HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO.167 OF 2021

BETWEEN:

MR. PUSHPARAJ R. ULLAL
S/O. ROHINATH ULLAL
AGED ABOUT 37 YEARS
RESIDING AT SUNDARI BAGH
MASTIKATTE
ULLAL POST AND VILLAGE
BANTWAL TALUK
D.K. DISTRICT-574 219.

...PETITIONER

(BY SRI RAVISHANKAR SHASTRY G., ADVOCATE)

AND:

MR. HERALD D' SOUZA
S/O. LATE LADDIN D' SOUZA
AGED ABOUT 64 YEARS
RESIDING AT MARY VILLA
NEAR THOKKOTTU BUS STAND
PEMANNUR POST
MANGALORE TALUK
D.K. DISTRICT-575 012.

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)

* * *

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W SECTION 401 OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT DATED 19-10-2020 IN CRIMINAL APPEAL NO.131 OF 2019 PASSED BY THE COURT OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE CONFIRMING THE JUDGMENT

DATED 30-7-2019 IN CRIMINAL CASE NO.1043 OF 2016 PASSED BY THE COURT OF THE JMFC (V COURT), MANGALORE, D.K., AND PETITIONER MAY BE ACQUITTED FOR THE OFFENCE ALLEGED BY ALLOWING THIS REVISION PETITION.

THIS CRIMINAL REVISION PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Sri G. Ravishankar Shastry, learned counsel for the revision petitioner. Respondent is served but unrepresented.

2. The petitioner/accused has filed this petition under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 (for short, "Cr.P.C") praying to set-aside the judgment dated 19.10.2020 passed by the learned III Additional District and Sessions Judge, D.K., Mangaluru, (for short, "First Appellate Court") in Criminal Appeal No.131/2019 and also to set-aside the judgment of conviction and order on sentence dated 30.07.2019 passed by the Judicial Magistrate Class-V Court,

Mangaluru, D.K. (for short, "trial Court") in Criminal Case No.1043/2016 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "N.I. Act").

3. For the sake of convenience, the parties are referred to as per their rankings before the trial Court. The petitioner is the accused and the respondent is the complainant before the trial Court.

4. The brief facts of the complainant's case are as under:

The respondent/complainant filed a complaint against the petitioner/accused for the offence punishable under Section 138 of the N.I. Act on the ground that he had advanced a loan of Rs.1,57,000/- to the accused for his necessities. The accused, in order to repay the loan, issued two cheques bearing Nos.012356 and 818881 for sums of Rs.57,000/- and Rs.1,00,000/-, respectively, on 20.09.2016, drawn on Federal Bank and Karnataka Bank

Ltd., Thokottu Branch, Mangaluru. Upon presentation, the said cheques were dishonoured on 21.09.2016 and 26.09.2016, respectively, due to "insufficient funds" in the account of the accused. Therefore, the complainant got issued a legal notice (Ex.P5) calling upon the accused to pay the amounts due under the cheques. Though the notice was served on the accused, he neither repaid the amount nor replied to the legal notice. Therefore, the complainant filed a private complaint under Section 200 of the Cr.P.C. for the offence punishable under Section 138 of the N.I. Act.

5. After institution of the complaint, the trial Court recorded the sworn statement of the complainant, took cognizance under Section 190(1)(a) of the Cr.P.C., secured the presence of the accused, and recorded his plea. The accused pleaded not guilty and claimed to be tried.

6. The complainant, in order to prove his case, examined himself as PW1, examined two other witnesses as PW2 and PW3, and relied upon documents marked as Exs.P1 to P8. On behalf of the defence, the accused examined himself as DW1 and relied upon three documents marked as Exs.D1 to D3.

7. On the basis of the oral and documentary evidence on record, the trial Court convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced him to pay a fine of Rs.1,62,000/-. In default of payment of the fine, he shall undergo simple imprisonment for a period of six months.

8. Being aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused preferred an appeal before the First Appellate Court in Criminal Appeal No.131/2019. In turn, the First Appellate Court confirmed the judgment of conviction and

order on sentence passed by the trial Court. Hence, this revision petition.

