®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION No.1081 OF 2018
(397(Cr.PC) / 438(BNSS)

BETWEEN:

JAGADISH R
AGED ABOUT 29 YEARS,
S/O L RAMANNA,
NO.9-9/1,
E CROSS, 24TH MAIN ROAD,
J.C.NAGARA,
KURUBARAHALLI
BANGALORE-560086

…PETITIONER

(BY SRI. RISHI PAL SINGH VARMA, ADVOCATE)

AND:

SRI B S RAVI
AGED 56 YEARS,
S/O LATE SRIKANTAIAH,
R/AT NO.4, 4TH MAIN ROAD, SHIVA NAGAR,
RAJAJINAGAR,
BANGALORE-560010

SINCE DEAD REPRESENTED BY
LEGAL REPRESENTATIVES

1(A) SMT.SHEELAVATHI.B.M
W/O LATE SRI B.S.RAVI
AGED ABOUT 60 YEARS

1(B) SRI JAYANTH RAVI.B

S/O LATE SRI B.S.RAVI
AGED ABOUT 35 YEARS

1(C) LAVANYA.B.R
D/O LATE SRI B.S.RAVI
AGED ABOUT 30 YEARS

ALL ARE RESIDENT OF
NO.176, 3RD MAIN ROAD
7TH CROSS, 1ST STAGE, 5TH PHASE,
SRI MAHAGANAPATHY NAGAR
RAJAJINAGAR
BENGALURU.

…RESPONDENTS

[BY SRI. CHANDRASHEKAR P PATIL, ADVOCATE
FOR R1 (A TO C)]

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 09.08.2018 IN CRL.A.NO.1154/2016, BEFORE THE HON'BLE COURT OF LXVIII CITY CIVIL AND SESSION JUDGE, CCH-69, AT BANGALORE FOR AN OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENT ACT AGAINST PETITIONER AND JUDGMENT DATED 21.09.2016 IN C.C.NO.3975/2015, BEFORE THE HON'BLE 13TH ACMM, BANGALORE AND ACQUIT THE PETITIONER/ACCUSED FROM THE CHARGES AGAINST HIM UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENT ACT.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

CAV ORDER

(PER: HON'BLE MR JUSTICE V SRISHANANDA)

Heard Sri Rishi Pal Singh Varma, learned counsel for the revision petitioner and Sri Chandrashekar P.Patil, learned counsel for respondent Nos.1(A to C).

2. Accused who is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.3975/2018 confirmed in Crl.A.No.1154/2016 is the revision petitioner.

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

A private complaint under Section 200 of the Code of Criminal Procedure came to be lodged with the jurisdictional Magistrate alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by contending that complainant and the accused are acquainted with each other for several years.

4. Taking advantage of such acquaintance, accused said to have approached the complainant for financial assistance in a sum of Rs.3,00,000/- agreeing to repay the said loan amount within two months with interest at 16% per annum.

5. The complainant, considering the request of the accused lent the loan of Rs.3,00,000/- to the accused by way of cash on 24.10.2014 which was duly acknowledged by the accused and after receipt of the amount, accused failed to repay the same as agreed.

6. On persistent demands, accused said to have issued a post dated cheque bearing No.643006 dated 24.11.2014 in a sum of Rs.3,00,000/- drawn on State Bank of India, West of Chord Road Branch, Bengaluru, which on presentation came to be dishonoured with an endorsement 'funds insufficient' on 26.11.2014. Accused was demanded to pay the said amount by issuing a legal notice.

7. Despite service of notice, there was no compliance to the callings of the notice and therefore, complainant has sought for action.

8. On receipt of the complaint, learned Trial Magistrate summoned the accused and recorded the plea. Accused pleaded not guilty. Therefore, trial was held.

9. In order to prove the case of the complainant, complainant got examined himself as P.W.1 and placed on

record seven documents which were exhibited and marked as Exs.P.1 to P.7, comprising of cheque, bank endorsement, notice, postal receipt, postal acknowledgment, complaint and letter.

10. As against the material evidence placed on record by the complainant, accused got examined himself as D.W.1 and placed on record fourteen documents which were exhibited and marked as Exs.D.1 to D.14 comprising of letters, receipts, notice, reply notice, postal acknowledgment, blank cheque (original), statement of account, Xerox copy of the cheque and endorsement.

