

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF APRIL, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE V SRISHANANDA**

**CRIMINAL REVISION PETITION No.583 OF 2021**

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

**BETWEEN:**

1. APARA ENTERPRISE SOLUTION  
PRIVATE LTD, UNIT-2,  
LOWER LEVEL,  
GROUND FLOOR, NO.139,  
OXFORD TOWERS, KODIHALLI,  
AIRPORT ROAD,  
BANGALORE-560017  
(HANDED OVER TO OFFICIAL LIQUIDATOR  
(EX. COMPANY)  
PIN 560 017
2. SRI MANPREET SING SIDHU  
S/O RAJENDER SINGH,  
AGED ABOUT 55 YEARS,  
R/AT NO.17, GRACE VILLA,  
5<sup>TH</sup> MAIN, SANTRUPTI LAYOUT,  
KOTHANUR DINNE, J.P.NAGAR,  
7<sup>TH</sup> PHASE,  
MANAGING DIRECTOR OF  
APARA ENTERPRISES PVT. LTD,  
BANGALORE – 560 078.
3. SMT.VIDYALAKSHMI SIDHU  
AGED ABOUT 52 YEARS  
R/AT# 17, GRACE VILLA,  
5<sup>TH</sup> MAIN, SANTRUPTI LAYOUT,  
KOTHANUR DINNE, J.P NAGAR,  
7<sup>th</sup> PHASE,  
(DIRECTOR OF APARA ENTERPRISES PVT. LTD,  
COMPANY)  
BANGLAORE – 560078



...PETITIONERS

(BY SRI. JAIRAJ G, ADVOCATE)

**AND:**

M/S INFLOW TECHNOLOGIES PVT TD  
NO.33, AND 34, INDIRANAGAR 1<sup>ST</sup> STAGE,  
OFF 100 FEET ROAD, BANGALORE 38.  
REP. BY SRI PREM KUMAR.

...RESPONDENT

(BY SRI R.KIRAN, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE DATED 25.08.2015 PASSED BY THE LEARNED XIV ACMM, BANGALORE IN C.C.NO.26048/2013 AND THE JUDGMENT DATED 06.03.2021 PASSED BY THE HON'BLE LVII ADDITIONAL CITY CIVIL JUDGE, MAYO HALL UNIT AT BANGALORE IN CRL.A.NO.25120/2015 AND ACQUIT THE PETITIONERS.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

**CAV ORDER**

Accused who suffered an order of conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 confirmed in C.C.No.26048/2013 confirmed in Criminal Appeal No.25120/2015 is the revision petitioner.

2. Facts which are utmost necessary for disposal of the present revision petition are as follows:

2.1 Respondent/complainant lodged a complaint under Section 200 of the Code of Criminal Procedure with XIV Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru, alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 contending that, complainant is a company incorporated under the provisions of the Indian Companies Act, 1956 carrying on the business of Information and Technology products and services. It also had its business in distribution of software and hardware.

2.2 It is further found from complaint averments that second accused being the Managing Director and third accused being the Director of the accused No.1/Company, viz., Aparaa Enterprise Solutions Private Limited had the business transaction with the complainant.

2.3 Accused No.2 issued a cheque towards the repayment of the amount outstanding to the complainant. There was a business transaction of purchase orders and invoices to the tune of Rs.4,84,27,931/-. When the same was demanded repeatedly, payment was postponed. Ultimately second accused being the Managing Director of the first accused Company issued an acknowledgment of debt on

16.03.2011 and agreed to pay the amount with 15% interest calculated upto 31.01.2011 which works out to Rs.72,95,708/-.

2.4 Towards the repayment, fifteen cheques were issued. Out of those cheques, cheque No.853204 dated 20.04.2012 was to the tune of Rs.72,95,710/- and cheque No. 853205 dated 20.05.2012 was a sum of Rs.76,595/- drawn on State Bank of India, Bengaluru.

2.5 Both the cheques on presentation got dishonored with an endorsement 'funds insufficient'. A legal notice was issued to the accused calling upon the amount covered under the cheques to be repaid.

2.6 Notice was not claimed by the accused and therefore, complainant sought for action against the accused.

3. Learned Trial Magistrate after completing necessary formalities, summoned the accused. Accused Nos.2 and 3 appeared before the Court and plea was recorded. The accused pleaded not guilty. Therefore, trial was held.

4. In order to prove the case of the complainant, authorized signatory of the complainant by name Sri Prem Kumar was examined as PW-1 and placed on record as many as 70

documentary evidence which are exhibited and marked as Exhibits P-1 to P-70.

5. As against the material evidence placed on record by the complainant, Sri Manpreet Singh Sidhu, second accused got examined himself as DW-1. He placed on record eight documentary evidence which were exhibited and marked as Exhibits D-1 to D-8.

