HC-KAR

NC: 2026:KHC:42272
CRL.RP No. 101 of 2026

CNR: KAHC010028412026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO. 101 OF 2026

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

BETWEEN:

MR. TULASI PRADHAN
S/O NANU B PRADHAN,
AGED ABOUT 45 YEARS,
PROPRIETOR OF PHOENIX PROJECTS,
NO.2397/29A, 3RD FLOOR,
18TH MAIN ROAD,
KUMARASWAMY LAYOUT,
II STAGE, BENGALURU-560 078.

...PETITIONER

(BY SRI. MANJUNATHA R. SWAMY, ADVOCATE)

AND:

M/S. BEARDSELL LIMITED
NO.2, 2ND FLOOR,
CHAMPAKA MANSION,
NATIONAL HIGH SCHOOL ROAD,
NEAR JAIN COLLEGE,
V.V. PURAM, BENGALURU-560 004.
REP. BY ITS GM MR P.NARENDRAN

...RESPONDENT

(BY SRI. M.M. RAGHAVENDRA, ADVOCATE FOR
SRI. SUDHAKARA M R., ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.PC (FILED U/S 438 R/W 442 BNSS) PRAYING TO SET ASIDE THE JUDGMENT DATED:10/01/2025 IN CC.No.2984/2023 AT ANNEXURE-A OF THE HON'BLE COURT OF THE XXXVIII ACJM, BANGALORE AND ALSO THE JUDGMENT DATED: 12/12/2025 IN CRL.A 223/2025 AT ANNEXURE-B OF THE HONBLE COURT OF

THE LXVIII ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE AND CONSEQUENTLY ACQUIT THE REVISION PETITIONER.

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

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

The petitioner has filed this petition under Section 397 r/w Section 401 Code of Criminal Procedure, 1973 praying to set aside the judgment dated 12.12.2025 passed by learned LXVIII Additional City Civil and Sessions Judge, Bengaluru in Crl.A.No.223/2025 and also to set aside the judgment of conviction and order on sentence dated CC.No.2984/2023 passed by learned XXXVIII Addl. Chief Judicial Magistrate punishable under Section 138 of N.I. Act, 188(for short N.I. Act).

2. For the sake of convenience, the parties are referred to as per their ranks before the trial court. The petitioner is the 'accused' and respondent is the 'complainant' before the trial court.

3. 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 N.I. Act. The complainant is the company registered under the Companies Act and engaged in the business of manufacturing and marketing of cold storage products, PVC, Corner Coving and panel supply. The petitioner/accused is running a business established under the name and style of M/s.Phoenix Projects. The accused had business relationship with the complainant. The accused had purchased PUF insulated sandwich panels for ceiling and ancillary materials from the complainant company as per his requirements during the course of business. He had made several purchases from the complainant and the complainant company has been maintaining the purchases made by the accused and payment made by the accused with regard to the business transaction. By the end of year 2021, the accused was liable to pay sum of Rs.21,81,141/- as outstanding payable to the complainant company. Towards partial discharge of the balance amount, he issued Cheque bearing No.000146 dated 21.10.2021 drawn on

Kotak Mahindra Bank for a sum of Rs.15,59,863/- in favour of the complainant. On presentation of the said cheque, it was returned with a shara 'funds insufficient' in the account of the accused on 30.10.2021. Hence, the respondent called upon the petitioner to pay the balance amount due under the cheque. Though the notice was served on the petitioner, the petitioner neither repaid the amount nor replied to the legal notice. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C. for the offence punishable under Section 138 of N.I. Act. After institution of the complaint, the trial Court recorded the sworn statement of the complainant, took cognisance under Section 191A of Cr.P.C., secured the presence of the accused and recorded his plea. The accused pleaded not guilty and claimed to be tried.

