



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 26<sup>TH</sup> DAY OF MARCH, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE V SRISHANANDA**

**CRIMINAL REVISION PETITION No.1731 OF 2025**  
**(397(Cr.PC) / 438(BNSS))**

**BETWEEN:**

SMT. MANJULA  
W/O MADAPPA,  
AGED ABOUT 57 YEARS,  
R/AT NO. H I G 28, 9<sup>TH</sup> CROSS,  
SHARADADEVINAGAR,  
MYSORE - 570 022

...PETITIONER

(BY SRI N.SHANTKUMAR  
FOR SRI CHANDRASHEKAR H B, ADVOCATES)

**AND:**

SRI B R RAGHAVENDRA  
S/O LATE B.R. RAMACHANDRAIAH,  
AGED ABOUT 42 YEARS,  
R/AT NO.51, 20<sup>TH</sup> CROSS,  
RAJARAJESWARINAGAR,  
BENGALURU-560 061

...RESPONDENT

(BY SRI. KRISHNA B J, ADVOCATE)

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signed by  
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Location:  
HIGH  
COURT OF  
KARNATAKA

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET-ASIDE THE JUDGMENT AND ORDER DATED 06.10.2025 PASSED BY THE LEARNED LVIII ADDL. CITY CIVIL AND SESSIONS JUDGE AT BANGALORE, IN CRIMINAL APPEAL No.138/2020 AND THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 10.01.2020 PASSED BY THE LEARNED XXII ADDL. CHIEF METROPOLITAN MAGISTRATE AT BANGALORE, IN C.C. No.20707/2018 AND CONSEQUENTLY DISMISS THE COMPLAINT IN TOTO.



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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

**ORAL ORDER**

Heard Sri N.Shantkumar, advocate for Sri H.B. Chandrasekhar, learned counsel for the revision petitioner and Sri B.J.Krishna, learned counsel for the respondent.

2. Accused who suffered an order of conviction in C.C No. 20707/2018 dated 10.01.2020 on the file of the XXII Addl. Chief Metropolitan Magistrate, Bengaluru, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 confirmed in Criminal Appeal No.138/2020 dated 06.10.2025 on the file of the LVIII Additional City Civil and Sessions Judge, Bengaluru, is the revision petitioner.

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

3.1 A complaint under Section 200 of the Code of Criminal Procedure came to be lodged with the jurisdictional Magistrate alleging commission of the offence punishable under Section 138 of Negotiable Instruments Act, contending that



accused and the complainant are known to each other for more than ten years.

3.2 It is the case of the complainant that accused approached him in the month of January 2017 seeking financial assistance in a sum of Rs.5,00,000/- for purchase of a site in Mysuru and also to meet family necessity. The complainant lent a sum of Rs.5,00,000/- on 20.01.2017. Accused did not repay the said amount even after six months.

3.3 Later on, accused issued a cheque bearing No.584395 dated 11.06.2018 in a sum of Rs.5,00,000/- drawn on Vijaya Bank, New Saraswathipuram Branch, Mysuru, in the name of the complainant, which on presentation came to be dishonored with an endorsement 'funds insufficient'.

4. Complainant issued a legal notice calling upon the accused to make good the amount covered under the cheque.

5. A reply came to be issued by the advocate on behalf of the accused on 05.07.2018 whereunder, it has been stated that accused has borrowed only sum of Rs.1,00,000/-. The repayment was made by cash in a sum of Rs.50,000/- and towards balance amount of Rs.50,000/-, the cheque in question



bearing No.584395 was issued which was not encashed by the complainant for long.

6. In the year 2013, the complainant approached the accused and obtained one more cheque bearing No.129601010010163 which was encashed. Therefore, there was no amount payable by the accused to the complainant and a cheque which has been portrayed as lost towards the repayment of Rs.50,000/- bearing No.584395 was misused by the complainant by filling up Rs.5,00,000/- and thus sought for registering the criminal action.

7. Since the reply was untenable, complainant approached the jurisdictional Police for taking action.

8. Learned Trial Magistrate after completing the necessary formalities, recorded the plea of the accused. Accused pleaded not guilty. Therefore, trial was held.

9. The 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 cheque, cheque return memo, legal notice dated 23.06.2018, reply notice, Bank of



India passbook, Canara Bank passbook, Vijaya Bank passbook, Mysore Silks Cloth Merchants Co-operative Bank passbook, registration deed dated 18.06.2015 and 17.03.2015.

10. As against the same, accused got examined herself as DW-1 and placed on record Vijaya Bank passbook and Bank of India passbook, exhibited and marked as Exs.D-1 and D2.

11. Later on, learned Trial Magistrate heard the arguments of the parties in detail and thereafter, considered the material evidence placed on record in a cumulative manner and noted that the transaction as is initiated by the complainant stood proved and there was no proper rebuttal evidence, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, *inter alia* holding in paragraphs 11 to 13 as under:

*"11. The accused has taken the same defence during her cross-examination. The complainant categorically admitted that he has lent loan of Rs.1,00,000/- in the year 2010 and it is repaid by the accused. The accused has totally denied the transaction of Rs.5 lakhs in the year 2017. The accused has also disputed the capacity of the complainant. But the complainant has categorically answered during the cross- examination and nothing has*



*been elicited to deny the evidence of the complainant. Therefore the stand taken by the accused by disputing in the capacity of the complainant is not supported by any oral or documentary evidence.*

*12. As per the legal presumption the complainant is entitled for drawing up of presumption in his favour. Herein the present case it is the accused who has to establish the disputed cheque that of the year 2013 and it is not issued for the transaction of the year 2017. The accused is examined as DW.1 and she has produced her two bank passbooks. The bank passbook which is marked as Ex.D1 is the Vijaya Bank passbook commencing from 29.07.2011 till 29.12.2014. The accused relied on the repayment made in the year 2013. I have carefully perused the cheque Number which were issued to the accused during the year 2013 and used by her. The series of cheque are commencing from 18464281 till 18477940. Therefore it clearly goes to show that the cheque series number 584395 which is the disputed cheque was not used by the accused during year 2013 for the Vijaya Bank transaction. Therefore it is the accused who has to show that the disputed cheque bearing No.584395 was issued to her from the concerned bank in the year 2013. She has not taken steps summon the concerned bank to establish her contention. Therefore the accused has failed to establish that how the cheque in question has been placed into the hands of the complainant during year 2017. Therefore the case of the complainant is acceptable. As per the judgments of the Hon'ble Supreme Court held*



*the case of Rangappa V/s. Mohan, it is the accused who has to prove that the cheque in question was not issued for enforceable liability. Therefore here in the present case the accused has failed to establish the same.*

*13. Herein I rely on the Judgment reported in **AIR 2019 Supreme Court 1876** rendered by the Hon'ble Supreme Court of India in the case of **Rohit Bhai Jeevanlal Patel V/s State of Gujarath and Another** wherein it is held that when all basic ingredients of Section 138, 118 and 139 are apparent on the face of record it is required to be presumed that cheque in question was drawn for consideration and complainant received it in discharge of an existing debt. Here in the present case the complainant has shown that he received the cheque for enforceable liability from the accused.*

*The accused has not shown sufficient material to rebut the presumption which is drawn in favour of complainant. The accused has failed to disprove the presumption through her oral and documentary evidence. Hence the accused is liable for conviction. Hence Points No.1 and 2 are answered in the Affirmative."*

12. Being aggrieved by the same, accused filed an appeal before the District Court in Criminal Appeal No.138/2020.



13. Learned Judge in the First Appellate Court after securing the records, re-appreciated the material evidence on record dismissed the appeal of the accused by considered judgment dated 06.10.2025, *inter alia* holding in paragraphs 19 to 21 as under:

*"19. The following suggestion made in page 6 of the deposition of PW.1 would again demonstrate the mutually destructive defence sought to be raised by the accused. At one stretch, the accused intends to say that, he had lost the cheque while shifting his house. But during the cross-examination of PW.1, it is found suggested that, the amount of Rs.1 lakh said to have been lent by the complainant was already repaid during 2013, but the complainant when asked about the return of the cheque is alleged to have maintained that the cheque was lost. The question is whether the cheque was lost while in custody of the accused or whether the cheque was tendered to the complainant by the accused and the complainant had failed to return the cheque. In any case, there are no documents to show that, the cheque was either lost or whether the return of it was sought. The defence must be plausible or believable to make it probable so that without the requirement of the accused entering the witness box, the presumption raised in favour of the complainant could be held to have been sufficiently rebutted.*

*20. A suggestion was made to PW.1 that would there be any hindrance for him to produce statement of*



*account with bank for the period from 2011. The accused has to raise a plausible defence that may require the complainant to produce the documents to discharge the onus that has shifted on him. Merely because, the accused is entitled to cross-examine the complainant, he cannot traverse the area which would not fall within the ambit of the transaction alleged by the complainant. The paradox in cheque dishonour cases is that, the accused could borrow loan or have liability, could draw a cheque towards discharge the debt and then exercise the right of silence and during cross-examination under the guise of veracity grill, the complainant with all possible questions under the sky taking the complainant by surprise. The clause that made cause of action for cheque dishonour cases after 15 days from the date of service of notice is made a dead letter and without any purpose. Even with marathon cross-examination, the accused is not able to stick to plausible defence that could enable the Court to hold that, he had successfully rebutted the presumption that was raised in favour of the complainant. The discussion made by the learned trial Court is in consonance with the established principle of law.*

*21. The principles laid down in the judgment relied upon by the appellant are followed, but on facts, they could be distinguished with the facts in this case. In the case of Chandra Pratap Singh Vs State of Madhya Pradesh, the offences were punishable under Sections 141, 148, 149, 302 r/w Sec.34 of the IPC, whereas the offence for which the accused was tried in this case was an offence punishable under Sec.138 of Negotiable*



*Instruments Act. The discussion made in this judgment would rather supplant the discussion made in the impugned judgment by the learned trial Court. Accordingly, I have answered point No.1 is in the Negative."*

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

15. Sri Shantkumar, learned counsel for the revision petitioner reiterating the grounds urged in the petition would contend that the cheque which is said to have been lost by the complainant which was issued by the accused towards repayment of balance amount of Rs.50,000/- in respect of a loan transaction of a sum of Rs.1,00,000/- has been misused by the complainant after receiving one more cheque for the similar amount.

16. Therefore, learned Judge in the First Appellate Court, observing that it is the accused who lost the cheque is incorrect and there is misunderstanding of the factual evidence placed on record, both by the Trial Magistrate as well as the First Appellate Court resulting in miscarriage of justice and sought for allowing the revision petition.



17. Further, he would emphasize that the solitary transaction between the accused and the complainant was Rs.1,00,000/- which has been repaid by the accused in a sum of Rs.50,000/- by cash and balance sum of Rs.50,000/- by issuing an alternate cheque. It was encashed by the complainant in *lieu* of the cheque No.584395, which was earlier issued, which has been lost according to the complainant and the same has been misused and therefore sought for allowing the revision petition.

18. *Per contra*, Sri B.J.Krishna, learned counsel for the respondent/complainant would support the impugned judgment.

19. He would further contend that the theory of loss of cheque is emphatically denied by PW-1 in his cross-examination. He also contended that, if the cheque is pertaining to earlier year, why such a cheque came to be issued by the accused to the complainant is a question that remains to be answered by the accused. The theory of misuse is not probabilized by placing material evidence on record.



20. He would also contend that no action has been taken about the misappropriation of the cheque which has been lost by the complainant. Therefore, the order of the Trial Court has been confirmed by the First Appellate Court needs no interference that too in the revisional jurisdiction and sought to dismiss the petition.

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

22. On such perusal of the material on record, from the contents of the reply notice itself issuance of the cheque marked at Ex.P.1 is not in dispute.

23. According to the accused, said cheque came to be issued in respect of repayment of Rs.50,000/- which is part of the loan amount of Rs.1,00,000/- borrowed by the accused.

24. Further contentions taken in the reply notice that complainant approached the accused in the year 2013 and told the accused that he lost the cheque bearing No.584395 marked at Ex.P.1 and therefore, he obtained one more cheque bearing



No.129601010010163 and got it encashed and therefore, there is no legally recoverable debt under Ex.P-1.

25. To substantiate the contentions taken in the reply, except the oral testimony of DW-1, no other material evidence is placed on record.

26. If the complainant has really misused the cheque marked as Ex.P-1, nothing prevented the accused to take criminal action against the complainant, especially when her son-in-law and his father are practicing advocates.

27. No normal prudent person would keep quiet if a cheque which was issued in a sum of Rs.50,000/- which has been replaced with another cheque having been misused in a sum of Rs.5,00,000/- would keep quiet especially after required notice has been sent and summons has been served for the prosecution under Section 138 of the Negotiable Instruments Act.

28. The silence of the accused and non taking any action with regard to the alleged misappropriation exposes the hollowness



of the defence taken by the accused about the theory of misuse of the cheque.

29. Further, in respect of Rs.1,00,000/- transaction, the complainant has not suppressed any material and he has admitted that said amount of Rs.1,00,000/- is cleared. But the present transaction is subsequent to the said transaction wherein the loan of Rs.5,00,000/- is obtained by the accused subsequent to the transaction that has taken place and cleared his respect of Rs.1,00,000/- in the year 2013.

30. Therefore, when once the cheque is admitted and signature found therein is that of the accused person, the theory of misuse has not been established by the accused, the presumption that is available to the complainant under Section 139 of the Negotiable Instruments Act gets strengthened which needs to be rebutted by placing cogent evidence on record.

31. The material evidence placed on record is the self-serving testimony of the accused apart from the entries being marked in Exs.D-1 and D-2.



32. There is no dispute with regard to the earlier loan transaction and the same has been repaid by the accused.

33. When such is the factual aspect of the matter, the material evidence placed on record by the accused is not subject to the presumption available to the complainant under Section 139 of Negotiable Instruments Act.

34. A feeble attempt is no doubt made by the accused to question the lending capacity of the accused. In this regard, detailed cross-examination has been carried out with respect to the entries in the passbook relied on by the complainant.

35. So far as the lending capacity is concerned, the principles of law enunciated by the Hon'ble Apex Court in the case of ***Rajesh Jain vs. Ajay Singh*** reported in ***(2023)10 SCC 148*** comes into operation. The relevant paragraph of the said judgment at paragraph Nos.45 to 61 reads as under:

***"Our analysis***

***45. It is against the backdrop of the aforestated legal principles that we proceed to consider if there is any interference that is called for.***

***Point (1)***



**46.** *The accused has neither replied to the demand notice nor has led any rebuttal evidence in support of his case. The case set up by him needs to be drawn from the suggestions put during the cross-examination and from his reply given in the statement recorded under Section 313CrPC.*

**47.** *It has been suggested to the complainant that the accused had not borrowed any loan from him. It was suggested to him that no legal notice had been issued on dishonour of cheque. It was further suggested that the complainant has misused a blank cheque — the said cheque having been obtained from his employee, Gita Sunar, who also happens to be the sister-in-law of the accused. It was suggested that Gita Sunar had some financial transactions with the complainant and towards that end, he had received a blank cheque (signed by the accused) from Gita Sunar and misused it. It is pertinent to note that the suggestions mentioned above were denied by the complainant.*

**48.** *In her cross-examination, Gita Sunar (examined on behalf of the complainant as CW 3) has denied the suggestion that she has misused a blank cheque in collusion with the complainant. She has also denied the suggestion that a blank cheque was given to her by the brother-in-law of the accused.*



**49.** *In the statement recorded under Section 313CrPC, the first incriminating circumstance put to the accused was as follows:*

*"It has come in evidence against you that you along with your wife, Jyoti visited the plaintiff an Orthopaedic Surgeon on 1-3-2014, and availed friendly loan from plaintiff from time to time through sister of Jyoti, namely, Gita Sunar working there, on the plea of need for family requirements, and promised to pay up the "interest moneys as also the entire principal amounts, what do you have to say about this?"*

*He responded to said suggestion/question as follows:*

*"I had taken some money from the plaintiff.*

*I have taken Rupees twenty lakhs from the plaintiff."*

*(emphasis supplied)*

**50.** *When it was put to him that he has reneged on his promise to pay on several occasions and sought to avoid the complainant by changing his telephone number, the accused denies that he had changed his number but however, admits that he could not pay the entire sum at one go. He further admits that he did pay some interest but could not pay the remaining sum since the complainant would increase the outstanding amount every month by one lakh rupees and had been demanding higher amount. As regards the circumstance of return of the cheque, the legal notice and non-reply to the demand notice, he admits of having received the demand notice. He states that he had no knowledge about the dishonour*



*of his cheque since his cheque book and bank passbook were kept in his sister-in-law's house.*

**51.** *On an overall consideration of the record, we find that the case set up by the accused is thoroughly riddled with contradictions. It is apparent on the face of the record that there is not the slightest of credibility perceivable in the defence set up by the accused.*

**52.** *In his Section 313 CrPC statements, he admits of having taken a loan of Rs 20 lakhs and having repaid some interest but in the cross-examination of the complainant, a suggestion is made that the accused had no financial dealings with the complainant. Whereas in his Section 313CrPC statement, the accused states that his cheque book and passbook is kept in his sister-in-law's house, yet, in the cross-examination of Gita Sunar, the accused's sister-in-law, no suggestion is made to that effect. In fact, she has plainly denied that any blank cheque was given to her by her brother-in-law. We find it highly unnatural to presume that the accused would leave his signed cheque leaves and passbook in his sister-in-law's house. Even if he did, there is no reason(s) or motive attributed on the part of his sister-in-law, for her to collude along with the complainant. The accused has also not explained as to why he has not set up his defence at the earliest point, that is, at the stage of receiving the demand notice, even though he admits having received the demand notice in his Section 313 CrPC statement, yet he makes a suggestion to the complainant in his cross-*



*examination that no legal notice had been issued. The theory of "blank cheque" being misused has been suggested, only to be denied by both, the complainant and Gita Sunar, CW 3. No action has been taken by way of registering a police complaint in order to prosecute the alleged illegal conduct of his blank cheque having been misused by CW 3.*

**53.** *Nothing significant has been elicited in the cross-examination of the complainant to raise any suspicion in the case set up by the complainant. Other than some minor inconsistencies, the case of the complainant has been consistent throughout as can be noticed from a perusal of the complainant, demand notice and affidavit evidence. In fact, the signature on the cheque having not been disputed, and the presumption under Sections 118 and 139 having taken effect, the complainant's case stood satisfied every ingredient necessary for sustaining a conviction under Section 138. The case of the defence was limited only to the issue as to whether the cheque had been issued in discharge of a debt/liability. The accused having miserably failed to discharge his evidential burden, that fact will have to be taken to be proved by force of the presumption, without requiring anything more from the complainant.*

**54.** *As rightly contended by the appellant, there is a fundamental flaw in the way both the courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the*



HC-KAR

*courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.*

**55.** *At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption): Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?*



HC-KAR

**56.** *The perversity in the approach of the trial court is noticeable from the way it proceeded to frame a question at trial. According to the trial court, the question to be decided was "whether a legally valid and enforceable debt existed qua the complainant and the cheque in question (Ext. CW I/A) was issued in discharge of said liability/debt". When the initial framing of the question itself being erroneous, one cannot expect the outcome to be right. The onus instead of being fixed on the accused has been fixed on the complainant. Lack of proper understanding of the nature of the presumption in Section 139 and its effect has resulted in an erroneous order being passed.*

**57.** *Einstein had famously said:*

*"If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."*

*Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.*

**58.** *Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.*



**59.** *Coming to the finding of the High Court, we find again, there has been fundamental error in the approach with which the High Court has proceeded to consider the evidence on record. In para 6 of the impugned order [Rajesh Jain v. Ajay Singh, 2022 SCC OnLine P & H 4244] , the High Court finds that the complainant has proved the issuance of cheque, which means that the presumption would come into immediate effect. In para 13, it rightly observes that the burden is on the accused to rebut such presumption. In the very next paragraph, it finds that the accused has rebutted the presumption by putting questions to the complainant and explaining the circumstances under Section 313 CrPC.*

**60.** *There is no elucidation of material circumstances/basis on which the Court reached such conclusion. It notes the allegation made in the complaint that the complainant had given the loan on 1-3-2014 and on several dates thereafter. Based on this averment, the High Court [Rajesh Jain v. Ajay Singh, 2022 SCC OnLine P&H 4244] rather shockingly concludes that : (Rajesh Jain case [Rajesh Jain v. Ajay Singh, 2022 SCC OnLine P&H 4244] , SCC OnLine P&H para 14)*

*"14. ... If the complainant had given loans on various dates, he must have maintained some document qua that, because it was not a one-time loan but loan along with interest accrued on the principal, which made the amount to Rs 6,95,204."*



*Therefore, according to the High Court, "the burden was primarily on the complainant to prove the debt amount".*

**61.** *The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque."*

36. Applying the above principles of law to the case on hand, this Court is of the considered opinion that the accused having failed to establish the defence taken by her that there is a misuse of the cheque, conviction order recorded by Trial Magistrate confirmed by the First Appellate Court needs no interference that too in the revisional jurisdiction.

37. View of this Court is also fortified by yet another judgment of the Hon'ble Supreme Court in the case of **Sanjabij Tari vs. Kishore S. Borcar and another** reported in **2025 SCC OnLine SC 2069**.



38. Accordingly, the following:

ORDER

The Revision Petition is ***dismissed***.

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

kcm  
List No.: 1 Sl No.: 78