IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 64 OF 2024

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

BETWEEN:

1. SMT. S.G.SHANTHAKUMARI
   AGED ABOUT 62 YEARS,
   W/O SHANTAKUMAR
   R/AT NO.672, 7TH CROSS,
   9TH MAIN ROAD, K.N.LAYOUT,
   YESHWANTHAPUR, BENGALURU - 560 022
   SENIOR CITIZEN IS NOT CLAIMED

...PETITIONER

(BY SRI.MALLIKARJUN.N.K, ADVOCATE FOR
SRI. SAMPATH A.,ADVOCATE)

AND:

1. SRI.S. GANGAPPA
   S/O D SHIVANNA,
   AGED 55 YEARS,
   C/O JADIYAPPA, 1ST MAIN ROAD, 7TH CROSS,
   GAYATHRINAGAR,
   BENGALURU - 560021

...RESPONDENT

(BY SRI. R B SADASIVAPPA.,ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO A. SET ASIDE THE JUDGMENT DATED 02.11.2023 PASSED IN CRL.A.NO.180/2022 BY THE LEARNED LII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE BENGALURU (CCH-53) AND ETC.,

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THIS PETITION HAVING BEEN HEARD AND RESERVED ON 16.11.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

This is the petition filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1973 (in short, Cr.P.C.) by the revision petitioner/accused, challenging the judgment of conviction and order of sentence dated 12.11.2021 in C.C.No.3411/2019 on the file of the XII Additional ACMM, (SCCH-8), Bengaluru, (in short, 'the trial Court') which is confirmed in the judgment of appeal dated 02.11.2023 passed in Criminal Appeal No.180/2022 on the file of LII Additional City Civil and Sessions Judge, Bengaluru (CCH-53) (in short, 'the appellate Court').

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

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3. The case of the complainant before the trial Court is that on 14.08.2018 on ₹50/- stamp paper in presence of two attesters, the accused has handed over the cheque dated 20.05.2019 for a sum of ₹6,00,000/- to the complainant; the complainant has presented the same for encashment on 20.05.2019; it was dishonoured with an endorsement 'funds insufficient' dated 22.05.2019; then the complainant has issued legal notice dated 01.06.2019 through his advocate to the accused and it is served on her on 10.06.2019; the accused has not given reply to said notice and not repaid the cheque amount. Hence, the complainant has filed the complaint before the trial Court on 26.06.2019.

4. After recording the sworn statement of the complainant, the trial Court has taken cognizance of the offence and registered the case against accused and then issued summons to her.

5. The accused appeared through her counsel and pleaded not guilty of the offence when the accusation levelled against her was read over and explained to her.

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6. Afterwards, the complainant let in his evidence. The accused has denied the case of the complainant in *toto* in her statement recorded under Section 313 of Cr.P.C.

7. After hearing arguments of the complainant; as sufficient time was given to the accused, she has not submitted arguments and then the trial Court convicted the accused of the offence punishable under Section 138 of Negotiable Instruments Act (in short, 'the N.I.Act'), sentencing her to pay a fine of ₹6,55,000/-; out of this ₹6,50,000/- shall be payable as compensation to the complainant and ₹5,000/- shall be defrayed to the State expenses.

8. Aggrieved by the said judgment of conviction, the revision petitioner has preferred the appeal wherein the appellate Court after hearing has dismissed the appeal by confirming the judgment of the trial Court.

9. Aggrieved by the same, the revision petitioner is before this Court.

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10. Heard arguments of both sides.

11. The learned counsel Sri Mallikarjun N.K. appearing for the learned counsel Sri A. Sampath for the revision petitioner would submit that the trial Court has not given sufficient opportunity to the accused to cross-examine the complainant. The judgment was passed during exigency of COVID-19 pandemic. Even though the accused was present, his counsel was absent for completion of the cross-examination of the complainant. No opportunity was given to the accused to lead his defence evidence. Furthermore, while issuing legal notice, the cheque number was not mentioned in the notice. Hence, the notice was defective in nature.

12. In this regard, he places reliance on the judgments of the Hon'ble Apex Court in ***S.N. Vijayalakshmi & others v/s State of Karnataka & another***[1] and ***Priyanka Srivastava & Another v/s State of Uttar Pradesh & Others***[2] and High Court of

[1] 2025 SCC OnLine SC 1575
[2] (2015) 6 SCC 287

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Gauhati in ***Dhiraj Sarma v/s Kakil Namasudra***[3]***.*** Hence, prayed for allowing the revision petition and to acquit the accused.

13. The learned counsel for the respondent Sri R.B. Sadasivappa would submit that there is concurrent finding of trial Court and appellate Court that the accused has committed the offence. The accused has not given reply to the notice and not let in defence evidence and not rebutted the presumption available in favour of the complainant. Almost 20 hearing dates were taken by the accused to cross-examine the complainant; on one or the other pretext, he has taken adjournments. These facts were considered by the trial Court and also the appellate Court. The jurisdiction of this revision Court is very limited. In this regard, he places reliance on the judgment of co-ordinate bench in ***Latha B.M. v/s N. Nageshand and others***[4]***; Ganesh Traders & Another v/s M/s.Tegginamani Sales Corporation***[5] and ***Syed Wajid***

[3] 2026 SCC Online Gau 3205
[4] 2026 (3) KAR.L.R.561
[5] 2025 (4) Kar.L.R.SN 27

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v/s Mujeeb Abdul Matheen[6]. Hence, prayed for dismissal of the revision petition.

14. 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 petitioner establishes perversity or grossly erroneousness 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 ?"*

15. The finding of this Court on above point is in '***Negative'*** for the following:

REASONS

16. 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

[6] 2026 (2) Kar.L.R.455

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Kuntegowda v/s Thurubaiah in Criminal Appeal No.3654/2026, (Arising out of Special Leave Petition (Criminal) No.2247 of 2024 dated 04.08.2026 reported in ***2026 SCC OnLine SC 1485***. 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 High Court went into great detail into each of the testimonies, documents and merits of the case which*

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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*

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to gross miscarriage of justice. 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."

17. Thus, only if the judgment of the trial Court confirmed by appellate Court is *perverse* or grossly erroneous, or grossly unreasonable, or wholly unreliable, or wholly untenable, or the trial Court considered an immaterial or irrelevant, material or no material or not at

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all relevant material or judicial discretion has been exercised arbitrarily and capriciously, the revisional Court can interfere with such judgment.

18. The alleged offence in this case is the offence under Section 138 of N.I. Act; to attract the offence under Section 138 of N.I. Act, the complainant has to satisfy the following ingredients:

(i) that there exists legally enforceable debt;

(ii) that the cheque was drawn from the account of bank of the accused 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 amount of money by giving a notice in writing to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

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(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;

(vii) Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

19. If the aforementioned clause (iii) to (vii) 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 N.I. Act. There is also statutory presumption under Section 139 of N.I. Act that there exists legally recoverable debt and the cheque is issued for recovery of legally recoverable debt either wholly or in part. But the presumptions available under Section 118 and 139 of the N.I. Act are rebuttable presumptions.

20. With this background, the facts of the present case are to be analysed and to verify whether the trial Court and the appellate Court have not examined the

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records produced by either party or erroneously appreciated the evidence.

21. The case presented before the trial Court establishes that the cheque in question is dated 20.05.2019, presented for encashment on the same day for a sum of ₹6,00,000/- and it was returned dishonoured with an endorsement dated 22.05.2019 as per Ex.P.2, stating 'funds insufficient'; the complainant through his advocate has issued legal notice dated 01.06.2019 as per Ex.P.3; it was served on the accused on 04.06.2019; no reply is given and then the complaint is filed on 26.06.2019. The complainant has also placed reliance on the loan agreement between the complainant and the accused as per Ex.P.7.

22. The accused has not disputed the cheque issued from her bank account and it bears his signature. Under these circumstances, the presumptions in favour of the complainant is to be drawn as the clause Nos.(iii) to (vii) mentioned above of the ingredients of Section 138 of NI

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Act are fulfilled. However, the accused can rebut these presumptions.

23. When the complainant establishes the aforesaid facts, then the presumption will be in favour of the complainant under Sections 118 and 139 of NI Act that the cheque was issued for consideration; it was issued on the date mentioned in it; there exists legally recoverable debt or liability and to discharge the said liability either in part or in whole, the subject cheque was issued. However, these presumptions are rebuttable in nature.