6. Thereafter, learned Trial Magistrate on cumulative consideration of the oral and documentary evidence placed on the record by both the sides, convicted the accused and sentenced as under:

*"Acting under Section 255(2) of Cr.PC accused are hereby convicted and accused Nos.2 & 3 are being the Managing Director and Director of accused No.1 Company are sentenced to undergo simple imprisonment for one year for the offence punishable under Section 138 of Negotiable Instrument Act.*

*Acting under Section 357(3) of Cr.PC accused are directed to pay a compensation/fine of Rs.1,00,55,000/- to the complainant towards the loss and injury suffered by him.*

*In the total compensation/fine amount, a sum of Rs.5,000/- shall be deposited as fine to the State.*

*In default of the aforesaid compensation/fine amount accused Nos.2 & 3 shall further undergo simple imprisonment for three months."*

7. Being aggrieved by the same, accused filed an appeal before the District Court in Criminal Appeal No.25120/2015.

8. Learned Judge in the First Appellate Court, after securing the records, heard the arguments in detail and on re-appreciation of the material evidence on record, dismissed the appeal of the accused. However, the First Appellate Court modified the judgment of the learned Trial Magistrate by enhancing the default sentence from three months to one year *inter alia*, holding in paragraph Nos.24 to 31 as under:

*"24.In this case, issuance of Cheques is admitted by the accused and the signature on Cheques Exs.P2 and P3 are also admitted, but denies that said Cheques have been issued for discharge of liability. On the other hand, according to them cheques were issued as security. It is pertinent to note that when the Cheques has been issued as security and when the repayment is not made as agreed, holder in due course has got every right to present the Cheque for encashment. When the accused themselves admitted regarding issuance of Cheques as security, now they cannot claim that there is no liability.*

25. Another contention taken by the accused that Exs.P67 and 68 are issued by mistake of fact. On perusal of Ex.P67 it reflects that on 10.3.2011 accused discloses that they are desirous to settle the matter and willing to extend cooperation. Further agreed by the arrangement to restructure the debt and settle the matter by making payments in installments, wherein they admitted that they are having balance of Rs.4,38,90,544/. Further, they agreed to pay by the end of March2012 and agreed to continue the business plan and also requested not to resort to any legal recourse as stated in the notice of the complainant as accused are willing to go for amicable settlement.

26. Further Ex.P68 reflects that accused persons acknowledged the debt and also disclosed about invoice number and outstanding dues. Further disclosed that they sought some more time to clear outstanding dues and also agreed to pay interest at the rate of 15% per annum on all outstanding balances, until such amounts have been paid in full. Further it is notified the amount of interest that has accrued and is payable at the end of each calendar quarter whereupon they will promptly provide inflow with a post dated cheque to cover such debt. So, I am of the opinion that accused persons acknowledged the debt. How they can go back to their stand? The accused cannot claim that Exs.P67 and 68 are issued by mistake of fact.

27. According to accused, in another case accused are acquitted on the ground that Cheque issued as

*security. In my opinion, each case should be proved independently. Any order passed by the co bench cannot be applied to another cobench and the accused cannot take benefit that in another case accused are acquitted, hence they should claim on par to acquit in this case. The complainant had produced the invoices, which got marked as Exs.P22 to 51, which supports the contention of the complainant. Further, Ex.P69 discloses about the detail transaction with accused No.1*

*28. Further, the accused persons had produced copy of the Notice and evidence given by them in other Court and Tax paid invoices, Company petition and the judgment. These documents nothing to do with this case and it is not sufficient evidence to rebut the presumption available in favour of the complainant. Filing a Company Petition before Bombay High Court against Yahoo Company does not vitiate the proceedings of this case and later does not bar filing of the complaint u/S.138 of N.I.Act for the reason complainant already filed Company Petition. It is pertinent to note that accused No.2 is the signatory of the Cheque and accused No.3 is having control over the daytoday affairs of accused No.1 Company. Accused Nos.2 and 3 are also parties to the Escrow Account agreement. Though accused No.1 agreed for making settlement and acknowledged existence of debt as per Exs.P67 and 68, not bothered to come forward to clear outstanding and to settle the matter. So, in my opinion, the accused failed to rebut the presumption available u/S.138 of N.I.Act in favour of*

*complainant. Further failed to establish that the Cheques not issued for discharge of debt or liability. On the other hand, complainant had produced sufficient material evidence before this Court to show that accused had issued cheques as per Exs.P2 and P3 for discharge of debt and when the Cheques has been presented for encashment, it has been dishonoured for the reason 'funds insufficient' and in spite of service of notice, accused not bothered to comply the demand made in the notice. When the accused failed to rebut the presumption and failed to establish their defence, I am of the opinion that the Court has no hesitation to hold that complainant proved the guilt of the accused.*

