IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 1197 OF 2024

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

BETWEEN:

1. SRI BALAJI
   S/O SRI MOHAN G
   AGED ABOUT 26 YEARS
   R/AT NO.199, KRISHNA NAGAR
   BYRATHI BANDE, BANGALURU-562 149

...PETITIONER

(BY SRI.T.S.VENKATESH, ADVOCATE)

AND:

1. SMT SHAKILA PURUSHOTHAM
   W/O DR.KONCHADY PURUSHOTTAM
   AGED ABOUT 43 YEARS
   RESIDING AT NO.186/8, 2ND FLOOR
   ABHISHEK COMPLEX, SHESHADRIPURAM
   BENGALURU-560020

...RESPONDENT

(BY SRI. AKRAM PASHA K.,ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C (U/S 438 R/W 442 BNSS) BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE IMPUGNED JUDGMENT/ORDER DATED 03.09.2024 IN CRIMINAL APPEAL NO.25221/2023 PASSED BY HONBLE LXXIV ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYO HALL UNIT, BENGALURU (CCH-75) AND ALSO SET-ASIDE THE JUDGMENT/ORDER DATED 18.07.2023 IN C.C.NO.53235/2022 PASSED BY THE HONBLE XIV ACMM, MAYO HALL, BENGALURU BY ALLOWING THIS CRIMINAL REVISION PETITION.

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THIS PETITION HAVING BEEN HEARD AND RESERVED ON 17.10.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

This is the revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') by the revision petitioners/accused challenging the judgment of conviction and order of sentence dated 18.07.2023 in CC No.53235/2022 on the file of XIV Addl. CMM, Mayohall, Bengaluru (in short, the Trial Court), which is confirmed in the appeal in Criminal Appeal No.25221/2023 dated 03.09.2024 on the file of LXXIV Addl. City Civil and Sessions Judge, Mayohall Unit, Bengaluru (CCH-75) (in short, the 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 the Negotiable Instruments

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Act, 1881 (in short, 'N.I Act') against the accused and punish him in accordance with law and to order compensation to the complainant and for such other reliefs.

4. The case of the complainant before the trial Court in nutshell is that there was a rental agreement between the husband of the complainant and the accused in respect of the premises bearing No.74 and 75 with Khata number 74/74/28 and 75/75/28 situated at Sri Krishna Nagar, Byrathi Bande, Bengaluru, and they entered into the lease agreement dated 23.01.2020 for a period of 10 years with a monthly rent of Rs.1,75,000/-. The husband of the complainant, who is a doctor, has paid Rs.35,00,000/- as an advance rental deposit to the accused. The husband of the complainant also made arrangements for procuring medical and other equipments worth Rs.42,38,489/-. The accused ought to hand over the premises on 01.03.2020, and when the husband of the complainant had approached the accused, he was turned away on the pretext of ongoing construction work.

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Because of continuous delay by the accused and the onset of the COVID-19 pandemic, the plans of the husband of the complainant to open the hospital went in vain. After lifting of restrictions of COVID-19, the husband of the complainant approached the accused to take possession of the building, but the accused insisted for enhancement of the advance amount. Accordingly, an amended rental agreement dated 23.07.2020 came into existence and an additional amount of Rs.10,00,000/- was paid with a stipulation to hand over the possession in September 2020. There was continuous harassment to the husband of the complainant by the brother of the accused- Vinod, who was not the owner of the property. Finally, with some changes, the rental agreement dated 04.02.2021 again came into existence, but the brother of the accused lashed out at him by making defamatory remarks and unilaterally terminated the agreement after conveniently receiving an advance amount of Rs.40,00,000/- and causing a significant delay of over two years. Because of all these things, the husband of the complainant has filed

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O.S.No.425/2021 which was referred to Lok-Adalat where the accused agreed to settle the matter amicably by repaying the advance amount by filing a joint memo dated 29.03.2021 before the II Additional Senior Civil Judge, Bengaluru Rural Court, wherein the accused agreed to pay Rs.20,00,000/- on 31.05.2021 and Rs.20,00,000/- on 31.07.2021 to the husband of the complainant. However, he miserably failed to make such payments. An email dated 03.06.2021 was sent by the complainant's husband seeking payment of Rs.20,00,000/-, for which the brother of the accused responded with a reply on 03.06.2021. Thereafter, the husband of the complainant has issued a legal notice dated 07.06.2021 demanding payment as per the joint memo. Thereafter, the husband of the complainant came to know that the accused entered into a rental agreement with one Dr.Nilufer Rehman and received the security deposit. These facts were brought to the notice of the Court in O.S.No.425/2021. The accused has made payment of Rs.10,00,000/- towards the principal amount and Rs.1,20,000/- towards the interest. Again the

