HC-KAR

NC: 2026:KHC:59389
CRL.RP No. 351 of 2024

CNR: KAHC010135112024

**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. 351 OF 2024**

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

**BETWEEN:**

1. SRI DHANANJAYA T N
   S/O NARAYANAPPA,
   AGED 35 YEARS,
   WORKING AS COOLIE,
   R/AT OPPOSITE RMC, DABBEGHATTA ROAD,
   TURUVEKERE TOWN, TUMKUR DISTRICT-572227.

…PETITIONER

(BY SRI. M B CHANDRA CHOODA.,ADVOCATE)

**AND:**

1. SMT. SHOBHA,
   W/O B H KUMAR,
   AGED 45 YEARS,
   R/AT NADUVALAKOTE, TURUVEKERE TOWN,
   TUMKUR DISTRICT-572227.

…RESPONDENT

(BY SRI. N SURESHA.,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 ORDER DATED 09.02.2024 PASSED IN CRL.A.NO.10038/2022 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE TUMAKURU (SITTING AT TIPTUR) CONFIRMING THE JUDGMENT AND ORDER DATED 10.08.2022 PASSED IN

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C.C.NO.365/2020 FOR THE OFFENCE P/US/ 138 OF NI ACT, ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, TURUVEKERE.

THIS PETITION, COMING ON FOR HEARING AS DICTATED, 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 by the revision petitioner/accused under Section 397 r/w 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for setting aside the judgment of conviction and order of sentence dated 10.08.2022 passed in C.C.No.365/2020 on the file of the Senior Civil Judge and JMFC, Turuvekere (in short, 'the trial Court'), confirmed in appeal judgment dated 09.02.2024 passed in Criminal Appeal No.10038/2022 on the file of the V Additional District & Sessions Judge, Tumkur (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 before the Trial Court under Section 200 of the Cr.P.C., praying for punishing the accused for the offence punishable under Sections 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act').

4. The case of complainant in nutshell is that the accused approached the complainant for financial assistance for discharge of his hand loans for the purpose of purchase of site property and for his household expenses. Accordingly, the complainant lent a sum of ₹4,90,000/- to the accused as hand loan in her house at Naduvalapote Turvaikara town about six months prior to issue of cheque to the complainant and he agreed to repay the said loan amount as early as possible. When the complainant insisted for repayment, the accused has issued the said cheque bearing No.001636 dated 09.09.2020 drawn on Corporation Bank, Turuvekere Branch for a sum of ₹4,90,000/- and said cheque was presented for encashment through the banker of

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complainant – SBI, Turuvekere branch; it was returned with an endorsement dated 10.09.2020 'funds insufficient' and then the complainant issued the legal notice dated 15.09.2020 to the accused which was served upon him but he failed to repay the cheque amount and not given reply. Hence, the complaint presented on 05.10.2020.

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

6. After hearing arguments, the trial Court concluded that the accused has committed the offence punishable under Section 138 of NI Act, convicted him and sentenced to pay fine of ₹4,95,000/- out of which ₹5,000/- shall be paid towards expenses of the State and the remaining fine amount shall be payable to the complainant as compensation.

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7. Aggrieved by the said judgment of conviction, the accused has filed the appeal before the appellate Court, which was dismissed after hearing arguments of both sides by confirming the judgment of conviction and order of sentence of the trial Court.

8. Aggrieved by the same, the complainant is before this Court.

9. Heard arguments.

10. The learned counsel for the revision petitioner Sri M.B. Chandra Chooda, would submit that the signature of the accused is disputed in the subject cheque. Hence, there is no presumption in favour of the complainant as available under Sections 118 and 139 of the NI Act. The learned counsel for the revision petitioner would further submit that the legal notice was not received by the accused. Furthermore, the financial capacity of the complainant was seriously disputed by the accused. However, these aspects were not at all considered by the trial Court and appellate Court and thus the judgments are

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grossly erroneous and pray for allowing the revision petition.

11. Having heard arguments, 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 ?"*

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

## REASONS

13. 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 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.*

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*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*

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*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.*

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*iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously."*

14. 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.

15. 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;*

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*(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.*

16. 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

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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.

17. 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.

