2026 INSC 790

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(Arising out of Special Leave Petition (Criminal) No.2247 of 2024)

KUNTEGOWDA ... APPELLANT

VERSUS

THURUBAIAH ... RESPONDENT

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. The present criminal appeal has been preferred by the complainant/appellant assailing the order dated 06.10.2023 passed by the High Court of Karnataka at Bengaluru in Criminal Revision Petition No.1502 of 2016 wherein the High Court allowed the said criminal revision petition preferred by the respondent

(hereinafter referred to as 'accused') and thereby set aside the order of conviction dated 19.09.2016 passed by the Court of LXV Additional City Civil & Sessions Judge, Bangalore in Criminal Appeal No.1224 of 2015. The said Criminal Appeal was preferred by the accused being aggrieved by the judgment dated 01.09.2015 of the Court of the XL Additional Chief Metropolitan Magistrate, Bangalore in Complaint Case No.12108 of 2013 wherein the Magistrate had convicted him under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "NI Act") and thereby sentenced him to pay a fine of Rs.9,00,000/- (Rupees Nine Lakh) and in default of payment of the fine, to undergo simple imprisonment for six months.

3. Briefly stated, the admitted facts of the case leading to the present Appeal are that the complainant and accused, being acquainted with each other, entered into an agreement in December 2010 whereby a hand loan of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand) was extended by the complainant to the accused for the purpose of purchase of a house site. It was further agreed by the parties that the said loan would be paid by

the accused within a period of one year with interest at the rate of 16% per annum.

3.1 Thereafter, the accused issued a cheque bearing No.524714 dated 20.03.2013 in favour of the complainant drawn upon ICICI Bank, Malleshwaram Branch, Bengaluru. The said cheque was presented for encashment by the complainant before State Bank of India, Magadi Road Branch, Bengaluru which was returned on 22.03.2013 with remark "funds insufficient". Aggrieved, the complainant served a legal notice on the accused on 28.03.2013 demanding that the sum of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand) alongwith interest be paid within fifteen days from the date of receipt of the said legal notice.

3.2 Aggrieved by the inaction and non-repayment of the hand loan extended, the complainant filed a complaint on 06.05.2013 being Complaint Case No.12108 of 2013 under Section 200 of the Code of Criminal Procedure, 1973 read with Section 138 of the NI Act before the Court of XII Additional Chief Metropolitan Magistrate, Bengaluru.

3.3 When the matter stood thus, the accused sent a legal notice dated 16.09.2014 to the complainant and one S.B. Ramachandraiah (who was later examined by the trial court as Prosecution Witness No.2) imploring the latter to return his blank cheques and blank documents that were allegedly deposited by the accused as a security for a hand loan of Rs.40,000/- (Rupees Forty Thousand) that was extended to him by S.B. Ramachandraiah.

3.4 On 01.09.2015, the accused was convicted by the Court of the XII Additional Chief Metropolitan Magistrate, Bangalore under Section 138 of the NI Act in the Complaint Case and was sentenced to pay a fine of Rs.9,00,000/- (Rupees Nine Lakh), in default whereof he was directed to undergo simple imprisonment for six months. The trial court, while convicting the accused, held that the signature on the cheque admittedly belonged to the accused and that the said cheque was dishonoured due to insufficiency of funds. It was further observed that even though the legal notice dated 28.03.2013 was not received by the accused personally, nevertheless, it was addressed to the accused and there was nothing on record to believe that the accused was not residing at the address shown in the legal notice and therefore on the basis of acknowledgment and correctness of address of the accused, the notice was deemed to have been served upon him. Furthermore, it was held by the trial court that the complainant had complied with all the requirements of Sections 138 to 142 of the NI Act and therefore presumptions under Sections 118 and 139 of the NI Act were raised in favour of the complainant and the said presumptions were not rebutted by the defence of the accused and hence making him liable to be punished under the rigours of Section 138 of the NI Act.