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matter was referred to Lok-Adalat on 18.01.2021; both parties agreed to settle the matter for a total amount of Rs.47,20,000/-. After deducting the Rs.11,20,000/- paid by the accused, the accused has agreed and issued the subject cheque bearing No.000063 dated 17.01.2022 for a sum of Rs.36,00,000/- in the name of the complainant, who is the partner in the work of her husband, and accordingly, a joint memo, entered into by both parties, was filed before the Court. When the complainant presented the said cheque for encashment on 17.01.2022 through her banker-Kotak Mahindra Bank, Kalyan Nagar Branch, Bengaluru, it was returned dishonored with bank endorsement dated 18.01.2022 that the 'drawer's signature differs'. When it was brought to the notice of the accused, he has not given a proper reply. He has failed to make payment. Then the complainant issued legal notice dated 14.02.2022 which was returned unserved with a postal endorsement as 'insufficient address'. Then she has issued another legal notice dated 09.03.2022 which was served on the accused on 15.03.2022, and thereafter both

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the said notices are withdrawn by the complainant due to an error in the description of the complaint and issued another legal notice dated 26.04.2022 to the accused which was returned with a postal shara 'unclaimed' dated 10.05.2022. Within 15 days from 10.05.2022, the accused has not made payment. Hence, the complaint was filed on 27.05.2022. This is owing to the extension of the limitation period by the Hon'ble Apex Court in Miscellaneous Application No.21/2022 in *suo moto* Writ Petition (C) No.3/2020.

5. After recording the sworn statement, the trial Court has taken cognizance of the offence, and issued summons to the accused. The accused appeared and pleaded not guilty of the offence when the accusation leveled against him is read over and explained to him. The statement under Section 313 Cr.P.C., was recorded. The complainant was cross-examined by the learned counsel for the accused and marked some documents on behalf of the accused in that cross-examination. However, he has not let-in defence evidence.

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6. After hearing arguments of both sides, the trial Court concluded that the accused has committed the offence punishable under Section 138 of the NI Act; convicted him and sentenced to pay a fine of Rs.41,75,000/- for the offence punishable under Section 138 of the NI Act and also directed to pay Rs.41,70,000/- out of the fine amount to the complainant as compensation and the remaining Rs.5,000/- shall be adjusted to the State.

7. Aggrieved by the said judgment of conviction and order of sentence, the accused has preferred the appeal.

8. After hearing arguments of both sides, the appellate Court confirmed the judgment of the trial Court.

9. Aggrieved by the same, the accused is before this Court.

10. Heard arguments of both sides.

11. The sum and substance of the arguments of the learned counsel for revision petitioner Sri T.S. Venkatesh

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is that, the complainant is the wife of one doctor who is the prospective tenant of the property of the accused. The husband of the complainant approached the accused for material alteration in 80% of the completed building from residential building to hospital and in that respect, he has given advance amount of Rs.35,00,000/- and the rental agreement as per Ex.D.3 came into existence between the accused and the husband of the complainant. However, as per the terms and conditions of the said agreement, the complainant's husband has not come forward to occupy the building due to COVID-19 pandemic. Then two amended draft agreements came into existence as per Ex.D.2 and D.3. But those agreements have not become final and not duly signed by both parties. Afterwards, the husband of the complainant has filed the civil suit in O.S.No.425/2021 which was finally disposed in Lok-Adalat, as plaintiff has not pressed the suit. In that case, earlier a joint memo was filed on 01.03.2021 but it was not materialized. His further contention is that, one more joint memo dated 18.12.2021 filed before the Civil Court was

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not admitted by the accused because it does not bear the signature of the accused in the order sheet. After filing the said joint memo, the case was called for seven hearing dates, not for hearing on joint memo or to report settlement, but to file objections to IA for attachment before judgment, for filing of objections and to hear on said IA. Ultimately, during March-2021, the plaintiff i.e. the husband of complainant got dismissed the said suit on the ground that the matter is settled out of Court. However, as on the date of dismissal of said suit, the subject cheque which was mentioned in said joint memo dated 18.12.2021 presented and dishonoured and even the legal notice was also issued on behalf of the husband of the complainant in respect of dishonour of said cheque. Furthermore, the husband of complainant has filed one commercial suit in respect of the same transaction. When the rental agreement came into existence initially and draft amendments subsequently and filing of O.S.No.425/2021 are in commercial suit, there is no whisper about Ex.P.12- the partnership agreement. He

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would further submit that thus the complainant has no *locus-standi* at all to file the present complaint. There is no transaction whatsoever between the complainant and the accused.

12. In this regard he places reliance on the judgment of ***Mrs. Sujan Sawant vs. Dr. Kamlakant Shantaram Desai***[1]. Further there is no whisper in the complaint that she files the complaint as partner of the partnership firm. Further, in that partnership agreement, the place belonged to the accused, which was intended to be leased to the husband of complainant, is shown as the place of business of the partnership firm which was never leased to the complainant. He would further submit that under Ex.D.3, it was agreed that, in case the husband of complainant vacates the premises within the lock-up period of 5 years, he has to refund Rs.6,00,000/- to the husband of complainant; in Ex.D.2 it is stated that in case the lessee terminates the lease, the lessor (present accused) shall withhold Rs.14,00,000/-; in case, the lessor terminates

[1] AIR 2004 Bom 446

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the lease, the lessee (the husband of complainant) is entitled to penalty of Rs.14,00,000/- with total security deposit. Furthermore, when the subject cheque was presented by the complainant; it was returned with an endorsement 'drawer's signature differs' and not with an endorsement 'funds insufficient'. Hence, the complainant ought to establish that, the signature found on the cheque is the signature of the accused.

13. In this regard he places reliance on ***Ravichandra vs. Rosi Line Reena Rani***[2]. Further, because even though Section 138 of N.I Act appears to be quasi-civil in nature; as penal provision is attracted under Section 138 of N.I Act, the strict interpretation of the section is required and there shall not be any ambiguity in it. In this regard, he places reliance on the judgments of the Hon'ble Apex Court in ***H.M.Parimala Vs. M Babu***

[2] Crl. Appeal No.1244/2019 decided on 02.12.2021

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Reddy[3] and ***Sham Sundar and Others v. State of Haryana***[4].

14. The learned counsel for revision petitioner would further submit that even though the cheque was dishonoured in the month of January-2022, first two notices were issued on behalf of the husband of the complainant and finally only in April-2022, the notice on behalf of the present complainant was issued. Hence, the legal notice was not issued within the prescribed period to attract the offence under Section 138 of NI Act. Further, only at the fag end of the case, the complainant recalled herself and produced Ex.P.12-the alleged partnership agreement which is not at all helpful for the complainant. When the accused has raised probable defence that there was no transaction of whatsoever nature between the complainant and the accused and when the cheque was not bearing the signature of the accused, the offence under Section 138 of NI Act would not be attracted against

[3] Criminal Petition No.9649/2018 decided on 01.03.2019

[4] AIR 1989 Supreme Court 1982

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the revision petitioner. Hence, prayed for allowing the revision petition.

15. The learned counsel for respondent Sri Akram Pasha would submit that the facts admitted before the trial Court by both sides are that there was rental agreement between the husband of the complainant and the accused in respect of the property belonged to the accused. However, as per the terms and conditions of the said agreement, the accused has not handed over the building to the husband of complainant. Hence, two more draft lease deeds came into existence but because of the brother of the accused, the transaction between both went in vain. The subject cheque was issued by the accused in O.S.No.425/2021 along with joint memo dated 18.12.2021 to the complainant's husband by mentioning the name of the complainant and hence when it is issued in a civil suit towards settlement arrived between the parties, the complainant has established that there exists legally recoverable debt. The complainant is none other than the wife of the prospective tenant. Moreover, she is having

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authority to file the complaint because Ex.P.12-partnership agreement establishes that she is having every right in the transaction between her husband and the accused. Considering it, the subject cheque was issued in her name. Even though the second legal notice was received in person by the accused, he has not made any efforts to give reply to it. There is deemed service of notice of the third legal notice. The accused has not stepped into witness box to prove his defence. The accused has not elicited from the cross-examination of the complainant, to rebut the presumption in favour of the complainant. The accused has not challenged Exs.P.15 to P.17. They are the joint memo dated 31.03.2021 and the affidavit of present accused and the husband of present complainant filed in OS No.425/2021. These documents clearly establish that there exists legally recoverable debt in favour of the husband of the complainant and the cheque is drawn in the name of the complainant. There is no inter se dispute between the complainant and her husband. The accused cannot challenge it. He voluntarily

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issued the subject cheque in favour of the complainant. Hence, he cannot dispute these documents. Even though in his statement under Section 313 Cr.P.C., the accused stated that he would examine the witnesses; he has not made any efforts to examine himself or examine the witness to prove his defence. Considering these aspects, rightly the trial Court concluded that the accused has committed the offence and convicted him which is upheld by the appellate Court. The jurisdiction of the revision Court is very limited. The extraneous evidence was not considered by the trial Court or the appellate Court and no gross erroneousness in said judgments and they are not *perverse*, not capricious. Hence, this Court cannot interfere in the aforesaid judgments. Hence, prayed for dismissal of the revision petition.

16. 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:

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"Whether the revision petitioner establishes 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 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 ?"

17. 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 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 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:

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"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.

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

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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

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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

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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 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

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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 NI 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.

23. The cheque as per Ex.P.1 is dated 17.01.2022 drawn for a sum of Rs.36,00,000/-; when it was presented

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for encashment, the same was dishonoured with an endorsement dated 18.01.2022 that 'drawer's signature differs'. Afterwards, the first notice dated 14.02.2022 was issued on behalf of the husband of complainant to the accused which was not served with endorsement 'insufficient address'; subsequently, on 09.03.2022 the second notice as per Ex.P.4 was issued on behalf of the husband of complainant to the accused which was served on him; but no reply is given; then on 26.04.2022, third notice was issued on behalf of the complainant to the accused which was returned unserved as 'unclaimed'. Hence there is deemed service of legal notice dated 26.04.2022. Then on 27.05.2022, the complaint was presented before the trial Court.

24. The trial Court has taken cognizance of the offence only based on the notice dated 14.02.2022 and not on the notice dated 26.04.2022. The accused has not disputed that the cheque was from his bank account. But he disputed his signature on the cheque.

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25. Only if foundational facts i.e., clause number (iii) to (vii) of ingredients of Section 138 are fulfilled; the Court shall presume that there exists legally recoverable debt and the cheque is issued for discharge of part or whole of it as per Section 139 of NI Act.

26. In the instant case, as stated above, the endorsement 'the drawer's signature differs' and the endorsement is not 'insufficient funds' or 'exceeds arrangements' or 'account closed' or 'payment stopped' or 'referred to the drawer'.

27. The learned counsel for the respondent places reliance on ***M/s.Laxmi Dyechem vs. State of Gujarat***[5] case and would submit that even in case of mismatch of signature, the offence under Section 138 can be made out. In the aforesaid judgment at paragraph No.15 has held as follows:

> *"15. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement*

[5] (2012) 13 SCC 375

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with the decision in NEPC Micon Ltd. (supra) that the expression "amount of money..... is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues

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instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration."

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28. The learned counsel for revision petitioner has placed reliance on ***Ravichandra's case*** cited supra of the Co-ordinate Bench of this Court. ***Laxmi Dyechem's*** case is not examined in ***Ravichandra's*** case. In the aforesaid judgment at paragraph No.13 held as follows:

> *"13. In the case on hand, the accused has taken a specific defence that the signature found on the cheque in question does not belong to her and she has not at all received a sum of ' 7 lakhs from the complainant. The cheque was also dishonoured for the reason that 'drawers signature differ' and the complainant has not made any effort to establish that the signature found on the cheque was that of the accused. The trial Court after considering the entire evidence on record has acquitted the accused holding that the complainant has failed to prove that the accused to discharge her legally enforceable debt had issued Ex. P1-cheque in his favour. I do not find any illegality in the order passed by the trial Court."*

29. In ***Laxmi Dyechem's*** case, the High Court has quashed 40 complaints against the same accused on the ground of mismatch of signature. The said fact was in the initial stage i.e., before trial. Further, in ***Laxmi Dyechem's*** case, the Hon'ble Apex Court has discussed the various judgments of Hon'ble Apex Court regarding

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'stop payment', 'account closed' endorsements and in that context, the paragraph No.15 as discussed above came into existence. In that case, the directors of the company were changed. In that case the Hon'ble Apex Court held that, there is no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorized signatories resulting in the dishonour of cheques already issued and where the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make payment.