11. On conclusion of recording of evidence, accused statement as is contemplated under Section 313 of the Code of Criminal Procedure was also recorded.

12. Thereafter, learned Trial Magistrate heard the arguments of the parties and by following the dictum of the Hon'ble Apex Court in the case of ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde*** reported in ***AIR 2008 SC 1325*** and also taking into consideration the principles of law enunciated in the case of ***Rangappa vs. Sri Mohan*** reported in ***(2010)11 SCC 441,*** while raising the presumption under Section 139 of the

Negotiable Instruments Act, 1881, by the considered judgment dated 21.09.2016, convicted the accused and sentenced him as under:

> *"Acting under Section 255(2) Cr.P.C, the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act.*
>
> *The accused shall pay a fine of Rs.4,00,000/-. In default of payment of said fine amount, the accused shall undergo simple imprisonment for six months.*
>
> *Out of the said amount, accused shall be paid Rs.3,95,000/- to the complainant as compensation, as provided under Section 357 of Cr.P.C and Rs.5,000/- shall be remitted to the State as fine."*

13. Being aggrieved by the judgment of conviction and sentence, accused filed an appeal before the District Court in Criminal Appeal No.1154/2016.

14. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties in detail and on re-appreciation of the material evidence on record, by the considered judgment dated 09.08.2018, dismissed the appeal, *inter alia* holding in paragraph Nos.12(c) to 12(g) as under:

> *"12(c) The learned counsel for the accused had raised a contention that the Bank endorsement, marked as*

Ex.P2, is not a genuine endorsement as it does not bear any seal or signature of the concerned Bank or its Manager. However, in this regard, it is pertinent to note that Ex.P2 is a Computer generated document, as such, as contended by the learned counsel for the respondent, it does not bear the signature of the concerned Manager. Even if for a moment, the above said contention of the learned counsel for the accused is accepted, the accused was at liberty to summon and examine the Manager of the concerned Bank to substantiate his claim that Ex.P2-Endorsement, is a created document, but the accused has not done so. Therefore, the above said contention of the learned counsel for the accused cannot be accepted and the decisions relied on by the learned counsel for the accused in that regard would not help the case of the accused.

12(d) It was also contended by the learned counsel for the accused that, if at all Ex.P1-cheque was issued to respondent/complainant, it would have been mentioned in the statement of accounts pertaining to the accused, marked as Ex.D11. In so far as this contention is concerned, on perusal of Ex.D11, it is to be seen that, there is no mention even with regard to the fact, as contended by the accused that the said cheque was issued to the Society at the time of availment of loan. Hence, the above said contention of the learned counsel for the accused cannot be accepted. Moreover, a letter stated to have been addressed by the accused to the Manager of State Bank of India, marked as Ex.D12, it is to be seen that it is dated 22-02-2016, whereas the present complaint against the accused has been filed on 12-01-2015.

Therefore, Ex.D12 which is subsequent to the filing of the complaint, cannot be considered.

12(e) One more contention urged by the learned counsel for the accused is that, in Ex.D14-document, the Account Number bears All Zeros (17 Zeros) and as such there is no such account of the accused in the State Bank of India. However, it is not known under which context the said document (Ex.D14) was produced and for what purpose. Moreover, the accused has not examined the Manager of the said Bank in that regard. Hence, the above said contention of the learned counsel for the accused cannot be accepted.

12(f) It was further contended by the learned counsel for the accused that, the complainant had filed insolvency case in I.C.No.46/2009 and as such it was contended that the complainant had no capacity to lend the money in question to the accused. However, in this regard, the accused has not produced any documents to substantiate that the complainant had become insolvent. On the other hand, it is to be seen from the perusal of the cross-examination portion of PW.1 by the counsel for the accused that, a suggestion has been put to PW.1, the complainant that the accused had availed loan of only Rs.50,000/- from the complainant. The said suggestion is to be found at unnumbered Page No.7 of the deposition of PW.1. Therefore, the contention of the accused that the complainant had no financial capacity to lend the amount in question to the accused, cannot be accepted. Further more, it is to be seen that Exs.D7 and D.8, which are stated to be the legal notice and reply to the legal notice, have come into existence after the institution of the present complaint

by the complainant under Sec.200 of Cr.P.C., dated 12-01-2015. Therefore, Ex.D7 and 8 would not have any bearing upon the case on hand.