9. Learned counsel for the petitioner has contended that the judgment of conviction and order on sentence passed by the trial Court as well as the First Appellate Court are not in accordance with law. The complainant has failed to prove the requirements of Section 138 of the N.I. Act, as the accused has disputed the cheques in question. It is further contended that the complainant had no financial capacity to lend the loan amount and that there was no legally enforceable debt. As per Exs.D1 and D2, the accused had borrowed a loan in the month of January 2015 and repaid the said loan by way of cheques dated 28.01.2015 and 28.02.2015 for a sum of Rs.20,000/- each. However, the complainant did not return the cheques in question, which had been issued for security purposes. Instead, the complainant misused the cheques and presented them for encashment. The complainant has not mentioned the date of advancement

of the loan to the accused either in the complaint or in the chief examination. The trial Court and the First Appellate Court have failed to consider the fact that the complainant has also not mentioned the date of advancement of the loan either in the loan agreement (Ex.P8) or in the legal notice (Ex.P5).

10. It is further contended that there was no amount due to the complainant and, therefore, there was no legally enforceable debt or liability. It is also contended that, in the cross-examination of PW1, he has categorically stated that on 23.05.2016 the accused sought a loan. However, the date of advancement of the loan has not been stated either in the complaint, in the chief examination, or in Exs.P5 and P8, and no explanation has been offered by the complainant, more particularly, Exs.D1 and D2, namely, the bank passbooks, disclose that a sum of Rs.20,000/- each was paid on two occasions to the account of the complainant. On all these grounds, the

learned counsel appearing for the revision petitioner prays to allow the petition.

11. In the light of the submissions made by the learned counsel for the revision petitioner, the judgments of the trial Court and the First Appellate Court, and the other materials on record, the following points arise for consideration by this Court:

i. *Whether the revision petitioner has proved that there is an apparent error on the face of the record in the judgments of the trial Court as well as the First Appellate Court in convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act?*

ii. *Whether the judgment of conviction and order on sentence passed by the trial Court as well as the First Appellate Court are perverse and call for an interference by this Court?*

12. Admittedly, the complainant filed a private complaint under Section 200 of Cr.P.C. against the

accused for the offence punishable under Section 138 of the N.I. Act. In order to substantiate the contention of the complainant, he examined himself as PW1 and relied upon, in all, eight documents. Ex.P1 is the cheque dated 20.09.2016 issued by the accused for a sum of Rs.57,000/-, drawn on Federal Bank, Thokottu Branch, D.K., Mangaluru. The signature of the accused is marked as Ex.P1(a), and Ex.P2 is the bank endorsement issued on 26.09.2016 in respect of Cheque No.012356 for a sum of Rs.57,000/-. Ex.P3 is another cheque dated 20.09.2016 for a sum of Rs.1,00,000/-, drawn on Karnataka Bank Ltd., Thokottu Branch, D.K., Mangaluru, issued by the accused in favour of the complainant. Ex.P4 is the bank endorsement issued in respect of Cheque No.818881. The perusal of the bank endorsements clearly shows that the endorsements were issued in respect of Exs.P1 and P3 - cheques and that the cheques were returned with the shara "Funds Insufficient" in the account of the accused. Ex.P5 is the legal notice dated 01.10.2016 issued by the complainant to the accused, wherein the complainant called upon the accused to pay a sum of Rs.1,57,000/- due under the two cheques. Ex.P6 is the postal receipt for having issued the legal notice to the accused on 01.10.2016. Ex.P7 is the postal acknowledgment, wherein the wife of the accused affixed her signature. Ex.P8 is the agreement dated 23.05.2016 entered into between the complainant and the accused in respect of the hand loan borrowed by the accused for a sum of Rs.1,57,000/-. At paragraph 4 of the said agreement, the parties have stated that the second party, i.e., the accused, issued Cheque No.818881 drawn on Karnataka Bank Ltd., Thokottu Branch, and Cheque No.012356 drawn on Federal Bank Ltd., Thokottu Branch, as security for the aforesaid loan amount and interest.