*29. The accused No.1 is a Company and accused No.2 is Director having control over the accused No.1 Company. The Company does not have a physical body. In the event of conviction when the default is committed by the Company and the Company's responsible persons for the affairs are also liable. In this case, trial Court on appreciating the evidence of both the parties and come to the conclusion that accused are committed the offence u/S.138 of N.I. Act. Accordingly, convicted the accused Nos.2 and 3 holding that they are Managing Director and Director of the accused No.1 Company are sentenced to undergo simple imprisonment for one year for the offence punishable u/S.138 of N.I.Act. 30. The object of the ingredients of Negotiable Instruments Act is that 'to bring back the credibility to inculcate faith in the efficacy of Banking operations in transacting*

*business on Negotiable Instruments in general to bring the erring drawer to book, so that such irresponsibility is not perpetuated and also to protect the honest drawer and safeguard the payee who is almost a loser.' This has been observed by the Hon'ble Apex Court in the case of Vinaya Devanna Nayak Vs. Ryot Sewa Sahakari Bank Ltd. in 2008 (2) SCC 305. Further, regarding punishment is concerned, the Court can pass order imposing fine or sentencing him imprisonment or both. 31. In the present case in hand, the trial Court convicted the accused Nos.2 and 3 who are the Managing Directors of accused No.1 Company sentencing them to undergo simple imprisonment for one year. I did not find any reason to interfere with respect to the imposition of fine and compensation is concerned. Accused Nos.2 and 3 are the Managing Directors of accused No.1 Company. So, I am of the opinion that in default of payment of fine amount, it is fit to impose default sentence on the accused Nos.2 and 3. With the above discussion, I am of the opinion that the sentence imposed by the trial Court is required to be modified. There is no reason to interfere with the fine imposed by the trial Court. Therefore, I am of the opinion that trial Court rightly appreciated all the aspects and rightly convicted the accused and this Court did not find any illegality in the finding of the trial Court. Accordingly, point No.1 is answered in Affirmative and point No.2 is answered in partly Affirmative."*

9. Ss

10. Being aggrieved by the same, accused has preferred the present revision petition on following grounds:

- *The Judgment and order of courts below are perverse opposed to law and materials on records and liable to be set-aside.*
- *Both the courts below have grossly erred in ignoring abundant rebuttal evidence available on record by drawing assumption and presumption inadmissible in law.*
- *Both the courts below have failed to observe that, not only there are abundant materials available in the form of documents but also material elicited in the cross examination of the PW-1 to rebut the presumption under Sec.139 of N.I.Act.*
- *Both the courts below have failed to observe that, there was **tripartite between the agreement complainant/respondent** the petitioners and one Yahoo.com company and as per the contract, the respondent has agreed to supply the goods to Yahoo on the basis of purchase orders by the petitioners to the respondent only on the conditions that, Yahoo Company shall make the payment by depositing the invoice amount directly to the "**ESCROW ACCOUNT**" of the Respondent and petitioners wherein, **the Respondent is the sole beneficiary.** And in-fact, the said contract/agreement was acted upon by the Respondent and the Yahoo Company, respect of supplying the good to yahoo and receiving payments through the **ESCROW ACCOUNT.***

- *Both the courts below have failed to observe that, as per the respondent, goods were delivered to Yahoo Company and there were no disputes regarding the quality and quantity of goods supplied and Yahoo Company was liable to make the payments and the above facts have been suppressed by the Respondent before the court elicited in the cross examination of (PW-1). Hence, the Respondent has not come before the court with clean hands.*
- **Both the courts below have failed to observe that, the petitioners are not liable to pay the amount covered under the cheque which, has been proved by oral and documentary evidence like Ex.P.65 ESCROW Agreement, Ex.D1 dt. 01/06/2011 notice issued** to Yahoo company by the Respondent holding them responsible and liable and further the respondent filing a company petition before the Hon'ble High Court at Bombay against the Yahoo Company holding it solely liable which is marked as Ex.D7.dt.20/06/2012, and non-mentioning of the alleged acknowledgment of debt Ex. P.68 and issuance of cheques by the petitioner.
- *Both the courts below have grossly erred in observing that, Ex.D1 dt. 01/06/2011 is a demand notice made to the petitioners Company which is wrong. Since, Ex. D1 is the legal notice issued by the Respondent to the Yahoo.com company holding them responsible for liability which is more precisely as per **Sec. 41 and 53 of Indian Contract Act.***

