HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1319 OF 2022

BETWEEN:

SRI C NAGARAJAIAH
S/O LATE CHINNAPPA
AGED ABOUT 69 YEARS,
R/AT NO.351, 2ND MAIN ROAD, 8TH CROSS,
RHBCS LAYOUT, ANNAPORNESHWARINAGARA
NAGARABHAVI, BENGALURU-560091

PRESENTLY R/AT NO.141
1ST MAIN, NGEF LAYOUT NRUPATHUNGANAGARA
2ND STAGE, NAGARABHAVI
BENGALURU - 560 072

...PETITIONER

(BY SRI. KUMARA K.G.,ADVOCATE)

AND:

SRI M MUTHUAPPAIAHSWAMY
S/O LATE SHIVAPPA
AGED ABOUT 83 YEARS
R/AT NO.105/13, 11TH MAIN ROAD,
NEAR RUDRASWAMY TEMPLE
GAVIPURA WEST
BENGALURU - 560 019

...RESPONDENT

(BY SRI. PRAKASH SHETTY, ADVOCATE)

Digitally signed by SHARADAVANI B
Location: High Court of Karnataka

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER PASSED BY THE LXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-69), BENGALURU IN CRL.A.NO.1174/2019 DATED 07.07.2022 AND JUDGMENT PASSED BY THE XII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU IN C.C.NO.18298/2017 DATED 12.04.2017 AND TO ACQUIT THE PETITIONER OF THE CHARGE U/S 138 OF NEGOTIABLE INSTRUMENTS ACT, BY ALLOWING THIS CRL.RP.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Heard Sri. Kumara K.G., learned counsel for the revision petitioner and Sri. Prakash Shetty, learned counsel for the respondent.

2. Revision petitioner is the accused who suffered an order of conviction in CC No.18298/2017, confirmed in

Criminal Appeal No.1174/2019 for the offence under Section 138 of the Negotiable Instruments Act.

3. Facts in the nutshell which are utmost necessary for disposal of the present petition are as under:

3.1 A complaint came to be filed under Section 200 Code of Criminal Procedure alleging the commission of the offence under Section 138 of the Negotiable Instruments Act by contending that accused and complainant are known to each other through a common friend. Accused was in the real estate business.

3.2 In the acquaintance, accused requested hand loan in a sum of Rs.15,00,000/- which was paid in the last week of October 2016.

3.3 Towards the repayment, following cheques were issued, which would include the interest as well.

Sl.No.	Cheque No.	Bank	Branch	Date	Amount
01	528200	SBM	Malleswaram	15.03.2017	1,50,000/-
02	007095	HDFC	Chord Road	18.05.2017	10,00,000/-
03	007096	HDFC	Chord Road	18.05.2017	8,50,000/-
				TOTAL	**20,00,000/-**

3.4 Those cheques on presentation returned with an endorsement 'funds insufficient'/'Account closed'. There was no compliance to the callings of notice and therefore, action was sought against the accused.

3.5 Learned Trial Magistrate, after completing the necessary formalities, summoned the accused, recorded plea. Accused pleaded not guilty. Therefore, trial was held.

3.6 Complainant got examined himself as PW1 and placed on record twelve documents which are exhibited and marked as Exhibits P1 to Exhibit P12, comprising of dishonoured cheque, bank endorsement, office copy of the

legal notice, postal receipt, returned postal cover, agreement dated 16.11.2016, letter dated 06.11.2016. Sale Deed dated 11.03.2014.

3.7 As against the material evidence placed on record, accused got examined himself as DW1 and placed on record three documents namely HDFC Bank Letter, Form No. 16 and Khata Extract.

3.8 Thereafter, learned Trial Magistrate heard the arguments of the parties and on cumulative consideration of the material on record, convicted the accused and sentenced as under:

> *"Acting U/s 255(2) Cr.P.C., the accused is convicted for the offence punishable U/s. 138 of N.I. Act.,*
>
> *The accused shall pay a fine of Rs.20,05,000/-. In default of payment of said fine amount, the accused shall undergo simple imprisonment for Eight Months.*
>
> *Further, ordered that, out of the said fine amount of Rs.20,00,000/- shall be paid to the complainant as compensation, as provided U/s 357 of Cr.P.C., and remaining an amount of Rs.5,000/- shall be remitted to the state as fine."*

3.9 Being aggrieved by the same, accused filed an appeal before the District Court in Criminal Appeal No.1174/2019.

3.10 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 evidence on record, dismissed the appeal of the accused *inter alia* holding in paragraphs 14 to 17 as under:

