



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO. 1313 OF 2017

BETWEEN:

1. V K LAKSHMIDEVI @ LAKSHMI
W/O GOPAL,
AGED ABOUT 59 YEARS
R/A OLD NO.1,NEW NO.10/1
MUTTON STALL ROAD,KRISHNAPPA ROAD
DODDAMAVALLI,BENGALURU-560 004.

...PETITIONER

(BY SRI. PRASANNA KUMAR P,ADVOCATE)

AND:

1. SMT JAYALAKSHMI
W/O LATE SATHYANARAYANA PRASAD G
AGED ABOUT 33 YEARS
R/A NO.38/3,KANAKAPURA MAIN ROAD
TATA SILK FARM,BASAVANAGUDI
BENGALURU-560 004.

...RESPONDENT

(BY SRI. VISWANATH SETTY V,ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 11.09.2017 PASSED BY THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN CRL.A.NO.188/2017 THEREBY





DISMISSING THE APPEAL FILED BY THE PETITIONER AND CONFIRMING THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 11.01.2017 PASSED BY THE XII ADDL.C.M.M., BENGALURU IN C.C.NO.29531/2015 THEREBY CONVICTING THE PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I. ACT AND SENTENCED HER TO PAY FINE OF RS.10,05,000/- WITH DEFAULT CLAUSE, AND ACQUIT THE ACCUSED/PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I. ACT.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

Heard the learned counsel for the revision petitioner and also the counsel appearing for the respondent.

2. This matter is listed for final hearing.

3. This revision petition is filed against the concurrent finding of the trial Court as well as the appellate Court for convicting the revision petitioner for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, (hereinafter referred to as 'N.I.' Act for short) wherein he is directed to pay an amount of Rs.10,00,000/- (Rupees Ten lakhs only) and default sentence is also imposed and the same is questioned in



the Criminal Appeal No.188/2017, wherein the appellate Court confirmed the order of the trial Court and hence, prayed to set aside the orders of both the Courts.

4. The factual matrix of the case of complainant is that accused is none other than the mother-in-law of the complainant and complainant is a widower. After the death of complainant's husband, she has filed a suit for partition and separate possession with respect to the property owned by the complainant's husband which is numbered as OS No.4796/2007. Thereafter, the matter was referred to the mediation. With the intervention of the elders of the family members, the accused and the complainant have arrived at a compromise, and the suit was decreed by allotting share to the complainant. The accused had categorically admitted before the mediator that she will continue in possession of the property allotted in favour of the complainant till 31.01.2012. Even after lapse of 31.01.2012, the accused continued to be in possession of the property allotted in favour of the



complainant. Hence, the complainant along with one Smt. Shantha, wife of Govindaraju had personally visited to the place of accused. And requested her to deliver vacant possession of the property to the complainant for which, accused expressed her inability to vacate the property and requested the complainant to grant 8 to 10 months time on the guise that she has to perform her son Ashok Babu's marriage. The complainant has permitted the accused to stay in the property allotted to her.

5. It is her further case that after lapse of stipulated period, in spite of several requests and reminders, she did not vacate the property. As such, the complainant was constrained to issue legal notice to the accused, demanding her to hand over the possession to the complainant on 22.03.2014. After receipt of the said legal notice, at the intervention of the elders as well as the well wishers, the accused and her son Ashok Babu have approached the complainant by representing that they are on a lookout to purchase an independent house in a place



ifUttarahalli, Bangalore and that requested the complainant to purchase the property which was allotted in favour of the accused and requested the complainant to pay sum of Rs.23,00,000/- (Rupees Twenty three lakhs only) to the accused and her son. The complainant on the fond hope that she would get the entire extent of property including her property which was allotted to her, has agreed to purchase the entire extent of property excluding the property allotted to her for a sum of Rs.23,00,000/-.

