HC-KAR

NC: 2026:KHC:59786
CRL.RP No. 86 of 2024

CNR: KAHC010022052024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 86 OF 2024

BETWEEN:

MR. BHASKAR SALIAN,
S/O LATE HONNAYYA SUVARNA,
AGED ABOUT 47 YEARS,
R/AT PINTO COMPOUND,
NEAR MODERN RICE MILL,
URVA, MANGALORE - 575 006.

...PETITIONER

(BY SRI SACHIN B S, ADVOCATE)

AND:

SHAWN PETER D'SOUZA,
S/O LATE STANY D'SOUZA,
AGED ABOUT 43 YEARS,
R/AT MATADAKANI ROAD,
BOKKAPATNA, BOLOOR,
MANGALURU, D.K - 575 003.

...RESPONDENT

(BY SRI KETHAN KUMAR, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE IMPUGNED JUDGMENT DATED 16.10.2023 IN CRL.A.NO.14/2023 ON THE FILE OF THE II

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ADDITIONAL DISTRICT AND SESSIONS JUDGE MANGALURU D.K., THEREBY DISMISSING THE APPEAL FILED BY THE PETITIONER AND CONFIRMING THE JUDGMENT OF CONVICTION AND SENTENCE DATED 09.12.2022 IN C.C.NO.19/2017 ON THE FILE OF THE JMFC (V COURT) MANGALURU D.K, FOR THE OFFENCE P/U/S.138 OF NI ACT AND CONSEQUENTLY ALLOW CRIMINAL APPEAL NO.14/2023 FILED BY THE PETITIONER AS PRAYED FOR.

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

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

ORAL ORDER

1. This is the revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C') challenging the Judgment of the conviction and order of sentence dated 09.12.2022 in CC No.19/2017 on the file of JMFC V Court, Mangaluru, Dakshina Kannada (in short, 'the trial Court') confirmed in the Criminal appeal No.14/2023 dated 16.10.2023 on the file of II Addl. District and Sessions

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Judge, Dakshina Kannada, Mangaluru (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.

3. The complainant has filed the complaint under Section 200 Cr.P.C., before the trial Court praying for taking cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act, 1988 (in short, 'NI Act') against the accused.

4. The case of the complainant in nutshell is that the complainant was tenant under the accused and the lease agreement dated 15.06.2015 was executed between the parties for a period of 11 months wherein the complainant has given an lease amount of ₹3,00,000/- to the accused, which ought to have been returned to the complainant at the time of vacating the premises. The said amount was only the security deposit. The complainant

has vacated the house earlier and the complainant requested to reimburse the lease amount; on 07.03.2016 the accused has paid ₹1,00,000/- by only way of cash to the complainant agreeing to pay the balance amount of ₹2,00,000/- and issued the post dated 14.03.2016 cheque bearing No.008571 drawn on Axis Bank Ltd., Urva, Mangaluru for said balance amount; when the same was presented for encashment, it was returned with an endorsement 'funds insufficient' on 16.05.2016; then the complainant got issued legal notice dated 14.06.2016 to the accused, which was served on him on 15.06.2016, but the accused failed to pay the amount. Hence, the complainant has presented the complaint on 26.07.2016.

5. After recording the sworn statement, the cognizance of the offence was taken by the trial court by registering the case and then issued summons to the accused.

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6. After service of summons, the accused appeared before the trial Court, till date not pleaded guilty of the offence, when the accusation leveled against him was read over and explained to him.

7. Afterwards, the statement of the accused under Section 313 Cr.P.C., was recorded; then the complainant was cross-examined and the accused has also let in defence evidence.

8. After hearing arguments of both sides, the trial Court concluded that the accused has committed the offence punishable under Section 138 of NI Act and sentenced him to pay a fine for a sum of ₹2,53,000/-; out of which ₹2,50,000/- shall be payable to the complainant as compensation and remaining ₹3,000/- shall be payable towards expenses of the State.

9. Aggrieved by the said Judgment of the trial Court, the accused has preferred the appeal before the appellate Court.

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10. After hearing arguments of both sides, the appellate Court has dismissed the appeal by confirming the Judgment of conviction and order of sentence.

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

12. Heard arguments of both sides.

13. The learned counsel for the revision petitioner Sri Sachin B.S, would submit that the accused has repaid ₹2,00,000/- through cash to the complainant, which is not appreciated by the trial Court and the appellate Court. Further, the accused cannot be compelled to pay the State expenses as only the private parties are involved and said machinery is not involved in this case. Hence, prays for allowing the revision petition.

14. The learned counsel for the respondent Sri Kethan Kumar, would submit that the issuance of cheque by putting signature by the accused is not disputed

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by the accused. He had taken only defence that he paid the entire lease amount through cash to the complainant.

15. The learned counsel for the complainant would further submit that the total lease amount was ₹3,00,000/-; only ₹1,00,000/- was paid through cash which is endorsed in the lease agreement as per Ex.P.8 and the balance amount of ₹2,00,000/- was not paid by the accused. The accused has not given reply to the legal notice and not stepped into the witness box to prove his contention. Hence, the trial Court rightly convicted the accused, which is confirmed by the appellate Court. Hence, prays for dismissal of the revision petition.

