

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04<sup>TH</sup> DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL REVISION PETITION No.1140 OF 2023

C/W

CRIMINAL REVISION PETITION No.1114 OF 2023

CRIMINAL REVISION PETITION No.1141 OF 2023

CRIMINAL REVISION PETITION No.1143 OF 2023

CRIMINAL REVISION PETITION No.1145 OF 2023

CRIMINAL REVISION PETITION No.1147 OF 2023

CRIMINAL REVISION PETITION No.1153 OF 2023

CRIMINAL REVISION PETITION No.1155 OF 2023

**IN CRIMINAL REVISION PETITION No.1140 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R.LAYOUT  
HOSUR - SARJAPURA ROAD  
BENGALURU - 20.

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA

AGED ABOUT 49 YEARS  
AGRICULTURIST  
R/O HOUSE NO. 152  
CHANNAPURA ROAD, FORT  
CHIKKAMAGALURU CITY – 577 101.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H.N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRL.A.NO.329/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33472/2021 ON THE FILE OF HON'BLE 42<sup>ND</sup> A.C.M.M, BENGALURU.

**IN CRIMINAL REVISION PETITION No.1114 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R, LAYOUT  
HOSUR – SARJAPURA ROAD  
BENGALURU – 20.

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA

S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS  
AGRICULTURIST, R/O HOUSE NO. 152  
CHANNAPURA ROAD, FORT  
CHIKKAMAGALURU CITY – 577 201.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST TO SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRIMINAL APPEAL NO.328/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33469/2021 ON THE FILE OF HON'BLE 42ND ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BANGALORE.

**IN CRIMINAL REVISION PETITION No.1141 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R LAYOUT  
HOSUR - SARJAPURA ROAD  
BENGALURU - 20.

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS

AGRICULTURIST  
R/O HOUSE NO. 152  
CHANNAPURA ROAD, FORT  
CHIKKAMAGALURU CITY - 577 101.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRL.A.NO.331/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33479/2021 ON THE FILE OF HON'BLE 42ND A.C.M.M, BENGALURU.

**IN CRIMINAL REVISION PETITION No.1143 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R LAYOUT  
HOSUR - SARJAPUR ROAD, BENGALURU -  
20.

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS  
AGRICULTURIST, R/O HOUSE NO.152  
CHANNAPURA ROAD, FORT

CHIKKAMAGALURU CITY – 577 101.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRL.A.NO.327/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33476/2021 ON THE FILE OF HON'BLE 42ND A.C.M.M, BENGALURU.

**IN CRIMINAL REVISION PETITION No.1145 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R.LAYOUT  
HOSUR - SARJAPUR ROAD  
BENGALURU – 20.

... PETITIONER

(BY SRI VYDHANATHA S.S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS  
AGRICULTURIST  
R/O HOUSE NO.152  
CHANNAPURA ROAD FORT

CHIKKAMAGALURU CITY - 577101.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SET ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRL.A.NO.330/2023 ON THE FILE OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33255/2021 ON THE FILE OF HON'BLE XLII ADDL.C.M.M., BENGALURU.

**IN CRIMINAL REVISION PETITION No.1147 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R. LAYOUT  
HOSUR - SARJAPURA ROAD  
BENGALURU - 20.

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS  
AGRICULTURIST  
R/O HOUSE NO. 152  
CHANNAPURA ROAD, FORT  
CHIKKAMAGALURU CITY.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRL.A.NO.332/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33245/2021 ON THE FILE OF THE HON'BLE 42<sup>nd</sup> ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU FOR OFFENCE PUNISHABLE UNDER SECTION 138 OF N.I.ACT.

**IN CRIMINAL REVISION PETITION No.1153 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R. LAYOUT  
HOSUR - SARJAPURA ROAD  
BENGALURU - 20

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS  
AGRICULTURIST  
R/O HOUSE NO. 152  
CHANNAPURA ROAD, FORT  
CHIKKAMAGALURU CITY - 577 101.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRIMINAL APPEAL NO.325/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE-CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGEMENT DATED 13.02.2023 PASSED IN C.C.NO.33240/2021 ON THE FILE OF HON'BLE 42ND ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BANGALORE FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF N.I. ACT.

**IN CRIMINAL REVISION PETITION No.1155 OF 2023**

**BETWEEN:**

M.P.KUMARASWAMY, FORMER M.L.A.,  
S/O LATE PUTTAIAH  
AGED ABOUT 56 YEARS  
R/O I-SECTOR, H.S.R.LAYOUT  
HOSUR - SARJAPURA ROAD  
BENGALURU - 20.

... PETITIONER

(BY SRI VYDHYANATHA S. S., ADVOCATE)

**AND:**

H.R.HUVAPPA GOWDA  
S/O LATE RAME GOWDA  
AGED ABOUT 49 YEARS  
AGRICULTURIST  
R/O HOUSE NO. 152  
CHANNAPURA ROAD, FORT  
CHIKKAMAGALURU CITY - 577 101.

