HC-KAR

NC: 2026:KHC:59041
CRL.RP No. 258 of 2024

CNR: KAHC010089432024

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. 258 OF 2024

BETWEEN:

SRI. N.M. JEEVAN KUMAR
S/O SRI. N.V. MADARAJU
AGED ABOUT 35 YEARS
SRI. NANJUNDESHWARA PAINTS,
20TH CROSS, R.P. ROAD
NANJANGUD - 571 301.

...PETITIONER

(BY SRI. VASU K, ADVOCATE)

AND:

SRI. MAHESH N.S,
S/O SRI. SHIVAKUMAR
AGED ABOUT 30 YEARS,
R/A NO.39/5, 4TH MAIN,
M.M. ROAD, BYATARAYANAPURA
NEW EXTENSIONS, MYSORE ROAD
BANGALORE - 560 026.

...RESPONDENT

(BY SMT. S. THEJASHWINI, ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.PC PRAYING TO 1. SET ASIDE THE IMPUGNED JUDGMENT DATED 04.12.2023 PASSED BY THE LVIII ADDL.CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU IN CRL.A.NO.795/2020 AND SET ASIDE THE ORDER OF THE TRIAL COURT DATED 04.03.2020 PASSED BY THE LEARNED XVIII A.C.M.M AT

BENGALURU IN C.C.NO.20547/2017 FOR THE OFFENCE P/U/S 138 OF N.I ACT AND ACQUIT THE PETITIONER.

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 397 read with Section 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 04.03.2020 passed in C.C.No.20547/2017 on the file of the XVIII Addl. Chief Metropolitan Magistrate, Bengaluru (in short the 'trial Court') which is confirmed in the judgment dated 04.12.2023 in Criminal Appeal No.795/2020 on the file of LVIII Additional City Civil and Sessions Judge, Bengaluru (CCH-59) (in short the 'appellate Court').

2. Parties would be referred with their banks, 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 Cr.P.C. before the trial Court praying for taking cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I.Act) against the accused.

4. The case of the complainant in nut shell is that the complainant and accused are childhood friends and towards the difficulties and financial problems of the accused, as per his request, the complainant has lent Rs.3,60,000/- to the accused on 10.05.2016. At that time, accused assured to repay the same within six months. Six months afterwards, when the complainant approached the accused to repay the amount, the accused has issued the subject cheque bearing No.064186 drawn on Corporation Bank, Nanjangud Branch for a sum of Rs.3,60,000/-. When the complainant presented the same for encashment, it was returned dishonoured with an endorsement dated 09.02.2017'funds insufficient'. After

such an endorsement, the complainant issued legal notice dated 06.03.2017 to the accused calling upon him to pay the cheque amount; the accused has received the notice on 15.03.2017 but not replied to it. Hence, the complaint is filed on 28.04.2017.

5. After recording sworn statement, the trial Court registered the case by taking cognizance of the offence under Section 138 of N.I. Act and issued summons to the accused. Afterwards accused appeared through his counsel. When the accusation levelled against the accused is read over and explained to him, he pleaded not guilty of the offence and claimed trial. Learned counsel for accused has cross-examined the complainant and then statement under Section 313 of Cr.P.C was recorded. Afterwards accused has let in his defence evidence.

6. After hearing arguments, the trial Court convicted the accused for the offence punishable under Section 138 of N.I. Act and sentenced him to pay a fine of

Rs.4,60,000/- out of which Rs.4,50,000/- shall be payable to the complainant as compensation and remaining Rs.10,000/- is defrayed towards State expenses.

7. Aggrieved by the said judgment, the accused has filed the appeal before the appellate Court. After hearing arguments of both sides, 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 revision petitioner Sri Vasu K. would submit that the complainant and the accused were childhood friends. However, afterwards, complainant became highly educated and started working in Bengaluru and there was no connection between complainant and the accused. The mother of complainant

was doing chit business, the accused was one of the subscribers of the said chit business and in that business, there were differences of opinion between the mother of complainant and the accused. At the time of commencement of said chit business, mother of the accused has taken two blank signed cheques from the accused towards security. One of those cheques was misused by the complainant and filed this false complaint. The financial capacity of the complainant was disputed by in the cross-examination of the complainant, the accused has elicited some important points on his financial capacity thereby he has raised the probable defence. However, the trial Court and the appellate Court have not appreciated the probable defence raised by the accused; that the burden shifts upon the complainant to prove his contention beyond reasonable doubt. Hence, the judgment of both Courts is erroneous and requires interference.