- *Both the courts below have totally ignored the evidence of the defence witness and the documents relied by him and proving that, the cheques have been issued only as security and that, the petitioners are not liable to pay amounts mentioned in Ex.P.68*  
**THE DISPUTED ACKNOWLEDGMENT OF DEBT.**  
*Since, it has been proved beyond doubts that, it contains materials supplied on cash transaction and material supplied to Yahoo Company which are admitted to be payable by Yahoo.com only and Respondent/Complainant has already initiated proceedings like winding up petition, filing of Civil suit etc., against Yahoo.com.*
- *Both the courts below have failed to observe that, the **petitioner were acquitted in the first case based on the same set of facts and documents in respect of 6 cheques out of 15 cheques alleged to have been issued by the petitioner No.1 in CC.NO.26017/2012 which is marked as Ex.D8.** and the present cheques Ex. P.2 & Ex.P.3 are said to have been issued to-wards interest.*
- *It has come in the evidence of PW-2 Vijay in the other case filed by the Respondent in respect of 6 cheques in C.C.NO.26017/2012 that, Yahoo Company has not denied the liability which goes to the root of the case and which is clear from the above facts that, the petitioners are no where benefited in the transactions.*
- *Both the courts below have failed to observe that, One Mr.Vijay examined as PW-2 in connected case above who has the fullest knowledge of the*

*transactions between the parties has not been examined in the instant case as such, and adverse inference should have been drawn against the prosecution more particularly due to the fact that he has admitted in cross examination in that case that, **the cheques have been issued as a security and Yahoo.com company is alone liable to pay etc..***

- *Both the courts below have failed to observe that, the complainant has taken a definite and consistent stand that, goods were supplied to Yahoo company and they are liable to pay and there is no demand by the respondent/complainant asking the petitioners to pay the amount defaulted by Yahoo company.*
- *There is nothing on record to show that, the Respondent/Complainant accepted the alleged offer made by the petitioners as per Ex. P.68 on the other hand there is abundant material to show that the Respondent/complainant has not at all presented the cheques, on respective dates on the cheques. But, only proceeded against Yahoo Company for the recovery holding them solely responsible for the payment.*
- *Both the courts below failed to observe that, the alleged acknowledgement of debt Ex.P.68 is false and within the knowledge of the respondent/complainant as the same contains cash bills and invoice not payable by the petitioners/accused which cannot be treated as debt as such using the Ex. P.68, the alleged acknowledgement of debt known to be false as*

*evidence in a judicial proceedings amount to offence punishable under sec.196 of IPC.*

- *It has come in the evidence that, the respondent/complainant has filed a civil suit for recovery against the Yahoo as the liability was seriously disputed, the trial court appellant should have either acquitted the petitioners/accused or waited for the result of the Civil suit which has resulted in grave miscarriage of justice for the reason that, the respondent/complainant has filed a civil suit clearly claiming that, out of the 16 purchase order/invoices Ex.P.19 to 24 amounting TO 8.56 Crore is due from Yahoo.com, and the petitioners/accused jointly and severally, **thereby making it clear that, there is no due/liability in respect of the invoice of yahoo in Ex. P.66 in respect of which the alleged cheques have been issued.***
- *It is submitted that, the civil suit has been decreed for a sum of Rs. 8.56 Crore holding Yahoo and the petitioners liable in respect of five (5) invoices which are not the invoices in Ex. P.68 Acknowledgment of debt which is a clear inference that, **nothing is due in respect of the invoices against which cheques has been issued.***
- *The erroneous judgment/order of the courts below has resulted in grave miscarriage of justice leading to unlawful gain to the respondent/complainant and unlawful loss to the petitioner since, the first 3 invoices shown in Ex.p.68 are payable by Yahoo company as per the evidence of the*

*respondent/complainant in his cross examination.*

**And further there is no due at all in respect of these three invoices.**

- *Both the courts below have failed to note that, the respondent/Complainant has not laid any claim in respect of the invoices above against which the cheques are issued in the civil suit leading to the inference that, nothing is due in respect of these invoices and consequently dishonour of the cheques does not amount to the offence under the N.I.Act, since, **"THERE IS NO LEGALLY ENFORCEABLE DEBT"**.*
- *It is humbly submitted that, the judgment has been passed during the pendency of the civil suit and the civil suit has been concluded and the matter in the alternative deserves to be re-tried. Since, the suit has been decreed not only against Yahoo but, the decree is in respect of invoices not shown in Ex.P.68. and the total liability is the decreed amount only.*
- *Both the courts below failed to observe that there is no evidence as against the petitioner No.3 except alleging that she is a director and she is not a signatory to any of the documents including Ex. P.68 and cheques in question.*
- *Both the courts below failed to observe that petitioner No.3 cannot be held liable for the wrong acknowledgment of debt and issuance of cheque by petitioner No.2 for a sum not due by the company.*
- *Both the courts below failed to observe that there is no evidence is led to show has to why the second*

