



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. 1253 OF 2021

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

BETWEEN:

KHALID AHAMMED
S/O N.K. GULAM AHAMED
AGED ABOUT 51 YEARS
R/O 3949, AZAD ROAD,
HASSAN - 573 201.

...PETITIONER

(BY SRI. PRATHEEP K.C, ADVOCATE)

AND:

MALLESH GOWDA
S/O MANJEGOWDA
AGED ABOUT 48 YEARS
R/AT PIRUMANAHALLI VILALGE,
HANUMANTHAPURA POST,
HASSAN TALUK, HASSAN - 573 201.

...RESPONDENT

Digitally
signed by R
MANJUNATHA
Location:
HIGH COURT
OF
KARNATAKA

(BY SRI. HARSHA D, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT DATED 22.09.2021
PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS
JUDGE AT HASSAN IN CRL.A.NO.264/2019 AND JUDGMENT IN
C.C.NO.6338/2016 DATED 11.09.2019 ON THE FILE OF THE
PRINCIPAL CIVIL JUDGE AND JMFC AT HASSAN AND ACQUIT
THE PETITIONER FOR THE OFFENCE P/U/S.138 OF NI ACT.

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.Pratheep K. C., learned counsel for the revision petitioner and Sri.Harsha D., learned counsel for the respondent.

2. Accused who has suffered an order of conviction in CC No.6338/2016 dated 11.09.2019 on the file of Principal Civil Judge and JMFC, Hassan confirmed in CrI.A.No.264/2019 dated 22.09.2021 is the revision petitioner.

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

3.1. A private complaint under Section 200 of Cr.P.C. came to be filed by the respondent against the revision petitioner herein alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act by contending that towards the legally recoverable debt, accused herein issued a cheque bearing No.927938 dated 31.08.2016 in a sum of Rs.12,00,000/- drawn on Bank of India,



Hassan branch, which on presentation came to be dishonored with an endorsement 'funds insufficient'.

3.2. Legal notice was issued calling upon the payment of amount covered under the cheque. Though the legal notice is duly served, there is no compliance nor reply by the accused. Thereafter, complainant has sought for action against the accused.

4. Learned Trial Magistrate after completing necessary formalities, secured the presence of the accused and recorded the plea. Accused pleaded not guilty and therefore, trial was held.

5. In order to prove the case of the complainant, he got examined himself as P.W.1 and one witness by name C.B.Chandrashekar as P.W.2.

6. He placed on record, seven documents which were exhibited and marked as Exs.P.1 to P.7 comprising of dishonored cheque, bank endorsement, copy of the legal notice, postal acknowledgement, copy of the sale deed dated 15.07.2016 and account extract.



7. As against the material evidence placed on record by the complainant, accused got examined himself as D.W.1 and two witnesses by name Hemanth Kumar P. Theertha and Tarani Pradhan as D.W.2 and 3 and placed on record four documents which were exhibited and marked as Exs.D.1 to D.4 comprising of sale deed dated 31.08.2016, mutation register extract, RTC extract and account extract.

8. Learned Trial Magistrate after conclusion of recording of the evidence, heard the arguments of the parties and convicted the accused *inter alia* holding in paragraph Nos.16 to 19 as under and convicted the accused and sentenced as under:

"16. The learned Counsel for the accused put much stress on Ex.P.2 and 3 and argued that there are corrections in both documents. Ex.P.2 is an endorsement given by the bank. The complainant has stated that he does not know who has made correction. The learned Counsel for the complainant argued that the bank authorities might have made correction if there was mistake. Ex.P.2 reflects the date as 18-10-2016. The same date is also appearing on the seal of TGMC bank in Ex.P.1. In such circumstances, that correction is not of much consequence. As regards notice at Ex.P.3 is concerned



the same date is mentioned in Ex.P.4 postal receipt. The complainant has to give notice within 30 days from the date of dishonor and Ex.P.4 reflects that the notice was issued within stipulated time. Hence, the said correction with respect to date in notice is also of not much consequence.

17. The learned Counsel for the accused also put much stress on the evidence of bank officials and argued that all the endorsements as mentioned in the complaint are not produced. The cheque was not presented on 31-8-2016. If the same was presented on 31-8-2016 it would have been honored. But as on the said date also the amount in the account of accused was less than the amount mentioned in the cheque. It is clear from the evidence and documents that the cheque was presented twice and the same was dishonored for want of funds. Merely because the complainant has not produced all the endorsements it is not a fatal to the case. The complainant can present cheques for any number of times within the time of validity. The cheque was presented within the time of validity and the notice was issued within stipulated time from the date of dishonor on 18-10-2016.

18. PW1 and 2 have specifically denied that the cheque was given towards commission to PW2 and the same has been misused. It is stated that the accused has purchased one property in the month of June 2016 and at that time he was in need of money. It is also clear from the records that that accused has



purchased property at that time. The accused has taken contention that cheque given towards commission to PW2 is misused. If that is so, he could not have kept quiet without initiating any action. He has also not replied for the notice. Even at the time of recording 313 statement also he has not stated anything regarding misuse of his cheque. The learned Counsel for the accused relied on a decision reported in 2019 Cr.R.481 between Gurumallesh v. G.Ramesh. He argued that the complainant has failed to prove legally recoverable debt. He has not produced any document to show transaction. But by considering the facts and circumstances, the same is not helpful to the accused. He has not denied signature. By considering the facts and circumstances, there is no reason to disbelieve the contention taken by the complainant. Hence, it can safely be held that the accused has issued cheque in discharge of amount due to the complainant.

19. Perusal of oral evidence coupled with documentary evidence reveals that there are sufficient grounds to hold that the accused has issued a cheque for legally recoverable debt and has not repaid the amount inspite of having knowledge about dishonor of cheque. Hence, the accused has committed an offence punishable under Section 138 of NI Act. Accordingly, Point No.1 is answered in the Affirmative."



9. Being aggrieved by the same, accused filed an appeal before the First Appellate Court in Crl.A.No.264/2019.

10. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and dismissed the appeal filed by the accused after reappreciating the material evidence on record *inter alia* holding in paragraph Nos.28 to 32 as under:

"28. On perusal of the materials placed before the trial court, it is clear that the cheque was presented twice and the same was dishonoured for want of funds. The complainant can present cheques for any number of times within the time of validity. The cheque in question was presented within the time of validity and even notice is also issued within stipulated time.

29. The complainant has produced Ex.P.7, his bank loan extract which discloses that as on 21.01.2016, outstanding loan amount was Rs.25,00,000/- and he repaid the said loan. So, Ex.P.7 supports the version of the complainant that he lent money to the accused out of loan amount availed by him. So the complainant was having financial capacity to lend a loan to the accused.

30. Further it is important to note that defence side during cross-examination of P.W.1 suggests that he misused the cheque received from Krishnakumar



which was given to him at the time of Ex.D.1 sale deed. But during cross-examination of P.W.2, it is suggested by defence counsel to the effect that accused issued cheque to him towards commission of Rs.12,000/- and he in turn gave the said cheque to the complainant.

31. But the accused D.W.1 during his evidence states that he issued both cheques to Krishnakumar at the time of sale deed and he issued blank cheque to Chandrashekhar towards commission amount of Rs.12,000/- and complainant received the cheque from the said Chandrashekhar. So, the version of accused is changed from stage to stage. Accused / appellant has not placed any material to show that he issued cheque to Chandrashekhar towards commission and in turn the said cheque was received by the complainant and the same was misused. Further accused has not initiated any criminal proceedings against Chandrashekhar or complainant on the allegation that they got misused the cheque which was issued to Krishnakumar or to Chandrashekhar towards commission. Further the accused has not issued any reply to the demand notice issued by the complainant. Further it is important to note that the accused has not got examined Krishnakumar in support of his contentions. So, absolutely no materials placed before the court that the complainant/ respondent misused the cheque in question. So, when accused admitted his signature to the cheque marked at Ex.P.1, the presumption can be drawn under the



provisions of Sec.139 of Negotiable Instruments Act that the cheque has been issued by the accused in order to discharge his liability.

32. On perusal of the materials placed before the Court, it is clear that accused has issued cheque as per Ex.P.1 towards discharge of liability. Under the provisions of Sec.138 of Negotiable Instruments Act, once a cheque has been signed or issued in favour of the holder, there is statutory presumption that it is debt or liability. The said presumption is rebuttable if the issuer of cheque is able to discharge the burden that it was issued for some other purpose. After dishonour, the drawer of cheque incurs liability of presumption under section 138 of Negotiable Instruments Act. In the present case, the accused has not produced materials to rebut the presumption available against him. So, considering the materials placed before it, the trial court has rightly come to the conclusion that complainant has established and fulfilled the ingredients of Sec.138 and 142 of Negotiable Instruments Act and convicted the accused for the offence punishable under section 138 of Negotiable Instruments Act. So, the order of conviction passed by the trial court is not erroneous. Hence, there is no need to interfere with the judgment passed by the trial court. The appellant/accused has not made out grounds to allow the appeal and the appellant has failed to establish that impugned judgment passed by learned Magistrate is arbitrary



and capricious. Hence, appeal is devoid of merits.

Accordingly, Point No.1 is answered in the 'Negative.'

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

12. Learned counsel for the revision 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 and material evidence placed on record on behalf of the accused and wrongly convicted the accused resulting in miscarriage of justice.

13. He would further contend that cheque was actually issued to Sri Krishna Kumar who in turn gave it to the complainant who is a totally stranger to accused. It is pertinent to note that there is no mention in the complaint or legal notice as to the nature of transaction between the complainant and the accused which exposes the hollowness in the case of the complainant and sought for admitting the revision petition for further consideration.



14. Per contra, learned counsel for the respondent opposes the revisional grounds.

15. He would support the impugned judgments by contending that material evidence placed on record has been discussed at length both by learned Trial Magistrate as well as the learned Judge in the First Appellate Court assailing the cogent reasons for conviction of the accused and therefore, sought for dismissal of the revision petition.

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

17. On such perusal of the material on record, there is no dispute that the cheque marked at Ex.P.1 belongs to the accused and signature found therein is that of the accused.

18. The material evidence placed on record including the oral testimony of P.W.1 and 2 would make it clear that cheque in question came to be issued by the accused towards legally recoverably liability.

19. Thus, the learned Trial Magistrate was justified in raising the presumption in favour of the complainant as is



contemplated under Section 139 of the Negotiable Instruments Act as there is an initial discharge of the burden cast on the complainant.

20. No doubt, it is a rebuttable presumption.

21. In order to rebut the said presumption, not only accused got examined himself but he also examined two more witnesses and placed on record four documents as referred to supra.

22. According to the accused, cheque in question was issued to Sri Krishna Kumar in respect of some other sale transaction and said cheque has been misused by the complainant having obtained the same from Krishna Kumar and therefore, there was no legally recoverable debt that was covered under Ex.P.1 and there is no mention about the nature of transaction that existed between the complainant and accused in the complaint as well as the contents of the legal notice marked at Ex.P.3.

23. Learned Trial Magistrate as well as learned Judge in the First Appellate Court discussed the said aspect of the



matter in detail as referred to supra while convicting the accused and upholding the order of conviction respectively.

24. Assuming that the cheque is misused by the complainant in active collusion with Krishna Kumar, as a normal prudent person, accused must have taken action against the Krishna Kumar as well as the complainant for the alleged misappropriation of the cheque.

25. No such action has been taken. There is no reply to the callings of the legal notice. Therefore, defence set up by the accused is illusory in nature.

26. Further, nothing prevented the accused to summon Krishna Kumar and examine him to establish that the cheque which was given to him has been handed over to the complainant which has been misused.

27. All these aspects of the matter when viewed cumulatively, learned Trial Magistrate recorded a categorical finding that the defence evidence was not sufficient to rebut the presumption available tot the complainant which has been



rightly reappreciated by the learned Judge in the First Appellate Court as referred to supra.

28. Taking note of the limited revisional jurisdiction, this Court does not find any good grounds to interfere with the orders of the learned Trial Magistrate confirmed by the First Appellate Court.

29. Accordingly, following:

ORDER

Revision petition is ***dismissed***.

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

KAV
List No.: 1 Sl No.: 17