NC: 2026:KHC:23879
CRL.RP No. 1382 of 2018

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1382 OF 2018
(397(Cr.PC) / 438(BNSS)

BETWEEN:

SRI. SRIRAM REDDY
S/O LATE KANNA REDDY,
AGE ;55 YEARS
R/AT NO.896/11, 1ST MAIN,
MAHALAXMIPURAM,
BENGALURU-560 086.

…PETITIONER

(BY SRI. J S HALASHETTI, ADVOCATE)

AND:

SRI. B. N. NARAYAN BHAT
S/O LATE P.NARASIMHAIAH,
SINCE DEAD REPRESENTED BY HIS LRS

1(a) BHARATHI N. BHAT
D/O LATE B.N.NARAYANA BHAT
AGED ABOUT 52 YEARS

1(b) MITHILA N. BHAT
D/O LATE B.N.NARAYANA BHAT
AGED ABOUT 28 YEARS

BOTH ARE RESIDENT OF
NO.37 (122),
6TH CROSS, 6TH MAIN ROAD
CHAMARAJPET,
BENGALURU-560 018.

…RESPONDENTS

(BY SRI PRITHVI RAJ.B, ADVOCATE –ABSENT;

Digitally signed by MALATESH K C
Location: HIGH COURT OF KARNATAKA

R1(A) AND R1(B) -SERVED)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE ORDER OF CONVICTION AND SENTENCE OF FINE DATED 19.12.2015, PASSED BY THE XII ACMM, BANGALORE IN C.C.NO.8185/2014, SENTENCING BY IMPOSING A FINE OF RS.5,05,000/- AND IN DEFAULT OF PAYMENT OF FINE, PETITIONER WAS TO UNDERGO SIMPLE IMPRISONMENT FOR SIX MONTHS FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE N.I ACT WHICH IS CONFIRMED BY THE COURT OF THE LXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY IN CRL.A.NO.586/2016, DATED 31.10.2018.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Dr.J.S.Halashetti, learned counsel for the revision petitioner.

2. None appears for the dependents of deceased respondent who was the complainant before the Trial Court.

3. Revision petitioner is the accused who suffered an order of conviction in C.C No.8185/2012 which was confirmed in Criminal Appeal No.586/2016.

4. Facts of the case which are utmost necessary for disposal of the present petition are as under:

4.1 A private complaint under Section 200 of the Code of Criminal Procedure came to be filed alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by contending that complainant and accused are friends for sufficient period of time and in the friendship, accused requested the complainant to lend a sum of Rs.10,00,000/- as financial assistance in the month of March 2013. Complainant lent the said amount in cash on 10.04.2013 which was promised to be repaid by the accused.

4.2 It is further contended that after repeated demands, accused has repaid sum of Rs.5,00,000/- by way of a demand draft and yet another sum of Rs.5,00,000/- by way of a cheque bearing No.136131, drawn on Axis Bank Limited, Rajajinagar Branch, Bengaluru, which on presentation came to be dishonored with an endorsement 'funds insufficient'.

4.3 Legal notice was issued which was served on the accused for which an untenable reply came to be issued by the accused questioning the very transaction as well as the lending capacity of the complainant.

5. Therefore, complainant sought for action against the accused.

6. Learned Trial Magistrate on receipt of the complaint completed necessary formalities and summoned the accused and recorded the plea. Accused pleaded not guilty. Therefore, trial was held.

7. In order to prove the case of the complainant, he got examined himself as PW-1 and placed on record eleven documents which were exhibited and marked as Exhibits P-1 to P-11 comprising of dishonoured cheque, bank endorsement, copy of the legal notice, postal receipt, postal information letter, reply notice, photographs and compact disc

8. As against the material evidence placed on record by the complainant, accused stepped into the witness box and got examined himself as DW-1 and placed on record three documents which were exhibited and marked as Exhibits D-1 to D-3 comprising of Partnership deed, Registration certificate and copy of the complaint to the police.

9. In the cross-examination of DW-1, he has admitted that he is earning Rs.15,000/- to Rs.20,000/- per month from his hotel business. He denied the suggestion that in the month of May 2013 complainant was running the hotel called 'Namma Mane'.

10. He also denied having supplied men and material to the said hotel. However he admits that Exhibit P-1 cheque bears his signature marked Exhibit P-1(a).

11. According to the accused, the cheque which was given in the Partnership business as security, has been misused by the complainant.

12. If it is so, some positive action was required to be taken by the accused. No action was taken against the complainant for the alleged misuse though reply came to be issued vide Exhibit P-6.

13. Accused has further stated that he has no documents to show that he has borrowed Rs.12,00,000/- from his relative by name Sampath. He has also stated that towards the partnership dues, he orally demanded the complainant to pay

the money. He admits that in Exhibit D-1, he had agreed to purchase the running hotel from the complainant.

14. These aspects of the matter has been taken note of by the learned Trial Magistrate and noted that the evidence placed on record by the accused was not sufficient to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act, 1881, and convicted the accused.

15. Thereafter, accused filed an appeal before the District Court in Criminal Appeal No.586/2016.

16. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material on record, dismissed the appeal of the accused *inter alia* holding in paragraphs 20 and 21 as under:

> *"20. The burden is now upon the accused to rebut the presumption available to the complainant. The accused himself was examined as DW.1 and got marked the documents as Exs.D1 to D3. Ex.D1 is the partnership deed, Ex.D2 is the Registration certificate, Ex.D3 is the copy of the complaint lodged by the accused against*

the complainant. The substance of the evidence of the accused is that himself and the complainant entered into the partnership deed dated 10.06.2013 to run a hotel under the name 'Nammane. The accused has paid Rs.10,00,000/- towards investment, Rs.5,00,000/- by cheque and another Rs.5,00,000/- by way of demand draft. Subsequently, he has paid Rs.5,00,000/- in cash and forgotten to take the cheque back. Further, he has stated that the owner of the building did not permit them to prepare non-vegetarian food. Due to this, the complainant did not co-operate with the accused, because of this the accused demanded for repayment of Rs.10,00,000/- from the complainant. The complainant instead of repaying the amount has misused the cheque which was given to complainant by him towards the deposit to start partnership firm. The accused has further stated in his evidence that he has not issued the said cheque towards the repayment of loan and he has not liable to pay any loan amount to the complainant. However, in the cross-examination, the accused has admitted that the hotel business was running by him prior to 2013. And he has further admitted that the cheque Ex.P1 was issued by him and the signature put by him only. He has further stated that though he has issued reply to the notice issued by the complainant he has not stated about the payment of Rs.5,00,000/- to the complainant and the same is not reflected in Ex.D1, the Partnership deed. And he has further stated that he has not demanded for return of cheque in writing. However, in the evidence the

accused has not denied the issuance of cheque. He has admitted the issuance of signed blank cheque. After due consideration of the oral and documentary evidence of the accused, there is no sufficient reasons and evidence to believe the version of the accused. The oral and documentary evidence are not sufficient to rebut the presumption available to the complainant. Hence, I am of the view that the accused has failed to prove his defense.

21. In the light of the aforesaid reason, I am of the opinion that, the contention raised by the appellant in his appeal are not supported by any cogent and valid documentary or oral evidence and he has failed to rebut the presumption available to the complainant. Hence, I am of the opinion that the trail court has rightly observed that the accused had issued cheque in question to discharge legally enforceable debt i.e., loan taken by the accused. Hence, on careful perusal of the lower court records and the impugned judgment of conviction, I am of the opinion that the trial court has rightly passed the judgment of conviction. The impugned judgment is in accordance with the settled principle of law and facts of the case. There is no error in the judgment passed by the learned Magistrate and no grounds are made out by the appellant to interfere with the impugned judgment of conviction."

17. Being further aggrieved by the same, accused is before this Court in this revision.

18. Dr. J.S.Halashetti, learned counsel for the revision petitioner reiterating the grounds urged in the petition would contend that the accused has questioned the capacity of the complainant in lending Rs.10,00,000/- in cash.

19. According to him, Rs.5,00,000/- paid by the accused to the complainant is in respect of partnership firm and not towards repayment of the loan amount. Therefore, there was no legally recoverable debt.

20. He also contended that the cheque that has been issued by the accused in the partnership business, has been misused by the complainant.

21. Therefore, the order of conviction recorded by both the courts is bad in law.

22. In the light of the arguments put forth on behalf of the petitioner, this Court perused the material on record, meticulously, as the dependants of the original complainant failed to appear before this Court and contest the petition.

23. On such perusal of the material on record, admittedly cheque marked at Exhibit P-1 and the signature found therein is that of the accused. How Ex.P.1 reached the hands of the complainant is explained by the accused by contending that the same was handed over during the course of partnership business which existed between complainant and accused.

24. Exhibit D-1 is the Partnership Deed which has been placed on record. There is an admission by the accused that in Exhibit D-1 there is a mention that he intended to purchase the running hotel business from the complainant.

25. If it is so, what is the value and how much money he has paid is not forthcoming on record as accused has failed to establish the same by placing further documents on record.

26. Accused, has no doubt, stated that he got Rs.12,00,000/- received from his relative Sampath. To establish the said fact, Sri Sampath has not been examined before the Court to establish that he had sufficient money.

27. In the reply notice, no doubt, the accused has stated that he is well off financially. But in the cross-examination he has

admitted that he had the income of Rs.15,000/- to Rs.20,000/- per month and not so well off, so as to not to borrow money from the complainant.

28. Taking note of this defence evidence placed on record, it is not sufficient to rebut the presumption in the opinion of the learned Trial Magistrate which has been further considered in *extenso* by the learned Judge in the First Appellate Court as referred to *supra* while upholding the opinion of the Trial Magistrate.

29. This Court having regard to the limited revisional jurisdiction cannot revisit into the factual aspects of the matter.

30. At any rate, the lending capacity being questioned and not established by the accused, this Court is of the considered opinion following the dictum of the Hon'ble Apex Court in the case of ***Rangappa vs. Sri Mohan*** reported in ***(2010)11 SCC 441***, ***Rajesh Jain vs. Ajay Singh*** reported in ***(2023)10 SCC 148*** and ***Sanjabij Tari vs. Kishore S. Borcar and another*** reported in ***2025 SCC OnLine SC 2069*** that, the order passed

by the learned Trial Magistrate confirmed by the First Appellate Court needs no interference.

31. Accordingly, the following:

ORDER

Revision Petition is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 2 Sl No.: 55