HC-KAR

NC: 2026:KHC:55771
CRL.RP No. 762 of 2026

CNR: KAHC010325092026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 762 OF 2026

BETWEEN:

SRI. RIYAZ RAXIDI,
S/O M.A. ABUBAKAR,
AGED ABOUT 48 YEARS,
PROPRIETOR MALLAPADPU TRADERS,
MALLAPADPU HOUSE,
KOTEKAR, KEENYA POST,
DAKSHINA KANNADA DISTRICT - 574 232.

...PETITIONER

(BY SRI.JAYASHYAM JAYASIMHA RAO, ADVOCATE FOR
SRI. PRAVEEN N., ADVOCATE)

AND:

SMT. SHILPA,
W/O D.G. SHIVAKUMAR,
AGED ABOUT 46 YEARS,
R/O DEVAVRUNDA VILLAGE
AND POST, MUDIGERE TALUK,
CHIKKAMAGALUR - 577 132.

...RESPONDENT

(BY SRI. LINGARAJU K.R., ADVOCATE)

HC-KAR

CNR: KAHC010325092026

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C PRAYING TO A. SET ASIDE THE JUDGMENT DATED 02.03.2026 PASSED BY THE LEARNED PRL. DISTRICT AND SESSIONS JUDGE, CHIKKAMAGALURU IN CRL.A NO.112/2025 AT ANNEXURE - A AND ETC.,

THIS PETITION, COMING ON FOR ADMISSION, 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 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS, 2023') by the revision petitioner/ accused praying for setting aside the judgment of Conviction and order of Sentence dated 11.07.2025 passed in CC No.1031/2021 on the file of Principal Civil Judge and JMFC, Mudigere (in short, 'trial Court) which is confirmed in the appeal in Criminal Appeal No.112/2025 dated 02.03.2026 on the file of Principal District and Sessions Judge, Chikkamagalur (in short, 'appellate Court').

2. The 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 under Section 200 Cr.PC before the trial Court against the accused for the offence punishable u/s 138 of Negotiable Instruments Act, 1918 (in short, 'NI Act').

4. The case of the complainant in nutshell is that the accused having approached the complainant and has sought for financial facility for his immediate necessity and borrowed a sum of Rs.5,00,000/- and towards its repayment, the accused has issued the cheque bearing No.612276 (subject cheque) drawn on State Bank of Patiyala, Kankanadi branch for a sum of Rs.5,00,000/- dated 31.01.2014. The complainant presented the said cheque for encashment through Syndicate Bank, Mudigere branch and it was dishonoured with an endorsement 'payment stopped by drawer' dated 11.03.2014.

Immediately, the complainant demanded the accused for payment and issued a legal notice through her counsel on 25.03.2014, which was served on the accused on 01.04.2014. Inspite of service of notice, the accused has not repaid the cheque amount, but has issued an untenable reply to notice dated 15.04.2014. Hence, the present complaint is filed on 02.06.2015.

5. There was some delay in filing the complaint and it was condoned by the trial Court.

6. After recording the sworn statement of the complainant, the trial Court has taken the cognizance of the offence and issued summons to the accused.

7. After the issuance of summons, the accused appeared through his counsel and pleaded not guilty of the offence, when the accusation leveled against him were read and explained to him.

8. Afterwards, the statement under Section 313 Cr.PC was recorded; the complainant was cross-examined and let in defence evidence. After hearing the arguments, the trial Court convicted the accused for the offence punishable under Section 138 of NI Act and directed him to pay a sum of Rs.8,00,000/- as fine; out of which a sum of Rs.7,98,000/- shall be payable to the complainant as compensation and remaining Rs.2,000/- shall be defrayed to the state expenses.

9. Aggrieved by the said judgment of the trial Court, the complainant has preferred the appeal before the appellate Court.

10. After hearing both sides, the appeal was also dismissed by confirming the judgment of conviction and order of sentence.

