

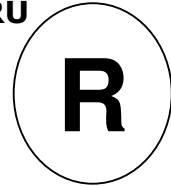
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF AUGUST, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO.611 OF 2026



BETWEEN:

SMT. B.R. PUSHPA
W/O C.K. RAVISHANKAR
AGED ABOUT 45 YEARS
R/AT BIRUR, KADUR TALUK
CHIKKAMAGALURU DISTRICT-577548

...PETITIONER

(BY SRI. A. LOURDU MARIYAPPA, ADVOCATE)

AND:

WILSON JAYARAJ
S/O R.B. RAJU
AGED ABOUT 56 YEARS
R/AT ASHOKANAGARA
BIRUR TOWN AND POST
KADUR TALUK
CHIKKAMANGALURU-577548

...RESPONDENT

(BY SRI. K.S. GANESHA, ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C (U/S 438 R/W 442 BNSS) PRAYING TO SET ASIDE THE JUDGEMENT PASSED BY THE HONBLE I ADDL. AND SESSIONS JUDGE AT CHIKKAMAGALURU, IN CRL.A.NO.163/2023 DATED 01.08.2025, AT ANNEXURE-A AND TO SET ASIDE THE TRIAL COURT IN CC.NO.563/2019 DATED ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:



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

CAV ORDER

This revision petition is filed against the judgment of conviction and sentence dated 05.08.2023 passed in C.C.No.563/2019 and also against the judgment of confirmation dated 01.08.2025 passed in Crl.A.No.163/2023.

2. This matter is listed for admission and heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the complainant before the Trial Court is that accused approached the complainant for financial assistance to meet her urgent necessities and for the family benefits and received a sum of Rs.1,50,000/- on 17.07.2017 and to repay the said amount, issued a cheque dated 06.09.2017. When the said cheque was presented, the same was returned with an endorsement 'funds insufficient' on 17.10.2017. Thus, the complainant got issued a notice on 26.10.2017 and the same was served on the accused on 27.10.2017. In spite of receipt of the notice, accused did not comply with the demand. Hence, complaint was filed and

cognizance was taken. The accused on her appearance did not plead guilty and claims the trial.

4. In order to prove the case of the complainant, he himself examined as PW1 and got marked the documents at Ex.P1 to P7. The accused also examined herself as DW1 and got marked the documents at Ex.D1 to D11. The Trial Court having considered the material on record held that the plea of the defence that there was a chit transaction and cheque was issued in favour of Smt. Anuradha and there is no loan transaction. The said defence was not accepted by the Trial Court and comes to the conclusion that complainant has made out his case leading cogent evidence. Hence, the Trial Court convicted and sentenced the accused.

5. The judgment of the Trial Court was challenged before the Appellate Court in Crl.A.No.1632/2023. The Appellate Court also held that despite the service of notice, accused has not complied with the demand and defence which was taken was also re-appreciated. The Appellate Court relied upon the judgment of **Rangappa vs Shrimohan** reported in **(2010) 11 SCC 441** and also relied upon the judgment of **K N Beena vs Muniyappa and another** reported in **AIR 2001 SC**

2895 and so on the judgment of **Kalamani Tex and another vs P Balasubramanian** reported in **(2021) 5 SCC 283** wherein paragraph 13 of the said judgment was discussed and the judgment of **Rohitbhai Jivanlal Patel vs State of Gujarath** reported in **(2019) 18 SCC 106** wherein paragraph 18 of the said judgment was discussed. The Appellate Court on re-appreciation of both oral and documentary evidence placed on record comes to the conclusion that accused has not elicited any answer from the mouth of PW1 to disbelieve the case of complainant and difficult to accept the defense theory that no Cheque was given in favour of the complainant and presumption arises that the accused indeed gave Ex.P1 - cheque and the same was not disputed. The Appellate Court with regard to the quantum of fine also discussed holding that transaction was taken place in 2017 and Trial Court has not committed any error in imposing the sentence also.

6. Being aggrieved by the concurrent finding of both the Courts, the present revision petition is filed before this Court.

7. The first and foremost ground urged by counsel appearing for the revision petitioner is that DW1 had filed the

affidavit which goes against the dictum of this Court as per the case of **Mrs. Zaheda Inamdar vs. Dr. Fatima Hassina Sayeedha** and also as per the judgment of Apex Court in a case of **Mandvi Cooperative Bank Ltd** reported in **2010 SC 1402** and **Indian Bank Association** reported in **(2014) 5 SCC 590** wherein it is held that as per Section 145(1) of the Evidence Act, the accused shall not file evidence affidavit and hence, judgments of both the Courts requires to be set aside on that ground and remand the matter to the Trial Court. The counsel also would vehemently contend that both the Courts failed to answer and scrutinise the material available on record particularly, Ex.D1 to D11 and committed an error in relying upon the Cheque. The counsel would vehemently contend that both the Courts failed to look into the defence and hurriedly and blindly have accepted the case of complainant.

8. Per contra, the counsel appearing for the respondent in his arguments would vehemently contend that the accused herself tendered her evidence in lieu of chief by way of an affidavit and now, she cannot approbate and reprobate before this Court that matter requires to be considered afresh and set aside the judgments of both the Courts and remand the matter to the Trial Court. Accused was

subjected to cross-examination by the complainant. Once accused had subjected for cross examination, later she cannot raise the issue that her chief evidence and the same is not admissible. The counsel also would vehemently contend that when the defence was taken that cheque was given in favour of one Smt. Anuradha particularly, 16 cheques and she was running the chit and in connection with the said chit transaction only, the subject matter of cheque was issued, the same was not substantiated and even not examined the said Anuradha to prove the case of the accused. But only produced the copy of the private complaints at Ex.D1 to D9 and Ex.D10 and D11 are the affidavit and cross examination.

9. Having heard the counsel appearing for the respective parties and on perusal of the material on record, the point that would arise for consideration of this petition is:

1. Whether the Trial Court and the Appellate Court committed an error in convicting the accused for the offence punishable under Section 138 of N.I. Act? Whether it requires interference of this Court?
2. What order?

Point No.1

10. The first question which was raised by the counsel for the petitioner that though the affidavit is filed by DW1, the same cannot be considered as evidence and there is no provision to entertain the chief evidence as defence. In support of this contention, the counsel relied upon the judgment of **Mandvi Cooperative Bank Limited** reported in **AIR 2010 SC 1402**.

11. In respect of this issue is concerned, this Court would like to rely upon judgment reported in **ILR 2016 KARNATAKA 4145** in the case of **AFZAL PASHA vs MOHAMED AMEERJAN** wherein this Court with regard to the issue of validity of affidavit is concerned held that a closer scrutiny of Section 145 would indicate that the same is intended to ensure that trial is concluded as expeditiously as possible. The said provision does not in any manner affect the right of the accused to cross-examine the complainant and his witnesses. The said provision enables even the defence evidence to be led by affidavits. Thus, the said provision is purely procedural in nature and even considered Section 145 of N.I. Act. In this judgment, even referred the judgment of Apex

Court in a case of **Mandvi Co-operative Bank Ltd** and also the judgment in the case of **Indian Bank Association** and held that it does not contemplate evidence by affidavit by the accused and extracted the Directions and comes to the conclusion that Trial Court is directed to receive the affidavit evidence of the petitioner on his request in accordance with Section 315 of Cr.P.C. and proceed with the pending case in accordance with law when the affidavit filed by the defence was not entertained.

12. This Court also would like to rely upon the judgment of Madhya Pradesh High Court reported in **MANU/MP/1067/2020** in the case of **VAIBHAV KHARE vs KAMAL KISHORE ARYA** wherein also relied upon the judgment of **Mandvi Co-operative Bank Limited's** case and also the judgment of **Meters And Instruments Private Limited And Another vs Kanchan Mehta** reported in **MANU/SC/1256/2017** wherein held that Section 138 of Act is of summary proceeding nature, it should be completed on the basis of day-to-day trail and endeavour must be to conclude it within six months. Hence, that evidence on affidavit can be received as evidence on all such are trials or proceedings. In paragraph 14, held that the affidavit filed by

the applicant as an evidence be considered as examination-in-chief of the applicant.

13. This Court also would like to rely on the judgment of the Apex Court in the case of **INDIAN BANK ASSOCIATION AND OTHERS vs UNION OF INDIA AND OTHERS** reported in **(2014) 5 SCC 590** and in paragraph 14 of this judgment also discussed the judgment of **Mandvi Cooperative Bank Ltd.** and so Section 145(1) of N.I. Act. The Apex Court held that even though the legislature in their wisdom did not deem it proper to incorporate the word “accused” with the word “complainant” in Section 145(1), it does not mean that the Magistrate could not allow the accused to give his evidence on affidavit, unless there was just and reasonable ground to refuse such permission. That means even accused can also file an affidavit.

14. This Court also would like to rely on the judgment of the Madhya Pradesh High Court in a case of **SUNIL AGARWAL vs NITIN KUMAR BADHWANI** decided on **24.02.2026** wherein also discuss the judgment of **Mandvi Cooperative Bank Ltd** and also the **Indian Bank Association** and also taken note of the judgment of Bombay

High Court in the case of **Viral Enterprises vs State Of Maharashtra** report in **2024 SCC ONLINE BOMBAY 1774** and extracted paragraph 7 of the said judgment and comes to the conclusion that Courts below have committed an error in not relying upon the Supreme Court verdict passed in the matter of **Indian Bank Association vs Union of India** and allowed the petition and petitioner is permitted to submit his affidavit before the concerned court.

15. This Court also would like to rely on the judgment of co-ordinate Bench of this Court in **CrI.R.P.No.1310/2023** dated **08.12.2025** wherein also discussed the judgments of the **Indian Bank Association** as well as **Afzal Pasha** referred supra and held that there would be no impediment in accepting affidavit in lieu of examination-in-chief while recording evidence of accused.

16. This Court also relied upon the judgment of the Apex Court reported in **(2014) 10 SCC 494** in the case of **J V BAHARUNI AND ANOTHER vs STATE OF GUJARAT AND ANOTHER** wherein it is held that in a case that can be tried summarily, court records evidence elaborately and in verbatim and gives defence full scope to cross-examine witness

particularly considering the proceedings were initiated under Section 138 of N.I. Act and also discussed the judgment of **Indian Bank Association**. In paragraph 17 discussed the provisions of Section 465 of Cr.P.C. and held that the learned counsel taking cue from sub-section (2) of Section 465 Cr.P.C. submitted that it is the bounden duty of respondent complainants to raise the objection, if any, at the earliest stage before the trial court itself. But the complainants had not raised any such objection that being summary proceedings, the learned Magistrate who delivered the judgment cannot act on the evidence recorded by his predecessor. The respondents have therefore no locus to raise such objection in appeal, and the High Court had committed a serious error in entertaining the plea of respondents and setting aside the judgment of the trial court.

17. This Court also would like to rely upon the judgment of co-ordinate Bench of this Court in a case of **SRI RAJAIAH vs SRI K S CHOWDAMMA** reported in **2020 (1) AKR 87** wherein discussion was made in respect of Section 145 of N.I. Act and also discussed the judgment of **Mandvi Cooperative Bank Limited** and taken note that when the evidence affidavit of the accused was filed 11 years back and

when no objection is raised by the complainant and when the court accepted the evidence of the accused under Section 316 of Cr.P.C. and allowed the complainant to cross-examine the accused and there was no dispute throughout filing of the appeal and this revision petition before this court and for the first time the contention taken by the counsel for the accused during the course of arguments cannot be accepted.

18. This Court also would like to rely upon the judgment of Madhya Pradesh High Court in a case of **PRABHUDAS PANJAINMAL RICE AND DAL MILL vs AVON TRADE LINK, SHAKTI NAGAR, KATNI** decided on **23.09.2021** wherein held that in a petition filed under Section 482 of Cr.P.C., taken note of the ground which was urged in view of the judgment of **Mandvi Cooperative Bank Ltd.** as well as **Indian Bank Association** and in paragraph 12, relied upon the case reported in **(2010) 1 MP LJ (CRI) (SC) 713** and held that legislature provided for the complainant to give his evidence on affidavit, but did not provide the same for the accused. The court held that even though the legislature in their wisdom did not deem it proper to incorporate the word “accused” with the word “complainant” in Section 145(1), it does not mean that Magistrate could not allow the complainant

to give evidence on affidavit, unless there was just and reasonable ground to refuse such permission.

19. This Court also would like to rely upon the judgment of the Gujarat High Court in a case of **RAKESHBHAI MAGANBHAI BAROT vs STATE OF GUJARAT** decided on **29.01.2019** wherein also considered the similar issue and discussed Section 145(1) of the Act contemplates an option which the complainant has of tendering his evidence by way of an affidavit and also question with regard to the omission of reference to the accused is for an obvious reason as shall be presently pointed out and sub-section (2) would indicate that there could be affidavit evidence of both witnesses for the complainant and also witnesses for the accused. In paragraph 17 taken note that the legislature in its wisdom has left it open to the accused to exercise the option of examining himself as a witness for an offence punishable under Section 138 of the N.I. Act, in deliberately omitting any reference to the evidence of the accused by way of affidavit. For it would run against a first principle in criminal law namely, that an accused shall not be called as a witness except on his own request in writing. The evidence on behalf of the accused would include that of the accused, subject to Section 315 of Cr.P.C. If the evidence of

the witnesses could be by way of affidavit in terms of Section 145 N.I. Act, the evidence of the accused could also be way of affidavit. Section 145 did not expressly permit the accused to give evidence on affidavit, it did not mean that the Magistrate could not allow the accused to do so by applying the same analogy, unless there was just and reasonable ground to refuse such permission. It is also held that the said provision enables even the defence evidence to be led by affidavit. Thus, the said provision is purely procedural in nature. The Gujarat High Court also allowed the accused to tender his evidence including the evidence of his witnesses, if any, by way of affidavit. However, it need not be clarified that the accused and his witnesses must be available for cross-examination as and when they are directed by the Trial Court to appear for the same.

