



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. 1214 OF 2022

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

BETWEEN:

SRI. PREETHAM
S/O LATE CHANDRASHEKHAR,
AGED ABOUT 38 YEARS,
R/AT NO.B-1/SFS-87,
SECTION B, YELHANKA NEW TOWN,
BANGALORE - 560 064.

...PETITIONER

(BY SRI. MANJUNATHA S.N, ADVOCATE)

AND:

BYREGOWDA A
S/O AKKALAPPA,
AGED IN MAJOR,
R/AT HONNENAHALLI VILLAGE,
MANCHANABELE POST,
CHIKKABALLAPURA TALUK
AND DSITRICT - 562 101.

...RESPONDENT

(BY SRI. A. MAHESH CHOWDHARY, ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.PC
PRAYING TO SET ASIDE THE IMPUGNED CONVICTION ORDER
DATED 02.12.2017 IN C.C.NO.31/2017 PASSED BY THE 1st



ADDL.CIVIL JUDGE AND J.M.F.C AT CHIKKABALLAPURA AND SAME WAS CONFIRMED BY THE III ADDL.DISTRICT AND SESSIONS JUDGE AT CHIKKABALLAPURA IN CRL.A.NO.02/2018 BY ITS JUDGMENT DATED 06.06.2022.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Heard Sri.Manjunatha S. N., learned counsel for the revision petitioner and Sri.A.Mahesh Chowdhary, learned counsel for the respondent.

2. Accused who has suffered an order of conviction in CC No.31/2017 dated 02.12.2017 on the file of I Additional Civil Judge and JMFC, Chikkaballapur which was confirmed in Crl.A.No.2/2018 dated 06.06.2022 on the file of III Additional District and Sessions Judge, Chikkaballapur for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') is the revision petitioner.

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



3.1. A private complaint came to be lodged under Section 200 of Cr.P.C. alleging the commission of the offence punishable under Section 138 of the N.I. Act by contending that accused borrowed sum of Rs.15,00,000/- from the complainant agreeing to repay the same with interest at 24% p.a. within one year.

3.2. Towards repayment of the hand loan, a cheque bearing No.252034 dated 09.02.2015 drawn on Canara Bank, Yelahanka Satellite Town Branch, Bengaluru came to be issued which on presentation came to be dishonored with an endorsement 'funds insufficient'.

3.3. Complainant demanded the payment covered under the cheque by issuing a legal notice on 26.02.2015.

3.4. Accused neither failed to comply the callings of the legal notice nor issued any reply. Therefore, complainant sought for action against the accused.

4. Learned Trial Magistrate after completing necessary formalities, 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 ten documents which were exhibited and marked as Exs.P.1 to P.10 comprising of dishonored cheque, bank endorsement, copy of the legal notice, postal acknowledgement, correspondence to the post office, certified copy of the sale deed, bank statement.

6. As against the material evidence placed on record by the complainant, accused got examined himself as D.W.1 and placed on record two documents namely certified copy of the sale deed and certified copy of the mortgage deed marked as Exs.D.1 and D.2.

7. Learned Trial Magistrate on conclusion of recording of the evidence, heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence placed on record, convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced as under:

"By exercising the power conferred under Sec. 255(2) of the Cr.P.C. the Accused is hereby convicted for the



offence punishable under Sec.138 of Negotiable instrument Act.

The accused is sentenced to undergo simple imprisonment for six months for the offence punishable under Sec.138 of Negotiable instrument Act.

The accused is sentenced to pay a fine of Rs.15,80,000/,(Rupees Fifteen Lakhs and Eighty Thousand), out of which, sum of Rs.5,000/- (Rupees Five Thousand) shall go to State as penalty and remaining amount shall be paid to the complainant as compensation.

In default of payment of fine, the accused shall under simple imprisonment for a period of 3 months, in addition to the above said imprisonment.

The bail bond and surety bond of the accused is hereby stands cancelled.

Free copy of this judgment shall be given to the accused."

