IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL REVISION PETITION NO. 909 OF 2026

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

BETWEEN:

1. INDIRA
   W/O K M RAMESH
   AGE ABOUT 46 YEARS
   R/AT NO 111, YAPANNA HOUSE,
   RAMANAHALLI STREET, HOSAHALLI
   MANDYA - 571401

...PETITIONER

(BY SRI. GAURAV G K.,ADVOCATE)

AND:

1. Y V SRINIVAS
   S/O LATE VENKATARAMANASHETTY
   AGE ABOUT 65 YEARS
   R/AT NO 38, LOKESH REDDY LAYAOUT,
   BEHIND SINCLAIR SCHOOL,
   CHELEKERE KALYANA NAGARA POST
   BENGALURU - 560043

...RESPONDENT

(BY SRI. J.R.JAGADISH.,ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 02.09.2024 PASSED BY THE XXXIV ADDL.CMM BENGALURU IN CC NO.53220/2022 WHICH IS CONFIRMED IN JUDGMENT AND

ORDER DATED 06.05.2026 PASSED BY THE LXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE, MAYOHALL UNIT AT BENGALURU (CH-74) IN CRL.A NO.25337/2024 AND CONSEQUENTLY ACQUIT THE PETITIONER FROM THE ALLEGED CHARGES AND THEY MAY BE SET AS LIBERTY.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 07.10.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

1. This is the revision petition filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for setting aside the judgment of conviction and order of sentence dated 02.09.2024 passed in CC.No.53220/2022 on the file of XXXIV Additional Chief Judicial Magistrate, Mayo Hall Unit, Bengaluru (ACJM-34) (in short, 'the trial Court'), confirmed in Criminal Appeal No.25337/2024 on the file of LXXIII Additional City Civil and Sessions Judge, Mayohall Unit, Bengaluru (CCH-74) (in short, 'the appellate Court') and to acquit the accused.

2. The parties would be referred with their ranks, as they were before the Tribunal for the sake of convenience and clarity.

3. The complainant has filed the private complaint under Section 200 Cr.P.C., before the trial Court alleging the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') against the accused.

4. The case of the complainant in nutshell is that the accused is known to the complainant through his brother-in-law-Mahesh since 5 years and both were in good terms. The accused approached the complainant through Mahesh during October-2020 and requested the complainant to lend a sum of ₹21,00,000/- for the purpose of education of the children of the accused. Considering the friendship and long-term association of the parties, the complainant advanced ₹21,00,000/- by way of cash in the month of November-2020. The accused promised to repay the said loan within one year but did not repay it. After repeated requests and demands by the complainant, the

accused has issued the subject cheque bearing No.719461 dated 10.03.2022 for a sum of ₹21,00,000/- drawn on Vijaya Bank (Now Bank of Baroda), Vidyanagar Branch, Mandya. When the complainant presented the said cheque for encashment, it was returned with endorsement 'Bank Branch Block' on 11.03.2022. Hence, the complainant got issued legal notice dated 26.03.2022 through his counsel through RPAD, which was served on the accused as per the postal track consignment report. Even after its service, the accused has not repaid the cheque amount. Hence, he filed the complaint on 13.05.2022 for appropriate reliefs.

5. After service of summons, the accused appeared through her counsel. She pleaded not guilty of the offence when accusation leveled against her was read over and explained to her. Afterwards, her statement under Section 313 Cr.P.C., was recorded. Subsequently, she has cross-examined the complainant; the accused has let in her evidence and also examined two witnesses and produced some documents.

6. After hearing arguments, the trial Court came to the conclusion that, the accused has committed the offence punishable under Section 138 of NI Act and convicted her to pay fine of ₹23,89,800/-; in default of payment of fine, to undergo simple imprisonment for 6 months and out of the fine amount ₹23,84,800/- shall be payable to the complainant as compensation and remaining ₹5,000/- shall be remitted to the State.

7. Aggrieved by the said judgment of conviction and order of sentence, the accused has preferred the appeal before the appellate Court. After hearing arguments, the appeal was dismissed by confirming the judgment of conviction and order of sentence.

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

9. Heard arguments of both sides.

10. The learned counsel for the revision petitioner Sri Gaurav G K would submit that the concurrent finding of trial Court and appellate Court is only based on the presumptions under Sections 118 and 139 of NI Act.

Those presumptions were rebutted by the accused by cross-examining the complainant and by establishing her specific defence that her cheques were misplaced in the bus when she left her bag in the bus by producing the 'stop payment' letter to her banker as per Ex.D.5 dated 08.05.2019. Under those circumstances, there was no occasion for the accused to issue the same cheque in the year 2022. She has further established that the complainant is stranger to her from the cross-examination of the complainant wherein he could not give proper details of her residential address; details of her family members; her financial capacity, etc. Further, she established from the cross-examination of the complainant regarding his financial incapacity to lend ₹21,00,000/-. Further, by examining the witness and by cross-examining PW.1, the accused has rebutted the presumption under Sections 118 and 138 of N.I. Act and then the burden shifts upon the complainant to prove his case beyond reasonable doubt, which was not properly appreciated by the trial Court as well as the appellate Court.

11. The learned counsel for the appellant would further submit that even though, he has disputed the signature of the complainant and receipt of legal notice, now he is not pressing on those two contentions.

12. The learned counsel for the respondent-Sri J.R.Jagadish, would submit that in the cross-examination, PW.1 specifically deposed that the accused approached him on 20.10.2020 for hand loan and he has given the hand loan to the accused on 20.11.2020. However, in further cross-examination, the suggestions put to the complainant are only about the date-20.10.2020 and not about the date-20.11.2020. Thus, accused has not denied the payment of ₹21,00,000/- by the complainant to the accused on 20.11.2020. When there is no such denial and when now the accused is not pressing on difference in signature and receipt of legal notice, the presumptions in favour of the complainant are intact and the accused has not rebutted those presumptions.

13. The learned counsel would further submit that reply to the legal notice was not at all given; the financial

capacity of the complainant was not at all disputed in the cross-examination of the complainant; the accused failed to establish her contention regarding loss of the cheques in transit; there is contradictory stand by the accused and her witnesses on the said point; she has not examined the bank-manager to prove the stop payment letter; the endorsement of the bank does not reveal the stop payment by the accused; the contention of accused that the complainant is stranger to her is not established and it is disproved from the evidence of DW.2. The accused in dire need of money towards education of her children, as per Ex.D.1 to 4. Thus, the presumption in favour of the complainant was intact. The learned counsel for the respondent places reliance on the judgments of the Hon'ble Apex Court in ***Amit Kapoor v/s Ramesh Chander and Another***[1] and ***Malkeet Singh Gill v/s State of Chhattisgarh***[2] and judgment of Co-ordinate bench of this Court in the case of ***K.Kuppuraj v/s J Thrilokamurthy***[3]

[1] (2012) 9 SCC 460
[2] (2022) 8 SCC 204
[3] Crl.RP NO.606/2020 dd 005.10.2020

14. 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 ?"*

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

REASONS

16. The revisional jurisdiction of this Court is very limited. In this regard, the Hon'ble Apex Court and the coordinate bench of this court in following cases held as follows:

17. The Hon'ble Apex Court in ***Amit Kapoor's*** case cited supra at paragraph Nos.11 and 12 held as follows:

> *"11. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*
>
> *12. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction."*

18. The Hon'ble Apex Court in ***Malkeet Singh's*** case cited supra at paragraph Nos.10 and 11 held as follows:

> *"10. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such*

inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

11. This Court in Manju Ram Kalitu v. State of Assam, while dealing with the scope of reappreciation of evidence by higher Court in criminal revision. observed in paras 9, 10 and 11 of the judgment as under: (SCC pp. 333-34)

> *"9. So far as Issue 1 is concerned i.e. as to whether the appellant b got married with Smt Ranju Sarma, is a pure question of fact. All the three courts below have given concurrent finding regarding the factum of marriage and its validity. It has been held to be a valid marriage. It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by reappreciating the evidence.*
>
> *10. This Court would not ordinarily interfere with the concurrent findings on pure questions of fact and review the evidence again unless there are exceptional circumstances justifying the departure from the d normal practice.*
>
> > *'9.... The position may undoubtedly be different if the inference is one of law*

from [the] facts admitted and proved or where the finding of fact is materially affected by violation of any rule of law or procedure.' (Vide Sriniwas Ram Kumar v. Mahabir Prasad, SCC p. 139, para 9)

11. Thus, it is evident from the above that this Court being the fourth court should not interfere with the exercise of discretion by the courts below as the said courts have exercised their discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material. Even if two views are possible on the question of fact, we, being the fourth court, should not interfere even though we may exercise discretion differently had the case come before us initially. In view of the above, we are not inclined to interfere with the finding of fact so far as the issue of bigamy is concerned nor the quantum of punishment on this count is required to be interfered with."

19. The Co-ordinate bench of this Court in ***K.Kuppuraj's*** case cited supra at paragraph No.5 held as follows:

"5. This Court in exercise of power under Section 397 of Cr.P.C. cannot re-appreciate the evidence and arrive at a different conclusion, even if different view is possible from the evidence. The jurisdiction under Section 397 of Cr.P.C. could be exercised only when the decision under challenge is found grossly erroneous, non-compliance with the provisions of law; finding of fact affecting the decision is not based on evidence; non-consideration of the material evidence and that the lower court has exercised the discretion arbitrarily or perversely and acted in excess of its jurisdiction or abused its power

resulting in failure of justice. No such errors or illegalities are found in the impugned order."

20. 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***, 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."

21. On careful perusal of the above said citations, and the principles noted in those citations, this court can interfere with the judgment of the trial Court confirmed by appellate Court only if they are *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.

22. The alleged offence in this case is the offence under Section 138 of NI Act; to attract the offence under Section 138 of NI 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.

23. 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. There is also statutory presumption under Section 139 of NI 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 Sections 118 and 139 of the NI Act are rebuttable presumptions.

24. 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.

25. It is the contention of the complainant that the accused has borrowed a sum of ₹21,00,000/- from the complainant on 20.11.2020 and to repay the said amount, the accused has issued the subject cheque dated 10.03.2022 in favour of the complainant; when it is presented for encashment, it was returned dishonored with an endorsement 'Bank Branch Block' dated 11.03.2022. Hence, the complainant has issued the legal notice dated 26.03.2022 to the accused demanding for repayment. However, the accused has neither given any reply to the said notice nor repaid the subject cheque amount. Hence, he has filed the complaint before the Court on 13.05.2022. Further, as it is, presently, the

signature of the accused on the cheque is not in dispute and the accused admits the receipt of legal notice; but no reply is given by her to it. Thus, the complainant has complied with clause No.(iii) to (vi) of the above ingredients. There are judgments of Hon'ble Apex Court that even though the cheque is dishonoured due to 'bank branch block' the offence under Section 138 would be attracted.

26. When once the complainant is able to establish this clause No.(iii) to (vi) then, automatically the statutory presumption under Section 139 of NI Act would be attracted in favour of the complainant that, there exists a legally enforceable debt and the cheque is issued for the discharge in whole or in part of any other liability.

27. It is the contention of the complainant that the accused has not rebutted the aforesaid presumptions available in favour of the complainant.

28. It is to be examined whether the accused has rebutted the aforesaid presumption available in favour of

the complainant. It is to be noted here that reply to the notice is the basis of the defence of the accused.

29. When the complainant established these facts, then the presumptions under Sections 118 and 139 NI Act would be in favour of the complainant. The Court shall presume that there exists a legally recoverable debt and towards discharge of whole or part of the said debt, the subject cheque was issued. This is the statutory presumption. However, it is a rebuttable one.

30. With this background, the facts of the present case are to be analysed to know whether the accused has rebutted the presumptions in favour of the complainant or not.

31. The contention of the complainant is that on 20.10.2020, the accused approached him for a hand loan of ₹21,00,000/- towards the education of children of the accused and accordingly, he lent it on 20.11.2020 to the accused.

32. It is elicited in the cross-examination of the complainant that he is the retired employee and he was

earning ₹72,000/- per month. According to him, he would spend only ₹ 15,000 – 20,000/- per month and his children would look after his family expenses. Two years prior to lending, he retired from his service.

33. At the time of cross-examination to the complainant, there is no specific denial of financial capacity of the complainant. But, it is elicited that he is not an income-tax payee.

34. In the cross-examination, the complainant deposed that he has paid the amount of ₹21,00,000/- by way of cash in the house of the accused. According to him, her house is in Hosahalli, Mandya, but he does not know in which cross, it is situated. According to the complainant, he lent said amount for the education of children of the accused. According to him, he lent said amount without obtaining any document from the accused. The amount was not lent with interest. The accused is not related to the complainant. Without obtaining any single document, he has given ₹21,00,000/-

and even without any interest cannot be the acceptable one.

35. The complainant alleged that the accused was known to him through his brother-in-law - Mr. Mahesh; as per request of the accused, he lent towards the education expenses of children of the accused by way of cash. At that time, he has not taken any document from the accused. He kept quiet for about 15 months, without any interest and without any document as security for the lending.

36. According to the complainant, only on the date of cheque i.e., on 10.03.2022, he has received the cheque from the accused. However, the accused has produced the stop payment letter as per Ex.D.5 dated 8.05.2019. As per cross-examination of the complainant, he lent money on 20.11.2020 to the accused. But much earlier to that date, the stop payment letter was issued to the bank wherein cheque numbers are mentioned, which includes the subject cheque.

37. As per Ex.D.5, six cheques were misplaced. The accused admitted about four cases registered against her by Kanyakumari, Srinidhi and Mahesh and the present case. According to the accused, all the above four persons are strangers to her.

38. To substantiate her contention, the accused has examined her husband as DW.2 and she has produced 3 certified copies of sale deeds to show that she is having sufficient income at the time of alleged borrowing from the complainant. She has also taken loan from the bank for education of her children who was studying outside India. The daughter's bank statement is produced as per Ex.D.4 to show that her daughter has obtained loan and she is paying installment with interest to the Bank.

39. The complainant has not produced any iota as to whether to show that he has such amount with him at the time of lending money.

40. The learned counsel for the complainant would vehemently submit that the complainant was having sufficient means to lend the amount of ₹21,00,000/-, as

he was a retired employee and earning ₹72,000/- per month with meager expenditure. However, said argument is not acceptable one, because, the complainant is not an income-tax payee; he has not stated that quantum of retirement benefits; whether, he is getting pension, etc. Hence, with meager income of ₹72,000/- per month, it is impossible to lend ₹21,00,000/- that too without interest for a period of one year and above, without obtaining document of security, without knowing the financial capacity of the accused.

41. It is the argument of learned counsel for the complainant that DW.1 only after her cross-examination has produced Ex.D.5, which is an afterthought. It is only the Xerox copy of the alleged document. The Manager of the Bank is not examined to substantiate her above contention that cheque was lost. Furthermore, there is a different stand taken by DWs.1, DW.2 and DW.3 regarding misplacement of cheques and theft of cheques. Thus, the accused has not established loss of cheques. The cross-examination of DW.2 clearly establishes that Mahesh is the tenant under husband of the accused and thus, he is a

known person to the accused. Thus, her contention that accused is a stranger to her is not established. The earning capacity of the complainant is not at all disputed. Even though the accused has taken contention about non-service of legal notice, she herself admitted that she received the legal notice. However, she has not made any endeavour to give reply to it. Thus, the accused has not at all established anything to disprove the presumptions.

42. In the cross-examination, the complainant deposed that the accused has given reply wherein she has stated that she would appear before the Court. However, said reply is not produced.

43. The argument of learned counsel for the complainant is not acceptable one, because, the amount lent to the accused is not a small one; a huge amount, without knowing the proper details of the accused; without proper acquaintance, without obtaining any security, such huge amount lent by him is not acceptable one.

44. Furthermore, from the cross-examination of the complainant, the accused elicited about the financial capacity of the complainant as follows:

45. In the cross-examination, the complainant has deposed that said ₹21,00,000/- is the amount earned by him. His contention is that his monthly income was ₹72,000/- out of which, he would spend ₹15,000/- to ₹20,000/- every month. According to him, his children are looking after his family expenses. He is not paying income tax. He has no problem to produce documents to prove his income. But the complainant has not produced any document to show that he possessed such amount at the time of alleged lending.

46. Furthermore, the accused in her defence evidence, categorically took contention that the complainant was not having the financial capacity to lend the amount. This fact is not seriously disputed by the complainant in her cross-examination.

47. It is to be noted here that, according to the case of the complainant he lent ₹21,00,000/- to accused

by way of cash and not by any bank transaction. This lending was in the year 2020. In the year 2020, if a person is having income of ₹2,50,000/- and above then he has to pay the income tax. However, the complainant even though deposed that his income is ₹72,000/- per month; according to him he is not paying income tax. If the income of the complainant is ₹72,000/- per month then he would have annual income of ₹8,64,000/- but he was not paying income tax and not produced his IT returns to show that he was having that much income at that point of time.

