



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 4TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V.SRISHANANDA

CRIMINAL REVISION PETITION NO. 100086 OF 2018

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

BETWEEN:

D.ISMAIL SAB S/O FAKKIR SAB
AGE: 56 YEARS, OCC: AGRICULTURIST,
R/O: HUGULUR VILLAGE, HADAGALI TALUK,
BALLARI DISTRICT-583219.

...PETITIONER

(BY SRI. RAJASHEKHAR B. HALLI, ADVOCATE)

AND:

A. SHANMUKHANAGOUDA S/O BASAVANAGOUDA
AGE: 37 YEARS, OCC: ADVOCATE,
R/O: HAMPASAGARA ROAD,
HUVINA-HADAGALI TALUK,
BALLARI DISTRICT-583219.

...RESPONDENT

(BY SRI. B.G. INDI, ADVOCATE FOR SRI. K.L. PATIL, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF CR.P.C., SEEKING TO CALL FOR RECORDS AND TO SET ASIDE THE JUDGEMENT DATED 24.02.2018 PASSED BY THE III ADDL. DISTRICT AND SESSIONS JUDGE, AT BELLARY, SITTING AT HOSAPETE IN CRL. APPEAL NO. 5033/2014 AND TO CONSEQUENTLY TO SET ASIDE THE JUDGEMENT AND ORDER OF CONVICTION DATED 24.07.2014 PASSED BY THE CIVIL JUDGE AND JMFC, HADAGALI IN C.C.NO.315/2011, IN THE INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR FINAL DISPOSAL, THIS DAY, THE COURT MADE THE FOLLOWING:





ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE V.SRISHANANDA)

1. Heard Sri Rajashekhar B. Halli, learned counsel for the petitioner, and Sri B. G. Indi, learned counsel appearing for Sri K. L. Patil, learned counsel for the respondent.

2. The accused is the revision petitioner, being aggrieved by an order of conviction for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the N.I. Act') in CC No.315/2011, confirmed in CrI A. No. 5033/2014.

3. The facts, in a nutshell, which are necessary for the disposal of the present petition, are as under:

A complaint was lodged under Section 200 of the Criminal Procedure Code (for short, 'the Cr.P.C.') alleging that the accused had committed an offence punishable under Section 138 of the N.I. Act. It is the case of the complainant that the accused borrowed a hand loan on 15.11.2010 to the tune of Rs.2,00,000/-, promising to



repay the same within two months. When the complainant demanded repayment of the loan amount, the accused allegedly issued a cheque bearing Nos.518147 for Rs.2,00,000/- on 28.01.2011. On presentation, the cheque was dishonoured due to insufficient funds, and a statutory notice demanding payment of the amount covered under the cheque was issued.

4. The notice was duly served, and an untenable reply was issued, but there was no compliance with the demand. In the reply, it was contended that no hand loan transaction had taken place between the complainant and the accused. It was specifically contended that the accused is an agriculturalist who came into contact with Sri.V.B.Jayappa.

5. According to the accused, he had received Rs.200,000/- from Jayappa by pledging his vehicle bearing No.KA-35/R-996, and the cheque in question was issued to Jayappa, which was allegedly misused by the complainant.



6. During the trial before the trial Court, the accused maintained that the cheque was issued to Jayappa and, therefore, no legally recoverable debt existed. In the cross-examination of DW1, the accused admitted that Jayappa is a close friend and that a B report had been filed in respect of a complaint lodged by him against bank officials. The accused also admitted that he was facing another cheque bounce case, in which he had been convicted.

7. The learned trial Judge noted that the cheque in question belonged to the accused and that the signature on it was that of the accused. The rebuttal evidence placed on record, claiming that the cheque was misused, was not proved by the accused by placing necessary evidence on record. Accordingly, the accused was convicted.

8. Being aggrieved by the same, the accused filed an appeal before the First Appellate Court. The learned Judge of the First Appellate Court, after securing the



records and hearing the arguments of the parties, dismissed the appeal. Thereafter, the accused approached this Court.

9. Sri Rajashekhar B. Halli, learned counsel for the petitioner, reiterating the grounds urged in the petition, vehemently contended that both the courts below failed to properly appreciate the defence raised by the accused, which was sufficient to rebut the presumption available to the complainant under Section 139 of the N.I. Act, and sought allowance of the revision petition.

10. *Per contra*, Sri B. G. Indi, learned counsel, supported the impugned orders.

11. Having heard the arguments of both sides, this Court perused the material on record meticulously. On such perusal, it is clear that Ex.P1 cheque belongs to the accused and the signature found therein is that of the accused. According to the complainant, the cheque was issued towards repayment of the hand loan, which was subsequently dishonoured.



12. When the accused specifically pleaded that the cheque was issued to B. V. Jayappa, it was necessary for the accused to examine Jayappa as a witness. No attempt was made by the accused to summon Jayappa, nor was any legal action taken against Jayappa or the complainant for the alleged misuse of the cheque.

13. Further, except making an oral statement that the cheque was issued to Jayappa, there is no other material on record, such as the counterfoil of the cheque book, to substantiate the said defence.

14. Taking note of these aspects, it is clear that the rebuttal evidence placed on record, being nothing more than the self-serving testimony of DW-1, is insufficient to rebut the statutory presumption available to the complainant under Section 139 of the N.I. Act.

15. In view of the above, the conviction and sentence passed by the trial Court, confirmed by the First Appellate Court, are just and proper. Accordingly, following:



ORDER

The revision petition is ***dismissed***.

Sd/-
(V.SRISHANANDA)
JUDGE

AC
CT-CMU
LIST NO.: 1 SL NO.: 37