



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T
CRIMINAL REVISION PETITION NO. 104 OF 2022
(397(Cr.PC) / 438(BNSS))

BETWEEN:

SRI. KRISHNARAJ
S/O BOLAR LAXMAN SHRIYAN,
AGED ABOUT 41 YEARS,
R/AT NO.6-154, ABBAKKA NAGAR,
KOTTARA, DEREBAIL,
MANGALURU,
D K DISTRICT -575005.

...PETITIONER

(BY SRI. SANATH S B., ADVOCATE FOR
SRI. RAJASHEKAR S., ADVOCATE)

AND:

MOHAMMED ISAQ
S/O BAB JOHN SAHEB,
AGED ABOUT 51 YEARS,
R/AT SHANTHINAGARA,
VITTAL KASABA VILLAGE,
P. O. VITLA BANTWAL TALUK - 574 211.

...RESPONDENT

(BY SRI. PRASANNA V R., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED
03.09.2021 PASSED IN CRL.A.NO.52/2020 ON THE FILE VI
ADDL. DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE
DISMISSING THE APPEAL FILED BY THE PETITIONER AND
CONFIRMING THE JUDGMENT OF CONVICTION AND ORDER OF
SENTENCE DATED 17.03.2021 PASSED IN C.C.NO.272/2016





CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND JMFC, BANTWAL D.K., BY ALLOWING THE ABOVE R.P AND THEREBY BY DISCHARGE THE ACCUSED/ PETITIONER HEREIN FROM THE ALLEGED OFFENCE.

THIS 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. Sanath S.B. for Sri. Rajashekar S., learned counsel for the petitioner and Sri. Prasanna V.R., learned counsel for the respondent.

The petitioner has filed this petition under Section 397 r/w Section 401 Code of Criminal Procedure, 1973 praying to set aside the judgment of conviction and order on sentence dated 17.03.2021 passed in C.C.No.272/2016 on the file of learned Prl. Senior Civil Judge & JMFC, Bantwal, Dakshina Kannada, which is confirmed by the judgment dated 03.09.2021 passed by learned VI Additional District & Sessions Judge, Dakshina Kannada, Mangaluru in CrI.A.No.52/2020.

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



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

'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 private complaint under Section 200 Cr.P.C. against the petitioner/accused for the offence punishable under Section 138 of N.I. Act on the ground that he had advanced the loan of Rs.2,50,000/- in the first week of October 2012 to the petitioner, wherein, the petitioner had promised to repay the same on or before 06.11.2012 and accordingly, he issued a cheque bearing No.000301 dated 06.11.2012 for a sum of Rs.2,50,000/- drawn on Axis Bank Limited, Mangalore. The cheque was presented for encashment on 15.01.2013 as per the instructions of the accused and the same was returned for the reason 'fund insufficient' in the account of the accused. Therefore, on 23.01.2013, the complainant issued legal notice calling upon the accused to pay the amount due under the cheque. Though legal notice was served upon the accused on 24.01.2013, he never paid the amount. However, he has issued false reply on 01.02.2013. Therefore, the complainant filed a private



complaint for the aforesaid offence. After institution of the complaint, the trial Court recorded the sworn statement of the complainant, took cognisance under Section 190(1)(a) 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 his case, examined himself as PW.1 and relied upon in all fourteen documents as per Exs.P1 to 14. For the defence, the accused was examined as DW.1 and he relied upon four documents as per Exs-D1 to D4. 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 him to pay a fine of Rs.2,65,000/- 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 in C.C.No.272/2016, the accused preferred an appeal before the first appellate court in Crl.A.No.52/2020 before learned VII Addl. District & Sessions Judge, Dakshina Kannada, Mangalore. In turn, the first appellate court confirmed the judgment of



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

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 complainant had no financial capacity to lend the loan and there was no legally enforceable debt. Learned counsel further contended that the entire cheque book of the accused was lost and accordingly, a complaint was lodged before the jurisdictional police and after receipt of legal notice also, a suitable reply was given by the accused. However, the complainant by misusing the cheque, presented it for encashment. It is further contended that 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 petitioner has also not mentioned the date of



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

advancement of the loan either in the complaint or in the legal notice. Hence, the learned counsel prayed to allow the revision petition.

6. Per-contra, learned counsel for the respondent/complainant contended that the complainant has proved that the accused borrowed the loan of Rs.2,50,000/- from the complainant and in consideration thereof, he issued Ex-P1 cheque in his favour and on presentation of the said cheque, the same was returned with a shara 'funds insufficient' in the account of the accused. Therefore, the complainant issued a legal notice, wherein, he called upon the accused to pay the amount due under the cheque. It is contended that the complainant has proved his case by oral and documentary evidence on record and thus, 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



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

respondent and on perusal of the judgment of the trial court and first appellate court, 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 the accused 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 the 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, he himself got examined as PW.1 and relied upon in all 14 documents as per Exs.P1 to P14. Ex.P1 is the cheque, wherein, the signature of the accused can be seen, which is marked as Ex-P1(a). Exs.P2



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

and P3 are the bank endorsements issued by the complainant soon after the presentation of the cheque. Ex.P4 is the legal notice dated 23.01.2013, wherein, the complainant called upon the accused to pay the amount due under the cheque. Ex-P5 is the reply notice dated 01.02.2013. Ex-P6 is the postal acknowledgment, Ex-P7 is the postal receipt, Ex-P8 is the copy of the complaint, Ex-P9 is the statement of the accused. Exs-P12 and 13 are the Trade license and Value Added Tax Composition Registration Certificate and Ex-P14 is the bank passbook.

9. On perusal of the oral and documentary evidence on record, it clearly demonstrates that there was loan transaction between the complainant and the accused and in that regard, the accused issued the cheque and on presentation of the said cheque for encashment, the same was returned with a shara 'funds insufficient' in the account of the accused. PW.1 was cross examined. In the cross-examination, nothing has been elicited from the mouth of PW.1 to discredit his testimony. On the contrary, learned counsel for the accused himself admitted



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

the transaction and issuance of cheque by posing certain questions.

10. On the other hand, the accused got himself examined as DW.1 and he relied upon Exs-D1 to D4. In the cross-examination also, the accused admitted the transaction and his signature is found in Ex-P1(a) and he also admitted receipt of legal notice. On perusal of the oral testimony of PW.1 and contents of Exs-P1 to P14, it appears that accused had borrowed a sum of Rs.2,50,000/- from the complainant and in consideration thereof, he issued cheque Ex-P1 for a sum of Rs.2,50,000/-. Hence, the complainant presented the cheque for encashment through his banker and the said cheque was dishonoured for the reason 'funds insufficient' in the account of the accused, inspite of issuance of cheque Ex-P1.

11. In the present case, the complainant has produced the cheque in question and the same was marked as Ex-P1. Bank endorsement are marked as Exs-P2 and P3. On perusal of these documents, it clearly establishes that the accused issued the cheque and legal notice was served upon him. In view of the presumption available under Section 139 of the N.I. Act,



CNR: KAHC010412582021

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 lost and therefore, he lodged the complaint. But the fact is that soon after issuance of legal notice by the complainant, the accused did not lodge any complaint against the complainant alleging that the cheque leaf was stolen by the complainant. Further, the accused has not made any efforts to verify whether the investigation is pending or completed or any action has been taken against the complainant or not. Therefore, the accused failed to prove that the cheque was lost and complainant misused his cheque.

12. The burden lies on the accused to prove non-existence of consideration either by direct or by probable evidence so as to show that the existence of consideration was improbable, doubtful or illegal. The accused has not produced any iota 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 presumption that



CNR: KAHC010412582021

the cheque was issued by the accused towards legally enforceable debt. The petitioner has filed this revision petition challenging the concurrent findings of the trial court as well as first appellate court.

13. The very fact that the order of the first appellate court has not been complied by the revision petitioner and even the interim order granted by this Court is also not complied by the revision petition.

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



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

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



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

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 as well as the first appellate Court considering the oral and documentary



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

evidence on record and the peculiar facts and circumstances of the case have 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 17.03.2021 passed in CC.No.272/2016 by learned Prl. Senior Civil Judge and JMFC, Bantwal, Dakshina Kannada as well as the judgment dated 03.09.2021 passed by learned VI Additional District & Sessions Judge, Dakshina Kannada, Mangaluru in Crl.A.No.52/2020 are hereby confirmed.



CNR: KAHC010412582021

NC: 2026:KHC:43052
CRL.RP No. 104 of 2022

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.: 39