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. 1600 OF 2024

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

BETWEEN:

1. SRI MUNIRAJU
S/O KRISHNAPPA
AGED ABOUT 39 YEARS
R/AT. KULKUNTE AGRAHARA
VILLAGE AND PANCHAYATHI,
AMBEDKAR COLONY, NEW AMBEDKAR BHAVAN,
ANUGONDANAHALLI HOBLI,
HOSAKOTE TALUK,
BENGALURU RURAL DISTRICT-560067

...PETITIONER

(BY SRI. SHASHIDHAR JOSHI, ADVOCATE)

AND:

1. SRI S DEVARAJ
S/O SATHYANARAYANA RAO G.H,
AGED ABOUT 52 YEARS,
R/AT. WARS NO. 1, VENKATAGIRI KOTE,
CHINTAMANI CITY,
CHIKKABALLAPURA DISTRICT-563125

...RESPONDENT

(BY SRI. SYED ZAHEERUDDIN BAREED.,ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 CR.P.C (U/S 438 R/W 442 BNSS) BY THE ADVOCATE FOR THE PETITIONER PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER DTD 09.09.2024 PASSED BY THE HONBLE II ADDL. DISTRICT AND SESSIONS COURT AT CHINTAMANI, CHIKKABALLAPUR IN

CRL.A.NO.61/2023 CONFIRMING THE JUDGEMENT AND ORDER DTD 05.09.2023 PASSED BY THE HONBLE PRINCIPAL CIVIL JUDGE AND JMFC AT CHINTAMANI, CHIKKABALLAPURA IN CC.NO.84/2022 AND ACQUIT THE PETITIONER FOR THE OFFENCE P/U/S 138 OF NI ACT.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 08.10.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT DELIVERED THE FOLLOWING:

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

CAV JUDGMENT

This is the revision petition filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.,'), by the revision petitioner/accused challenging the judgment of conviction and order of sentence dated 05.09.2023 passed in CC No.84/2022 on the file of Principal Civil Judge and JMFC, Chintamani (in short, 'trial Court') which is confirmed in Criminal Appeal No.61/2023 dated 09.09.2024 and the file of II Additional District and Sessions Judge, Chikkaballapur sitting at Chintamani (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 under Section 200 of the Cr.P.C., praying for taking cognizance of offence punishable under Section 138 of Negotiable Instruments Act, 1988 (In short 'NI Act') against the accused.

4. The case of the complainant before the trial Court in nutshell is that the accused is working in post office as Central Government employee and family friend of the complainant and both the complainant and the accused were having mutual acquaintance. The accused came and approached the complainant and requested for hand loan of ₹10,00,000/- on 10.09.2021 for the purpose of his family benefit and legal necessity. Accordingly, considering his request, the complainant has paid a sum of ₹10,00,000/- as hand loan on 25.09.2021. At the time of receiving the loan, the accused promised to repay the same within two months. In that regard, the accused has issued the subject cheque dated 20.12.2021 bearing No.368127 drawn on Cauvery Grameena Bank, Kulkunte Branch via Kadukodi, Hosakote Taluk, in favour of the

complainant for a sum of □₹10,00,000/-. Afterwards, the complainant presented the said cheque for encashment through his banker on Pragathi Krishna Grameena Bank, Chintamani Branch for encashment on 21.12.2021 and the same was returned with 'insufficient funds'. Immediately after its dishonour, the complainant informed the same to the accused, but the accused has given lame excuses. Hence, the complainant has issued the legal notice dated 06.01.2022 to the accused calling upon him to repay the cheque amount within 15 days. Notice sent to the home address of the accused returned with shara 'unclaimed' on 19.01.2022 and notice sent to his office address returned as 'insufficient address'. Hence, there is deemed service of notice. Hence, the complaint for appropriate reliefs.

5. After recording the sworn statement of the complainant, the trial Court has taken cognizance of the offence, registered the criminal case and issued summons to the accused. Afterwards, the accused appeared through

his counsel and pleaded not guilty of the offence alleged against him. On the same day, the statement of accused under Section 313 Cr.P.C., was also recorded. Afterwards, the complainant was recalled and cross-examined by the accused and the accused also let in evidence.

6. After hearing arguments of both sides, the trial Court concluded that the accused has committed the offence punishable under Section 138 of the NI Act on the ground that the accused failed to rebut the presumption available in favour of the complainant and thereby passed the judgment of conviction and order of sentence.

7. Aggrieved by the said judgment of conviction and order of sentence, the accused approached the appellate Court.

8. After hearing arguments of both sides the appellate Court has confirmed the judgment of conviction and order of sentence.

9. Aggrieved by the same, the accused/revision petitioner is before this court.

10. Heard arguments of both sides.

11. The learned counsel for the revision petitioner Sri Raghavendra K., would submit that the complainant is a total stranger to the accused. The accused has lost his 2 cheque books, passbook and several other documents and in this regard he lodged the police complaint as per Ex.D.2 on 22.06.2020 and issued the stop payment letter to block the cheques to the Cauvery Grameena Bank as per Ex.D.1 on 02.11.2020. But, according to the complainant, the transaction between the accused and the complainant had taken place on 10.09.2021 i.e., long after the accused had blocked his entire cheque book. The accused is a Central Government employee. Thus, he had to obtain permission from his employer to take any loan from a third party and has to intimate the same to his employer in writing. However, that is not at all done in this case because the complainant is a stranger to the accused and the accused never borrowed any amount from the complainant.

12. Furthermore, as per the evidence of the complainant, his income is only ₹40,000/- - ₹50,000/- per

month. According to the complainant, he lent ₹10,00,000/- to the accused. No document has been produced by the complainant to show his financial capacity. The financial capacity of the complainant is completely denied by the accused. As such, the complainant has given evidence that he had phone conversations with the accused several times and he would produce documents in that regard, but no such documents were produced.

13. The complainant has not denied the lodging up of complaint by the accused to Bellanduru Police Station and information to his bank regarding the loss of cheque book and pass book. The complainant is resident of Chinthamani, whereas the accused is a resident of Anugondanahalli village, Hosakote Taluk, these are not neighbouring taluks, there is long distance between the two places. The accused is not a family friend of the complainant as alleged in the complaint. The accused has produced Ex.D.1 and D.2 to substantiate his contentions and thus rebutted the initial presumptions available in favour of the complainant. But, it was not properly

examined by the trial Court and the appellate Court. The trial Court has wrongly, blindly applied the presumptions under Sections 118 and 139 of NI Act and convicted the accused and it was confirmed by the appellate Court. Hence, prays to set aside the judgments and acquit the revision petitioner.

14. Learned counsel for the respondent would submit that Exs.D.1 and D.2 are concocted documents. There is a gap of about 5 months between Exs.D.1 and D.2. No proper explanation is given for such an inordinate delay. Further, according to Ex.D.1, totally 44 leaves in 3 cheque books were lost. No prudent man would carry 3 cheque books with him every time. Further, even though the notice issued to the correct address of the accused, intentionally he has not received them and both of them were returned as 'insufficient address' and 'unclaimed'. The accused being an employee in the postal department, he has manipulated those entries in postal covers.

15. The complainant in his cross-examination has given the details of the accused, his family members, which is not disputed by the accused while further cross-examining the complainant or while leading his evidence. It is the burden of the accused to take permission from his higher authorities before obtaining loan but that is not the burden of the complainant to examine whether such permission was taken or not. Even though Exs.D.1 and D.2 are dated 2.11.2020 and 22.06.2020 respectively, at Ex.P.2-the dishonour memo issued by the bank, it is stated that 'Funds insufficient' and not 'cheque blocked by the drawer'. Thus, the accused has not at all rebutted the presumptions in favour of the complainant. Further, the accused has not examined the bank manager or police officer to show that actually he has given such complaints as per Exs.D.1 and D.2.

16. Learned counsel for the revision petitioner would submit that generally only for self-cheques, the signature on the backside of the cheque will be made. In Ex.P.1,

there is signature on both sides which falsifies the contention of the complainant.

17. Learned counsel for the complainant would submit that only for account payee cheques, signature on backside is not required but Ex.P.1 is not the account payee cheque. Hence, the accused has put signature on both sides. Considering these aspects, rightly, the trial court and the appellate court have come to the right conclusion that the accused has not rebutted the presumptions available in favour the complainant and thus, it requires no interference.

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

19. The finding of this Court on above point is in AFFIRMATIVE for the following:

REASONS

20. 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."

21. 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.