*cheque Ex. P.3 has been issued at all and why the remaining cheques were not presented at all for encashment.*

- *The appellate court below has grossly erred in **enhancing the punishment in a criminal appeal against conviction** by modifying the sentence in default of fine from 3 months SI to one year SI which is illegal.*
- *Looking to totality of the circumstances and proved facts indicates and conclusively point out that, the alleged issuance of acknowledgement of debt Ex.P.68 and reply notice Ex.P.67 have been made purely due to "MISTAKE OF FACT" and it is wrong acknowledgement of debt."*

11. Sri G.Jairaj, learned counsel for the revision petitioner, reiterating the grounds of urged in the revision petition, vehemently contended that the transaction was with one Yahoo India Private Limited ('Yahoo Limited' for short), after direct dealing between accused Company and complainant was stopped as per escrow agreement.

12. As such, Yahoo Limited was required to deposit the amount into the escrow account. The invoices marked as Exhibits P-19 to P-27 were in the name of Yahoo Limited, wherein, materials were supplied to Yahoo Limited. Therefore,

there is no *privity* of contract between the complainant and accused.

13. As such, there was no legally recoverable debt involved under Exhibits P-2 and P-3 cheques which has not been appreciated by both the Courts in proper perspective and wrongly convicted the accused resulting in miscarriage of justice.

14. He would further contend that as per Section 41 of the Indian Contract Act, 1872, when there is no *privity* of contract between the complainant and accused, there is no legally recoverable debt at all which is a *sine qua non* for holding that accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in view of the fact that Exhibits P-2 and P-3 cheques were dishonored.

15. It is also emphasized by Sri Jairaj that there is a clear admission by PW-1 in his cross-examination that Exhibits P-19 to 27/invoices are in the name of Yahoo Limited and materials were supplied to said Yahoo Limited.

16. He brings to the notice of the Court that a notice came to be issued by the complainant on 01.06.2011 to Yahoo Limited.

Amount was demanded from Yahoo Limited. Since the said notice was admitted by P.W-1, in his cross-examination said notice was marked as Exhibit D-1.

17. He also brings to the notice of the Court that P.W-1 has admitted that a Company Petition came to be filed by the complainant against Yahoo Limited before the High Court of Judicature, Mumbai. There is an admission by PW-1 that as per Exhibit P-68, acknowledgment of debt is not mentioned.

18. Sri Jairaj also pointed out that there is a suit pending in O.S No.5466/2012 wherein accused and Yahoo Limited are party defendants.

19. According to Sri Jairaj, there is one more case filed in C.C No.26107/2012 in respect of Exhibits P-19 to P-24 invoices and acknowledgment of debt vide Exhibit P-68.

20. Therefore, cheques in question were issued as security which has not been properly appreciated by both the Courts and recorded an order of conviction has thus resulted in miscarriage of justice and sought for allowing the revision petition.

21. In support of his arguments, Sri Jairaj, placed reliance on the judgment of the High Court of Kerala at Ernakulam in the case of **Mr.Danikutti Philip vs. Mr.Johnykutty J**, passed in **Criminal Appeal No.1965/2025 dated 26.03.2026**, wherein it has been held as under:

*"9. Coming to the legal issue involved in this case, Sections 15 and 56 of the NI Act assumes significance. Section 15 of the NI Act deals with indorsement and Section 56 of the NI Act deals with indorsement for part of the sum due. Section 15 of the NI Act provides as under:*

*"15. Indorsement.—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."*

*Section 56 of the NI Act provides as under:*

*"56. Indorsement for part of sum due.—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the*

*instrument, which may then be negotiated for the balance”.*

**10.** *In Dashrathbhai's case (supra), in paragraph No. 30, while addressing the indorsement required to be made under Sections 15 and 56 of the NI Act, the Supreme Court held as under:*

*“30. In view of the discussion above, we summarise our findings below:*

*(i) For the commission of an offence under S. 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;*

*(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;*

*(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in S. 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under S. 138 will stand attracted;*

*(iv) The first respondent has made part - payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under S. 138 of the Act when the cheque was dishonoured for insufficient funds; and*

*(v) The notice demanding the payment of the 'said amount of money has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to S. 138 need to be fulfilled in addition to the ingredients in the substantive part of S. 138. Since in this case, the first respondent has not committed an offence under S. 138, the validity of the form of the notice need not be decided."*

**11.** *Thus the law emerges is that, when a part of the sum covered by the cheque is paid during the period between the date on which the cheque is drawn and its encashment upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque. Further, when a part, or the whole of the sum represented in a cheque is paid by the drawer, the same must be indorsed on the cheque as prescribed under Section 56 of the NI Act. Then the indorsed cheque could be used to negotiate the balance, if any. On dishnour of cheque, which was presented for*

