

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 12TH DAY OF NOVEMBER, 2024****BEFORE****THE HON'BLE MR JUSTICE V SRISHANANDA****CRIMINAL REVISION PETITION NO. 777 OF 2022****BETWEEN:**

SRI G S LOKESHA
S/O SHIVANANJEGOWDA
AGED ABOUT 51 YEARS
R/O GANGURU VILLAGE
DODDABYAGATHAVALLI POST
KASABA HOBLI
HOLENARASIPURA TALUK
HASSAN DISTRICT -573 211.

...PETITIONER

(BY SRI. VIJAYA KUMAR K.,ADVOCATE)

AND:

SRI PUTTARAJU
S/O LATE THAMMAPPA
AGED ABOUT 58 YEARS
R/O NARASIMHANAYAKA NAGAR
(EXTENSION) HOUSE NO.282
BEHIND GREEN WOOD ENGLISH SCHOOL
HOLENARASIPURA TOWN
HASSAN DISTRICT - 573 211.

...RESPONDENT

(BY SRI. VENKATESHA T S.,ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PLEADED TO SET ASIDE THE JUDGMENT AND ORDER DATED 21.02.2022 PASSED IN CRL.A.NO.156/2020 PASSED BY THE V ADDL. SESSIONS JUDGE, CHIKKAMAGALURU AND ALSO THE JUDGMENT AND ORDER PASSED IN C.C.NO.290/2016 PASSED BY THE ADDL. CIVIL JUDGE AND JMFC, HOLENARASIPURA DATED 04.11.2020 AND ALLOW THE R.P. BY ACQUITTING THE PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I ACT.





THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri.Vijay Kumar K, learned counsel for the
revision petitioner and Sri.Venkatesh T.S, learned counsel
for the respondent.

2. Accused suffered an order of conviction in
C.C.No.290/2016, confirmed in CrI.A.No.156/2020 and
modified with regard to the sentence in imposing the fine
amount of Rs.3,05,000/- as against the fine of
Rs.6,00,000/- imposed by the trial Magistrate, has
preferred this Revision Petition.

3. Brief facts of the case which are utmost necessary
for the disposal of the present revision petition are as
under:

A complaint came to be lodged under Section 200 of
Cr.P.C alleging the commission of the offence under
Section 138 of the Negotiable Instrument Act by



contending that, complainant and accused are acquainted each other and in that acquaintance, accused borrowed a sum of Rs.3,00,000/- on 20.11.2015 from the complainant for repayment of the loan borrowed for his contract works.

4. Accused had agreed to repay the same and towards the repayment, he passed on a cheque bearing No.333158 in a sum of Rs.3,00,000/- dated 29.02.2016 drawn on SBM Bank, Holenarasipura branch. A cheque on presentation came to be dishonoured with an endorsement "insufficient funds". Callings of legal notice was not complied nor there were any reply. Therefore, complainant sought for an action against the accused.

5. Learned Trial Magistrate after completing necessary formalities summoned the accused. Plea was recorded. Accused pleaded not guilty and therefore trial was held.

6. In order to prove the case of the complainant, the complainant got examined himself as PW.1 and produced



thirteen documents which are exhibited and marked as Ex.P1 to Ex.P13, comprising of dishonored cheque, bank endorsement, copy of the legal notice, postal receipt, postal acknowledgement, complaint and four more cheques, complaint and FIR and charge sheet, signature of PW.1, bank statement, RTC extracts, certified copy of Aadhar card. On behalf of the complainant to substantiate the complainant allegations, two more witnesses namely, Manjegowda and Mallikarjuna were also examined as PW.2 and PW.3.

7. Detailed cross-examination of complainant and his witnesses did not yield any positive material so as to disbelieve the version of the complainant or dislodge the presumption available to the complainant under Section 139 of the Negotiable Instrument Act. The trend of cross-examination was solely focused on the lending capacity of the complainant.



8. To substantiate further lending capacity of the complainant, RTC extracts were relied upon so also the oral testimony of the PW2 and PW3.

9. On conclusion of the recordings of evidence on behalf of the prosecution, accused statement as is contemplated under Section 313 of Cr.P.C was recorded by the learned Trial Magistrate, wherein accused has denied all the incriminating materials.

10. In order to rebut the presumption available to the complainant under Section 139 of the Negotiable Instrument Act, accused got examined himself as DW.1 and on his behalf one Shivegowda s/o Chikkegowda is also examined as DW.2. On behalf of the accused, three documents were placed on record, namely, complaint letter to the bank, bank statement and contractor license which were exhibited and marked as Ex.D1 to D3.



11. In the cross-examination of DW.1 he admits that Ex.D1 -letter came to be issued by him after five to six months of filing the complaint.

12. The signature of the accused in Ex.P1 is not disputed but he has stated that the cheque has been illegally taken by the complainant. He admits that such a statement is not even made by him in his examination-in-chief.

13. On conclusion of recording of evidence, learned trial Magistrate heard the parties in detail and on analysis of the material on record, convicted the accused for the offence punishable under Section 138 of the Negotiable Instrument Act and awarded double the cheque amount as fine amount in a sum of Rs.5,60,000/- and the same was ordered to be paid as compensation to the complainant and remaining amount of Rs.40,000/- towards the defraying expenses of the State with a default sentence of six months of simple imprisonment.



14. Learned Trial Magistrate further observed that payment of fine amount of Rs.6,00,000/- would not get absolved even if the accused undergoes to default sentence.

15. Being aggrieved by the same, accused preferred an appeal before the First Appellate Court in Criminal Appeal No.156/2020.

16. Learned Judge in the First Appellate Court, secured records and heard the parties and confirmed the order of conviction and modified the sentence, is reads as under;

"The appeal filed by the appellant under Section.374(3) of Cr.P.C is hereby partly allowed.

In so far as Judgment is concerned, findings recorded by the trial court is hereby confirmed. Sentence imposed by the trial court is modified.

Accused/appellant shall pay a fine of Rs.3,05,000/- out of this fine amount, Rs.3,00,000/- to be payable to the complainant as a compensation and Rs.5,000/- shall be remitted to State Government. It is made clear that appellant had deposited Rs.1,20,000/- before the trial court in compliance with interim order passed by this court. Complainant is entitle to withdraw the said amount from the trial court.



Office is directed to send back the records and intimate the same to the trial court".

17. Being further aggrieved by the same, accused has filed the present revision petition. Complainant did not challenge the reduction of the fine amount before this Court by filing a separate revision petition and therefore the order of the First Appellate Court in reducing the fine amount has become final, insofar as the complainant is concerned.

18. Sri. Vijay Kumar, learned counsel for the revision petitioner reiterating the grounds urged in the memorandum of petition vehemently contended that both the courts have not properly appreciated the material evidence placed on record especially lending capacity of the complainant, moreso, when he had admitted that he is a BPL card holder and wrongly convicted the accused for the offence punishable under Section 138 of the Negotiable Instrument Act resulting in miscarriage of justice and sought for allowing of the revision petition.



19. Per contra, Sri. Venkatesh T S, learned counsel for the respondent supports the impugned judgment.

20. Having heard the parties in detail, this Court perused the material on record meticulously. On such perusal of the material on record, following points would arise for consideration;

(i) Whether the revision petitioner/accused makes out a case that impugned orders are suffering from legal infirmity or perversity and thus calls for interference?

(ii) Whether the sentence is excessive?

(iii) What order?

21. In the case on hand, issuance of the cheque and signature found therein is that of the accused is not in dispute. The accused has maintained that the cheque has been illegally obtained by the complainant from the accused. In his cross-examination he admits that he has not stated said aspect of the matter in his examination-in-



chief itself. Therefore, the initial burden is discharged by the complainant by deposing before the Court that he has lent a sum of Rs.3,00,000/- as loan for meeting the expenses for contract work of the accused and coupled with marking of dishonoured cheque, copy of the legal notice and postal acknowledgement.

22. Therefore, learned trial Magistrate were justified in raising the presumption available to the complainant under Section 139 of the Negotiable Instrument Act based on the oral testimony of the complainant and his two witnesses coupled with the documentary evidence referred to supra.

23. No doubt such a presumption is a rebuttable presumption. To rebut said presumption, accused stepped into the witness box and deposed before Court that the cheque has been illegally taken by the complainant.

24. He also examined one witness by name Shivegowda in this regard. The oral testimony of DW1 and



DW2 is nothing but self-serving testimony. Very fact of Ex.D1 being issued five to six months later after complaint came to be filed shows that accused wanted to somehow escape from the rigors of law. Ex.D2 and Ex.D3 did not improve the case of the accused. DW1 admits the fact that he is a contractor and the complainant has stated before the Court that for contract work accused borrowed a sum of Rs.3,00,000/-.

25. Under such circumstances, the material evidence placed on record by the accused has been rightly appreciated by the learned trial Magistrate in recording the finding that the defence evidence was not sufficient to rebut the presumption available to the complainant under section 139 of the Negotiable Instrument Act.

26. The fact of committing the accused under Section 138 of the Negotiable Instrument Act has been rightly re-appreciated by the learned Judge in the First Appellate Court.



27. The order of the First Appellate Court is justifiable for simple reason that there is a total application of mind while passing the order by the First Appellate Court inasmuch as not only the sentence imposed by the trial Magistrate is modified but the proper reasons are assigned by the First Appellate Court for reducing the fine amount and also the directions issued by the learned trial Magistrate with regard to the fine amount and the imprisonment.

28. Complainant having not challenged the order of the First Appellate Court reducing the sentence, only interference by this Court in this revision petition is with regard to the sum of Rs.5,000/- awarded by the First Appellate Court towards defraying expenses of the State as against the sum of Rs.40,000/- awarded by the trial Magistrate as *lis* is prevailed to the parties and no state machinery is involved.



29. In view of the above discussion, point No.1 is answered in the negative and point No.2 is in the partly affirmative.

Regarding point No.3 :

30. In view of the finding of this Court on the point Nos. 1 and 2 as above, following:

ORDER

- i. Revision petition is ***allowed in part.***
- ii. While maintaining the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instrument Act, fine amount modified by the First Appellate Court in a sum of Rs.3,05,000/- as against the sum of Rs.6,00,000/- is further reduced to Rs.3,00,000/- and entire said sum of Rs.3,00,000/- shall be paid as compensation to the complainant on or before **10.12.2024**, failing which, the



accused shall undergo simple imprisonment for a period of six months.

- iii. The fine amount of Rs.5,000/- awarded by the First Appellate Court towards defraying expenses of the State after modifying the same from Rs.40,000/- is hereby set aside.
- iv. Office is directed to return the Trial Court records along with the copy of this Order forthwith.

**SD/-
(V SRISHANANDA)
JUDGE**

RU, List No.: 1 SI No.: 78