11. The learned counsel for respondent Smt.Tejaswini would submit that the accused has not raised any probable defence by cross-examining the complainant or from his defence evidence. Even though the legal notice was served upon the accused, he remained silent and not given any reply to legal notice. Only after commencement of the cross-examination of the complainant, the accused has issued legal notice to the mother of complainant contending that there was chit transaction between him and the mother of complainant only to raise probable defence. However, the said notice was suitably replied by the mother of complainant. Considering these aspects, the trial Court and the appellate Court have rightly held that accused issued the cheque for consideration and failed to rebut the presumption in favour of the complainant and hence, prayed for dismissal of the revision petition.

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

> *"Whether the revision petitioner establishes perversity or grossly erroneousness in the judgment of the trial court and appellate court or the judgment of the trial court and appellate court is glaringly unreasonable or wholly unreliable or untenable and the judgment of the trial court and appellate court considered immaterial or irrelevant material or no material or non-consideration of any relevant material or judicial discretion has been exercised arbitrarily or capriciously ?"*

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

REASONS

14. 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."

15. 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.

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

> *(i) that there is legally enforceable debt;*
>
> *(ii) that the cheque was drawn from the account of bank for the discharge in whole or in part of any debt or other liability;*
>
> *(iii) that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(iv) that cheque so issued has been returned due to insufficiency of funds;*
>
> *(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*

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

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

18. 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.

19. The case of complainant is that accused has taken hand loan of Rs.3,60,000/- on 10.05.2016 agreeing to repay the same after 6 months for his financial needs. In that regard, the accused has issued the subject cheque dated 16.12.2016. It was presented for encashment but returned with an endorsement dated 09.02.2017 'funds insufficient'. Then the complainant got issued legal notice dated 06.03.2017 which was served upon the accused and postal acknowledgment was received by the complainant on 15.03.2017 and filed the complaint dated 28.04.2017. The accused has not disputed that the cheque bears his signature and it is from his bank account.

20. When once the complainant establishes the aforesaid facts, the ingredients of clause Nos.(iii) to (vi) stated above are fulfilled. When once the complainant fulfills clause Nos.(iii) to (vi), as per Sections 118 and 139 of NI Act, the Court shall presume that the cheque was issued for consideration, the cheque was issued on the

date mentioned in it; there exists legally recoverable debt and the cheque is issued towards discharge of said debt either wholly or in part. However, these are rebuttable presumptions.

21. The accused can rebut the presumptions either by giving reply to the notice, or by cross-examining the complainant or by leading his evidence or by all the above three modes.

22. In the instant case, the accused has not given reply to the legal notice of the complainant but he cross-examined the complainant and let in his defence evidence. The defence taken by the accused is that there was chit transaction between the accused and the mother of the complainant and in that respect, the accused has issued two signed blank cheques to mother of the complainant as security.

23. To substantiate the above contention, the accused has produced Ex.D1, the legal notice dated

12.12.2018 issued on behalf of the accused to the mother of the complainant. After service of said legal notice, the mother of the complainant has given reply as per Ex.P7 dated 03.01.2019 that there was no cheque transaction that mother of the complainant never had the chit transaction and there was no such transaction with the accused.

24. It is to be noted here that the legal notice issued by the complainant was served upon the accused on 15.03.2017, the complaint is filed on 28.04.2017; the criminal case was registered on 10.08.2017. Afterwards the accused appeared through his counsel on 18.06.2018. Only almost six months after his appearance in this criminal case, the alleged notice as per Ex.D1 was issued by the accused; before that date, already the complainant was cross-examined partly by the learned counsel for the accused. Hence, the accused failed to establish this

defence that the cheque was issued as security to the mother of the complainant.

25. Another defence taken by the accused is that the complainant had no such financial capacity to lend the amount. In this regard, the complainant deposed in his cross-examination that on 10.05.2016 between 06:00 p.m. to 6.30 p.m., he lent amount to the accused. He has deposed that since 7-8 years, he is an income tax assessee but he has not shown the hand loan to the accused in his IT returns. He has further deposed that he was getting a salary of Rs.6,50,000/- per annum during the year 2016. He denied the suggestion that he was not getting such salary. Except this, nothing was elicited in the cross-examination of complainant to believe that complainant is not capable to lend the amount. In this regard, accused in his evidence has not stated anything about the financial capacity of the accused. Thus, this accused failed to prove this defence also. Only when

accused by proving probable defence has rebutted the presumptions in favour of the complainant, the burden shifts upon the complainant to prove his contention. However, in the instant case, he has not established the chit transaction with mother of the complainant and financial incapacity of the complainant. Considering these aspects, the trial Court convicted the accused which is confirmed by the appellate Court. There is no erroneous finding in this case to interfere with the aforesaid judgments.

26. Hence, this Court passes the following:

ORDER

Criminal revision petition is ***dismissed***.

(GEETHA K.B.)
JUDGE

SSD
List No.: 1 Sl No.: 17