IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 415 OF 2024

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

BETWEEN:

1. SRI. V NAGESH
   S/O VISHWANTHA,
   HINDU, AGED ABOUT 63 YEARS,
   RESIDING AT NO.116, 1ST CROSS,
   GAYATHRIPURAM, MYSORE 570001

…PETITIONER

(BY SRI. MURTHY K.,ADVOCATE)

AND:

1. SMT. M.S.SAVITHA
   W/O D SUBRAMANYA,
   HINDU, AGED ABOUT 72 YEARS,
   RESIDING AT D.NO.26, LIG-1,
   2ND STAGE BOGADI, MYSORE 570001

…RESPONDENT

(BY SRI. SANATHKUMAR SHETTY K.,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/JUDGMENT DATED 30.01.2024 IN CRL.A.NO.80/2023 PASSED BY THE LEARNED IV ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MYSURU CONFIRMING THE ORDER DATED 23.01.2023 PASSED BY THE LEARNED III ADDITIONAL CIVIL JUDGE AND JMFC AT MYSURU IN C.C.NO.1202/2015.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 16.10.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

This is the revision petition filed under Section 397 and 401 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C') by the revision petitioner/accused challenging the judgment of conviction and order of sentence passed in CC No.1202/2015 on the file of III Additional Civil Judge and JMFC, Mysuru (in short 'trial Court') dated 23.01.2023 confirmed in the judgment of Criminal Appeal No.80/2023 dated 30.01.2024 on the file of IV Additional District and Sessions Judge, Mysuru (in short '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.

3. The complainant has filed the complaint under Section 200 Cr.P.C praying for taking cognizance of the offence under Section 138 of Negotiable Instruments Act, 1988 (in short NI Act) and to punish the accused in accordance with law.

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4. The case of complainant in nutshell is that the accused along with his son approached the complainant during July-2011 and requested for a loan of ₹6,80,000/- for educational expenses of his children. The accused is known to the complainant and thus the complainant arranged to lend the said amount; accordingly, on 29.07.2011, the complainant lent a sum of ₹6,80,000/- to the accused and his son. At that time, the accused and his son agreed to repay the aforesaid amount with interest at 1-½% per month on demand and executed the promissory note and consideration receipt in favour of the complainant. Subsequently, towards repayment of the said principal amount, the accused has issued the cheque bearing No.173449 dated 01.09.2013 for a sum of ₹6,80,000/- drawn on Vijaya Bank J.L.B Road Branch, Mysuru. When the complainant has presented the said cheque for encashment through her banker M/s. Canara Bank, Kuvempunagar Branch, Mysuru, it was returned with an endorsement 'insufficient funds' dated 07.09.2013; then the complainant issued legal notice

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dated 11.09.2013 calling upon the accused to pay the cheque amount to the complainant within 15 days. It was duly served upon the accused on 16.09.2013. Instead of paying the cheque amount, the accused has given an untenable reply dated 26.09.2013 that he handed over blank cheque as security for the loan of ₹80,000/-. The said contention is false. Hence, the complaint is filed by the complainant on 03.10.2013.

5. After recording the sworn statement of the complainant, summons was issued to the accused. The accused appeared before the trial Court and then he pleaded not guilty of the offence when accusation levelled against him is read over and explained to him. Then, the complainant examined himself and cross-examined by the learned counsel for the accused. The Accused denied the case of the complainant in *toto* in the statement recorded under Section 313 Cr.P.C. The accused let in defence evidence.

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6. After hearing arguments of both sides, initially the trial Court has acquitted the accused on the ground that the complainant failed to prove her financial capacity.

7. Challenging the same, the complainant has filed the appeal before this Court. Then, the Co-ordinate Bench of this Court allowed the appeal by making an observation that there was no rebuttal evidence and remitted back the case to the trial Court to reconsider the evidence and documents produced and to pass the appropriate judgment.

8. After such remand, after hearing both sides, the trial Court has convicted the accused and sentenced him to pay fine of ₹7,80,000/-; out of which ₹7,70,000/- shall be payable to the complainant as compensation and ₹10,000/- shall be remitted to the State towards expenses.

9. Aggrieved by the same, the accused preferred the appeal. After hearing both sides, the appeal is dismissed

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by confirming the judgment of the trial Court, which is under challenge in this revision petition.

10. Heard arguments of both sides.

11.The learned counsel for the revision petitioner/accused would submit that the revision petitioner has taken only a loan of ₹80,000/- from the complainant in the year 2011; he has not taken loan of ₹6,80,000/-; the complainant was not having any financial capacity to lend ₹6,80,000/-. The amount of ₹80,000/- was received by the wife of the accused towards chit amount and the complainant was doing chit business. The complainant was cross-examined in length on her financial capacity, which establishes her financial incapacity.