3.5 Aggrieved by the order dated 01.09.2015 of the trial court, the accused preferred Criminal Appeal No.1224 of 2015 before the Court of LXV Additional City Civil and Sessions Judge, Bangalore which was dismissed *vide* judgment dated 19.09.2016 by affirming the findings of the trial court. However, the order of sentence was modified to the extent of fine imposed, which was reduced from Rs.9,00,000/- (Rupees Nine Lakh) to Rs.6,50,000/-(Rupees Six Lakh and Fifty Thousand).

3.6 Aggrieved by the judgment dated 19.09.2016 of the Appellate Court, the accused preferred a Criminal Revision Petition No.1502 of 2016 before the Karnataka High Court with a prayer to set aside the judgment dated 19.09.2016 passed in Criminal Appeal No.1224 of 2015 and judgment dated 01.09.2015 passed in the Criminal Complaint No.12108 of 2013 convicting him.

3.7 The High Court, by the impugned order dated 06.10.2023 and while exercising its revisional jurisdiction, allowed the criminal revision petition preferred by the accused and set aside the conviction and sentence recorded by the trial court, and acquitted him under Section 138 of NI Act by observing that the complainant had failed to disclose from which of his relatives he had taken money to extend the hand loan to the accused. It was further observed that the complainant has failed to provide any explanation with respect to the need for the complainant to avail a loan from his relatives and friends and then advance the same to the accused without charging any interest. Further, no date was disclosed by the complainant as the date of advancement of the loan. The High Court, upon scrutiny of evidence, observed that the complainant has failed to elucidate and explain as to how the amount of Rs.3,00,000/-(Rupees Three Lakh) was mobilised while his monthly income was between Rs.20,000/- (Rupees Twenty Thousand) to Rs.25,000/- (Rupees Twenty Five Thousand). Therefore, in view of the aforesaid, it was highly improbable that a loan to the tune of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand) was advanced without charging any interest and thereby the complainant failed to satisfy the court that he had the financial capacity to advance such a huge amount which was completely disproportionate to his monthly income. Therefore, giving the benefit of doubt to the accused, the High Court observed that he was able to successfully discharge and rebut the presumption in favour of the complainant by exposing the financial incapacity of the complainant to extend the said loan and thereby acquitting him and setting aside the concurrent findings of the courts below.

3.8 Aggrieved by the impugned judgment and order dated 06.10.2023, the complainant has preferred the present criminal Appeal praying for setting aside of the impugned order and restoration of the judgment dated 01.09.2015 of the trial court as affirmed by the Appellate Court along with fine.

4. We have heard the learned counsel for the complainant-appellant and the learned counsel for the accused-respondent. We have perused the material on record.

4.1 Learned counsel for the complainant contends that the impugned order proceeds on an erroneous premise in placing reliance upon the complainant's monthly income to infer absence of financial capacity to advance a sum of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand). It was argued that such an approach is contrary to the settled position of law as no initial burden lies upon the complainant once the presumption under Sections 118 and 139 of the NI Act is satisfied. It was further contended that the accused neither produced any additional evidence nor demonstrated any cogent material to rebut the presumption under Section 139 of the NI Act. In fact, it was contended that the accused only produced legal notice sent post-facto and some oral evidence, but no reliable evidence was produced by the accused to rebut the presumption under Section

139 of the NI Act. Lastly, it was argued that the High Court had committed an error by allowing the revision petition preferred by the accused and therefore should be set aside in the interest of justice.

4.2 *Per contra*, learned counsel for the accused, while opposing the appeal preferred by the complainant, submitted that on 10.10.2010, the accused took a hand loan of Rs.40,000/- (Rupees Forty Thousand) from one S.B. Ramachandraiah (the Prosecution Witness No.2 in the Complaint Case). In such circumstances, the accused had handed over two blank cheques along with a promissory note and a signed white blank paper. The said documents were later misused by the complainant who is a relative of the said Prosecution Witness No.2 (for short, "PW-2"). It was further contended by the learned counsel that the complainant failed to specify exact timelines of the alleged transaction as he failed to disclose specific source, date, time and contemporaneous material to substantiate the alleged hand loan in favour of the accused. It was further contended by the learned counsel that the complainant had admitted his income was Rs.20,000/- (Rupees