> *"14. I have gone through the trial court records, evidence and documents. Before going to discuss about the merits of the case, I would like to mention that the respondent contended that, the appellant is known to him. He is well acquainted with the appellant. The appellant approached the respondent and requested for financial assistance of Rs.15 lakhs. Accordingly, he paid Rs.3,00,000/- on 20.10.2016, Rs.3,00,000/- on 25.10.2016, R$ 4,00,000/- on 28.10.2016, Rs.2,50,000/- on 04.11.2016 and Rs.2,50,000/- on 06.11.2016, totally Rs. 15,00,000/- to the accused. The accused after borrowing the said loan amount had promised that he will share the profits out of his real estate business and in this regard the accused had written a letter dated 06.11.2016 in favour of the complainant. Further, on 08.11.2016 the Central Government had demonetized the old currency notes of*

Rs.500/-and Rs.1,000/- denomination and at that stage, the accused told that, he had invested all the money in his real estate business and such being the possession, he cannot sell his land and could not share the profit as stated in the letter and on 16.11.2016, the accused had executed an agreement of loan in favour of the complainant and agreed to repay the entire amount with Rs.5,00,000/- extra as a profit, in all total an amount of Rs.20,00,000/- within 6 months from the date of agreement and accused had issued cheque bearing No.528200 for Rs.1,50,000/-dated 15.03.2017, cheque bearing No.007095 for Rs. 10,00,000/-dated 18.05.2017 and cheque bearing No.007096 for Rs.8,50,000/-dated 18.05.2017 and assured that the said cheques would be honoured on its presentation. Thereby, respondent presented the said cheques through his banker. But the said cheques were dishonoured with an endorsement "Funds Insufficient" and "Account Closed respectively. Thereafter, complainant got issued legal notice to the accused on 05.06.2017 through RPAD cailing upon the same address is reflected in the legal notice and other documents. In order to disprove the same, the appellant is not able to furnish any documents i.e., Aadhaar card, proof document etc., It goes to show that the appellant has never made any attempt to prove the address which is mentioned by the respondent in the cause title of the complainant is not belongs to him. Thereby, the contention of the appellant that the legal notice issued by the respondent is not served upon him is not holds good. There must be documentary evidence by the side of the

appellant to show that he is not residing in the said address at the relevant point of time. It is not proved by the appellant. Thereby, the presumption automatically arises that the legal notice issued by the respondent is served on the proper address as mentioned in the cause title of the complaint.

16. Now, I would like to mention that the appellant contended that the respondent has no financial capacity to lent such huge amount in October 2016. On this point, I would like to refer the cross-examination of the respondent. The counsel for the appellant elicited that the respondent is doing real estate business and getting rents from the houses. But he is not having any real estate office. The respondent further deposed that, he had let out some houses on rent. But he has not produced any documents to show the same. It is further noticed that the appellant is acquainted with the respondent through one Arvind Prathap. The said Arvind Prathap is also doing real estate business. The said Arvind Prathap and appellant used to come to meet the respondent. The respondent further deposed that, he had sold one vacant site and obtained Rs.8 lakhs. He deposited Rs.2,00,000/- in his bank account. He borrowed Rs.2,50,000/- from Srirama and Rs.2,50,000/- from Krishna and totally he secured Rs. 15,00,000/-and paid to the appellant. He has account in Canara Bank. He had Rs.4,00,000/- to Rs.5,00,000/- in his bank account. The entire evidence of respondent goes to show that the respondent is having sufficient amount at the relevant point of time. The

learned counsel for the appellant tried to elicit that, there is some difference of writing in Ex.P.1 and Ex's.P.2 & P.3. The respondent deposed that, it is written by the appellant himself. He further deposed that Ex.P.11 is ready over to him by Aravind Prathap. Moreover, the learned counsel for the appellant tried to elicit that, there is overwriting in Ex.P.11 regarding date etc., The respondent deposed that, it is made by the appellant himself. In Ex.P.11 it is mentioned that, the appellant is liable to pay the amount of Rs.15 lakhs. The entire cross-examination of respondent reveals that, there is no material admissions on the part of the appellant's counsel that the respondent is not having sufficient source of income at the relevant point of time. The respondent deposed that he is not able to ascertain the new address of the appellant. Later on his counsel has ascertained the new address of the appellant. The address of the appellant at that point of time and present address is house No. 141, 1st Main Road, 10th Cross, N.G.F. Layout, 2nd Stage, Nagarabhavi, Bangalore - 71. The address mentioned in the postal acknowledgement is No.351, 2nd Main road, 8th Cross, RHBCS Layout, Annapoorneshwarinagar, Nagarabhavi, Bangalore - 91. The learned counsel for the appellant tried to elicit that intentionally the respondent has sent the legal notice to the wrong address of the appellant. The same is denied by the respondent. The entire evidence of respondent and documents reveals that, the appellant is unable to elicit anything from the mouth of the respondent. It reveals that, he has obtained loan from the respondent.

Moreover, it is the duty of the appellant to show that Ex's.P.1 to P.3 are given in the hands of the respondent. On that point, the appellant is not able to put any suggestion to the respondent during the course of evidence. Moreover, Ex.P.10 is the Agreement regarding amount obtained by the appellant. The signature on the said document-is admitted by the appellant. This goes to show that, in order to clear the loan amount, the appellant has executed Ex.P.10. Another document at Ex.P.11 also reveals that, C. Nagarajaiah and respondent are doing real estate business. Both have executed this documents. The signature found on the said document is also admitted by the appellant. It goes to show that the appellant and respondent are doing real estate business. Accused had assured the respondent that he would repay the amount with profit. Unfortunately, he has not repaid the loan amount of the profit. Moreover, the document at Ex P.12 is the agreement of sale regarding immovable property held between one Nagarajaiah and Smt. Venkatamma. This document also reveals that Nagarajaiah obtained agreement of sale regarding Sy. No.25/1, new Sy.No.25/3, measuring 1 acre 36 guntas. On perusal of the evidence of respondent and documents, one thing is clear that the appellant is not able to elicit any material admissions from the mouth of the respondent. Thereby, I come to the conclusion that there are no materials to show that the respondent is not having financial capacity to lend such huge amount.

17. Now, I would like to refer the evidence of the appellant before the trial court. He has clearly stated in the evidence that himself and respondent are close friends and there was financial transaction between them in the earlier days. At that time, he used to give cheques as as security. This aspect is not disclosed by the appellant's counsel during the course of cross-examination conducted to the respondent before the trial court. Thereby, this contention is not holds good. It is further case of the appellant that, he has issued blank signed cheques to the respondent for security purpose. On this point, I would like to mention that there is no such suggestion put to the respondent regarding cheques are issued for security purpose. Thereby, this contention is also not supported with any material evidence and documents. Now, I would like to refer the cross-examination of the appellant before the trial court. The appellant categorically admitted that, he is a Proprietor of S.L.V. Enterprises. The address mentioned in Ex.P.11 belongs to him. He himself has written the contents of Ex.P.11. He has also admitted his signature found on Ex.P.11. It is written on the stamp paper. The stamp paper is purchased by him. The learned counsel for the respondent has tried to elicit that the appellant entered into agreement of sale. He required amount, thereby he asked the respondent to lend Rs.15 lakhs and obtained the said amount from the respondent. It is denied by the appellant. It is further noticed that the appellant is acquainted with the respondent since 17 years. He further admitted that, in Ex's.P.10, P.11 and P.12, it is not

mentioned that he has issued Ex's.P.1 to P.3 for security purpose. He has no separate documents to show that the alleged cheques are issued for security. This goes to show that the appellant is having knowledge that he has issued the alleged cheques in favour of the respondent at the relevant point of time. Material admission on the part of the appellant clearly goes to show that since he has stated that the alleged cheque is misused by the respondent, moreover, he is not able to take any legal action against the respondent. Even after filing of the complaint also he has not made any efforts to take legal action against the respondent. This goes to show that the contentions urged by the appellant is not supported by any material documents. The appellant furnished 3 documents marked as Ex's.D.1 to D.3. These documents are pertaining to the Account extract of the appellant and Encumbrance certificate. The learned counsel for the respondent elicited that, in case account holder has closed the account, he has to return the unused cheque leaves and ATM card to the bank. It is admitted by the appellant. The appellant is having back account at HDFC Bank, Mahalakshmi Layout Branch. He has not given any letter to the bank to close the account. The entire evidence of the appellant clearly goes to show that the appellant has not made out any grounds that the appellant has issued the cheques for security purpose. Thereby, I come to the conclusion that the appellant is not able to made out sufficient ground to show that the respondent is not able to prove the case before the trial court."

