I. Act. In this regard, he also places reliance on the judgment of the Hon'ble Apex Court in **Don Ayengia vs. State of Assam and Anr.** reported in **(2016) 3 SCC 1.**

10.3. By placing reliance on these citations and the documents at Exhibits-P.8, P.14, P.19 and Exhibit-D.1, learned counsel for the respondent would submit that the cheque issued by accused No.2 is on behalf of accused No.1 and 3 also involved in the said transaction. Hence, all



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of them are liable to pay the cheque amount. Learned counsel for the respondent would submit that in the judgments relied by the learned counsel for the revision petitioners in ***Kaveri Plastics*** and ***Suman Sethi's*** case cited supra, it is clearly held that when admission is made by mentioning the amount with interest, it would be held as an omnibus demand.

11. In reply to this, learned counsel for the revision petitioner submits that the notice under Exhibit D.1 is defective one and it cannot be cured by issuing Exhibit P.8. There is no mention in Ex.P.8 that it is a Corrigendum to the notice mentioned in Exhibit D.1. Hence, as it is, the private complaint is barred by limitation.

11.1. In this regard, the learned counsel for revision petitioners places reliance on the judgment of Hon'ble Apex Court in ***Alka Khandu's*** case, ***Suman Sethi's*** case and ***Kaveri plastics*** case cited supra.



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12. 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 erroneousess 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 ?"

13. The finding of this Court on above point is in **Partly in affirmative** for the following :

REASONS

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

Revision petitions are filed challenging the judgment of conviction by the trial Court which is confirmed by the

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appellate Court. 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..2026, (Arising out of Special Leave Petition (Criminal) No.2247 of 2024 dated 04.08.2026***. 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 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 judgement 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

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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 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.

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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.

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."

15. Thus, only if the judgment of the trial Court confirmed by appellate Court is perverse or grossly erroneous, are grossly unreasonable, or wholly unreliable,

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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.

16. To attract the offence under Section 138 of NI Act, the complainant has to satisfy the following ingredients:

(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



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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.

17. If the aforementioned ingredients are satisfied, then there shall be a presumption under section 139 of the 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. In the argument, learned counsel for the revision petitioner has brought to the notice of this Court that the complainant has issued an e-mail notice in writing to accused No.2 as per Ex.D.1.

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18. With this background, the facts of the present case are to be analysed.

19. It is the case of the complainant that accused No.1 is represented by accused No.2 and 3, who are partners of accused No.1. As per the representation made by accused No.2 and 3, the complainant has invested Rs.30,00,000/- in accused No.1 Company and at that time, MOU between parties came into existence as per Exhibit P.14. According to the terms and conditions of MOU, the accused persons have not complied with statutory obligations imposed on them. Hence, the complainant demanded back the amount invested by him in the accused No.1-firm with cost and interest as agreed under MOU. Because of complainant's persistent demand, accused No.2 on the guise that the cheque leaves of accused No.1 is not available, has issued his individual cheques i.e., P.2 to P.4 which are dated 20.02.2016, 20.03.2016 and 20.04.2016 for a sum of Rs.11,94,300/-, Rs.12,08,600/- and 12,23,900/-

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respectively. When those cheques were presented by the complainant for encashment through his bankers, they were dishonoured and the complainant received the notice of dishonour intimation from his banker on 13.05.2016, 25.05.2016 and 25.05.2016 respectively.

20. According to the complainant, in this regard he issued legal notice dated 11.06.2016 as per Ex. P.8.

21. However, learned counsel for accused 2 and 3, in his arguments, has taken the contention that by virtue of the e-mail dated 26.05.2016 as per Exhibit D.1, the complainant has issued written notice to accused No.2 and thus, the complaint filed by the complainant on 27.07.2016 is barred by the law of limitation, and he has not filed any application for condonation of delay for such barred complaint. Hence, the complaint itself is not maintainable in law.