Twenty Thousand) to Rs.25,000/- (Rupees Twenty Five Thousand) per month and therefore it would not be possible for him to lend a hand loan of Rs.4,50,000/- (Rupees Fourt Lakh and Fifty Thousand) to the accused. It was also the case of the complainant that he had received amounts from his relatives i.e., the PW-2 along with Sri Nagaraj and others to lend money to the accused. However, the complainant admitted that the aforementioned names were not specified in the Complaint dated 06.05.2013 and hence it established the fact that the complainant improvised his false case and the witnesses produced had been staged by him. Further, it was contended that the contention of the complainant is highly improbable as no prudent person would receive multiple hand loans to lend the same as a loan to a third party as he had admitted that there was no written agreement between him and the accused for the alleged transaction. The complainant, it was contended, had admitted that there was no documentary evidence to show that he was in possession of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand) with him at the time of issuance of the alleged hand loan. The learned counsel for the accused further submitted that the complainant failed to independently establish a legally enforceable debt even though he admitted that the signature on the cheque differs from the signature on acknowledgment and therefore failed to establish a legally enforceable debt. In consideration of aforementioned admissions, it was contended by the learned counsel for the accused that PW-2 admitted that there was no documentary evidence to establish that the complainant received an amount of Rs.1,00,000/- (Rupees One Lakh) from him and therefore the High Court was correct in setting aside the concurrent judgments of conviction passed by the lower courts.

5. Before delving into the contentions of the parties and appreciation of facts, we wish to underline the aims and objectives of Chapter XVII (Sections 138 to 148) of NI Act which was inserted by Act 66 of 1988 w.e.f. 01.04.1989. The scope and intent of bringing the said Chapter in the statute is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It is to enhance the acceptability of cheque in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate

safeguards to prevent harassment of honest drawers. This chapter has been introduced to prevent dishonesty on the part of the drawer of negotiable instruments to draw a cheque without sufficient funds in the account maintained by him in the bank and induce the payee or holder-in-due-course to act upon it. In other words, these provisions have been introduced to give greater credibility to our trade, business, commerce and industry, which is absolutely imperative in view of the growing international trade and business. In this regard, it would be apposite to rely on the judgment of this Court in ***Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders & Agencies Ltd., (2001) 6 SCC 463***.

5.1 Section 138 of the NI Act aims to enhance the acceptability of cheque in settlement of liabilities and by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer with adequate safeguards to prevent harassment of honest drawers. The said section is extracted as hereunder:

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account.—**Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person

from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

5.2 Section 138 of the NI Act, which is a penal provision, provides that wherever any cheque drawn by a person for discharge of any liability is returned by the bank unpaid for the reason of insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the banker for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

5.3 At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd., (2000) 2 SCC 745.***

> "10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
>
> > (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;
> >
> > (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> >
> > (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of

> the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
>
> (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
>
> (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.
>
> 11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability."

5.4 The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

5.5 At this juncture we find it appropriate to deal with certain presumptions that flow from the NI Act with respect to cheques drawn in favour of the payee or the holder in due course. Section 118 of the NI Act provides for certain special rules of evidence. The said provision is extracted as hereunder:

> "**118. Presumptions as to negotiable instruments.—** Until the contrary is proved, the following presumptions shall be made:—
>
> **(a) of consideration:—**that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> **(b) as to date:—**that every negotiable instrument bearing a date was made or drawn on such date;
>
> **(c) as to time of acceptance:—**that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
>
> **(d) as to time of transfer:—**that every transfer of a negotiable instrument was made before its maturity;
>
> **(e) as to order of indorsements:—**that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
>
> **(f) as to stamp:—** that a lost promissory note, bill of exchange or cheque was duly stamped;
>
> **(g) that holder is a holder in due course:—**that the holder of a negotiable instrument is a holder in due course:
>
> Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or