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

12. Heard arguments of both sides.

13. The learned counsel for the revision petitioner would submit that the case of the complainant is that the accused has issued a cheque for Rs.5,00,000/- dated 31.01.2014 for the amount received by him as hand loan from the complainant. When the said cheque was presented for encashment on 08.03.2014, it was returned with an endorsement as per Ex.P2 'payment stopped by the drawer'. Afterwards, the complainant issued a legal notice dated 25.03.2015 as per Ex.P3 to the accused, making allegation that she has paid the hand loan by way of cash to the accused. The accused has given reply as per Ex.P5 and its copy is marked as Ex.D9. In that reply, the accused has denied the hand loan by complainant to the accused; he has taken the plea that the accused has no financial capacity to lend such huge amount; the accused is a timber merchant. In support of the said timber transaction, the husband of complainant was assisting the accused in his business. By smelting that the

complainant's husband may misuse those cheques, on 30.07.2013 the accused has stopped the payment of those three cheques, as per Ex.D8 and bank endorsement at Ex.D7. Even then on 04.02.2014, the complainant has presented the subject cheque bearing No.612276 for encashment and it was encashed on 06.02.2014. Hence, there was no offence at all.

14. The learned counsel for the accused would further submit that the accused has summoned the details of this cheque to the bank manager. The said application was allowed on 20.01.2024, the bank manager came to the Court and furnished two documents. In that statement and in the documents produced by him, it is stated that the complainant has presented the subject cheque dated 4.02.2014 and it was came for collection on 06.02.2014 and then she has withdrawn said amount on 24.02.2014. Later it is learnt that it was wrong payment. Hence, from the account of the husband of complainant on 01.01.2016 they have withdrawn the said amount. Even though the

accused has given reply denying the financial capacity of the complainant, denying the transaction between her and also taken contention that the cheque in question was already honoured; the complainant has reiterated the averments made in the legal notice, in her complaint and also in her evidence and thus it is cryptic. She has suppressed those material facts. The learned counsel would further submit that in the statement recorded under Section 313 Cr.P.C, 5 questions were put to accused, and amongst them, there were 4 mistakes.

15. The learned counsel for the revision petitioner would further submit that he disputes the financial capacity of the complainant in reply notice; also elicited some facts on this point from the cross-examination of the complainant. But, these facts were not appreciated by the trial Court and the appellate Court.

16. The learned counsel for the revision petitioner would further submit that by suppressing the factum of

receipt of the amount from the bank and suppressing the contention taken by the accused in his reply notice; the complainant has presented the cheque once again before the Court and as on the date of lodging up of complaint, the amount of Rs.5,00,000/- was already credited to the bank account of the complainant. Thus, she has played fraud on the Court.

17. In this regard, he places reliance of the judgments of the Hon'ble Apex Court in ***S.P. Chengalava raya Naidu (dead) by LR's vs. Jagahnath (dead) by LRs and others*** reported in ***1994 1 SCC*** para - 6, which reads as follows:

> *"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was*

working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing

fraud on the court as well as on the opposite party.

18. The learned counsel for the revision petitioner also places reliance on the judgment of Hon'ble Apex Court in ***APS Forex Services (P) Ltd. vs. Shakti International Fashion Linkers*** reported in ***(2020) 12 SCC 724***.

19. The learned counsel for the respondent/ complainant Sri Lingaraju K.R. would submit that the alleged amount credited to the bank account of the complainant during February-2014 is not from the bank account of the accused. It was a wrong entry made by the bank. It is an internal mistake of the bank. It was re-credited to the bank from the account of the husband of complainant. When the said amount was not credited from the bank account of accused, he cannot take a defence that already the cheque was honoured. The trial Court and the appellate Court have clearly discussed on this

point in their respective judgments. Hence, when one view is taken on this point, the revisional Court cannot take a contrary view in this revision because the jurisdiction of revisional Court is limited. In this regard, he also places reliance on the ***APS Forex Services Pvt. Ltd.'s*** cited supra at para No.8.4.

20. The learned counsel for the respondent/ complainant would further submit that the financial capacity of the complainant cannot be disputed merely because she is a housewife. The complainant is the wife of a coffee planter. There are catena of judgments that merely because the complainant is a homemaker, her financial capacity cannot be disputed. Thus, the complainant has established her financial capacity which is accepted by both the trial Court and the appellate Court.

21. He would further submit that the transaction between the complainant's husband and the accused is entirely different from the subject cheque transaction

between the complainant and the accused. The presumptions available in favour of complainant under Section 118 and 139 of Negotiable Instruments Act were not at all rebutted by the accused.

22. Having heard arguments of both sides, verifying the revision petition papers, the trial Court and the 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?"*

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

REASONS

24. 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 judgment 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."

25. Thus, only if the judgment of the trial Court confirmed by appellate Court is perverse or grossly

erroneous, are 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.