24. The learned counsel for the accused would vehemently submit his arguments that the cheque number is not mentioned in the legal notice and thus, the legal notice itself is defective in nature and thus, the presumption cannot be drawn in favour of the complainant.

25. In this regard, in ***Dhiraj Sarma's***[7] case cited supra at paragraph Nos.29, 31, 32 and 33 held as follows:

> *"29. It is seen that there is no dispute in regards to the cheque issued by the respondent and*

[7] 2026 SCC Online Gau 3205

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signature available in the cheque is also not disputed by the respondent. But the case of the respondent is that he had taken a loan of Rs.1,00,000 which has already been repaid by him and to substantiate the fact, he exhibited the bank statement and the money receipt as Exts. 1 and 2 at the time of adducing evidence stating that 3/4 blank cheques were issued by him and there is no existing debt or liability for any subsequent cheque or amount which has been claimed by the present appellant.

"31. Now the signature in the cheque in question as well as receipt of demand notice from the appellant is not disputed. But the only issue raised in this case is that while issuing the demand notice, the cheque number was not mentioned and demand was made for cheque dated 5-4-2014 wherein there was no existing liability. However, it is the case of the appellant that coming to know about the inadvertent typographical mistake they have corrected the demand notice at the time of filing the case, but that was not considered by the learned trial court.

32. There may be typographical error while typing the date of the cheque as 5-4-2014 instead of 5-4-2017, but it could have been corrected or could have been taken into consideration if the proper cheque number would have mentioned in the demand notice whereby Rs.6,00,000 was demanded by the appellant.

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33. Thus, it is seen that though an amount of Rs.6,00,000 was demanded through the demand notice, but the demand notice could not considered as there was no mention of cheque number which is the most essential part of the demand notice and at the same time the date of the cheque is also mentioned as 5-4-2014 instead of correct date of cheque i.e. 5-4-2017. Thus, in that aspect it cannot be considered as a proper legal demand notice for the cheque amount of Rs.6,00,000 dated 5-4-2017. It is also the case of the appellant that they have come to know about their typographical mistake, but without making any correction the case has already been instituted and also did not take any course for filing a fresh demand notice to the respondent demanding the cheque amount dated 5-4-2017. So for non-mentioning of any cheque number as well as incorrect date of cheque mentioned in the demand notice it cannot be considered as a legal demand notice as required under Section 138 of N.I. Act which clearly states in proviso (b) that the holder of cheque should make a demand for payment of an amount to the drawer of the cheque and it is an admitted fact that the demand notice which was sent, did not bear the cheque number and the date of the cheque is also incorrect to understand the exact transaction against which such demand is made."

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26. In the aforesaid case, 3-4 cheques were issued by the accused and one of them was the subject cheque; furthermore, the date of cheque was wrongly mentioned in the legal notice and the cheque number was also not mentioned. The coupled reading of all the above, i.e., wrong mentioning of the date of cheque in the legal notice which is not corrected by issuing corrigendum and by not mentioning the cheque number and even as 3-4 cheques were issued, the High Court of Guwahati held as above. However, that is not the situation in the present case. Only cheque number is not mentioned in the legal notice.

27. In ***Priyanka Srivastava's***[8] case cited supra at paragraph Nos.30 and 31 held as follows:

> *"30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can*

[8] (2015) 6 SCC 287

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make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31.We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are

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compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

28. In ***S.N.Vijayalakshmi's***[9] case cited supra at paragraph No.45 held as follows:

"45. The High Court has taken a view that this is a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under Section 156(3) of the CrPC, the required formalities were done. In our considered opinion, this approach cannot be labelled erroneous. The requirement under Priyanka Srivastava (supra) is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement could not be said to be a mere formality. One of us (Sudhanshu Dhulia, J.) as a Single Judge of the Uttarakhand High Court, in Sachin Chamoli v State of Uttarakhand, 2016 (3) NCC 68, where no affidavit had been filed, held that filing of affidavit was a mandatory requirement as per Priyanka Srivastava (supra). In

