HC-KAR

NC: 2026:KHC:59785
CRL.RP No. 120 of 2024

CNR: KAHC010029552024

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. 120 OF 2024

BETWEEN:

SMT.JAYAMMA B.N.,
W/O SHIVANNA,
AGED ABOUT 54 YEARS,
R/AT NO.43, 2ND CROSS, 3RD STAGE,
4TH BLOCK, J.C.NAGAR,
BASAVESHWARA NAGAR,
BENGALURU - 560 079.

...PETITIONER

(BY SRI. V.R.BALARAJ., ADVOCATE)

AND:

SRI. HARISH G.K.,
S/O LATE SRI. KEMPANNA,
AGED ABOUT 34 YEARS,
R/O GOLENAHALLI, MADENAHALLI POST,
KADABA HOBLI, GUBBI TALUK,
TUMAKURU DISTRICT - 572 117.

...RESPONDENT

(BY SRI. CHANDAN B.K., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 17.08.2022 PASSED BY THE PRINCIPAL CIVIL JUDGE AND

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J.M.F.C., GUBBI IN C.C.NO.254/2017 AND THE JUDGMENT DATED 07.10.2023 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKURU IN CRL.A.NO.61/2022.

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

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

ORAL ORDER

This is the revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.PC') by the revision petitioner/accused challenging the judgment of conviction and order of sentence dated 17.08.2022 passed in CC No.254/2017 on the file of the Prl. Civil Judge & JMFC, Gubbi (in short, 'the trial Court'), which is confirmed in the Criminal appeal No.61/2022 dated 07.10.2023 on the file of I Addl. District & Sessions Judge, Tumakuru (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 complainant has filed the private complaint under Section 200 Cr.PC before the trial Court praying for taking cognizance of the offence punishable under Section 138 of Negotiable Instruments Act, 1988 (in short, 'NI Act') against the accused.

4. After recording the sworn statement of the complainant, the trial Court has taken cognizance of the offence, registered the case and issued summons to the accused. After his appearance, the accused pleaded not guilty of the offence, when the accusation leveled against him is read over and explained to him.

5. Afterwards, the accused has cross-examined the complainant and denied the contention of the complainant in the statement recorded under Section 313 of Cr.P.C. Even though the accused lead in defence evidence, he failed to cross-examine the complainant.

6. After hearing the arguments of both sides, the trial Court concluded that the accused has committed the

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offence punishable under Section 138 of NI Act and convicted him and sentenced to pay a fine of ₹6,50,000/-; out of which ₹6,45,000/- shall be payable to the complainant as compensation and ₹5,000/- shall be payable towards State expenses.

7. Aggrieved by the said judgment of the conviction and order of sentence, the accused has preferred an appeal before the appellate Court.

8. After hearing the arguments of both sides, the appeal was dismissed by confirming the judgment of conviction and order of sentence.

9. Aggrieved by the same, the accused is before this Court.

10. Heard the arguments of both sides.

11. The learned counsel for the revision petitioner Sri V.R. Balaraj, would submit that there was no transaction between the complainant and the accused; it

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was the chit transaction between the sister of the complainant by name Shantamma and the accused. The complainant had no financial capacity to lend ₹5,00,000/- as alleged in the case. The cheque issued towards security of chit transaction to the sister of the complainant was misused by the complainant and filed this false case. The complainant has not produced any iota of evidence to show that he was earning ₹50,000/- per month from agriculture and milk vending. Even though accused has given reply to the notice, that was not produced by the complainant and thus there is a grave error in not producing the reply to legal notice.

12. Even in said reply, the accused has taken specific contention that two cheques issued to the sister of complainant towards security to the chit transaction and one amongst them was misused by the present complainant and also taken contention regarding the quarrel between the sister of complainant and the accused

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and lodging up of criminal complaint by the accused. These facts were not appreciated by the trial Court and appellate Court in an appropriate manner. Hence, pray for allowing the revision petition.

13. The learned counsel for the respondent Sri Chandan B.K. appeared through VC would submit that except putting apart suggestion that complainant was not having financial capacity to lend the amount of ₹5,00,000/-, no evidence is produced by the accused to rebut the presumptions available in favour of the complainant. These facts were examined properly by the trial Court and upheld by the appellate Court. Furthermore, the accused cannot take the financial incapacity of the complainant. Accused has admitted his signature on the cheque and also that cheque was issued from his bank account. Hence, considering these aspects, trial Court convicted the accused which is confirmed by the appellate Court and thus, it requires no interference.

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14. Having heard arguments of both sides, verifying the revision petition papers, the point that arises for consideration:

> *"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 ***Kuntegowda v/s Thurubaiah in Criminal Appeal***

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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 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*

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

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18. 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 is legally enforceable debt;

(ii) that the cheque was drawn from the account of bank 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 15 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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19. 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. There is also statutory presumption under Section 139 of NI 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 Sections 118 and 139 of the NI 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 records produced by either party or erroneously appreciated the evidence.