8. Being aggrieved by the same, the accused filed an appeal before the First Appellate Court in Crl.A.No.2/2018.

9. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties and on reappraisal of the material evidence on record, dismissed the appeal filed by the accused by judgement dated 06.06.2022.



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

11. Learned counsel for the petitioner reiterating the grounds urged in the revision petition, vehemently contended that both the Courts have not properly appreciated the defence taken by the accused that the three cheques issued by the accused towards the chit transaction has been misused and that there was no liability of sum of Rs.15,00,000/- with the complainant by the accused and therefore sought for allowing the revision petition.

12. He further emphasized that the sister of the complainant had also filed a case based on one of the cheques which has been taken as security towards the chit transaction, which resulted in acquittal. Thereafter, the present complaint came to be filed through the brother by Smt.Anusuyamma with whom the accused had the chit transaction and therefore sought for admitting the revision petition for further consideration.

13. Per contra, learned counsel for the respondent supports the impugned judgments.



14. Having heard the arguments of both sides this Court perused the material on record meticulously. On such perusal of the material on record, there is no dispute that the cheque-in question belongs to the accused and signature found therein is that of the accused.

15. Further, according to the complainant, there was a loan transaction of Rs.15,00,000/- between the accused and complainant. Towards the repayment the cheque-in question came to be issued. There is no reply to the callings of the legal notice. All these factors were sufficient enough to the learned Trial Magistrate to raise the presumption in favour of the complainant under Section 139 of the N.I. Act.

16. No doubt it is a rebuttable presumption. To rebut the said presumption, the accused got examined himself as D.W.1 and specifically stated before the Court that towards the chit transaction run by sister of the complainant, namely Smt.Anusuyamma, three cheques were given to her and one such cheque has been misused by the complainant after a case filed by Smt.Anusuyamma against the accused, stood acquitted for the offence punishable under Section 138 of the N.I. Act.



17. To substantiate the said aspect of the matter, there is no material evidence placed on record. What was the chit amount and when did the chit transaction with Smt.Anusuyamma commenced and when it ended and whether the accused was a prized subscriber and what was the liability if accused is a prized subscriber are not forthcoming on record.

18. Crowning all these aspects of the matter, neither Smt.Anusuyamma is neither examined nor any other person who participated in the chit transaction been examined by the accused.

19. Further, if it is the case of the accused that there is a misuse of the cheque issued to Smt.Anusuyamma, no normal prudent person would keep quiet if a cheque in a sum of Rs.15,00,000/- is misused without taking any positive action against Smt.Anusuyamma as well as the complainant.

20. In this regard and non-reply to the callings of legal notice is sufficient enough to expose the hollowness of the defence that has been taken by the accused which has been rightly appreciated by both the Courts while ordering the conviction and maintaining the same.



21. However, purpose of enacting Section 138 of the N.I. Act is not to penalise a person. Primarily said provision is enacted to recover the money covered under the cheque at the earliest.

22. Taking note of the fact that if the accused pays the fine amount as ordered by learned Trial Magistrate and confirmed by the First Appellate Court, the sentence of imprisonment stands set aside, it is hereby ordered that if the accused pays the fine amount as ordered by the learned Trial Magistrate on or before 15.04.2026, the sentence of imprisonment stands set aside.

23. Hence, following:

ORDER

(i) The Criminal Revision Petition is
allowed in part.

(ii) While maintaining the conviction of the accused for the offence under Section 138 of the N.I. Act, balance of the fine amount as ordered by learned Trial Magistrate and



confirmed by the First Appellate Court shall be paid on or before 15.04.2026 in which event the sentence of imprisonment stands set aside.

(iii) If the accused fails to pay the said amount on or before 15.04.2026, the sentence as ordered by the learned Trial Magistrate and confirmed by the First Appellate Court stands restored automatically.

Sd/-
(V SRISHANANDA)
JUDGE

KAV,AMM
List No.: 1 SI No.: 27