... RESPONDENT

(BY SRI MANJUNATH PRASAD H. N., ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CRIMINAL PROCEDURE CODE 1908, AGAINST SETTING ASIDE THE IMPUGNED JUDGMENT DATED 19.07.2023 PASSED IN CRIMINAL APPEAL NO.326/2023 ON THE FILE OF THE HON'BLE COURT OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE-CCH-82 AND CONSEQUENTLY SET ASIDE THE JUDGMENT DATED 13.02.2023 PASSED IN C.C.NO.33252/2021 ON THE FILE OF HON'BLE 42ND ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BANGALORE.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

Conglomeration of these cases are all between the same parties, but relate to different transactions on different instruments/cheques issued by the accused in favour of the complainant. The petitioner is thus before this Court calling in question orders dated 19-07-2023 passed by the LXXXI Additional City Civil and Sessions Judge, Bengaluru in different Criminal

Appeals affirming the orders dated 13-02-2023 passed by the XLII Additional Chief Metropolitan Magistrate, Bengaluru in different C.C. numbers. Therefore, the petitioner is before this Court calling in question the concurrent findings recorded against him.

2. Heard Sri S.S.Vydhyanatha, learned counsel appearing for the petitioner and Sri H.N.Manjunath Prasad, learned counsel appearing for the respondent.

3. Facts, in brief, germane are as follows: -

3.1. The petitioner, in all these cases, is the accused. The accused was a Member of Legislative Assembly from Mudigere constituency for over three terms. At the relevant point in time he had not been elected. Complainant is a native of the same constituency and is said to be an acquaintance of the accused for over 15 years. The acquaintance between the two led to several financial transactions between them. The financial transactions led to issuance of certain cheques by the accused in favour of the complainant. The financial transactions that form the fulcrum of

the present *lis* is an amount totaling to ₹1,66,70,000/- which the accused is said to have borrowed from the complainant on different dates and towards assurance of repayment of the said amount the accused had issued several cheques. The relationship between the two appear to have turned sore. The relationship turning sore leads the complainant to initiate proceedings under the Negotiable Instruments Act, 1881 ('the Act' for short) by causing legal notice upon the accused and then taking up proceedings by registering a private complaint for offences punishable under Section 138 of the Act. A criminal case is registered before the concerned Court and the accused faces trial before the concerned Court.

3.2. The learned Magistrate, in terms of his order dated 13-02-2023, passes an order under Section 255(2) of the Cr.P.C convicting the accused for the offence punishable under Section 138 of the Act and sentences him to pay a certain amount in each of the cases. The accused who suffered conviction calls the said order of conviction in question before the Court of Sessions in different Criminal Appeals. The Court of Sessions rejects the appeals and affirms the conviction of the petitioner in all the transactions. It is

these two orders i.e., order of conviction of the learned Magistrate and the rejection of the criminal appeals that has driven the petitioner to this Court in the subject petitions.

4. The amount involved in the transactions is different in each of the cases, but the transaction is between the petitioner and the respondent who are accused and the complainant respectively, in all the cases.

5. The learned counsel appearing for the petitioner would reiterate the grounds urged in the revision petition. The primary ground urged is that, both the Courts have ignored the fact that the complainant possess a BPL ration card which is given to families who have income of less than ₹1,25,000/- p.a. If the complainant was not in a capacity to lend huge sums of money and possesses a BPL ration card, the learned counsel submits that the entire transaction between the two is a sham. The cheques given by the petitioner for different collateral purposes are misused by the complainant. It is his further submission that under the Act, the complainant can secure only the transaction amount and not any

fine or interest. The complainant is not a registered money lender and is not entitled to make any transaction in law. He would contend that all these points are not considered by both the Courts while answering the issue against the present accused. Therefore, both the orders – order of conviction and the order in appeals should be obliterated.

6. Per contra, the learned counsel appearing for the respondent/complainant would vehemently refute the submissions contending that these very submissions were urged before the concerned Courts. The learned Magistrate, by detailed reasons has convicted the accused and the said conviction is affirmed in the appeal again by a detailed order. These concurrent findings, based on cogent reasons, can be interfered with in the revisional jurisdiction, only if the orders are perverse or lacking in jurisdiction. Therefore, the revisional jurisdiction of this Court is extremely limited, unlike hearing an appeal. He would, on the merit of the matter, contend that the BPL card was secured by the wife without informing the complainant. The moment the complainant came to know, the BPL card is cancelled long before the transaction. He

would contend that if in the event of non-payment, the concerned Court is empowered to impose fine and also imprisonment. It cannot be that the Court is powerless to pass necessary orders. He would seek dismissal of these petitions.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts and link in the chain of events are all a matter of record. Delving deeper into the facts would not be required, as the trial Court as well as the appellate Court have considered the facts in their entirety and passed orders. The order passed by the learned Magistrate in C.C.No.33472 of 2021 reads as follows:

**"REASONS**

12. **POINTS No.1 and 2**: One of the conditions for applicability of section 138 Of the ACT is that the cheque must be given in discharge, in whole or part of legally enforceable debt or liability. In order to establish the same the complainant examined himself as PW-1. In his affidavit filed in lieu of his chief-examination, he has testified regarding the transaction, issuance of the cheque, dishonour of the cheque, service of the legal notice and failure of the accused to pay the amount

covered under the cheque. The cheque is marked as Ex P.1, the memo of the banker is marked as Ex.P.2, office copy of the legal notice is marked as Ex.P.3, acknowledgments are marked as Ex.P.4 and 5, reply dated:20-02-2020 is marked as Ex.P.6, order sheet, complaint and cheque of CC. No. 1582/17 are marked as Ex.p.7 to 9, order sheet, complaint and cheque of CC.No.1584/17 are marked as Ex.p.10 to 12, complaint and cheque of CC.No.1585/17 are marked as Ex.p.13 to 15, letter written by the accused to the complainant on 12-10-2017 is marked as Ex.P16 and bank statements are marked as Ex.P.17 and 18.

13. The counsel for the accused has thoroughly cross - examined PW-1. From the sum and substance of the cross - examination done to PW-1, it could be gathered that the defence of the accused is that the Complainant did not have financial capacity to lend that much money, that the accused is not due to make any repayment to the complainant and he has misused the cheque leaves of the accused. There is no dispute that the accused and the complainant are known to each other. There is also no dispute that this complainant had filed three complaints prior to this one in respect of the cheques issued by the accused and the same is withdrawn by the complainant as those cases were settled.

14. The reply given by the accused to the demand notice is marked as Ex.P6. On perusal of the same, it goes to show that the accused has contended that false cases were filed by the complainant. But since, he contested for the election, as per the advice of his relatives and friends and the party workers, they have settled the matter as the pendency of the cases will come in the way of his election. It is also contended that the cheque leaves are stolen and then transcribed by the complainant. It is contended that he never borrowed any money from the complainant.

15. Now, once again, let me go through the cross - examination of PW-1. In the entire cross-examination, not even a single suggestion is put to PW-1 stating that he has stolen the cheque leaves. Not even a single suggestion is put to PW-1 stating that the friends, relatives and party workers settled three cases which were filed earlier to this complainant. Further, not even a single suggestion is put to PW-1 that the accused

has not borrowed any money from the complainant. On the other hand, the counsel for the accused went on posing questions to PW-1 with regard to his financial capacity of lending money. The counsel for the accused has cross examined PW-1 at length. Finally, it is suggested that the accused is not due to pay any money to the complainant.

16. During the course of cross-examination of PW-1, it was tried to elicit from his mouth with regard to payment of income tax and also with regard to filling of IT returns and further, with regard to the complainant holding BPL Card with him. The complainant has not denied about possessing BPL Card. By way of confrontation, two documents were marked. One is the certified copy of the memo filed in earlier case which was withdrawn by the complainant and the copy of the BPL Card. They are marked as Ex D1 and 2.

17. During the course of arguments, it is argued by the counsel for the accused that if really the accused was due of Rs. 26,70,000/- when the earlier cases were withdrawn and if a sum of Rs.68,00,000/- is once again paid, the same would have found place in Ex.D1 memo. For this line of argument, the answer is found in the re-examination of PW-1 at Page No.9. He has deposed that the accused requested him not to mention about the same, as he is contesting for the election. This evidence of PW-1 is appealable to the conscious of this court and the same is also probable one. Usually, the contesting party in the election, is expected to be free from criminal cases. So there is every likelihood of the accused having told the complainant not to mention about the loan and dues in the memo. As such, this line of argument by the accused is not acceptable.

18. The complainant has produced and got marked two statements of his bank accounts as Ex.p 17 and 18. I have carefully gone through the entries of those documents. Not even a single question is posed to PW-1 in respect of both these documents. There is no cross-examination to PW-1 stating that a sum of Rs. 1,66,70,000/- is not transferred to the account of the accused from the account of the complainant. There is no cross-examination to PW-1 in respect of the entries of Ex.P17 and 18. On the other hand, the documents marked as Ex.P 17

evidences that a sum of Rs.1,40,00,000/- is repaid by the accused to the complainant, by transferring the said sum to the complainant's account on 06.03.2018. Ex.P18 evidences that once again, the complainant paid a sum of Rs.68,00,000/- to the accused through his account viz.. a sum of Rs.20,00,000/- on 08-03-2018, Rs.15,00,000/- on 08-03-2018, Rs.8,00,000/- on 09-03-2018, Rs.6,00,000/- on 09-03-2018, Rs.8,00,000/- on 12-03-2018, Rs.8,00,000/- on 14-03-2018 and Rs.3,00,000/- on 16-03-2018. As could be seen from the undisputed entries made in Ex.P 17 and 18, it is evident that initially a sum of Rs.1,66,70,000/- was borrowed and later, a sum of Rs.1,40,00,000/- is repaid i.e., after filing Three Private Complaints, accordingly, those cases were withdrawn. Later, again a sum of Rs.68,00,000/- was borrowed and eight cheques were issued for repayment of earlier balance of Rs.26,70,000/- and later amount of Rs.68,00,000/- by adding interest on the said sum. Admittedly, the complainant is not a money lender. But from the evidence, it goes to show that the accused himself came forward to give interest on the money borrowed by him and accordingly, calculated the total amount due with interest and issued eight cheques, and Ex.P1 is one among those cheques.

**19. There is no contrary evidence from the accused either oral or documentary to disprove the case of the complainant. No doubt, the accused has produced the copy of the BPL Card pertaining to the family of the accused and the same is admitted and marked as Ex.D2. From the said document, it goes to show that the same is obtained by the wife of the complainant by showing her husband (complainant) and children as the family members. The counsel for the accused has drawn the attention of this court to the cross of PW-1, where few questions were posed to him with regard to giving false statement before the concerned department for obtaining BPL Card. PW-1 has denied the suggestions put to him. Admittedly, when the BPL Card is issued to the wife of the complainant, for the statement or documents given by her to the concerned department, this complainant cannot be held responsible nor this complainant can be treated as a person below poverty line. Moreover, when the accused is not able to disprove the transaction between him and the complainant and the entries in**

**Ex.P17 and 18 showing that the complainant and paid such a huge sum of money to the accused, the accused is debarred from contending that the complainant did not have financial capacity to lend that much money.**

**20. If the complainant or his wife are not eligible for the BPL Card and if they have still obtained the same, then it is the look out of the concerned department to deal with the same and it is not the scope of this case and this court has no jurisdiction to determine about the same. Further, the counsel for the accused has also argued that the accused has not paid the income tax and has not filed returns for the said amount. Again, this is also the look out of the concerned department and the same will not come within the jurisdiction of this court. As such, the contention of the accused that the complainant did not have financial capacity to lend the money does not stand for consideration.**

21. Though, lengthy cross-examination is done to PW-1, not even a single suggestions is put to him, as to how the Ex.P1 cheque came to the hands of the complainant, though in Ex.P6 reply, it is stated that the complainant has stolen the cheque leaves.

22. It is argued by the counsel for the accused that the amount shown in the cheque is more than the liability and the accused has never agreed to pay any interest. It is argued that the complainant is a money lender and he is not holding any licence to do the said business. Now, according to the complainant, the cheque amount shown in Ex.P1 is Rs. 48,00,000/-. It is the case of the complainant that the accused was due a sum of Rs. 26,70,000/- in respect of the earlier transaction and a sum of Rs.68,00,000/- in respect of the later transaction. And, it is his case that the accused himself agreed to pay interest at the rate of 2% per month and he calculated the interest and issued the 8 cheque leaves for Rs. 1,36,50,000/- and Ex.P1 is one among those cheque leaves. In the cross-examination of PW-1 also, he has deposed that he has not asked for any interest from the accused and he has also deposed that he is not doing the business of money lending. Further more, no suggestion is put to PW-1 stating that he is doing the said business. As such, for the reasons stated above,

it can be said that the accused is not successful in rebutting the presumption available to the complainant.

23. The counsel for the complainant has relied upon the following decision:

- 1) AIR 2019 SC 1876, between Rohitbhai Jivanlal Patel Vs. State of Gujarat and another.
- 2) LAWS (KAR) 2017-4-57, between C.N.Dinesha Vs. C.G.Mallika.
- 3) AIR Online 2022 SC 1373 between P.Rasiyal Vs. Abdul Nazer and another.
- 4) 2022 Live Law (SC) 979 between Jain P. Jose Vs. Santosh and another.
- 5) 2022 Live Law (SC) 714 between Oriental Bank of Commerce Vs Prabodh Kumar Tewari.

24. I have gone through all the decisions thoroughly. All the authorities are aptly applicable to the case on hand.

25. On the other hand the counsel for the accused has relied upon the following decisions:

- 01) In Cr.A.No.636/2019, SC., between Basalingappa Vs. Mudibasappa, decided on 09-04-2019.
- 02) In Cr.A.No.518/2006, SC., between Krishnajanardhan Bhat Vs. Dattatraya G. Hegde, decided on 11-01-2008.
- 03) In Cr.A.No.1594/2012, SC., between Rev. Mother Marykutty Vs. Reni C. Kottaram and another, decided on 12-10-2012.
- 04) In Cr.A.No.298/1997, SC., between Narendra Singh and another Vs. State of M.P., decided on 12-04-2004.

05) In Cr.P.No.236/2019(A), Karnataka High Court., between Ashok B Dani Vs. P.R.Bhot, decided on 25-02-2022.

06) In Cr.P.No.1649/2017, Karnataka High Court, between T.R.Sampathu Vs. Srinivasa, decided on 25-02-2022.

07) (2022) 2 BC 290, Karnataka High Court, between Sri.M.Nagaraju Vs. Sri.Lokesh Bagal.

08) (2011) ACD 365, Karnataka High Court, between Amzad Pasha Vs. H.N.Lakshmana.

09) AIR (2008) 6 KarR., 432, between Shiva OF THE CHIER Murthy Vs. Amruthraj

10) (2001) Cri.L.J., 745, Karnataka High Court, between B.P.Venkatesulu Vs. K.P.Mani Nayar.

11) AIR (2018) KarR 450, between Pushpa B.R., Vs. State of Karnataka Department of Urban Development.

12) AIR (2019) BomR (Cri.) 97, between Vikas Gopi Bhagat Vs. Shivadas Pednekar.

13) In W.P.No.16748(W)/2018, West Bengal High Court, between Bhriguram DE Vs. State of West Bengal, decided on 20-09-2018.

14) (2020) 3 LW 141, Madras High Court, between Dr.C.Dharshan Vs. State of Tamil Nadu.

15) In Cri.A.No. 1978/2013, SC., between Rajaram S/o.Sriramulu Naidu (Since deceased) through Lrs., Vs. Maruthachalam (Since deceased) through Lrs, decided on 18.01.2023.

**26. I have gone through all the decisions thoroughly. None of them are applicable to the case on hand. As the facts and circumstances of the cases involved in the said decisions and the facts and circumstances of this case are totally different. In the**

case on hand, the accused is not successful in rebutting the presumption available the complainant. Moreover, the accused himself admits that the complainant had the financial capacity to lend him money. Not only that the complainant has produced cogent documents to show that money was transferred to the account of the accused and the same is not denied, which is discussed supra. Further more, Ex.P16 is the document which will falsify the defence of the accused that the complainant did not have financial capacity to lend the money. Ex.P16 is the letter written by the accused to the complainant on 12-10-2017 i.e., after receipt of the demand notice issued by the complainant, when the first three cheques were dishonoured. As could be seen from the said document, it goes to show that the accused has admitted the transaction and also issuance of those three cheque leaves and he has sought for time to repay the earlier loan and requested the complainant not to proceed with filing of the complaint. This document is also not denied by the accused. But, in the case on hand, the accused has questioned the financial capacity of the complainant and has also gone to the extent of saying that he gave off a sum of Rs.1,40,00,000/- to the complainant only to get rid of the cases filed against him during the elections. No prudent man will just give away such a huge amount without any liability. This is nothing but cock and bull story cooked up by the accused to get away from the clutches of law and the same is not permissible.

27. From, the over all evidence on record, it goes to show that the accused has tried to take some baseless defence which is usually taken by the accused person in the case of this nature. The presumption available to the complainant is not at all rebutted by the accused. A proceeding under section 138 of N.I Act, is quasi criminal in nature. In these proceedings proof beyond reasonable doubt is subject to presumptions envisaged under section 118, 139 and 146 of N.I Act. An offence under section 138 of N.I Act, is committed not on dishonour of the cheque, but on the failure of the drawer of cheque to make payment within 15 days from the receipt of notice of dishonour. An essential ingredient of section 138 of N.I

**Act, is that cheque in question must have been issued towards a legally enforceable debt or liability.**

**28. At the cost of repetition, it is to be stated that the complainant has proved the accused is due to him and the said debt is legally recoverable debt. Section 118 and 139 of the Act, envisages certain presumptions. Under section 118 a presumption shall be raised regarding consideration, date, transfer, endorsement and regarding the holder in case of Negotiable Instruments. Even, under section 139 a rebuttable presumption shall be raised that the cheque in question was issued regarding discharge of a legally enforceable debt. These presumptions are mandatory presumptions that are required to be raised in a case of N.I Act. These presumptions are not conclusive presumptions, but rebuttable. Therefore, it is for the accused to show that there was no debt or liability or that debt or liability was not legally enforceable. It is true that the accused need not prove his case beyond reasonable doubt, but the defence should be such which makes the court to accept the defence version probable. Unless, the drawer is able to discharge the onus, an offence under section 138 would be complete provided there are no technical defects in the prosecution.**

**29. Since, the accused has not discharged the burden cast upon him. Ex.P.1 having been issued by him and its return on the ground of "Insufficient Funds", which was followed by a demand notice to pay the cheque amount, the complaint having been filed within the period of limitation and the material documents having been exhibited during the course of trial by the payee of the cheque, during whose cross examination nothing material has been elicited to doubt his testimony, the ingredients of the offence under section 138 has been met out. The statutory presumption under section 139 has not been discharged by the accused. The reverse burden is on the accused which he has to discharge in a manner which is believable as well as acceptable to the court, but the accused has not done so. Accordingly, it is to be held that the accused has committed the offence**

**punishable under section 138 of N.I Act. As such, Points No.1 and 2 are answered in the Affirmative.**

30 **Point No.3:** Negotiable Instruments Act, was enacted to bring credibility to the cheque. The very purpose of the enactment is to promote the use of the Negotiable Instrument, while to discourage the issuance of the cheque without having sufficient funds in the account. Such being the case, the intention of the legislature is that complainant be suitably compensated while the accused be punished for his act.

31. When compensation is awarded enforcement of the same come into question. There is no provision in the Code of Criminal Procedure for imposing default sentence for enforcing the payment of compensation. In this regard, the Hon'ble Supreme Court in the decision reported in **2002 (2) SCC 420** between **Suganthi Suresh Kumar Vs. Jagadeeshan** was pleased to hold that "the court may enforce the order by imposing sentence in default". The same is reaffirmed in latest decision in **2010 AIR SCW 3398** between **K.A.Abbas H.S.A. Vs Sabu Joseph**. Therefore, it is deemed fit to provide default sentence in order to enforce the payment of compensation. Ex.P.1 cheque is of the Year -2019. Therefore, the complainant is deprived of the money that was rightfully due to him for about Three Years. Accordingly, it is deemed fit that a compensation of Rs.2,20,000/- (Rupees Two Lakh Twenty Thousand only) be granted. Accordingly, in the light of the above discussions, I proceed to pass the following:-

#### **ORDER**

**By acting under section 255(2) of Cr.P.C., the accused is convicted for the offence punishable under section 138 of the Negotiable Instruments Act and he is sentenced to pay fine of Rs.2,25,000/- (Rupees Two Lakh Twenty Five Thousand only), in default to undergo Simple Imprisonment for a period of Six Months.**

If the fine amount is recovered a sum of Rs.2,20,000/- (Rupees Two Lakh Twenty Thousand only) is ordered to be paid to the complainant by way of compensation as per the provisions under section 357 of Cr.P.C. and the remaining amount of Rs.5,000/- is to be appropriated to the State.

The Bail Bond and the Surety Bond of the accused shall stand cancelled.

Supply a free copy of this Judgment to the accused.”

The petitioner thus gets convicted of the offence punishable under Section 138 of the Act. The conviction is challenged in Criminal Appeal No.329 of 2023 before the Court of Sessions. The Court of Sessions goes deeper into the details on all the contentions that are advanced by the petitioner and rejects the appeal by the following order:

“.... .... ....

16. Now let me examine the oral as well as documentary evidence. The complainant himself examined as PW1 and got marked Ex.P.1 to P.18. The accused has not stepped in to the witness box. However, he got marked three documents as Ex.D1 to D.3 during the course of cross-examination of PW1. It is the case of the complainant that the accused had borrowed Rs. 1,66,70,000/- on different dates and issued three cheques for Rs.80 lakhs, Rs.85 lakhs and Rs.1.70 lakhs and after presentation of those cheques to the bank, they were returned unpaid for 'insufficient funds' and he had filed three criminal cases before the II Addl. Civil Judge and JMFC, Chikkamagaluru and when the cases were pending, election was declared for Karnataka State Assembly in the year 2018 and immediately, the accused thought of settling the disputes and deposited Rs.1,40,00,000/- and after the deposit of Rs.1,40,00,000/-, the complainant had withdrawn the complaints and immediately, the accused again requested the complainant to Rs.68,00,000/- as loan and he agreed to pay interest @2% pm. on Rs.68,00,000/- and balance amount of Rs.26,70,000/- of he earlier transaction. So, believing the words of the accused, the

complainant had credited Rs.68,00,000/- on different dates from 08.03.2018 to 16.03.2018 by way of cheques and for repayment of the said loan amount of Rs.68,00,000/- and earlier balance of Rs.26,70,000/- with interest at the rate of 2% p.m., the accused issued 8 cheques drawn on Kaveri Grameena Bank, Hassan Main Branch and when the said cheques were presented to the bank, the same were returned unpaid for 'insufficient funds'.

17. Ex.P.1 is the cheque bearing No.439921 for Rs.2,00,000/- dated 08.11.2019 drawn on Kaveri Grameena Bank. Ex.P.2 is the bank memo for dishonour of cheque issued by Oriental Bank of Commerce, Ex.P.3 is the copy of the legal notice, Ex.P.4 and 5 are the postal acknowledgments, Ex.P.6 is the reply notice issued by the accused. Ex.P.7 to 9 are the copy of order sheet, complaint and cheque of PCR No.861/2017, Ex.P.10 to 12 are the order sheet, complaint and cheque of PCR No.860/2017. EP.13 to 15 are the copy of the order sheet, complaint and cheque of PCR No.863/2017, Ex.P.16 is the reply dated 12.10.2017 issued by the accused, Ex.P.17 and 18 are the statement of the bank account of the complainant. Ex.D.1 is the copy of the memo filed in CC No.1582/2017, Ex.D.2 is the copy of BPL Card, Ex.D.3 is the copy of the order sheet, complaint and sworn statement recorded in PCR No.17/2016.