16. 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 establish 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 ?"

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

REASONS

18. 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 ***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.

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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 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 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...."*

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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."

19. Thus, only if the judgment of the trial Court confirmed by appellate Court is perverse or grossly erroneous, are grossly unreasonable, or wholly unreliable, or wholly untenable, or the trial Court considered an immaterial or irrelevant, material or no material or not at all relevant material or judicial discretion has been exercised arbitrarily and capriciously, the revisional Court can interfere with such judgment.

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20. The alleged offence in this case is the offence under Section 138 of NI Act; to attract the offence under Section 138 of NI 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;

(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;

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(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.

21. If the aforementioned 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 NI Act. But the presumptions available under Section 118 and 139 of the NI Act are rebuttable presumptions.

22. The facts which are established by the complainant before the trial Court are that the Ex.P.1 - cheque dated 14.03.2016; it was presented for encashment on 13.05.2016 and it was dishonoured on 16.05.2016 with an endorsement 'funds insufficient'; then as per legal notice dated 14.06.2016 the complainant has issued the legal notice to the accused, which is served on him on 15.06.2016, but the accused failed to repay the cheque amount and not given reply. Hence, the

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complainant has presented the complaint on 26.07.2016. The signature of the accused in the cheque and cheque issued from his bank account are not disputed. Hence, the complainant has established clause Nos.(iii) to (vii) of the ingredients of Section 138 of NI Act.

23. When the complainant establishes the aforesaid clauses, then the statutory presumptions available in favour of the complainant under Section 139 of NI Act are that there exists legally recoverable debt or liability and towards discharge of the whole or in part of the debt or liability, the subject cheque was issued by the accused to the complainant either in whole or in part. The presumption under Section 118(a) of NI Act is that the cheque issued for consideration and Section 118(b) is that the cheque bears the date of which it was issued.

24. These are the rebuttable presumptions. The accused can rebut these presumptions either by giving reply to the legal notice or by cross-examining the

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complainant or by leading defence evidence or by all the three ways. In this case, the accused has only cross-examined the complainant, but not given reply to legal notice and not stepped into the witness box.

25. In the cross-examination, the suggestion was put to the complainant that the cheque issued towards security was misused and a false case was registered, which is denied by the complainant. He denied the suggestion that entire ₹3,00,000/- was paid in cash. Ex.P.8 is the lease deed between the complainant and the accused. There is an endorsement as per Ex.P.8(a) in the said lease deed, which is duly signed by the complainant, wherein it is recited that on 07.03.2016, cash of ₹1,00,000/- was paid by the accused to the complainant and for the remaining ₹2,00,000/- he has issued the cheque dated 14.03.2016 (the subject cheque) and the complainant has vacated the house.

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26. A vague suggestion is made to the complainant that this Ex.P.8(a) is concocted one, which is denied by the complainant. Except this, nothing was elicited in the cross-examination of the complainant to believe that the accused has failed to pay the entire lease amount of ₹3,00,000/- in cash to the complainant. Hence, the accused has not at all rebutted the presumption available in favour of the complainant.

27. Considering these aspects, the trial Court rightly convicted the accused, which is upheld by the appellate Court and it requires no interference.

28. As far as the imposing sentence is concerned, the transaction is of the 2016, whereas the case ended in the year 2022 before the trial Court. Thus, considering these aspects, the trial Court imposed the fine of ₹2,53,000/-, which is not exorbitant.

29. As far as ₹3,000/- towards State expense is concerned, the learned counsel for the revision petitioner

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places reliance on the judgment of Coordinate Bench of this Court in Criminal Appeal No.619/2024 dated 04.06.2014 between ***Sri A.M. Harish Gowda @ A.M. Harisha vs. Sri Chaluvaraju H.S***, wherein at para Nos.26 to 28 held as follows:

> *"26. Admittedly, the lis is between the two private parties and therefore, no State machinery is involved. Further, learned Trial Magistrate has no power to impose fine more than double the cheque amount.*
>
> *27. In the case on hand, the Magistrate has imposed the fine of Rs.4,30,000/- which is beyond the jurisdiction of the Trial Magistrate under the Act.*
>
> *28. Said aspect of the matter is totally ignored by the leaned Judge in the First Appellate Court while mechanically dismissed the appeal. Therefore, a case is made out by the accused for interference in the sentence."*

30. In the aforesaid case, more than double the amount of cheque was imposed as fine and under those circumstances, the aforesaid judgment came to the existence. Even though the state machinery is not directly

involved in the case, because it is dispute between two private parties; there will be expenses to the State for maintenance of the judicial mechanism. Hence, the argument of the learned counsel for the revision petitioner for waiving off the amount of Rs.3,000/- towards State expenses is not sustainable. Hence, this Court holds that the Judgment of conviction and order of sentence passed by the trial Court, which is confirmed by the appellate Court requires no interference.

31. Hence, this Court passes the following,

ORDER

The Criminal revision petition is ***dismissed***.

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(GEETHA K.B.)
JUDGE

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List No.: 1 Sl No.: 15