12(g) The accused has not disputed the fact that, Ex.P1-cheque in question is the cheque pertaining to his account and that Ex.P1(a) is his signature. Such being the case, it was for the accused to offer explanation under what circumstances the said cheque reached the hands of the complainant. But the explanation given by the accused that the said cheques were given to the Society and in turn it has been misused by the complainant, it not satisfactory and it has not been substantiated by any satisfactory evidence. Hence, a presumption has to be drawn that Ex.P1-cheque was issued by the accused to the complainant in connection with the money transaction as contended by the complainant. As such, the findings of the learned trial Judge in the impugned judgment, is in consonance with the facts of the case. Therefore, I do not see any grounds to interfere with the findings of the learned trial Judge. Accordingly, I hold point Nos.1 and 2 in the NEGATIVE."

15. Being further aggrieved by the same, accused is before this Court in this revision petition.

16. Learned counsel for the revision petitioner, after addressing oral arguments has furnished the written submission. Important points are as under:

"1. Which bank issues the cheque return memo under Section 146 NI Act?

2. Whether seal and signature of bank are mandatory under Section 146 NI Act?

3. Hence dishonour itself remains unproved.

4. Dishonour itself not legally proved - hence conviction unsustainable.

5. Cheque return memo of the accused exhibit has to be taken for this case and not the cheque return memo of complainant Ex. P-2."

17. In support of his arguments, learned counsel placed on record the judgment of the Kerala High Court in the case of ***P.Soman vs. Thomas Paul*** reported in ***LAWS(KER)-2002-5-31*** wherein, at paragraph-5, it is held as under:

"(5.) It is in this background that Ext. P2 has to be perused. It is a letter sent to the complainant from the complainants bank through which Ext. P1 cheque had been presented for payment. What is done through Ext. P2 is the conveyance of the information received from the accuseds bank. It is categorically stated in Ext. P2 that the cheque was returned unpaid for the reason of insufficiency of funds. According to me, in the absence of any counter evidence, nothing more is required to convince the court that the dishonour of the cheque took place for want of funds. It is more so in view of the two circumstances mentioned in the two earlier paragraphs. Of course, in order to succeed in a case of this nature the complainant has to convince the court, without room

for doubt, that the dishonour of the cheque was for insufficiency of funds. The evidence required therefore may take many forms. It is not an inflexible rule that in an action under S.136 of the Act, the complainant should invariably produce the memo of dishonour issued by the Bank in which the accused has his account certifying that the reason for dishonour is want of funds."

18. He also places reliance on the judgment of the co-ordinate Bench of this Court in the case of ***Rasheed Ahamed vs. Shoukath Hussain*** reported in ***AIR Online 2024 KAR 1133***, invited the attention of this Court to paragraphs 20 to 22 and 26 which reads as under:

"20. *Keeping in mind the ratio in the above decisions, it is necessary to examine whether complainant has proved his financial capacity to lend a sum of Rs. 8,45,000/- on 20.6.2011. During the course of his cross-examination, the complainant has deposed that since 1995 he is running liquor business in the name and style of H. R Bar. He has maintained account with regard to the said business. He is owning account in ICICI, SBM, Canara, IDBI and SBI Banks. He has admitted that, except the Bar he is not having any other source of income. He is an income tax assessee and filing returns every year.*

21. *During his cross-examination, the accused has admitted that complainant is running a Bar. Though he has admitted that complainant is living in his own house and has also rented out 4 premises, he has expressed*

ignorance to the suggestion that the complainant is also owning agricultural land. However, during the course of his evidence, complainant has not deposed regarding owning agricultural land. Complainant has not produced any documents with regard to the income derived from liquor business, the exact rent received by him from letting out 4 premises and also owning agriculture land and getting any income. He has also not produced his income tax returns to show the exact income, expenditure and savings. It would also have helped him to show that he has lent Rs. 8,45,000/- to the accused by way of hand loan as he is expected to show the details of Sundry debtors. Despite the accused challenging his financial capacity and cross-examining him extensively on that aspect, for reasons best known to him, complainant has not chosen to produce any documentary evidence to prove his income. Though in the reply notice, the complainant has not challenged his financial capacity, as he has done so during the trial, it was incumbent upon the complainant to place some evidence to prove his income to show that on 20.06.2011 he had cash in a sum of Rs. 8,45,000/- and he paid the same to the accused by way of hand loan. Consequently, the complainant has failed to prove that he has lent Rs. 8,45,000/- to the accused and the cheque in question was issued towards repayment of the same.

