IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CRIMINAL REVISION PETITION NO. 100073 OF 2021 (397 CR.P.C./438 BNSS)

BETWEEN:

SHRI T.N. BALAKRISHNA
AGE: 52 YEARS, OCC. HOTEL BUSINESS,
R./O. PAVITRA, (NORTH INDIAN) HOTEL,
BESIDES SHESHADRI PETROL BUNK,
BALARAJ URS ROAD, SHIMOGA-577201.

...PETITIONER

(BY SRI SATISH S. RAICHUR, ADVOCATE.)

AND:

1. SHRI. TUKARAM S/O. VISHNUPANT GAVADE
AGE. 55 YEARS, OCC. BUSINESS,
R/O. GHANTIKERI ONI,
HUBBALLI-580020.

SINCE DIED R/BY HIS LRS

1A) SMT. SOUBHAGYA W/O TUKARAM GAVADE
AGE. 48 YEARS, OCC. HOUSEHOLD WORK,
R/O. GHANTIKERI ONI, HUBBALLI
TQ. HUBBALLI DIST. DHARWAD.

1B) POOJA D/O TUKARAM GAVADE
AGE: 30 YEARS, OCC. HOUSEHOLD WORK,
R/O. GHANTIKERI ONI, HUBBALLI
TQ. HUBBALLI DIST. DHARWAD.

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Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2026.10.28 16:55:50 +0530

1C) VIDYA D/O. TUKARAM GAVADE
AGE. 28 YEARS, OCC. HOUSEHOLD WORK,
R/O. GHANTIKERI ONI, HUBBALLI
TQ. HUBBALLI DIST. DHARWAD.

…RESPONDENTS

(BY SRI A.B. PATIL, ADVOCATE.)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF CRIMINAL PROCEDURE CODE, 1973, SEEKING TO CALL FOR RECORD IN CRIMINAL APPEAL NO.58/2019 FROM THE COURT OF V ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD, SITTING AT HUBBALLI AND TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE ORDER DATED 31/12/2020 RECORDED THERE IN CONFIRMING JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 03/06/2019, PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, HUBBALLI, IN C.C.NO.1462/2016 FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881, PERUSING RECORDS HEREIN ON ARGUMENT OF THE COUNSEL FOR PETITIONER, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 08.10.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV ORDER

The accused being aggrieved by the impugned judgment dated 31.12.2020, passed in Criminal Appeal No.58/2019 by the V Additional District and Sessions Court, Dharwad, sitting at Hubballi (for short 'First Appellate Court'), confirming the judgment of conviction

and order of sentence dated 03.06.2019, passed by the Principal Civil Judge and JMFC, Hubballi ('trial Court' for short), in C.C.No.1462/2016, convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('N.I.Act' for short), has preferred this revision petition.

2. For convenience reference, the parties are referred to as the 'complainant' and the 'accused'.

3. Facts in brief as per the complaint averments is that, one Satyanarayan Jadhav and the accused were good friends. Said Satyanarayan Jadhav is brother-in-law of the complainant. Through him, the accused came to know the complainant and got acquaintance. The accused was in dire need of money for his business purpose and on his (accused) behalf, the said Satyanarayan Jadhav and complainant's wife Smt. Soubhagya requested the complainant to lend a sum of ₹1,50,000/- to the accused. By considering the recommendation of wife and brother-in-law, the complainant lent ₹1,30,000/- to the accused on

02.10.2013 by cash. The accused promised to repay the said amount within 3-4 months.

4. On demand, the accused repaid only ₹10,000/- by way of cash in the month of December 2013; in the month of March 2014, when the complainant demanded for repayment of balance amount of ₹1,20,000/-, the accused issued cheque bearing No.759042 dated 29.03.2014 in a sum of ₹1,20,000/- drawn on Oriental Bank of Commerce, Shivamogga. The complainant presented the said cheque for encashment and it was returned with an endorsement as 'funds insufficient' on 04.04.2014; further the complainant informed about the dishonour of the cheque to the accused and as the accused did not repay the said amount, then the complainant got issued legal notice to him (accused) on 23.04.2014 through RPAD. The said legal notice was returned unserved on 05.05.2014 with postal endorsement as not claimed. Despite the knowledge of the said notice, the accused did not repay the cheque amount nor he sent

any reply to the said notice. Hence, the complainant constrained to file the complaint.