20. This Court also would like to rely upon judgment of the Apex Court reported in **(2021) 16 SCC 116** in expeditious trial of cases under Section 138 of N.I. Act, wherein also discussion was made, discussing Section 145 and 138 read with Section 202 (2) of Cr.P.C. and in paragraph 4, discussion was made that there was an imminent need for remedying the situation which was addressed by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. Section

143 to 147 were inserted in the Act, which came into force on 06.02.2003. Section 143 of the Act empowers the Court to try complaints filed under Section 138 of the Act summarily, notwithstanding anything contained in the Code of Criminal Procedure, 1973. Sub-section (3) of Section 143 stipulates that an endeavor be made to conclude the trial within six months from the date of filing of the complaint. Section 144 deals with the mode of service of summons. Section 145 postulates that evidence of the complainant given by him on affidavit may be read as evidence in any inquiry. In paragraph 9 also discussed that in a case tried summarily in which the accused does not plead guilty, it is sufficient for the Magistrate to record the substance of the evidence and deliver a judgment, containing a brief statement of reasons for his findings. It is only in a case where the Magistrate is of the opinion that it may be necessary to sentence the accused for a term exceeding one year that the complaint shall be tried as a summons trial. From the responses of various High Courts, it is clear that conversion by the trial courts of complaints under Section 138 from summary trial to summons trial is being done mechanically without reasons being recorded. The scope of Section 202 and 145 of the Act was also discussed in paragraph 12 and made an

observation that there is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202(2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit.

21. Having considered the discussions made above in detail with regard to the principles laid down in the judgments of different High Courts, Apex Court as well as this Court particularly in the case of **Mandvi Cooperative Bank Limited** and **Indian Bank Association** case referred supra, the Apex Court categorically held that it will not prevent the Courts in entertaining an affidavit unless it causes prejudice to the parties. But in the case on hand, the Court has to take note of the fact that the accused voluntarily filed her affidavit before the Trial Court and led her evidence by way of affidavit and she

was subjected to the cross-examination. When she was subjected to the cross-examination before the Trial Court and relied upon her evidence before the Trial Court and so also before the Appellate Court, now, she cannot approbate and reprobate that she had led the evidence by way of affidavit and Court has to set aside that evidence and remitted back the matter to the Trial Court. Thus, the Court has to take note of modus operandi of the accused before this Court that the evidence which she had led voluntarily has to be discarded and she may be given an opportunity to lead evidence on oath. The said modus operandi cannot be entertained in a revision petition. If such argument is accepted, it will open a Pandora of litigation remitting the matter to the Trial Court to consider the same afresh. The accused cannot be permitted to do the same. Once she had voluntarily tendered her evidence by way of affidavit and makes an attempt before the third Court that too in a revisional Court raising such plea, the same cannot be entertained and this is nothing but an attempt of blow hot and cold before this Court to take the advantage of getting more time in complying with the demand even though when the same was not complied when demand was made instead of that perpetrated the proceedings before the Trial Court and

Appellate Court and also before the third Court. If such permission is given, there is no end to the litigation and there is no law forbidden that she cannot be permitted to lead evidence by way of affidavit. The different High Courts held that when the affidavit was not permitted to file before the Court, has permitted the accused to lead the evidence by way of affidavit. Hence, there is no force in the contention of the counsel appearing for the revision petitioner and the same cannot be entertained.

22. Having considered the other ground urged before this Court with regard to the merits in considering the case on hand, the specific defence was taken that Cheque was given to one Anuradha in connection with chit transaction. The said defence was not accepted by the Trial Court and Appellate Court as there is no material before the Court to substantiate the same. The very theory of chit transaction was not accepted. Even DW1 categorically admitted that number of cases are filed against her and she was an accused in all the cases. Though contend that she has given 16 cheques in favour of Anuradha, the same is not substantiated. Merely taking such defence is not enough since the defence has to be substantiated by proving the same. There is no any iota of evidence to accept

the theory that cheque was given to Anuradha and there is no rebuttal evidence before the Court under Section 139 of N.I. Act. The same is considered by the Trial Court and Appellate Court. When the orders of the Trial Court and Appellate Court were not suffered from its legality and correctness, the question of exercising the revisional jurisdiction does not arise. If there is any miscarriage of justice in appreciating the evidence, then only this Court can exercise its revisional jurisdiction and the said circumstances are not warranted in the case on hand. Hence, I do not find any force in the contention of the counsel appearing for the petitioner to admit this revision petition. Accordingly, I answer the above point as negative.

Point No.2

23. In view of the discussions made above, I pass the following:

ORDER

The revision petition is dismissed.

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

SN