22. *On the other hand, during the course of evidence the accused has deposed that while borrowing Rs. 3,00,000/- from the complainant during 2008, he had issued a blank cheque and though he repaid the same during 2011, complainant failed to return the blank cheque and utilizing the same he has filed this complaint.*

Complainant has also claimed that earlier to the present transaction, on several occasions accused has borrowed hand loan from him and repaid and claimed that during January 2011, accused borrowed a sum of Rs. 3,00,000/- and repaid it in two installments in the month of April 2011. Whether the earlier transaction was in the year 2008 or 2011, fact remains that there used to be monetary transaction between the complainant and accused. Accused has claimed that he had issued Ex. P1 in a blank form during 2008 when he borrowed Rs. 3,00,000/-.

26. In the above facts and circumstances, trial Court is justified in dismissing the complaint and this Court finds no justifiable grounds to interfere with the conclusions arrived by the trial Court. In the result, the appeal fails and accordingly, the following:

ORDER

(i) Appeal filed by the complainant under Section 378(4) of Cr. P.C. is dismissed.

(ii) The impugned judgment and order dated 17.06.2015 in C.C. No. 1454/2012 on the file of JMFC-II, Davanagere is confirmed.

(iii) The Registry is directed to send back the trial Court records along with copy of this judgment forthwith."

19. Further, learned counsel for the revision petitioner also relied on the following judgments, in support of his arguments.

(i) Criminal Appeal No.1789/2004 (Citibank vs. RPS Varma) on the file of High Court of Karnataka, Bengaluru.

(ii) Criminal Appeal No.815/2010 (A.M. Govindegowda vs. B.V.Ravi) on the file of High Court of Karnataka, Bengaluru.

(iii) Criminal Appeal No.431/2017 (Kanthar Raj vs. Sham Shudin) on the file of High Court of Karnataka, Bengaluru.

(iv) Criminal Appeal No.2789/2009 (Thippeswamy vs. Gopalshetty K. Shettar) on the file of High Court of Karnataka, Bengaluru.

(v) Insolvency Case No.46/2009 (B.S.Ravi vs. Manjula and others) on the file of the City Civil Judge, Bengaluru.

(vi) O.A. No.36/2010 (State Bank of Mysore, Bangalore vs. B.S.Ravi) on the file of Debts Recovery Tribunal, Bengaluru.

20. *Per contra*, learned counsel for the respondent/ complainant supports the impugned judgment by contending that, prior to introduction of Electronic Clearance System in the banks, the procedure contemplated for encashing the cheque was by physical method wherein, cheque would be sent to the

clearing house and there would be physical verification of records including ledgers. Later on, necessary endorsement would be issued which would require the signature of the banker of the accused as well as the banker of the complainant, through which the cheque in question would be sent for collection.

21. But, after introduction of Electronic Clearance System, the physical and manual intervention would not be there and the cheque would be electronically cleared by comparing with the data available with the banker of the accused as well as the banker of the complainant and necessary endorsement would be issued which requires no specific signature of any of the Officers of the bank.

22. Therefore, the contentions urged on behalf of the revision petitioner/accused cannot be countenanced in law and thus sought for dismissal of the revision petition.

23. Having heard the arguments of both sides, this Court perused the material on record, meticulously.

24. On such perusal of the material on record, there is no dispute that the cheque marked at Ex.P.1 is belonging to the accused and signature found therein is that of the accused.

25. The bank endorsement marked at Ex.P.2 contains the cheque number marked at Ex.P.1. The sort code, ISN, branch code, bank name and inward of the cheque is also mentioned. Similarly, the date of presentation of the cheque for collection, amount of the cheque, reason for dishonor is also mentioned.

26. Therefore, the first contention on which the learned counsel for the revision petitioner has stated that there could not be any criminal prosecution for dishonor of the cheque, inasmuch as the bank memo did not contain proper endorsement of dishnour cannot be countenanced in law. Likewise, the contention that the seal and signature of the bank was a mandatory requirement when the cheque was sent for manual collection cannot also be accepted.

