HC-KAR

NC: 2026:KHC:60959
CRL.RP No. 270 of 2024

CNR: KAHC010097282024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO. 270 OF 2024

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

BETWEEN:

1. K. VENKATASWAMY
   S/O SRI. KARAGAPPA,
   AGED ABOUT 48 YEARS,
   R/AT NEAR BOMMANAHALLI GATE,
   DEVARAMALLURU VILLAGE AND POST,
   SHIDLAGHATTA TALUK,
   CHIKKABALLAPURA DISTRICT-562105.

...PETITIONER

(BY SMT.PRAJWALA.S.N, ADVOCATE FOR
SRI.AJITH KUMAR A.S, ADVOCATE)

AND:

1. CHIKKA HANUMANTHAPPA
   S/O LATE SRI. DODDAPOOJAPPA,
   AGED ABOUT 52 YEARS,
   R/AT ANURU VILLAGE,
   THIPPENAHALLI POST, KASABA HOBLI,
   SHIDLAGHATTA TALUK,
   CHIKKABALLAPURA DISTRICT-562105.

...RESPONDENT

(RESPONDENT SERVED)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO a) SET ASIDE THE JUDGMENT AND SENTENCE DATED 17.11.2023 PASSED IN

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CRL.A.NO.59/2022 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA SITTING AT CHINTAMANI AND b) SET ASIDE THE JUDGMENT AND SENTENCE DATED 29.04.2022 PASSED IN C.C.NO.199/2020 ON THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C AT SHIDLAGHATTA AND ETC.,

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

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

ORAL ORDER

This is the revision petition filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) by the revision petitioner/accused praying for setting aside the judgment of conviction and order of sentence dated 29.04.2022 passed in CC No.199/2020 on the file of Senior Civil Judge and JMFC, Shidlaghatta, which is confirmed in the judgment of appeal dated 17.11.2023 in Criminal Appeal No.59/2022 on the file of II Additional District and Sessions Judge, Chikkaballapura, sitting at Chintamani.

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

3. The complainant has filed the private complaint under Section 200 Cr.P.C., before the trial Court praying for taking cognizance of the offence under section 138 of Negotiable Instruments Act, 1881 (in short 'NI ACT') against the accused and to punish him in accordance with law.

4. The case of the complainant before trial Court in nutshell is that the complainant and the accused are known to each other and are residents of neighbouring villages. The accused approached the complainant in the second week of October, 2016, requested him the hand loan of Rs.2,50,000/- for family and legal necessity. Believing the words, keeping faith and trust on the accused, the complainant has lent the said amount to the accused on 10.10.2016 by way of cash and towards its repayment, the accused has issued the subject cheque

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bearing No.599504 dated 04.11.2016 drawn on Canara Bank, Gokula Branch, Bengaluru. When the complainant presented the said cheque for encashment on 04.11.2016 through his banker, it was dishonoured and returned with an endorsement 'funds insufficient' dated 03.12.2016. After receipt of such endorsement, the complainant intimated the same to the accused. Then, the complainant has issued legal notice dated 08.12.2016 to the accused to fulfil his legal obligation. The said notice was duly served upon the accused. In spite of service of notice, the accused intentionally failed to comply with the terms of the notice, not paid the amount and not given reply to it. Hence, prayed for taking suitable action against the accused.

5. After recording sworn statement, the trial court registered the case against the accused and issued summons to him. After service of summons, the accused appeared through his counsel and pleaded not guilty of the offence when the accusation was read over and explained

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to him. After the cross-examination of complainant, statement of accused under Section 313 Cr.P.C., was recorded wherein the accused denied the case of complainant in *toto*. He has let in defence evidence.

6. After hearing arguments, the trial Court concluded that the accused has committed the offence punishable under Section 138 of NI Act, convicted him for the aforesaid offence; directed to pay a fine of Rs.3,50,000/- in default to undergo simple imprisonment for one year.

7. Aggrieved by the said judgment, the complainant approached the appellate Court.

8. After hearing arguments, the appeal was dismissed by confirming the judgment of conviction and order of sentence.

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

10. Even after service of notice, respondent remained absent and unrepresented.

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11. Heard arguments of the learned counsel for the revision petitioner.

12. The learned counsel for the revision petitioner/accused Sri Ajit Kumar A.S. would submit that the complainant has not produced the evidence to show that he had financial capacity to lend Rs.2,50,000/- to the accused at relevant point of time; further not produced any material to show that the amount in question was lent by him because according to him, lending was on 10.10.2016 but it is through denomination of Rs.500/- and Rs.2,000/- notes. Furthermore, the complainant has sold his 10 guntas of land for construction of his house. Thus, he was not having financial capacity to lend the amount. Hence, prayed for allowing the revision petition.

13. Having heard arguments of learned counsel for the revision petitioner, verifying the revision petition papers, the trial Court and the appellate Court records, the point that arises for consideration is:

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"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 ?"

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

REASONS

15. 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

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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."

16. 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.

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17. 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 exists legally enforceable debt;

(ii) that the cheque was drawn from the account of bank of the accused 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 30 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

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or the holder in due course of the cheque within 15 days of the receipt of the said notice;

(vii) Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

18. 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.

19. 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

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produced by either party or erroneously appreciated the evidence.

20. Ex.C.1-Cheque is dated 04.11.2016 drawn for a sum of Rs.2,50,000/- and it was dishonoured as per Ex.C.2 as 'funds insufficient' dated 03.12.2016.

21. Thereafter, the complainant got issued legal notice dated 08.12.2016 to the accused. As per Ex.P.5, it was served on the accused. But the accused has not given any reply to the notice. The address mentioned in the legal notice and the address of the accused is one and the same. Hence, there is deemed presumption that the notice issued to the accused is duly served upon him. The accused has not given any reply to the notice.

22. The accused is not only an agriculturist but also an advocate by profession. After service of legal notice, filing of the present complaint and appearance by the accused before the trial Court, Exs.D.1 to D.3 came into existence. According to these documents, the accused has taken the

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plea that he had obtained loan from one Devaraju; after its repayment, Devaraju has not returned the subject cheque which was taken for security and hence, he has lodged the complaint before police. In the statement of Devaraju before police, it is recited that the said cheque was misplaced in his house accidentally and if he traces it, he would produce. The said Devaraju was examined as DW.2 by the accused. In that evidence he has taken a completely different stand that he has been called to the police station wherein his signatures were taken but he has not stated that there is no money transaction between him and the accused and the subject cheque is not concerned to him and the police have taken his signature only by saying that the accused has given complaint and he has not stated before the police that the cheque was misplaced and if he traces it, he would return it.

23. Thus, Exs.D.1 to D.3 are in no way helpful to the accused to prove his defense that it was given to one

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Devaraju as security. However, when said defence was not at all established by him, the accused has taken another defence that he stopped payment of the cheque by giving instructions to the bank.

24. In the cross-examination of the complainant, it is only elicited that the complainant has paid the amount in Rs.500/- and Rs.2,000/- denomination notes during October-2016. However, during October, 2016 there were no notes of Rs.2000 denomination. Only because of this reason, the presumption in favour of the complainant cannot be rebutted.

25. The complainant has deposed that he is doing agriculture, tethering cow, sheep, hen and getting substantial income and his son is also working as an Engineer. Thus, nothing was elicited in his cross-examination to disbelieve the financial capacity of the complainant. Furthermore, in his evidence, the accused

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has not taken that plea. He has not even given reply to legal notice.

26. Thus, the accused failed to rebut the presumptions in favour of the complainant, which is properly appreciated by the trial Court and the appellate Court. There is no material to show that the trial Court and the appellate Court have not examined the available material or relevant material or examined any irrelevant material or their judgment is grossly erroneous or capricious. Hence, interference of the judgment of the trial Court and the Appellate Court is not required.

27. Hence, this Court passes the following:

ORDER

The revision petition is ***dismissed***.

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(GEETHA K.B.)
JUDGE

rs/List No.: 1 Sl No.: 20