6. The complainant further submitted that mother of the complainant and other family members have partitioned the joint family properties and in the said partition, the complainant has got a sum of Rs.9,00,000/- (Rupees Nine lakhs only) towards her share in the joint family of her parents and requested her brother Sri. Muninagappa and borrowed a sum of Rs.14,00,000/- (Rupees Fourteen lakhs only) from him and in total paid a sum of Rs.23,00,000/- (Rupees Twenty three lakhs only) to the accused and her son in the month of April 2014 by



way of cash in the presence of one Smt. Shantha, wife of Govindaraju. After the receipt of said amount, the accused and her son have assured the complainant to hand over the vacant possession of the entire property to the complainant within a month or two and further assured that to execute the said deed in favour of the complainant in respect of the said property allotted in favour of the accused. Even after lapse of six months, the accused did not vacate the property allotted to the complainant and the accused did not even execute the sale deed in favour of the complainant and on persistent demand, the accused expressed to return back the amount paid by the complainant and accordingly accused has issued a post dated cheque dated 15.07.2015 for a sum of Rs.10,00,000/- (Rupees Ten lakhs only) in favour of the complainant and for the remaining amount of Rs13,00,000/- (Rupees Thirteen lakhs only), the son of the accused issued a Cheque dated 15.07.2015.



7. It is her further case that when the cheque was presented and the same was dishonored with an endorsement funds insufficient, thereafter, legal notice was issued to the accused. In spite of service of notice, the accused did not comply with the demand and hence, private complaint was filed and cognizance was taken for the offence punishable under Section 138 of N.I Act. The accused was secured and pleaded not guilty and the complainant examined as P.W.1 and got marked documents as Exs.P1 to P11. Though the learned counsel for accused took the time for cross-examination of P.W.1, P.W.1 was not cross-examined. Even though the defence led evidence, but not subjected for cross-examination as such, the evidence of D.W.1 is discarded. The trial Court having considered the material on record, convicted and sentenced the accused and the same is confirmed by the appellate Court.

8. Learned counsel appearing for the revision petitioner/accused in his argument would vehemently



contend that in respect of the cheque issued by the son of the accused, the case was dismissed by acquitting the son and for that the counsel produced a copy of the order dated 12.04.2017 passed in C.C.No.29352/2015 by the XXII Addl. Chief Metropolitan Magistrate, Bengaluru, before this Court along with the memo. The counsel also vehemently contend that no notice was served and both the Courts have committed an error. Prior to initiating the private complaint, the complainant must satisfy all the prerequisites of Section 138 of NI Act and the demand must be made to the buyer of the cheque within a period of 30 days. On that ground also, the proceedings is not maintainable.

9. He further submits that the revision petitioner had seriously disputed the contents of the complainant that the complainant had paid the alleged sum and it was incumbent upon the complainant to prove that complainant in fact had paid the alleged sum and also not having any source of income to make the payment and



therefore, this Court has to exercise its revision powers that both the Courts have committed an error. Lastly, he contend that this Court can remand the matter for fresh consideration by giving an opportunity to the petitioner to cross examine P.W.1 and led defence evidence.

10. Per contra, the counsel appearing for the respondent/complainant would submit that the case was filed in the year 2015 and the same was disposed of in the year 2017 and ample opportunity was given to the counsel for the accused. In spite of sufficient opportunity, the counsel for the accused not cross examined P.W.1 and even though the defence evidence was led, but not subjected to cross examination. These factors were also taken note of by both the Courts. The counsel also vehemently contend that when the cheque was issued and the same was not honoured, there was a presumption and the said presumption was not rebutted effective cross-examination was not done and so also not let any defence



evidence, the question of exercising the revision does not arise.

11. Further, the counsel would submit that scope of revision is very limited i.e, only to examine the legality and correctness of the judgment of the trial Court as well as the appellate Court. The counsel would also submit that question of giving an opportunity for cross-examination of P.W.1 after a decade and even when the given opportunity was not utilized, it cannot be accepted.

12. Having heard the learned counsel for the revision petitioner and so also the counsel appearing for the respondent, and keeping in mind the contentions and grounds urged in the revision and also the respective submissions, the point that would arise for the consideration of this Court are:

- a. Whether the trial Court committed an error in convicting and sentencing the accused for the offence punishable under Section 138 of N.I. Act?