5. After receipt of the complaint, learned Magistrate took cognizance of the offence and issued summons to the accused. The accused appeared and pleaded not guilty. The complainant to prove his case got examined himself as PW1 and got marked the documents as Ex.P1 to P5. The accused was examined under section 313 of Criminal Procedure Code, 1973, where the accused denied all incriminating evidence attributed against him. He got examined himself as DW1; no documents got marked.

6. The trial Court after hearing the arguments, proceeded to pass the impugned judgment, whereby the accused is found guilty of the offence punishable under Section 138 of the N.I.Act and sentenced him to pay ₹1,30,000/-, out of which ₹1,20,000/- was awarded as compensation to the complainant and remaining ₹10,000/-

was ordered as fine to the State, vide judgment dated 03.06.2019.

7. Being aggrieved by the impugned judgment, the accused preferred the appeal before the First Appellate Court in Criminal Appeal No.58/2019. The First Appellate Court after re-appreciation of the evidence on record, passed the impugned judgment dismissing the appeal and confirming the impugned judgment of the trial Court, vide judgment dated 31.12.2020.

8. Being aggrieved by the impugned judgments of both the Courts, the petitioner/accused preferred the present revision petition.

9. In this revision petition, in response to the notice, the complainant/respondent appeared through his counsel and resisted the petition.

10. Trial Court records have been secured.

11. Heard the arguments of Sri Satish S. Raichur, learned counsel for the petitioner and the arguments of Sri A.B.Patil, learned counsel for the respondent.

12. Perused the original records.

13. The point that arises for consideration of this Court in this petition is as under:

> Whether the impugned judgments of both the Courts suffer from any illegality, perversity and calls for interference by this Court?

14. Learned counsel for the petitioner argued that both the Courts have failed to take into consideration the oral and documentary evidence placed by the respective parties and passed the impugned judgment.

15. It is further contended that, the Courts have lost their sight of cross-examination of PW1, wherein the complainant has admitted the fact that, he does not know the accused. Both the Courts have failed to apply the principles of preponderance of probabilities and held that

the burden is on the accused to rebut the presumption, which has resulted in miscarriage of justice.

16. Further learned counsel for the petitioner argued that, both the Courts have wrongly held that since the signature of the accused is admitted in the cheque, writings on the cheque are filled by the accused, both the Courts have come to the conclusion that, the complainant has proved the guilt of the accused.

17. Learned counsel further argued that, there are various infirmities in the evidence of the complainant which are not properly appreciated by both the Courts. Further it is contended that, both the Courts have not considered the best available evidence i.e. of one Satyanarayan Jadhav. The complainant has not examined the said Satyanarayan Jadhav nor he has been impleaded as party to the complaint.

18. Further learned counsel argued that, both the Courts have misconceived the document Ex.P5 and formed

wrong opinion that, the accused has borrowed money from the complainant.

19. On these grounds the learned counsel for the petitioner contended that, both the Courts have committed an error and thereby interference is required. Hence prayed for setting aside the impugned judgments of both the Courts and to acquit the accused.

20. On the contrary, learned counsel for the respondents argued that, both the Courts have rightly appreciated the evidence on record and have come to right conclusion, the complainant has proved that the accused has committed an offence under Section 138 of the N.I.Act and thereby learned counsel for the respondent/complainant supported the impugned judgments passed by both the Courts and prayed for dismissal of the petition.

21. Learned counsel for the petitioner/accused has relied upon the following judgments in support of his case.

i) Judgment of Hon'ble Supreme Court in the case of *Basalingappa vs. Mudibasappa, in Criminal Appeal No.636 of 2019, reported in AIR 2019 Supreme Court 1983*.

ii) Judgment of this Court in the case of *Bopanna A.E. vs. C.M.Anand, in Criminal Appeal No.685 of 2018, decided on 05.02.2024*.

iii) Judgment of Hon'ble Supreme Court in the case of *M/s Kumar Exports vs. M/s.Sharma Carpets, in Criminal Appeal No.2045/2008, decided on 16.12.2008.*

22. On the contrary, learned counsel for respondent/complainant has also relied upon the following judgments in support of his case:

i) Judgment of this Court in the case of *Pushparaj R. Ullal vs. Herald D'Souza, reported in 2026(3) KCCR 2774*.

ii) Judgment of this Court in the case of *M/s.Shruthi Enterprises, Bengaluru vs. M/s.Akshara Drug House Private Limited, Bengaluru, reported in 2026(3) KCCR 2941*.