27. In view of the electronic clearance, the seal and signature is not mandatory and therefore, seal and signature, official mark etc., on Ex.P.2 cannot be a ground to reject the complaint.

28. Since the complainant enjoys the presumption under Section 139 of the Negotiable Instruments Act, 1881, if at all the accused is of the opinion that bank endorsement vide Exhibit P-2 is incomplete or incorrect, he could have summoned his banker to establish that he had sufficient money in his account and the cheque was not presented to his banker at all for collection.

29. Therefore, the ground that in view of Section 146 of the Negotiable Instruments Act, 1881, complaint is not maintainable, cannot also be countenanced in law.

30. Moreover, accused admits that Exhibit P-2 is the endorsement issued by the banker in respect of dishonour of cheque at Exhibit P-1. Thus, argument that Exhibit P-2 is not in consonance with Section 146 of the Negotiable Instruments Act is only an afterthought inasmuch as DW-1(accused) has specifically admitted in his cross-examination that Exhibit P-2 which is the bank endorsement is in respect of dishonour of Ex.P-1/cheque. Accused further admitted in his cross-examination that he has not complained to his banker that Exhibit P-2 is incorrect. He also admits that he has not taken

any action against his banker for having wrongly issued Exhibit P-2.

31. What is the probative value of cheque return memo after electronic clearance system has been adopted by the banks was subject matter for decision before the Hon'ble Delhi High Court.

32. In the case of ***Guneet Bhasin vs. State (NCT of Delhi)*** reported in ***2022 SCC OnLine Del 3967***, at paragraph-9, it has been held as under:

> *"9. The cheque return memo is a memo informing the payee's banker and the payee about the dishonour of a cheque. When the cheque is dishonoured, the drawee bank immediately issues a cheque return memo to the payee's banker mentioning the reason for non-payment. The purpose of the cheque return memo is to give the information of the holder of the cheque that his cheque on presentation could not be encashed due to the variety of reasons as mentioned in the cheque return memo. As per the section 146 of the NI act, the cheque return memo on presentation presumed the fact of dishonour of the cheque unless and until such fact is disapproved. Neither section 138 nor the section 146 of the NI act has prescribed any particular form of cheque return memo. The section 138 of the NI Act does not mandate any particular form of cheque return memo which is nothing but a mere information given by the Banker of the due holder of a cheque that the*

cheque has been returned as unpaid. If the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is not required to be covered under section 4 of the Bankers Book (Evidence) Act, 1891. If there is any infirmity in the cheque return memo, it does not render entire trial under section 138 of the NI Act as nullity."

33. Similar view is also taken by Hon'ble High Court of Calcutta in the case of ***Pravin Kumar Tiwari V. Ajit Chandra Mandal,*** reported in ***2025 SCC OnLine Cal 779.***

34. Moreover, if sufficient money was available in the account of the revision petitioner and the bank has wrongly dishonoured the cheque, soon after receipt of the notice or at least on first appearance, as a bonafide drawer of the cheque, accused could have repaid the amount covered under Ex.P-1.

35. Insofar as the presumption under Section 139 of the Negotiable Instruments Act, 1881, is concerned, time and again, the Hon'ble Apex Court has held that, once the execution of the cheque is admitted, initial presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881, can be invoked by the Trial Magistrate which can be rebutted by accused by placing sufficient rebuttal evidence.

36. The principles of law enunciated in the case of ***Rangappa*** supra, and ***Rajesh Jain vs. Ajay Singh*** reported in ***(2023)10 SCC 148*** and latest judgment of the Hon'ble Apex in the case of ***Sanjabij Tari vs. Kishore S. Borcar and another*** reported in ***2025 SCC OnLine SC 2069*** would aptly fortify the said legal position.

37. What is the scope of revisional jurisdiction is also spelt out by the Hon'ble Apex Court in the case of ***Sanjabij Tari*** supra wherein, it has been held as under:

> *"15. In the present case, the cheque in question has admittedly been signed by respondent No. 1-accused. This court is of the view that once the execution of the cheque is admitted, the presumption under section 118 of the Negotiable Instruments Act, that the cheque in question was drawn for consideration and the presumption under section 139 of the Negotiable Instruments Act, that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-judge Bench in Krishna Janardhan Bhat v. Dattatraya G. Hegde [(2008) 141 Comp Cas 665 (SC); (2008) 4 SCC 54; (2008) 2 SCC (Cri) 166; 2008 SCC OnLine SC 106.] have been set aside by a three-judge Bench in Rangappa v. Sri Mohan [(2010) 11 SCC 441; (2010) 4*

SCC (Civ) 477; (2011) 1 SCC (Cri) 184; 2010 SCC OnLine SC 583.]

16. This court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under section 139 of the Negotiable Instruments Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque (see : Bir Singh v. Mukesh Kumar [(2019) 5 Comp Cas-OL 560 (SC); (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138.] .

18. The judgment of this court in APS Forex Services P. Ltd. v. Shakti International Fashion Linkers [(2020) 12 SCC 724; (2020) 4 SCC (Cri) 505; 2020 SCC OnLine SC 193.] relied upon by learned counsel for respondent No. 1-accused only says that the presumption under section 139 of the Negotiable Instruments Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash. This judgment nowhere states, as was sought to be contended by learned counsel for respondent No. 1-accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under section 139 of the Negotiable Instruments Act does not arise.

Approach of some courts below to not give effect to the presumptions under sections 118 and 139 of the Negotiable Instruments Act, is contrary to mandate of Parliament

21. This court also takes judicial notice of the fact that some district courts and some High Courts are not giving effect to the presumptions incorporated in sections 118 and 139 of the Negotiable Instruments Act, and are treating the proceedings under the Negotiable Instruments Act, as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged.

No documents and/or evidence led with regard to the financial incapacity of the appellant.

22. It is pertinent to mention that in the present case, respondent No. 1- accused has filed no documents and/or examined any independent witness or led any evidence with regard to the financial incapacity of the appellant- complainant to advance the loans in question. For instance, this court in Rajaram v. Maruthachalam [(2023) 16 SCC 125] has held that the presumptions under sections 118 and 139 of the Negotiable Instruments Act, can be rebutted by the

accused examining the Income-tax Officer and bank officials of the complainant/drawee.

When the evidence of PW-1 is read in its entirety, it cannot be said that the appellant-complainant had no wherewithal to advance loan.

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 (see : Bir Singh v. Mukesh Kumar [(2019) 4 SCC 197]). 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 and Services 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."

38. Taking note of these aspects of the matter, the contentions urged on behalf of the revision petitioner that there is no proper material evidence to show that the bank endorsement vide Ex.P.2 is not in order and therefore, there could not be any offence under Section 138 of the Negotiable Instruments Act, 1881 cannot be countenanced in law.

39. Thus, on cumulative consideration of the material on record, in the light of the limited revisional jurisdiction, this

Court having noted that the cheque belongs to accused and signature is not in dispute the transaction between the complainant and accused is also established, the complainant has discharged the initial burden so as to invoke the presumption available to the complainant under Section 139 of the Negotiable Instruments Act, 1881.

40. The rebuttal evidence placed on record in the form of oral testimony of D.W.1 and documentary evidence vide Exs.D.1 to D.4 is not sufficient to rebut the presumption available to the complainant inasmuch as in the cross-examination of D.W.1 he has specifically admitted that he had borrowed sum of Rs.50,000/- from the complainant and he has answered that he has repaid the same on 26.09.2015.

41. Accused has specifically admitted that he has issued two blank cheques to the Society of the complainant as security and one such cheque has been misused by the complainant.

42. Accused also admits that he has not maintained any counterfoil to establish that the cheque in question was issued in blank as security. He admits that Exhibit D-6 has been issued on 03.11.2015 by which time the loan obtained from Aditya Society has been cleared in full. He admits that in

Exhibit D-6 there is no demand for return of the two blank cheques.

43. Further, he admits that in Exhibit D-8 there is no demand for return of the two cheques which were given in blank as security for the loan obtained from Aditya Society. He further admitted that for the alleged misuse of Exhibit P-1/cheque, he has not taken any criminal action against the complainant.

44. Therefore, the oral and documentary evidence of the accused is not sufficient to rebut the presumption available to the complainant and as such, conviction of the accused for the offence under Section 138 of the Negotiating Agreement Act, upheld by the First Appellate Court, needs no interference in this revision petition.

45. Hence, the following:

ORDER

Revision Petition is meritless and is hereby ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm