HC-KAR

NC: 2026:KHC:58018
CRL.RP No. 276 of 2026

CNR: KAHC010110932026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 276 OF 2026

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

BETWEEN:

1. SMT. SUSHMITHA. G
   W/O VENKATESH
   AGED ABOUT 35 YEARS,
   R/AT BEHIND VIVEKANANDA SCHOOL
   NEAR KMF DAIRY, MALUR-KOLAR MAIN ROAD,
   MALUR TOWN, KOLAR DISTRICT-563139

...PETITIONER

(BY SRI. BASAVARAJU T A.,ADVOCATE)

AND:

1. SRI. SATHISH. M
   S/O MUNIREDDY
   AGED ABOUT 52 YEARS,
   R/AT NEAR THIRUMALA CHOULTRY 2ND STAGE,
   MARUTHI EXTENSION, MALUR TOWN,
   KOLAR DISTRICT-563139

...RESPONDENT

(BY SRI. SRINATHA B.V.,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 JUDGMENT OF ORDER DATED 28-06-2024 PASSED IN C.C. NO.2/2023 ON THE FILE OF HONBLE II ADDITIONAL CIVIL JUDGE AND J.M.F.C AT MALUR

TALUK, KOLAR DISTRICT AND ALSO SET ASIDE THE CONFIRMATED JUDGMENT AND ORDER DATED 21/1/2026 PASSED IN CRIMINAL APPEAL NO.105/2024 ON THE FILE OF HONBLE II ADDL. DISTRICT AND SESSIONS JUDGE AT KOLAR, CONSEQUENTLY ACQUIT THE PETITIONER FROM THE ALLEGED CHARGE.

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

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

ORAL ORDER

1. This is the revision petition filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C') praying for setting aside the judgment of conviction and order of sentence dated 28.06.2024 passed in CC No.2/2023 on the file of Principal Civil Judge and JMFC, Malur Taluk, Kolar District and to set aside the judgment in Criminal Appeal No.105/2024 dated 21.01.2026 on the file of II Additional District and Sessions Judge, Kolar and to acquit the accused/revision petitioner.

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 private complaint under Section 200 Cr.P.C praying for taking cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1988 (in short 'NI Act') against the accused.

4. The case of the complainant in nutshell is that, the accused borrowed hand loan of ₹8,00,000/- from the complainant in the second week of May, 2022, for her family necessity and to discharge her debts agreeing to repay the same within six months. Accordingly, the accused has issued a post dated subject cheque Bearing No.619181 dated 02.12.2022 drawn on Canara Bank, Abbenahalli branch for a sum of ₹8,00,000/-. When the complainant presented the said cheque for encashment, it was dishonoured with an endorsement dated 02.12.2022 as 'funds insufficient'. Later on, the complainant has issued the legal notice dated 06.12.2022 to the accused calling upon him to pay the cheque amount. It was duly

served on 07.12.2022. Then, the complainant was filed the complaint on 23.12.2022.

5. After recording the sworn statement of the complainant, the trial Court has registered the case and issued summons to the accused. After appearance of the accused, the accused pleaded not guilty of the offence when the accusation levelled against him was read over and explained to him. After the cross-examination of the complainant, the accused has denied the case of complainant in *toto* in the statement recorded under Section 313 Cr.P.C. However, the accused has not let in defence evidence.

6. After hearing arguments of both sides, the trial Court came to the conclusion that the complainant has proved his case and the accused has committed the offence punishable under Section 138 of NI Act and sentenced him to pay the fine of ₹8,00,000/- which shall be payable to the complainant as compensation.

7. Aggrieved by the said judgment of conviction and order of sentence, the accused has preferred the appeal. After hearing arguments, the appellate Court has confirmed the judgment of trial Court by dismissing the appeal. Aggrieved by the same, the accused is before this Court.

