HC-KAR

NC: 2026:KHC:43865
CRL.RP No. 1388 of 2019

CNR: KAHC010514562019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO.1388 OF 2019

BETWEEN:

SHIVASHANKAR PANDIT
S/O. RAJENDRA PANDIT,
AGED ABOUT 32 YEARS,
RESIDING AT NO.357, 9TH CROSS,
THIGALARAPALYA, HOODI,
BENGALURU 560 048.

...PETITIONER

(BY SRI BASANAGOUDA S S., ADVOCATE, FOR
SRI VIRUPAKSHAIAH P.H.)

AND:

K. SHANTHA
W/O. KRISHNAPPA,
AGED ABOUT 52 YEARS,
RESIDING AT HOODI VILLAGE,
K. R. PURAM HOBLI,
BENGALURU EAST TALUK,
BENGALURU 560 048.

...RESPONDENT

(BY SRI NARAYANA T H., ADVOCATE)

* * *

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE JUDGMENT AND CONVICTION ORDER PASSED BY THE LVIII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, MAYO HALL UNIT, BENGALURU, IN CRIMINAL CASE NO.53360 OF 2017 DATED 03.10.2018 AND JUDGMENT PASSED BY THE LXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT MAYO HALL, BENGALURU, IN CRIMINAL APPEAL NO.25204 OF 2018 DATED 05.11.2019 AND ALLOW THIS CRIMINAL REVISION PETITION BY ACQUITTING THE PETITIONER HEREIN.

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

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Sri Basanagouda S.S., learned counsel appearing for Sri Virupakshaiah P.H., learned counsel for the petitioner, and Sri Narayana T.H., learned counsel for the respondent.

2. The petitioner-accused has preferred this criminal revision petition under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') praying to set aside the judgment of conviction and order on sentence dated 03.10.2018 passed by the LVIII Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru (ACMM-58) which is upheld by the LXXII Additional City Civil and Sessions Judge at Mayo Hall, Bengaluru, (CCH-73) in Criminal Appeal No.25204 of 2018 dated 05.11.2019, wherein both the Courts passed concurrent findings against the accused and convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act', for short) and sentenced him to pay fine of Rs.2,55,000/- with default sentence.

3. For the sake of convenience, the parties herein 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 case are as under:

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 against the accused contending that the accused borrowed Rs.2.00 lakh for his business and domestic purpose and in consideration thereof, the accused issued two cheques, bearing Nos.041719 dated 15.07.2016 and 998275 dated 22.07.2016 for Rs.1,00,000/- each. On presentation of the said cheques for encashment, the cheques were dishonoured for 'funds insufficient'. The complainant informed the said fact of dishonour of the cheques to the accused, but the accused did not pay the cheques amount. Therefore, on 14.10.2016, the complainant issued legal notice to the accused calling upon him to pay the amount due under the cheques. Even after receipt of the legal notice, the accused failed to pay the amount.

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 the plea of the accused, the accused pleaded not guilty and claimed to be tried.

6. The complainant, in order to prove her case, examined herself as PW1 and got marked eight documents as per Exs.P1 to P8. In order to rebut the claim of the complainant, the accused examined himself on oath as DW1 and relied on one document as per Ex.D1.

7. On the basis of the oral and documentary evidence, 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.2.55 lakh and in default

to pay the fine amount, to undergo simple imprisonment for a period of three months.

8. Aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused preferred an appeal in Criminal Appeal No.25204 of 2018 before the learned the LXXII Additional City Civil and Sessions Judge at Mayo Hall, Bengaluru, (CCH-73) and in turn, the First Appellate Court confirmed the judgment of conviction and order on sentence passed by the trial Court.

9. Aggrieved by the concurrent findings passed by the trial Court as well as the First Appellate Court, the accused has filed this revision petition.

10. Learned counsel for the petitioner-accused has contended that the judgment of conviction and order on sentence passed by the First Appellate Court and the trial Court are erroneous. He contended that during 2015, the

accused borrowed loan from the son of the complainant and it was paid in the year 2016 and therefore, there is no transaction between the accused and the complainant. However, the complainant or his son did not return the cheques in question, which were issued for security purpose, instead, the complainant misused the cheques and presented them for encashment. He further contended that there was no amount due to the complainant and there was no legally enforceable debt or liability in order to attract Section 138 of the N.I. Act. The complainant has not mentioned the date of advancement of the loan to the accused in the complaint or in the legal notice and the said fact is not considered by the trial Court and the First Appellate Court. He further contended that in the cross-examination of PW1, she has categorically admitted that the amount was borrowed in the year 2015 and it was paid in the year 2016. On all these grounds, the learned counsel prays to allow the revision petition.

11. Learned counsel for the respondent-complainant has contended that the petitioner-accused has admitted issuance of cheques-Exs.P1 and P2, contents of the cheques and service of legal notice on him. Therefore, the trial Court had drawn presumption under Sections 118 and 119 of the N.I. Act and rightly convicted the accused for the offence punishable under Section 138 of the N.I. Act and thus, no interference is called for in this regard. Hence, the learned counsel prays to dismiss the revision petition.

12. On the basis of the submissions made by the parties to the *lis*, the following point would arise for consideration of this Court:

> *Whether the petitioner-accused proved that the judgment of conviction and order on sentence passed by the trial Court and confirmed by the First Appellate Court are perverse and calls for interference by this Court?*

13. Admittedly, the complainant filed a private complaint under Section 200 of the Cr.P.C. against the accused for the offence punishable under Section 138 of the N.I. Act and in order to substantiate the contention of the complainant, the complainant examined herself as PW1 and got marked eight documents. Exs.P1 and P2 are the cheques, Exs.P1(a) and P2(a) bear the signature of the accused. Exs.P3 and P4 are the Bank endorsements, Ex.P5 is the account pay-in-slip, Ex.P6 is the legal notice, Ex.P7 is the postal acknowledgment, and Ex.P8 is the unserved postal cover.

14. Exs.P3 and P4 are the Bank endorsements, which clearly demonstrate that on presentation of the cheques, they were returned with endorsement 'funds insufficient in the account of the accused'.

15. To rebut the claim of the accused, the accused examined himself as DW1. The accused stated that he

repeatedly requested the complainant to return the cheques, but she did not return the cheques back and in that regard, he also admitted that no complaint has been lodged against the complainant.

16. On perusal of oral testimony of PW1, it appears that the accused had borrowed a sum of Rs.2.00 lakh from the complainant and in consideration thereof, he issued two cheques for a sum of Rs.1.00 lakh each. Hence, the complainant presented the cheques for encashment through his Banker, but the cheques were returned with endorsement 'funds insufficient'. In spite of issuance of legal notice, the accused failed to pay the amount. Therefore, the documents at Exs.P1 to P8 clearly establish that the accused has not disputed the issuance of the cheques, contents of the cheques and service of notice upon him. Hence, the complainant has complied with the legal requirements of Section 138 of the N.I. Act.

17. Now, the burden shifts on the accused to disprove the case of the complainant. Perusal of the evidence of the accused, the accused has contended that Exs.P1 and P2-cheques were issued for security purpose that he had borrowed a loan of Rs.1.00 lakh from the son of the complainant in the year 2015 and the same was re-paid in the year 2016, but those cheques were not returned by the complainant and to substantiate his contention, nothing has been placed on record by the accused. The fact remains that the accused never discharged the alleged loan borrowed from the complainant in the year 2015. On the contrary, the complainant has proved that Exs.P1 and P2-cheques were issued by the accused towards discharge of legally enforceable debt. In this regard, the accused has not placed any contra evidence to disbelieve the case of the complainant.

18. The Hon'ble Apex Court in the case of ***RAJESH JAIN v. AJAY SINGH*** reported in ***2023 LiveLaw (SC) 866***, at paragraph Nos.34 and 40 to 45, has held as under:

"34. The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the 'presumed fact' directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

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40. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The *accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of 'preponderance of probabilities', similar to a defendant in a civil proceeding.* ***[Rangappa vs. Mohan (AIR 2010 SC 1898)]****.*

41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. ***[Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513]****.*

42. In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was 'no debt/liability'. ***[Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]****.*

43. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

44. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that *case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.*

45. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. ***[Basalingappa vs.***

Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441]."

19. Further, 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. The review is not a fresh trial. Courts are generally barred from re-examining evidence or substituting their own judgment for the lower Court's on matters of fact unless the findings are demonstrably perverse or arbitrary. The Hon'ble Apex Court has

discussed the applicability and scope of revision in various decisions, which are highlighted hereunder:

A. 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."

B. 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."

C. 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."

20. Therefore, the revisional jurisdiction should normally 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.

21. In view of the facts, circumstances and the decision cited supra, in the instant case, the accused has not placed any rebuttal evidence. In the absence of

rebuttal evidence, the accused has failed to prove the non-existence of liability.

22. When execution of the negotiable instruments, passing of consideration and signature found on Exs.P1 and P2-cheques are admitted, the Court may draw presumption under Sections 118 and 139 of the N.I. Act in favour of the holder of the negotiable instrument.

23. Thus, the trial Court as well as the First Appellate Court rightly appreciated the oral and documentary evidence and proceeded to convict the accused for the offence punishable under Section 138 of the N.I. Act. Therefore, there is no error or illegality committed by the Courts below to interfere by this Court. Accordingly, the petition is ***dismissed***.

24. In view of the dismissal of the revision petition, pending interlocutory applications, if any, shall stand dismissed.

Registry is directed to send back the trial Court record with a copy of this order, forthwith.

Sd/-
(VENKATESH NAIK T)
JUDGE

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List No.: 1 Sl No.: 41