

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21st DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO. 1751 OF 2025

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

BETWEEN:

MR. SUNDAR MURUGESAN
AGED ABOUT 57 YEARS,
M/S. VASAN HEALTH CARE PVT. LTD.,
NO.28 AND 29, 7TH MAIN,
4TH BLOCK, DIAGONAL ROAD,
JAYANAGAR, BENGALURU -560 011.

...PETITIONER

(BY SRI. D PRABHAKAR, ADVOCATE)

AND:

M/S. MEDIHAUXE INTERNATIONAL
REPRESENTED BY ITS MANAGING PARTNER
MR. GURAJA RAO P.
AGED ABOUT 52 YEARS,
S/O. P. RAMAKRISHNA RAO,
NO.2676/20, 11TH MAIN,
'D' BLOCK, 2ND STAGE,
RAJAJINAGAR,
BENGALURU - 560 010.

...RESPONDENT

(BY SRI. PRAVEEN C., ADVOCATE)

* * *

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 11.09.2025 IN CRIMINAL APPEAL NO.1797/2023 PASSED BY THE LX ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-61 AND ALSO SET ASIDE THE JUDGMENT AND SENTENCE DATED 07.11.2023 IN C.C.NO.28812/2018 PASSED BY THE XXVIII ADDL.CMM, BENGALURU.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 19-08-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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by
NAGARATHNA
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Location: High
Court of
Karnataka



CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

Heard learned counsel for the revision petitioner Sri D. Prabhakar and Sri C. Praveen, learned counsel for the respondent.

2. The present criminal revision petition has been preferred by the accused/petitioner challenging the order dated 11.09.2025 passed by the learned LX Additional City Civil and Sessions Judge, Bengaluru in Crl.A.No.1797/2023, wherein the criminal appeal preferred by the petitioner was allowed-in-part by the first appellate court and thereby confirmed the judgment and order of conviction and sentence dated 07.11.2023 passed by the learned XXVIII Addl. CMM, Bengaluru in CC No.28812/2018, wherein the learned Magistrate had convicted the accused under Section 138 of Negotiable Instruments Act and thereby sentenced them to pay fine of Rs.7,00,000/- and in default of payment of fine, accused No.2 to undergo simple imprisonment for one year.

3. Briefly stated, the admitted facts of the case leading to the present criminal revision petition are that:-

HC-KAR

The complainant is a firm dealing with medical supplies of all kinds of drugs, surgical medicines and life-saving drugs to the respective clients. Accused No.1 M/s Vasan Health Care Private Limited, Hubli is the client of the complainant. During the course of business with the complainant, the accused issued in all 18 cheques in favour of the complainant drawn on Axis Bank(KT) Branch, Dharwad towards payment for the goods supplied. The complainant presented the said cheques for realization through its banker viz., Karnataka Bank, Malleshwaram Branch, Bengaluru on 08.01.2018. The said cheques were dishonoured for the reason 'funds insufficient' on 11.01.2018 and the same was intimated to the complainant on 16.01.2018 and thereafter, the complainant got issued legal notice dated 15.02.2018, wherein the complainant called upon accused No.1 company and its Directors to pay the amount covered under the cheques. Though notices were served upon few directors, certain notices were returned unserved with an endorsement 'not claimed' and 'addressee vacated' and some of the Directors gave evasive reply. However, accused No.2, the authorised officer of the company,

replied to the notice admitted the transaction, however, he failed to make payments of the amounts covered under the cheques. Therefore, the complainant instituted a private complaint under Section 200 Cr.P.C. for the offence punishable under Section 138 of N.I. Act.

4. 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 accused No.2. He pleaded not guilty and claimed to be tried.

5. The complainant, in order to prove its case, examined the authorised officer of the complainant as PW.1 and relied upon 31 documents marked at Exs.P1 to P31. On behalf of the defence, accused No.2 was examined as DW.1 and he relied upon four documents marked as Exs.D1 to D4.

6. On the basis of the oral and documentary evidence on record, the Trial Court convicted the accused for the offence punishable under Section 138 of N.I. Act and sentenced them to pay a fine of Rs.7,00,000/- and in default of payment of fine, accused No.2 to undergo simple imprisonment for a period of one year.

7. Being aggrieved by the judgment of conviction and order of sentence passed by the Trial Court, the accused preferred an appeal before the First Appellate Court in Crl.A.No.1797/2023. In turn, the First Appellate Court confirmed the judgment of conviction and sentence passed by the Trial Court. Hence, the accused preferred this Criminal Revision Petition.

8. Learned counsel Sri D. Prabhakar, for the petitioner/accused No.2 contended that the judgment of conviction and order on sentence passed by the Trial Court as well as the First Appellate Court are not in accordance with law. The complainant has failed to prove the requirements of Section 138 of N.I. Act, as the accused has disputed the cheques in question. The Trial Court as well as the First Appellate Court have failed to appreciate the fact that the complainant has supplied the medicines in the year 2014 and at that time, accused No.1 has issued undated cheques which were signed by the petitioner, as he was the authorized signatory of the Company. It is further contended that, the Trial Court has failed to notice that the petitioner was not a Director or involved in the day-to-day management or affairs of accused No.1 company and he was only an employee on a

monthly salary. He further contends that Section 142 of N.I. Act can be attracted towards an employee, Manager, Secretary or other person only if such of them are deemed to be guilty of the offence and proved by the complainant that the offence has been committed with the consent or connivance of, or is attributable, to any neglect. Whereas, in the present case, on one hand, there is no whisper about the same in the complaint or in the evidence; however, the Trial Court has failed to consider this aspect.

9. It is contended that the Trial Court and the First Appellate Court also failed to note that an Operational Creditor has initiated Corporate Insolvency Resolution Proceedings (CIRP) before the NCLT Division Bench-I, Chennai under Section 9 of IBC, 2016 in CA/1-IB/2017 and in pursuance of the same, the NCLT has appointed one Mr. V. Mahesh as Interim Resolution Professional (IRP) and he has taken over the management of the company in the year 2017 and as such, the petitioner having signed the cheques in the year 2018, does not arise and inspite of the petitioner having taken such contention, the courts below have failed to consider the same and has passed the impugned judgment, which is contrary to law. Further, the IRP has caused public notice to

be issued pursuant to the NCLT proceedings, calling upon the creditors to lay their claims against accused No.1 company and the complainant has lodged claim in respect of the very same amount covered under the cheques. The IRP has admitted a portion of the amount out of the said claim and in pursuance to the resolution passed, the creditors were paid at the rate of 38 paise per rupee and the RP has transferred Rs.1,391/- towards full and final settlement of the claims of the complainant and as such, the entire liabilities stood extinguished and there was no existing liability dischargeable by the accused persons.

9a. Further, during the course of cross-examination, the complainant has accepted the above said facts, but the courts below have not considered the same aspect.

9b. Further, the petitioner has taken specific contention that when the cheques were handed over to the complainant, the cheques were undated and it is the complainant, who subsequently inserted the date and it was also contended that the complainant has falsely deposed that the cheques were issued on the dates mentioned therein, the same has been established beyond doubt that the accused company was

under dissolution process and IRP was appointed and he has taken over the management of the company, much prior to the dates mentioned in the cheques. As such, the petitioner ought to have been exonerated for the alleged offence, as he was not divested with signing authority on the cheques as authorized signatory and he was only an employee.

9c. Further, the Trial Court and the First Appellate Court have failed to take note of the fact that the liability did not arise on the date of issuance of cheques and it is settled proposition of law that when the cheques are issued towards future payments and the same being disputed or the settlement is withdrawn, then in that event, the cheques issued would be squarely for security purpose and there is no legally recoverable debt to which the cheques were issued and in such event, the provision of 138 of N.I. Act does not attract and accused No.2 cannot be convicted. However, the courts below have ignored these factual aspects.

9d. It is contended that the courts below have failed to take note of the fact that the complainant is an unregistered partnership firm and there is prohibition under Section 69(2)

of the Indian Partnership Act to institute any proceedings including that of complaint under Section 138 of N.I. Act.

9e. Further, the complaint filed by the partner of an unregistered partnership firm is not maintainable and is barred under law.

9f. The Trial Court and the First Appellate Court have failed to take note of the admissions made by the complainant in his cross-examination, where the accused was able to elicit the truth from the mouth of the complainant. Further, the complainant has admitted regarding receipt of Exs.D1 to D4, namely, the letter addressed to the complainant by the accused and the demand made by the accused not to present the cheques and having informed the bankers for stop payment of the said cheques. The complainant, in spite of the said knowledge, had presented the cheques when there was dispute between the complainant and the accused. On all these grounds, learned counsel prayed to allow the revision petition.

10. Per contra, learned counsel for the respondent Sri Praveen C., vehemently contended that there was transaction between the complainant and the accused

and the complainant had supplied goods to accused No.1 company, accused No.2 is none other than authorized officer of accused No.1 company and therefore, the question of non-joinder of other persons would not arise.

11. In Ex.P25 dated 21.02.2018, accused No.2 has clearly admitted that he has answered to the legal notice issued by the complainant. In fact, the accused No.1 company had issued the cheques on different dates in respect of supply of goods. As none of the directors came forward to reply to the legal notice, accused No.2, the authorized officer, issued the reply. Hence, issuance of cheques and signature found in the cheques is admitted by the accused persons.

12. In so far as Section 69(2) of the Indian Partnership Act, 1932, is concerned, in fact, filing of a lawsuit is barred under Section 69(2) of Partnership Act, whereas complaint under Section 138 of Negotiable Instruments Act is maintainable. In fact, there are concurrent findings of the Trial Court and the First Appellate Court. Thus, there is no error on the face of the record in the findings of the courts below. Hence, learned counsel prayed to dismiss the revision petition.

13. In the light of the submissions made by the learned counsel for the revision petitioner, perusal of the judgments of the Trial Court and First Appellate Court and the materials available on record, the following points arise for consideration by this Court:

1. Whether the revision petitioner has proved that there is an apparent error on the face of the record in the judgments of the Trial Court as well as the First Appellate Court in convicting the accused for the offence punishable under Section 138 of Negotiable Instruments Act?
2. Whether the judgment of conviction and order on sentence passed by the Trial Court as well as the First Appellate Court are perverse and calls for interference by this Court?

14. Admittedly, the complainant filed a private complaint under Section 200 of Cr.P.C. against the accused for the offence punishable under Section 138 of N.I. Act.

15. Before delving into the contentions of the parties and appreciation of facts, the Court wished to underline the

aims and objectives of Chapter XVII (Sections 138 to 148) of NI Act, which was inserted by Act No.66 of 1988 with effect from 01.04.1989. The scope and intent of bringing the said Chapter in the statute is to inculcate faith in the efficiency of banking operations and credibility in transacting business on negotiable instruments. It is to enhance the acceptability of cheque in settlement of liabilities by making the drawer liable for penalties in case of dishonor of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. This chapter has been introduced to prevent dishonesty on the part of the drawer of Negotiable instruments to draw a cheque without sufficient funds in the account maintained by him in the bank and induce the payee or holder in due course to act upon it. In other words, these provisions have been introduced to give greater credibility to the Trade, Business, Commerce and Industry, which is absolutely imperative in view of the growing international trade and business. In this regard, it would be appropriate to rely on the judgment of Hon'ble Apex Court in ***Dalmia Cement (Bharat) Ltd. vs. M/s. Galaxy Traders and Agencies Ltd. and Ors.*** reported in **(2001) 6 SCC 463.**

16. Section 138 of NI Act aims to enhance the acceptability of cheque in settlement of liabilities and by making the drawer liable for penalties in case where cheques are dishonoured due to insufficient arrangements made by the drawer. Section 138 of NI Act is extracted as hereunder:-

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

- (a) 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;*
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the*

cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

17. Section 138 of NI Act, which is a penal provision, provides that wherever any cheque is drawn by a person for discharge of any liability is returned by the bank unpaid for the reason of insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque which is a banker for that account, the drawer of such cheque shall be deemed to have committed an offence. In such circumstances, the drawer shall without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

18. At this juncture, it is pertinent to highlight the key ingredients as highlighted by the Hon'ble Apex Court in the case of ***Kusum Ingots and Alloys Ltd. vs. Pennar Peterson Securities Ltd.*** reported in **(2000) 2 SCC 745**, wherein at paragraph Nos.10 and 11, the Hon'ble Apex Court held as under:-

10. "On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

- (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
- (ii) that 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;*
- (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*
- (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said 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;*
- (v) 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.*

11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability."

