

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO.139 OF 2025

BETWEEN:

1. SMT. SARASWATHI,
W/O SHIVANNA,
AGED ABOUT 45 YEARS,
RESIDING AT NO.58,
2ND CROSS, 3RD MAIN,
KOTTIGEPALYA, VISHWANEEDAM POST,
BENGALURU-560091.

...PETITIONER

(BY SRI. B.M. LOKESH, ADVOCATE)

AND:

1. SRI. JAYAPPA M.N.,
S/O LATE MAYANNA,
AGED ABOUT 43 YEARS,
4TH CROSS, 1ST MAIN,
MAGADI MAIN ROAD,
KOTTIGEPALYA,
BENGALURU-560040.

...RESPONDENT

(BY SRI. DHANANJAYA C.P., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.PC (FILED U/S 438 R/W 442 BNNS) PRAYING TO SET-ASIDE THE ORDER DATED 22.10.2021, PASSED BY THE LEARNED XXII ADDL. CHIEF METROPOLITAN MAGISTRATE AT BENGALURU AT IN C.C NO.15920/2018 AT ANNEXURE-B AND SET-ASIDE THE ORDER OF DATED 21.12.2024 IN CRIMINAL APPEAL NO.912/2021 PASSED BY THE LVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-59), BENGALURU CITY AT ANNEXURE-B AND CONSEQUENTLY ACQUIT THIS PETITIONER.



THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.08.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

This matter is listed for admission. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

2. The factual matrix of the case of the complainant before the Trial Court while invoking Section 138 of Negotiable Instruments Act, 1881 ('NI Act' for short), in a private complaint filed under Section 200 of Cr.P.C., it is contended that the accused is the absolute owner of land bearing No.44/2, khatha No.888, measuring east to west 15 feet and north to south 40 feet, situated at Hosahalli, Gollarapalya Village, Yeshavantpura Hobli, Bangalore North Taluk, under a registered sale deed dated 19.02.2014. The accused was in need of money and she approached the complainant and offered to sell the property. The complainant also wanted to purchase the said property. Therefore, he entered into an agreement of sale with the accused on 15.04.2015 through registered agreement. The complainant paid an amount of Rs.5,00,000/- to the accused and agreed to pay the balance consideration out of

total Rs.7,20,000/- on the date of registration. The complainant was ever ready for registration of the sale deed, but the accused failed to provide necessary documents. The period mentioned in sale agreement came to be expired and both of them again entered into subsequent agreements. But the accused failed to provide necessary documents and again requested the complainant to pay further amount of Rs.2,00,000/-. The complainant paid Rs.2,00,000/- and in all paid the amount of Rs.7,00,000/-. But inspite of it, the accused did not come forward to execute the sale deed. After due negotiations, the accused agreed to pay the amount of Rs.12,00,000/- and accordingly, she had issued a cheque dated 03.04.2018 for an amount of Rs.12,00,000/-. When the said cheque was presented, it came to be dishonoured with an endorsement "funds insufficient". The notice was issued and the same was served, but the accused did not repay the amount and also did not reply to the same. Hence, complaint was filed and cognizance was taken. The accused was secured and she did not plead guilty and claimed trial. Hence, the complainant examined himself as P.W.1 and got marked the documents at Exs.P.1 to 16. The complainant also examined two witnesses as P.W.2 and P.W.3 in support of his complaint.

The accused was subjected to 313 statement, but she did not choose to lead any defence evidence.

3. The main defence which was taken before the Trial Court by the accused was that the complainant has not paid the amount as stated in the complaint. The defence of the accused was that the persons by name Ningamma and Jyothi have received the amount from the complainant. The accused has also taken the defence of chit amount, but no documents are produced to that effect. The other contention was taken that the cheque is a joint account cheque of the accused and her husband. It is also contended that the sale agreement was taken as a guarantee in respect of the chit business. But the same is not supported by any documents. The contention was taken that the amount was repaid and the same was denied in the cross-examination of P.W.1. The accused did not explain how her cheque went to the hands of the complainant. The Trial Court taking into note of all these materials, comes to the conclusion that there is a presumption under Section 138 of the NI Act. Though the accused cross-examined P.W.1 and took number of defences, the same was not accepted by the Trial Court and comes to the conclusion that there is no any rebuttal evidence by placing any material in respect of the chit

transaction and also transaction between Ningamma and Jyothi and hence, the Trial Court convicted the accused and sentenced to pay an amount of Rs.12,75,000/-.

