HC-KAR

NC: 2026:KHC:45601
CRL.RP No. 1431 of 2025

CNR: KAHC010629652025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REVISION PETITION NO. 1431 OF 2025

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

BETWEEN:

1. CHANDRASHEKAR UDUPI
S/O VASUDEVA DEVADIGA
AGED ABOUT 50 YEARS
R/AT CHAYA KRUPA
LIC COLONY, 34 SHIRIBEEDU
UDUPI TALUK - 576101.

...PETITIONER

(BY SRI. S KRISHNASWAMY., ADVOCATE)

AND:

1. BUDNAR GAFFAR SAHEB
S/O MAHAMMED ISMAIL
AGED 71 YEARS
R/AT D.NO. 1-72C BEIT AI AMEEN
AMRUYAMBI COMPOUND, BUDNAR ROAD
OPP MGM COLLEGE, KUNJIBETTU POST
UDUPI TALUK AND DISTRICT - 576101

...RESPONDENT

(BY SRI. PRASIDDARAJ., ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.P.C (U/S 438 R/W 442 BNSS) PRAYING TO SET ASIDE THE JUDGMENT DATED: 24.01.2024 PASSED IN C.C.NO.3407/2022, ON THE FILE OF IV ADDL. CIVIL JUDGE AND JMFC,AT UDUPI (C/C) AND THE CONFIRMATION OF SAID JUDGMENT DTD: 26.06.2025 IN CRL.A.NO.27/2024 BY THE PRINCIPAL DISTRICT AND

SESSIONS JUDGE, UDUPI, BY ALLOWING THIS REVISION PETITION AND DISMISSING THE COMPLAINT OF THE RESPONDENT.

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

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL ORDER

Heard Sri S.Krishnaswamy, learned counsel appearing for the petitioner and Sri Prasiddaraj, learned counsel for the respondent.

2. The petitioner-accused has preferred this criminal revision petition under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'B.N.S.S.') praying to set aside the judgment of conviction and order on sentence dated 24.01.2024 passed in C.C.No.3407/2022 by the IV Additional Civil Judge and JMFC at Udupi, which is upheld by the Principal District and Sessions Judge, Udupi, in Criminal Appeal No.27 of 2024 dated 26.06.2025, 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'*) and sentenced him to pay fine of Rs.1,97,000/- and in default of payment of fine amount, accused shall undergo simple imprisonment for a period of three months.

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 on the ground that accused had borrowed a loan of Rs.1,92,000/- for his necessities. The accused in order to re-pay the loan issued the cheque bearing No.000184 dated 21.04.2022 drawn on Bank of

Baroda, Udupi Court Road Branch, Udupi Taluk, in favour of the complainant.

5. On 25.05.2022, the complainant presented the cheque for encashment, but same was dishonoured with shara 'funds insufficient' in the account of the accused. Therefore, on 18.06.2022, the complainant issued legal notice to the accused calling upon him to pay the amount due under the cheque. Though notice was served on the accused, he neither re-paid the amount nor replied to the legal notice. Therefore, the complainant filed complaint under Section 200 of Cr.P.C.

6. 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.

7. The complainant, in order to prove his case, examined himself as PW1 and got marked five documents as per Exs.P1 to P5. In order to rebut the claim of the complainant, the accused neither entered the witness box nor produced any documents.

8. 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.1,97,000/- and in default to pay the fine amount, to undergo simple imprisonment for a period of three months.

9. Aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused preferred an appeal in Criminal Appeal No.27 of 2024 before the Principal District and Sessions Judge, Udupi, and in turn, the First Appellate Court confirmed the judgment of conviction and order on sentence passed by

the trial Court by imposing interest @ 18% per annum on the fine amount. Hence this Revision Petition.

10. Learned counsel for the petitioner-accused contends that the judgment of conviction and order on sentence passed by the First Appellate Court and the Trial Court are erroneous. The complainant has failed to prove the requirements of Section 138 of the N.I. Act, as the accused has disputed the cheque in question. It is further contended that the complainant had no financial capacity to repay the loan amount and that there was no legally enforceable debt.

11. It is further contended that the First Appellate Court has not discussed the facts and points of law involved in the case. The direction of the First Appellate Court that the amount should be recovered with interest at the rate of 18% per annum is contrary to the provisions of the N.I. Act, more particularly Section 80 of the N.I. Act. Such a direction is against the pleadings and the law.

Further, there is no appeal by the respondent seeking enhancement of compensation. Hence, learned counsel prayed to allow the Revision Petition.

12. Learned counsel for the respondent while justifying the concurrent findings of the trial Court as well as First Appellate Court, vehemently contended that the revision petitioner has admitted the issuance of cheque, loan transaction and service of legal notice upon him. Hence, prayed to dismiss the petition.

13. 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?*

14. 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 himself as PW1 and got marked five documents. Ex.P1 is the cheque bearing No.000184 dated 21.04.2022, Exs.P1(a) bears the signature of the accused. Ex.P2 is the Bank Endorsement dated 25.05.2022. Ex.P3 is the legal notice dated 18.06.2026, wherein complainant called upon to pay the amount due under cheque. Ex.P4 is the postal receipt for having sent the legal notice to the accused. Ex.P5 is the postal unclaimed cover containing original legal notice issued to the accused and Ex.P5(a) is the Notice.

15. PW-1 was not cross-examined despite granting sufficient time to the accused. Hence, the trial Court closed the evidence. The accused failed to enter the witness box and examine himself, and no document was placed on record.

16. On perusal of the oral testimony of PW1 and the contents of Exs.P1 to P5, it appears that the accused had borrowed a sum of Rs.1,92,000/- from the complainant and in consideration thereof he had issued Ex.P1-cheque. Hence, the complainant presented cheque for encashment through his bank and the cheque was dishonoured for the reason 'funds insufficient' in the account of the accused. In the present case, the accused has not disputed issuance of cheque from a transaction and issuance of legal notice. In view of the presumption available under Section 138 of N.I. Act, the complainant has complied with legal requirement under Section 138 of the N.I. Act. Under such circumstances, the burden generally shifted on the accused to disprove the case of the complainant. But, the accused has not placed any reasonable evidence. Therefore, the trial Court rightly convicted the accused for the offence under Section 138 of the N.I.Act.

17. Whereas, the First Appellate Court, while confirming the order of the Trial Court, imposed interest at

the rate of 18% per annum. This involves the applicability of Section 80 of the N.I. Act. Hence, it is just and necessary to analyze Section 80 of the Negotiable Instruments Act, 1881.

> *"80. Interest when no rate specified.— When no rate of interest is specified in the instrument, interest on the amount due thereon shall, 1 [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of 2 [eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such a mount as the Court directs."*

18. The perusal of the aforesaid provision of law shows that Section 80 of the N.I. Act provides for cases where no rate of interest is mentioned in the instrument. This Section governs a case where, in a negotiable instrument, payment of interest is mentioned, but no rate is stipulated, and also a case where there is no interest mentioned at all in the instrument.

19. Whereas, in the instant case, there is no agreement between the parties insofar as payment of interest is concerned. In the absence of any such stipulation regarding interest, the imposition of interest would be contrary to Section 80 of the N.I. Act. Further, the trial Court has not assigned any reasons for granting interest on the fine amount. Hence, to that extent, the findings of the First Appellate Court require to be set aside.

20. 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."

21. On perusal of the material available on record, there is no error on the face of the record insofar as concurrent findings recorded by the First Appellate Court and the trial Court. Accordingly, the Court proceeds to pass the following:

O R D E R

i. Criminal revision petition is ***allowed-in-part***.

ii. The judgment of conviction passed by the trial Court and upheld by the First Appellate Court are hereby confirmed, however, insofar as interest amount is concerned, as ordered by the First Appellate Court payable to the respondent-complainant, is set aside.

iii. Amount in deposit, if any, shall be disbursed to the respondent-complainant, on proper identification.

In view of the disposal 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

AM/KVK
List No.: 1 SL No.: 24