30. In the instant case, the facts are entirely different. Of course, the accused has not given any reply to the legal notice but he has cross-examined the complainant and has taken the specific defence at the time of cross-examination that the signature found on the cheque is not the signature of the accused. The same was substantiated by the endorsement given by the bank that, 'drawer's signature differs'.

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31. The complainant has not stated either in her complaint or in her legal notice that, accused intentionally, only to deceive the complainant, has changed his own signature and issued the same to her.

32. As stated earlier, even though the endorsement of the bank mentioning dishonour of the cheque on 18.01.2022; the complainant has issued notice only on 26.04.2022. Earlier two notices as per Exs.P.3 and P.4 are of no consequence because they were issued on behalf of the husband of complainant and not on behalf of the complainant. The complainant and her husband are not one and the same person. They are two distinct individuals. The accused has not taken the plea of closure notification because of COVID-19 pandemic.

33. If there was no COVID-19 pandemic during that period, there was no chance for the complainant to issue the legal notice belatedly. However, as discussed above, because there is COVID-19 pandemic and closure notification and the Hon'ble Apex Court in the *suo moto* petition has held that the period up to 28.02.2022 and

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then for a period of 90 days, the limitation is exempted. It includes even to the issuance of legal notice as required under Section 138 of NI Act. Hence, only because of that, it can be said that the legal notice issued on behalf of the complainant in respect of dishonour of cheque is well within limitation.

34. The learned trial Court and the appellate Court have not at all considered the legal notice issued on behalf of complainant to the accused but they have considered the first notice issued on behalf of the husband of the complainant to the accused and not discussed these facts which are not proper.

35. As discussed above, the cheque was returned dishonoured not as 'funds insufficient' but 'the signature of drawer differs'. In this regard, in ***K. Damodaran vs. M. Shivarama Reddy***[6] at paragraph No.19 it is held as follows:

> *"19. The complainant has also not taken any steps to secure the opinion of expert regarding the signature of the accused on disputed cheque Ex.P1.*

[6] AIR OnLine 2023 KAR 2299

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No such attempt has been made by the complainant and he tried to rely on the evidence of PW3 asserting that the accused signed Ex.P1 in his presence, but complainant himself admitted that no one was present during the said transaction. In view of the these facts and circumstances, it is evident that the complainant has failed to establish the fact that Ex.P1 bears the signature of the accused and it was issued towards legally enforceable debt. When the complainant has failed to prove the guilt of the accused beyond all reasonable doubt, question of convicting him in this regard does not arise at all only on the ground that he has failed to prove his defence. Unless the complainant initially discharges his burden, the defence of accused does not have any much relevance."

36. Legal notices - Ex.P.3 dated 14.02.2022, Ex.P.4 dated 09.03.2022 are issued on behalf of husband of the complainant and not on behalf of the accused; on 26.04.2022, the notice issued on behalf of the present complainant, is returned unserved as 'unclaimed'. The cheque is dated 17.01.2022; it is presented to the bank and returned as 'signature of drawer' differs on 18.01.2022. As per the order of Hon'ble Apex Court in Miscellaneous Application No.21/2022 in *suo moto* Writ Petition No.3/2020, the period from 15.02.2020 till 28.02.2022 shall be excluded to compute the period of limitation. This exclusion applies even to issuance of legal

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notice as required under Section 138 Proviso sub clause (b) which is specifically excluded by clause No.4 of paragraph No.5 in the order of Hon'ble Apex Court. However, it is to be noted here that immediately after dishonour of the cheque on 14.02.2022 and 09.03.2022, notices were issued to the accused on behalf of the husband of the complainant and then notice on behalf of the complainant was issued on 26.04.2022. There is no mention about earlier two notices in this notice dated 26.04.2022. There is no mention that they were defective in nature and they were withdrawn and the present notice was issued.