4. Being aggrieved by the said judgment of conviction and sentence, an appeal is filed in Crl.A.No.912/2021. The grounds which have been urged before the Appellate Court are also set out in paragraph No.8 of the criminal appeal. The Appellate Court having re-assessed the material on record and also considering the application filed under Section 391 of Cr.P.C., formulated the point in respect of I.A.Nos.4 and 5 and also whether the judgment of conviction and sentence suffers from legal infirmities and answered the same in the negative. In respect of the application filed under Section 391 of Cr.P.C. for production of additional documents, the Appellate Court referring the judgment of the Apex Court in the case of **AJIT SINH CHEHUGI RATHOD v. STATE OF GUJARAT AND ANOTHER** reported in **2024 Live Law SC (64)**, comes to the conclusion that no explanation is given by the accused what prevented her from producing those documents before the Trial Court and even she has not tried to produce the said bank statement before the Trial Court, which are much within her knowledge and she has not assigned any reason for non-

production of those documents before the Trial Court and nothing is stated in 313 statement of the accused. Hence, comes to the conclusion that the accused has not made out sufficient grounds to allow the I.As.

5. The Appellate Court in paragraph No.23 comes to the conclusion that the presumption is not conclusive presumption and the same is rebuttal presumption. The Appellate Court taken note of the defence which was taken, in paragraph No.25. The first contention is that Ex.P.1 cheque is a joint account cheque and accused only signed on the cheque. The other contention is that in Ex.P.1 it is printed as valid only for Rs.10,00,000/- and the amount mentioned in Ex.P.1 is Rs.12,00,000/-. Hence, Ex.P.1 is not valid negotiable instrument. The other contention was taken that the amount was repaid. But to substantiate the same, nothing is placed on record. The Appellate Court taken note with regard to the joint account and signed by one of the account holders and relies upon the judgment of this Court in the case of **SURESH KALLAPPA MAKAVI v. MADAN BINDURAO DESAI** reported in **ILR 2008 KAR 3922**, wherein it is held that the case can be proceeded against the person who signs it because, a joint account can be operated by either of the holders. The

Appellate Court also taken note of the judgment of the Apex Court in the case of **APARNA A. SHASH v. SHETH DEVELOPERS PVT. LTD. AND ANOTHER** reported in **(2013) 8 SCC 71**, wherein it is held that if the cheque is issued and signed by one of joint account holder, one who signed the cheque is liable to be prosecuted under Section 138 of the NI Act. Hence, the first ground was trashed out by the Appellate Court.

6. The other contention was taken that P.W.1 has admitted that his salary is Rs.13,500/- out of Rs.22,000/- what he was earning. When the capacity of the complainant was questioned, the Appellate Court in paragraph No.27 taken note of the documents produced by the complainant Exs.P.11 to 16 to show his financial capacity. Ex.P.11 is the certificate of experience, Ex.P.12 is bank statement, Ex.P.14 is copy of silk worm craft and Exs.P.15 and 16 are RTC extracts of immovable properties and hence, comes to the conclusion that the complainant has shown the source of income and these documents supports the case of the complainant with regard to the capacity.

7. The other contention was raised before the Court that no notice was served on her. But the accused did not deny the address mentioned in the notice. With regard to this also in paragraph No.28 given the reason that if the address is not denied and the same is correct, the same is sufficient as per Section 27 of the General Clauses Act. The grounds which have been urged before the Appellate Court, all have been addressed by the Appellate Court.

8. The other contention was taken that the extended agreement as well as agreement of sale were executed at the instance of the complainant to collect the interest and amount from Ningamma and Jyothi and the accused had requested to cancel the same. Instead of cancelling the same, the present complaint is filed. In order to substantiate that those documents are executed at the instance of the complainant, nothing is placed on record and both of them were not examined before the Trial Court. All these materials were taken note of by the Appellate Court while considering the grounds which have been urged.