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22. In reply, the learned counsel for the respondent would submit that, the e-mail notice is not a notice in accordance with Section 138 of the NI Act, but Exhibit P.8 is such notice. Even if this Court comes to the conclusion that said notice is a notice in writing, the period of limitation would not run from the date of e-mail because it is a defective notice and the defect is cured by issuing Ex. P.8. In this regard, the learned counsel for the respondent places reliance on the following judgments :

i) **Raghuveer's** case cited supra wherein in paragraphs 6 and 7 it is held as follows :

"6. Heard counsel for the parties and have gone through the judgment under challenge. It appears to me that there is nothing on record to show that the first notice was a notice under Section 138 of the Negotiable Instruments Act. The Supreme Court judgment relied upon by learned counsel for the respondent is of no avail. It is only when one valid notice is given under Section 138 of the Act that the limitation starts running. Any notice which is not in conformity

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with the requirement of Section 138 of the Act is not a valid notice for the purpose of putting into motion the process of law under the Negotiable Instruments Act.

7. In that view of the matter, the first notice not being a notice under Section 138 of the Negotiable Instruments Act could not be used to count limitation. Therefore, the order under challenge is bad and is set aside. The complaint is restored to file and number and the matter is remanded for proceedings in accordance with law. Parties to appear before the trial court on 28th July, 2005."

ii) Nityanand vs Jamuna Prakash reported in **ILR 2001 KAR 5469** wherein the co-ordinate Bench of this Court in paragraph No.5 held as follows :

5. "xxxxx. "It is therefore that necessary particulars need to be mentioned in the said notice. What needs to be mentioned in such a notice cannot be viewed in a hypertechnical manner. The purpose of giving the notice is to bring it to the notice of the drawer of the cheque that the cheque he has issued has been dishonoured and to put him on guard with regard to making of payment covered by that cheque within

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fifteen days so as to avoid prosecution. Viewed in this context, whether or not non-mentioning of cheque number when all other necessary particulars had been given in the notice, would be fatal to the case of the complainant, should depend upon the facts and circumstances of each case. For example, if there is only one incidence of issuing a cheque between the parties, then, if all other necessary particulars are furnished in the notice, the mere fact that cheque number is not mentioned would not be fatal. Even in a case like the present one wherein the accused totally denies having had any transaction with the complainant, and denies having issued the cheques concerned at all, it hardly matters whether cheque numbers are mentioned or not. But, there could be a case wherein the drawer of a particular cheque that has been dishonoured, would also have issued several other cheques in favour of the complainant concerned. In that event, if the cheque number is not mentioned in the notice of demand, then, the accused drawer would not be in a position to know as to in respect of which particular cheque among several cheques that he has issued that he should make payment within fifteen days to avoid prosecution. It is in such circumstances that mentioning of cheque number would be essential. If in a given case, depending upon the facts and

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circumstances of that case, it is to be found that the absence of cheque number in the demand notice made it impossible for the drawer of the cheque to ascertain which particular cheque that the payee was speaking of, and therefore was not possible for the drawer of the cheque to arrange for the payment of the amount within fifteen days, then, it has to be held that, there was no proper demand within the meaning of Clause (b) of the proviso to Section 138 of the N.I. Act."

23. By placing reliance on these two judgments, learned counsel for the respondent submits that, as penal provision is there under Section 138 of NI Act, strict consideration of the provisions of said section are necessary to attract the said offence.

24. With this background, notice under Exhibit D.1 is to be examined carefully. It reads as follows:

"From: Anant Komar <anantkomar@gmail.com>

Date: 26 May 2016 at 16:17:29 IST

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To: "Chinmay Hegde (ISW)" <chinmay@interactive-spectrum.com>, Mahesh Ramachandra Bhat <maheshrbhat@gmail.com>, Satish Hebbar <sati2571@gmail.com>

Subject: Notice for Loan Repayment subsequent to Cheque Dishonor

Dear Chinmay,

I would like to draw your attention to the following points:

- 1. Please refer to the MoU signed-specially the option to exit at the end of one year.*
- 2. Subsequent tranches of investments were not made for non-completion of compliances.*
- 3. I am exercising the option to exit due to non-performance of even a single clause mentioned in the MoU including pending compliances.*
- 4. Several emails were exchanged and personal meetings held to inform you my decision to invoke the withdrawal as per MoU.*
- 5. Personal Cheques were issued by you (Chinmay) for repayment of loan along with interest.*
- 6. Waited patiently for 3 months from issue of first cheque*
- 7. Cheques were deposited and dishonored.*

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Because of the above, I am left with no alternative but to take legal steps if payments are not received within the next 15 days.

Thank you and best regards,

Anant Komar"

25. In the aforesaid e-mail conversation, the cheque numbers, amount to which cheques are drawn and when they were dishonoured and other details are not at all mentioned. Hence, this e-mail conversation cannot be called as notice under Section 138 of N.I. Act. When the notice is defective, it is always open for the complainant to cure it by issuing a proper notice. Hence, Exhibit P.8-legal notice dated 11.06.2016 issued by the complainant is curative and it complies with all the ingredients of Section 138 of the NI Act.

26. At this juncture, the learned counsel for the revision petitioner would submit that this notice is an omnibus notice and it does not specify as per Section 138 of N.I. Act. In this regard, he places reliance on

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paragraphs 5.3 and 8 of the judgment in **Kaveri Plastics** case cited supra. It is held as follows:

"5.3 This Court in K.R. Indira (supra), again held that specific demand for the payment of the sum covered by the dishonoured cheque is required to be made in the notice. In that case, there was a loan transaction in the backdrop and the cheques were issued towards that payment. In absence of specific demand for the cheque amounts, the notice was held to be invalid. In Rahul Builders vs. Arihant Fertilizers & Chemicals & Anr.6, the imperative character of the condition in the Proviso (1999) 8 SCC 221 (2008) 2 SCC 321 and

8. "xxxxx. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

and at paragraph Nos.6 and 8 of **Suman Sethi's** case cited supra. It is held as follows:

6. We have to ascertain the meaning of the words the "said amount of money" occurring in clauses (b) and (c) to the proviso to Section 138. Reading the section

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as a whole we have no hesitation to hold that the above expression refers to the words "payment of any amount of money" occurring in the main Section 138 i.e. the cheque amount. So in a notice, under clause (b) to the proviso, demand has to be made for the cheque amount. Dr Dhavan, learned Senior Counsel has urged that Section 138 being a penal provision has to be construed strictly. We may refer the decision of this Court in M. Narayanan Nambiar v. State of Kerala. This Court considered the rule of construction of a penal provision and quoted with approval the following passage of the decision of the Judicial Committee in Dyke v. Elliott. The passage runs as follows:

"No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a

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penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

8. It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice might well fail to meet the legal requirement and may be regarded as bad."

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27. Thus, the language of notice is to be examined to decide, whether the notice issued on behalf of complainant is an omnibus notice or notice under 138 of N.I. Act?

28. In Exhibit P.8, at paragraph No.7 and 8, the details of cheques, amounts mentioned in those cheques, dates of cheques, dates of dishonour are mentioned in detail. In paragraph No.11, the sum total of those three cheques of Rs.36,26,800/- was demanded along with interest as on the date. Thus, the cheque amount is specified in the notice. Along with the cheque amount, the complainant has also demanded interest and also the notice charges, etc. They were mentioned separately. Hence, the notice under Ex.P.8 cannot be called an omnibus notice.

29. The next point argued by the learned counsel for the revision petitioners is that the cheques were issued in individual capacity by accused No.2, whereas he has made accused No.1 and 3 also as parties in the case on the ground that the transaction between complainant and

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accused No.1 represented by accused No.2 and 3 had taken place. But as the cheques were issued in individual capacity making accused No.1 and 3 as parties is not proper. In this regard, the learned counsel for the revision petitioner places reliance on the judgment of **Alka Khandu's** case cited supra wherein at paragraph 6 it is held as follows :

"6. We have heard learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint. It emerges from the record that the dishonoured cheque was issued by original accused No. 1 - husband of the appellant. It was drawn from the bank account of original accused No. 1. The dishonoured cheque was signed by original accused No. 1. Therefore, the dishonoured cheque was signed by original accused No. 1 and it was drawn on the bank account of original accused No. 1. The appellant herein-original accused No. 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the

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light of the aforesaid facts, it is required to be considered whether the appellant herein - original accused No.2 can be prosecuted for the offence punishable under Section 138 r/w Section 141 of the NI Act?"

"8.1 Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. Learned counsel appearing on behalf of the original complainant has submitted that "Company" means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within "other association of individuals" and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be "other association of individuals". Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque.

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30. In the aforesaid case, the complainant has received the cheque from accused No.1 regarding the legal advice given by him to accused No.1 and 2, who are husband and wife. However, the cheque was issued only by accused No.1. Under those circumstances, the Hon'ble Apex Court held as above.