> has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

Section 118 lays down certain special rules of evidence relating to presumptions akin to Section 114 of the Indian Evidence Act, 1872 (Section 119 of Bharatiya Sakshya Adhiniyam, 2023). The rationale behind these presumptions is that negotiable instruments such as cheque are passed from hand to hand on endorsement and therefore it would make trading very difficult and negotiability of instruments impossible, unless certain presumptions are made. Section 118 of the NI Act provides presumptions to be raised until the contrary is proved. Under Section 118(a) of the NI Act, until the contrary is proved, presumption shall be made that every negotiable instrument was made for a consideration. Once there is admission that the execution of a cheque or the same is proved to have been executed, the presumption under Section 118(a) is raised that it is supported by consideration. Similar presumptions are made in the sub-clauses (b) to (g) of Section 118. Presumption under Section 118(b) relates to the date on which negotiable instruments were and statutory presumption is that the said instrument was drawn or made on such date unless the contrary is proven. With respect to the time of acceptance, it is presumed under Section 118(c) of the NI Act that every bill of exchange including bill of exchange payable on demand was accepted within a reasonable time after its issue or before its maturity until the contrary is proven. Similar is the presumption under Section 118(d), (e) and (f) which allows for presumption that every transfer of negotiable instrument was made before its maturity, every indorsement appearing upon a negotiable instrument was made in order in which they appear, every negotiable instrument that was lost was duly stamped respectively. Lastly, the statutory presumption under Section 118(g) is that every holder of a negotiable instrument shall be considered as a holder in due course i.e. he is presumed to have paid the consideration for the instrument and in good faith.

5.6 Now, coming to Section 139 of the NI Act, the said section raises the presumption that unless the contrary is proved, it shall be presumed that the holder of the cheque had received the cheque for the discharge, in whole or in part, of any debt or other liability. The said section is extracted as hereunder:

> **“139. Presumption in favour of holder.—**It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability.”

The presumption as envisaged under Section 139 is a statutory and mandatory presumption and not a discretionary one. Under Section 139 of the NI Act, there is presumption that the holder of the cheque has received it for the discharge of debt or other liability. To understand the spirit of Sections 138 to 147 of the NI Act, Section 139 plays a vital role as the provision gives power to the court to presume, unless the contrary is proved, that the holder of the cheque received the cheque of the nature referred in Section 138 of NI Act for discharge in whole or part of debt or other liability. The burden to displace the said presumption is on the drawer and consequently, non-displacement of the said burden and presumptions lead to a penal consequence wherein the accused can be punished for imprisonment up to two years or with fine which may extend to twice the amount of the cheque, or with both.

Interpreting the provisions of Section 139 in ***Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513*** this Court has observed as under:

> "17. Section 118 of the Act, inter alia, directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque, for the discharge of whole or part of any debt or liability.
>
> 18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.
>
> 19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only

> points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.”

5.7 A conjoint and harmonious reading of the aforesaid provisions clearly indicate towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either approved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable presumptions, the accused has the burden of disproving the same by leading evidence, either direct or indirect to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and therefore to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

6. Now, coming to the facts of the present case, upon perusal of the documents and material on record, it is evident that the accused has admitted his signature on the cheque as a drawer and therefore the complainant becomes the holder in due course. Upon admission of execution of the impugned cheque, the Court is required to invoke the statutory presumption with reference to Sections 118 and 139 of the NI Act until the contrary is proven i.e. the said cheque was drawn and issued for a consideration. It also has to be presumed, unless the contrary is proven, that the cheque was bearing the same date on which it was drawn or made; that

the holder of the said cheque was the holder in due course and had received the said cheque for discharge of whole or a part of any debt or liability. Since the signature on the cheque has not been disputed as that of the accused i.e. the drawer, the presumption under Section 118 and Section 139 ought to be invoked against the accused so as to make him liable under Section 138 of the NI Act.

6.1 Now, to constitute an offence under Section 138 of the NI Act, the complainant has to put forth evidence on record to fulfil the ingredients constituted under the said section. Such evidence would include documents such as legal notice of demand owing to non-payment of cheque issued by the accused, cheque return memo from the bank. If the court finds that the complaint was filed within the period of limitation and the other requirements such as the presentment of cheque within six months from the date on which it was drawn, demand of the said amount through legal notice within thirty days and non-repayment of the cheque amount within a period of fifteen days thereafter are fulfilled, the court has to set in motion the wheel of criminal machinery as envisaged under Section 138 of the NI Act.

6.2 As apparent from the bare perusal of the record, the complainant herein received the cheque bearing No.524714 dated 20.03.2013 drawn by the accused for a sum of Rs.4,50,000/-(Rupees Four Lakh and Fifty Thousand). The said cheque was presented before the State Bank of India, Magadi Road Branch, Bengaluru on 20.03.2013 i.e. within the period of six months as envisaged under Section 138(a). Thereafter, the said Bank issued a return memo with respect to the cheque bearing No.524714 stating that the said cheque was dishonoured owing to insufficiency of funds in the accused's bank account. In consequence of the return memo received by the complainant, a legal notice was issued to the accused on 28.03.2013 demanding the cheque amount of Rs.4,50,000/-(Rupees Four Lakh and Fifty Thousand) as apparent from the legal notice annexed with the present Appeal. The said demand through the legal notice was made within the statutory outer limit of thirty days as envisaged under Section 138(b) of the NI Act. Lastly, the said payment was not made by the accused within a period of fifteen days from the receipt of the said legal notice as required by Section 138(c) and thereafter the complaint being Complaint Case No.12108 of 2013 was filed before the Court of XII Additional Chief Metropolitan Magistrate, Bangalore on 06.05.2013. A fortiori, upon compliance with the statutory mandate as envisaged under Section 138 of NI Act, the complainant was able to trigger the invocation of presumptions under Sections 118 and 139 of the NI Act and thereby shifting the onus of proof upon the accused to disprove his liability.

6.3 Once the rigours of Section 138 are satisfied, the onus of proof shifts upon the accused to prove his defence and with cogent evidence and so as to demonstrate how the offence under the said Section is not made out. Upon perusal of the written submissions and arguments advanced by the learned counsel for the accused in defence, we come to the conclusion that a frivolous and feeble attempt has been made to rebut the allegations put forth in the complaint. It is the case of the accused that the complainant has misused a blank cheque that had been handed over by him to S.B. Ramachandraiah (PW-2) as security for a hand loan of Rs.40,000/- (Rupees Forty Thousand) which was allegedly advanced to him by S.B. Ramachandraiah (PW-2). The accused has further contended that upon repayment of the said loan, he demanded that the said cheques be returned to him but the same were misplaced. However the accused has failed to put forth any evidence to support the said contentions made by him. What is apparent, upon perusal of the documents placed on record, is that the accused has relied upon his own testimony as Defence Witness No.1 (DW-1), and of Defence Witness No.2 (DW-2), one Manjunatha who has supported the version of the accused alongwith legal notice dated 16.09.2014 issued to S.B. Ramachandraiah and the complainant, postal receipts and acknowledgments with respect to the said legal notice. However, upon perusal of the aforesaid oral evidence and the limited documentary evidence, we are not satisfied with the defence of the accused as there is no documentary evidence to support the contention of the accused that he had borrowed Rs.40,000/- (Rupees Forty Thousand) from S.B. Ramachandraiah. There is no receipt or endorsement to evince the fact that the said loan was ever repaid by the accused. Furthermore, even if this Court accepts the argument of the accused that a blank cheque was given by the accused which was later misplaced by S.B. Ramachandriah, we fail to see any step that was undertaken by the accused to recover the said cheques from him. No legal action has been undertaken by him to show that there was any attempt made by the accused for recovering the cheques and documents issued by him which were allegedly misappropriated by the complainant herein. The accused has relied upon the legal notice dated 16.09.2014 that was addressed to the complainant and to S.B. Ramachandraiah wherein for the first time, a demand was made by the accused for the return of the said cheque and document. However, we cannot help but take note of the fact that the said legal notice was issued only on 16.09.2014 whereas the Complaint Case No.12108 of 2013 was filed on 06.05.2013. Furthermore, by the time the said legal notice was issued, the evidence of PW-1 was already complete and therefore the said legal notice cannot come in as an aid and assistance to the accused. This indubitably points out towards *ex post facto* creation of evidence, an afterthought and an attempt to create documentary evidence to create artificial defence. Therefore, the said legal notice has no evidentiary value to support the case of the accused as the same was sent by the accused after the commencement of the complaint case against him.