8. Heard arguments of both sides.

9. The learned counsel for the revision petitioner Sri T.A. Basavaraj would submit that the complainant has not at all established that, he has given hand loan of ₹8,00,000/- to the accused. Even the signature of the accused is not admitted in the cheque but the trial Court on the wrong belief that the signature was admitted and came to the wrong conclusion that the presumption in favour of the complainant is not rebutted by the accused. There was a sale agreement between the husband of the accused and the respondent, which is suppressed by the complainant before the trial Court. The cheque was issued by the husband of the complainant regarding sale

transaction only as a security and it is not a legally recoverable debt. Hence, the trial Court and the appellate Court have wrongly applied the presumptions under Sections 118 and 139 of NI Act.

10. The learned counsel for the revision petitioner would further submit that opportunity was not given to the accused to cross-examine the complainant completely. Hence, prayed for allowing the revision petition.

11. The learned counsel for the respondent/complainant Sri Shivananda Reddy R.V would submit that even after service of legal notice, the accused has not given reply to it and nothing was elicited in the cross-examination of the complainant to disbelieve his version and no defence evidence was let in. Thus, the accused failed to rebut the statutory presumptions available in favour of the complainant. Considering these facts, the trial Court rightly convicted the accused which was confirmed by the appellate Court, which requires no interference.

12. 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 ?"*

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 the 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 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.

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 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.

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. On careful perusal of the trial Court records and the arguments canvassed by both sides, the facts which are established before the trial Court are that the complainant has presented the subject cheque on 02.12.2022 issued by the accused for a sum of Rs.8,00,000/-; on 02.12.2022, it was dishonoured with an endorsement 'funds insufficient'; on 06.12.2022, legal notice was issued to the accused, which was served on 07.12.2022 and the complaint was filed on 23.12.2023.

The only contention of the accused in this case is that the younger brothers of the wife of the complainant, Babu Reddy and Manjunatha Reddy and there was a sale agreement for a period of 22 months and it came to an end by 02.09.2023 and the complainant has taken important role in completion of that sale agreement transaction. He denied the suggestion that the subject cheque was issued only towards security of the said sale agreement transaction. He denied the suggestion that husband of the complainant has given interest every month. He denied the suggestion that three cheques were given to him on 02.09.2023.

20. Even though the accused tried to elicit that there is no financial capacity to the complainant to lend ₹8,00,000/-, nothing was elicited to say that the complainant has no financial capacity. His cross-examination reveals that he is having ₹10,00,000/- - ₹15,00,000/- income per annum. The sale agreement transaction was pending between his wife and the accused

before the civil Court. He admitted that the sale deed was executed by the husband and in-laws of the accused on 06.05.2022 in favour of Manjunatha Reddy, his brother-in-law and it was drafted by him. Except these admissions, nothing was elicited in the cross-examination of the complainant.

21. The above discussion reveals that even though accused denied his signature on the subject cheque while cross-examining the complainant, it was not denied. Thus, it is established that the subject cheque bears the signature of the accused and it is from his bank account.

22. Under these circumstances, the complainant has established clause Nos.(iii) to (vi) of ingredients of Section 138 of NI Act. When it is established, then the presumption in favour of the complainant under Section 118 and statutory presumption under 139 that cheque is issued for a consideration; it bears the date on which it was issued; there exists legally recoverable debt and towards discharge of whole or part of the said debt, the

subject cheque was issued. These are rebuttable presumptions.

20. The accused has to rebut the presumptions by giving reply to the legal notice by cross-examining complainant or by leading defence evidence or by all the above three modes. However, in the present case, admittedly the accused has not let in defence evidence and not given reply to legal notice. He has only cross-examined the complainant.

21. The above facts elicited in the cross-examination of the complainant in no way rebut the presumptions available in favour of the complainant by the accused. His defence that there was an agreement between Rajanna's brothers and the accused and in pursuance of said agreement, subject cheque was issued as a security is not at all established. Considering these aspects, the trial Court has convicted the accused, which is confirmed by the appellate Court. The above said judgments are not

erroneous and there is no *perversity* in these judgments to interfere in this revision petition.

22. Hence, this Court passes the following:

ORDER

Revision petition is **dismissed.**

(GEETHA K.B.)
JUDGE

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List No.: 1 Sl No.: 29