



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. 1045 OF 2022

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

BETWEEN:

SMT. LAKSHMI
AGED ABOUT 46 YEARS
W/O MUNIRAM
R/AT MARALUSIDDESHWARA TEMPLE
M.G. ROAD, CHICKBALLAPUR - 562 101.

...PETITIONER

(BY SRI. PRATHAP K, ADVOCATE)

AND:

SRI. BASAVARAJU
S/O PEERAPPA
AGED ABOUT 50 YEARS
R/AT ASHWATHASHETTY HOUSE
2ND CROSS, ASHOKA NAGARA
VIJAYANAGARA TOWN
DEVANAHALLI - 562 110.

...RESPONDENT

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO A. SET ASIDE THE JUDGMENT DATED 13.12.2021
PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS
JUDGE AT DEVANAHALLI IN CRL.A.NO.15005/2020 WHEREBY
THE APPEAL WAS DISMISSED.





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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard learned counsel for the revision petitioner.
Respondent is served with the notice and remained absent.

2. Revision petitioner is the accused who has suffered an order of conviction in CC No.2686/2012 dated 05.11.2019 on the file of Additional Civil Judge and JMFC, Devanahalli which was confirmed by the First Appellate Court in Crl.A.No.15005/2020 dated 13.12.2021 on the file of V Additional District Judge, Bengaluru Rural District, Devanahalli for the offence punishable under Section 138 of the Negotiable Instruments Act.

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

3.1. A private complaint came to be filed with the jurisdictional Magistrate under Section 200 of Cr.P.C. alleging the commission of offence punishable under Section 138 of the



Negotiable Instruments Act by contending that complainant is well acquainted with the accused who approached him for hand loan of Rs.2,10,000/- for the purpose of construction of a house and she agreed to repay the same within a short period of time.

3.2. Thereafter, accused failed to repay the same despite repeated demands and ultimately issued a cheque bearing No.193962 dated 25.05.2012 in a sum of Rs.2,10,000/- drawn on Vijaya Bank, Chikkaballapura Branch which on presentation came to be dishonored with an endorsement funds insufficient.

3.3. There was no compliance to the callings of the legal notice and there was no reply. Therefore, complainant sought for action against the accused.

4. Thereafter, learned Trial Magistrate after taking cognizance for the offence alleged against the accused, summoned the accused and recorded the plea. Accused pleaded not guilty and therefore, trial was held.



5. In order to bring home the guilt of the accused, complainant got examined himself as P.W.1 and placed on record seven documents which were exhibited and marked as Exs.P.1 to P.7 comprising of dishonored cheque, copy of the legal notice, postal acknowledgements and postal receipt.

6. As against the material evidence placed on record, accused got examined herself as D.W.1 but failed to place any documentary evidence on record.

7. Thereafter, learned Trial Magistrate heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record, convicted the accused disbelieving the defence taken by the accused that there is a misuse of the cheque issued to Smt.Latha by the accused and convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and ordered to pay sum of Rs.2,50,000/- as the fine amount of which sum of Rs.2,40,000/- is ordered to be paid as compensation to the complainant and balance sum of Rs.10,000/- towards defraying expenses of the State with default sentence of three months simple imprisonment.



8. Being aggrieved by the same, accused filed an appeal before the First Appellate Court in CrI.A.No.15005/2020.

9. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappreciation of the material evidence placed on record, dismissed the appeal filed by the accused and confirmed the order of conviction and sentence.

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

11. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition vehemently contended that cheque in question came to be issued in favour of Smt.Latha which has been misused by the complainant and therefore, sought for allowing the revision petition.

12. He would further contend that there was no proper service of legal notice and therefore, conviction of the revision petitioner is bad in law.



13. He also pointed out that material evidence placed on record is not sufficient to convict the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sought for allowing the revision petition.

14. In the light of the arguments put forth on behalf of the respondent, this Court perused the material on record meticulously.

15. On such perusal of the material on record, it is crystal clear that Ex.P.1 – cheque belongs to the accused and signature found therein is that of the accused.

16. According to the complainant, cheque in question came to be issued for repayment of the hand loan.

17. Learned Trial Magistrate based on the oral testimony of P.W.1 coupled with the documentary evidence, raised presumption under Section 139 of the Negotiable Instruments Act which is rebuttable in nature.

18. To rebut the said presumption, accused got examined herself as D.W.1 and stated that she is acquainted with Smt.Manjula and Smt.Latha is her friend.



19. It is her case that Smt.Manjula has sought for Rs.50,000/- financial assistance and she would repay the same after obtaining the same from Smt.Latha.

20. At this juncture, accused said to have demanded money from Smt.Latha for which Smt.Latha took two cheques of Smt.Manjula and two cheques of accused and paid Rs.30,000/- in January first week and balance sum of Rs.20,000/- in February.

21. Cheques were not returned and it was kept as a security which has been misused by the complainant.

22. In her cross-examination, she admits the address mentioned in Exs.P.6 and 7 which is the postal acknowledgements where under notice has been served on the address mentioned in postal acknowledgement.

23. She has stated that Smt.Latha is resident of Vijayapur and she is her friend. She has further admitted in her cross-examination that there is no document to establish the transaction between her and Smt.Latha.



24. However, she used to pay Rs.5,000/- every week and she used to hand over the same to a person as directed by Smt.Latha.

25. In her further cross-examination, she admits that Ex.P.1 – cheque belongs to her and admits that address mentioned in Exs.P.6 and 7 is her address.

26. Taking note of these aspects of the matter, learned Trial Magistrate noted that presumption available to the complainant under Section 139 of the Negotiable Instruments Act is not rebutted in the absence of examining Smt.Latha and failed to prove the transaction between Smt.Latha and the accused.

27. Further, learned Judge in the First Appellate Court reappreciating the material evidence on record, dismissed the appeal on merits.

28. Thus, the theory of misuse of the cheque retained by Smt.Latha through complainant having failed, the presumption available to the complainant is not rebutted. Therefore, order of conviction recorded by the learned Trial



Magistrate confirmed by the First Appellate Court needs no interference by this Court that too in the revisional jurisdiction.

29. Accordingly, following:

ORDER

Revision petition is ***dismissed***.

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

KAV
List No.: 1 Sl No.: 22