19. The ingredients of the offence under Section 138 are as follows:-.

- i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.
- ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.
- iii. Presentation of cheque to the bank within the period of 6 months or within the period of its validity.
- iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.
- v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in a regard to the return of the cheque.
- vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.
- vii. Filing of the complaint within a month from the date of expiry of the grace period of 15 days before a magistrate or a judicial magistrate not below the first class.

20. At this juncture, the Court finds it appropriate to deal with certain presumptions that flow from the NI Act with

respect to cheques drawn in favour of the payee or the holder in due course. Section 118 of the NI Act provides for certain special rules of evidence. The said provision is extracted as hereunder:-

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.

21. Section 118 lays down certain special rules of evidence relating to presumptions akin to Section 114 of Indian Evidence Act, 1874(Section 119 of Bharatiya Saksha Adhiniyam, 2023). The rationale behind these presumptions is that negotiable instruments such as cheque are passed from hand to hand on endorsement and therefore it would make trading very difficult and negotiability of Instruments impossible, unless certain presumptions are made. Section 118(a) of NI Act provides presumption to be raised until the contrary is proved. Under Section 118 of the NI Act, until the contrary is proved, presumption shall be made that every negotiable instrument was made for a consideration. Once there is admission that the execution of a cheque or the same is proved to have been executed, the presumption under Section 118 is raised that it is supported by consideration.

22. Similar presumptions are made in the sub clauses(b) to (g) of Section 118.

23. Presumption under Section 118(b) relates to the date on which negotiable instruments were and statutory presumption is that, the said instrument was drawn or made on such date, unless the contrary is proven with regard to the time of acceptance, it is presumed that Section 118(c) of the NI Act that every bill of exchange including bill of exchange payable on demand was accepted within a reasonable time after its issue and before its maturity until the contrary is proven. Similar is the presumption under Sections 11(d), (e) and (f) relating to the time of transfer, order of indorsement and due stamping of a lost negotiable instrument respectively. Lastly, the statutory presumption under Section 118(g) is that every holder of a negotiable instrument shall be considered as a holder in due course i.e., he is presumed to have paid the consideration for the instrument and in good faith.

24. Now coming to Section 139 of NI Act, the said section raises the presumption that unless the contra is proved, it shall be presumed that the holder of the cheque had

received the cheque for the discharge, in whole or in part, of any debt or other liability.

25. Section 139 of NI Act is extracted as hereunder:-

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

26. Now, coming to the facts of the present case, upon perusal of the documents and material on record, it is evident that the accused has admitted his signature on the cheques as a drawer and therefore the complainant becomes the holder in due course. The records further reveal that it is the case of the complainant that the complainant is a firm dealing with medical supplies of all kinds of drugs, surgical and life-saving drugs, to the respective clients. Accused no.1 company is the client of the complainant. During the course of business with the complainant, the accused had issued in all 18 cheques in favour of the complainant and on presentation of the cheques, same were dishonored with the reason 'funds insufficient' and thus the same was intimated to the accused, but the accused issued evasive reply, however not paid any amount due under

the cheques. Upon admission of the execution of impugned cheques, the Court is required to invoke the statutory presumption with reference to Sections 118 and 139 of NI Act, until the contrary is proven i.e., the said cheques were drawn and issued for a consideration. It also has to be presumed, unless the contrary is proven, that the cheques were bearing the same date on which it was drawn or made, that the holder of the said cheques was the holder in due course and had received the said cheques for discharge of whole or a part of any debt or liability. Since the signature on the cheques has not been disputed as that of the accused, that is, the drawer, the presumption under Section 118 and Section 139 have to be invoked against the accused so as to make the accused liable under Section 138 of NI Act.