4. The complainant in order to prove its case, examined its Officer Sri. P Narendran as PW.1 and relied upon in all fifteen documents as per Exs.P1 to 15. For the defence, the petitioner herein was examined as DW.1 and he relied upon 177 documents as per Exs-D1 to D177. 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 N.I. Act and sentenced to pay a fine of Rs.22,00,000/- and in default of payment of fine, he shall undergo simple imprisonment for a period of six months. Being aggrieved by the judgment of conviction and order of sentence passed by the trial Court, the accused preferred an appeal before the first appellate court in Crl.A.No.223/2025. In turn, the first appellate court confirmed the judgment of conviction and order of sentence passed by the trial Court. Hence, the revision petition.

5. Learned counsel for the petitioner/accused contended that the judgment of conviction and order of sentence passed by the trial Court as well as first appellate court are not in accordance with law. The complainant has failed to prove the requirement of Section 138 of NI Act, as the accused has disputed the cheque in question. It is further contended that the accused has discharged the entire arrears of amount and he had paid excess amount to the complainant as per Exs.D1, D19 and D21. It is further contended that the complainant secured the cheque for the entire transaction, which was not returned to the accused and it was issued for the purpose of

security, instead, the complainant misused the cheque and presented it for encashment. The trial Court and the first appellate Court have failed to consider the fact that the petitioner had paid excess amount to the complainant, which is corroborated by Exs.D1, D19 and D21. It is further contended that there was no amount due to the complainant and there was no legally enforceable debt on the complainant. On all these grounds, the learned counsel prayed to allow the revision petition.

6. Per-contra, learned counsel for the respondent/complainant contended that there was transaction between the complainant company and respondent and the complainant supplied the materials to the accused and in this regard, the accused has issued the cheque, which was presented on the instruction of the accused and the same was returned with a shara 'funds insufficient' in the account of the accused. Therefore, a legal notice was issued. But no reply was sent by the accused. Considering the oral and documentary evidence on record, the trial court rightly convicted the accused and the first appellate court also rightly affirmed the judgment

of the trial court. Hence, learned counsel submits that no interference is required by this Court in that regard and prayed to dismiss the appeal.

7. In the light of the submissions made by the learned counsel for the revision petitioner and learned counsel for respondent, the following points would arise for court's consideration:-

1. Whether the revision petitioner has proved that there is apparent error on the face of the record in the judgment of the trial Court as well as first appellate Court in convicting him for the offence punishable under Section 138 of NI Act?

2. Whether the judgment of conviction and order on sentence passed by the trial Court as well as first appellate Court are perverse and calls for interference by this Court?

8. Admittedly, the complainant filed a private complaint under Section 200 Cr.P.C. against the accused for the offence

punishable under Section 138 of N.I. Act. In order to substantiate the contention of the complainant, the officer of the complainant company was examined as PW.1 and he relied upon in all 15 documents as per Exs.P1 to P15. Ex.P1 is the original cheque bearing No.000146 dated 21.10.2021 issued for a sum of Rs.15,59,863/- in favour of the complainant. Ex.P2 is the bank endorsement, Ex.P3 is the legal notice dated 25.11.2021 issued by the complainant company, wherein the complainant called upon the accused to pay the amount due under the cheque, Ex.P4 is the postal receipt, which corroborates the fact that the complainant company issued legal notice to the accused, Ex.P5 is the postal acknowledgment for having issued legal notice to the respondent and the same was served on the petitioner, Exs.P6 to P13 are the tax invoices, wherein the complainant company supplied materials to the accused. Ex-P14 is the Special GPA executed by the company in favour of PW.1 to give evidence and Ex-P15 is the statement.

9. Per-contra, the respondent/accused himself was examined as DW.1 and he relied upon in all 177 documents,

i.e., ledger account, Bank statement, debit note and tax invoices etc.,

10. On perusal of the oral testimony of PW.1 and the contents of Ex.P1 cheque, it appears that the complainant company had supplied materials to the accused and therefore, in consideration thereof, the accused had issued Ex.P1 cheque for a sum of Rs.15,59,863/-. Hence, the complainant company presented the cheque for encashment through its banker and the cheque was dishonored for the reason 'funds insufficient' in the account of the accused. In spite of issuance of legal notice Ex.P3, the accused failed to repay the amount due under Ex-P1 cheque.

