IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CRIMINAL REVISION PETITION NO. 1201 OF 2021

BETWEEN:

SMT. N. SUNITHA
W/O PRABHU
AGED ABOUT 36 YEARS
RESIDING AT NO.89/2A
4TH CROSS, RAJENDRA NAGAR
MYSURU-570 007

...PETITIONER

(BY SRI: SRINIVASA D C, ADVOCATE)

AND:

SMT. RANI NAGESH
W/O NAGESH
AGED ABOUT 41 YEARS
RESIDING AT NO.5211, 8TH CROSS
BEHIND SBM VIJAYANAGAR
MYSURU-570 017

Digitally signed by PAVITHRA B
Location: HIGH COURT OF KARNATAKA

...RESPONDENT

(BY SRI: A B NATESH KUMAR, ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTIONS 397 READ WITH 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE PASSED BY THE IV JMFC, MYSURU IN C.C.NO.1461/2017 DATED 07.03.2020 AND THE JUDGMENT AND SENTENCE PASSED BY THE VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU IN CRL.A.NO.129/2020 DATED 21.09.2021 CONVICTING THE PETITIONER UNDER SECTION 138 OF N.I ACT AND DIRECTING TO PAY A SUM OF

RS.3,05,000/- IN DEFAULT TO PAY THE AMOUNT TO UNDERGO S.I FOR 6 MONTHS AND FURTHER ACQUIT THE PETITIONER.

THIS CRL.RP, HAVING BEEN RESERVED FOR ORDERS ON 29.10.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **T.P.VIVEKANANDA J.,** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV ORDER

This Criminal Revision Petition is filed by the accused in CC No.1461 of 2017, assailing the legality and correctness of the judgment of conviction and order of sentence dated 07.03.2020, whereby, the learned Magistrate convicted the accused for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') and the judgment dated 21.09.2021 passed in Criminal Appeal No.129 of 2020 by the learned VI Additional District Judge, Mysuru, whereby, the appeal preferred by the petitioner was dismissed and the conviction was confirmed with a rectification in the operative portion of the order of sentence.

2. The petitioner is the accused and the respondent is the complainant before the Trial court. The parties are referred to as per their ranking before the Trial Court.

3. The facts leading to the institution of the complaint, as could be gathered from the records, are as follows:

The complainant and the accused are relatives and were acquainted with each other. It is the case of complainant that the petitioner-accused had approached her for financial assistance for alteration of her house, and borrowed a sum of Rs.2,00,000/- in cash on 30.04.2016. It is stated that the said amount was withdrawn from the bank account of the husband of the complainant.

4. It is the further case of the complainant that the accused again approached her and borrowed a further sum of Rs.1,00,000/- on 16.01.2017, which was transferred by way of money to the account of accused bearing SB A/c No.064046422424, State Bank of Mysuru, Vijayanagar Branch, Mysuru. Thus, the accused has borrowed a total sum of Rs.3,00,000/- and had agreed to repay the same within three months.

5. As the accused had not repaid the amount as agreed, after repeated requests, the accused had issued a cheque bearing No.915929 dated 03.06.2017 for a sum of Rs.3,00,000/-drawn on Canara Bank, N.R Mohalla Branch,

Mysuru. The complainant presented the cheque for encashment and it was returned unpaid on 05.06.2017 with an endorsement "Payment stopped by drawer".

6. The complainant got issued a legal notice dated 24.06.2017 calling upon the accused to pay the cheque amount within fifteen days from the date of receipt of notice. The notice was served on the accused on 27.06.2017 and she issued a reply on 28.06.2017 as per Ex.P6. The accused having failed to pay the amount covered under the cheque, the complainant lodged a complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C') for the offences punishable under Section 138 of the NI Act.

7. The learned Magistrate took cognizance and issued summons to the accused. The accused appeared and pleaded not guilty and claimed to be tried. The complainant was examined as PW1 and got marked Exs.P1 to P8. The accused examined herself as DW1 and two other witnesses as DWs.2 and 3, but no documents were marked on her behalf. Upon appreciation of the oral and documentary evidence, the learned Magistrate convicted the accused for the offence punishable under Section 138 of the NI Act and sentenced her to pay a fine of Rs.3,05,000/-, in default to undergo simple

imprisonment for a period of six months, and directed that out of the fine amount, a sum of Rs.1,00,000/- be paid to the complainant as compensation under Section 357 of Cr.P.C and Rs.5,000/- to be paid to the State.

8. Being aggrieved, the accused preferred Criminal Appeal No.129 of 2020 before the Appellate Court. The Appellate Court, after framing the points for consideration and upon re-appreciation of the evidence, dismissed the appeal. While doing so, the Appellate Court noticed that there was a clerical or arithmetical error in the operative portion of the order of sentence, that though the fine imposed was Rs.3,05,000/-, only Rs.1,00,000/- was directed to be paid to the complainant as compensation, and in exercise of its powers under Sections 362 and 386 of the Cr.P.C rectified the same by directing that out of the fine amount of Rs.3,05,000/- a sum of Rs.3,00,000/- shall be paid to the complainant as compensation and Rs.5,000/- shall be paid to the State.

9. Aggrieved by the concurrent findings, the accused is before this Court in this Criminal Revision Petition.

10. The contention of the learned counsel of the petitioner-accused are that:

(i) The cheque at Ex.P1 was not issued towards any loan transaction and it was issued as security in respect of a chit amount of Rs.1,30,000/- availed by the accused from the complainant, who was running a chit business, and towards a sum of Rs.60,000/- payable in respect of an insurance policy. Though the entire chit amount and the insurance amount were paid, the complainant did not returned the cheque in spite of repeated requests on the ground that it is lost, and therefore, she was constrained to instruct her banker to stop payment.

(ii) That there was no legally enforceable debt for enforcement.

(iii) The complainant had no financial capacity to advance a sum of Rs.3,00,000/-.

(iv) The Courts below have failed to appreciate the contradictions, omissions and inconsistencies in the evidence of the complainant.

(v) The Appellate Court had no jurisdiction to alter the amount of compensation, and the impugned judgments are opposed to law and the probabilities of the case.

11. *Per contra,* the learned counsel for the respondent would support the impugned judgments contending that:

(i) The issuance of the cheque at Ex.P1 and the signature of the accused thereon are admitted, and the complainant has established all the ingredients of the offence under Section 138 of the NI Act. The statutory presumptions under Sections 118 and 139 operate in her favor.

(ii) The financial capacity of the complainant stands established by the documentary evidence placed on record, including the passbook which discloses that a sum of Rs.1,98,000/- was withdrawn from the account of the husband of the complainant, and Exs.P7 and P8 relating to the amount raised by pledging gold ornaments. Rs.1,00,000/- was admittedly paid through bank transfer.

(iii) The petitioner-accused did not produce a single document to substantiate the alleged chit transaction, or its repayment.

(iv) The statutory presumption in favour of the complainant has not been rebutted by the petitioner-accused.

12. In the light of the rival contentions, the points that would arise for consideration before this court are:

"i) Whether the accused has rebutted the presumptions available to the complainant under Sections 118 and 139 of the NI Act so as to warrant interference with the concurrent findings of the Courts below?

ii) Whether the Appellate Court was justified in rectifying the clerical or arithmetical error in operative portion of the order?

iii) What order ?"

13. Regarding **POINT NO.1**: The amount involved, namely, Rs.3,00,000/-is not so large as to be beyond the means of the complainant, particularly when it is shown that part of it was in fact drawn from the bank account and it was raised by pledging gold ornaments. In order to prove the financial capacity, the complainant-respondent has produced documents at Exs.P7 and P8. The finding of the Courts below on this aspect is based on legal evidence and is well founded. No grounds are made out by the petitioner for this Court to upset the findings in exercise of revisional jurisdiction.

14. The other contention that there are contradictions, omissions and inconsistencies in the evidence of the complaint is also without substance. Having perused the evidence of PW1, this Court is of the opinion that the alleged discrepancies

are minor and do not go to the root of the matter so as to upset the statutory presumption available in favour of the complainant. Inasmuch as, the issuance of cheque, its dishonor, and non-payment despite notice, stands established. However, the theory of chit transaction between the complainant and the accused is not established. Thus, the plea of the accused that as a security for the payment of remaining chit installment, the cheque in question was issued is not established. No evidence was produced or led by the accused to demonstrate that she was a subscriber of chit and was paying the chit amount to the complainant. Though the accused has deposed in the course of evidence that she used to pay the monthly subscription of the chit amount in cash and through bank transfer, however, the same is not established. Learned counsel for the petitioner has not been able to point out any material contradiction, which would demolish the case of the complainant.

15. In the considered view of this Court, the accused has failed to probabalise her defense. The Trial Court, on appreciation of the oral and documentary evidence, has rightly held that the statutory presumption under Sections 118 and 139 of the NI Act have not been rebutted, and the Appellate

Court, on re-appreciation of the same evidence, has affirmed the said finding by assigning sound and cogent reasons. The concurrent findings are neither perverse nor contrary to the materials on record, nor is there any illegality or material irregularity in the same. The plea of the accused that when she made a request for return of the cheque after closure of the chit, the same was not returned on the ground it is lost, is not established by leading any evidence. If the said fact was true, the same should have been the reason for giving instructions to the bank for stop payment. The request made to the Bank for stop payment should have contained the plea of cheque being lost at the hands of the complainant. The accused has not issued any notice to the complainant in that regard calling upon her to return the cheque. The accused has miserably failed to prove the theory of non return of cheque by the complainant after closure of the chit transaction. None of the other members of the chit group were examined to prove that the accused was one of the member of chit group.

16. It is well established that the presumption under Section 139 of the NI Act is a presumption of law, it is not a presumption of fact. The onus of proof to rebut this

presumption always lies on the accused. The standard of such rebuttal evidence depends on the facts and circumstances of each of case. Such evidence must be sufficient, cogent and should prove beyond any reasonable doubt. Therefore, a mere explanation is not enough to repel this presumption of law. The defence and evidence of the petitioner-accused did not meet the requirement of standard of rebuttal evidence and the accused has failed to create a semblance of doubt regarding the statutory presumption which stood in favour of the complainant. For the aforesaid reasons, point No.1 is answered in the negative.

17. Regarding **POINT N0.2**: The contention of the Petitioner is that the Appellate Curt has no jurisdiction to alter the amount of compensation. It is noticed that the Trial Curt imposed a fine of Rs.3,05,000/- on the accused, i.e., the cheque amount of Rs.3,00,000/- together with a sum of Rs.5,000/- and directed that Rs.5,000/- shall be paid to the State and the remaining Rs.3,00,000/-was to be paid to the complainant. However, in the operative portion of the order, due to an inadvertent error the compensation payable to the complainant under Section 357 of the Cr.P.C., was mentioned as Rs.1,00,000/- and Rs.5,000/- which does not tally with the

fine amount of Rs.3,05,000/-, leaving a sum of Rs.2,00,000/- of the fine amount unaccounted for. It is a clerical or arithmetical error. Section 362 of the Cr.P.C., while prohibiting a Court from altering or reviewing its judgment or final order after the same has been signed, expressly saves the power of correction of a clerical or arithmetical error. An Appellate Court under Section 386 of the Cr.P.C., is vested with all the powers, which the Trial Court could have exercised.

18. Admittedly, the issue was brought to the notice of the Appellate Court during the course of arguments and the learned counsel for the accused was heard in the matter. By rectifying the error, the Appellate Court has neither enhanced the sentence nor altered the quantum of fine imposed, nor the default sentence. The total fine amount of Rs.3,05,000/-and the sentence of simple imprisonment for a period of six months in default remain exactly as imposed by the Trial Court. All that has been done is that the apportionment of the very same fine amount between the complainant and the State has been brought in line with the Trial Court. The petitioner-accused has not suffered any prejudice by such rectification. On contrary, if the error had not been corrected,

grave injustice would have been caused to the complainant, who would have been deprived of compensation for the amount of the cheque, which was found to be due to her. Therefore, this Court finds no illegality in the rectification made by the Appellate Court. Point No.2, is accordingly, answered in the negative.

19. Regarding **POINT No.3**: For the aforesaid reasons, this Court find that the revision petition is devoid of merits and is liable to be dismissed. The petitioner-accused having been found to have borrowed the amount from respondent-complainant, and having thereafter issued the cheque in discharge of the same and given instruction of 'stop payment', thereof without repaying the amount, has not made out any ground to interfere with the concurrent finding of the Courts below.

20. In the result, the following:

ORDER

(i) The Criminal Revision Petition is ***dismissed.***

(ii) The judgment of conviction and order of sentence dated 07.03.2020 passed in CC No.1461 of 2017 passed by Judicial Magistrate First Class (IV Court), Mysuru, as modified

by the judgment dated 21.09.2021 passed in Criminal Appeal No.129 of 2020 by the VI Additional District Judge, Mysuru, are hereby confirmed.

(iii) The amount deposited by the petitioner before the Trial Court shall be released in favour of the respondent-complainant.

Registry is directed to transmit the Trial Court records, forthwith, along with the copy of this judgment, for needful action.

Sd/-
(T.P.VIVEKANANDA)
JUDGE

PB