31. In this regard, the learned counsel for the respondent/complainant places reliance on the following judgments :

- i) **Anil Sachar's** case cited supra
- ii) **Don Ayengia's** case cited supra and
- iii) **Rallies India Ltd. vs. Poduru Vidya Bhushan and Ors.** reported in **(2011) 13 SCC 88**

32. The facts and circumstances in the aforesaid cases relied upon by the learned counsel for the complainant are entirely different. In **Anil Sachar's** case cited supra, the person who has issued the cheque was partner in both Sister concerns and even though a transaction took place



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between one concern with the complainant, the cheque of its Sister concern was issued and under those circumstances, in **Anil Sachar's** case cited supra at paragraphs 18, 19 and 21 it is held as follows :

"18. According to the provisions of the aforestated section, there is a presumption with regard to consideration when a cheque has been paid by the drawer of the cheque. In the instant case, M/s. A.T. Overseas Ltd. paid the cheque which had been duly signed by one of its Directors, namely, Munish Jain. Munish Jain is also a Director in M/s. Shree Nath Spinners Pvt. Ltd.. As stated hereinabove, both are sister concerns having common Directors. Extracts of books of accounts had been produced before the trial court so as to show that both the companies were having several transactions and the companies used to pay on behalf of each other to other parties or their creditors. The above fact strengthens the presumption to the effect that M/s. A.T. Overseas Ltd. had paid the cheques to the complainants, which had been signed by Munish Jain, in consideration of goods supplies to M/s Shree Nath Spinners Pvt. Ltd. Of course, the presumption referred to in Section 139 is rebuttable. In the instant case, no effort was made by Munish Jain or any of the Directors of M/s.

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A.T. Overseas Ltd. for rebuttal of the aforestated presumption and, therefore, the presumption must go in favour of the holder of the cheques. Unfortunately, the trial court did not consider the above facts and came to the conclusion that there was no consideration for the cheques which had been given by M/s. A.T. Overseas Ltd. to the complainants.

19. It is true that a limited company is a separate legal entity and its directors are different legal persons. In spite of the aforestated legal position, in view of the provisions of Section 139 of the Act and the understanding which had been arrived at among the complainants and the accused, one can safely come to a conclusion that the cheques signed by Munish Jain had been given by M/s. A.T. Overseas Ltd. to the complainants in discharge of a debt or a liability, which had been incurred by M/s Shree Nath Spinners Pvt. Ltd.

21. Looking to the facts of the case and law on the subject, we are of the view that all the four cheques referred to in both the complaints are presumed to have been given for consideration. The presumption under Section 139 of the Act has not been rebutted by the accused and, therefore, we are of the view that the trial court wrongly acquitted the accused by

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taking a view that there was no consideration for which the cheques were given by Munish Jain to the complainants. The aforesaid incorrect view was wrongly confirmed by the High Court. We, therefore, set aside the acquittal order and convict accused Munish Jain under Section 138 of the Act."

The Hon'ble Apex Court in ***Don Ayengia's*** case cited supra in paragraphs 13 and 14 it is held as follows:

"13. It is important to note that it was not a case where no debt or liability was determined or acknowledged to be payable. If cheques were issued in relation to a continuing contract or business where no claim is made on the date of the issuance nor any determinate amount payable to the holder, one could perhaps argue that the cheques cannot be presented or prosecution launched on a unilateral claim of any debt or liability. The present is, however, a case where the existence of the debt/liability was never in dispute. It was on the contrary acknowledged and a promise was made to liquidate the same within one month. Failure on the part of the debtor to do so could lead to only one result viz. presentation of the cheques for payment and in the event of

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dishonour, launch of prosecution as has indeed happened in the case at hand.

14. The argument that the respondent had no liability to liquidate the debt owed by Nazimul Islam has not impressed us. What is important is whether the cheques were supported by consideration. Besides the fact that there is a presumption that a negotiable instrument is supported by consideration there was no dispute that such a consideration existed inasmuch as the cheques were issued in connection with the discharge of the outstanding liability against Nazimul Islam. At any rate the endorsement made by the respondent on the promissory note that the cheques can be presented for encashment after 25-9-2007 clearly shows that the cheques issued by him were not ornamental but were meant to be presented if the amount in question was not paid within the extended period. The High Court in our view fell in error in upsetting the conviction recorded by the courts below who had correctly analysed the factual situation and applied the law applicable to the same."