48. As per RBI guidelines and as per the provisions of Income Tax Act, 1961 any transaction above ₹2,00,000/- shall be only through bank transaction but in this case, even though the complainant alleged that he lent ₹21,00,000, according to him it is only through cash.

49. The accused has taken specific contention that the complainant is stranger to him. The complainant even though deposed that he had been to the house of accused on 20.10.2020 and the accused told him that her children

are studying in foreign countries and she requires money; he does not know the names of the children of the accused, the husband of the accused or any other details of her family.

50. In the cross-examination, the complainant deposed that he lent the amount on 20.11.2020 by going to the house of the accused.

51. The ₹21,00,000/- during 2020 is not a small amount, it is a huge amount. But even according to the complainant, the accused is not so well versed with him because he does not know anything about her family members, even then, he lent said amount of ₹21,00,000/- to the accused, without taking any security from her or without taking any document from her. Without knowing the financial capacity of the accused, no prudent man could lend such huge amount without taking any security for the loan. However, he has specifically deposed in the cross-examination that, there is about 15 months' gap between the alleged date of lending and the alleged date of issuance of cheque by the accused. But he has not

taken any document from the accused. The complainant has not given details that where and how he had kept that ₹21,00,000/- in his house or in his bank account or in which place.

52. With this background, the documents produced by the accused are to be looked into. Exs.D.1 to D.3 are the certified copies of sale deeds executed by the accused and her husband. As per Exs.D.1 to D.3, the accused and her family members have sold three properties in the year 2018, 2019 and 2020 respectively totally amounting to ₹51,13,000/-. According to the complainant's version, he has lent money about 5 months after the last sale of property by the accused.

53. According to the complainant's cross-examination, when he demanded the accused to repay the amount, she told him that she is having a property and by selling it she will repay the amount to the complainant. However, as discussed above three properties were sold much earlier to the alleged lending.

54. The specific contention of the accused is that while traveling, she lost her bag which consists of cheque book consisting of 6 cheque leaves. Hence, she requested the bank manager to block her cheque book.

55. It is to be noted here that Ex.D.5 dated 08.05.2019 is the requisition given by the accused to her banker. On that day, the bank manager has put seal of Bank of Baroda and put signature in the round seal and below that he has put the date-08.05.2019.

56. The subject cheque produced in this case is the cheque of Vijaya Bank. This Vijaya Bank is merged with Bank of Baroda with effect from 01.04.2019. Even then, the cheques of Vijaya Bank were valid upto 01.07.2021. But the subject cheque is dated 10.03.2022. Thus, as on the date of presentation of this cheque, it was an invalid cheque. That's why the endorsement issued by the banker is 'Bank Branch Blocked'. The endorsement is not 'funds insufficient' or the 'stop payment' but it is 'Bank Branch Blocked'.

57. It is not in dispute that even though the 'Bank Branch Blocked' endorsement is received, initially the offence under Section 138 of NI Act would be attracted. However, it is to be noted here that, the complainant is not an illiterate person. He is worldly wise. According to him, he is a retired employee. Thus, if the cheque was issued to the complainant on 10.03.2022, definitely he would be aware that this Vijaya Bank is already merged with Bank of Baroda; he would not have received the subject cheque towards repayment because the validity of Vijaya Bank cheque had already expired.

58. The learned counsel for the accused further places reliance on Ex.D.4, the bank account statement of her daughter to show that during 2016 itself her daughter has taken educational loan of ₹10,00,000/- and she was repaying its installments punctually.

59. Under these circumstances, when Exs.D.1 to D.4 are produced by the accused to show that they had sufficient amount of more than ₹60,00,000/- as on the date of alleged lending by the accused; there was no need

or necessity for the accused to obtain further loan of ₹21,00,000/- from the complainant.

60. Under these circumstances, Ex.D.1 would substantiate the further contention of the complainant that, she has lost the cheques which were kept in the bag and she lost the said bag while traveling in a bus. There is specific suggestion to the complainant regarding his financial capacity. He was also cross-examined about his income and other details which reveal that, the accused is disputing the financial capacity of the complainant.

61. The accused has not put a mere suggestion denying the financial capacity of the complainant, but she has elicited something from the cross-examination of the complainant regarding his income and he was not an income tax payee etc., as discussed above and further, this huge lending of ₹21,00,000/- only through cash; Under these circumstances, it was incumbent upon the complainant to produce some evidence to show his financial capacity which he did not do.

62. The accused has taken two defenses. One is financial capacity of the complainant which is discussed as above. Another is she lost the cheque and it was misused by the complainant. To substantiate it, she examined her husband and her neighbour as DWs.2 and 3. DWs.2 and 3 have taken a little bit different version from the accused that the cheque in question was stolen by one Mahesh from the house of the accused but that is not the contention of the accused.

63. The learned counsel for the complainant vehemently would submit that one Mahesh introduced the accused to the complainant and said Mahesh is his brother-in-law. In this regard, the accused denied the suggestion that she knows this Mahesh. However, her husband in his evidence has deposed that one Mahesh was tenant under him. It is not suggested to the accused that said Mahesh is tenant under her husband but only suggested to her that one Mahesh is known to her, which she denies. Under these circumstances, it cannot be said that, the accused knows Mahesh and she is not deposing

truth on this point. Mahesh might be the tenant under her husband and not under her to say that she is having personal knowledge about the said tenant. Admittedly, this accused is a housewife and not having any avocation. Her educational qualification is not questioned in the cross-examination.

64. Another point stressed by the learned counsel for the complainant is that similar 4-5 cases are registered against the accused wherein also she has taken the similar defence.

65. In this regard, in the cross-examination, the accused has admitted that Kanyakumari, Srinidhi and Mahesh have filed cheque dishonour cases against her. However, she has deposed that all those three persons are strangers to her and she does not know how they got the cheque leaves. She also admitted that Mahesh has filed a suit against her and obtained decree against her but the said decree was challenged in an appeal.

66. According to the accused, she has not lodged any complaint to the police regarding loss of her cheques

but her husband has deposed that he has lodged the complaint; anyway the complaint details are not produced.

67. Only because there are some discrepancies in the evidence of the accused and her witnesses regarding how she lost the cheques, nothing more was elicited in their cross-examination to disbelieve their version.

68. As discussed above, the initial burden is on the accused to rebut the presumptions under Sections 118 and 139 of NI Act.

69. The above discussion reveals that the accused has rebutted those presumptions. To summarize it, lending of ₹21,00,000/- cash to an unknown person; no document is taken at the time of lending; further, the complainant is getting a meager salary of ₹72,000/- per month and no material is produced to show that he had ₹21,00,000/- at the time of lending. The complainant does not know anything about family members of the accused, which substantiates the contention of accused that complainant is stranger to her. By eliciting these facts, the accused has rebutted the presumptions in favour of the

complainant. However, after such rebuttal, the complainant has not produced any evidence to prove his contention.

70. It is to be noted here that only in the case of complete wrong appreciation of evidence or without examining the materials available on record, the trial Court and appellate Court have passed the judgments; then and then only the revisional Court can interfere with it.

71. The above discussion reveals that the trial Court and the appellate Court have given importance only to the cross-examination of DWs.1 to 3 regarding how they have misplaced the cheques or whether cheques were stolen and DWs.2 and 3 have not identified the signature of the accused in her deposition and other documents like vakalathnama. But the intrinsic fact that, the complainant has lent money of ₹21,00,000/- without any document; kept quiet for a period of 15 months and his income was only ₹72,000/- per month are completely ignored by the trial Court and the appellate Court. Thus, the judgment of

the trial Court and the appellate Court are grossly erroneous and wrong appreciation of evidence and further, the reasoning given by the trial Court and the appellate Court is wholly unreliable and untenable based on the irrelevant material and wrong appreciation of presumptions under Sections 118 and 139 of NI Act. Hence, it requires interference.

72. Accordingly, this Court passes the following:

ORDER

a. The revision petition is ***allowed***.

b. The judgment of conviction and order of sentence dated 02.09.2024 passed in CC.No.53220/2022 on the file of XXXIV Additional Chief Judicial Magistrate, Mayo Hall Unit, Bengaluru (ACJM-34), confirmed in Criminal Appeal No.25337/2024 on the file of LXXIII Additional City Civil and Sessions Judge, Mayohall Unit, Bengaluru (CCH-74), are hereby ***set aside.***

c. The accused is acquitted for the offence punishable under Section 138 of NI Act.

d. The amount in deposit shall be refunded to the accused on proper identification.

(GEETHA K.B.)
JUDGE

SPV