9. Now before this Court in this revision petition also, similar grounds are urged in paragraph No.3 with regard to

Ex.P.1 cheque is concerned and also that the validity of the cheque is Rs.10,00,000/- and under, but Ex.P.1 is for Rs.12,00,000/-. The admission on the part of P.W.1 is extracted regarding capacity and the learned counsel contend that notice has not been served. The learned counsel would contend that the Appellate Court relied upon Ex.P.10 and ought not to have relied upon it. The learned counsel would contend that Exs.P.11 to 16 will not come to the aid of the complainant with regard to the capacity is concerned. The witnesses who have been examined before the Trial Court, except showing the accused by the complainant, they are not aware of the same and P.W.3 says that the accused is not known to him and at the time of payment, he was not there. The learned counsel in support of his arguments relies upon the judgment of the Apex Court in the case of **MUKESH KUMAR SAINI v. GAURI SHANKAR PALADIYA AND ANOTHER** passed in **SLP (Crl.) Diary No.2005/2023** and also relies upon the judgment of High Court of Judicature for Rajasthan in the case of **GAURI SHANKAR PALADIYA v. MUKESH KUMAR SAINI** passed in Criminal Misc. (Petition) No.5324/2018. The learned counsel referring these judgments would contend that these judgments are with regard to the validity of the cheque that the cheque

was for an amount of Rs.12,25,000/-, but the same is valid only for Rs.10,00,000/- and under.

10. Per contra, the learned counsel for the respondent would vehemently contend that though several defences were taken before the Trial Court, while cross-examining P.W.1, nothing is elicited with regard to the transaction is concerned. In one breath she admits the very execution of document Ex.P.5 agreement and in another breath denies the very execution of documents Exs.P.6 to 8. But those documents are not sent to the handwriting expert. The learned counsel would also contend that there is no any rebuttal evidence and also any preponderance of probabilities and the same is taken note of by the Trial Court and the Appellate Court. The grounds which were urged before the Appellate Court are once again urged before this Court and the same has been answered by the Appellate Court with the judgments of this Court as well as the Apex Court. The other contention of the accused that the cheque is valid only for Rs.10,00,000/- and not Rs.12,00,000/- cannot be accepted once she has issued the cheque and admitted her signature and hence, it does not require any interference.

11. Having heard the learned counsel for the revision petitioner and the learned counsel for the respondent and also considering the factual matrix of the case, there was an agreement in terms of Ex.P.5 in respect of the property which is mentioned in the agreement. In terms of the registered agreement Ex.P.5, an amount of Rs.5,00,000/- was paid by the complainant to the accused. But defence was taken that the said amount was not given to the accused. If that was the case, what made the accused to execute the document is not substantiated. It is also to be noted that the complainant has categorically stated in the complaint that the accused became the owner of the property in terms of the sale deed dated 19.02.2014 and the accused entered into an agreement of sale with the complainant as per Ex.P.5 on 15.04.2015 within a span of almost 1 year 2 months. It is also to be noted that extended sale agreements are also executed in terms of Exs.P.6 and 7 and though the same were disputed by the accused, not sent the documents to the handwriting expert. The documents Exs.P.6 and 7 are very clear that an amount of Rs.1,00,000/- each was received. In all, the complainant made the payment of Rs.7,00,000/- to the accused and balance

was only Rs.20,000/-. The case of the complainant is very clear that he did not come forward to execute the sale deed.

12. The learned counsel for the respondent brought to the notice of this Court that if the transaction is not completed in terms of the document Ex.P.5, there is a recital to refund the amount with additional amount of Rs.5,00,000/-. On perusal of Ex.P.5 condition No.5 agreement, it is very clear that if the sale did not take place, the accused has to add another amount of Rs.5,00,000/- apart from what the amount was received. This condition is not disputed by the accused. But her only contention is that the document was executed when there was a transaction between the complainant and Ningamma and Jyothi. What made the accused to execute the sale agreement in favour of the complainant to safeguard the interest of the complainant in a transaction of Ningamma and Jyothi is not explained by the accused. It is also to be noted that the said Ningamma and Jyothi were also not examined before the Court. But the documents Exs.P.7 and 8 is very clear for having received the additional amount of Rs.1,00,000/- each.

13. The other contention of the accused is that notice was not served. But Ex.P.10 issued by the Department of

Posts, India, is very clear that article was delivered on 04.05.2018. It is also to be noted that Ex.P.3 is the legal notice dated 01.05.2018 issued to the accused and the same was delivered on 04.05.2018 and when the acknowledgment was not returned, a letter was given in terms of Ex.P.4 and in pursuance of Ex.P.4, Ex.P.10 was issued and hence, it is clear that notice was served on 04.05.2018, but no reply was given. The Appellate Court taken note of Section 27 of the General Clauses Act with regard to the service of notice. If really the accused had not executed the documents Exs.P.6 to 8 having acknowledged the additional amount, she would have sent the documents to the handwriting expert and also would have given reply when the notice was served. But only afterthought, at the time of cross-examination, all these defences are set up. Both the Trial Court and the Appellate Court met the grounds which have been urged both in the Trial Court as well as in the Appellate Court.