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As the same person is partner in both the concerns, the aforesaid judgment came into existence. The other judgment is also on similar line.

33. With this background, the facts of the present case are to be analysed afresh.

34. In this case, the complainant alleges that accused No.2 and 3 are partners of accused No.1. However, accused persons have produced Exhibits D.2 to D.4 documents. Those documents establish that accused No.2 was never a partner of accused No.1-LLP. But in the e-mail conversation between the complainant and accused No.2, accused No.2 misrepresented himself as partner of accused No.1-firm and even in the MOU, it is misrepresented that he is a partner of accused No.1. However, the reality is that accused No.2 is not the partner of accused No.1-firm. No material except the e-mail conversation and MOU between parties is produced to show that accused No.2 is the partner of accused No.1. They are not the official documents maintained by the

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Registrar of Firms. But the official documents produced by accused No.2 clearly establish that accused No.2 is not the partner of accused No.1-firm. Anyway, cheques were issued by accused No.2 in his individual capacity is not in dispute. When cheques were issued in the individual capacity of accused No.2, accused No.2 is liable to repay the cheque amount and not accused No.1 & 3.

35. With this background, as discussed earlier, the presumptions under Section 118 and 139 of NI Act will come to the aid of the complainant. According to Section 118, of NI Act, the presumption is that these cheques were issued on the dates mentioned in those cheques and they were issued for consideration. As far as statutory presumption under Section 139 of NI Act is concerned, these cheques are issued for discharge of legally recoverable debt or liability either wholly or in part. As discussed above, these presumptions are rebuttable presumptions.

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36. It is to be noticed here that the GPA holder of the complainant was cross-examined in length by the learned counsel for the accused. The accused were represented by different counsels before the trial court but their defence is common, they cross-examined the GPA holder of the complainant in length on several hearing dates. In that cross-examination, the main defence of the accused persons is that as per MOU, the complainant ought to have invested another sum of Rs.20,00,000/- to accused No.1-firm and because he has not invested said amount, he is not entitled for the repayment.

37. Thus, the investment of Rs.30,00,000/- by the complainant is not at all disputed by accused No.1 to 3. In MOU, accused No.2 was shown as promoter No.2. In the e-mail conversation between complainant and accused No.2, accused No. 2 represented himself as 50% shareholder of accused No.1-LLP, and his nominee - accused No.3 is holding 20% shares. By placing reliance on the aforesaid contention of accused No.2, complainant

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has invested the amount in accused No.1-firm. Whether accused No.2 is partner of accused No. 1 or not, he is one of the signatories to the MOU is admitted fact; further, he in his cross-examination categorically admitted that he had got interest in accused No.1-LLP. Under these circumstances, accused No.2 failed to rebut the presumptions available in favour of complainant that cheques were not issued for consideration or not for discharge of whole or part of legally recoverable debt or liability. Under these circumstances, definitely accused No.2 is liable to pay the cheque amount. But as accused No.1 or accused No.3 are not signatories to the cheque and as accused No.2 in his individual capacity issued the cheques and not on behalf of accused No.1 LLP, accused No.1 and 3 cannot be held liable; invoking Section 141 of N.I. Act is not in accordance with said provision. On this count, the finding of the trial Court confirmed by the appellate court is *perverse* and the documents were not at all examined and appreciated by the trial court and

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appellate court on this point. Hence, it is *perverse*. Hence, it requires interference.

38. Hence, this court answers the point ***partly in affirmative*** and passes the following :

ORDER

- i) CrI.R.P No.558/2026 is ***allowed in part***;
- ii) CrI.R.P No.565/2026 is ***dismissed***;
- iii) The judgment of conviction and order of sentence dated 04.03.2020 passed in CC No.24537/2016 by trial Court on the file of XVIII Additional Chief Metropolitan Magistrate, Bengaluru, confirmed in the common judgment dated 06.02.2026 by the appellate Court passed in Criminal Appeal Nos.579/2020 and 580/2020 on the file of LXIII Additional City Civil and Sessions Judge, Bengaluru, against accused No.1 and 3 is hereby set aside; however, the judgment of conviction and order of sentence is confirmed only against accused No.2.

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iv) Except this modification, other part of the judgment of trial Court confirmed by appellate court is unaltered.

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(GEETHA K.B.)
JUDGE

RS
List No.: 2 Sl No.: 1