11. In the present case, the complainant has produced the cheque in question and the same was marked as Ex.P1. The signature of accused was also marked as Ex.P1(a). The bank endorsement is also marked as Ex.P2. On perusal of all these documents, it is clear that the accused has not disputed the issuance of cheque and service of legal notice issued upon him. In view of the presumption available under Section 139 of the N.I. Act, the complainant has complied with the legal

requirements under Section 138 of NI Act. 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 cheque was issued for security purpose and he had paid excess amount to the complainant company. However, the cheque was not returned by the complainant and thereby the complainant has misused the cheque in question. As per Ex-P23, the petitioner purchased materials worth Rs.1,35,82,650/- and paid the amount of Rs.1,50,50,000/- as per Exs-D1 and Ex-D19.

12. To substantiate the said contention, the accused examined himself as DW.1. On perusal of the evidence of DW.1 as well as the complainant, legal notice and Exs.P6 to P13- tax invoices, it clearly demonstrates that the complainant company supplied the materials to the accused and in that regard, the accused issued cheque-Ex.P1. Merely because, the complainant failed to mention the exact date in the cheque, the case propounded by the complainant cannot be thrown out on that sole ground. If the execution of negotiable instrument, viz., Ex.P1 is admitted, the Court may draw a presumption under

Section 118 of the NI Act and shall draw a presumption under Section 139 of the NI Act in favour of the holder of the negotiable instrument. The burden lies on the accused to prove the non-existence of consideration, either by direct evidence or by adducing 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. Though learned counsel for the petitioner vehemently contended that excess payment was made to the complainant and in that regard, DW.1 in his evidence has admitted that he has not obtained 'no due certificate' from the complainant to show that there was no due as on the date of the alleged transaction and he never instructed his banker for stop payment. Further, he never insisted the complainant company for return of the cheque as he made excess payment to the company. Therefore, the trial court as well as the first appellate Courts have drawn the presumption that the cheque was issued towards a legally enforceable debt. Whether the accused issued the cheque for the transaction between the complainant and him i.e. towards supply of materials, as security or towards discharge of the current transaction, it makes no difference under Section 138 of NI Act and legal consequence is the same without any distinction.

13. 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.

14. The "scope of revision" refers to the limited authority of a higher Court to review judgment of the trial Court and the First Appellate Court, focusing on correcting errors in jurisdiction or gross legal/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, not to function as an automatic second appeal. The specific grounds and limitations vary between civil and criminal proceedings. Revisions can address situations where the decision is grossly inaccurate, not supported by evidence, or where relevant evidence was ignored. Therefore, the revision is not a fresh trial and there is bar on re-examining evidence and substantiated the real findings recorded by the Courts below.

15. 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. at paragraph No.3 has held 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."

16. 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 has 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 the 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."*

17. 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 has 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."*

18. 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.

19. In the present case, the trial Court has rightly analysed the fact, the oral and documentary evidence, more particularly, the defence of the accused with reference to the contents of Exs-D1, D19 and D23 and has rightly convicted the

petitioner for the offence punishable under Section 138 of N.I. Act, which does not require any interference by this Court. Hence, there is no merit in the contention of the revision petitioner.

Accordingly, I pass the following:-

ORDER

1. The revision petition filed by the petitioner is ***dismissed***.

2. The judgment of conviction and order on sentence dated 10.01.2025 passed in CC.No.2984/2023 by learned XXXVIII Addl. Chief Judicial Magistrate Bengaluru as well as the judgment dated 12.12.2025 passed by learned LXVIII Additional City Civil and Sessions Judge, Bengaluru in Crl.A.No.223/2025 are hereby confirmed.

3. Registry is directed to send a copy of this judgment to the trial Court alongwith trial Court records forthwith.

In view of dismissal of the main petition, pending inter-locutory applications, if any, stand disposed of.

Sd/-
(VENKATESH NAIK T)
JUDGE

MN
List No.: 1 Sl No.: 21