HC-KAR

CNR: KAHC010591482024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

CRIMINAL REVISION PETITION NO. 1307 OF 2024

BETWEEN:

SRI. M. KOTEESWARAN
AGED ABOUT 42 YEARS,
NO.6, E-1 BLOCK,
NAVY QUARTERS, CRI SCHEME,
MOGAPPAR EAST, CHENNAI - 600 037.
ALSO R/AT: NO. 741, 9TH CROSS,
4TH BLOCK, BEL LAYOUT,
VIDYARANYAPURA, BENGALURU.

...PETITIONER

(BY SRI. KARTHIK N, ADVOCATE)

AND:

SRI. RAJAVEL MANIKYAM
AGED ABOUT 60 YEARS,
R/AT NO. 133, 80 FEET ROAD,
ASHWATHNAGAR,
R.M.V EXTENSION, 2ND STAGE,
BENGALURU - 560 045.

...RESPONDENT

(BY SRI. SHERWIN D'SOUZA, ADVOCATE FOR
SRI. ANIL KUMAR SHETTY, ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.PC (FILED U/S 438 R/W 442 BNNS) PRAYING TO SET ASIDE THE JUDGMENT DATED 11/09/2024 PASSED BY THE LEARNED LXVII

ADDL. CITY CIVIL AND SESSIONS JUDGE AT BANGALORE (CCH NO. 68) IN CRIMINAL APPEAL NO. 1708/2019, AND ALSO THE JUDGMENT OF CONVICTION DATED 06/07/2019 PASSED BY THE LEARNED XV ADDL. CHIEF METROPOLITAN MAGISTRATE AT BANGALORE IN CC NO. 11675/2017 OFFENCE P/U/S 138 OF NI ACT 1881 AND CONSEQUENTLY ACQUIT THE PETITIONERS FOR THE CHARGES WITH WHICH THEY STOOD CHARGE.

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

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL ORDER

This is the revision petition filed under Section 397 and 401 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C') by the revision petitioner challenging the judgment of conviction and order of sentence passed in CC No.11675/2017 on the file of XV Additional Chief Metropolitan Magistrate, Bengaluru (in short 'trial Court') which is confirmed in Criminal Appeal No.1708/2019 on the file of LXVII Additional City Civil and Sessions Judge, Bengaluru (in short 'appellate Court).

2. Parties would be referred with their ranks, as they were before the trial Court for the sake of convenience and clarity.

3. The complainant has filed the complaint before the trial Court on 19.04.2017 under Section 200 Cr.P.C alleging the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (in short 'N.I. Act') against the accused contending that there was an outstanding amount due from the accused to the complainant; he assured that the same will be returned at the earliest and issued the cheque dated 05.03.2017 bearing No.011927 drawn on ICICI Bank, Sahakaranagar Branch Bengaluru (in short 'the subject cheque') in favour of complainant for a sum of Rs.12,00,000/- (Rupees Twelve lakhs only). When the said cheque was presented for encashment through his banker, the same was returned with an endorsement 'account closed'. Hence, he issued legal notice dated 18.03.2017 to the accused. Even

15 days after service of notice, accused has not repaid the cheque amount. Hence, the complaint.

4. After recording sworn statement of the complainant, hearing arguments of both sides, the trial court has taken cognizance of the offence and registered the case; then issued summons to the accused.

5. After appearance of the accused, accused pleaded not guilty of the offence under Section 138 of N.I. Act when accusation was levelled against him is read over and explained to him. Thereafter complainant let in his evidence and cross-examined. Accused has denied the statement of complainant under Section 313 of Cr.P.C. Then the accused let in defence evidence.

6. After hearing arguments, the trial Court concluded that the accused failed to discharge the presumptions available in favour of the complainant and also concluded that the accused has committed the offence punishable under Section 138 of the N.I. Act. He

was sentenced to pay Rs.12,10,000/- as fine amount; out of which Rs.12,05,000/- shall be payable to the complainant and remaining Rs.5,000/- shall be forfeited to the State.

7. Aggrieved by the said judgment of conviction and order of sentence, the accused has filed the appeal before the appellate Court. After hearing both sides, the appeal is dismissed confirming the judgment of conviction and order of sentence.

8. Aggrieved by the same, the revision petitioner is before this Court.

9. Heard arguments of both sides.

10. Learned counsel for the revision petitioner Sri Karthik N would submit that the complainant failed to establish that accused was due a sum of Rs.12,00,000/- to the complainant as on the date of the alleged issuance of cheque. The account of complainant closed long prior to

the date of cheque. The accused has given stop payment letter to his bank much earlier to these facts. He had taken the plea that the subject cheque with other cheques were stolen. Furthermore, the son of complainant-Yadesh has filed one more complaint under Section 138 of N.I. Act alleging that the accused has committed the offence under 138 in respect of Rs.25,00,000/-. The son of complainant in the capacity of the Managing Director of his firm/company has filed another complaint in respect of another Rs.25,00,000/-. After contest, the accused was acquitted in those two cases. The same was not challenged by the complainant and thus acquittal of the present revision petitioner in respect of Rs.50,00,000/- is unchallenged. These facts would come in aid of the accused to show that even the subject cheque at the time was stolen and misused by the complainant. These facts were established by the accused by leading defence evidence and also by cross-examining the complainant. However, these facts were not at all appreciated in an

appropriate manner by the trial Court and the appellate Court. Furthermore, both the complainant and accused are not well versed with Court languages of Kannada and English. At the time of recording evidence of the complainant and accused, the questions were put to complainant and accused in English language and they have given answers in English language, which was translated to Kannada. There was some mistake in recording such evidence. Hence, prayed for allowing the revision petition and to acquit the accused; otherwise at least remand the matters for fresh consideration.

11. The learned counsel for respondent/claimant Sri Sherwin D'Souza on behalf of Sri Anil Kumar Shetty appeared through video conferencing and would submit that there is concurrent finding of trial Court and appellate Court that accused has committed the offence and he failed to rebut the presumptions available in favour of the complainant. These facts clearly establish that the revision

petitioner is not entitled for acquittal as prayed in the petition and remand is not necessary because there is no such pleading either before the trial Court or before the appellate Court that there was wrong translation. For the first time, the learned counsel for the revision petitioner is making such submission before this Court.

12. The learned counsel for respondent would further submit that acquittal of the accused in other two cases has no bearing on the present case. All the three cases are independent to each other. Hence, prayed for dismissal of the revision petition.

13. Having heard arguments of both sides, verifying the revision papers, the trial Court and appellate Court records, the point that arises for consideration is

> *"Whether the revision petitioner establishes perversity or grossly erroneousness in the judgment of the trial court and appellate court or the judgment of the trial court and appellate court is glaringly unreasonable or wholly unreliable or untenable and*

the judgment of the trial court and appellate court considered immaterial or irrelevant material or no material or non-consideration of any relevant material or judicial discretion has been exercised arbitrarily or capriciously ?"

14. The finding of this Court on above point is in **Affirmative** for the following :

REASONS

15. The revisional jurisdiction of this Court is very limited. In this regard, this Court places reliance on the Judgment of the Hon'ble Apex Court in the case of ***Kuntegowda v/s Thurubaiah in Criminal Appeal No.3654/2026, (Arising out of Special Leave Petition (Criminal) No.2247 of 2024 dated 04.08.2026*** reported in ***2026 SCC OnLine SC 1485***. In the aforesaid judgment, the Hon'ble Apex Court at paragraph Nos.7.1. to 7.3 has discussed the revisional jurisdiction of this Court, which reads as follows:

"7.1 This Court, in the State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659 observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgement and orders of the trial and appellate courts.

7.2 Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of record. In State of Kerala vs. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, while considering the scope of the revisional

jurisdiction of the High Court this Court has laid down the following:

> *"5.... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence...."*

7.3. The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been

observed that the High Court shall not interfere with the orders of the lower court unless:

> *i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.*
>
> *ii. The lower court has passed the impugned order after considering an immaterial or irrelevant material or no material at all.*
>
> *iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously."*

16. Thus, only if the judgment of the trial Court confirmed by appellate Court is perverse or grossly erroneous, or grossly unreasonable, or wholly unreliable, or wholly untenable, or the trial Court considered an immaterial or irrelevant, material or no material or not at all relevant material or judicial discretion has been exercised arbitrarily and capriciously, the revisional Court can interfere with such judgment.

17. The alleged offence in this case is the offence under Section 138 of N.I. Act; to attract the offence under Section 138 of N.I. Act, the complainant has to satisfy the following ingredients:

(i) that there is legally enforceable debt;

(ii) that the cheque was drawn from the account of bank for the discharge in whole or in part of any debt or other liability;

(iii) that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iv) that cheque so issued has been returned due to insufficiency of funds;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

18. If the aforementioned ingredients are satisfied, then there shall be a presumption under Section 139 of

the N.I. Act. Always, the cheque is a bill of exchange and thus there shall be a presumption under Section 118 of the N.I. Act., there is also statutory presumption under Section 139 of N.I. Act that there exists legally recoverable debt and the cheque is issued for recovery of legally recoverable debt either wholly or in part. But the presumptions available under Section 118 and 139 of the N.I. Act are rebuttable presumptions.

19. With this background, the facts of the present case are to be analysed and to verify whether the trial Court and the Appellate Court have not examined the records produced by either party or erroneously appreciated the evidence.

20. It is the contention of complainant that the accused was due a sum of Rs.12,00,000/- to the complainant and in that regard, the accused has issued the cheque bearing number 011927 drawn on ICICI Bank for a sum of Rs.12,00,000/- to the complainant. When it

is presented for encashment, the complainant has received the endorsement dated 15.03.2017 that the account closed; then complainant has issued legal notice dated 18.03.2017 calling upon the accused to pay the cheque amount, the accused has given reply dated 24.03.2017 and on 21.04.2017, the present complaint was filed before the trial Court.

21. Thus, clause Nos. (iii) to (vi) ingredients are fulfilled. Under these circumstances, merely because the account of the accused is closed, he has not come out of the clutches of the offence under Section 138 of N.I. Act. When once the complainant establishes that clause Nos. (iii) to (vi) as stated above, then automatically the statutory presumption under Section 139 of N.I. Act would be attracted in favour of the complainant that there exists legally recoverable debt and the cheque is issued for the discharge of whole or in part of any such liability or debt.

22. There are presumptions in favour of the complainant that the cheque is drawn for a consideration and it bears the date on which it was issued as per Section 118(a) and 118(b) of N.I. Act. However, these presumptions are rebuttable presumptions. The accused can rebut the presumption by the principle of preponderance of probabilities and not beyond reasonable doubt.

23. It is to be borne in mind that there is concurrent finding in favour of complainant. Only if accused establishes that the concurrent finding is not in accordance with law, then only the revision petition is maintainable.

24. With this background, the further case of accused is to be examined.

25. As per Ex.D2, the accused has issued reply notice. Reply notice is the foundation of the defence of the accused. In Ex.D2, accused has taken a plea that the

son of complainant was working as 'office boy' with the accused. He had taken further defence that under the guidance of the accused, the son of complainant was looking after the business of accused and at that time, he cheated the accused and started his own business by overlooking the accused and by attracting the customers of accused. There is no cross-examination to complainant on the above points urged in the reply notice.

26. The further defence taken by the accused in his reply notice is that he had lost cheques and communicated to the banker by way of stop payment instructions dated 12.09.2016, which includes the subject cheque also. He has denied that the subject cheque was issued by the accused to the complainant. He had taken further defence that the son of complainant-Yadesh was kidnapped in Chennai. At the time of releasing scenario in first week of July-2016, the signed empty cheque leaves of the accused, documents and other office related paper file

were lifted and misused by the complainant. Those cheque leaves include the subject cheque also.

27. In this regard, while cross-examining the complainant, accused has taken another plea that a case was registered in Chennai and in respect of the said case, complainant and accused had been to the police station in Chennai but according to complainant, he and the uncle of accused had been to police station in Chennai. A suggestion was put to the complainant that at that time, the uncle of accused has left his bag which consists of the cheque and it is being misused by the complainant and his son and false complaint is filed which is denied by the complainant. Thus, the accused has taken different plea in the reply notice and also in the cross-examination to the complainant regarding when and how the subject cheque was lost.

28. The accused has produced Ex.D8 said to be the complaint given before the police station in Chennai.

However, it does not bear the seal and signature of the police station for having received its original. Hence, it cannot be looked into for any purpose.