12.The learned counsel for the revision petitioner/accused would further submit that the accused is a BSNL employee and getting a very good salary; his wife is running milk vending business and provision store; thus, he was having sufficient income and there was no need for him to obtain loan of ₹6,80,000/-; his children

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were studying M.com and B.com at the time of alleged transaction and thus, no need to take such huge loan.

13. The learned counsel for the revision petitioner has placed reliance on the two judgments of the Hon'ble Apex Court i.e., ***Rangappa vs. Sri Mohan***[1] and ***Basalingappa vs. Mudibasappa***[2].

14. Per contra the learned counsel for the respondent/complainant would submit that the accused has taken different version at different stages. The accused admitted his signature on the cheque, promissory note and consideration receipt wherein it is specifically mentioned about ₹6,80,000/-. Promissory note and consideration receipt are executed on 29.07.2011 and because the accused has not repaid the amount as agreed under the promissory note and consideration receipt, she has issued cheque dated 01.09.2013 to the complainant.

15. The learned counsel for the respondent would further submit that, in the reply notice the accused has

[1] (2010) 11 SCC 441)
[2] (2019) 5 SCC 418)

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taken the defence that he has obtained loan of ₹80,000/- from the complainant but in the affidavit evidence, he has taken the contention that his wife has taken ₹80,000/- from the complainant as chit transaction and not ₹6,80,000/-. The accused categorically admitted that when cheque was dishonoured, he was not having ₹6,80,000/- in his account. The accused in his affidavit evidence has not taken the contention of financial capacity of the complainant.

16. The learned counsel for the respondent would further submit that the presumptions in favour of the complainant under Section 118 and 139 of NI Act were not rebutted by the accused.

17. 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 establishes perversity or grossly erroneousness in the judgment of the trial Court and the appellate Court or the*

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judgment of the trial Court and the 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 ?"

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

REASONS

18. 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[3] in Criminal Appeal No.3654/2026, (Arising out of Special Leave Petition (Criminal) No.2247 of 2024 dated 04.08.2026***. 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

[3] *2026 SCC OnLine SC 1485*

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SCC 659 observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial Court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgement and orders of the trial and appellate Courts.

7.2 Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of record. In State of Kerala vs. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following:

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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.*

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

19. 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.

20. 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

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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.

21. 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

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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 NI Act are rebuttable presumptions.

22. With this background, the facts of the present case are to be analysed to know whether accused has rebutted the presumptions in favour of complainant or not.

23. The facts which are not in dispute are that, the Ex.P.1-cheque bears the signature of the accused and it is from his bank account. The said cheque is dated 01.09.2013. When it is presented for encashment, it was returned with an endorsement 'funds insufficient' dated 07.09.2013; on 11.09.2013, the complainant has issued legal notice as per Ex.P.6 to the accused for which the accused has given reply as per Ex.P.7 dated 26.09.2013 and then the present complaint was filed on 06.11.2013.

24. The above facts clearly establish that the complainant has fulfilled clause No.(iii) to (vi) of the ingredients as stated above.

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25. When the complainant establishes this clause Nos.(iii) to (vii) of Section 138 of NI Act, immediately the presumption under Section 118 of NI Act and Section 139 of NI Act shall be raised in favour of the complainant. However, those presumptions are rebuttable presumptions. Always the presumptions can be rebutted by accused by giving reply to the legal notice or by cross examining the complainant or by leading his evidence or by all the above three modes.

26. In the instant case, the accused has given reply to the notice, cross-examined the complainant and also let in his defence evidence. Thus, he has taken all the above three modes.

27. Since from the reply to legal notice, the accused has taken specific defence that she has taken loan of ₹80,000/- from the complainant but the complainant filled the cheque for a sum of ₹6,80,000/- and that was not the amount borrowed by him. He has also taken the specific plea of financial incapacity of the complainant to lend a sum of ₹6,80,000/-.

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28. In this regard, it is to be noted here that the complainant in the complaint has taken contention that the accused approached during July-2011 and requested for loan of ₹6,80,000/- for educational expenses of his children and she has lent ₹6,80,000/- on 29.07.2011 to the accused.

29. It is to be noted here that not only the cheque, the complainant has also produced the pro-note and consideration receipt as per Exs.P.3 and P.4. In Ex.P.3, it is mentioned that the accused and his son- Preetam have borrowed a sum of ₹6,80,000/- for the education of his children.