14. The other contention is that additional documents were produced before the Appellate Court producing two documents of bank statement. The Appellate Court also taken note of the same and framed the point for consideration and while dismissing the said application also assigned the reason

relying upon the judgment of the Apex Court in the case of **Ajit Sinh Chehugi** (supra), wherein it is held that Section 391 of Cr.P.C., should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the such facts give rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to favour of justice. Having taken note of the principles laid down in the said judgment, the Appellate Court taken note of the fact that the accused has not tried to produce any bank statements before the Trial Court which are much within her knowledge and at the same time, she has not assigned any reason for non-production of those documents. Even reason was also given that in 313 statement also not stated anything. When such reasoned order has been passed and rejected, the question of urging the very same ground before this Court does not arise. The Appellate Court also taken note of the ground which have been urged with regard to the capacity is concerned and the Court has to take note of the fact that Ex.P.5 is a registered document under which payment of Rs.5,00,000/- was paid and in terms of Exs.P.6 and 7, extended documents, additional amount of Rs.2,00,000/- was

paid. Though the said documents were disputed, the same were not sent to the handwriting expert.

15. The other contention is that cheque was valid for only Rs.10,00,000/- and not for Rs.12,00,000/-. The accused not disputes the fact that the said cheque is a joint account holder cheque. The same was also taken note of by the First Appellate Court relying upon the judgment of this Court that any one of the joint holders can issue the cheque and the person who has issued the cheque could be prosecuted for the offence under Section 138 of NI Act. With regard to the validity is concerned, the accused was having knowledge about the validity of the cheque and issued the cheque for an amount of Rs.12,00,000/-, but the bank did not return the cheque that the cheque is invalid, but reason was assigned "funds insufficient". Regarding validity of the cheque is concerned, the bank manager is not summoned and examined. The learned counsel for the revision petitioner relied upon the judgment of the Apex Court in the case of **Mukesh Kumar Saini** (supra), wherein it is held that they are not inclined to interfere with the order passed by the High Court and dismissed the SLP. The High Court of Judicature for Rajasthan in the case of **Gauri Shankar Paladiya** (supra), taken note of that the disputed

cheque was dishonoured on account of "exceeds arrangement". It is held therein that it is an admitted position that at the time of presentation of cheque, petitioner had sufficient amount for honouring of the disputed cheque but the said cheque was dishonoured on account of "exceeds arrangement". A perusal of the disputed cheque reveals that there is printed instruction on the cheque that it would be valid only for Rs.10,00,000/- and under but disputed cheque was of Rs.12,25,000/-. It cannot be treated as valid negotiable instrument as defined under the Negotiable Instruments Act. The said order was challenged before the Apex Court and the Apex Court also dismissed it.

16. In the case on hand, when the cheque was presented, endorsement was issued as "funds insufficient". The Appellate Court taken note of the said fact into consideration. The law was not laid down in respect of validity of the cheque is concerned. When such being the case, the judgment relied upon by the learned counsel for the revision petitioner will not come to the aid the petitioner. The Court has to take note of the facts and circumstances of each case. In the case on hand, the revision petitioner offered to sell the property for a valuable consideration of Rs.7,20,000/- and executed a registered sale agreement in terms of Ex.P.5. But when she could not execute

the sale deed, she executed Exs.P.6 to 8 extending the time and ultimately, the sale transaction did not come through. Hence, she agreed to refund the amount in terms of Clause 5 of the agreement. The amount which she had received as well as the penal amount of Rs.5,00,000/- was to be added while refunding the amount and accordingly, cheque Ex.P.1 was issued. Though several defences were taken that it was a transaction between the complainant and Ningamma and Jyothi, the same is not substantiated and also with regard to the chit transaction is concerned also, nothing is placed on record and none of the chit subscribers were examined and the said Ningamma and Jyothi were also not examined and not led any defence evidence by entering into the witness box explaining the circumstances. All these factors were taken note of by the Trial Court and the Appellate Court. When the similar grounds were urged before the Appellate Court, the Appellate Court redressed the same by relying upon the judgment of the High Court and the Apex Court. When such being the case, the scope of revision is very limited. If any miscarriage of justice in appreciating the evidence, then the revisional jurisdiction can be exercised. When the judgment of the Trial Court and the Appellate Court not suffers from its legality and correctness,

the question of entertaining the revision petition does not arise.
Hence, I do not find any ground to entertain the revision petition.

17. Accordingly, the criminal revision petition is dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

MD