27. Once the rigours of Section 138 are satisfied, the onus of proof shifts upon the accused to prove his defence with cogent evidence, so as to demonstrate how the offence under the said section is not made out.

28. Upon perusal of the submissions and arguments advanced by the learned counsel for the accused in defence, it appears that, the defence of accused No.2 is that complaint

under Section 138 Act is not maintainable in view of Section 69 of the Indian Partnership Act. PW.1 in his evidence admitted that the complainant firm is an unregistered partnership firm and in view of the admitted fact, the Court proceeded to examine the contention of the accused. Hence it is just and necessary to analyze Section 69 of The Indian Partnership Act, 1932, which reads as under:-

69. Effect of non-registration.—

(1)"No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2)No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3)The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

- (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
- (b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply,—

- (a) to firms or to partners in firms which have no place of business in [the territories to which this Act extends], or whose places of business in [the said territories], are situated in areas to which, by notification under section 56, this Chapter does not apply, or
- (b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

29. The perusal of the aforesaid provision makes it clear that the bar contained in Section 69(2) of the Partnership Act applies only in the respect of suits and are not applicable to the proceedings initiated under Section 138 of Negotiable Instruments Act. The Coordinate bench of this Court in case of **Ajmera Housing Corporation, Bengaluru vs. Ramachandra** reported in **2019 (3), Karnataka Law Journal 362**, wherein it opined that unregistered partnership firm also can maintain a complaint under Section 200 of CrPC for the offence punishable under Section 138 of Negotiable Instruments Act. Further, in the case of **Bhavani Agencies vs. GC Colour Lab, Bengaluru**, reported in **(2004) 1 KLJI**

421, the Co-ordinate Bench held that the bar created for maintaining a suit in Section 69 of the Partnership Act by an unregistered firm cannot be stretched and applied to maintain a criminal proceedings under Section 138 of N.I.Act and therefore, non-registration of partnership firm, is not a bar to prosecute the accused under Section 138 of NI Act, as the bar is only for initiation of civil suit and not the criminal proceedings. Therefore, there is no merit in the contention of the counsel for the revision petitioner insofar as non applicability of Section 69 of Partnership Act is concerned.

30. Learned counsel for the accused/petitioner further contended that in view of the bar under Section 14 of the Insolvency and Bankruptcy Code, 2016(for short 'IBC'), initiation and continuation of proceedings before the appellate court for recovery of money is not maintainable. The counsel also contended that Section 14 of IBC creates a bar for the continuation of the proceedings.

31. The Hon'ble Apex Court in the case of **P Mohanraj and others v Shah brothers ISPAT Pvt. Ltd.** reported in **2021 SCC Online SC 152**, wherein the Hon'ble Apex Court held that the Corporate debtor would be covered by the

moratorium provision contained in Section 14 of IBC, by which, continuation of Section 138/141 of N.I. Act proceedings against the said debtor during the corporate insolvency regulation process are interdicted. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceedings to continue or to be instituted against the corporate debtor. Therefore, for the period of moratorium, since no section under Section 138/141 proceedings can continue or be initiated against the corporate debtor because of statutory bar, but such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of N.I. Act. Therefore, the moratorium provision contained in Section 14 of Insolvency and Bankruptcy Code would apply only to corporate debtor, the natural persons mentioned in Section 141, continuing to be statutorily liable under Chapter XVII of Negotiable Instruments Act.

32. Whereas, in the instant case, the issuance of cheques is not at all disputed by the company and accused No.2 in favour of the complainant and thus Section 114(1) and 141(2) of N.I. Act provides for prosecution of Director of the company and also Manager, Secretary or other officer of the company. The perusal of Ex.P25 clearly demonstrated that

accused No.2 was working as Director(Operations) in the accused company and he is the authorised signatory representing the accused company. In his statement recorded under Section 313 CrPC, accused No.2 clearly admitted the issues of cheques at Exs.P5 to Ex.P22, on behalf of accused No.1 in favour of the complainant. Therefore, initiation of proceedings before the NCLAT and appointment of resolution professional under IBC is not a legal embargo to prosecute accused No.2.

33. Learned counsel further has taken the contention that an operational creditor has initiated Corporate Insolvency Resolution Proceedings (CIRP) before the NCLT, Division Bench-I, Chennai, under Section 9 of IBC, and in pursuance to the same, the NCLT has appointed one Mr. V. Mahesh as Interim Resolution Professional (IRP) and he has taken over the management of the company in the year 2017 and as such, the petitioner having signed on the cheques in 2018 does not arise. In this regard, learned counsel for the petitioner relied upon the decision in the case of **Vishnoo Mittal vs M/s Shakti Trading Company** in Special Leave Petition(Crl) No.1104 of 2022((2025) 9 SCC 417) disposed on

17.03.2025, wherein the Hon'ble Apex Court at paragraph

Nos.12 and 13 held as under:-

12. *"There is another aspect to this matter. In the present case, on 25.07.2018, the moratorium was imposed and management of the corporate debtor was taken over by the interim resolution professional as per Section 17 of the IBC. Here, we would also like to reproduce extracts from Section 17 of the IBC which are as follows:*

"17. Management of affairs of corporate debtor by interim resolution professional.—

(1) From the date of appointment of the interim resolution professional—

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the Board of Directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

*(c)****

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional."

13. *The bare reading of the above provision shows that the appellant did not have the capacity to fulfil the demand raised by the respondent by way of the notice issued under clause (c) of the proviso to Section 138 NI Act. When the notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from his position as the Director of the corporate debtor as soon as IRP was appointed on 25-7-2018. Therefore, the powers vested with the Board of Directors were to be exercised by the IRP in accordance with the provisions of IBC. All the*

bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the appellant to repay the amount in light of Section 17 IBC."

34. In **Vishnoo Mittal's** case, the said case was arising out of a petition filed under Section 482 of CrPC seeking quashing of proceedings initiated under Section 138 of N.I.Act against the accused in that case. Whereas the present criminal revision is arising out of concurrent findings of the trial court and the first appellate court. Further the proceedings i.e., the liability of accused No.1 company and accused No.2 can continue against the erstwhile directors/persons in-charge of and responsible for the conduct of the business of the company in view of the ratio laid down in **P.Mohanraj case** cited supra.

35. Therefore in the present case, the accused have not discharged the burden cast upon them regarding the non-existence of consideration either by direct evidence or by probable evidence as to show that the existence of consideration was improbable, doubtful or illegal. The accused have not produced any kind of evidence to show that the existence of consideration was improbable, doubtful or illegal. Therefore, the trial Court as well as the first appellate court

have drawn the presumption that the cheques were issued towards a legally enforceable debt. Whether the accused issued the cheques for repayment of the loan, as security, or towards discharge of the current transaction, it makes no difference under Section 138 of NI Act and the legal consequence is the same without any distinction.

36. The present revision petition has been filed by the petitioner/accused No.2 challenging the concurrent findings of the trial court as well as first appellate court.

37. The scope of revision refers to the limited authority of a higher court to review the judgment of the trial Court and the first appellate court, focusing on correcting errors of judgment or gross legal or 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, and not to function as an automatic second appeal. The specific grounds and the limitations vary between civil and criminal proceedings. Revision can address situations where the decision is grossly erroneous, not supported by evidence, or where relevant evidence has been ignored. Therefore, the revision is not a fresh trial and there is a bar on re-examining

the evidence and substituting the revision court's own findings for those recorded by the courts' below.

38. 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 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."

39. 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 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."

40. 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."

41. Therefore, the revisional jurisdiction should 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.

42. In the present case, the trial Court as well as the first appellate court considering the oral and documentary evidence on record and the peculiar facts and circumstances of the case, have convicted the petitioner for the offence

punishable under Section 138 of NI Act, which does not require any interference by this Court. Therefore, the criminal revision petition filed by the petitioner/accused No.2 is liable to be dismissed.

Hence, I proceed to pass the following:-

ORDER

1. The criminal revision petition is ***dismissed***.

Pending IAs, if any, stands disposed of.

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

MN/-