HC-KAR
CNR: KAHC010154872026

NC: 2026:KHC:63384
CRL.RP No. 366 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 366 OF 2026

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

BETWEEN:

1. SRI S H KRISHNAMURTHY
   S/O A D HANUMANTHAPPA,
   AGED ABOUT 61 YEARS,
   PRESIDENT OF ADI DRAVIDA VIDYA SAMSTHE,
   BEHIND NIRAVARI SUB DIVISION,
   OFFICE ROAD, SASVEHALLI,
   HONNALI TALUK,
   DAVANAGERE DISTRICT- 577 224

...PETITIONER

(BY SRI. NANJUNDA SWAMY N.,ADVOCATE)

AND:

1. SMT SHARADA C H
   W/O DATATREYA,
   AGED ABOUT 59 YEARS,
   R/AT 2ND CROSS,
   BASAVESHWARANAGARA,
   RENUSHREE NILAYA,
   SHIVAMOGGA - 577 204

...RESPONDENT

(BY SRI. RUDRAPPA P.,ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 01.12.2025, PASSED BY III ADDL.DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, IN CRL.A.NO.83/2025 AND JUDGMENT AND

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ORDER DATED 09.05.2025 PASSED BY THE I ADDL.SENIOR CIVIL JUDGE, AND C.J.M SHIVAMOGGA IN C.C.NO.1515/2021 AND ACQUIT THE PETITIONER FROM THE ALLEGED OFFENCE.

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 438 r/w Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS, 2023') by the revision petitioner/accused challenging the judgment of conviction and order of sentence dated 09.05.2025 passed in C.C.No.1515/2021 on the file of the I Additional Senior Civil Judge and CJM, Shivamogga (in short, 'the trial Court'), which was confirmed in the appeal judgment dated 01.12.2025 passed in Criminal Appeal No.83/2025 on the file of the III Additional District and Sessions Judge, Shivamogga (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 case of the complainant before the trial Court in nutshell is that the accused was constructing a house and requested the financial assistant in the form of hand loan of ₹8,00,000/- for completion of the said construction. In this regard, the complainant and her husband have given hand loan of ₹1,00,000/- in cash; a sum of ₹5,00,000/- through cheque bearing No.290074508245 dated 22.03.2018 drawn on Syndicate bank, Shivamogga and ₹2,00,000/- through cheque bearing No.853241 dated 05.04.2018 drawn on Karnataka Bank, Savalanga Road, Shivamogga from the account of the husband of the complainant by name-Dattathreya. After availment of the said loan, the accused agreed to repay the said amount within short period. But not repaid; when the complainant requested for repayment, the accused has issued the subject cheque bearing No.329920 dated 15.03.2019 for a sum of ₹8,00,000/- drawn on Karnataka Bank, Sasvehalli. When said cheque was presented for encashment, it was returned with an

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endorsement dated 04.04.2019 that 'funds insufficient'. Again as per the request of the accused, the said cheque was presented for encashment in the month of May. At that time, the endorsement dated 17.05.2019 received from the bank that 'drawer's signature differs'. Afterwards, the complainant got issued legal notice dated 22.05.2019 to the accused calling upon him to pay the cheque amount within 15 days from the date of receipt of the notice. The said notice was served on the accused on 27.05.2019. He has given reply on 08.06.2019 denying the transaction. Then the complaint is presented before the Court on 19.06.2019.

4. After recording sworn statement, the trial Court registered the case against the accused and issued summons to him. After service of summons, the accused appeared through his counsel. Afterwards, the GPA holder of the complainant was examined as PW.1 and after completion of said evidence, the statement of the accused under Section 313 Cr.P.C., was recorded wherein, the

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accused has denied the contention of the complainant in *toto* and then he also let in defence evidence.

5. After hearing arguments, the trial Court concluded that the accused has committed the offence punishable under Section 138 of NI Act and sentenced him to pay fine of ₹8,10,000/-; out of which ₹8,05,000 is payable to the complainant as compensation and the remaining ₹5,000/- shall be defrayed to the State.

6. Aggrieved by the said judgment, the accused has preferred an appeal before the appellate Court.

7. After hearing arguments of both sides, the appellate Court dismissed the appeal by confirming the judgment of conviction and order of sentence.

8. Aggrieved by the same, the revision petitioner/accused is before this Court.

9. Heard arguments of both sides.

10. The learned counsel for the revision petitioner, Sri Nanjunda Swamy N., would submit that the transaction between the complainant and the accused is not the

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transaction as alleged in the complaint. The accused is the President of Adi Dravida Vidya Samsthe in Shivamogga and, in that regard, the complainant and her husband approached the accused and requested him to appoint their son-Girish as Kannada teacher. In that regard, the husband of the complainant had paid ₹5,00,000/- in the name of the accused; ₹2,00,000/- in the name of his wife towards Educational Development fund of the said Education Institution and they have not paid ₹1,00,000/- cash as alleged in the complaint. The son of complainant served as Kannada teacher in the said school for a period of 1 year. Afterwards, he voluntarily resigned the said job as his job was not made permanent**.** The accused has made recommendation to the Government to make him as permanent but for the reasons best known to the Government, he was not made as permanent. Thus, the amount paid by the complainant's husband is towards building fund of the educational Institution and not for repayment. Even otherwise the complainant has not

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produced any material to show that ₹1,00,000/- cash was paid as loan; ₹2,00,000/- paid to the wife cannot be recovered from the accused and even the amount in question was not paid by the complainant but it was paid by her husband. Hence, the complainant has no *locus standi* to recover the same.

11. In this regard the learned counsel for the revision petitioner places reliance on the following judgments:

i) ***Dashrathbhai Trikambhai Patel v/s Hitesh Mahendrabhai Patel*** [1]***;***

ii) ***H.S.Venugopala Reddy v/s M.Ramesh*** [2]***;***

iii) ***S.N.Lakshmipathi v/s M.Suresh***[3] ***.***

12. Further, the learned counsel for the revision petitioner would submit that the complainant could not have given loan of such huge amount without charging

[1] (2023) 1 SCC 578
[2] 2022 (5) KCCR 105
[3] 2024 (5) KCCR 812

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any interest. Hence, the transaction was doubtful. Hence, the accused is entitled for the benefit of doubt. Hence, prayed for allowing the revision petition.

13. The learned counsel for the respondent Sri P. Rudrappa would submit that the accused has not at all established that in pursuance of appointing the son of the complainant as Kannada teacher in the school being run by the accused, the sum of ₹8,00,000/- was paid. The cross-examination of the complainant clearly establishes that the accused has not denied the receipt of ₹8,00,000/- but his only contention is that it was paid to the building fund, which is not established by him. Thus, the accused has not rebutted the presumptions available in favour of the complainant. Hence, prayed for dismissal of the revision petition.

14. 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:

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"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 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

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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...."

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.

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 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;

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(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.

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

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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 date of subject cheque is 15.03.2019; initially, it was presented for encashment and at that time, the endorsement dated 04.04.2019 was 'funds insufficient'; subsequently, the same cheque was presented for encashment by the complainant; at that time as per Ex.P.3, the endorsement dated 17.05.2019 was 'drawer's signature differs'.

22. Afterwards, the complainant has issued the legal notice dated 22.05.2019 to the accused which was served on the accused on 27.05.2019. The accused has given reply to said notice in Ex.P.7 on 08.06.2019.

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23. As there was an endorsement that the drawer's signature differs, at the request of the accused, the admitted and disputed signatures were referred to the handwriting expert at FSL. The handwriting expert at FSL authority opined that no divergent writing habits were observed between the questioned and standard signatures, except for natural variations; the similarities in writing habits found in the admitted and questioned signatures would not accidentally coincide in the writing habits of two different persons; when considered collectively, they are sufficient to establish the authorship of the questioned signatures marked as Ex.P.1(1) and Q.1.

24. When once the signature found on the cheque is held to be the signature of the accused and when once the cheque was issued from the bank account of the accused and the complainant has established the above said facts regarding issuance of legal notice, reply to it and presentation of the complaint; the complainant has

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established the above clause No.(iii) to (vii) of the ingredients of Section 138 of NI Act.

25. When once the complainant established these facts, then automatically, the Court shall draw the presumptions in favour of the complainant 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 same, either wholly or in part; the accused has issued the subject cheque. However, these presumptions are rebuttable in nature.

26. With this background, the defence taken by the accused is to be examined.

27. In reply notice, the accused has taken specific defence that the complainant-Sharada and her husband-Dattathreya along with their son-Girish have come to the Institution which is being run by the accused for getting a job of Kannada teacher to their son in June 2018. It is stated in the said reply notice that "after negotiation, your client had voluntarily come forward to give `8,00,000/- as

the Educational development fund and accordingly, they have given `8,00,000/- for the purpose of getting a job to their son one Girish".

28. The further defence taken by the accused in his reply notice that "afterwards also, the complainant and her husband were frequently visiting the accused and was enquiring about the permanency of the job of their son and even though the accused had stated that the necessary documents were sent to the Government for permanency of the said job and advised them to wait for some time; they were not satisfied with the said answer and demanded for payment of cheque for the security and accordingly, the subject cheque in question had given".

29. Thus, in the reply notice, the accused has categorically admitted about receipt of ₹8,00,000/- from the complainant and her husband towards Educational Development fund. But it is a fact that ₹5,00,000/- cheque was given to the accused to his individual capacity; ₹2,00,000/- was given to the wife of the accused to her

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individual capacity and in this reply, the accused has not disputed the receipt of ₹1,00,000/- by way of cash. Furthermore, his contention that as per the demand, the subject cheque was given as security.

30. The contention taken by the accused in his evidence is different. In his evidence, he has deposed that he does not know how the subject cheque had been to the complainant. According to him, he can take the donation from public and obtained the permission from Central Government under Section 80G and 12A of Income Tax Act, 1961. The said permission to take donation is to the Institution and not to the accused in his individual capacity. Hence, his contention that the amount was paid towards Building Educational fund cannot be accepted.

31. Even in the cross-examination, the accused has deposed that his individual account is merged with the bank account of the Institution and he was paying salary to his staff from the bank account of the Educational Institution and also from his individual bank account.

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However, the said fact that he was giving the amount from his individual bank account towards salary of his staff is not established. Even though the accused has stated that he does not know how the cheque came to the complainant; he has not taken such defence in his reply notice and while cross-examining the complainant. The said defence was taken by him for the first time in his evidence.

32. At the time of cross-examination of the complainant, the only defence taken by him is that he has not obtained loan of ₹8,00,000/- from the complainant or from her husband. Even at the time of cross-examination of the complainant, the accused admitted about receipt of ₹8,00,000/-. Thus, he cannot dispute the same subsequently.

33. The argument of the learned counsel for the accused that the complainant has not established payment of ₹1,00,000/- by way of cash and he is not responsible for the amount of ₹2,00,000/- paid to his wife's account, and

only ₹5,00,000/- deposited to his bank account is not tenable. The further argument of the learned counsel that, the amount mentioned in the subject cheque exceeds the amount due to the complainant as on the date of presentation of the cheque and ***Dashrathbhai's*** case cited supra is also not tenable and not helpful for him to prove his defence cannot be accepted.

34. In ***Dashrathbhai's*** case cited supra, at paragraph No.30, it is held as follows:

> *"30. The appellant contends that the purpose of Section 138 of the Act would be defeated if the dishonour of the cheque issued for security is not included within the purview of Section 138 where the payment of a part of the cheque amount is made. It was contended that it would lead to a possibility where the drawer of the cheque could evade prosecution under Section 138 by paying a small amount of the debt while defaulting on the remaining payment. Section 56 stipulates that if there is an endorsement on a negotiable instrument that a part of the sum mentioned in the cheque has been paid, then the instrument may be negotiated for the balance. Section 56 reads as follows:*

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> *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."*

35. If after issuance of the cheque, the part-payment is made and even then, if the cheque is presented to the bank for encashment of the entire amount, then, the Section 56 of the NI Act would come into operation. However, that is not the argument of the revision petitioner's counsel as discussed above.

36. Initially, the accused has to establish that he is not liable to pay ₹8,00,000/- as on the date of presentation of the cheque. But as discussed above, he categorically admitted about the receipt of ₹8,00,000/- in the reply notice and also while cross-examining the

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complainant. Hence, this ***Dashrathbhai's*** case cited supra is not at all helpful to the accused to prove his contention.

37. In ***H.S.Venugopala Reddy's*** case cited supra, paragraph No.21 is held as follows:

> *" 21. Lastly, the learned counsel for the petitioner (accused) canvassed a point that, mere collection of the disputed cheque by the complainant only towards the alleged principal amount but not inclusive of the interest payable, also creates a doubt in the case of the complainant.*
>
> *In his support, he relied upon a reported judgment of a Co-ordinate Bench of this Court in the case of B.P. Venkatesulu's case (supra), wherein, in a similar circumstance, for the offence under Section 138 of the N.I. Act and about the presumption under Section 139 of the N.I. Act, the Court after observing that, the cheque amount since does not include the amount of interest on the loan payable for a particular period, though the rate of interest was agreed, results in a vital defect in the complainant's case. With the observation that the issuance of cheque for the actual loan amount and not including the amount of interest on loan payable is a strong intrinsic circumstance of a suspicious character, the*

Court held that the acquittal of the accused was proper."

38. In ***S.N.Lakshmipathi's*** case cited supra, head note is held as follows:

"NEGOTIABLE INSTRUMENTS ACT, 1881 - Section 138 - Acquittal - Complainant admitting that hand load of huge amount was not paid from his bank account - also failing to show his capacity to lend - accused claiming that cheque in question was given as security at time of joining employment - accused also lodging complaint for misusing said cheque - acquittal not liable to be interfered with."

39. In ***H.S.Venugopal Reddy's*** case cited supra, the contention of the accused was upheld not only on the ground of not adding the interest but also on other grounds. In that case, the accused was working in police department and has not obtained permission or sanction from his employer to take loan of such huge amount and other factors were discussed and then this ground of interest was also discussed; thus, that itself cannot be a ground to reject the claim of the complainant. However, in

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the present case, as discussed above, the accused himself categorically admitted about receipt of ₹8,00,000/- and according to him, it is towards building fund and for providing a permanent appointment to the son of the complainant.

40. Taking money for providing permanent employment to the son of the complainant itself is an offence. Hence, the aforesaid defence of the accused is not tenable.

41. In ***S.N.Lakshmipathi's*** case cited supra, the capacity to lend amount was in dispute. However, that is not so in the present case because the complainant was a retired Government School teacher and her husband was also working in Zilla Panchayath and retired just 1 year prior to his evidence. Hence, their capacity to pay the amount is not at all in dispute. On the other hand, the accused himself admitted about the payment of ₹8,00,000/- by the complainant's husband to him and his wife. In the aforesaid citation, the accused has lodged

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complaint for misusing of the cheque. However, that is not so in the present case. On the other hand, he is taking different defence at the time of giving reply to legal notice, cross-examining the complainant and leading his evidence.

42. Considering all these facts, the trial Court convicted the accused which is confirmed by the appellate Court. Thus, there is no gross erroneousness in coming to the aforesaid findings by the trial Court or the appellate Court and requires no interference. Further, the above discussion reveals that the aforesaid judgments of the trial Court and the appellate Court are not *perverse*, *capricious*, or *vexatious* to interfere with it.

43. 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.: 29