*getting the balance amount, excluding the amount indorsed as paid, then the offence under Section 138 of the NI Act would be attracted. However, when part payment(s) is/are made and the indorsement mandated under Section 56 of the NI Act failed to be recorded, presenting the cheque for the whole sum, of which a part payment has already been paid, does not represent the legally enforceable debt; thus no offence under the NI Act would lie in case of dishonour of such a cheque. The rationale is that, in order to attract an offence under Section 138 of the NI Act, the dishonoured cheque must represent a legally enforceable debt.*

**12.** *On the facts of this case, admittedly, the cheque is dated 31-10-2017. As per the averments in the complaint, it could be gathered that the cheque was presented for collection through the Idukki District Cooperative Bank, Nedumkandam branch, on 2-11-2017 and the same got dishonoured for want of funds. After dishonour of the cheque for the first time, the accused paid Rs 1,94,000 and Rs 1,96,000 on 14-11-2017 and 15-11-2017 respectively to the complainant. It was thereafter when the accused failed to repay the balance amount, the cheque was again presented without making the required indorsement under Section 56 of the NI Act, and the complainant launched prosecution claiming Rs 10,90,000 as such, shown in the cheque itself, without disclosing the part payments in the complaint. If so, the prosecution could not be held as one consequent to dishonour of a cheque which represent a legally enforceable debt coming to Rs 10,90,000. When the prosecution is not for a legally*

*enforceable debt in full on the date of presentation of the cheque, no offence under Section 138 of the NI Act get attracted.*

**13.** *Since the law is settled in the above line, in the present facts of the case, finding of the learned Magistrate that offence under Section 138 of the NI Act is not attracted is perfectly justifiable. In view of the above, verdict impugned is liable to be confirmed."*

22. *Per contra*, Sri R.Kiran, learned counsel for the respondent, supports the impugned judgments by contending that in the entire cross-examination of PW-1, there is no challenge to the acknowledgment of debt executed by accused Company signed by accused No.2. The escrow account agreement (Exhibit P-65) wherein there is an acknowledgment of debt.

23. As such, the contentions now urged before this Court cannot be countenanced in law, that too, having regard to the scope of revision where this Court cannot revisit into the factual aspects of the matter.

24. He would further invite the attention of this Court to the cross-examination of DW1(accused No.2) wherein there is a clear admission that in Exhibit P-68 one of the cheque involved in the present case bearing No.853204 is mentioned.

25. He also points out that the witness has put in his appearance before this First Appellate Court in respect of the order of acquittal vide Exhibit D-8 and thus sought for dismissal of the petition.

26. Having heard the arguments of both sides, this Court bestowed its attention to the material on record meticulously.

27. As could be seen from the material on record, cheques marked at Exhibits P-2 and P-3 does belong to accused No.1 Company. Signature found in Exhibits P-2 and P-3 is that of accused No.2.

28. Admittedly, cheques were dis-honoured with an endorsement of insufficient funds. Legal notice was issued vide Exhibit P-6. In the said legal notice itself, there is a clear mention as to the transaction of Rs.4,84,27,931/- and also there is a mention about the acknowledgment of debt, wherein interest is calculated on the outstanding amount and dues of the accused to the complainant was crystallized in a sum of Rs.72,95,708.99. Two cheques were issued towards the clearance of the said amount as per Exhibits P-2 and P-3 is also points placed in Exhibit P-6.

29. Admittedly the accused has not claimed the notice issued and return covers are placed on record. Exhibit P-13 is the office copy of the notice. Exhibits P-19 to P-51 are the copies of invoices.

30. Important document as per the complainant is the escrow account agreement marked at Exhibit P-65, wherein there is an acknowledgment of debt. Said escrow account agreement is between accused, complainant and Axis Bank. Said agreement is not in dispute. Words namely 'Escrow Account', 'Company's Account', 'Business Day' were defined in the said agreement in clause 1.01.

31. When the transaction has taken place between the complainant and accused directly, huge arrears was there. Therefore, an intermediary by name 'Yahoo Limited' took over the responsibility that Invoices can be raised for supply of materials and Yahoo Limited would pay the amount for and on behalf of the accused.

32. That is the stand taken by the accused, but nobody is examined on behalf of the accused to establish the said arrangement.

33. However, Exhibits P-19 to P-24 and P-27 were raised in the name of Yahoo Limited and also there is a specific admission that materials were being supplied to Yahoo Limited which in turn used to supply to the accused company and value of those materials would be deposited into the escrow account.

