HC-KAR

NC: 2026:KHC:61725
CRL.RP No. 796 of 2024

CNR: KAHC010333942024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO.796 OF 2024

BETWEEN:

RAVI KUMAR P.H.,
S/O HULISIDDE GOWDA,
AGED ABOUT 42 YEARS,
R/AT NO.546, 4TH CROSS,
LIG 707, YELAHANKA NEW TOWN,
BENGALURU - 560 064.

...PETITIONER

(BY SRI SHARAN B.T., ADVOCATE)

AND:

KRISHNA KUMAR M.,
S/O G.H. HUCHAIAH,
AGED ABOUT 47 YEARS,
RA/T NO.103/C, TYPE 1,
RWF WEST COLONY,
YELAHANKA TOWN,
BENGALURU - 560 064.

...RESPONDENT

(BY SRI SHRINIWAS M. KULKARNI, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE IMPUGNED JUDGMENT AND ORDER DATED 29.09.2020 IN C.C.NO.1480 OF 2019 PASSED BY THE HONBLE XVIII ADDL. CHIEF MM AT BENGALURU AND TO SET

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ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 24.04.2024 IN CRL.A.NO.186/2021 PASSED BY THE LXII ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-63) AT BENGALURU BY ACQUITTING THE PETITIONER (ANNEXURE-B AND ANNEXURE-A) RESPECTIVELY.

THIS PETITION, COMING ON FOR ORDERS, 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 under Section 397 read with 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 dated 29.09.2020 passed in CC No.1480/2019 on the file of XVIII Addl. Chief Metropolitan Magistrate, Bengaluru (in short, 'the trial Court') and confirmed the same in Judgment of criminal appeal dated 24.04.2024 passed in criminal appeal No.186/2021 on the file of LXII Addl. City Civil and Sessions Judge (CCH - 63), Bengaluru and to acquit the revision petitioner.

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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 private complaint under Section 200 Cr.P.C., before the trial Court praying for taking the cognizance of the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (in short, 'NI Act') against the accused.

4. It is stated in the complaint that the complainant and the accused are known to each other. The accused during April-2018 approached the complainant for financial assistance of ₹6,74,000/- to perform the marriage of his younger sister and to install the water refilled tank. Accordingly, the complainant lent the aforesaid amount during May-2018; out of which he has paid ₹2,00,000/- through cheque drawn on Corporation Bank, Yelahanka, New town, Bengaluru and the balance amount was paid by pledging the gold ornaments of his wife to perform the marriage of sister of

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the accused. The accused has agreed to repay the amount on 31.10.2018. In this connection, he has issued the subject cheque bearing No.313257 drawn on State Bank of India, Yelahanka, New town, Bengaluru for the sum of ₹6,74,000/-. The complainant presented the same for encashment on the same day. However, the said cheque was dishonoured with an endorsement 'Funds insufficient' and that the complainant received the said endorsement on 09.11.2018. He has issued the legal notice dated 14.11.2018 to the accused, which is served on 15.11.2018; he has given an untenable reply dated 07.12.2018 and then the complaint is filed on 15.12.2018.

5. After recording the sworn statement of the complainant, the trial Court has taken cognizance of the offence and issued summons to the accused.

6. After his appearance, the accused pleaded not guilty of the offence, when the accusation leveled against him were read over and explained to him.

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7. Afterwards the statement of the accused under Section 313 of Cr.P.C., was recorded, wherein he denied the case of the complainant in *toto*. The complainant was cross-examined by the learned counsel for the accused and the accused also led his defence evidence.

8. After recording the evidence of both sides, hearing the arguments, the trial Court concluded that the accused has committed the offence and convicted for the offence punishable under Section 138 of NI Act, sentenced him to pay a fine of ₹10,20,000/-; out of which ₹10,00,000/- shall be payable to the complainant as compensation.

9. Aggrieved by the said Judgment of conviction and order of sentence, the revision petitioner approached the appellate Court. After hearing arguments, the appellate Court dismissed the appeal by confirming the Judgment of conviction and order of sentence.

10. Aggrieved by the same, the revision petitioner is before this Court.

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11. Heard arguments of both sides.

12. The learned counsel for the revision petitioner Sri Sharan B.T. for Sri Pruthvi M. would submit that the accused has received only ₹2,00,000/- through cheque from the complainant to perform the marriage of his sister and he has to repay only the said amount and not the cheque amount of ₹6,74,000/-. The complainant being a central government employee has not obtained permission of his employer to lend the amount mentioned in the cheque and has not shown the amount due to him from the accused in his income tax returns. Furthermore, the complainant has not produced any evidence to show that the he has pledged the gold ornaments of his wife to lend amount to the accused. The Xerox documents produced by him were relied by the trial Court. In this regard, he places reliance of the Hon'ble Apex Court in ***Rangappa vs. Sri Mohan***[1]. Hence, prays for allowing the revision petition.

[1] *(2010) 11 SCC 441*

13. The learned counsel for the respondent Sri Shriniwas M. Kulkarni for Sri Manish S would submit that the trial Court and the appellate Court have considered the available evidence and have applied the presumptions available under Section 118 and 139 of NI Act, which were not at all rebutted by the accused. Hence, the Judgment of conviction passed by the trial Court and confirmed by the appellate Court is just and proper and requires no interference.

14. As far as sentencing is concerned, the learned counsel for the revision petitioner would submit that admittedly the transaction between the complainant and the accused is not commercial transaction; but it is for the performance of the marriage of younger sister of the accused. Furthermore, the accused is in acute financial crisis and could not pay the amount stated in the sentence. No appropriate reason is given for such enhancement of the sentence. Hence prayed for reduction of the sentence.

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15. The learned counsel for the respondent would submit that the conduct of the revision petitioner establishes that he is not entitled for any relaxation as prayed by him. Even though the sentence was suspended by imposing some conditions; they were not fulfilled by the revision petitioner; he approached the Hon'ble Apex Court. The revision petition was dismissed for non-prosecution. But as per the direction of the Hon'ble Apex Court, it was restored because he deposited the amount mentioned in the condition for suspension of sentence. Hence, he is not entitled for any relaxation.

16. Having heard arguments of both sides, verifying the revision petition papers, trial Court records and the appellate Court records, the points that arise for consideration is:

i. Whether the revision petitioner 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

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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 ?

ii. *Whether imposing sentence by the trial court is exorbitant compared to the gravity of the offence committed and proved against the accused.*

17. The finding of this Court on point No.1 is in '***Negative'*** and point No.2 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 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

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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 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."*

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:

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(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 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

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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 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 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.

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23. The Case of complainant is that as per the request of the accused he lent totally ₹6,74,000/- to the accused in the month of May-2018; out of which he lent only ₹2,00,000/- through bank transaction and the remaining amount is by way of cash.

24. The defence of the accused is that he has taken loan only of ₹2,00,000/- mentioned in the bank transaction and he denied the receipt of balance amount which was paid by way of cash.

25. The accused has not disputed the signature on the cheque and it belongs to his bank account. The cheque is dated 31.10.2018; it was presented for encashment on the same day; the complainant received the endorsement - 'Funds insufficient' on 09.11.2018; he issued legal notice dated 14.11.2018 as per Ex.P.3 which was served upon the accused on 15.11.2018 as per Ex.P.5 and the accused has given reply dated 07.12.2018; the complaint is filed on 15.12.2018.

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26. The above facts establish that the complainant able to establish clauses No.(iii) to (vii) of the ingredients of the offence punishable under Section 138 of NI Act, as stated above; when the complainant establishes these facts, the initial presumptions in favour of the complainant is that the subject cheque was issued for consideration; it was issued on the date mentioned in it; there exists legally enforceable debt and to discharge the whole or in part of said debt, the accused has issued the subject cheque. The above presumptions are rebuttable in nature. The accused can rebut these presumptions by giving reply, by cross-examining the complainant or by leading defence evidence or by all the above three modes.

27. In this case, the accused did all the above three. His defence since from beginning is that he received only ₹2,00,000/- from the complainant which was paid to him by way of bank transaction. However, he has not made any efforts to repay the said amount before institution of the case before the trial Court. Only as per

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the direction of the appellate Court, he has deposited 20% of the fine amount and then as per the direction of the Hon'ble Apex Court, he deposited totally 50% of the fine amount.

28. The cross-examination of accused reveals that he has not taken any legal steps for misusing his cheques. In the legal notice he has only stated that he has given 5 blank signed cheques to the complainant; out of them the subject cheque is one and it was misused by the complainant. But, in the evidence he has deposed that he has issued those 5 cheques to one Jagdish who stood as surety for his loan transaction. Thus, he has taken two different stands in reply to legal notice and also in his evidence.

29. In the cross-examination of the complainant, the accused able to elicit that the complainant is central government employee and to lend the amount and also not showed the amount of lending in his income tax returns. Except the above evidence, there is no evidence

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on record to rebut the presumptions available in favour of the complainant.

30. In ***Rangappa's*** case cited above, the Hon'ble Apex Court at para No. 19 and 27 held as follows:

> *19. It has been contended on behalf of the appellant-accused that the presumption mandated by Section 139 of the Act does not extend to the existence of a legally enforceable debt or liability and that the same stood rebutted in this case, keeping in mind the discrepancies in the complainant's version. It was reasoned that it is open to the accused to rely on the materials produced by the complainant for disproving the existence of a legally enforceable debt or liability. It has been contended that since the complainant did not conclusively show whether a debt was owed to him in respect of a hand loan or in relation to expenditure incurred during the construction of the accused's house, the existence of a legally enforceable debt or liability had not been shown, thereby creating a probable defence for the accused.*
>
> *27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the*

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course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendat-accused cannot be expected to discharge an unduly high standard or proof.

31. The standard of proof required to rebut the presumptions in favour of the complainant by the accused is only preponderance of probability and not beyond reasonable doubt. In the instant case as discussed above nothing was produced by the accused to rebut the presumptions in favour of the complainant. Under these circumstances, convicting the accused by the trial Court is appropriate and it requires no interference.

32. As far as imposing sentence is concerned, the trial Court has not assigned any reason to impose the sentence of ₹10,20,000/- when the cheque amount is ₹6,74,000/-. The transaction is of the year 2018 and the

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criminal case is filed in the year 2019 and the judgment was pronounced in the year 2020 itself. Admittedly, the transaction between the complainant and the accused is for the performance of the marriage of younger sister of the accused. Even though it is stated that for installation of water refilling tank, the accused has taken the loan, the said fact is not emphasized in the evidence but the fact emphasized is that accused has taken the loan for performing the marriage of his younger sister. Thus, the transaction between parties is not commercial transaction but it is for the domestic needs of the accused.However as on today, the transaction has taken place about 8 years back.

33. Considering all these aspects, this Court opines that the imposition of fine of ₹10,20,000/- by the trial Court is exorbitant and it shall be reduced to ₹8,00,000/-. Further, the trial court imposes the default sentence of two years, which is defiantly not in accordance with the norms prescribed under law.

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34. The maximum sentence of imprisonment for this offence is two years; which cannot be imposed as default sentence. Hence, the default sentence is to be reduced to six months.

35. Hence, this Court passes the following:

ORDER

I. The Criminal revision petition is ***allowed in part***.

II. The imposition of fine amount of ₹10,20,000/- by the trial Court is reduced to ₹8,00,000/-; in default of payment of fine, the accused shall undergo simple imprisonment of six months.

III. Except this modification, the remaining part of the judgment of the trial Court is unaltered.

IV. The respondent/complainant is permitted to withdraw the amount already deposited before the trial Court on proper identification by allowing IA No.5/2026.

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V. In view of disposal of the main petition and IA No.5/2026, if any other pending IAs, they shall stand disposed of.

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(GEETHA K.B.)
JUDGE

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List No.: 1 Sl No.: 9