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 Section 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. The subject cheque is dated 20.12.2021. The bank endorsement-'insufficient funds' is dated 22.12.2021. Then, the legal notice dated 06.01.2022 was issued to the accused which were returned as 'unclaimed' and 'insufficient address' to the home residential address and official address of the accused. Afterwards, the complainant has filed the present complaint on 08.02.2022.

26. Even though notice issued to the residential address of the accused, returned as unclaimed, there is deemed service of notice because the address of accused mentioned in the legal notice and also in his evidence and in the documents produced by him is one and the same. Thus, there is deemed service of legal notice. The accused has not disputed his signature on the subject cheque and said cheque belonged to his bank account.

27. Thus, clause No.(iii) to (vi) of the ingredients of Section 138 of the NI as stated above were complied with.

28. When once complainant establishes clause No.(iii) to (vi), then the statutory presumption under Section 139 and presumption under Section 118 of NI Act is in favour of the complainant that cheque is issued for consideration; the issuance of cheque is the date of cheque mentioned in the cheque; there exists legally recoverable debt and the accused has issued the cheque for recovery of whole or in part of such debt. However, these presumptions are rebuttable one.

29. It is to be noted here that the presumptions can be rebutted by giving reply to the legal notice, by cross-examining the complainant by leading defence evidence or by all the above three modes.

30. In the instant case, the accused has not given any reply to the legal notice. His contention is that he had not received the legal notice from the complainant. In Ex.P.6, it is stated that it is 'unclaimed'. In this regard the accused has deposed that none has told him that such a notice letter came to him so that he could not receive it.

As far as second notice in respect of his address is concerned, in the endorsement from the postal authorities, it is stated that 'insufficient address' and before that it is also stated that, not in 12 weeks transferred to 1 week. Thus, the accused could not give any reply to the legal notice.

31. Thus, the remaining options available for the accused to rebut the presumptions is by cross-examining the complainant and by leading defence evidence.

32. In this case, it is the specific contention of the accused that the complainant is stranger to him and he does not know anything about the complainant or his address. The accused is resident of Kalkunte village; whereas, the complainant is resident of Chintamani and there is distance of about 70 kms. in between both the places. They are not neighbouring villages. The accused contended that while travelling on 20.06.2020, in two-wheeler he lost his cheque books, passbook, and ATM cards and he is having account at SBI near Onam Circle HM Tech Park with account No. 55150124628 and also

was having account in Cauvery Grameena Bank, Kalkunte. He has given complaint to Police Sub Inspector Bellanduru Police Station on 22.06.2020 as per Ex.D.2 that he lost the cheque books of two banks and hence prayed for blocking those two cheque books and also to issue new cheque books. Ex.D.1 is dated 02.11.2020 and it is addressed to the Cauvery Grameena Bank, Kalkunte Branch Manager by the accused. In this letter the accused has specifically mentioned that while travelling in a vehicle, he lost his passbook, cheque book, ATM card. He has mentioned his account number in Cauvery Grameena Bank, Kulkunte and also stated that he lost his signed cheque book, passbook, cheque book and ATM card and hence requested to block cheque book and ATM card and he lost them about 20 - 15 days back and he was searching them in his house and confirmed that they were lost and hence prayed for blocking them. He has mentioned the cheque leaves which were lost. They were totally 44 in numbers. In one cheque book, 9 cheque leaves; second one consists of 10 cheque

leaves and the third one consists of 25 cheque leaves and all these cheque leaves were lost.

33. The subject cheque is one amongst the cheque numbers mentioned in the aforesaid complaint.

34. As the accused had taken the contention that the complainant is stranger to him, the cross-examination of the complainant by the accused and this point is very much required.

35. In this regard, the complainant in his cross-examination has deposed that he knows the accused who is working in HIL Post Office but he does not know since how many years, he is working there and according to him the accused was known to him since 5-6 years. He has not stated how he came in contact with the accused. According to him, he had not been to the house of the accused but the accused has a son and a daughter and also an elder sister. In this regard, the complainant has deposed that on 10.09.2021 he had been to Kalkunte Village and at that time the accused requested for loan

and on 25.09.2021 he has given the amount to the accused and at that time, none was present and he has received the cheque from the accused about 2 months after he lending the money to the accused. According to him, he has telephoned the accused in 5 years several times but he could not produce a single document to prove the said contention. According to him, he came in contact with the accused through one Anand but the said Anand is not examined.