26. The alleged offence in this case is the offence under Section 138 of NI Act. The learned counsel for the respondent would places reliance on para 7 of the Hon'ble Apex Court in ***APS Forex Services Pvt. Ltd***. cited supra. It is extracted as follows:

> *"7. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the N.I. Act that there exists a legally enforceable debt or liability. Of*

course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore once the issuance of

the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence."

27. The learned counsel for the revision petitioner places reliance on the Hon'ble Apex Court in ***APS Forex Services Pvt. Ltd***. cited supra at para 8.4. It is extracted as follows:

"8.4. Now so far as the reliance is placed by the learned counsel appearing on behalf of the accused on the decision of this Court in Basalingappa, on going through the said decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the accused. In that case, before this Court, the defence by the accused was that the cheque amount was given by the complainant to the accused by way of loan.

When the proceedings were initiated under Section 138 of the NI Act, the accused denied the debt liability and the accused raised the defence and questioned the financial capacity of the complainant. To that, the complainant failed to prove and establish his financial capacity. Therefore, this Court was satisfied that the accused had a probable defence and consequently, in absence of the complainant having failed to prove his financial capacity, this Court acquitted the accused. In the present case, the accused never questioned the financial capacity of the complainant. We are of the view that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the presumption under Section 139 of the NI Act about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter, the onus shifts again on the complainant to prove his financial capacity and at that stage, the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan

by cash and thereafter issuance of a cheque. That is not the case here."

28. On careful perusal of the principles noted in the aforesaid judgment and the plain reading of Section 138 and 139 of NI Act, the following ingredients are to be fulfilled to attract the offence under Section 138 of NI Act:

(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.

29. 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 NI Act. But the presumptions available under Section 118 and 139 of the NI Act are rebuttable presumptions.

30. It is contention of the complainant that the accused has borrowed a sum of Rs.5,00,000/- from the complainant for his immediate necessity and towards his repayment, the accused has issued the subject cheque dated 31.01.2014; when it was presented for encashment

on 11.03.2014 through Syndicate Bank, Mudigere branch, it was returned that the cheque was dishonoured with an endorsement 'payment stopped by drawer' on 11.03.2014; then the complainant has issued legal notice dated 25.03.2014 and it was served upon the accused on 01.04.2014 and then the accused has given reply on 15.04.2014. He has not disputed the cheque bears his signature and it is from his bank account.

31. The complaint was received on 08.07.2014. Thus, they was some delay in filing the complaint, which was already condoned by the trial Court. Thus, clause Nos.(iii) to (vi) were fulfilled.

32. There are several judgments of Hon'ble Apex Court holding that even though the payment is stopped by the drawer, the offence under Section 138 of N.I. Act would be attracted. When once the complainant is able to prove three clauses and the statutory presumption under Section 139 of N.I. Act is automatically attracted in favour

of the complainant that there exists a legally recoverable debt or other liability and that the cheque was issued for its discharge in whole or part.

33. It is contention of the complainant that the accused has not rebutted the statutory presumption available in favour of the complainant. However, it is the case of the accused that he has rebutted the said presumption by taking the contention in the reply to legal notice that the complainant has no financial capacity to lend the amount and there was no transaction between the complainant and the accused. The accused has also cross-examined the complainant regarding her financial capacity. Thus, even though no suggestion was put to the complainant that she has not produced any document to prove her financial capacity and she has not pleaded about her financial capacity either in the legal notice nor in the complaint. However, the cross-examination of the complainant reveals that she is merely a homemaker and

has not produced any document to show her source of income.

34. It is to be noted here that either in the complaint or in the legal notice, the complainant has stated that she has presented the cheque prior to 11.03.2015 before the bank. However, in Ex.P1 - cheque, there is two seals of the bank, that it was presented on 04.02.2014 and also subsequently. The accused has summoned the bank statement of the complainant and her husband before the trial Court. The complainant and the accused have not disputed the said bank statements of the complainant and her husband. The statement of the complainant reflects that on 04.02.2014, the complainant has presented the subject cheque for encashment through her banker; it came to the bank account on 06.02.2014 and Rs.5,00,000/- was credited to her account; on 24.02.2014 she has withdrawn the said amount. According to the bank account of the husband of the complainant on 01.01.2015, he has credited Rs.5,00,000/- to the bank

because of wrong credit to the account of his wife-the complainant by name Shilpa.

35. According to this entry on 06.02.2014, an amount of Rs.5,00,000/- was credited to the bank account of the complainant and she has withdrawn the said amount. But, there is no material produced by the accused to show that the said amount was credited from his bank account.