- b. Whether the appellate Court committed an error in confirming the order of the trial Court?
- c. Whether both the orders suffer from its legality and correctness?
- d. What order?

13. Having considered the case of the complainant narrated above, it is her specific case that in respect of the share allotted in favour of the mother-in-law, an offer was made to sell the property in order to purchase the other property and received an amount of Rs.23,00,000/- (Rupees Twenty three lakhs only) from the complainant. When the accused did not come forward to execute the sale deed and on persistent demand, they issued the cheque and the fact that cheque was issued by the accused for an amount of Rs.10,00,000/- (Rupees Ten lakhs only) which is the subject matter of the present proceedings and also another cheque was issued by the son of the accused which is also the subject matter of in CC.No.29532/2015 are not in dispute. It is also the case



of the complainant that these two cheque are issued by mother-in-law and brother-in-law respectively who are not strangers but they are the family members. After the death of the complainant's husband, there was a civil dispute wherein the suit was filed and it was compromised between the parties and only on compromise, the revision petitioner has come forward to sell the portion of property which was allotted in her favour. When such being the case, the issuance of cheque is admitted and signature is not disputed and it is not the case that the amount was repaid.

14. Though counsel appearing for the revision petitioner contended that notice was not served on him, it is evident that when the acknowledgment was not returned in respect of issuance of notice, a letter was issued by the postal department in terms of Ex.P6 and confirmed that the notice was delivered to the revision petitioner and no reply was given by her. Apart from that, when there is no any effective cross examination and



when there is a presumption in favour of the complainant, the same ought to have been rebutted by leading defence evidence to probablise the case. However, there is no such effective cross examination of P.W.1 rebutting the case of complainant and so also not led any defence evidence. Though the defence evidence is led, but not subjected to cross examination, then the Court has to take note of the conduct of the revision petitioner herein in not subjecting for cross-examination and so also the very ground that no opportunity has to be given to cross examine, such contention cannot be accepted when the cross examination was not done. Coming to the fact that when the defence evidence was led but not subjected to cross examination, the Court can draw an adverse inference also and when there is no any rebuttal evidence before the Court with regard to the very averments of the complaint and also the evidence of the complainant, who narrated by examining herself as P.W.1, the question of exercising the revision jurisdiction does not arise and the



scope of revision is very limited and only this Court has to examine the legality and correctness of the order passed by the trial Court and also the appellate Court.

15. Having considered the material on record and considering the material in Criminal Appeal No.188/ 2017, taken note of the aspect that adverse inference can be drawn against the complainant/respondent under Section 114(g) of the Evidence Act, 1872, when the revision petitioner/accused did not subject for cross-examination. Though D.W.1 denied that notice has not been served, it is evident from Exhibit P6 i.e. the reply sent by Senior Superintendent of Post Office of Bengaluru, it is clear that the same was delivered to the accused on 02.11.2015, which is also marked as Exhibit P7. All these factors were also appreciated by the appellate Court in paragraph Nos.9 and 10 of its judgment. Under the circumstances, no ground is made out to exercise the revision jurisdiction and orders of both the Courts do not suffer from its legality and correctness.



16. Further, in respect of contention of the counsel for the revision petitioner that in C.C.No.29532/2015, the son of revision petitioner/accused was acquitted and the said order is also under challenge, admittedly, when the appeal is filed before this Court in view of the judgment of the Hon'ble' Apex Court, matter is remitted to the learned Sessions Court to consider the same and when the same is pending for consideration, the Court has to take note of the facts and circumstances of each case. Hence, the filing of copy of the acquittal order passed in C.C.No.29532/2015 in favour of son of revision petitioner/accused along with memo will not come to the aid of the revision petitioner to come to other conclusion and also the Court has to take note of both oral and documentary evidence available on record in respect of the particular case, and not the material in respect of the other case. Under the circumstances, I do not find any ground to entertain the revision. Hence, I answered the above points in negative.



17. In view of the discussions made above, I pass
the following:

ORDER

Criminal revision petition is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE