



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1258 OF 2022

BETWEEN:

1. MR ARUN KUMAR B
S/O SRI LINGE GOWDA
AGED ABOUT 57 YEARS
R/A NO.J-1006, 10TH FLOOR
MALLESHWARAM WEST
BENGALURU - 560 055
2. MRS CHYTHRA ARUN KUMAR
W/O MR ARUN KUMAR B
AGED ABOUT 32 YEARS
R/AT NO.J-1006, 10TH FLOOR
MALLESHWARAM WEST
BENGALURU - 560 055

...PETITIONERS

(BY SRI. C. ANANTHA KUMAR, ADVOCATE)

AND:

1. MS KUSUMA SUDHAKAR
AGED ABOUT 57 YEARS
W/O. SRI SUDHAKAR RAJACHAR
R/AT NO.1020, FLAT NO.402
HEMADHRI RESIDENCY
4TH FLOOR
1ST MAIN, 4TH BLCOK
RAJAJINAGAR
BENGALURU - 560 010

Digitally
signed by R
MANJUNATHA
Location:
HIGH COURT
OF
KARNATAKA



2. MR SUDHAKAR RAJACHAR
AGED ABOUT 61 YEARS
R/AT NO.1020, FLAT NO.402,
HEMADHRI RESIDENCY
4TH FLOOR, 1ST MAIN, 4TH BLOCK
RAJAJINAGAR
BENGALURU - 560 010

...RESPONDENTS

(BY SRI. ADITHYA R. CHAKRAGIRI, ADVOCATE)

THIS CRL.RP 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 ORDER PASSED BY THE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU IN CRL.A.NO.282/2020 DATED 23.06.2022, AND SET ASIDE THE ORDER PASSED BY XIII ADDL.CHIEF METROPOLITAN MAGISTRATE AT BENGALURU OUT OF C.C.NO.17466/2016 DATED 16.01.2020 AND CONSEQUENTLY ACQUIT THE PETITIONERS.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

1. Accused who suffered an order of conviction in CC No.17446 of 2016 confirmed in Criminal Appeal No.282 of



2020 for the offence punishable under Section 138 of the Negotiable Instruments Act, is the revision petitioner.

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

3.1 A private complaint under Section 200 of the Code of Criminal Procedure came to be filed alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act by contending that complainant and accused are known to each other.

3.2 It is further contention that the complainants were engaged in advertisement agency business and also ventured into real estate business.

3.3 It is also case of the complainants that accused persons approached the complainants for financial assistance to the tune of Rs.85,00,000/- during the month of July 2015 to meet their immediate financial necessity. A sum of Rs.85,00,000/- was thus lent to the accused by obtaining overdraft facility from their bank namely Punjab



National Bank, Peenya Branch, Bangalore and the said amount was transferred to the account of the accused on 14.08.2015 and 17.08.2015 in a sum of Rs.65,00,000/- and Rs.20,00,000/- respectively.

3.4 Accused persons said to have issued a letter of undertaking in favour of the complainants acknowledging the receipt of loan amount and also assured the complainants to repay the same within fifteen days.

3.5 However, there was no repayment even after fifteen days, complainants insisted for the repayment. Thus, after repeated demands, two post-dated cheques bearing Nos.529178 in a sum of Rs.65,00,000/- and 623592 in a sum of Rs.20,00,000/- were issued, which on presentation came to be dishonored with an endorsement 'funds insufficient'.

3.6 A legal notice was issued calling upon the accused to repay the said amount within fifteen days. Notices were duly served but there was no reply nor



compliance of the calling of notice which resulted in seeking action against the accused.

3.7 Learned Trial Magistrate after considering the relevant aspects of the matter completed the necessary formalities and summoned the accused and recorded plea. Accused pleaded not guilty, therefore trial was held.

3.8 In order to prove the case of the complainant, one of the complainants namely Sudhakar Rajachar was examined as PW1 and seventeen documentary evidence were placed on record comprising of dishonored cheque, bank endorsement, copy of the legal notice, postal acknowledgment, letter issued by the Punjab National Bank, Peenya, Power of Attorney, certified copy of the absolute sale deed, Account Ledger Extract, letter of undertaking.