36. At the time of arguments, the learned counsel for the accused fairly concedes that the said amount was not credited from his bank account and it was wrong amount from the bank.

37. Thus, no amount was debited from the bank account of the accused. The trial Court and the appellate Court have discussed these aspects in length and come to the conclusion that the amount in question was not debited from the bank account of the accused and thus the offence under Section 138 of N.I. Act would be attracted

when the cheque presented before the bank on 11.03.2014.

38. It is noted here that as on 11.03.2014, rightly or wrongly the amount of Rs.5,00,000/- was credited to the bank account of the complainant and she has utilized the said amount by withdrawing the same on 24.02.2014. It is pertinent to note that the said withdrawal amount of Rs.5,00,000/- by the complainant is only in respect of the subject cheque. However, the complainant again presented the same cheque to the bank and obtained endorsement on 11.03.2015. Furthermore, as on the date of presentation of the complaint, said amount was already utilised by the complainant, as discussed above.

39. The learned counsel for the complainant would submit that the complainant has not presented the cheque second time before the bank. But, when once bank authorities came to know that the amount was wrongly credited to the account of complainant they themselves

have dishonoured it and returned the cheque. However, as it is, the amount was utilized by the complainant as on the date of presentation of the cheque and it was not returned to the bank before that date.

40. On careful perusal of the evidence of PW1, it is not so as submitted by the learned counsel for complainant. Furthermore, as per the bank statement on 08.03.2014, again the complainant has presented the same cheque before the bank and it was dishonoured on 11.03.2014. According to Ex.P2, the cheque was dishonoured as 'payment stopped by drawer'. Ex.D8 is the stop payment letter given by the accused to his bank and it is dated 30.07.2013. In this letter, the accused has stated that the cheques bearing No.612274, 612275 and 612276 were issued to Mr. Shivakumar (the husband of complainant) in blank, he may misuse the cheques and hence kindly please stop the payment for these cheques. This was given by the accused to his banker on 30.07.2013 at 11:20 a.m. Ex.D7 is the endorsement

issued by State Bank of India dated 31.10.2022 to the accused that as per his instructions, the cheques bearing No.612274, 612275 and 612276 were stopped on 30.07.2013. Thus, Ex.D7 and D8 along with Ex.P2 clearly establish that the accused has stopped payment of subject cheque along with two other cheques on 30.07.2013 itself. With this background, the cross-examination of PW1 is to be analysed.

41. In that cross-examination, PW1 categorically deposed that about 1-1/2 - 2 months prior to Ex.P1, the accused met her in respect of the money matter and on that day there was a financial transaction between her and the accused. She deposed so in para No.4 of her cross-examination recorded on 09.02.2024. However in the previous paragraph, the complainant has deposed that on the date in which accused met her, no writing has taken place between her and the accused. It is the specific contention of the accused that there was business transaction between the accused and the husband of

complainant. According to him the husband of complainant was working on behalf of the accused with timber merchants to procure timber and to gain confidence of the land owners, the accused has issued several cheques, amongst them the subject cheque is also one and because there was misunderstanding between the complainant's husband and the accused, he has stopped the payment of 3 cheques, which includes the subject cheque.

42. Thus, the cheque in question was not with the accused as on the date of this alleged 1-1/2 -2 months prior to Ex.P1. Ex.P1 is dated 31.01.2015 and about 1-1/2 -2 months prior to it means December-2013, but the stop payment was done in July-2013. Thus, the initial presumption under Section 118 (b) of NI Act that the cheque is drawn on the date referred in the cheque is rebutted by the accused. The cheque in question was not issued on the date mentioned in the cheque.

43. The other presumptions available in favour of the complainant are that, the cheque is issued for

consideration; there exists legally recoverable debt and the cheque is issued for recovery of said debt either whole or in part. With this background it is to be analysed whether accused could rebut these presumptions.

44. As discussed earlier, the complainant in her cross-examination admitted that there were transactions between the complainant's husband and the accused but she does not know details of those transactions but she admitted the signature of her husband in Ex.D1. Ex.D1 is the agreement between landowner and the accused and the husband of the complainant put his signature to it as an attester. This fact is admitted by the accused in his cross-examination. There is no mention about the subject cheque in Ex.D1 but it is of 01.10.2010 that is much earlier to the date of stop payment letter and the alleged transaction between complainant and the accused.

