



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. 36 OF 2022

BETWEEN:

SRI K V VIJAY KUMAR,
S/O LATE KUMARAVENKANNA,
AGED ABOUT 60 YEARS,
R/AT NO.951, 15TH 'A' MAIN,
2ND 'A' CROSS 3RD STAGE, 1ST BLOCK,
BASAVESHWARANAGAR,
BENGALURU - 560 079.

ALSO AT:

VISHAKA ENTERPRISES,
NO.303, 2ND FLOOR,
3RD CROSS, 5TH MAIN,
GANDHINAGAR, BANGALROE - 560 009.

...PETITIONER

[BY SRI A. MADHUSUDHANA RAO, ADVOCATE]

AND:

SRI V MADAIAH,
S/O LATE VEERABHADRAIAH,
AGED ABOUT 49 YEARS,
NO.122, SURAGAJAKANAHALLI VILLAGE,
KASABA HOBLI, ANEKAL TALUK,
BANGALORE DISTRICT - 560 110.

...RESPONDENT

[RESPONDENT - SERVED & UNREPRESENTED]

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE DATED 06.04.2016 PASSED BY THE XXI ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU IN C.C.NO.27601/2014 AND ALSO THE JUDGMENT DATED 17.04.2021 PASSED BY THE LEARNED LXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU IN CRL.A.NO.572/2016, ALLOW THIS CRL.REVISION PETITION WITH COSTS.





THIS PETITION IS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.12.2025, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV ORDER

Challenging judgment dated 17.04.2021 passed by LXIX Additional City Civil and Sessions Judge, Bengaluru, in Crl.A.no.572/2016 confirming judgment dated 06.04.2016 passed by XXI ACMM, Bengaluru, in CC no.27601/2014, this revision petition is filed.

2. Sri A Madhusudhan Rao, learned counsel for petitioner submitted, this revision petition is against concurrent findings convicting petitioner (accused) for offence punishable under Section 138 of Negotiable Instruments Act, 1881 ('**NI Act**' for short).

3. It was submitted, present proceedings arise out of a private complaint filed by respondent - complainant under Section 200 of Code of Criminal Procedure, 1973, ('**CrPC**', for short), stating that accused was Telugu Film Distributor and well known to R. Venkateshappa of Anekal, a close friend of



complainant, who had introduced accused to him and they had become friends. On 10.06.2013, accused borrowed Rs.5,00,000/- as hand loan assuring return within three months by issuing cheque no.320409 dated 10.09.2013, which when presented returned with endorsement 'insufficient funds' and despite demand notice got issued by complainant being 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, where upon complainant deposed as PW-1 and got marked Exhibits-P1 to P7, while accused confronted PW.1, and got marked Exhibit-D1. Thereafter, when substance of incriminating material was explained, accused denied it and his statement under Section 313 of CrPC was recorded. Thereafter he deposed as DW.1 and got marked Exhibit-D2. Though he raised various defences and substantiated same, without proper consideration, trial Court convicted him. Even appeal was dismissed without proper re-appreciation, leading to this revision petition.



5. It was submitted, in cross-examination, PW-1 denied contents of his complaint and examination-in-chief affidavit. It was submitted, accused had deposed that R. Venkateshappa had collected 16 cheques from him for Chit subscription, including cheque in question and had failed to return them after completion of chit transaction and that complainant had misused one of them. It was submitted, accused had filed complaint against R. Venkateshappa on 07.07.2014 as per Ex.D1 for abuse of his cheques and PW-1 admitted being summoned by police for enquiry. Accused had also produced Ex.D2 - reply dated 15.10.2013 to legal notice dated 16.09.2013 got issued by R. Venkateshappa, wherein he had mentioned details of all 16 cheques issued to R. Venkateshappa for chit subscription. This cast grave doubt over alleged loan transaction by accused from complainant herein. It was submitted, failure to examine R. Venkateshappa, despite stating there was no difficulty to do so, ought to have attracted adverse inference to upset presumption under Sections 118 and 139 of NI Act.



6. It was submitted, when there was sufficient explanation about Ex.P1 – cheque being part of 16 cheques issued by accused to R. Venkateshappa and Exs.D1 and D2 corroborating said contention, reasoned assigned by trial Court in Para-15 of its judgment that there was no explanation for issuance of 16 cheques would be erroneous, contrary to record and perverse, as such and calling for interference.

7. Even, PW-1 contradicted himself by deposing that accused approached him for hand loan, but admitting in cross-examination that accused had not approached him, but R. Venkateshappa had asked complainant to lend money. Similarly, after stating accused was his friend, he denied knowing his place of residence, office etc. Apart from above, accused disputed financial capacity. Complainant claimed, he had cash of Rs.5,00,000/- at home derived from agriculture and business. But, same was not stated in Ex.P3 – demand notice.

8. In support of his submissions, learned counsel relied upon ratio laid down by Hon'ble Supreme Court in **MS Narayana Menon alias Mani v. State of Kerala & Anr.**,



reported in **(2006) 6 SCC 39; APS Forex Services Pvt. Ltd.,**

v. Shakti International Fashion Linkers and Ors., reported in **(2020) 12 SCC 724** and **Basalingappa v. Mudibasappa** reported in **(2019) 5 SCC 418**, and prayed for allowing revision petition.

9. Respondent is served and unrepresented.

10. Heard learned counsel for petitioner and perused impugned judgments and record.

11. This revision petition is by accused challenging concurrent judgments convicting him for offence punishable under Section 138 of NI Act. Challenge is mainly alleging perversity of findings insofar as presuming issuance of Ex.P1 was for legally enforceable debt, about financial capacity of complainant to lend money as well as ignoring material inconsistencies and omissions while deciding on probability of defence taken by accused. Accused has relied on various decisions in support of his contentions and it would be appropriate to refer them.



12. In **MS Narayana Menon**'s case (supra), it is held onus would be on accused to rebut presumption under Sections 118 and 139 of NI Act, but, standard of proof for same would not be proof beyond reasonable doubt and it would suffice to raise probable defence. Same is reiterated in **Basalingappa**'s case (supra). In **APS Forex**'s case (supra), it is held when accused disputed financial capacity of complainant, onus would shift back on complainant to prove financial capacity.

13. While there can be no denial of ratio laid down as above, Hon'ble Supreme Court in **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460**, scope for interference in revision would arise only if findings suffer from perversity or infraction of statutory provisions.

14. As noted above, there is no contention urged about findings being contrary to statutory provisions. While arriving at its conclusions about issuance of Ex.P1 – cheque was towards discharge of legally enforceable debt, trial Court referred to contents of complaint and deposition of complainant as PW-1 and exhibits marked. It noted that in his cross-examination on 16.12.2016, accused admitted that Ex.P1 belonged to him and



identified his signature on it as Ex.P1(a). Based on same, it held presumption under Sections 118 and 139 of NI Act were attracted and onus would be on accused to upset same.

15. In this regard, it is seen accused deposed as DW-1 relying on Exs.D1 and D2. But as rightly noticed by trial Court both complaint given by accused against R. Venkateshappa, notice issued to complainant by Investigation Officer (Ex.D1) are after filing of complaint in present proceedings. Therefore, it has to be examined, whether there is sufficient material to upset presumption.

16. It is seen, accused admitted his signature on Ex.P1 - cheque and that it was drawn from his account. Ex.P2 - endorsement for dishonor of cheque. Ex.P3 - demand notice got issued by complainant through his counsel Sri H. Srinivas, mentioning about friendship between accused and complainant on introduction by R. Venkateshappa leading to lending of Rs.5,00,000/- on 10.06.2013 and claiming accused had issued Ex.P1 – postdated cheque for repayment.

17. But, in Ex.P6 – reply, accused denied transaction with complainant and specifically stated that Ex.P1 was part of



cheques issued to R. Venkateshappa for Chit transaction. In Ex.D2 – reply given to notice issued by H. Srinivas, Advocate on behalf of R. Venkateshappa, accused also denied approaching R. Venkateshappa for hand loan and issuing cheque. Accused specifically stated, R. Venkateshappa was running private Chit business, got accused to participate in it and collected undated cheques bearing no.320407 to 320410 for Rs.5,00,000/- each, drawn on IDBI Bank and 10 undated cheques bearing no.345302 to 345311 for Rs.4,00,000/- each and 2 undated cheques bearing no.345312 and 345313 for Rs.3,50,000/- each, drawn on Andhra Bank drawn on account of M/s. Padmacharan Enterprises, a proprietorship concern of accused.

18. Both Ex.P6 and Ex.D2 – replies issued on 15.10.2013, when complainant and R. Venkateshappa were represented by same counsel namely H. Srinivas, who incidentally represented complainant before trial Court herein. Thus, complainant would be deemed to be aware of specific defence of accused. Indeed as pointed out by learned counsel for accused, in cross-examination, PW-1 stated he knew accused through R. Venkateshappa and accused accompanied



R. Venkateshappa while meeting him. He admitted there was no difficulty in examining R. Venkateshappa. In cross-examination, it is elicited complainant did not know much about accused such as his mobile phone number, occupation and location of his office etc. In above circumstances, failure to examine R. Venkateshappa, without explanation would be material omission.

19. Further, PW-1 feigning not to remember contents of his demand notice, denomination of currency notes of payment and admission about not possessing any document to show availability of amount in cash to lend to accused as well as failure to disclose source of income, would be material omission. In addition, there is admission that complainant had not informed accused about dishonor of cheque and that accused did not ask complainant for hand loan and that amount was paid to R. Venkateshappa, who had sought loan for accused. When, it is admitted that complainant had given money to R Venkateshappa on behalf of accused and that accused had not asked him for loan, non-examination of R. Venkateshappa would be a material omission, probabilising



defence set-up and upsetting presumption. Same would be in present facts and circumstances fatal to prosecution.

20. While passing impugned judgments, both Courts proceeded on admission of accused about issuance of Ex.P1 - cheque to R Venkateshappa and his signature on it to hold availability of presumption in favour of complainant. There is no proper consideration of material on record, while examining whether defence set-up was probabilised. Thus, it has to be held, finding of both Courts are without consideration of entire material on record and as such perverse.

21. Consequently, revision petition succeeds and is **allowed**; impugned judgment dated 17.04.2021 passed by LXIX Additional City Civil and Sessions Judge, Bengaluru, in Crl.A.no.572/2016 and judgment dated 06.04.2016 passed by XXI ACMM, Bengaluru, in CC no.27601/2014 are set-aside; and accused is acquitted of offence punishable under Section 138 of NI Act. Bail/Surety bonds stand discharged.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

AV/GRD
List No.: 1 Sl No.: 63