HC-KAR

NC: 2026:KHC:61176
CRL.RP No. 253 of 2024

CNR: KAHC010087832024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE M` JUSTICE GEETHA K.B.

CRIMINAL REVISION PETITION NO. 253 OF 2024

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

BETWEEN:

1. SRI R GANESH
   S/O RAMAIAH
   AGED ABOUT 50 YEARS
   R/A NO.1917, 12TH CROSS
   4TH MAIN, VIJAYANAGARA
   BENGALURU-560040

…PETITIONER

(BY SRI. THIMMAIAH K H.,ADVOCATE)

AND:

1. M/S MANJUNATHA INDUSTRIES
   PROPRIETOR
   MANJUNATH N
   S/O NARASEGOWDA K
   AGED ABOUT 41 YEARS
   R/A NO.36, PETE CHENNAPPA INDUSTRIAL ESTATE
   KAMAKSHI PALYA, BENGALURU-560079

…RESPONDENT

(BY SRI. BAPAT SAMPATH VINAYAKA RAO.,ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION SENTENCE FOR THE OFFENCE P/US/ 138 OF NI ACT DATED 06.11.2023 PASSED IN

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CRL.A.NO.969/2021 BY THE LXV ADDITIONAL CITY CIVIL AND JUDGE, BENGALURU (CCH-66) AND THE JUDGMENT AND ORDER OF CONVICTION PASSED IN C.C.NO.20840/2018 DATED 28.10.2021 PASSED BY THE XXII ACMM AT BENGALURU BY ALLOWING CRIMINAL REVISION PETITION CONSEQUENTLY ACQUITTING THE PETITIONER.

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

CORAM: HON'BLE M` JUSTICE GEETHA K.B.

ORAL ORDER

This is the revision petition filed by the revision petitioner/accused under Section 397(1) read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying to set aside the judgment of conviction and order of sentence dated 28.10.2021 passed in C.C. No.20840/2018 on the file of the XXII Additional Chief Metropolitan Magistrate, Bengaluru (in short, 'the trial Court'), which was confirmed in the appellate judgment dated 06.11.2023 passed in Criminal Appeal No.969/2021 on the file of the LXV Additional City Civil & Sessions Judge, Bengaluru City (CCH-66) (in short, 'the appellate Court').

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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 before the trial Court under Section 200 of the Cr.P.C., praying for punishing the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), in accordance with law.

4. It is stated in the complaint that the complainant and the accused were friends and were known to each other for several years. Out of this relationship, the accused approached the complainant and obtained a hand loan of ₹12,00,000/- in cash on 15.06.2014, agreeing to repay the said amount with interest at 1% per month. The accused also executed an on-demand promissory note with consideration receipt dated 15.06.2014, assuring repayment of the amount within one year. The parents of the complainant's wife had sold their property in March-2014 and given the sale proceeds to her as her share. The

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complainant had the said amount with him and, at the request of the accused, lent the aforesaid amount to him. The accused paid interest for a period of six months and thereafter stopped paying the interest. Hence, the complainant insisted to the accused to repay the aforesaid amount. Thereafter, the accused issued the subject cheque dated 27.04.2018 bearing No.141203, drawn on the Karnataka State Co-operative Apex Bank Limited, Basaveshwaranagara Branch, Bengaluru. When the complainant presented the said cheque for encashment through his bank on 18.05.2018, it was returned with the endorsement 'account closed'. Thereafter, the complainant issued a legal notice dated 12.06.2018 calling upon the accused to repay the loan amount within fifteen days. The said notice was served on the accused on 19.06.2018. However, the accused neither replied to the notice nor repaid the loan amount. Hence, the complaint.

5. After recording the sworn statement of the complainant, the case was registered against the accused

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and summons was issued to him. After appearing before the trial Court, the accused pleaded not guilty to the accusation levelled against him when it was read over and explained to him.

6. Thereafter, the complainant was further examined-in-chief.

7. Even after providing sufficient opportunities, the complainant was not cross-examined by the accused. The accused denied the case of the complainant in *toto* in his statement recorded under Section 313 of the Cr.P.C., and submitted that he would lead defence evidence. However, despite giving sufficient time, the accused did not lead any defence evidence.

8. The trial Court convicted the accused for the offence punishable under Section 138 of the NI Act and sentenced him to pay a fine of ₹12,50,000/- out of which ₹5,000/- was ordered to be paid to the State and the remaining amount was ordered to be paid to the complainant as compensation.

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9. Aggrieved by the same, the accused preferred an appeal before the appellate Court, contending that, due to the COVID-19 pandemic and the death of his two brothers-in-law during the said pandemic, he could not approach his advocate. Hence, he prayed for remand of the matter. However, without considering the said prayer of the accused, the appeal was dismissed. Hence, the accused is before this Court.

10. Heard arguments.

11. The learned counsel for the revision petitioner-Sri Thimmaiah K.H., would submit that, only due to the COVID-19 pandemic, the accused could not cross-examine the complainant after disposal of the application filed by the complainant under Section 143 of the NI Act. Furthermore, the accused lost his brothers-in-law. Hence, he prayed for allowing the revision petition and remand the matter to the trial Court.

12. The learned counsel for the accused would submit that the contention of the accused is that there was

no loan transaction between the complainant and the accused at any point of time. The accused stood as a witness to the agreement of sale executed between the complainant and one Jayamma, who is related to the accused. Furthermore, as per the averments in the complaint itself, the alleged cheque was issued in respect of a time-barred debt.

13. The learned counsel for the revision petitioner would further submit that, as per Ex.P.5, the amount was not received by the wife of the complainant, but was received by her mother. Hence, there was no financial capacity for the complainant to lend a huge amount of ₹12,00,000/- in the year 2014. Hence, he prayed for allowing the revision petition.

14. The learned counsel for the respondent, Sri Bapat Sampath Vinayaka Rao, would submit that the presumption in favour of the complainant has not been rebutted by the accused either by replying to the legal notice, or by cross-examining the complainant or by

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leading defence evidence, despite being given sufficient opportunities. The COVID-19 pandemic arose only after closure of the evidence of the complainant, and the application for recalling the complainant was allowed. Even then, the learned counsel for the accused did not make any efforts to cross-examine the complainant. Once the cheque is issued by the accused, there is no question of treating the debt as time-barred. Hence, he prayed for dismissal of the revision petition.

15. 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/s 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*

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relevant material or judicial discretion has been exercised arbitrarily or capriciously?"

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

REASONS

17. 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. 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

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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:

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"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...."

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."

18. 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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19. 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

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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.

20. 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.

21. 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.

22. The facts stated before the trial Court are that, on 15.06.2014, the accused obtained a hand loan of ₹12,00,000/- from the complainant, agreeing to repay the same with interest at 1% per month, and executed an on-demand promissory note with consideration receipt. However, he did not return the said amount to the complainant. Hence, upon repeated demands, the accused issued the subject cheque dated 27.04.2018. When the said cheque was presented for encashment on 18.05.2018, it was returned with the endorsement 'account closed'. Thereafter, the legal notice dated 12.06.2018 was issued to the accused, which was served on him on 19.06.2018. However, the accused did not repay the cheque amount. Hence, the complaint was presented on 16.07.2018. The accused neither replied to the legal notice nor repaid the amount. Thus, it is

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established that the cheque was drawn on the account of the accused and bears his signature.

23. The above facts clearly establish that the complainant has established ingredient clause Nos. (iii) to (vii) of Section 138 of NI Act as stated above.

24. 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.

25. The accused can rebut these presumptions by giving reply to the legal notice or by cross-examining the complainant or by leading defence evidence or by all the above three modes. However, in the present case admittedly, the accused has not done any of the above

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three modes and thus, the presumption in favour of the complainant is not at all rebutted by the accused.

26. Even then, on careful perusal of the averments made in the complaint, it is evident that the loan transaction between the complainant and the accused took place on 15.06.2014. According to the complainant, the accused paid interest for a period of six months and thereafter stopped paying the interest. Thus, the limitation period for filing a suit for recovery of the amount due would have expired by the end of December-2017; whereas the subject cheque is dated 27.04.2018. Thus, *prima facie*, it appears that the debt had become time-barred. However, the time barred debt could be acknowledged in writing and then the fresh cause of action would arise.

27. Even in case of time barred debt, when once a written promise is made; then it amounts to a fresh contract. In this regard, reading of Section 25 of the

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Indian Contract Act, 1872 (in short 'the Act') is very much required.

28. Section 25 of the Act is extracted as follows:

25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—

An agreement made without consideration is void, unless—

(1)it is expressed in writing and registered under the law for the time being in force for the registration of 'documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2)it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.

(3)It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations:

(a)A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b)A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c)A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d)A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e)A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f)A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

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(g)A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

29. A plain reading of Section 25(3) and Illustration (e) of the said section makes it clear that even in respect of a time barred debt, if the borrower signs a written promise to pay the debt, it amounts to a valid contract. Issuance of the cheque dated 27.04.2018 by the accused is nothing but a written promise by the accused and, therefore, constitutes a fresh contract. Hence, the present case is maintainable even in respect of a time-barred debt.

30. In this regard, this Court places reliance on the judgment of the co-ordinate bench of this Court in the case of ***Sri Ganesh v/s Sri K.R.Puttaswamy***[1] at paragraph Nos.10, 11 & 13.

"10. Having considered the material on record, there is no dispute with regard to the initiation of

[1] Crl.R.P.No.1471/2024 dd 25.09.2026

proceedings under Section 138 of the NI Act. The main contention urged before this Court by the learned counsel for the petitioner is that the cheque issued is time barred. No doubt, the cheque is issued after three years of the original transaction between the parties. But with regard to the validity of the cheque is concerned, the Court has to take note of the fact. It has to be noted that the Kerala judgment in the case of ***Sasseriyil Joseph*** *(supra) was upheld by the Apex Court in SLP (Crl.) No.1785/2001 with regard to time barred debt is concerned. It is important to note that the Apex Court only dismissed the same and validity of the cheque has not been discussed with regard to Section 25(3) of the ICA and no law was laid down except confirming the said order and hence, the very contention of the learned counsel for the petitioner that the Supreme Court affirming the judgment of Kerala High Court comes to the aid of the petitioner, cannot be accepted.*

11. It is also important to note that the learned counsel for the respondent relied upon the Division Bench judgment of Kerala High Court in the case of ***Dr. K.K. Ramakrishnan*** *(supra), wherein the earlier judgment in the case of* ***Sasseriyil Joseph*** *(supra), was not accepted by the Division Bench. It is also to be noted that this Court in Crl.R.P.No.400/2016 while passing the judgment taken note of the*

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judgments of different High Courts as well as the Apex Court, particularly in the case of ***A.V.Murthry (supra), K. HYMAVATHI v. THE STATE OF ANDHRA PRADESH AND ANOTHER*** *reported in* ***(2023) 14 SCR 412*** *and several judgments were discussed and definite finding is given considering the judgment of Kerala High Court in the case of* ***Dr. K.K. Ramakrishnan*** *(supra),* ***RAJEEV KUMAR v. STATE NCT OF DELHI AND ANOTHER*** *reported in* ***2024 SCC Online Del 6421****, judgment of the Apex Court in the case of* ***S. NATARAJAN v. SAMA DHARMAN*** *reported in* ***(2021) 6 SCC 413*** *and also discussed the judgment of* ***RANGAPPA v. MOHAN*** *passed in Crl.A.No.1020/2010,* ***M. BALAJI v. PERIM JANARDHANA RAO*** *reported in* ***2020 SCC Online Mad 28058****, wherein at paragraph No.60 of the said judgment, discussed with regard to sub-section (3) of Section 25 of ICA deals with acknowledgment time barred debt. Having considered the material in detail, in paragraph No.37, the Apex Court held that furnishing of a cheque of a time barred debt effectively resurrects the debt itself by a fresh agreement through the deeming provision under Section 25(3) of ICA. The original debt therefore, through Section 25(3) of the ICA, becomes legally recoverable and enforceable to the extent of the amount the cheque has been given. It is further held*

that by the act of drawing a cheque, the promisor i.e., the drawer, is effectively stating that he has a liability to pay the drawee. Drawing of the cheque in itself, is acknowledgment of which would trigger the provisions under Section 138 of NI Act. To deny a complaint/drawee of invoking the penal provisions of Section 25(3) of the ICA recognizing a fresh agreement to pay, would be an unfortunate disentitlement.

13. Having considered all these materials on record and also the principles laid down in the judgments referred supra, it is very clear that once the cheque is issued, even if it is for the time barred debt also, there is a deemed provision under Section 25(3) of Contract Act. The first contention of the counsel appearing for the petitioner that the Trial Court committed an error in convicting cannot be accepted.".

31. By placing reliance on the aforesaid judgment, this Court holds that even in case of time barred debt, the issuance of cheque itself reveals that there is fresh contract between the complainant and the accused.

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32. The accused has not produced any material to show that he has rebutted the presumptions in favour of the complainant.

33. As far as non giving opportunity to the accused to cross-examine the complainant, the trial Court and the appellate Court in paragraph Nos.12 to 14 have categorically observed in their respective judgments the number of opportunities granted to the accused even before the commencement of the COVID-19 pandemic. These facts categorically establish that the accused has not utilized the opportunities given to him to cross-examine the complainant and to lead defence evidence.

34. Hence, the judgment of the trial Court and the appellate Court is neither erroneous, nor perverse nor capricious, as the Courts have considered the relevant material evidence and have not relied upon irrelevant evidence. Hence, the judgment of the trial Court and the appellate Court requires no interference.

35. Hence, this Court passes the following:

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ORDER

The Criminal Revision Petition is ***dismissed.***

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(GEETHA K.B.)
JUDGE

SPV
List No.: 1 Sl No.: 19