45. With this background, it is to be examined that how the complainant has paid the amount to the accused. According to her, she is the homemaker. She is not doing

any money-lending business or any monetary business. She is acquainted with the accused only through her husband. But, she admitted that the accused is doing timber business. She has categorically deposed in her cross-examination that she is having bank account in Syndicate bank which was earlier known as Canara Bank at K.M. Road Mudigere. Her said account number is 09112200073795.

46. The bank account of complainant summoned by the accused which is admitted by the complainant is of the same bank. The complainant has deposed that she has not done any transaction in her said bank account since 10 years. But according to her, her husband might have transacted from said bank account. In cross-examination complainant has specifically deposed that she has not produced any document to show that she is having financial capacity to lend Rs.5,00,000/-.

47. The learned counsel for complainant would strenuously submit his arguments that only because the

complainant is a housewife and not produced any document to prove her financial capacity, it cannot be said that she was incapable to lend Rs.5,00,000/-.

48. It is to be noted here that in the reply notice, the accused has taken a specific contention that the complainant is not having financial capacity and he has cross-examined the complainant on these facts as observed above. Atleast after such cross-examination, when the accused elicited these facts in her cross-examination, the complainant could produce some documents to prove that he had such amount with her as on the date of lending. Even then the complainant has not produced any iota of evidence to show that where she has kept Rs.5,00,000/- to lend the same to the accused. The amount given by the complainant to the accused is only by way of cash. This alleged transaction has taken place in the year 2014 but as per Income Tax Act and Rules, any transaction above a sum of Rs.2,00,000 shall be only through bank transaction and not by way of cash.

49. The accused has categorically established that the cheque in question was not in his possession as on the date of issuance to the complainant but it was already given to the husband of complainant. The stop payment letter given by the accused and endorsed by the bank are not at all disputed and they are the documents issued by the bank and cannot be disputed.

50. The accused has to rebut the presumptions only based on the principle of preponderance of probability and not beyond reasonable doubt. When he establishes that the cheque in question was not at all with him as on the date of alleged transaction and also established that there was transaction between the husband of complainant and the accused also established that complainant has financial capacity; then he has rebutted the presumption in favour of the complainant. When once the presumption in favour of the complainant is rebutted, then the burden entirely shifts upon the complainant to prove her case beyond reasonable doubt. To prove the case of the complainant

beyond reasonable doubt, the complainant has not produced any iota of evidence. In the cross-examination of the accused, the complainant has only elicited that regarding the amount not debited from the bank account of the accused at the time of its credit to the bank account of the complainant during February-2015.

51. As discussed earlier, the amount credited to the bank account alone cannot be a ground to say that accused has rebutted the presumption. He has only deposed that he does not remember the date of stopping requisition given by him to his banker but it was in the year 2013 but he himself has produced said document which reflects the date of giving such requisition as discussed above. Merely because the accused has not taken any legal action against the husband of complainant regarding other two cheques mentioned in stop payment letter, it cannot be said that the subject cheque was issued by the accused to the complainant. Except these suggestions no other cross-examination to the accused

regarding financial capacity of the complainant or on any other aspect.

52. The presumptions available under Section 118 and 139 are rebuttable presumptions and trial Court and the appellate Court ought to have examined this point in an appropriate manner but without examining those facts, the trial Court and the appellate Court have given importance only to the fact that the amount in question was not debited from the bank account of accused during February 2014 and have wrongly concluded that the accused has committed the offence punishable under Section 138 of NI Act. Instead of doing so, the trial Court convicted the accused blindly by following the presumptions under Sections 118 and 139 which is blindly confirmed by the appellate Court. Hence, they have not examined the available material. There is no proper discussion on stop payment letter of Ex.D7 and 8 in the judgment of both Courts.

53. Under these circumstances, when the material evidence was not at all considered by the trial Court and appellate Court, this Court under revisional jurisdiction can interfere with said Judgments. Hence, this Court passes the following:

ORDER

i) The revision petition is allowed by setting aside the judgment of Conviction and Order of Sentence dated 11.07.2025 in CC No.1031/2021 on the file of the Prl. Civil Judge & JMFC, Mudigere and confirmed in Criminal Appeal No.112/2025 dated 02.03.2026 on the file of the Principal District and Sessions Judge, Chikkamagaluru.

ii) The amount deposited by the accused shall be refunded to him upon proper identification.

(GEETHA K.B.)
JUDGE

LL
List No.: 2 Sl No.: 1