HC-KAR

NC: 2026:KHC:60544
CRL.RP No. 183 of 2024
C/W CRL.RP No. 49 of 2024

CNR: KAHC010055462024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 183 OF 2024

C/W

CRIMINAL REVISION PETITION NO. 49 OF 2024

IN CRL.RP No. 183/2024

BETWEEN:

SREE AKSHAYA HOUSING
CO-OPERATIVE SOCIETY LTD.,
NO.5, GROUND FLOOR,
KONENA AGRAHARA,
VIMANAPURA POST,
BANGALORE - 560 017
REPRESENTED BY ITS SECRETARY.
MRS. MOHAN KUMARI.N

…PETITIONER

(BY SRI MANJUNATH G. KANDEKAR, ADVOCATE)

AND:

1. GARUDADHRI DEVELOPERS
   PARTNERSHIP FIRM HAVING ITS
   OFFICE AT VYNATHEYA DHAMA,
   BHARATH GAJARIA LAYOUT ROAD,
   SUBASH NAGAR, NELAMANGALA TOWN,
   BENGALURU RURAL DISTRICT - 562 123
   REPRESENTED BY ITS EXECUTIVE PARTNER,
   M.G. RANGADHAMAIAH,
2. SRI. M.G. RANGADHAMAIAH
   S/O LATE C. GANGAIAH,
   AGED ABOUT MAJOR,

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RESIDING AT VYNATHEYA DHAMA,
MALLARA BANASWADI VILLAGE,
KASABA HOBLI, NELAMANGALA TALUK,
BENGALURU RURAL DISTRICT - 562 123.

…RESPONDENTS

(BY SRI A. SAMPATH, ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE ONLY A PORTION OF JUDGMENT OF THE APPEAL COURT DATED 15.12.2023 PASSED IN CRL.A.NO.1229/2023 BY THE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-60), AT BANGALORE, BY MODIFYING THE FINE AMOUNT / COMPENSATION OF RS.1,05,00,000/- AGAINST THE AWARD OF COMPENSATION OF RS.1,35,000/- PASSED BY THE TRIAL COURT IN C.C.NO.2455/2019 ON THE FILE OF THE XL A.C.M.M BENGALURU DATED 03.08.2023, PASSED BY THE TRIAL COURT IN C.C.NO.2455/2019 BY THE XL A.C.M.M AT ENGALURU AND CONFIRM THE COMPENSATION OF RS.1,35,00,000/-.

IN CRL.RP NO. 49/2024

BETWEEN:

1. GARUDADHRI DEVELOPERS
PARTNERSHIP FIRM,
HAVING ITS OFFICE AT
VYNATHEYA DHAMA,
BHARATH GAJARIA LAYOUT,
ROAD, SUBASH NAGAR,
NELAMANGALA TOWN,
BANGALORE RURAL DISTRICT - 562 123
REPRESENTED BY ITS EXECUTIVE PARTNER
M.G. RANGADHAMAIAH.

2. SRI. M.G. RANGADHAMAIAH
S/O LATE C. GANGAIAH,
AGED ABOUT 57 YEARS,
R/AT VYNATHEYA DHAMA,

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MALLARA BANAWADI VILLAGE,
KASABA HOBLI,
NELAMANGALA TALUK - 562 123.

...PETITIONERS

(BY SRI. A. SAMPATH, ADVOCATE)

AND:

SREE AKSHAYA HOUSING
CO-OPERATIVE SOCIETY LTD.,
NO.5, GROUND FLOOR,
KONENA AGRAHARA,
VIMANAPURA POST,
BENGALURU - 560 017
REPTD. BY ITS SECRETARY.

...RESPONDENT

(BY SRI. MANJUNATH G. KANDEKAR, ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 OF CR.P.C PRAYING TO 1) SET ASIDE THE JUDGMENT DATED 15.12.2023 PASSED IN CRL.APPEAL NO.1229/2023 BY THE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-60) AT BENGALURU.

THESE PETITIONS, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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

ORAL ORDER

The Criminal Revision Petition No.49/2024 is filed by the revision petitioner/accused challenging the judgment of conviction and order of sentence dated 03.08.2023 on

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the file of the XL Addl. Chief Metropolitan Magistrate, Bengaluru (in short 'trial Court') and the judgment dated 15.12.2023 passed in Criminal Appeal No.1229/2023 confirming the conviction and modification of sentence on the file of the LIX Addl. City Civil & Sessions Judge (CCH-60), Bengaluru (in short 'appellate Court').

2. The Criminal Revision Petition No.183/2024 is filed by the Revision Petitioner/Complainant challenging the judgment dated 15.12.2023 passed in Criminal Appeal No.1229/2023 on the file of the LIX Addl. City Civil & Sessions Judge (CCH-60), Bengaluru (in short 'appellate Court') with regard to reduction of sentence.

3. The parties would be referred with their ranks, as they were before the Tribunal for the sake of convenience and clarity.

4. The facts established before the trial Court and the appellate Court are that the complainant is the Society and accused is the land developer; there was Memorandum of Understanding (in short 'MOU') dated

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21.10.2015 as per Ex.P.9 between the complainant and the accused.

5. According to said MOU, the accused ought to have procured the lands for and on behalf of the Society. The complainant is a Housing Co-operative Society and intended to provide sites to its members. In that regard, the complainant has paid ₹1,30,10,000/-; there is a recital in MOU that the accused has received said amount, but only ₹1,10,00,000/- was paid through bank transaction as per recitals of MOU. Because the accused could not procure lands on behalf of the Society; thus, cancellation of MOU came into existence between the complainant and the accused on 29.11.2017. Under said document, accused agreed to pay a sum of ₹1,21,10,000/-. Accordingly, the subject cheque was issued by the accused to the complainant for a sum of ₹1,21,10,000/-. As per the assurance of the accused, the date 12.09.2018 is inserted the cheque and the said cheque was presented for encashment and it was returned dishonoured with shara

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'funds insufficient' on 15.09.2018. Afterwards, the accused has paid ₹10,00,000/- each on 20.09.2018 and 06.10.2018 towards interest and requested for encashment in 2nd week of November-2018. Again on 14.11.2018, the complainant has presented the cheque for encashment for the total amount of ₹1,21,10,000/-, which was dishonoured with an endorsement 'funds insufficient'. Then the legal notice dated 27.11.2018 was issued to both official and residential address of the accused;; notice to official address returned unserved; hence, again notice dated 06.12.2018 was issued which was served on 08.12.2018. Hence, the complainant has filed a complaint before the trial Court on 16.01.2019.

6. After recording sworn statement, registering the case by taking cognizance of the offence, summons issued to the accused, who appeared and pleaded not guilty of the offence when the accusation levelled against him was read over and explained to him. Later accused denied the case of complainant in *toto* in the statement recorded

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under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.). The complainant was cross-examined in length and accused has also let in defence evidence and examined the witness.

7. After hearing arguments, the trial Court concluded that the accused has committed the offence under Section 138 of Negotiable Instruments Act, 1881 (in short 'N.I. Act'), convicted him for the aforesaid offence and sentenced to pay a fine of ₹1,35,00,000/-. The same was challenged before the appellate Court. The appellate Court confirmed the conviction but reduced the quantum of sentence to ₹1,05,00,000/- by considering the fact that already ₹20,00,000/- was paid by the accused after issuance of cheque.

8. The learned counsel for the revision petitioner/accused Sri Mallikarjun N. K. would submit that even though the transaction between the parties is admitted, as per Section 56 of the N.I. Act, the complainant ought to present a cheque by making an

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indorsement of receipt of ₹20,00,000/- but it is not being done. Hence, the offence under Section 138 of N.I. Act is not attracted. In this regard, he places reliance on the judgment of Hon'ble Apex Court in ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and Anr***[1] and also the judgment of Co-ordinate Bench of this Court in ***M/s. Nazama Traders vs. M/s. Arihant Marketing***[2]. These technical and legal aspects were not considered by the trial Court and the appellate Court. Hence, prayed for allowing the revision petition.

9. The learned counsel for the respondent/complainant Sri Manjunath G. Khandekar would submit that the accused has not disputed the issuance of the cheque, receipt of the amount under MOU and he has not disputed that the cheque was presented second time for the entire amount. Furthermore, the complainant is a Co-operative Society and the amount involved in this case is the public money. The members

[1] (2023) 1 Supreme Court Cases 578 dt. 11.10.2022

[2] In Criminal RP.No.6/2016 c/w. Criminal R.P.No.1362/2015 dtd. 08.09.2023

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would suffer if the compensation awarded by the Court would be less than the compensation awarded by the trial Court. The money value is being deteriorated and there is high inflation. Hence, the compensation awarded by the trial Court is proper and reduction by the appellate Court is not correct. Hence, prayed for allowing his revision petition and dismissal of the revision petition of the accused.

10. Having heard arguments of both sides, verifying the revision papers, the trial Court and 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?"*

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

REASONS

12. 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***[3]. 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*

[3] **2026 SCC OnLine SC 1485 dt. 04.08.2026**

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*

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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 re-appreciating 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."

13. 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.

14. 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;

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(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;

(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.

15. 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 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.

16. The case of the complainant is that the Housing Co-operative Society and accused is the land developer. There was Memorandum of Understanding (in short 'MOU') dated 21.10.2015 as per Ex.P.9 between the complainant and the accused.