3.9 As against the material evidence placed on record, there is no defence evidence either oral or documentary, placed on record.



3.10 Thereafter, learned Trial Magistrate heard the arguments of the parties and noting that the complainants were successful in establishing that there existed a legally recoverable debt and cheques in question were issued towards the repayment of the loan amount and thus drawn the presumption available to the complainants under Section 139 of the Negotiable Instruments Act.

3.11 Being aggrieved by Order of conviction, accused persons filed an appeal before the District Court in Crl.Appeal No.282/2020. Learned Judge in 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.

3. Being further aggrieved by same, accused persons are before this Court in this revision petition.

4. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition, contented that



even in the absence of any defence evidence placed on record, presumption available to the complainant can be successfully rebutted as is held by the Hon'ble Apex Court in the case of ***Rohit Bhai Jivanlal Patel vs. State of Gujarat*** reported in ***(2019) 18 SCC 106*** and therefore the conviction of the accused persons by the Court below confirmed by the Trial Magistrate, confirmed by the First Appellate Court is suffering from legal infirmity besides resulted in miscarriage of justice and sought for admitting the revision petition for further consideration.

5. It is further contended that the answers elicited in the cross-examination of PW1 would be sufficient enough to hold that the complainants were not having the capacity to lend a huge sum of Rs.85,00,000/- and therefore the presumption drawn by the learned Trial Magistrate and mechanically confirmed by the First Appellate Court, needs to be set-aside by admitting the revision petition for further consideration.



6. Per contra, counsel for respondent supports the impugned orders.
7. Having heard the arguments of both sides, this Court perused the matter on record meticulously.
8. On such perusal of the material on record, it is crystal clear that Exhibit P1 and Exhibit P2 - cheques belonged to the revision petitioner and signature found therein is that of the revision petitioners.
9. Admittedly, a sum of Rs.85,00,000/- was lent by the complainants through bank transfer.
10. In fact, to lend such a huge sum of money, complainants themselves have drawn the same from the Punjab National Bank through overdraft.
11. In the cross-examination of PW1, no doubt a suggestion is made to the effect that they did not possess such amount so as to lend the same.



12. In other words, lending capacity of the complainants is challenged by the accused person during the course of cross-examination of PW1. But there is a specific answer in the cross-examination by PW1 to the effect that the property which was standing in the name of his wife has been mortgaged with the bank and overdraft has been obtained and thereafter the same amount was lent to the accused persons.

13. In that regard, there is a document that has been placed on record by the complainants themselves which is Exhibit P14 and Exhibit P15.

14. Letter depositing the documents of title deeds of the wife of PW1 is marked at Exhibit P17.

15. Moreover, the lending capacity of the complainants having been established by placing necessary materials, initial burden has been discharged by the complainants so as to raise the presumption available to the complainants under Section 139 of the Negotiable Instruments Act, as is



held in the case of ***Rangapa vs. Sri Mohan*** reported ***(2010) 11 SCC 441*** and ***Rajesh Jain vs. Ajay Singh*** reported in ***(2023) 10 SCC 148***.

16. Therefore, the contentions urged on behalf of the revision petitioners that the answers elicited in the cross-examination was sufficient enough to rebut the presumption availed to the complainant cannot be countenanced as in law especially in view of non-placing of any rebuttal evidence on record.

17. When once the complainant is successfully established before the Court that he had borrowed the money from Punjab National Bank by mortgaging the property of the wife of PW1 and obtained overdraft, there cannot be any further proof that the complainant is required to place it before the Court and burden shifts on the accused to rebut the presumption.

18. In the absence of any rebuttal evidence, the principles enunciated in ***Rohit Bhai*** supra would not be of



no avail to the revision petitioners to seek for interference of well reasoned orders passed by the Trial Magistrate confirmed by the First Appellate Court having regard to the limited scope of judicial jurisdiction.

19. Accordingly, from the above discussion, following order:

ORDER

(i) Revision Petition is meritless and hereby ***dismissed.***

(ii) Amount in deposit is ordered to be withdrawn by the complainant under due identification.

(iii) Balance amount to be paid on or before **10.04.2026.**

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

SNC
List No.: 1 Sl No.: 3