

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CRIMINAL REVISION PETITION NO.100216 OF 2021

BETWEEN:

YANKOBAPPA NAYAK S/O. KOMAREPPA
AGE 68 YEARS, OCC. AGRICULTURE,
R/O. NEAR AMBAMMA TEMPLE, JEERAL,
TQ. KANAKAGIRI, DIST. KOPPAL - 583231.

...PETITIONER

(BY SRI. SHIVANAND MALASHETTI, ADVOCATE)

AND:

RAJARAO G. S/O. JOGARAO
AGE 43 YEARS, OCC. AGRICULTURE,
R/O. CHALLUR CAMP,
TQ. KARATAGI-583229
DIST. GANGAVATHI.

...RESPONDENT

(NOTICE SERVED UNREPRESENTED)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W 401 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER OF THE SENTENCE AND CONVICTION PASSED BY THE I ADDL. DISTRICT AND SESSION JUDGE KOPPAL (SITTING AT GANGAVATHI) CONFIRMING THE ORDER PASSED BY THE ADDL. CIVIL JUDGE AND JMFC GANGAVATHI IN C.C NO. 255/2019 DATED 21/01/2020 AND ACQUIT HIM FOR THE OFFENSES PUNISHABLE U/S 138 OF NI ACT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.08.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV ORDER

This petition is by the accused filed under Section 397 r/w 401 of the Criminal Procedure Code, 1973 (for short, Cr.P.C) assailing the impugned judgment and order of conviction dated 21.01.2020, passed by the Addl.Civil Judge and JMFC., at Gangavati in CC No.255/2019 (for short, Trial court) and confirmed by the I Addl. District and Sessions Judge., Koppal (sitting at Gangavathi) (for short appellate court) in CrI.Appeal.No.7/2020 dated: 04.09.2021 for the offences punishable under Section 138 of Negotiable Instrument Act (hereinafter, referred to as 'N.I.Act').

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

3. Facts in brief is that,

The complainant filed the complaint before the Trial Court under Section 200 of Cr.P.C, praying to take

cognizance of the offence against the accused punishable under Section 138 of NI Act.

4. As per the complaint averments,

The complainant and the accused were well known to each other, since many years. By this acquaintance, the accused took financial help from the complainant on 20.01.2018 as a hand loan of Rs.1,00,000/- for his family necessity. The accused promised to repay the said amount within one month from that date and he has not repaid the same within one month. On demand of the complainant, the accused issued a cheque bearing No.080961 dated: 23.03.2018 drawn on State Bank of Hyderabad, Kanakagiri Branch.

4.1 When the complainant presented the said cheque for encashment, it was returned with an endorsement 'funds insufficient'. Immediately, the complainant informed the dishonor of the cheque and requested the accused to repay the amount, as the accused not repaid the amount

and the complainant got issued a legal notice to the accused on 13.06.2018. The accused though received the notice neither replied to the notice nor repaid the amount. Hence, the complainant constrained to file the complaint.

5. The trial court took cognizance of the offence and registered criminal case and on issuance of summons to the accused, he appeared through his counsel where a plea of the accused recorded and he pleaded not guilty and claimed trial.

6. The complainant in order to prove his case himself examined as PW1 and got marked documents as Ex.P.1 to 9. After completion of evidence of the complainant accused was examined U/s 313 Cr.P.C., wherein, he denied the incriminating evidence appearing against him. He chose to lead a defence evidence and he himself examined as DW1 and got marked 07 documents as Ex.D.1 to 7.

7. Learned Magistrate after appreciation of the evidence on records proceeded to pass the impugned

judgment dated: 21.01.2020 whereby the accused was convicted for the offence punishable U/s 138 of N.I.Act and sentenced to pay fine of Rs.1,20,000/- in default he shall undergo SI for 6 months, out of fine amount of Rs.1,20,000/- a sum of Rs.1,15,000/- ordered to be paid to the complainant towards compensation and remaining Rs.5,000/- ordered to be paid to the State towards fine.

8. Being aggrieved by the impugned judgment, the accused preferred an appeal before the Appellate Court in Crl. Appeal No.7/2020. The Appellate court after completion of evidence on record proceeded to dismiss the appeal by confirming the conviction and sentenced passed by Trial Court vide impugned judgment dated: 04.09.2021.

9. Being aggrieved by the dismissal of the appeal by the Appellate court and confirming the impugned judgment of the trial court, the accused/petitioner has preferred the present petition on the following;

GROUND

a) Both the courts have committed an error convicting the accused though the complainant failed to prove that there was transaction between the complainant and the accused.

b) The cheque was issued to one Yasubabu which was misused by the complainant by filing a false complaint. There was no legally enforceable debt so as to issue cheque to the complainant by the accused.

c) The accused seriously disputed the financial capacity of the complainant to pay the hand loan of Rs.1,00,000/-. The burden of proving financial capacity of the accused heavily on the complainant, the complainant himself admitted that he has not produced Income Tax returns pertaining to him which clearly goes to show that, the complainant had no financial capacity for issue of hand loan to the accused.

d) Both the courts without appreciation of the defence of the accused only on the presumption available in favour of the complainant proceeded to pass the conviction order.

e) Further in the course of cross-examination of P.W.1 the complainant, he himself admitted that, he lent hand loan to the accused at the rate of 2% interest which is illegal as the complainant had no licence to lent the amount and he was not the money lender.

f) Further the trial court while awarding the compensation to the complainant ought to have conducted an enquiry and to see the capacity of the accused to pay the compensation to the tune of double of the cheque amount. The trial judge neither conducted an enquiry nor considered the financial capacity of the accused to pay the compensation.

g) Both the courts have not considered that there was no transaction as per the Ex.P.1 i.e, the impugned cheque and only based on the wrong inference and mis-interpreted the

presumption available U/s 118 and 139 of NIAct, erroneously convicted the accused.

10. Hence, the petitioner herein prayed for allowing this revision petition by setting-aside the impugned judgments of both the courts and to acquit the accused.

11. After issuance of notice in this revision petition, the respondent/complainant served with the notice, but the respondent is unrepresented.

12. Trial court records secured.

13. Heard the learned counsel Sri.Shivanand Malashetti, appearing for the petitioner/accused. The respondent/complainant remained unrepresented.

14. The learned counsel has relied upon the judgment **K. R. Raja Reddy @ Kallem Raja Reddy v. State of Haryana and another** reported in (2024) 8 SCC 588.

15. Perused the Trial Court Records.

16. The following point do arise for consideration

Whether the impugned judgments passed by both the Courts suffer from illegality, perversity and call for interference by this Court?

17. Arguments of the Petitioner/Accused

Learned counsel for the petitioner/accused argued that the defence of the accused is that he does not know the complainant at all. According to the accused, he had borrowed a sum of Rs.80,000/- from one Yasubabu and, at the time of borrowing the said amount, he had issued two cheques to the said Yasubabu. The accused contends that he subsequently repaid the said amount of Rs.80,000/- to Yasubabu and, when he requested him to return the cheques, Yasubabu did not return them. It is further contended that the accused was never acquainted with the complainant and that the cheque issued by him to Yasubabu was misused by the complainant by filing the present complaint.

17.1. It is further argued that DW1/accused was cross-examined by the complainant and, during such cross-examination, it was suggested to him that he had received a sum of Rs.1,00,000/- from the complainant, which suggestion was denied by him. However, he admitted that Ex.P.1-cheque belongs to his bank account and also admitted his signature thereon, which was marked as Ex.P.1(a). It was further suggested to him that the complainant had issued a notice to him as per Ex.P.3 and that, though the said notice was served upon him, he had refused to receive it. The accused denied the said suggestion and contended that he had neither received the notice as per Ex.P.3 nor refused to receive the same. It is also admitted by the accused that he had not lodged any complaint against the said Yasubabu alleging misuse of the cheque.

17.2. It is further argued that, though the accused had taken the defence that he was not acquainted with the complainant and had never issued any cheque in favour of

the complainant, both the Courts, without properly appreciating the defence of the accused, proceeded to convict him merely on the basis of the statutory presumption available in favour of the complainant. It is therefore argued that the impugned judgments are erroneous and contrary to law. Hence, learned counsel submits that the present petition deserves to be allowed by setting aside the impugned judgments passed by both the Courts and by acquitting the accused of the alleged offence.

18. In the present case, though the respondent/complainant was served with notice, he has neither appeared before this Court nor represented himself through counsel and has not addressed any arguments.

19. On perusal of the records, it is evident that the contention of the complainant is that the accused was known to him and had received a sum of Rs.1,00,000/- as a hand loan and, towards repayment of the said hand loan, had issued the impugned cheque. When the said cheque was presented for encashment, it came to be dishonoured.

Thereafter, the complainant issued a legal notice to the accused as per Ex.P.3. The said notice was refused by the accused, and the returned postal cover/acknowledgment is marked as Ex.P.5.

20. On perusal of the records, it is evident that, in order to substantiate his contention, the complainant examined himself as PW1 and got marked the relevant documents. Both the Courts, after appreciating the evidence available on record, came to the conclusion that the complainant had proved that the accused had committed the alleged offence and accordingly convicted and sentenced him.

21. Now, it is the contention of the accused that, though he had taken the defence that there was no transaction between himself and the complainant and that the complainant did not have the financial capacity to lend the alleged amount, the said defence was not properly appreciated by both the Courts.

22. It is the contention of the accused that, during the cross-examination of PW1, he admitted that he knew the said Yasubabu, but stated that he did not know whether there was any transaction between Yasubabu and the accused. It is further contended that a suggestion was made to PW1 that the complainant and the said Yasubabu, in collusion with each other, had filed a false complaint against the accused, who was an uneducated person.

23. It is further contended by the accused that, during his cross-examination, PW1 admitted that he had lent a sum of Rs.1,00,000/- to the accused on interest at the rate of 2% per month and also admitted that the writing on Ex.P.1-cheque had been made by his friend. Therefore, it is argued that, though there was no transaction between the complainant and the accused, the complainant, in connivance with the said Yasubabu, had misused the cheque and filed a false complaint against the accused.

24. On perusal of the evidence elicited from PW1, it is evident that he has admitted that he had lent the amount

to the accused on interest. Further, PW1 has also admitted that the writing on Ex.P.1-cheque was made by his friend.

25. It is the defence of the accused that he is an illiterate person and that the complainant has filed a false complaint against him by misusing the said cheque for wrongful gain.

26. Though the accused has taken the defence that he had issued the cheque to one Yasubabu, he has not produced any oral or documentary evidence to substantiate the said defence. Further, no material has been placed on record to show that he had demanded the return of the cheque from Yasubabu or that he had lodged any complaint alleging misuse of the cheque.

27. On perusal of the impugned judgments passed by both the Courts, it is evident that both the Courts have properly appreciated the evidence available on record and have rightly come to the conclusion that the complainant had established the commission of the alleged offence by

the accused. I find no illegality, perversity, or material irregularity in the appreciation of evidence or in the findings recorded by the Courts below. Therefore, the impugned judgments do not call for interference by this Court.

28. At this stage, learned counsel for the accused submitted that, pursuant to the order passed by this Court, the accused has deposited a sum of Rs.45,000/- before the Trial Court. It is further submitted that the accused/petitioner is presently not in a position to move about due to his ill-health and that, if the respondent/complainant were to appear before this Court, the accused is ready to settle the matter. However, though the respondent/complainant has been served with notice, he has remained unrepresented before this Court.

29. Learned counsel for the petitioner has relied upon the judgment cited supra, in the case of K.R.Rajareddy, wherein it is observed that,

“Even though the complainant is unwilling to compound the case but, considering the

totality of the facts and circumstances of the present case which we have referred above, we are of the considered view that these proceedings must come to an end. We, therefore, allow this appeal and set aside the impugned order in order to do complete justice."

30. Learned counsel for the petitioner/accused, relying upon the observations set out above, submitted that, in the present case also, though the accused is ready and willing to compound the offence, due to the absence of the complainant, he could not compound the case. It is further submitted that, due to his present health condition, the accused is not in a position to move about and, therefore, his request may be considered. On these grounds, learned counsel submitted that this Court may allow the petition by setting aside the impugned judgments and acquit the accused.

31. In the present case, the cheque in question, marked as Ex.P.1, is for a sum of Rs.1,00,000/-. The learned Magistrate has sentenced the accused to pay a fine

of Rs.1,20,000/- and ordered that a sum of Rs.1,15,000/- out of the said fine amount be paid as compensation to the complainant.

32. It is the argument of learned counsel for the petitioner/accused that the accused has already deposited a sum of Rs.45,000/- before the Trial Court pursuant to the conditional order passed by this Court. It is further submitted that, despite the efforts made by the accused to secure the presence of the complainant for the purpose of settling the matter, the complainant has not appeared before this Court.

33. Having regard to the defence taken by the accused and the evidence elicited from PW1, particularly his admission that the alleged amount was lent to the accused on interest at the rate of 2% per month, i.e., 24% per annum, as well as his admission that the writing on Ex.P.1- cheque was made by his friend, the defence raised by the accused assumes significance. Though the statutory presumptions under Sections 118 and 139 of the Negotiable

Instruments Act operate in favour of the holder of the cheque, such presumptions are rebuttable. In the facts and circumstances of the present case, the material elicited in the cross-examination of PW1, coupled with the defence of the accused, raises a serious doubt regarding the existence of the alleged transaction between the complainant and the accused. Therefore, the Courts below have not properly appreciated the evidence available on record in its proper perspective.

34. The accused has expressed his willingness to compound the offence; however, due to the non-appearance of the respondent/complainant, such settlement could not take place. The accused has also deposited a sum of Rs.45,000/- before the Trial Court pursuant to the order passed by this Court. Considering the totality of the circumstances, the evidence available on record, the defence raised by the accused, and the admissions elicited from PW1, this Court is of the opinion that the findings recorded by the Courts below suffer from improper

appreciation of the evidence and warrant interference in the exercise of revisional jurisdiction. Accordingly, the above point is answered in the **affirmative** and the following order is passed:

ORDER

The revision petition is **allowed**.

The judgment of conviction and order of sentence passed by the learned Addl.Civil Judge and JMFC at Gangavathi in CC No.255/2019 dated: 21.10.2020 and confirmed by the I Addl.District and Sessions Judge, Koppal in Criminal Appeal No.7/2020 dated: 04.09.2021 are hereby set aside.

Consequently, the petitioner/accused is acquitted of the offence punishable U/s 138 of NI Act. Amount of Rs.45,000/- deposited by the accused/petitioner before the trial court ordered to be returned to the complainant.

The trial court is directed to return the said amount to the complainant / respondent on proper identification.

Return the Trial Court Records.

**Sd/-
(RAJESHWARI N.HEGDE)
JUDGE**

kkp
CT:CMU