



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF JANUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V HOSMANI
CRIMINAL REVISION PETITION NO. 1536 OF 2023

BETWEEN:

SMT.SAFIYA
W/O ABDUL REHAMAN,
AGED ABOUT 55 YEARS,
AT MUMBALU VILLAS,
ANANDAPUR POST,
SAGARA TALUK,
SHIVMOGGA DISTRICT - 577 412.

...PETITIONER

[BY SRI PAVANKUMAR Y. DHONGDE, ADVOCATE (PH)]

AND:

MR.M HAMEED,
S/O MOHIDDIN BYARI,
AGED ABOUT 56 YEARS,
BUSINESSMAN, AT SHETTYKOPPA,
NR PURA TALUK,
CHICKMANGALURU DISTRICT - 577 101.

...RESPONDENT

[BY SRI GS BALAGANGADHAR, ADVOCATE (PH)]

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C., PRAYING TO SETTING ASIDE THE JUDGMENT AND ORDER DATED 23.09.2023 PASSED AND ISSUED BY THE HONBLE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT CHIKKMANGALURU IN CRL.A.NO.101/2023 (ANNEXURE A) AND CIVIL AND JUDGE AND JMFC AT N.R.PURA IN C.C.NO.276/2020 (ANNEXURE B) AND ETC.

THIS PETITION IS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.12.2025, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:





CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV ORDER

Challenging judgment dated 23.09.2023 passed by Principal District and Sessions Judge, Chikkamagaluru, in Crl.A.no.101/2023 confirming judgment dated 29.04.2023 passed by Civil Judge & JMFC, NR Pura, in CC no.276/2020, this revision petition is filed.

2. Sri Pavankumar Y Dhongde, learned counsel for petitioner submitted this revision petition was against concurrent erroneous findings convicting accused for offence punishable under Section 138 of Negotiable Instruments Act, 1881 ('**NI Act**' for short).

3. It was submitted, proceedings were initiated on a private complaint filed by complainant under Section 200 of Code of Criminal Procedure, 1973 ('**CrPC**' for short) stating that accused was his relative and in first week of January, 2020, borrowed Rs.4,30,000/- as hand-loan agreeing to repay within three months, and on demand accused issued cheque bearing no.281951 dated 07.10.2020 for Rs.4,30,000/- drawn



on Canara Bank, Anandapura, which when presented was dishonored with endorsement 'funds insufficient and drawer signature incomplete'. And thereafter, even when demand notice got issued by complainant on 09.10.2020 was served, accused failed to repay amount within time and thereby committed offence punishable under Section 138 of NI Act.

4. It was submitted, on appearance, accused denied charges and sought trial, in which, complainant examined himself as PW.1 and got marked Exhibits.P1 to P7. After being explained incriminating material, accused denied it as false and same was recorded as her statement under Section 313 of CrPC. Thereafter, accused examining herself and two others as DWs.1 to 3 and got marked Exhibit D1. It was submitted, accused had set-up various defences and substantiated them in cross-examination, but, both Courts without proper appreciation convicted accused and therefore, said findings were perverse calling for interference.

5. It was firstly submitted, accused was an illiterate, who knew to sign in her name. Her signature in pleadings, vakalath etc. were in Kannada language. Though complainant



claimed, accused signed on Ex.P1 - cheque in English in his presence and differed from signature in bank records. In cross-examination, PW.1 denies knowledge of accused unable to sign in any other language than Kannada. It was submitted, when accused denied and disputed execution of Ex.P1 - cheque, without establishing *execution*, offence under Section 138 of NI Act could not be established, *moreso*, when complainant failed to get opinion from handwriting expert.

6. It was submitted, definition of Bill of Exchange under Section 5 of NI Act, required signature of drawer on instrument for it to become a Bill of Exchange, which was absent in present case. It was further submitted, to substantiate defence denying signature of accused on Ex.P1 - cheque, accused had examined Manager of her Bank as DW.2, who stated that Ex.P.3 - endorsement indicated two reasons for dishonour of cheque in question, firstly *insufficient funds* and secondly about *difference in signature of drawer*. And corroborated same by production of Account Opening Form Register as Ex.D.1 and stating about difference in signature of accused on Ex.P1 in comparison with Ex.D1. Therefore,



conviction based merely on presumptions under Sections 118 and 139 of NI Act would be contrary to record and perverse.

7. Relying upon decision in case of **Ravichandra V. v. Rosi Line Reena Rani** reported in **2021:KHC:41611**, it was submitted, this Court had confirmed acquittal of accused of offence under Section 138 of NI Act, when complainant failed to establish accused signing on cheque, when reason for its dishonor was '*drawer's signature differs*'. In support of his submission, learned counsel relied on decision of Hon'ble Supreme Court in case of **Vinod Tanna & Anr. v. Zaher Siddiqui & Ors.** reported in **(2002) 7 SCC 541**, wherein it was held, unless all ingredients to constitute offence under Section 138 of NI Act were established, penal provision would not get attracted.

8. It was also contended, accused on other hand had contended that she had borrowed loan earlier in year 2019 and for security issued two cheques including Ex.P1 to complainant, but he had not returned same after loan was cleared and misused them for present proceedings. It was also submitted, DW.1 had deposed that Ex.P.1 was issued towards Association



dues of her daughter. On above grounds sought for allowing revision petition.

9. On other hand, Sri GS Balagangadhar, learned counsel for complainant opposed revision petition. At outset, learned counsel submitted, none of grounds urged were supported by record. It was submitted, Ex.P.7 - reply notice itself would bear testimony to admission about due execution of Ex.P.1 - cheque. Despite same, defence contrary to record was adopted only to delay/dilate proceedings. Attention was drawn to several contradictory and mutually self-destructive defences raised. It was submitted, in her deposition DW.1 stated that Ex.P.1 was issued towards Association dues of her daughter. This would in corroboration of admission in Ex.P7 - reply notice about due execution of Ex.P.1. Even, defence that Ex.P.1 was one of two cheques given as security for alleged earlier loan borrowed and claimed to have been repaid in year 2019 would also admit execution of Ex.P.1 by accused. Despite same, accused chose to adopt contradictory/mutually destructive plea denying signature on Ex.P.1. It was submitted, in later part of deposition, accused once again admitted execution of Ex.P.1. It



was submitted, even daughter of accused examined as DW.3 admitted Ex.P.1 was issued by accused. Taking note of above material, trial Court had convicted accused. Same was confirmed in appeal.

10. In support of his submissions, learned counsel sought to rely on decisions of Hon'ble Supreme Court in case of **Laxmi Dyechem v. State of Gujarat & Ors.** reported in **(2012) 13 SCC 375** and **Rangappa v. Sri Mohan** reported in **(2010) 11 SCC 441**. It was submitted, both Courts had thus concurrently convicted accused based on well reasoned findings and material on record, leaving no scope for interference. On said ground, sought dismissal of petition.

11. Heard learned counsel and perused impugned judgment and copies of depositions/exhibits appended to petition as well as copies filed by complainant along with Memo filed on 08.12.2025.

12. From above, it is seen that revision petition is by accused challenging concurrent judgments convicting her for offence punishable under Section 138 of NI Act. Grounds urged are perversity of findings insofar as holding issuance of Ex.P.1



by accused to complainant was towards discharge of legally enforceable debt.

13. There would be no dispute about proposition that in order to sustain action or conviction for offence punishable under Section 138 of NI Act, complainant would require to establish that accused had drawn a cheque and after duly signing issued it to complainant in discharge of some legally enforceable debt and that such cheque having returned dishonored on presentation due to failure of accused-drawer failing to maintain balance in bank account as would cover amount mentioned in cheque in question.

14. Two specific grounds are called upon to be spelt upon, *firstly*, whether there is material to establish due execution of Ex.P1 by accused and *secondly*, whether conviction would be sustainable even where cheque in question was alleged to have returned dishonored due to difference in signature on cheque.

15. While passing impugned judgment trial Court, noted first defence adopted by accused was denying issuance of



cheque to complainant and claiming cheque in question to have been issued to her daughter for her transaction in Association. It is seen both accused - DW1 as well as her daughter - DW.3 deposed likewise.

16. However, trial Court noted inconsistency in their deposition, wherein DW.3 claimed that for her Association dues, she had issued two cheques belonging to her mother also apart from two cheques from her account. But, defence set up in Ex.P.7 - reply by accused is about two cheques having been issued as security towards earlier loan of Rs.70,000/- borrowed from complainant and claiming it to have been cleared. Such defence is not urged in reply. Besides, there is no material to probablize same. In any case, there is unequivocal admission about issuance of Ex.P1 to complainant. Thus defenses setup are mutually destructive.

17. As per law laid down in **Bir Singh v. Mukesh Kumar** reported in **(2019) 4 SCC 197**, admission about signature on cheque and its issuance to complainant would attract presumption under Sections 118 and 139 of NI Act. Thereafter burden would be on accused to establish probable



defence. As noted above, there is no material placed to establish either issuance of Ex.P.1 was towards Association dues of DW.3 or as security for earlier loan. Thus, finding of both Courts about execution and issuance of Ex.P1 by accused to complainant would be based on material on record.

18. Insofar as question whether dishonour of cheque on ground of difference in signature of drawer would attract penal consequences under Section 138 of NI Act, Hon'ble Supreme Court in **Laxmi Dyechem's** case (supra) considering this very issue and held such dishonour would also attract Section 138 of NI Act. In view of said ratio, reliance on **Ravichandra's** case (supra), which is by this Court, would be inconsequential. Besides, facts in said matter are distinguishable.

19. Wherefore, neither of contentions urged sustain. Taking note of fact that filing of revision petition has caused delay in complainant realizing cheque amount, despite well reasoned findings of both Courts over a period of two years, and fact that trial Court had imposed sentence of fine of Rs.4,35,000/-, when amount mentioned in Ex.P1 was for Rs.4,30,000/-, revision petition is **dismissed** as devoid of



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merit, imposing cost of Rs.25,000/-, which shall be in addition to fine amount imposed and shall be payable to complainant.

Sd/-
(RAVI V HOSMANI)
JUDGE

Psg*/AV
List No.: 1 SI No.: 67