36. Generally, if self-cheque is drawn, the drawer would put his signature on front and back side of the cheque otherwise, payee has to put his signature on back side of the cheque but in the instant case Ex.P.1 bears the signature of the accused on both sides. The signature of the accused and other recitals in the cheque leaf are entirely in different ink. The amount lent by the complainant to the accused is ₹10,00,000/- but the complainant is not an income tax assessee. According to him, he is having only ₹40,000/- - ₹50,000/- income per month. The complainant does not know the reason for

borrowing. In the cross-examination held on 31.03.2023, the complainant has deposed that the accused has not come to his house. In the further cross-examination held on 11.07.2023, the complainant has deposed that, twice he has given the amount to the accused; he has given the amount to the accused in his house. As per his earlier cross-examination, the accused has not at all come to his house, how he lend money to the accused in his house is not at all forthcoming.

37. A suggestion put to the complainant that the accused is only a contract employee and not central government employee, for which he answered that he does not know about it. This shows that without knowing the employment structure of the accused, he lent ₹10,00,000/- to the accused is unbelievable one. Further, the complainant has not denied that the accused has lodged the complaint to the bank and also to police station regarding loss of his two cheque books and ATM card but he has only deposed that it may be true.

38. The accused in his evidence has deposed about loss of cheque books and ATM card and has produced Ex.D.1 and D.2. In this regard, even though the accused was cross-examined in length by the learned counsel for complainant, not even a single suggestion is put to the accused denying lodging of such complaints by the accused to the bank and police station. Thus, lodging up of complaint by the accused to concerned bank and police station regarding loss of his cheque books and ATM card is established. The details of cheque leaves are mentioned in Ex.D.1, which includes the subject cheque as discussed above.

39. The complaint to police was lodged on 22.06.2020 and to Cauvery Grameena Bank, Kulkunte on 02.11.2020. The learned counsel for the complainant vehemently submit that Ex.D.1 does not bear the signature of the bank authority. However, on perusal of Ex.D.1, it is to be noted here that on the bottom of the cheque, it is mentioned that 'block the above' and below that, signature of the banking authority is forthcoming and

it also bears the round seal of the bank on the upper portion. In Ex.D.2 even though it is addressed to the Bellandur Police Station, it appears that it is addressed to a bank because even in Ex.D.2 the accused has prayed for blocking the above cheques and above cheque books and to permit him to take new cheque books.

40. Even though the accused has blocked the above said cheques, the endorsement from the bank is 'funds insufficient' and not 'cheques are blocked'. Anyway as discussed above, the above factum of loss of cheque is not seriously disputed.

41. 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 ₹10,00,000/-, according to him it is only through cash.

42. The financial capacity of the complainant was disputed by the accused while cross-examining him. As discussed above, the complainant is not an income tax

assessee, he has not obtained any license to run his business and his income is only ₹40,000/- - ₹50,000/- per month then he should have that much amount with him to lend the same to the accused but when the accused has taken these specific defences, the complainant has not made any efforts to establish his financial capacity. Mere denial of financial capacity is not sufficient but some cogent evidence is to be produced to prove that the complainant is not having financial capacity to lend ₹10,00,000/- which is being established in this case by cross-examining the complainant.

43. According to the complainant without taking any documentary proof from the accused, he lent ₹10,00,000/- to the accused and about two-and-half months afterwards, the accused has issued the subject cheque to him and the complainant does not know the cause of borrowing by the accused and even the employment structure of the accused. Without knowing the financial capacity of borrower nobody would lend money. These facts clearly establishes that the accused has rebutted the

presumptions available in favour of the complainant. However, after such rebuttal, the complainant has not produced any evidence to prove his contention.

44. 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.

45. The above discussion reveals that the trial Court and the appellate Court have grossly not verified the evidence elicited in the cross-examination of the complainant regarding his financial capacity and the employment structure of the accused. Thus, the judgment of the 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.

46. Accordingly, this Court passes the following:

ORDER

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

b. The judgment of conviction and order of sentence 05.09.2023 passed in CC No.84/2022 on the file of Principal Civil Judge and JMFC, Chintamani confirmed in Criminal Appeal Criminal Appeal No.61/2023 dated 09.09.2024 on the file of II Additional District and Sessions Judge, Chikkaballapur sitting at Chintamani, 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

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