30. As the accused had taken the plea of financial incapacity of the complainant, the complainant has produced Ex.P.5, the bank account statement of her husband.

31. On careful perusal of Ex.P.5, the savings bank account of the husband of the complainant, it is noted that ₹1,03,417/- was the maximum amount in his bank

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account as on 20.08.2010. As on the date of alleged transaction of 29.07.2011, there was ₹12,216/- in his account. On 28.07.2011, she has withdrawn a sum of ₹2,000/- from his account by keeping balance of ₹10,216/-.

32. The complainant in her cross-examination has deposed that she is running tailoring shop since 13 years and she is not having any document to prove the same; again she has deposed that she had kept the amount in her house from her 40 years of tailoring profession and from the retirement benefit amount of her husband. Her husband is a retired employee and getting EPF pension of ₹1,000/-. Ex.P.5 is the Savings Bank account statement of the husband of the complainant wherein the maximum amount in his account was ₹1,03,417/- as on 20.08.2010 prior to the alleged date of transaction. There was only ₹12,216/- in the account of the husband of the complainant wherein, he has withdrawn ₹2,000/- on 28.07.2011; on which date the alleged transaction had taken place. Thus, there was no such amount in the bank

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account of the husband of the accused at any point of time. She has deposed that she has withdrawn the amount from the bank account of her husband and lent it to the accused which is contrary to Ex.P.5 as discussed above.

33. The complainant categorically admitted in her cross-examination that accused is a BSNL employee getting ₹30,000/- to ₹35,000/- salary per month and his wife is running provision store and Nandini milk-vending business and getting substantial income from it.

34. The complainant does not know what the children of the accused was studying at the time of alleged lending. She has deposed that they were studying in degree but she does not know properly. But according to her she lent such huge amount of ₹6,80,000/- to the accused for the education of the children of the accused. Without knowing in which class they are studying and for which education such huge amount is required for the accused, nobody can lend such huge amount of ₹6,80,000/-.

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35. According to the complainant, at the time of taking loan, the accused was residing in the house in front of her house but the address of the accused mentioned in Ex.P.3 the pro-note is the address of his own house. The accused has deposed that, during 2011 he was residing in II stage, Bogadi with house #LIG-24 on rent. According to him, the complainant is resident of the house on front side of his house and she is well acquainted to his wife. The accused is running provision store and also milk vending business by taking agency of Nandini Milk in the name of his wife and he is also an employee of BSNL and getting handsome salary of ₹26,000/- as on the date of alleged loan.

36. The accused has admitted his signature in the cheque as well as in 'pro-note' and 'consideration receipt' as per Exs.P.3 and P.4 but the 'consideration receipt' does not bear the signature of attestors and pro-note bear signature of only one attestor -Javed Khan. The accused has deposed that he does not know said person and the said person is not acquainted to him.

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37. Anyway the complainant is not placing her reliance on Exs.P.3 and P.4 alone but she places reliance mainly on the cheque as per Ex.P.1 and its dishonour as per Exs.P.2, P.3 and P.4 are only collateral documents and not much important to decide the case of present nature.

38. With this background**,** the evidence of the accused is to be examined. In the affidavit evidence, the accused has stated that his son was studying in M.Com. and his daughter was studying in B.Com. during 2011. But in cross-examination, he has deposed that they were studying in PUC and SSLC during 2011. He denied the suggestion that he intended to provide higher medical and engineering education to his children during 2011 and for that purpose, he has taken financial assistance from the complainant. No evidence is produced to show that the children of the accused have joined either MBBS or Engineering courses or they have paid any college fee or tuition fee for such education. During 2011 ₹6,80,000/- is not required for tuition fees or for college fees either for SSLC or for PUC.

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39. The trial Court has disbelieved the evidence of the accused only on the ground that he had taken different stands in legal notice and in evidence.

40. The defence in the legal notice is that he has taken loan of ₹80,000/-; but in the evidence, the defence is that his wife was having chit transaction with the complainant and in that transaction his wife has received ₹80,000/- and towards security to the said amount, he has issued the cheque.

41. Thus, in both legal notice and in the evidence, the common stand is that the amount of ₹80,000/-. The only difference is borrowing by the accused and the chit transaction of the wife of the accused.

42. In the legal notice Ex.P.6 and also at the time of cross-examination of the complainant, the accused has taken specific stand that the complainant was not having the financial capacity to lend such huge amount. The above discussion reveals that the complainant had no

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financial capacity to lend the amount of Rs.6,80,000/- is established by the accused.