4. Being further aggrieved by the same, accused is before this Court.

5. Sri. Kumara K.G., learned counsel for the petitioner would submit that both the Courts have not properly dealt with the defence taken by the accused that the complainant had no lending capacity, admission made by PW1 that he was not mentally sound and the account of the accused having been closed in the year 2012, there was no legally recoverable debt covered under Exhibit P1 to Exhibit P3 resulting in miscarriage of justice and sought for admitting the revision petition for further consideration.

6. Per contra, counsel for the respondent supports the impugned judgments.

7. Having heard the arguments of both sides, this Court perused the matter on record meticulously.

8. On such perusal of the material on record, there is no dispute that Exhibit P1 to Exhibit P3 belong to

accused and signature found therein is that of the accused.

9. Legal notice is not served on the accused as he has vacated the premises which was mentioned in Exhibit P11.

10. Further, the complainant has specifically placed before the Court necessary material evidence on record and the payments made by him on different dates in the complaint itself.

11. Taking note of these aspects of the matter, following the dictum of The Hon'ble Apex Court in the case of ***Indian Bank Association vs. Union of India and others*** reported in ***(2014) 5 SCC 590***, learned Trial Magistrate raised necessary presumption under Section 139 of the Negotiable Instruments Act.

12. Pertinently, no application under Section 145(2) of Negotiable Instruments Act was filed by the accused

wherein the defence was mentioned so as to cross examine PW1.

13. In fact the case should have commenced from the defence evidence in the absence of an application under Section 145(2) of the Negotiable Instruments Act.

14. Nevertheless, since the parties have placed their respective evidence before the Court, defence of the accused that the complainant has no lending capacity and admission of PW1 that he is not mentally sound and account being closed in the year 2012 was considered by both the Courts.

15. In fact First Appellate Court dealt in extensio with these aspects of the matter and recorded a finding against the accused and held that accused has failed to establish 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.

16. Thus, following the dictum of 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***, the recording of the guilt of the accused for the offence under Section 138 of the Negotiable Instruments Act is just and proper.

17. Counsel for the petitioner, has no doubt placed on record the judgment of the Hon'ble Apex Court in the case of ***K. Subramani versus K. Damodaranaidu*** reported in ***2015 SCC 99***. Relevant paragraphs of the said judgment are culled out hereunder :

> *9. In the present case the complainant and the accused were working as Lecturers in a government college at the relevant time and the alleged loan of Rs 14 lakhs is claimed to have been paid by cash and it is disputed. Both of them were governed by the Government Servants' Conduct Rules which prescribes the mode of lending and borrowing. There is nothing on record to show that the prescribed mode was followed. The source claimed by the complainant is savings from his salary and an amount of*

Rs 5 lakhs derived by him from sale of Site No. 45 belonging to him. Neither in the complaint nor in the chief-examination of the complainant, is there any averment with regard to the sale price of Site No. 45. The sale deed concerned was also not produced. Though the complainant was an income tax assessee he had admitted in his evidence that he had not shown the sale of Site No. 45 in his income tax return. On the contrary the complainant has admitted in his evidence that in the year 1997 he had obtained a loan of Rs 1,49,205 from LIC. It is pertinent to note that the alleged loan of Rs 14 lakhs is claimed to have been disbursed in the year 1997 to the accused. Further the complainant did not produce bank statement to substantiate his claim. The trial court took into account the testimony of the wife of the complainant in another criminal case arising under Section 138 of the NI Act in which she has stated that the present appellant-accused had not taken any loan from her husband. On a consideration of entire oral and documentary evidence the trial court came to the conclusion that the complainant had no source of income to lend a sum of Rs 14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him.

10. In our view the said conclusion of the trial court has been arrived at on proper appreciation of material evidence on record. The impugned judgment of remand made by the High Court in this case is unsustainable and liable to be set aside.

> *11. In the result this appeal is allowed and the impugned judgment insofar as the appellant is concerned is set aside and the judgment of acquittal passed by the trial court is restored.*

18. In view of the authoritative pronouncement of the Hon'ble Apex Court in the case of ***Rajesh Jain and Sanjabij Tari*** referred to supra, principles of law enunciated in supra cited on behalf of the accused cannot be of any avail in admitting the matter for further consideration.

19. Further, stray admission of the complainant in his cross-examination cannot also be countenanced in law inasmuch as holder in due course enjoys the presumption that the instrument carries the consideration under Section 118 of the Negotiable Instruments Act.

20. Accordingly, following order:

ORDER

Criminal Revision Petition is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

SNC
List No.: 2 Sl No.: 19