18. The case of the complainant is that the accused has approached her for financial assistance for discharge of his hand loans for the purpose of purchase of site property and for his household expenses. Accordingly, she has lent a sum of ₹4,90,000/- to the accused as hand loan in her house at Naduvalapote Turvaikara town about six months prior to issue of cheque to the complainant and he agreed to repay the said loan amount as early as possible. When the complainant insisted for repayment, accused has issued the said cheque bearing No.001636 dated

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09.09.2020 drawn on Corporation Bank, Turuvekere Branch for a sum of ₹4,90,000/- and said cheque was presented for encashment through the banker of complainant – SBI, Turuvekere branch; it was returned with an endorsement dated 10.09.2020 'funds insufficient' and then the complainant issued legal notice dated 15.09.2020 to the accused which was served upon him but he failed to repay the cheque amount and not given reply.

19. Ex.P.1-cheque, Ex.P.2-bank endorsement, Ex.P.3-legal notice dated 15.09.2020, Ex.P.5-the postal track consignment. Ex.P.5 establishes that the notice served on the accused on 23.09.2020. Even after its service, the accused has not given reply to it. While cross-examining the complainant, accused has taken the defence that the signature found on Ex.P.1 is not his signature. However, the bank endorsement is only 'funds insufficient' and not the signature of drawer differs from the specimen signature. Further, the accused has not made any effort to send the disputed signature with his

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admitted signatures to handwriting expert to substantiate his defence.

20. Even though the accused has taken the contention that the legal notice was not served upon him, the postal receipt and postal track consignment establishes that the legal notice was served upon the accused. Furthermore, the same address is mentioned in the complaint cause-title as the address of the accused and it was served upon the accused personally and he appeared immediately after service of summons before the Court. Hence, his contention that the address furnished in the legal notice is not his address cannot be an acceptable one.

21. The accused even though denied his signature on Ex.P.1 and denied the receipt of the legal notice, the above discussion establishes that the legal notice was served upon the accused and the signature on Ex.P.1 is held to be the signature of the accused and it is from his bank account.

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22. When the above facts are established by the complainant, the ingredients of clause No.(iii) to (vi) of Section 138 of NI Act were fulfilled by the complainant.

23. When once the complainant able to establish this clause No.(iii) to (vi) then, automatically the statutory presumption under Section 139 of NI Act would be attracted in favour of the complainant that, there exists a legally enforceable debt and the cheque is issued for the discharge in whole or in part of debt or any other liability.

24. The accused can rebut the presumption either by giving reply to the notice or by cross-examining the complainant or by leading his evidence or by all the above three modes.

25. Furthermore, the accused has taken another defence that the complainant is not having financial capacity to lend the huge amount of ₹4,90,000/- as hand loan and accused has no such capacity to repay. However, these suggestions made to the complainant were denied by her.

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26. The complainant has deposed that she was doing coolie work, her husband is doing coolie work as well as running a mutton shop and thus, mere suggestion that complainant was not having financial capacity to lend the amount cannot be accepted. It is the specific contention of the accused that the accused is not doing any job and his father is doing coolie work and looking after the accused which is denied by the complainant. However, as discussed above, the address of the accused is his working place address and not his residential address. Hence, his above contention that he is not doing any job and not able to repay the loan amount cannot be accepted.

27. The above discussion reveals that except putting some suggestions which were denied by the complainant, the accused has not made any efforts to lead defence evidence to say that the signature on Ex.P.1 is not his signature; to prove the financial incapacity of the complainant and thus, accused has not produced any

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material to rebut the presumptions available in favour of the complainant.

28. Even though the cheque amount is ₹4,90,000/- the complainant is only doing coolie work, her husband is running a mutton shop and there is no material to produce that ₹4,90,000/- was not lent by the complainant to the accused.

29. The above discussion establishes that the accused has not produced any evidence to rebut the presumptions available in favour of the complainant.

30. When there is presumption that there exists legally recoverable debt and the cheque in question is issued towards whole or part of discharge of the debt or liability and when it is not rebutted, the complainant need not produce any other document to substantiate his contention.

31. Considering these aspects, rightly the trial Court convicted the accused which is confirmed in the appellate Court. Thus, the judgment of trial Court and appellate

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Court are not erroneous and in accordance with law and thus, requires no interference in this revisional jurisdiction.

32. Hence, this Court passes the following:

**ORDER**

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

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**(GEETHA K.B.)**
**JUDGE**

SPV
List No.: 1 Sl No.: 36