43. Under these circumstances, the complainnat could have produced some document to prove her financial capacity.

44. It is to be noted here that until and unless the accused rebutted the presumption in favour of complainant, the complainant need not produce any material to prove her financial capacity. The standard of proof required to be established by the accused is the principle of preponderance of probability and not beyond reasonable doubt. Once the accused has established the probable defence then, the burden/onus shifts upon the complainant to prove her case beyond reasonable doubt.

45. In ***Rangappa's*** case supra, relied by the learned counsel for the revision petitioner, at paragraphs No.28 and 29 it is held as follows :

> *28. In the absence of compelling justifications, reverse onus clauses a usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is*

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a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

29. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the "stop payment" instructions to his Bank. Furthermore, the instructions to "stop payment" had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability.

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46. In ***Basalingappa's*** case cited supra, the Hon'ble Apex Court places reliance on the Judgment of ***Kumar Exports vs. Sharma Carpets***[4]. In the aforesaid judgment at paragraph No.19 and 20, it is held as follows:

> *"19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.*
>
> *20.... The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently*

[4] (2009) 2 SCC 513)

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would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist."

47. Further, in ***Basalingappa's*** case cited supra at paragraphs No.27, 30, 32, it is held as follows:

"27. There was another evidence on the record i.e. copy of plaint in OS No. 148 of 2011 filed by the complainant for recovery of loan of Rs 7 lakhs given to one Balana Gouda in December 2009. Thus, there was evidence on record to indicate that in December 2009, he gave Rs 7 lakhs in sale agreement, in 2010, he made payment of Rs 4,50,000 towards sale consideration further he gave a loan of Rs 50,000 for which complaint was filed in 2012 and further loan of Rs 6 lakhs in November 2011. Thus, during the period from 2009 to November 2011, amount of Rs 18 lakhs was given by the complainant to different persons including the accused, which put a heavy burden to prove the financial capacity when it was questioned on behalf of the accused, the accused being a retired employee of State Transport Corporation, who retired in 1997 and total retirement benefits, which were encashed were Rs 8 lakhs only.

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The High Court observed that though the complainant is retired employee, the accused did not even suggest that pension is the only means of survival of the complainant. Following observations were made in para 17 of the judgment of the High Court: (Mudibasappa case, SCC OnLine Kar)

> *"17. Though the complainant is retired employee, the accused did not even suggest that pension is the only means for survival of the complainant. Under these circumstances, the trial court's finding that the complainant failed to discharge his initial burden of proof of lending capacity is perverse."*

30. We are of the view that when evidence was led before the court to indicate that apart from loan of Rs 6 lakhs given to the accused, within 2 years, amount of Rs 18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse, cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence.

31. This Court had occasion to consider the expression "perverse" in Gamini Bala Koteswara Rao v. State of A.P., this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered

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with only (sic when the) judgment is against the weight of evidence. In para 14 following has been held: (SCC p. 639)

> *"14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. erverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."*

48. In this case, as discussed above, the complainant raised the probable defence that she was doing only a tailoring business and her husband is a retired KSRTC employee without pension and was getting only ₹1,000/- EPF pension. She has not produced material to show that there was some substantial amount in the account of her husband. But as discussed above, her husband has withdrawn only ₹2,000/- on previous day of alleged lending which cannot be helpful to the complainant to prove her financial capacity to lend ₹6,80,000/-. She has

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not made any enquiry that for which education of the children of the accused, he required that huge amount. Furthermore, compared to the financial capacity of the complainant, the accused is having well financial stability because he was a BSNL employee, his wife is running provision store and doing Nandini Milk Vending Agency business. His children were only studying in SSLC, PUC at the time of alleged transaction and he in no way required that huge amount for the educational expenses of his children.

49. These aspects were not at all examined by the trial Court and the appellate Court. The trial Court and the Appellate Court have wrongly inferred that the presumptions in favour of the complainant were not rebutted by the accused. Thus, the judgment of the trial Court and the appellate Court is grossly erroneous and not appreciated the evidence in the way it should be appreciated. The only reason to disbelieve the case of the accused by the trial Court is that he had taken different stand which is not correct as discussed above. Hence, this

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Court holds that the judgment of trial Court and appellate Court requires interference.

50. Hence, this Court passes the following :

ORDER

i) The revision petition is ***allowed***;

ii) The revision petitioner/accused is ***acquitted*** of the offence punishable under Section 138 of NI Act.

iii) The amount in deposit be refunded to the accused on proper identification.

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(GEETHA K.B.)
JUDGE

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