29. The accused has produced Ex.D9 and its translated copy as per Ex.D9(a) and the said document is said to be the complaint given by the accused to the police station. Its translated copy reads as under:

> *"This is to inform that the petitioner has been doing the business of Colour fishes along with the said respondent Thiru. Yadesh of Sree Varu fish form and the said Yadesh was sending the colour fishes from the foreign country and hence it is duty and while doing the same, during the month of August 2016 for the import of fish while coming from the Airport Cargo Section the cheque who brought by him for three cheques (011925,011926,011927) has been misplaced and lost. While coming to the cargo for taking the cheque and his friend Yadesh had taken and without known and hence it is requested to kindly trace the lost cheques."*

The said complainant is dated 26.03.2017 at 6.30 p.m. i.e., after issuance of legal notice dated 24.03.2017 and it appears that only after receipt of said legal notice, the

accused has given said complaint. In the said complaint, he has mentioned only 3 cheque numbers i.e. 011925, 011926 and 011927 (the subject cheque). He has not stated about 15 cheques. In Ex.D1, the certificate issued by ICICI Bank that accused has given stock payment letter dated 12.09.2016 that 15 cheques were lost. However, amongst them 2 cheques were already encashed and hence branch stopped the remaining cheques. This certificate also revealed that the accused has closed his account on 24.01.2017. In Ex.D1, there is mention of loss of 15 cheques whereas in Ex.D9 there is mention of only loss of 3 cheques. In this regard, in the cross examination accused has deposed that at paragraph No.8, he does not know on which date he lost his cheque, but he came to know about theft of the cheque only after receipt of notice on behalf of the complainant and he has given a complaint to Airport authorities, Chennai. In paragraph No.10, questions were put to the accused regarding Ex.D1 wherein he mentioned about theft of 15 cheques; and he

can give details of the persons in respect of encashment of the two cheques mentioned in Ex.D1 only after verifying the records. Further a suggestion put to accused that what steps were taken by him regarding encashment of those two cheques for which he answered that he might have issued those two cheques.

30. The above evidence of DW.1 coupled with Ex.D1 reveals that he has mentioned about loss of 15 cheques and stop payment letter on 15.09.2017 itself to his banker but he has not taken any action about encashment of two cheques prior to said date because he might have issued those two cheques. Thus he is not sure about how many cheques were lost and how they were lost because at one stretch he states about 15 cheques; at another stretch, he says that two cheques amongst them might have been issued by him; at another stretch, he has lodged the complaint only in respect of 3 cheques. These discrepancies in the evidence of accused and the defence

taken by him in the reply notice and while cross-examining PW.1 are entirely different from his defence evidence. He has stated about receipt of Rs.7,00,000/- from the complainant in his affidavit evidence but according to him, out of the said Rs.7,00,000/-, Rs.4,50,000/- was deposited to Life Style Aqua belonging to the son of complainant; no document is produced to substantiate it. Furthermore, the cross-examination of PW.1 is not at all in accordance with the defence taken by him or the documents produced by him. Hence, he has not at all rebutted the presumption available in favour of the complainant about the date of a cheque or the cheque is issued for consideration or that there exists legally recoverable debt as on the date of issuance of cheque and he issued Ex.P1 towards discharge of the same.

31. Further, the learned counsel for respondent would submit that even though the revision petitioner has produced the copies of judgments wherein this accused is

acquitted for the offence punishable under Section 138 of N.I. Act in respect of Rs.25,00,000/- each has no bearing on the present case. This case is independent to other two cases. Merely because the son of complainant has filed those two cases in his individual capacity and in the capacity of Managing Director of his firm, that will not come in the way of complainant in prosecuting the present case. The acquittal of present accused in those two cases cannot be a ground for acquittal in the present case.

32. Considering these aspects, rightly, the accused was convicted by the trial Court which is upheld by the appellate Court. There is no grave error or erroneous finding on these facts either by the trial Court or by the appellate Court. The documents and evidence produced by both sides were considered properly and evidence was appreciated in accordance with law. Hence, it requires no interference.

33. Hence this Court passes the following:

ORDER

Revision petition is ***dismissed***.

(GEETHA K.B.)
JUDGE

SSD
List No.: 1 Sl No.: 33