13. PW1 was cross-examined. In the cross-examination, he admitted that he had not mentioned any particulars as to when the loan was advanced to the accused and that the same is not mentioned in the

complaint, the chief examination, Ex.P5 - legal notice, or Ex.P8 - loan agreement. In the cross-examination, a suggestion was made to PW1 that earlier, in the month of January 2015, the accused had borrowed a loan of Rs.40,000/- and the same was repaid through cheques for a sum of Rs.20,000/- each. However, the same was denied by PW1. In order to corroborate the oral testimony of PW1, the complainant examined two witnesses to Ex.P8 as PW2 and PW3. They corroborated the oral testimony of PW1 and stated that the accused borrowed a sum of Rs.1,57,000/- from the complainant and, in consideration thereof, executed Ex.P8 - loan agreement and issued two cheques.

14. To rebut the claim of the complainant, the accused examined himself as DW1 and relied upon Exs.D1 and D2. In his examination, the accused stated that he had borrowed a sum of Rs.40,000/- only on 01.01.2015 from the complainant and repaid the aforesaid amount by way of two cheques on 28.01.2015 and 28.02.2015.

However, the complainant failed to return some blank papers and two blank cheques, which had been issued as security. The accused also stated that he repeatedly requested the complainant to return the cheques. However, with a view to maintain cordial relations with the complainant, he did not issue any notice seeking return of the cheques. The accused further stated that the legal notice issued by the complainant was replied to through his counsel, but the reply was returned unserved.

15. On perusal of the oral testimony of PW1 to PW3 and the contents of Exs.P1 to P8, it appears that the accused had borrowed a sum of Rs.1,57,000/- from the complainant and in consideration thereof, had issued Exs.P1 and P3 - cheques for sums of Rs.57,000/- and Rs.1,00,000/-, respectively. Hence, the complainant presented the cheques for encashment through his banker, and the cheques were dishonoured for the reason "Funds Insufficient" in the account of the accused. In spite of the issuance of the legal notice as per Ex.P5, the

accused failed to repay the amount due under Exs.P1 and P3 - cheques.

16. In the present case, the complainant has produced the cheques in question, and the same were marked as Exs.P1 and P3. The signatures of the accused were also marked as Ex.P1(a) and Ex.P3(a). The bank endorsements were also marked as Exs.P2 and P4. On perusal of all these documents, it is clear that the accused has not disputed the issuance of the cheques and the service of the legal notice upon him. In view of the presumption available under Section 139 of the Negotiable Instruments Act, the complainant has complied with the legal requirements under Section 138 of the N.I. Act.

17. Now, the burden shifts on the accused to disprove the case of the complainant. On perusal of the evidence on record, the accused has contended that the cheques were issued for security purposes and that he had earlier borrowed a loan of Rs.40,000/- from the

complainant, which was repaid in the months of January and February 2015 itself. However, the cheques were not returned by the complainant, and thereby the complainant has misused the cheques in question. To substantiate this contention, the accused examined himself as DW1. On perusal of the evidence of DW1, as well as the complaint, the chief examination of PW1, the legal notice and the agreement entered into between the parties, merely because the complainant failed to mention the exact date of advancement of the loan to the accused, the case propounded by the complainant cannot be thrown out on that sole ground. The fact remains that the accused never discharged the alleged loan borrowed from the complainant in the year 2016. If the execution of the negotiable instruments, namely Exs.P1 and P3, is admitted, the Court may draw presumption under Section 118 of the N.I. Act and shall draw presumption under Section 139 of the N.I. Act in favour of the holder of the negotiable instruments.