23. According to the complainant, the accused who is the friend of brother-in-law of the complainant,

approached the complainant and sought financial help. Accordingly, the complainant paid ₹1,30,000/- and thereafter when he demanded, the accused paid only ₹10,000/- in cash and for remaining balance of ₹1,20,000/-, the accused is said to have issued the impugned cheque which is marked as Ex.P1.

24. The defence of the accused is that, there is no privity of contract between the complainant and the accused, the accused has not borrowed any amount from the complainant. However, the accused has admitted the cheque Ex.P1 belonged to him and he has also admitted the signature marked as Ex.P1(a) is that of him.

25. It is not in dispute that, the cheque which was presented for encashment was returned as 'funds insufficient' as per return memo Ex.P2. Further the complainant contended that, he has issued legal notice to the accused as per notice dated 23.04.2014 marked as Ex.P3. The complainant contended that, he has issued the said legal notice through RPAD. Postal receipts are marked

as Ex.P3(a) and P3(b). He has issued the said legal notice Ex.P3 to both the addresses of the accused. However, the said legal notice is returned as intimation delivered. The returned postal cover is marked as Ex.P3(c) and another returned postal cover is marked as Ex.P3(d).

26. The complainant contended that, despite issuance of notice and though intimation delivered to the accused about the said notice, the accused did not receive the said notice and not repaid the amount. Thereby the complainant constrained to file the complaint.

27. The complainant contended that, the accused by taking loan from him and also by issuing impugned cheque Ex.P1, deliberately not kept the required amount in his account and thereby the cheque was returned with an endorsement as 'insufficient funds'. Further, the complainant contended that, the accused knowingly that there was no balance in his account, issued the cheque to the complainant and though he was aware that, the legal notice was also issued, deliberately he has not received

the said legal notice and also not replied to the legal notice, therefore it is contended that the complainant has established the guilt of the accused.

28. Learned counsel for the petitioner/accused argued that, the defence of the accused is that he has not borrowed any amount from the complainant. He was doing hotel business and he has in all 03 hotels and there are 36 workers under him to maintain the said hotels. He has 40-45 lakhs turnover every year through the said hotel business.

29. It is the further contention of the accused that, one Satyanarayan Jadhav was working under him (accused) in his hotel and the said Satyanarayan Jadhav was entrusted to supply meals to the schools and at that time the accused gave some blank cheques to the said Satyanarayan Jadhav for the said business purpose. The said Satyanarayan Jadhav must have misused one of those cheques by giving it to the complainant. Thereafter the said Satyanarayan Jadhav without intimating to the

accused left the job and after that he came to know that the complainant has filed a complaint on the basis of the said impugned cheque Ex.P1. Therefore, it is the contention of the accused that, there was no privity of contract between him and the complainant and he has not at all borrowed any amount from the said complainant.

30. Learned counsel for the petitioner/accused further argued that, despite the accused took the defence that said Satyanarayan Jadhav was working under the accused, he was entrusted with the financial matters pertaining to the said hotel and also some blank cheques were handed over by the accused to the said Satyanarayan Jadhav, the said Jadhav without intimating the accused left the job and therefore, he must have misused the cheque, despite this specific defence the complainant did not make any venture to implead the said Satyanarayan Jadhav in the complaint nor the complainant examined the said Satyanarayan Jadhav.

31. It is not in dispute that, the said Satyanarayan Jadhav is none other than the brother-in-law of the complainant i.e., brother of the complainant's wife. Therefore, learned counsel for the petitioner argued that the petitioner/accused has not at all borrowed any amount from the complainant and thereby he need not repay the said amount of ₹1,20,000/- to the complainant.

32. It is contended that, the present complaint filed by the complainant is in collusion with the said Satyanarayan Jadhav, which is a mischievous complaint.

33. The accused who is examined as DW1 has reiterated his defence in his evidence. DW1 was subjected to cross examination by the complainant.

34. In the cross examination, it is suggested that, against him there are two other complaints filed in Shivamogga Court by one Ansar Pasha, which is numbered as C.C.No.5139/2013 and 4981/2013, which is denied by DW1. Further it is also suggested that, another case filed by K.V.Manjunath in C.C.No.47/2013 in Shivamogga

Court, is admitted by the by the accused. Further it is suggested that, one Keshava has also filed case in C.C.No.258/2014 and another M.B.Rajappa also filed a case against the accused in C.C.No.707/2014. Further, State Bank of India, Shivamogga Branch has also filed a case against this accused for recovery of money in O.S.No.357/2016. The accused has denied filing of the aforesaid cases against him.

35. Further DW1 has admitted that, he has not filed any complaint against said Satyanarayan Jadhav who is said to have misused the said cheque. Further he has admitted that, he and the said Satyanarayan Jadhav were in cordial terms even today. Further DW1 has admitted that his wife's name is Suvarna and said Suvarna filed a complaint before the District Protection Officer, wherein she has stated that the creditors said to have given loan to the accused are coming and harassing her for repayment of the loan amount said to have taken by the accused and the copy of the said complaint is got marked by the complainant as Ex.P4. The filing of the said complaint

before the District Protection Officer as per Ex.P4 is admitted by the accused. Further he has also admitted that the statement of said Satyanarayan Jadhav, before police is marked as Ex.P5.

36. It is the argument of the learned counsel for the respondent/complainant that, said Satyanarayan Jadhav is even now in cordial relationship with the accused and the accused himself admitted that as per Ex.P4 his wife gave complaint stating that, the creditors who lent money to the accused are harassing them. Further the complainant got marked the statement of said Satyanarayan Jadav as per Ex.P5.

37. On going through the said statement marked as Ex.P5, Satyanarayan Jadav has stated that, he told the complainant to give ₹1,30,000/- to the accused. Therefore, learned counsel for the respondent/complainant argued that, both the Courts have rightly appreciated the documents Ex.P4 and P5 and the overall evidence of the complainant PW1 and the other evidence i.e., impugned

cheque Ex.P1, cheque return memo Ex.P2 and the legal notice Ex.P3, rightly come to the conclusion that the accused borrowed the amount from the complainant and to repay the said amount he has issued the impugned cheque. However, he has not kept the balance in his account deliberately and thereby the impugned cheque came to be dishonoured.

38. Learned counsel for the petitioner/accused argued that, as per Ex.P5, wherein there is a statement with regard to the amount borrowed by the accused and he has borrowed an amount of ₹1,30,000/- from one Satyanarayan Jadhav, he repaid ₹68,000/- and he has to pay remaining ₹62,000/- and it is mentioned that, one blank cheque is with the said Satyanarayan Jadhav. Therefore, it is the argument of the learned counsel for the petitioner that, insofar he never borrowed any amount from said the complainant and he only borrowed the amount from said Satyanarayan Jadhav and he has repaid the amount of ₹68,000/-, remaining he has to repay i.e., ₹62,000/-. The learned counsel for the petitioner

contended that both the Courts have not properly appreciated the said document Ex.P5.

39. Learned counsel has relied upon the judgment in the case of ***M/s.Kumar Exports (supra)***. This is with regard to presumption, wherein it is observed that:

> "the use of the phrase 'until the contrary is proved' in Section 118 of the N.I.Act and use of the words 'unless the contrary is proved' in Section 139 of the N.I.Act, read with definitions of 'may presume' and 'shall presume' as given in Section 4 of the Indian Evidence Act makes it at once clear that presumptions to be raised under both the provisions are rebuttable".

Further it is observed that:

> "the accused in a trial under Section 138 of the N.I.Act has two options; he can either show that consideration and debt did not exist or that under the particular circumstances of the case, the non-existence of consideration and debt is so probable that, a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions, the accused is not expected to prove his defence beyond reasonable doubt, as is expected of the complainant in a criminal trial.

Further it is observed that:

> "bare denial of the passing of the consideration and existence of debt apparently would not serve the purpose of the accused.

> Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant."