34. A notice also came to the issued to Yahoo Limited by the complainant, which was admitted by PW-1 and marked at Exhibit D-1. Paragraph 8 is relevant in the said notice which reads as under:

*"8. **Take Notice**, that we hereby call upon you to pay the amount of Rs.8,56,48,640.90 (Rupees Eight Crores Fifty Six Lacs Forty Eight Thousand Six Hundred Forty and Ninety Paise) within 21 days from the date of receipt of this notice. You are also liable to pay interest @ 18% p.a. from the respective due dates of the invoices on the amount overdue till the date of the payment. In case of failure to comply with the terms of this notice, our client has instructed us to initiate appropriate legal action against you including winding up proceedings under Section 433 of the Companies Act, 1956, for which all costs and consequences you will be liable. Further our client also reserves liberty to initiate appropriate legal action including both civil and criminal against you and your Directors and all the officials who are involved in the said transactions without further notice to you."*

35. It is the case of the accused that another case filed by the complainant is dismissed and therefore, in the present case there could not have been any conviction. Likewise, certified copy of the Company Petition filed before the High Court of Judicature, Mumbai Company Petition No.425/2012 is also placed on record and marked as an Exhibit.

36. In other words, all that the accused wanted to impress upon the Trial Court is that cheques marked at Exhibits P-2 and P-3 are issued as security cheques by the accused Company and the same has been misused by the complainant to foist a false case against the accused as no liability was existing to pay any money under Exhibits P-2 and P-3 by the accused to the complainant.

37. In this regard, detailed cross-examination of PW-1 did not yield any positive material, except for the fact that the invoices marked at Exhibits P-2 and Exhibits P-24 to P-28 are drawn on Yahoo Limited.

38. It is in this regard, Sri Jairaj with vehemence pressed into service Section 41 of the Indian Contract Act, 1872. For ready reference, Section 41 of the said Act is culled out hereunder.

***"41. Effect of accepting performance from third person.—***

*When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor."*

39. On close reading of the above provision, if the third party is involved with regard to the promise, said third party who has undertaken to perform the promise, promisee cannot enforce the obligation against the promisor.

40. In the case on hand, for the escrow agreement Yahoo Limited is not made as a party. Therefore, it is a private affair between the accused and the Yahoo Limited. Having not examined anybody from Yahoo Limited as a witness to establish that there was no liability at all of the accused to the complainant Company, the plea taken by the accused that there was no legally recoverable debt under Exhibits P-2 and P-3 and cheques which have been given as security has been misused by the complainant cannot be countenanced in law.

41. Moreover, if the cheques were really misused as is contented by the accused, positive action should have been

taken against the complainant for having misused the cheques which were given as security.

42. No such action is forthcoming on record even after engaging the services of an advocate and matter was fought tooth and nail before the Trial Magistrate as well as before the First Appellate Court.

43. Further, if a cheque is issued towards the security, whether it would attract the offence under Section 138 of the Negotiable Instruments Act is no longer *res integra*.

44. Hon'ble Apex Court in the case of ***Sripathi Singh (since deceased) through his son Gaurav Singh vs. State of Jharkhand and another*** reported in ***(2022)18 SCC 614*** at paragraph 22 has held as under:

*"22. When a cheque is issued and is treated as "security" towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as "security" cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed*

*period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceeding initiated under Section 138 of the NI Act. Therefore, there cannot be a hard-and-fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an "on demand promissory note" and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as "security" the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."*

45. Even assuming that the cheques were given as security, accused cannot escape the liability.

46. Lastly, an order of acquittal in the respect of another cheque issued by the accused in C.C No.26107/2012 produced

vide Exhibit D-8 and depositions thereon and the complaint copy is sought to be pressed into service.

47. In the first place, the said document is of no avail to the accused to further advance his case in seeking an order of acquittal inasmuch as order of the Trial Magistrate would not bind this Court.

48. Moreover said order of acquittal is challenged by the complainant and it is now pending before this Court and accused has entered appearance. Further, deposition of a **living** witness cannot be relied in another proceedings.

49. Therefore, the alleged admissions of PW-2 in the said case would not improve the case of the accused in establishing the fact that there is no legally recoverable debt.

50. Further, taking note of these aspects including the judgment of the Hon'ble Apex Court in the case of **Sripathi Singh** supra, the judgment of the Kerala High Court in the case of **Mr.Danikutti Philip** supra, is of no avail in advancing the case of the accused.