37. It is a fact that there was transaction between the complainant's husband and the accused in respect of lease of the building belonged to the accused. Ex.D.3 is the rental agreement dated 23.01.2020 between the husband of the complainant and the accused. It is a fact that under the said document, the accused has received Rs.30,00,000/- as an advance amount from the husband of complainant; because he was constructing the

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residential apartment; when the husband of complainant approached the accused for lease of the building for his hospital purpose, 80% of the construction work was completed and as per request of accused, major alterations were to be made in the building and thus, the husband of complainant advanced Rs.30,00,000/- to the accused even though the rate of rent per month was only Rs.1,75,000/- which would be about 17 months rent. Generally, in the trade usage 5 months to 10 months rentals would be taken as advance but because of major alterations proposed by the husband of complainant, he has given advance amount of Rs.30,00,000 and this fact is admitted by the complainant in her cross examination.

38. The facts established before the trial court are that the transaction of lease was only between the accused and the husband of complainant. Complainant was not in picture. Because of misunderstanding between the parties, the husband of complainant has filed OS No.425/2021 for mandatory injunction to enforce the rental agreement between the parties. In that suit, a joint

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memo was filed on 31.03.2021 wherein the accused agreed to pay Rs.30,00,000/- to the accused but he paid Rs.10,00,000/- through bank transaction and Rs.1,20,000/- through cash.

39. One more joint memo was filed before the Civil Court in OS No.425/2021 dated 18.12.2021, which is seriously disputed by the accused. Under said Joint memo, the subject cheque was handed over to the husband of complainant for a sum of Rs.36,00,000/-. The complainant was not in picture even in that joint memo. After filing the joint memo, seven hearing dates were lapsed; during that period, there is no mention directly that accused disputes the said Joint memo, but the case was posted for not on hearing the Joint memo but for filing objections to application under Order XXXVIII Rule 5 CPC; after filing objections; to hear on said application. When the case was posted for hearing on said application, immediately the case was posted before Lok-Adalath in the month of March-2022 and the husband of complainant got dismissed the suit stating that the matter is settled out of the court;

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but long prior to it, on 18.01.2022 itself the subject cheque was dishonoured.

40. The complainant contended that there is a partnership agreement between the complainant and her husband as per Ex.P.12. Based on said partnership agreement, she has filed the present complaint and the cheque was issued into her name. However, this said partnership agreement came into existence on 27.01.2020. Subsequent to said partnership agreement, the alleged filing of suit in O.S No.425/2021, filing of joint memo etc., were by the husband of complainant and not by the complainant. The complainant was not at all in picture in any of these transactions.

41. In this regard, in ***Mrs. Sujan Sawant's*** case cited supra wherein at paragraph Nos.29 and 40, it is held as follows :

> *"29. In Sunil Siddhart v. Commissioner of Income-tax, Ahmedabad, Gujarat, AIR 1986 SC 368 while considering the expression "Transfer of Property" the Supreme Court has observed as follows:*

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"In its general sense, the expression "Transfer of Property" connotes the passing of rights in the property from one person to another. In one case there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In a third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in the property is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. Therefore, when a partner brings in his personal assets into the capital of the partnership firm as his contribution to its capital he reduces his exclusive rights in the asset to shared rights in it with the other partners of the firm. While he does not lose his rights in the asset altogether what he enjoys now is an abridged right which cannot be identified with the fullness of the right which he enjoyed in the asset before it entered the partnership capital. It becomes apparent that when a partner brings in his personal asset into partnership firm as his contribution to the capital, an asset which originally was subject to the entire ownership of the partner, becomes now subject to

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the rights of other partners in it. In other words, the partner who brings in the asset reduces his exclusive right in the asset to the shared rights in it with other partners of the firm."

42. In the alleged partnership agreement between the complainant's husband and the complainant, there is no whisper that the lease advance amount paid by the complainant shall be part of the partnership agreement; or the property to be taken on lease by the husband of the complainant shall be the property of the partnership firm. In the absence of these things, the wife/complainant cannot get any authority to claim the amount due to her husband under the agreement.