17. According to MOU, the accused ought to have procured the lands for and on behalf of the Society. The complainant intended to provide sites to its members, hence, enters into MOU with accused for procuring lands. In that regard, the accused has received ₹1,30,10,000/- but only ₹1,10,00,000/- was paid under MOU. Because the

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accused could not procure lands on behalf of the Society; MOU was cancelled and the subject cheque dated 12.09.2018 was issued by the accused to the complainant for a sum of ₹1,21,10,000/-. The said cheque was presented for encashment and it was returned dishonoured with shara 'funds insufficient' on 15.09.2018. Afterwards the accused has paid ₹10,00,000/- each on 20.09.2018 and 06.10.2018 towards repayment of the part of the subject cheque. Again on 14.11.2018, the complainant has presented the cheque for encashment for the total amount of ₹1,21,10,000/-, which was dishonoured with an endorsement 'funds insufficient'. Then legal notice dated 27.11.2018 was issued and served on 06.12.2018 to his residential address but unserved to his official address. Again notice dated 06.12.2018 was issued which was served on 08.12.2018.

18. The complainant has filed the complaint under Section 200 of Cr.P.C. because the cheque issued by the accused for a sum of ₹121,10,000/- was dishonoured and

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even after service of legal notice, accused failed to pay the cheque amount. Even though the accused admitted the issuance of cheque and it is from his bank account, it is also an admitted fact that after first presentation of the cheque, the accused has made payment of totally ₹20,00,000/- on two occasions. Even though, it is contended in the complaint that said payment is towards interest, but it is not deposed so by P.W.1 in his cross-examination; no document is produced to prove that said payment is towards interest. Further, it is clearly deposed by the complainant that there was no contract between the parties regarding interest. Thus, said payment of ₹20,00,000/- is towards part payment of cheque amount; only after making such payment, the cheque was presented second time for the whole cheque amount.

19. Whether, the presentation of the cheque for the whole amount by the accused is hit by Section 56 of the NI Act or not is to be examined.

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20. Under these circumstances, reading of Section 56 of the N.I. Act is relevant. It is extracted as follows:

> "56. *Indorsement for part of sum due- No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."*

21. Thus, after issuance of cheque, before its presentation a part payment is made by the accused, then as per the above provision of Section 56 of the N.I. Act, there shall be an indorsement on the cheque and cheque is to be presented for the balance amount and not for the whole cheque amount. If it is not done, then the offence under Section 138 of N.I. Act would not be attracted. In this regard, this Court places reliance on paragraph No.29 of the judgment ***Dashrathbhai's*** case[4] cited supra. It reads as follows:

[4] (2023) 1 Supreme Court Cases 578

> *"29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment."*

22. By placing reliance on the aforesaid judgment, the Co-ordinate Bench of this Court in ***M/s. Nazama Traders's***[5] case cited supra at paragraph No.26 held as follows:

> "26. *It is very much clear that as per the facts of the this case also, there was payment of money by*

[5] in Criminal RP.No.6/2016 c/w. Criminal R.P.No.1362/2015

the accused towards the cheque amount and even after then as per his own evidence, accused is due to pay ₹26,25,000/- and the complainant has received part payment of ₹24,75,000/- as per the settlement. When complainant has received substantial amount, then complainant would have resorted to Section 56 of the Act. Section 15 of the Act also speaks of indorsement which reads as under:

> *"When a maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser".*

and held that the offence under Section 138 of N.I. Act is not made out.

23. Thus, in case of part payment or in case the amount due from the accused is less than the amount mentioned in the cheque then, it was inevitable upon the complainant to endorse the part payment on the cheque and present the cheque for balance amount. If the cheque is presented for part payment even then if it is

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dishonoured then, the offence under Section 138 of N.I. Act would be attracted, and not if the cheque is presented for the whole amount.

24. The rebuttal evidence shall not require the proof beyond reasonable doubt. But if he produces the evidence based on the standard of proof of preponderance of probability, it is sufficient to rebut the presumption available under Section 139 of N.I. Act.

25. The trial Court and the appellate Court have not at all examined this aspect, even though there is categorical admission by the complainant in respect of part payment of ₹20,00,000/- by the accused. Thus, the aforesaid judgments are non-consideration of material evidence. Hence, requires interference in the revision. However, the liberty is always there to the complainant to pursue his remedy of recovery of the balance amount by appropriate recourse to law.

26. Hence, this Court passes the following:

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ORDER

i. Criminal Revision Petition No.49/2024 is ***allowed***.

ii. Criminal Revision Petition No.183/2024 is ***dismissed***.

iii. The judgment of conviction dated 03.08.2023 passed in C.C.No.2455/2019 on the file of the XL Addl. Chief Metropolitan Magistrate, Bengaluru, confirmed by the judgment of appeal dated 15.12.2023 in Criminal Appeal No.1229/2023 on the file of the LIX City Civil & Sessions Judge (CCH-60), Bengaluru are hereby set aside; the order of sentence modified by the appellate Court is hereby set aside.

iv. The bail bond of accused is cancelled and accused is set at liberty.

v. Send back trial Court records and appellate Court records with copy of this judgment to the trial Court.

vi. The amount already deposited by the accused and withdrawn by the complainant is to be refunded to the accused as per Section 148(3) of the N.I. Act,

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within 60 days from the date of receipt of certified copy of this judgment.

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(GEETHA K.B.)
JUDGE

SSD
List No.: 1 Sl No.: 16