40. On the basis of the observation made in the aforesaid judgment, learned counsel for the petitioner argued that, in this case the accused by examining himself as DW1 and on the basis of the very document produced by the complainant himself as Ex.P5, the accused has rebutted the presumption available in favour of the complainant as contemplated under Section 118 and 139 of the N.I.Act.

41. Learned counsel for the petitioner/accused argued that, the complainant has not proved the guilt of the accused beyond reasonable doubt and when the accused produced the evidence for rebutting the presumption, then the complainant must prove the guilt of the accused beyond any reasonable doubt when the accused has raised a probable defence. Therefore, learned counsel for the accused argued that, both the Courts have not properly appreciated the defence of the accused.

42. Further, learned counsel argued that, in the judgment passed by this Court in the case of ***Bhopanna A.E. vs. C.M.Anand (supra)***, on noticing that there are irregularities in the evidence of the complainant, i.e., the complainant himself admitted that, there is a difference in the ink in the impugned cheque, disbelieved the evidence of the complainant and dismissed the complaint and acquitted the accused.

43. Further learned counsel for the petitioner/accused has relied upon the case in ***Basalingappa vs. Mudibasappa (supra)***, that is also with regard to rebutting the presumption under section 118 and 139 of the N.I.Act is a rebuttable presumption and when the accused raised a probable defence and the complainant has not produced the standard of proof, then the accused is entitled to an acquittal.

44. Therefore, learned counsel for the petitioner/accused argued that, the accused in this case has rebutted the presumption by placing rebuttal

evidence, despite of which both the Courts have erroneously convicted the accused.

45. On the contrary, learned counsel for the complainant/respondent has relied upon the judgment passed by this Court in the case of ***Pushparaj R. Ullal (supra)*** and another judgment in the case of ***M/s.Shruthi Enterprises (supra)*** with regard to the scope of revisional powers under the Cr.P.C. It is observed that:

> "The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate Courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

46. It is the argument of the learned counsel for the complainant/respondent that, though the accused has

contended that he has not borrowed any amount from the complainant and he has borrowed the amount from Satyanarayan Jadhav and he has repaid ₹68,000/- to him and he has to pay only ₹62,000/- to the said Jadhav, however he has not filed any complaint against the said Satyanarayan Jadhav about misuse of the cheque Ex.P1. Further, in the cross examination DW1 himself admitted that, now the said Satyanarayan Jadav and the accused are in cordial terms. Therefore, it is argued that the defence of the accused that he never known the complainant is false. By borrowing amount from the complainant in a sum of ₹1,30,000/- and he repaid ₹10,000/- and thereafter he issued cheque Ex.P1 for a sum of ₹1,20,000/- only to avoid payment of the said sum of ₹1,20,000/-, the accused took false defence. Therefore learned counsel for the complainant/respondent argued that, both the Courts have rightly appreciated the evidence on record and convicted the accused.

47. On a perusal of the evidence on record and further on going through the evidence of DW1, as rightly

argued by the learned counsel for the complainant that DW1 himself admitted that, now he and said Satyanarayan Jadhav are in cordial terms and further he has not taken any action against the said Jadhav for his illegal act i.e., misusing the cheque. Therefore, now the accused cannot contend that, he has not at all borrowed any amount from the complainant.

48. On going through the reasons assigned by both the Courts, both the Courts have properly appreciated the evidence on record and have come to the conclusion that the complainant has proved the guilt of the accused beyond any reasonable doubt. This Court has not found any glaring or manifest error in the impugned judgments of both the Courts so as to interfere with the said judgments.

49. The petitioner/accused has failed to substantiate the grounds alleged in this petition and thereby interference of this Court in the impugned judgments is unwarranted. The revision petition is devoid

of merits and is liable to be dismissed. Hence, the point for consideration is answered.

50. Accordingly, this Court proceeds to pass the following:

ORDER

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

The impugned judgment dated 31.12.2020, passed in Criminal Appeal No.58/2019 by the V Additional District and Sessions Court, Dharwad, sitting at Hubballi, confirming the judgment of conviction and order of sentence dated 03.06.2019, passed by the Principal Civil Judge and JMFC Court, Hubballi, in C.C.No.1462/2016, is hereby confirmed.

Office is directed to send back the original records along with a copy of this judgment.

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

MRK
Ct: CMU.