18. The accused has contended that the complainant had no financial capacity to pay the loan of Rs.1,66,70,000/-. He has further contended that the complainant had no financial capacity to pay loan of Rs.68,00,000/-. Now it is for this court to appreciate the evidence on record. One of the important document which gives clinching evidence to the case on hand is Ex.P.16. This is the letter or reply given by the accused to the complainant when the complainant issued statutory notice after the dishonour of earlier three cheques issued for Rs.80 lakhs, 85 lakhs and 1.70 lakh for repayment of the loan of Rs.1,66,70,000/- and came to be dishonoured when presented to the Bank. In Ex.P.16, the accused has stated that he has received three notices from complainant issued through his counsel Sri Gerald Dias for the dishonour of cheques. He has also mentioned the cheque numbers and the amount of the cheques and stated that he cannot make payment of the cheques immediately and he sought for 15 days time to pay the amount and requested the complainant not to present complaint

before the court. So, this document clearly establishes that the accused had admitted the issuance of three cheques for the discharge of earlier loan of Rs.1,66,70,000/-. The accused has not disputed Ex.P.16 and there is no cross-examination on this reply notice and therefore, Ex.P.16 is an admitted document and this court can safely come to the conclusion that the accused had borrowed loan of Rs.1,66,70,000/- from the complainant and issued three cheques bearing No.704954, 704955 of Vijaya Bank, Chikkamagaluru Branch and cheque No.429517 of Karnataka State Co-Operative Apex Bank, L.H. Extension Branch, Bengaluru for Rs.85,00,000/-, Rs.80,00,000/- and Rs.1,70,000/- respectively. Ex.P.17 is the copy of the bank statement of the complainant H.R.Huvappa Gowda maintained with Punjab National Bank, Chikkamagaluru Branch. This document was also not disputed by the accused. The entry dated 6.3.2018 clearly shows that the present accused M.P.Kumaraswamy had remitted Rs.1,40,00,000/- to the bank account of the complainant. So, the contention that his friends, well-wishers, party workers, sympathisers, relatives helped him to pay Rs.1,40,00,000/- is falsified. It is the case of the complainant that after receipt of Rs.1,40,00,000/-, he had withdrawn earlier three complaints. Ex.D.1 is the memo filed by the complainant, wherein it is stated that the complainant and accused have settled the case outside the court and prayed for dismissal of the case as settled out of Court. It is pertinent to note that there is no terms of settlement mentioned in the memo and what was the amount settled is not stated in the memo. It is the case of the complainant that Rs.26,70,000/- had remained balance in the earlier transaction. Though the accused denied this aspect contending that the complainant had voluntarily withdrawn the complaints after settlement of the entire amount, but since, he has deposited only Rs.1,40,00,000/- to the bank account of the complainant towards settlement of the earlier cases and since there is no terms and conditions mentioned in the memo and since the accused has not produced any document to show the payment of Rs.26,70,000/-, this Court can safely come to the conclusion that the accused had kept balance of Rs.26,70,000/- in the earlier transactions.

19. The next document is Ex.P.18. This document is also not disputed by the accused. As per Ex.P.18 bank statement, the complainant had issued 7 cheques to the accused for

Rs.68,00,000/- and those 7 cheques were encashed by the accused. The contention of the accused is that he had not requested the complainant to give loan of Rs.68,00,000/-. But the accused has not returned the said amount to the complainant. There is no evidence on record to show as to who has presented those 7 cheques to the bank. It means the accused himself has presented the cheques and encashed. Therefore, from Ex.P.18 is very clear that the accused had borrowed Rs.68,00,000/- immediately after settlement of earlier cheque transactions. He has deposited Rs.1,40,00,000/- on 06.03.2018 and received Rs.20,00,000/- on 08.03.2018, Rs.15,00,000/- on 08.03.2018; Rs.8,00,000/- on 09.03.2018; Rs.6,00,000/- on 09.03.2018; Rs.8,00,000/- on 12.03.2018; Rs.8,00,000/- on 14.03.2018 and Rs.3,00,000/- on 16.03.2018. Now the accused cannot contend that the complainant had no financial capacity to lend the loan, because the accused himself had paid Rs.1,40,00,000/- to the complainant on 06.03.2018.