21. The case of complainant before the trial Court is that accused borrowed a sum of ₹5,00,000/- from the complainant on 14.10.2016 and to recover the same,

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when complainant demanded for its repayment, the accused has issued the cheque dated 14.02.2017. When it was presented for encashment, the same was dishonoured with an endorsement dated 21.02.2017 'funds insufficient'. Then the accused has issued legal notice dated 10.03.2017 which is served upon the accused as per the postal endorsements. Then the complainant has presented the complaint before the trial Court. The accused has not denied his signature and the cheque and admitted that the subject cheque-Ex.P.1 was issued from his bank account.

22. When the accused admitted these two facts and the aforesaid details mentioned above clearly establish that the complainant has complied with clause No.(iii) to (vi) of Section 138 of NI Act.

23. When the complainant establishes clause No.(iii) to (vi) of Section 138 of NI Act, then the presumptions in favour of complainant shall be drawn as per Sections 118 and 139 of NI Act. The presumption

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under Section 139 of NI Act is a statutory presumption. According to these presumptions, the Court shall presume that the cheque is issued for consideration, it was issued on the date mentioned in it; there exists legally recoverable debt or liability and to discharge the whole or part of it, the accused has issued the subject cheque.

24. The above presumptions are rebuttable presumptions. The accused can rebut the presumptions either by issuing reply to legal notice or by cross examining the complainant or by leading defence evidence or by all the above three.

25. In the instant case, the accused contended that he has given reply to the legal notice. Even in the judgment at paragraph No.3, the trial Court made an observation that in the complaint it is stated that the accused has given evasive reply. However, the reply to legal notice is not produced either by the complainant or by the accused. Anyway reply to legal notice is given. The

accused has cross-examined the complainant. However, he has not stepped into witness box.

26. The learned counsel for the revision petitioner would submit that the facts which are put forth in the cross-examination of complainant were narrated in the reply to legal notice. The complainant was cross-examined regarding his financial incapacity which is denied by him. He has deposed that he is getting ₹50,000/- per month from agriculture and milk vending. Except these suggestions, nothing more was elicited in the cross-examination of the complainant to say that accused has taken the defence of financial incapacity of the complainant. It is not even suggested to the complainant that he was not getting such ₹50,000/- income from agriculture and dairy business. The complainant is not paying income tax and he volunteered that because his income is from agriculture and milk vending, he need not pay income tax. It is a fact that agricultural income is

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exempted from income tax. According to complainant he has paid ₹5,00,000/- to accused through cash and he admitted that, if any transaction above ₹20,000/- is made then it shall be through cheque but that itself cannot be a ground to rebut the presumptions in favour of the complainant. The complainant has examined the financial capacity of repayment of the accused because he was working in BSNL office, Basaveshwaranagar and getting salary of ₹50,000/- per month.

27. The only contention taken by the accused is that accused was doing chit business with the sister of complainant by name Shanthamma and towards security of said chit transaction he has issued two cheques to the sister of complainant, one of them is misused by the complainant. However, these suggestions were denied by the accused in his cross-examination. It is suggested to the complainant that a criminal case is lodged against the sister of complainant before Badarahalli Police Station and

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sister of accused has obtained bail in that case for which the complainant expressed his ignorance. The sister of the complainant is not summoned by the accused to prove his above contention. Even though the accused has produced the copies of FIR and complaint as per Exs.D.1 and D.2, they cannot be looked into for any purpose because accused has not faced the cross-examination and he has not confronted those documents to the complainant. Hence, as it is, there is no defence evidence on behalf of the accused. Even though the accused took contention that he had given reply to the legal notice; he has not made any efforts to confront said reply notice to the complainant and not produced the said reply notice in his evidence. Under these circumstances, the trial Court and the appellate Court concluded that there is no reply given by the accused.

28. As discussed above, the presumptions in favour of the complainant are to be rebutted by the accused with the standard of proof of preponderance of probabilities and

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not beyond reasonable doubt. As discussed above, except putting a suggestion that complainant is not having financial capacity, nothing was elicited in the cross-examination of complainant. The accused has not produced any iota of evidence to show that he has issued the cheque as security to the sister of complainant which is misused by the complainant.

29. Under these circumstances, considering these aspects, rightly the trial Court convicted the accused, which is confirmed by the appellate Court and thus, requires no interference.

30. As far as imposing sentence is concerned, the cheque amount was ₹5,00,000/-; whereas the trial Court imposed fine of ₹6,50,000/- which is not exorbitant because the transaction is of the year 2017 but the judgment was passed in the year 2022 and thus, 5 years period was lapsed in between the period. Hence, there is no gross violation of principles of law and there is proper

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appreciation of evidence by the trial Court which is confirmed by the appellate Court. Thus, it 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

LL,SPV
List No.: 1 Sl No.: 16