



CNR: KAHC010383282023

NC: 2026:KHC:47273
CRL.RP No. 956 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO. 956 OF 2023

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

BETWEEN:

K H ISMAIL
S/O HASANABBA,
AGED ABOUT 50 YEARS,
R/A SRINIDHI KOTEKAR,
JOY ICE CREAM BACKSIDE,
SOMESHWARA UCHILA,
MANGALORE-574231.

...PETITIONER

(BY SRI. KARTHIK NATESH, ADVOCATE)

AND:

SMT. NASEEMA BANU
W/O HANEEF,
AGED ABOUT 31 YEARS,
R/A ANJURU VILLAGE,
JANNAPURA POST, GONIBEEDU HOBLI,
MUDIGERE TALUK,
CHIKKAMAGALURU-577132.

...RESPONDENT

(BY SRI. CHIDAMBARA G S., ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 OF CR.P.C PRAYING TO ALLOW THIS REVISION PETITION AND SET ASIDE THE JUDGMENT DATED 12.06.2023 PASSED BY THE LEARNED II ADDITIONAL DISTRICT AND SESSIONS JUDGE IN CRL.A.NO.219/2022 AT CHIKKAMAGALURU AND THE JUDGMENT DATED 28.11.2022 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC AT MUDIGERE IN C.C.NO.402/2021, AND CONSEQUENTLY ACQUIT THE PETITIONER FOR THE CHARGES WITH WHICH HE STOOD CHARGE.

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by
NAGARATHNA
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Location: High
Court of
Karnataka





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

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Sri Karthik Natesh, learned counsel appearing for the petitioner, and Sri Chidambar G.S., learned counsel for the respondent.

2. The petitioner-accused has preferred this Criminal Revision Petition under Section 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') praying to set aside the judgment of conviction and order on sentence dated 28.11.2022 passed in C.C.No.402/2021 by the Senior Civil Judge and JMFC at Mudigere, which is upheld by the II Additional District and Sessions Judge at Chikkamagaluru, in Criminal Appeal No.219/2022 dated 12.06.2023, wherein both the Courts passed concurrent findings against the accused and convicted the accused to undergo simple imprisonment for a period of six months for the offence punishable under Section 138 of the



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Negotiable Instruments Act, 1881 (*hereinafter referred to as 'N.I.Act'*) and sentenced him to pay fine of Rs.4,96,500/-, in default of payment of fine, he shall undergo further simple imprisonment for three months.

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

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

The respondent/complainant filed a private complaint under Section 200 of the Cr.P.C. for the offence punishable under Section 138 of the N.I. Act against the accused contending that the accused borrowed a sum of Rs.3,80,000/- for his necessities. The accused in order to re-pay the loan amount, issued cheque bearing No.309469 dated 03.07.2019 for a sum of Rs.3,80,000/- drawn on Corporation Bank, Bantwal Branch in favour of the complainant.



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5. On presentation of the said cheque for encashment, the cheque was dishonoured on 04.07.2019, due to 'Funds Insufficient'. Therefore, the complainant informed the said fact of dishonour of the cheque to the accused, but the accused did not pay the cheque amount. Therefore, on 29.07.2019, the complainant issued legal notice to the accused calling upon him to pay the amount due under the cheque. Even after receipt of the legal notice, the accused failed to pay the amount.

6. After institution of the complaint, the trial Court recorded the sworn statement of the complainant, took cognizance under Section 190(1)(a) of the Cr.P.C., secured the presence of the accused and recorded the plea of the accused, the accused pleaded not guilty and claimed to be tried.

7. The complainant, in order to prove her case, examined herself as PW1 and got marked six documents



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as per Exs.P1 to P6. In order to rebut the claim of the complainant, the accused examined himself on oath as DW1 and relied on four documents as per Exs.D1 to D4.

8. On the basis of the oral and documentary evidence, the trial Court convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for a period of six months and shall also be liable to pay a fine of Rs.4,96,500/- and in default of payment of fine amount, to undergo simple imprisonment for a period of three months.

9. Aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused preferred an appeal in Criminal Appeal No.219/2022 before the II Additional District and Sessions Judge at Chikkamagaluru and in turn, the First Appellate Court confirmed the judgment of conviction and order on sentence passed by the trial Court.



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10. Aggrieved by the concurrent findings passed by the trial Court as well as the First Appellate Court, the accused has filed this revision petition.

11. Sri Karthik Natesh, learned counsel for the petitioner-accused, has contended that the judgment of conviction and order on sentence passed by the First Appellate Court and the trial Court are erroneous. The complainant has failed to prove the requirements of Section 138 of the N.I. Act, as the accused disputed the cheque in question. It is further contended that the complainant had no financial capacity to repay the loan amount, as the complainant is a BPL card holder, and that there was no legally enforceable debt. As per Exs.D2 to D4, the accused paid a sum of Rs.11,000/-, Rs.20,000/- and Rs.5,000/-, respectively, to the husband of the complainant, Sri Haneef, and the remaining sum of Rs.1,13,000/- was paid to the husband of the complainant by way of cash. Further, the complainant and her husband



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did not return the cheque in question, which had been issued for security purposes. Instead, the complainant misused the cheque and presented it for encashment. Further, the complainant has not mentioned the date of advancement of the loan to the accused either in the complaint or in her chief-examination. On all these grounds, the learned counsel prays to allow the revision petition.

12. Learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh***, reported in **(2023) 10 SCC 148**, at paragraph No.44, which reads as under:

"44. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption "disappears" and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both



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parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance."

13. Sri Chidambar G.S., learned counsel for the respondent-complainant has contended that there was a separate transaction between the accused and the husband of the complainant, by name Haneef, and in that regard, the accused paid a sum of Rs.11,000/-, Rs.20,000/- and Rs.5,000/-, respectively, and the said transaction has nothing to do with the present transaction. It is further contended that no complaint was lodged by the accused against the complainant or her husband and that the accused never insisted upon the complainant or her husband to return the cheque. Therefore, the trial Court as well as the First Appellate Court, considering the oral and documentary evidence on record, have rightly convicted the petitioner-accused.

14. On the basis of the submissions made by the parties to the *lis*, the following point would arise for consideration of this Court:



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1. Whether the petitioner-accused proved that the judgment of conviction and order on sentence passed by the trial Court and confirmed by the First Appellate Court are perverse and calls for interference by this Court?

15. Admittedly, the complainant filed a private complaint under Section 200 of the Cr.P.C. against the accused for the offence punishable under Section 138 of the N.I. Act. In order to substantiate the contention of the complainant, the complainant examined herself as PW.1 and got marked six documents. Ex.P1 is the cheque issued by the accused for a sum of Rs.3,80,000/- drawn on Corporation Bank, Batwal Branch. The signature of the accused is marked as Ex.P1(a). Ex.P2 is the Bank endorsement, wherein it is recorded that the cheque was returned with the shara "Funds Insufficient" in the account of the accused. Hence, the complainant got issued a legal notice vide Ex.P3 to the accused, calling upon the accused to pay the amount due under the cheque. Ex.P4 is the postal receipt for having sent the legal notice to the



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accused. Ex.P5 is the postal acknowledgment and Ex.P6 is the notice.

16. PW.1 was cross-examined. In the cross-examination, nothing has been elicited to disprove the oral testimony of PW.1. In the cross-examination, a suggestion was made to PW.1 that the accused had paid a sum of Rs.11,000/-, Rs.20,000/- and Rs.5,000/-, respectively, to the husband of the accused and that the same is reflected in Exs.D2 to D4. However, the same was denied by PW.1, and the complainant has taken the contention that the said payments have nothing to do with the present transaction.

17. To rebut the claim of the complainant, the accused was examined as DW.1 and relied upon Exs.D1 to D4. Ex.D1 is the Bank Statement and Exs.D2 to D4 are the Bank Challan.