18. The burden lies on the accused to prove the non-existence of consideration either by direct evidence or by probable evidence, so as to show that the existence of consideration was improbable, doubtful, or illegal. The accused has not produced any kind of evidence to show that the existence of consideration was improbable, doubtful, or illegal. Therefore, the trial Court as well as the First Appellate Court have drawn the presumption that the cheques were issued towards a legally enforceable debt. Whether the accused issued the cheques for repayment of the loan, as security, or towards discharge of the current transaction, it makes no difference under Section 138 of the N.I. Act, and the legal consequence is the same without any distinction.

19. The present revision petition has been filed by the petitioner challenging the concurrent findings of the trial Court as well as the First Appellate Court.

20. The scope of revision refers to the limited authority of a higher Court to review the judgments of the trial Court and the First Appellate Court, focusing on correcting errors of jurisdiction or gross legal or factual flaws rather than re-examining the merits of the case. This power is exercised sparingly and is intended to set right a patent defect, and not to function as an automatic second appeal. The specific grounds and limitations vary between civil and criminal proceedings. Revision can address situations where the decision is grossly erroneous, not supported by evidence, or where relevant evidence has been ignored. Therefore, the revision is not a fresh trial, and there is a bar on re-examining the evidence and substituting the revision Court's own findings for those recorded by the Courts below.

21. The Hon'ble Apex Court in the case of ***MUNNA DEVI v. STATE OF RAJASTHAN AND ANOTHER*** reported in ***(2001) 9 SCC 631*** while discussing the scope

of Section 397 of the Cr.P.C. held at paragraph No.3 as under:

> *"3. xxx xxx xxx. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."*

22. The Hon'ble Apex Court in the case of ***STATE OF TAMIL NADU v. R. SOUNDIRARASU AND OTHERS*** reported in ***(2023) 6 SCC 768*** at paragraph No.79 held as under:

> *"79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be*

exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

23. Further, the Hon'ble Apex Court in the case of ***STATE OF MAHARASHTRA v. SUJAY MANGESH POYAREKAR*** reported in ***(2008) 9 SCC 475*** at paragraph No.16 held as under:

"16. xxx xxx xxx. Now it is well settled that revisional jurisdiction can be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal."

24. Therefore, the revisional jurisdiction should be exercised in exceptional cases, when there is a glaring defect in the proceedings or there is a manifest error of point of law and consequently, there has been a flagrant miscarriage of justice.

25. In the present case, the trial Court as well as the First Appellate Court, considering the oral and documentary evidence on record and the peculiar facts and circumstances of the case, has convicted the petitioner for the offence punishable under Section 138 of N.I. Act, which does not require any interference by this Court.

26. Learned counsel for the petitioner vehemently contended that since the petitioner/accused paid a sum of Rs.40,000/- through cheques to the complainant, the same has to be deducted from the entire loan transaction, as the complainant contended that he had advanced the loan to the accused in a single transaction.

27. On perusal of the complaint, the legal notice, Exs.P1, P3 - cheques and Ex.P8 - loan agreement, it appears that the complainant and the accused entered into a single loan transaction and that the accused borrowed a sum of Rs.1,57,000/- and repaid Rs.40,000/-. Therefore, in the interest of justice, the amount of Rs.40,000/- paid by the petitioner/accused is liable to be deducted from Rs.1,57,000/-, and accordingly, I pass the following:

ORDER

i) The Revision Petition is ***allowed-in-part***.

ii) The judgment of conviction and order on sentence dated 30.07.2019 passed in Criminal Case No.1043 of 2016 by the Judicial Magistrate First Class-V Court, Mangaluru, D.K., and the judgment dated 19.10.2020 passed in Criminal Appeal No.131 of 2019 by the III Additional District and Sessions Judge, D.K., Mangaluru, are confirmed. However, insofar as the amount payable to the complainant is concerned, the same is modified and reduced to Rs.1,17,000/- from Rs.1,57,000/-. The petitioner/accused shall pay a sum of Rs.1,17,000/- to the complainant.

iii) Registry is directed to send the Trial Court Records to the trial Court along with a copy of this order forthwith.

Pending interlocutory applications, if any, stand disposed of.

Sd/-
(VENKATESH NAIK T)
JUDGE

AM
List No.: 1 Sl No.: 17