43. As discussed above, the complainant is a separate individual and her husband is a separate individual. Admittedly there is no transaction between the complainant and the accused at any point of time. The alleged partnership deed will not give authority to the complainant to claim that the cheque was issued for legally recoverable debt or liability. Further, the complainant has not filed the complaint in the capacity of

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partner of the firm. It is to be noted here that Ex.P.12 is dated 27.01.2020 i.e., after Ex.D.3-the lease deed came into existence between the husband of complainant and the accused. However, it is to be noted here that the address of the partnership firm is shown as the address of the building belonged to the accused. The said building was not at all let out to the complainant or her husband as on the alleged date of this partnership deed. Thus, it appears that this is only a document created for the purpose of this case and it was never acted upon.

44. In the cross-examination, the complainant admitted that there were totally 3 agreements of rents which came into existence. The first one is Ex.D.3 dated 23.01.2020 between the husband of the complainant and the accused and it is duly signed by both the parties. According to this document, the accused has to hand over the property to the husband of complainant on 01.03.2020 but because of COVID-19 pandemic, it could not have been done. Subsequently, during July-2020 as per Ex.D.1 and during February-2021 as per Ex.D.2, the two draft

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lease deeds were prepared but they were not signed by both parties and finally the agreement was not at all come into existence. Even in these two documents, there is no mention about the complainant. Furthermore, after disposal of OS 425/2021, the husband of the complainant has filed Commercial OS 133/2022 and the complainant is not party even in that case. She is not at all in picture in both the agreements as per Exs.D.1, D.2 and in both the suits. However, the subject cheque stands in her name.

45. The cross-examination of the complainant reveals that the complainant does not know anything about the transaction between her husband and the accused and everything was being looked after by her husband but only for this subject cheque, she has filed the present complaint.

46. In ***Bir Singh vs. Mukesh Kumar***[7] Hon'ble Apex Court at paragraph No.37 held as follows:

> *37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a*

[7] AIR 2019 SC 2446

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person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

47. The judgment of Hon'ble Apex Court in ***Ajitsinh Chehuji Rathod vs. The State of Gujarat***[8] is regarding applicability of statutory presumptions; the judgment of Hon'ble Apex Court in ***M/S.Kalamani Tex vs. P. Balasubramanian***[9] is also on the same point.

48. In the aforesaid ***Bir singh's*** case cited supra, there is an observation regarding Sections 20, 87 and 139 of the NI Act and they made it clear that, a person who signs a cheque and delivers it to the payee remains liable unless he adduces evidence to rebut the statutory presumption. In the instant case, as discussed above, the signature of the accused on the cheque and its delivery by

[8] 2024 INSC 63
[9] AIR OnLine 2021 SC 82

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the accused either to the complainant or to her husband is not at all established. Hence, the said principle is not helpful to this case.

49. Admittedly the accused has not stepped into the witness box. It is not in dispute that presumptions are always in favour of the complainant but they are rebuttable presumptions. However, when the complainant failed to establish the signature of the accused on the subject cheque, the initial presumptions in favour of the complainant are not available to him.

50. The above discussion reveals that there is no transaction between the complainant and the accused at any point of time. It is only between the accused and the husband of complainant. However, the complainant came into picture only in this case. The accused has disputed his signature even on the alleged cheque; as discussed above, the subject cheque mentioned in the joint memo filed by the husband of complainant before the Civil Court was dishonoured;, after dishonour of the said cheque and after issuance of the notices on behalf of the husband of

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complainant, the complainant has withdrawn said suit as settled out of Court. If it was not intended that subject cheque is to be encashed and the husband of complainant is entitled for the amount due under subject cheque, there was no need for him to withdraw the said suit. He filed one more commercial suit and withdrawn said suit also. The complainant was not in picture even at that time.

51. The above discussion reveals that there is no transaction of what so ever between the complainant and the accused at any point of time; the subject cheque was not issued in favour of the complainant; and she is not competent to depose about the transaction that has taken place between her husband and the accused and she failed to establish that the subject cheque is signed by the accused.

52. 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

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Court and the appellate Court is grossly erroneous and not appreciated the evidence in the way it should be appreciated. Hence, this Court holds that the judgment of trial Court and appellate Court requires interference.

53. 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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