6.4 On the contrary, the said line of defence has to be countenanced with the evidence, oral and documentary put forth by the complainant that is consistent with the guilt of the accused. The complainant, in support of his case, has placed before this Court his testimony before the trial court as PW-1, testimony of S.B. Ramachandraiah as PW-2, testimony of one, Nagaraj as PW-3 along with documentary evidence such as the legal notice dated 28.03.2013, acknowledgements and receipts related to the same. Upon close scrutiny of the testimonies put forth by PW-1, PW-2 and PW-3, this Court is able to discern a clear statement of fact that is consistent with the story of the complainant and that he, in the second week of December 2010 was approached by the accused for a hand loan of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand). The said loan was required for the purpose of purchase of a land site at Vignewshwara Nagara Sunkadakatte, Bangalore. The extending of the said loan amount was facilitated on the basis of cash credit facility extended to the complainant by the PW-2 and PW-3 for an amount of Rs.1,00,000/- (Rupees One Lakh) given on 08.12.2010 and Rs.50,000/- (Rupees Fifty Thousand) given on 05.12.2010 respectively. This is further substantiated by the examinations-in-chief of PW-2 and PW-3. PW-2 in his statement has stated that:

> "I know the complainant. He is my relative. The complainant borrowed Rs.1,00,000/- from me on 08.12.2010. He borrowed the said amount for purchasing a site. He promised me to repay it within three months, but he did not repay within time. On enquiry, he stated that his amount was struck with the accused. Then myself and the complainant went to the accused and asked him to repay the money which he was in due to the complainant. On persistent demand, the accused issued cheque for Rs. 4,50,000/-in favour of the complainant in the year 2013. I came to know that the said cheque was dishonored. I have demanded the repayment of the amount, but the complainant has stated that he has filed a complaint against the accused and is waiting for its result."

Further, the PW-3 in his examination has stated:

> "I know the complainant. His native is situated near my village and he used to come to my bakery. I have financial transaction with the complainant. He borrowed Rs.50,000/- from me on 05.12.2010. He promised me to repay it within 2-3 months, but he did not repay within time. On enquiry, he stated that his amount is struck with some person and he has filed a case against him. He says that cheque issued by the said person is bounced and he will pay within 6 months"

Upon perusal of the aforesaid statements made by the PW-2 and PW-3, there appears a consonance with the case of the complainant that in order to extend loan of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand) in favour of the accused, the complainant had taken financial assistance from his friends and families. Upon perusal of cross-examination conducted by the counsel of accused upon the testimonies of PW-2 and PW-3, nothing has been elicited that disregards or discredits the case of the complainant. On the contrary, PW-2 has categorically denied the existence of any involvement with respect to the alleged loan of Rs.40,000/- (Rupees Forty Thousand) that was allegedly extended by him to the accused and which was later allegedly repaid.

6.5 When the said testimonies along with the documentary evidence put forth by the complainant are viewed in totality, the inevitable conclusion that was correctly drawn by the trial court and the Appellate Court stands justified and the burden of proof that the accused had taken a loan of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand) from the complainant stands discharged. After the said discharge of burden of proof, the onus of rebutting the same was upon the accused so as to lead cogent evidence so as to prove that there indeed was a misappropriation of the cheque that was issued by him in favour of the PW-2 which was misappropriated by him and the complaint so as to concoct a false case of prosecution against him. The accused has only relied upon plausible theories, conjectures and surmises with no evidence to support the same and thus his defence deserves to fail.

6.6 Another strand of defence taken by the accused is the incapacity of the complainant to extend the loan amount of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand). To this effect, he has relied upon the statement made by the complainant as PW-1 wherein he stated that his monthly income was of Rs.20,000/- (Rupees Twenty Thousand) to 25,000/- (Rupees Twenty Five Thousand) per month and owing to such financial capacity, he was not in a position to extend a loan amount of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand). This line of defence of the accused does not hold much water upon perusal of the statement made by the complainant in his examination-in-chief. On close perusal, the statement reveals that the complainant routinely used to invest in other business ventures such as chit funds wherein he has suggested different investments up to Rs.2,00,000/- (Rupees Two Lakh) which clearly establishes that he had the financial capacity to extend the loan amount as demanded by the accused. The financial capacity of the complainant was further bolstered by the hand loans extended by PW-2 and PW-3 which has been corroborated by their statements made during examination-in-chief. The said testimonies were subjected to intensive cross-examination as well wherein nothing of substance was elicited to shake their veracity and therefore the trial court and the Appellate Court were right in relying upon and basing their conviction on the same.

6.7 Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant’s lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan and therefore the argument and defence of the accused on this aspect falls flat.

6.8 Lastly, learned counsel for the accused contended that the complainant failed to independently establish a legally enforceable debt and that he failed to disclose or specify the exact timeline of the transaction to substantiate the hand loan extended in his favour. In this context, we would like to underline the admitted fact that the signature on the cheque is that of the accused. Apropos, once the signature on the cheque stands proved, the necessary corollary is that the accused was aware about the contents of the said cheque unless the contrary is proven which is not so in the present case.

6.9 Another necessary implication arising out of the said admission is the presumption under Section 139 of the NI Act which has been discussed at length by us in the preceding paragraphs. The presumption that the impugned cheque was issued to discharge in part or whole, a liability that accrued to the drawer has to be rebutted by the accused by leading cogent material evidence. Once the said presumption is invoked, the onus shifts upon the accused to prove that the said cheque was not issued for discharge of any liability, in this case, the alleged hand loan of Rs.4,50,000/- (Rupees Four Lakh and Fifty Thousand). In our opinion, the accused in the present case has not been able to satisfy this Court that there existed other supervening circumstances under which the said cheque was issued under dubious circumstances or that the same was misappropriated by the complainant. Moreover, the material placed on record by him in his defence is weak and not capable to dislodge the strong presumption of conviction that has been raised due to concurrent conviction by the trial court and the Appellate Court. On the contrary, the complainant has been able to adduce evidence with respect to the hand loan of Rs.4,50,000/- (Rupees Four Lakh and

Fifty Thousand) extended to the accused in the month of December 2010. The said transaction has been corroborated by the PWs-2 and 3 who have categorically stated that in the said month, the complainant had approached them for financial assistance in order to secure credit facilities so as to enable him to extend a hand loan to the accused.

6.10 As already observed, the said testimonies have been put through cross-examination by the opposing counsel and nothing has been elicited so as to shake its credibility. Thereafter, upon return of cheque after its presentment due to insufficiency of funds, a legal notice in compliance with the rigours of Section 138 of NI Act was issued and thereupon a complaint was lodged before the Magistrate which led to the culmination of Complaint Case No.12108 of 2013. The said chain of events right from the return of cheque, until the filing of the complaint case was done within the contours of law and procedural mandate as ordained in Chapter XVII (Sections 138 to 148) of the NI Act and therefore, we fail to find any merit in the submission of the learned counsel for the accused that the complainant failed to delineate proper sequence of time and chain of events beginning from issuance of hand loan to the filing of complaint. We therefore hold that the High Court erred in reversing well-reasoned and concurrent findings of conviction and sentence of the lower courts while exercising its extremely limited revisional jurisdiction.

7. Before parting, we would like to accentuate upon the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of Code of Criminal Procedure, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sannhita, 2023) encapsulates the power of High Courts and Session Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

> **"438. Calling for records to exercise powers of revision.—**(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his

own bond or bail bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1 This Court, in the ***State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgement and orders of the trial and appellate courts.

7.2 Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of record. In ***State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*, *(1999) 2 SCC 452***, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following:

> "5. … In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. …"

7.3 The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering an immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4 This Court in ***Sanjabij Tari vs. Kishore S. Borcar, 2025 INSC 1158*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

> “27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in Southern Sales & Services and Ors. v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
>
> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.”

7.5 In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High

Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

8. In view of the aforesaid findings and discussion, the impugned order passed by the High Court is set aside and the judgments as well as the orders of the trial court and Sessions Court are restored. This appeal is allowed in the aforesaid terms.

……………………………………J.
(B.V. NAGARATHNA)

……………………………………J.
(UJJAL BHUYAN)

NEW DELHI;
AUGUST 04, 2026.