



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 27 OF 2023

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

BETWEEN:

SRI. ABDUL KHADAR
S/O. SANAULLA,
AGED ABOUT 52 YEARS,
R/O. BATTEMALLAPPA,
HARIDRAVATHI POST,
HOSANAGARA TALUK,
SHIVAMOGGA- 577 201,
NOW R/O. NEAR A1 AMEEN COLLEGE,
BENGALURU- 560 027.

...PETITIONER

(BY SRI. K. V. SATEESHCHANDRA., ADVOCATE)

AND:

SRI. H. R. SOMASHEKAR
S/O. RUDRAPPA GOWDA,
AGED ABOUT 48 YEARS,
R/O. SAGARA TOWN,
SHIVAMOGGA- 577 401.

...RESPONDENT

(BY SRI. BIMBADHARA H. M., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE
ADVOCATE FOR THE PETITIONER PRAYING THAT THIS
HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE



SENTENCE AND CONVICTION ORDER PASSED IN CRL.A.NO.10013/2020 DATED 13.10.2022 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, SITTING AT SAGAR AND CONVICTION AND SENTENCE DATED 12.02.2020 PASSED BY THE COURT OF PRINCIPAL CIVIL JUDGE AND J.M.F.C., SAGAR IN C.C.NO.175/2016 FOR THE OFFENCE P/U/S 138 OF NEGOTIABLE INSTRUMENTS ACT BY ALLOWING THIS CRL.RP.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri.K.V. Sateeshchandra, learned counsel for the revision petitioner and Sri.Bimbadhara H.M., learned counsel for the respondent.

2. Accused who has suffered an order of conviction for the offence under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') in C.C. No.175/2016 confirmed in CrI.A.No.10013/2020 is the revision petitioner.



3. Facts in the nutshell which are utmost necessary for disposal of the present revision petition are as under:

3.1 A private complaint filed under Section 200 of Cr.P.C came to be lodged by the complainant against the accused alleging the commission of offence punishable under Section 138 of the N.I. Act, contending that towards the repayment of the hand loan, a cheque in a sum of Rs.2,75,000/- bearing No.418008 drawn on Canara Bank, Alageri Mandri branch, came to be issued. The said cheque on presentation returned with an endorsement as "Insufficient Funds" on 05.11.2015.

3.2 Complainant got issued a legal notice demanding the payment covered under the cheque which has been served on the accused on 02.12.2015 and there was no reply nor compliance to the callings of notice and therefore action was sought.



3.3 The learned Trial Magistrate after completing the necessary formalities, summoned the accused. The accused pleaded not guilty and therefore the trial was held.

3.4 In order to prove the case of the complainant, he got examined himself as P.W.1 and placed on record dishonored cheque, bank endorsement, copy of the legal notice, postal acknowledgment.

3.5 As against the material evidence placed on record by the complainant, there is no defence evidence either oral or documentary. The cross-examination of P.W.1 did not lead any positive material so as to rebut the presumption available to the complainant under Section 139 of the N.I. Act.

3.6 Therefore, learned Trial Magistrate convicted the accused and sentenced him as under:

" Acting under Sec. 255(2) of Cr.P.C., the accused is hereby Convicted for the offence punishable under Section 138 of Negotiable Instrument Act.



It is ordered that the accused shall pay fine a sum of Rs.3,10,000/- for punishment of offence punishable under Section 138 of Negotiable Instrument Act and in default he shall undergo simple imprisonment for a period of 6 months.

Acting under Sec.357 (1) of Cr.P.C. it is ordered that out of fine amount a sum of Rs.3,00,000/- shall be paid to the complainant as compensation and remaining amount of Rs.10,000/- shall be deposited to the state.

The complainant is also entitled for interest of 9% P.A on the cheque amount from the date of this order till realization.

The Judgment copy shall be supplied to the accused on free of cost."

4. Being aggrieved by the same, the accused filed an appeal before the First Appellate Court in Crl.A.No.10013/2020.

5. Learned Judge of the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, dismissed the appeal of the accused.

6. Being further aggrieved by the same, the accused is before this Court in this revision petition.



7. Sri.K.V. Sateeshchandra, learned counsel for the revision petitioner reiterating the grounds urged in the revision petition would contend that the accused was working as a driver with the complainant and that for the purpose of ensuring proper driving of the vehicles and to prevent illegal goods being transported, the cheque in question was given as a security by the accused with the complainant. Thereafter, the accused left the job and settled in Bangalore.

8. In his absence, the complainant misused the cheque which was given as security and presented the same to the bank which admittedly got dishonored and therefore there was no legally recoverable debt covered under Ex.P.1 which has not been properly appreciated by both the Courts and sought for admitting the revision petition for further consideration.

9. Per contra, Sri.Bimbadhara H.M., learned counsel for the respondent supports the impugned judgment.



10. Having heard the arguments of both sides, this Court perused the material on record meticulously.

11. On such perusal of the material on record, it is crystal clear that the cheque given for security would also attract the offence under Section 138 of the N.I. Act as is held by the Hon'ble Apex Court in the case of ***Sripathi Singh vs. State of Jharkhand and another*** reported in ***(2022) 18 SCC 614***.

12. Further, the cheque in question belongs to the accused and the signature found thereon is that of the accused. There is an oral testimony of the complainant that the cheque in question came to be issued towards the repayment of the hand loan.

13. Thus, the learned Trial Magistrate was justified in raising the presumption in favour of the complainant as is contemplated under Section 139 of the N.I. Act as the initial burden has been discharged on behalf of the



complainant. Further, the said presumption is a rebuttable presumption.

14. In order to rebut the presumption, there is no material evidence placed on record by the accused. However in a given case, the accused can demonstrate before the Court and rebut the presumption available to the complainant by effective cross-examination of the complainant by filing an application under Section 145(2) of the N.I. Act as is held by the Hon'ble Supreme Court in the case of ***Rohitbhai Jivanlal Patel vs. State of Gujarat and another*** reported in ***(2019) 18 SCC 106***. In that direction, when the material on record is perused, there is no application filed under Section 145(2) of the N.I. Act by the accused. Nevertheless, since the P.W.1 was permitted to be cross examined by the learned Trial Magistrate, this Court has perused the cross-examination portion of P.W.1.

15. In such cross-examination except making suggestions that the cheque has been misused no other



useful material is elicited by the accused. Thus, the presumption available to the complainant remains unrebutted, which resulted in conviction of the accused by the learned Trial Magistrate which has been rightly re-appreciated by the learned Judge in the First Appellate Court.

16. Having regard to the limited scope of revisional jurisdiction, this Court does not find any one good grounds to interfere with the well reasoned judgments of both the Courts.

17. Accordingly, I pass the following :

ORDER

The Criminal Revision Petition stands ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

AMM
List No.: 1 Sl No.: 33