



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1013 OF 2021

BETWEEN:

G. V. VENKATESH
S/O VENKATARAYAPPA
NOW AGED ABOUT 48 YEARS,
R/AT NEAR SHILPA SCHOOL
VENKATAGIRIKOTE, CHINTHAMANI TOWN,
CHIKKABALLAPURA DISTRICT-563 125.

...PETITIONER

(BY SRI.BHARAT.Y.J., ADVOCATE
FOR SRI.J.S.HALASHETTI, ADVOCATE)

AND:

SMT. V. ANNAPOORNA
W/O VENKATESH
NOW AGED ABOUT 44 YEARS,
R/AT NEAR OLD SHILPA SCHOOL
CHINTHAMANI TOWN,
CHIKKABALLAPURA DISTRICT-563 125.

...RESPONDENT

(BY SRI.VISHWANATHA K., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C. PRAYING TO
SET ASIDE THE ORDER OF CONVICTION AND SENTENCE OF FINE
DATED 16.08.2018 PASSED BY THE PRINCIPAL CIVIL JUDGE AND
JMFC, CHINTHAMANI IN C.C.NO.23/2016 WHICH IS CONFIRMED BY
THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



JUDGE, CHIKKABALLAPURA, SITTING AT CHINTHAMANI, BY ITS ORDER DATED 03.06.2021 IN CRL.A.NO.62/2018.

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

CORAM: HON'BLE MR. JUSTICE V. SRISHANANDA

ORAL ORDER

Heard Sri. Bharat Y.J., learned counsel for the petitioner on behalf of Sri. Jagadish S. Halashetti and Sri. K. Vishwanath for the respondent.

2. Accused who suffered an order of conviction for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (for short, "NI Act") in C.C.No.23/2016, confirmed in Criminal Appeal No.62/2018 is the revision petitioner.

3. Facts in the nutshell which are utmost necessary for disposal of the present petition are as under:

3.1. A private complaint came to be lodged under Section 200 of the Code of Criminal Procedure with the jurisdictional Magistrate by the complainant, alleging the commission of the offence punishable under Section 138 of the



NI Act, contending that the accused approached the complainant in the second week of May 2015, requesting for a loan of Rs.2,90,000/- to meet his immediate necessities.

3.2. The said loan was lent on 20.05.2015 by the complainant to the accused. The accused has agreed to repay the same within a period of three months, and towards the repayment, she issued a cheque bearing No.7822520002900010 dated 21.09.2015 drawn on Vijaya Bank, Chintamani Branch. The said cheque on presentation came to be dishonoured with an endorsement "insufficient funds."

3.3. Legal notice was issued demanding the payment covered under the cheque which was duly served on the accused, but there was no compliance. Therefore, action was sought against the accused.

4. Learned trial Magistrate after completing the necessary formalities, summoned the accused and recorded the plea. Accused pleaded not guilty. Therefore, trial was held.



5. In order to prove the case of the complainant, she got examined herself as P.W.1 and placed on record 12 documents, which were exhibited and marked as Exhibits P1 to P12, comprising of the original dishonoured cheque, bank endorsement, copy of the legal notice, postal receipts, postal acknowledgment, reply notice, certified copy of the business certificate, registration certificate and two RTC extracts.

6. As against the material evidence placed on record, there is no oral evidence on behalf of the accused. But in the cross-examination of P.W.1, four documents got marked, namely two chit cards, the passbook of Shakti Sangha, and Dhanyasree card.

7. Learned trial Magistrate thereafter, heard the arguments of the parties in detail and, on cumulative consideration of material on record in the light of the presumption available to the complainant under Section 139 of the NI Act, noted that there is no rebuttal evidence and thus, acquitted the accused for the offence punishable under Section 138 of the NI Act and imposed a fine of Rs.3,50,000/-.



8. Being aggrieved by the same, the accused filed an appeal before the District Court in Criminal Appeal No.62/2018.

9. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on the record, dismissed the appeal by a considered judgment dated 03.06.2021.

10. Being further aggrieved by the same, the accused is before this Court.

11. Learned counsel for the petitioner reiterating the grounds urged in the revision petition would contend that the complainant had no lending capacity and therefore, following the dictum of the Hon'ble Apex Court in the case of ***Basalingappa vs. Mudibasappa*** reported in ***(2019)5 SCC 418*** that the order of conviction passed by the trial Magistrate and upheld by the First Appellate Court needs to be set aside by allowing the revision petition.

12. Per contra, learned counsel for the respondent supports the interim judgment.



13. Having heard the arguments of both sides, this Court perused the material on record meticulously.

14. On such perusal of the material on record, in the case on hand, the directions issued by the Hon'ble Apex Court in the case of ***Indian Bank Association & Others vs. Union of India & Others***, reported in ***(2014)5 SCC 590***, are not followed by the learned trial Magistrate or the accused. In fact, the case should have been commenced by leading the defence evidence.

15. It is also pertinent to note that there is no application filed under Section 145(2) of the NI Act to cross-examine P.W.1. Nevertheless, trial Magistrate permitted the accused to cross-examine PW1 without there being any proper defence being shown.

16. In the cross-examination, Exhibits D1 to D4 were confronted to PW1, which were admitted, and therefore, it is the contention of the revision petitioner that the complainant had no lending capacity.



17. Pertinently, the complainant enjoys the presumption under Section 139 of the NI Act, which is rebuttable in nature.

18. To rebut the presumption, there is no material evidence placed on record. The accused should have stepped into the witness box and then deposed about the issuance of cheque and if not issued by him, how it reached the hands of the complainant. No such material evidence is forthcoming on record.

19. Since Exhibit P1-cheque belongs to the accused and the signature found therein is that of the accused, there is a specific contention taken by the complainant that she lent the loan in a sum of Rs.2,20,000/- on 20.05.2015. The presumption available to the complainant under Section 139 of the NI Act does not get rebutted. The principles of law enunciated in the case of Baslingappa was the subject matter of subsequent judgments before the Hon'ble Apex Court in the case of ***Rajesh Jain Vs. Ajay Singh***, reported in **(2023)10 SCC 148**, and ***Sanjabaij Tari Vs. Kishore S. Borcar &***



Another, reported in **2025 SCC Online SC 2069**, respectively.

20. In view of the authoritative principles of law enunciated in the case of ***Rajesh Jain*** and ***Sanjabaij Tari*** (*Supra*) this Court is unable to accept the contentions heard on behalf of the petitioner that the complainant had no lending capacity.

21. Therefore, the accused is entitled to an acquittal and cannot be countenanced in law.

Hence, the following:

ORDER

Revision petition is meritless and hereby ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**