



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. 1378 OF 2022

BETWEEN:

SRI VENKATESH
S/O BYREGOWDA
AGED ABOUT 36 YEARS
R/A NO.15, 11TH BLOCK
F.E.LAYOUT, ANJANAPURA
BENGALURU - 560 083.

AND ALSO R/AT
DODDAGULI VILLAGE
KODIHALLI HOBLI
KANAKAPURA TALUK
RAMANAGARA DISTRICT
PIN - 562 117.

AND ALSO R/AT SRINIVASA WINES
T.BEKUPPA CIRCLE, KASABA HOBLI
KANAKAPURA TALUK
RAMANAGARA DISTRICT - 562 117.

AND ALSO R/AT NO.2114
2ND CROSS
4TH MAIN ROYAL COUNTRY
NEAR JUMBO SAVARIDINNE
BENGALURU - 560 083.

PETITIONER

(BY SRI. SOMASHEKAR N., ADVOCATE)



AND:

SRI CHANDRAKUMAR
S/O LATE THIMME GOWDA
AGED ABOUT 47 YEARS
R/A NO.57/1,
"CHALUVA",
SAPTHAGIRI CUTTING TOOLS ROAD
CHUNCHAGATTA MAIN ROAD
CHUNACHAGATTA,
BENGALURU
PIN - 560 022.

...RESPONDENT

(BY SRI. K R SATHISH., ADVOCATE)

THIS CRL.RP 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 ORDER DATED
03.08.2017 PASSED IN C.C.NO.8216/2016 BY THE LEARNED
XVI ACMM, BENGALURU AND CONFIRMED IN CRL.A.NO.1236/
2017 DATED 02.12.2021 BY THE LEARNED LXIII ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE (CCH-64) AT BENGALURU,
ETC.,

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.Somashekar.N., learned counsel appearing for the revision petitioner and Sri.K.R.Sathish, learned counsel appearing for the respondent.

2. Revision Petitioner is an accused who suffered an order of conviction in C.C.No.8216 of 2016 confirmed in Criminal Appeal No.1236 of 2017 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. Facts in the nut-shell, which are utmost necessary for disposal of the present revision petition, are as under:

- A private complaint under Section 200 of Cr.P.C., was lodged with the XVI Additional Chief Metropolitan Magistrate, Bengaluru City alleging the commission of the offence punishable under Section 138 of the



Negotiable Instruments Act, 1881 by contending that accused and complainant are friends and in such friendship, accused borrowed loan of Rs.5,00,000/- and agreed to repay the same within a short span of time. The loan was lent in the month of June, 2013 and towards the repayment, a cheque bearing No.791624 dated 31.03.2015 drawn on the Vijaya Bank, Bannerghatta Branch was issued on 31.03.2015. The said cheque, on presentation came to be dishonored with an endorsement "Funds Insufficient".

- There was no compliance to the callings of legal notice, which resulted in seeking action against the accused.

4. The learned Trial Magistrate, after completing the necessary formalities, summoned the accused and recorded the plea, as the accused pleaded 'not guilty', therefore, trial was held.



5. In order to prove the case of the complainant, he got examined himself as PW-1 and placed on record fifteen documentary evidence, which were exhibited and marked as Exs.P1 to P15(a).

6. As against the material evidence placed on record, accused got examined himself as DW-1 and placed on record, a document, namely, certified copy of the cheque as Ex.N1.

7. The learned Trial Magistrate, thereafter heard the arguments of the parties and noticed that the defence taken by the accused that the cheque in question was misused is not probablised by placing necessary material evidence on record nor taking any positive action against the complainant for the alleged misuse, convicted the accused for the offence punishable under Section 138 of the N.I. Act and imposed fine of Rs.5,25,000/-.

8. Being aggrieved by the same, accused filed an appeal before the District Court in Crl.A.No.1236 of 2017



and the learned Judge in the First Appellate Court, after re-appreciation of the material on record by a considered judgment dated 02.12.2021 dismissed the appeal.

9. Thereafter, the accused is before this Court in this revision petition.

10. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition, would vehemently contend that both the Courts have not properly appreciated the oral testimony of DW-1 coupled with Ex.N1 in appreciating the fact that the cheque in question was misused by the complainant and therefore, sought for allowing the revision petition.

11. Per contra, learned counsel appearing for the respondent supports the impugned judgment.

12. Having heard the arguments of both sides, this Court perused the material on record meticulously. On such perusal of the material on record, it is noticed that there is no dispute that Ex.P1/original cheque belongs to



the accused and signature found therein is that of the accused. According to the complainant, the said cheque has been issued by the accused towards repayment of hand loan of Rs.5,00,000/-, but according to the accused, the said cheque has been misused by the complainant, which was given to him for security. To probablise said defence, there is no material evidence on record.

13. Pertinently, no normal prudent person would keep quiet that too after availing the services of an Advocate that if a cheque in a sum of Rs.5,00,000/- is misused.

14. Non-taking of positive action on behalf of the accused about the alleged misuse of the cheque exposes the hollowness in the defence of the accused and significant in appreciating the case of the parties.

15. Since the theory of 'misuse' has failed, the presumption available to the complainant under Section 139 of the N.I. Act gets crystallized as it was un-rebutted.



16. Therefore, conviction of the accused for the offence punishable under Section 138 of the N.I. Act by the Trial Magistrate, confirmed by the First Appellate Court needs no interference, that too, in the limited revisional jurisdiction. Accordingly, the following:

ORDER

Revision Petition is ***dismissed.***

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