18. On perusal of the oral testimony of PW.1 and the contents of Exs.P1 to P6, it appears that the accused



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had borrowed a sum of Rs.3,80,000/- from the complainant and, in consideration thereof, had issued Ex.P1-cheque for a sum of Rs.3,80,000/-. Hence, the complainant presented the cheque for encashment, and the same was returned with the shara "Funds Insufficient" in the account of the accused. Therefore, the complainant issued a legal notice.

19. On perusal of all these documents, it is clear that the accused has not disputed the issuance of the cheque and the service of the legal notice. In view of the presumption available under Section 139 of the N.I. Act, the complainant has complied with the legal requirements under Section 138 of the N.I. Act. However, the burden shifted upon the accused has not been discharged. The only defence set up by the accused is that the complainant has misused the cheque in question. To substantiate this contention, the accused has neither issued a legal notice to the complainant or her husband nor lodged a complaint against the complainant alleging misuse of the cheque.



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20. Therefore, the trial Court as well as the First Appellate Court have drawn the presumption that the cheque was issued towards a legally enforceable debt. Whether the accused issued the cheque for repayment of the loan, as security, or towards discharge of the current transaction, it makes no difference under Section 138 of the N.I. Act, and the legal consequence is the same without any distinction.

21. The present Revision Petition has been filed by the accused, challenging the concurrent findings recorded by the trial Court as well as the First Appellate Court.

22. The "scope of revision" refers to the limited authority of a higher Court to review judgment of the trial Court and the First Appellate Court, focusing on correcting errors in jurisdiction or gross legal/factual flaws rather than re-examining the merits of the case. This power is exercised sparingly and is intended to set right a patent defect, not to function as an automatic second appeal. The



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specific grounds and limitations vary between civil and criminal proceedings. Revisions can address situations where the decision is grossly inaccurate, not supported by evidence, or where relevant evidence was ignored. The review is not a fresh trial. Courts are generally barred from re-examining evidence or substituting their own judgment for the lower Court's on matters of fact unless the findings are demonstrably perverse or arbitrary. The Hon'ble Apex Court has discussed the applicability and scope of revision in various decisions, which are highlighted hereunder:

A. The Hon'ble Apex Court in the case of **MUNNA DEVI v. STATE OF RAJASTHAN AND ANOTHER** reported in **(2001) 9 SCC 631**, while discussing the scope of Section 397 of the Cr.P.C., at paragraph No.3, has held as under:

"3. xxx xxx xxx. The revision power under the Code of Criminal Procedure cannot be



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exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

B. The Hon'ble Apex Court in the case of **STATE OF TAMIL NADU v. R. SOUNDIRARASU AND OTHERS** reported in **(2023) 6 SCC 768**, at paragraph No.79, has held as under:

"79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional



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power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

C. Further, the Hon'ble Apex Court in the case of **STATE OF MAHARASHTRA v. SUJAY MANGESH POYAREKAR** reported in **(2008) 9 SCC 475**, at paragraph No.16, has held as under:

"16. xxx xxx xxx. Now it is well settled that revisional jurisdiction can be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal."



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23. Therefore, the revisional jurisdiction should normally be exercised in exceptional cases, when there is a glaring defect in the proceedings or there is a manifest error of point of law and consequently, there has been a flagrant miscarriage of justice.

24. In view of the facts, circumstances and the decision cited supra, in the instant case, the accused has not placed any rebuttal evidence. In the absence of rebuttal evidence, the accused has failed to prove the non-existence of liability.

25. When execution of the negotiable instruments, passing of consideration and signature found on Ex.P1 is admitted, the Court may draw presumption under Sections 118 and 139 of the N.I. Act in favour of the holder of the negotiable instrument.

26. Thus, the trial Court as well as the First Appellate Court rightly appreciated the oral and



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documentary evidence and proceeded to convict the accused for the offence punishable under Section 138 of the N.I. Act. Therefore, there is no error or illegality committed by the Courts below to interfere by this Court. Accordingly, the petition is ***dismissed***.

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

Sd/-
(VENKATESH NAIK T)
JUDGE

AM
List No.: 1 Sl No.: 14