



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO. 538 OF 2026

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

BETWEEN:

1. MRS. KEERTHI KIRAN,
W/O SATHISH PRABHU,
AGED ABOUT 47 YEARS,
R/AT, SRINIDHI, GURJI CENTRE,
MANNAGUDDA, MANGALURU-575003
INTER-ALIA KEERTHI'S DENTAL CLINIC
NEAR PLATINUM THEATRE, FALNNIR,
MANGALURU-575 001.

...PETITIONER

(BY SRI. KISHORE KUMAR,ADVOCATE)

AND:

1. MRS. JACINTHA PHILOMINA VIVIAN PEREIRE,
W/O LATE VIVIAN JERALD PERIAR
AGED ABOUT 57 YEARS,
PRESENTLY R/AT C/O AREEJA VEGETABLE
OIL AND DERIVATIVES ASCO, POST BOX NO
22/RUSSAY 1,POSTAL CODE 124 MUSCAT,
PERMANENT ADDRESS
FLAT NO 202/203, CHARMAS ENCLAVE,
7TH CROSS, BEJAI NEW ROAD,
MANGALURU-575 004
REPRESENTED BY HER GPA
FLAVIE GENVIE FERNANDES

...RESPONDENT

(BY SRI. AJAY PRABHU M, 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 THAT THIS HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER PASSED BY THE COURT OF IV JMFC MANGALURU IN CC NO 948/2023, DATED 11.03.2025 FOR THE OFFENCES UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT B. CONSEQUENTLY, ALSO SET ASIDE THE ORDER PASSED BY THE COURT OF 3RD ADD DISTRICT AND SESSION JUDGE D.K, MANGALURU IN CRIMINAL APPEAL NO. 191/2025 DATED 07.01.2026 FOR THE OFFENCE UNDER SECTION 138 N.I ACT.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

This matter is listed for admission. Heard the learned counsel appearing for the respective parties.

2. This revision petition is filed against the concurrent finding of both the Courts.

3. The factual matrix of case of the complainant before the Trial Court is that the accused is a Dentist by profession and running her dental clinic at Falnir,



Mangaluru. The accused and the complainant as well as her now deceased husband-Vivian Pereira had known each other as friends and well-wishers for several years. On the foundation of the said friendship, somewhere towards the end of 2017, the accused has approached the complainant and her now deceased husband Vivian Pereira and requested them to invest a sum of Rs.42,85,362/- in setting up her new dental clinic known as "Keerthi Dental Clinic" at Falnir, Mangaluru and promised to pay good returns for their said investment by way of profit sharing in the ratio of 40:60 i.e., is 40% of the profit arising out of the said clinic to the complainant and her husband and 60% to the accused. As the complainant and her husband wanted to augment their income and also having regard to their long standing friendship with the accused, they have agreed to invest the said sum of Rs.42,85,362/-. In between 2017 and 2020, the complainant and her now deceased husband have invested a sum of Rs.42,85,362/-. Both of them were in touch with each other over the phone in the year 2018 and 2019 to enquire about the



profits of her dental clinic and to ask for their 40% share in the same and the accused kept telling them that full-fledged operations had not yet begun in her dental clinic and there were no profits available. The complainant and her husband believed the same, when she went on saying the same. When the husband of the complainant passed away on 01.03.2021, the complainant became the sole breadwinner for her family consisting of herself and her two children and she was burdened with responsibility. Hence, approached the accused and the accused had acknowledged to repay the amount and took time. In terms of document at Ex.P12, an agreement of understanding came into existence. Cheques were given and the said cheques were bounced. Thus, the complainant issued the legal notice and the same was served, but did not comply with the demand of the complainant. Hence, the complaint was filed.

4. The Trial Court took the cognizance. The Trial Court having considered the evidence of the complainant,



comes to the conclusion with regard to the transaction between the parties considering the document of Ex.P12 that accused has committed an offence punishable under Section 138 of Negotiable Instruments Act ('NI Act' for short) and convicted and sentenced the accused. The said judgment was challenged before the Appellate Court. The Appellate Court also considering the material on record, confirmed the judgment of the Trial Court.

5. The learned counsel appearing for the revision petitioner would vehemently contend that the issuance of cheque is not towards any liability, thus, there was no any legal liability to pay the amount. The counsel would vehemently contend that amount was invested for the business, that too on the profit basis. Hence, it will not attract Section 138 of NI Act. The counsel also would vehemently contend that both the Courts have not appreciated the factual aspects in a proper perspective and the very approach of both the Courts is erroneous. Thus, the impugned order suffers from its legality and



correctness. The counsel also would vehemently contend that the respondent has not proved Ex.P12-memorandum of understanding by examining the witnesses. Thus, the Trial Court and the Appellate Court ought to have acquitted the accused. The counsel also would vehemently contend that in the reply notice, the revision petitioner had taken specific defence that when there is no legally recoverable debt, the question of making the payment does not arise.

6. Per contra, the counsel appearing for the respondent would vehemently contend that this argument is advanced before this Court for the first time. The very transaction between the parties is not in dispute and investment is also not in dispute and entering into an agreement in terms of Ex.P12 is also not in dispute. The counsel would vehemently contend that in order to prove the defence of the accused, nothing was placed on record except examining herself as D.W.1. The counsel appearing for the respondent also would vehemently contend that



the scope of revision is very limited. When there is an agreement as per Ex.P12 and in pursuance of the agreement, cheques were issued and liability was acknowledged, now cannot contend that the same is not a legally enforceable debt.

7. Having heard the learned counsel appearing for the respective parties and considering the material on record, it is not in dispute that an investment was made to the tune of Rs.42,85,362/- by the complainant. It is also not in dispute that the dental clinic was started by the accused with the fund of Rs.42,85,362/- which was paid by the complainant. When the profit was not paid, on demand, subsequent to the death of the husband of the complainant, an agreement was entered in terms of Ex.P12. Consequent upon Ex.P12 only, the cheques were issued. When liability was acknowledged in terms of the document at Ex.P12 and also cheques were issued, now the petitioner cannot contend that there was no liability since issuance of cheque is not disputed and signature is



also not disputed and bouncing of cheques is also not disputed. The contention that it was only an investment and not liability cannot be accepted. Once it is admitted that amount was invested in the business of the accused and though agreed to pay 40% of profit from the said business, whether that 40% was paid or not is immaterial when the cheque was acknowledged by the accused. Hence, there is no perversity in the order of both the Courts. The very contention of the counsel for the petitioner that both the Courts have committed an error cannot be accepted. Hence, I do not find any substance in the contention of the learned counsel for the revision petitioner that there is no legal liability and it comes within the purview of Section 138 of NI Act once issued the Cheque acknowledging the liability. Hence, I do not find any ground to admit the revision petition.

8. In view of the discussions made above, I pass the following:



ORDER

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

**Sd/-
(H.P.SANDESH)
JUDGE**

SSD
List No.: 1 Sl No.: 34