51. What is the presumption and how available to the complainant under Section 139 of the Negotiable Instruments

Act, 1881 and how same is to be applied before the Court of law is reiterated by the Hon'ble Apex Court in the case of ***Sanjabij Tari vs. Kishore S. Borcar and another*** reported in **2025 SCC OnLine SC 2069**, wherein, it is held as under:

*"15. In the present case, the cheque in question has admittedly been signed by respondent No. 1-accused. This court is of the view that once the execution of the cheque is admitted, the presumption under section 118 of the Negotiable Instruments Act, that the cheque in question was drawn for consideration and the presumption under section 139 of the Negotiable Instruments Act, that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-judge Bench in Krishna Janardhan Bhat v. Dattatraya G. Hegde [(2008) 141 Comp Cas 665 (SC); (2008) 4 SCC 54; (2008) 2 SCC (Cri) 166; 2008 SCC OnLine SC 106.] have been set aside by a three-judge Bench in Rangappa v. Sri Mohan [(2010) 11 SCC 441; (2010) 4 SCC (Civ) 477; (2011) 1 SCC (Cri) 184; 2010 SCC OnLine SC 583.]*

*16. This court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.*

*17. Needless to mention that the presumption contemplated under section 139 of the Negotiable*

*Instruments Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque (see : Bir Singh v. Mukesh Kumar [(2019) 5 Comp Cas-OL 560 (SC); (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138.] .*

*18. The judgment of this court in APS Forex Services P. Ltd. v. Shakti International Fashion Linkers [(2020) 12 SCC 724; (2020) 4 SCC (Cri) 505; 2020 SCC OnLine SC 193.] relied upon by learned counsel for respondent No. 1-accused only says that the presumption under section 139 of the Negotiable Instruments Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash. This judgment nowhere states, as was sought to be contended by learned counsel for respondent No. 1-accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under section 139 of the Negotiable Instruments Act does not arise.*

*Approach of some courts below to not give effect to the presumptions under sections 118 and 139 of the Negotiable Instruments Act, is contrary to mandate of Parliament*

*21. This court also takes judicial notice of the fact that some district courts and some High Courts are not giving effect to the presumptions incorporated in sections 118 and 139 of the Negotiable Instruments*

*Act, and are treating the proceedings under the Negotiable Instruments Act, as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged.*

*No documents and/or evidence led with regard to the financial incapacity of the appellant.*

*22. It is pertinent to mention that in the present case, respondent No. 1- accused has filed no documents and/or examined any independent witness or led any evidence with regard to the financial incapacity of the appellant- complainant to advance the loans in question. For instance, this court in *Rajaram v. Maruthachalam* [(2023) 16 SCC 125] has held that the presumptions under sections 118 and 139 of the Negotiable Instruments Act, can be rebutted by the accused examining the Income-tax Officer and bank officials of the complainant/drawee.*

*When the evidence of PW-1 is read in its entirety, it cannot be said that the appellant-complainant had no wherewithal to advance loan.*

*27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings (see : *Bir**

*Singh v. Mukesh Kumar [(2019) 4 SCC 197]*). This court is of the view that it is not for the revisional court to re-analyse and re-interpret the evidence on record. As held by this court in *Southern Sales and Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457]*, it is a well-established principle of law that the revisional court will not interfere, even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error.”

52. Further, no material is available on record to establish the fact that entire liability of accused was taken over by Yahoo Limited. Further, filing of the Company Petition by the complainant Company against the Yahoo Company does not debar the complainant to initiate criminal action against the accused company.

53. Furthermore, pendency of civil suit is also of no consequence in adjudicating the criminal proceedings which can run parallelly.

54. At the most, if any amount is paid by the accused pursuant to the Order passed by learned Trial Magistrate confirmed by the learned Judge in the First Appellate Court, same shall be given due deduction in the pending civil proceedings.

55. Thus, on cumulative consideration of the material on record, having regard to the limited scope of revisional jurisdiction, this Court does not find any good grounds to interfere with the order of conviction recorded by the learned Trial Magistrate.

56. However, in an appeal filed by the accused, First Appellate Court had no power to enhance the sentence. Pertinently, the quantum of sentence was not challenged by the complainant. Therefore, to the extent that the First Appellate Court has enhanced the sentence in the appeal filed by the accused needs to be set-aside and sentence ordered by the learned Trial Magistrate is to be upheld.

57. In fact, this Court has already taken a similar view in the case of ***Gousmodin vs. State of Karnataka in Crl.RP No.100216/2019 dated 21.04.2025.***

58. View of this Court is further fortified by the Hon'ble supreme Court in the case of ***Sachin vs. State of Maharashtra*** reported in ***(2025)9 SCC 507.***

59. Consequently, the following:

ORDER

- i. Revision Petition is ***allowed-in-part***.
- ii. While maintaining the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, sentence ordered by learned Trial Magistrate is upheld by setting aside such portion of the Order of the First Appellate Court where it has *suo motu* enhanced the sentence from 3 months to one year, in the absence of challenge to the quantum by the complainant.
- iii. Time is granted to pay the amount till **10<sup>th</sup> May 2026**.

**Sd/-  
(V SRISHANANDA)  
JUDGE**

kcm