IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 112 OF 2020

BETWEEN:

MR. D.M. NAIDU
AGED ABOUT 54 YEARS
S/O DORESWAMY NAIDU
R/AT NO.21/1, 1ST CROSS
K.A.S. MUNESHWARA BLOCK
PALACE GUTTAHALLI
KASTURBA NAGAR
JAKKUR, BENGALURU - 560 003.

...PETITIONER

(BY SRI PRAVEEN HEGDE, ADV.)

AND:

MR. D. KRISHNA
AGED ABOUT 41 YEARS
S/O LATE DONDONE
R/AT NO.G-60, V.B LANE
COTTONPET CROSS
BENGALURU - 560 053.

...RESPONDENT

(BY SRI HARI PARASAD U.J, ADV.)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 29.08.2019 IN CRL.A.NO.266/2013 DISMISSING THE APPEAL, CONFIRMING THE ORDER OF CONVICTION DATED 18.04.2013, PASSED BY THE XII A.C.M.M., AT BENGALURU IN C.C.NO.3082/2007, SENTENCING THE PETITIONER FOR THE OFFENCE P/U/S 138A OF THE N.I ACT.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused is before this Court in this criminal revision petition filed under Sections 397 read with 401 of Cr.PC with a prayer to set aside the judgment and order dated 18.04.2013 passed in CC.No.3082/2007 by the Court of XII Addl. Chief Metropolitan Magistrate, Bengaluru, and the judgment and order dated 29.08.2019 passed in Crl.A.No.266/2013 by the Court of LXI Addl. City Civil & Sessions Judge, Bengaluru.

2. Heard the learned Counsel for the parties.

3. Respondent herein had initiated proceedings against the petitioner before the jurisdictional court of Magistrate in CC.No.3082/2007 for the offence punishable under Section 138 of N.I.Act.

4. The case of the respondent-complainant is that petitioner had borrowed a sum of Rs.5 lakhs from him and towards repayment of the said amount, had issued the cheque in question bearing No.845714 dated 13.11.2026 for a sum of Rs.5 lakhs drawn on Syndicate Bank, Palace Guttahalli Branch, Bengaluru, in his favour. The said cheque was dishonoured

when presented for realization by the drawee bank with an endorsement 'payment stopped by drawer'. The legal notice got issued on behalf of the complainant to the petitioner was duly served. However, the petitioner had not paid the amount covered under the cheque in question inspite of service of notice, and on the other hand, an untenable reply was issued on his behalf. It is under these circumstances, the complainant had approached the jurisdictional Magistrate by filing a private complaint against the petitioner for the offence punishable under Section 138 of the N.I.Act.

5. In the said proceedings, the Trial Court had convicted the petitioner for the offence punishable under Section 138 of the N.I.Act and sentenced him to pay fine of Rs.8 lakhs and in default, to undergo simple imprisonment for a period of six months. The said judgment and order of conviction and sentence passed by the Trial Court was confirmed in Crl.A.No.266/2013 by judgment and order dated 29.08.2019 by the Court of LXI Addl. City Civil & Sessions Judge, Bengaluru. It is under these circumstances, petitioner is before this Court.

6. Learned Counsel for the petitioner submits that proper opportunity to cross-examine PW-1 was not given to the petitioner. The cheque in question was issued as security towards the loan transaction between the complainant and the friends of the petitioner herein viz., Prakash and Mohiddin. He submits that the said cheque was misused by the complainant for initiating the present proceedings against him. He also submits that the cheque in question was a blank signed cheque which was subsequently filled up by the respondent. The courts below have failed to consider the aforesaid aspects of the matter and erred in convicting the petitioner for the aforesaid offence.

7. Per contra, learned Counsel for the respondent has argued in support of the judgment and order passed by the courts below and has prayed to dismiss the petition.

8. Perusal of the material on record would go to show that the Trial Court had initially convicted the petitioner for the offence punishable under Section 138 of the N.I.Act in the present case by judgment and order dated 18.12.2008. The said judgment and order of conviction and sentence passed by

the Trial Court was confirmed in Crl.A.No.101/2009, and therefore, the petitioner had approached this Court in Crl.RP.No.1300/2010 which was allowed by this Court on 03.08.2011 with costs and the matter was remanded to the Trial Court with a direction to dispose of the case afresh from the stage of cross-examination of PW-1 onwards.

9. Subsequently, PW-1 was cross-examined by the defence on 24.09.2011. Thereafter, the petitioner also had examined himself as DW-1, but though he was recalled subsequently for the purpose of cross-examination, he had not appeared before the Court for the purpose of his cross-examination, and therefore, his cross-examination was taken as nil. The Trial Court, thereafter, had considered the arguments addressed by both the parties and by judgment and order dated 18.04.2013 has convicted the petitioner for the offence punishable under Section 138 of the N.I.Act. Under the circumstances, I do not find any merit in the contention urged on behalf of the petitioner that the petitioner was no granted sufficient opportunity before the Trial Court to cross-examine PW-1.

10. A specific defence has been raised by the petitioner before the Trial Court that the cheque in question was a blank signed cheque issued as security to the monetary transaction between the complainant and the friends of the petitioner viz., Prakash and Mohiddin. Though such a defence has been raised by the petitioner, he has failed to probablize the same by placing necessary oral and documentary evidence on record. He has failed to examine his friends Prakash and Mohiddin before the Court. He has only produced Exs.D-3 & D-4 which are the certified copy of the order and certified copy of the complaint in CC.No.10757/2006 which was initiated by the respondent herein against Prakash for the offence punishable under Section 138 of the N.I.Act. The said documents are not sufficient to hold that the cheque in question was issued as security by the petitioner in the loan transaction between the complainant and the aforesaid Prakash and Mohiddin.

11. The signature of the petitioner found in the cheque in question is not disputed and it is also not in dispute that the said cheque was drawn on the bank account maintained by him with Syndicate Bank. Under the circumstances, presumption

arises against the petitioner as provided under Sections 139 read with 118 of the N.I.Act and unless the said presumption is rebutted by him by putting forward a probable defence, he is liable to be convicted for the offence punishable under Section 138 of the N.I.Act.

12. In the present case, the defence put forward by the petitioner has not been probablized by placing necessary oral and documentary evidence before the Court and it is under these circumstances, the Trial Court as well as the Appellate Court have recorded a finding that the presumption that arose against the petitioner under Sections 139 read with 118 of the N.I.Act stood unrebutted, and accordingly convicted him for the offence punishable under Section 138 of the N.I.Act.

13. The Hon'ble Supreme Court in the case of **BIR SINGH VS MUKESH KUMAR – (2019)4 SCC 197**, has held that the person in whose favour the cheque is issued is entitled to fill up the said cheque and no fault can be found in the same. In paragraphs 33 to 36 of the said judgment, the Hon'ble Supreme Court has observed as under:

"33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

> 36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

14. Under the circumstances, I do not find any illegality or infirmity in the impugned judgment and order of conviction and sentence passed by the courts below for the offence punishable under Section 138 of the N.I.Act.

15. The proceedings was initiated in the year 2003, and therefore, I am of the opinion that even the order of sentence passed against the petitioner is just and proportionate. Accordingly, the following order:

16. Criminal revision petition is dismissed.

17. The amount deposited by the petitioner, if any, is permitted to be withdrawn by the respondent.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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