[9] 2025 SCC OnLine SC 1575

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Babu Venkatesh v State of Karnataka, (2022) 5 SCC 639, this Court held that the Magistrate concerned should not have entertained the complaint/ application under Section 156(3) of the CrPC therein, as it was not supported by an affidavit. In the case at hand, before the ACMM passed the referral order, the complaint was backed by an affidavit. In Ramesh Kumar Bung v State of Telangana, 2024 SCC OnLine SC 264, the Court, while stating that the directions in Priyanka Srivastava (supra) are mandatory, declined to interfere with the order(s) impugned therein, but noted that the informant had filed the affidavit belatedly. To complete the discussion on this aspect of the law, we may also refer to our judgment in Kanishk Sinha v State of West Bengal, 2025 SCC OnLine SC 443 where, speaking through Sudhanshu Dhulia, J., this Court upheld an order of the Calcutta High Court, to the effect that the direction in Priyanka Srivastava (supra) to file the affidavit, was prospective in nature. Therefore, if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law exposited in Priyanka Srivastava (supra). We sum up our conclusions on this score as follows: (i) Directions issued in Priyanka Srivastava (supra) are mandatory; (ii) Guidelines laid down in Priyanka Srivastava (supra) operate prospectively; (iii) Non-filing of the

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supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with Priyanka Srivastava (supra)."

29. The present case is registered based on the cognizance taken in the private complaint filed before the JMFC and not the case referred to police for investigation. Hence, the facts and circumstances of the present case are entirely different and those judgments are not relevant to decide the present case.

30. On careful perusal of the legal notice issued on behalf of the complainant, the bank account of the complainant and the bank account of the accused are mentioned, the amount of the cheque is also mentioned as ₹6,00,000/-. It is also mentioned that the accused has issued the said cheque and it was dishonoured with an endorsement 'funds insufficient'. The accused was called

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upon to pay the cheque amount of ₹6,00,000/- within 15 days from the date of receipt of the legal notice.

31. The date of cheque, bank account of the complainant and the accused from which the subject cheque was issued are categorically mentioned in the legal notice. Only the cheque number is not mentioned. If there is series of transactions between the complainant and the accused and if the accused could not able to testify for which transaction the aforesaid cheque was issued; then the issuance of legal notice by the complainant could be termed as vague and defective. However, that is not the situation in the present case. Further, that contention was not taken by the accused while cross-examining the complainant. Hence, it cannot be said that the legal notice is defective in nature and it would rebut the presumption in favour of the complainant.

32. The complainant has relied upon not only the cheque, its endorsement, legal notice, postal acknowledgement, but also places reliance on Ex.P.7-the

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loan agreement between the complainant and the accused which was executed on 14.08.2018, wherein the subject cheque number and the amount of the subject cheque etc., are categorically mentioned. This is duly signed by the complainant and the accused with two attesters.

33. These documents are not at all disputed by the accused.

34. The only question to be decided is whether sufficient opportunity was not given to the accused to lead his evidence. In this regard, the accused when pleaded not guilty of the offence has stated that he had kept two cheques in her car box and they were misused. However, this fact is not at all substantiated by leading evidence or by cross-examining the complainant completely.

35. At Paragraph No.16 of the judgment of trial Court, it has stated in detail that how many opportunities were given to the accused to cross-examine the complainant; for how many years, the accused dragged the matter. The appellate Court has also made an

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observation on all these facts in paragraph No.26 of its judgment.

36. Thus, considering these aspects that sufficient opportunity was given to the accused but he has not utilized them, rightly the trial Court and appellate Court have come to the right conclusion.

37. Even the accused kept mum, when she received the legal notice; she failed to cross-examine the complainant and lead defence evidence. Only one sentence of cross-examination was done by the accused wherein she has elicited nothing to rebut the presumptions in favour of the complainant.

38. Considering all these aspects, rightly the trial Court convicted the accused which is confirmed by the appellate Court, which requires no interference.

39. As far as imposition of sentence is concerned, the trial Court has imposed only ₹6,55,000/-; out of which, ₹6,50,000/- shall be payable to the complainant as compensation, which is not exorbitant. The transaction is of the year 2018; the cheque was dishonoured and the

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complaint was lodged in the year 2019, and 7 years lapsed from the date of transaction. Hence, the imposition of sentence by the trial Court is also not exorbitant and not requires any interference.

40. Hence, this Court passes the following:

ORDER

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

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(GEETHA K.B.)
JUDGE

SPV