20. During the course of cross-examination, PW1 has stated that he is an agriculturist and he is doing vegetable business and he has owned property and estate and his family has 15 acres of land and getting income of Rs.15 lakh per year from ginger crop. PW1 has deposed that the accused himself had requested him not to mention the amount in the memo filed in the earlier cases to save his image and to contest in the elections. Therefore, all this oral evidence as well as documentary evidence clearly establishes that the accused had borrowed loan of Rs.68,00,000/- from the complainant and he has not paid the entire amount of the earlier cheque transactions and kept balance of Rs.26,70,000/- and he has agreed to pay interest at the rate of 2% p.m. and for the repayment of the said loan amount, he has issued 8 cheques and those cheques were dishonoured when presented to the bank. No suggestion was put to PW1 that he has stolen his cheques. No suggestion was put to PW1 that his friends, well-wishers, party workers, relatives helped him for settling the earlier three cases. No suggestion was put to PW1 that the accused has not borrowed any money from the complainant. No suggestion was put to PW1 that he has not received Rs.68,00,000/- by way of cheques from the complainant and no suggestion was put to PW1 that he was not due to pay any amount to the complainant and no suggestion was put to PW1 that he has not agreed to pay interest at the rate of 2% p.m.

21. I have analyzed the principles laid down in the citations submitted by the learned counsel for accused and carefully gone through the observations and findings of the said decisions and applied the principles which suit to the facts and circumstances of the case in hand.

**22. During the course of arguments, the learned counsel for the accused raised a question as to the financial capacity of the complainant to lend loan to the tune of Rs.1,66,70,000/- since he is a BPL Card holder. As far as lending of loan of Rs.1,66,70,000/- is not the question before this court in this case. The said matter had already been settled. Now the question before this Court is with regard to the financial capacity of the complainant to lend loan amount of Rs.68 lakhs. It has already come in the evidence that the complainant has lent loan of Rs.68 lakhs out of Rs.1,40,00,000/-remitted by the accused for settling the earlier three criminal cases. As far as BPL Card is concerned, this court cannot take any action against the complainant. It is for the accused to take action before the appropriate authority for cancellation of BPL Card, if really the complainant and his family members are not really eligible to hold the BPL Card.**

**23. The learned counsel for accused has even pressed in to service the contention regarding non-disclosure of the loan transaction to the Income Tax Department. The accused can intimate the Income Tax Department or make complaint with regard to non-disclosure of lending of loan amount and regarding income of the complainant to give hand loan. This court cannot decide this aspect. Merely because he has not disclosed the loan transaction to the Income Tax Department, this Court cannot hold that he has no financial capacity to lend loan amount to the accused.**

**24. As could be noted from the evidence and the materials that has been placed before this court that the defence raised by the accused is not at all probable. The defence that he has not demanded money of Rs.68,00,000/- also gets falsified completely. All these**

circumstance cumulatively lead this Court to come to the conclusion that the complainant has succeeded in proving the legally enforceable debt and no probable defence made to rebut the statutory presumption as raised by the accused. Something which is probable has to be brought on record for getting burden of proof shifted to the complainant. The defence raised by the accused does not inspire the confidence of the Court or meet the standard of preponderance of probability. Therefore, the complainant has successfully proved the financial transaction between him and the accused and the accused had issued alleged cheques for the repayment of the loan amount borrowed by him from the complainant and said cheques came to be dishonoured when presented to the bank and the accused has failed to rebut the presumption available under Section 139 of the N.I.Act. Therefore, the judgment of conviction passed by the trial court is in accordance with law based on sound reasonings and the trial court has not committed any error or illegality in convicting the accused and imposing fine in the facts and circumstances of the case. Therefore, there is no need to interfere with the findings recorded by the trial Court to convict the accused for the offence punishable under Sec.138 of the Negotiable Instruments Act. Accordingly, Point No.1 is answered in the Negative.

25. **Point No.2:** In view of my findings on points No.1, I proceed to pass the following:

### **ORDER**

The Criminal Appeal filed by the appellant/accused under Sec.374(3) of Cr.P.C., is hereby dismissed.

**The Judgment passed by the XLII ACMM, Bengaluru in CC No.33472/2021 dated 13.02.2023 convicting the appellant accused for the offence punishable under Sec.138 of N.I.Act and sentencing him to pay a fine of Rs.2,25,000/- is hereby confirmed.**

The trial court is directed to pay the compensation to the complainant out of the fine amount deposited by the accused, if

any, as per the orders passed by this court after remitting the fine amount to the Government after the appeal period is over.

Send the copy of the judgment to learned Magistrate along with TCR forthwith.”

*(Emphasis added in each instance)*

The petitioner has reiterated those grounds that were urged before the Court of Sessions or even before the learned Magistrate all over again before this Court. Both the learned Magistrate and the learned Sessions Judge have gone in great detail and recorded their findings by examining each of the documents that were produced juxtaposing them with each of the cheques issued.

9. The sheet anchor of the submissions of the accused/petitioner is that the complainant did not have financial capacity to lend the amount of close to ₹1.7 crores. Therefore, this Court must examine the financial capacity of the complainant which will undoubtedly lead to obliteration of both the orders. The said submission is unacceptable, in the light of the fact that both the Courts have considered this aspect and have rendered orders in great detail. It is settled law that burden of proving financial capacity of the complainant to lend the amount to the accused is

always on the accused to establish in a proceeding under Section 138 of the Act. Section 118 of the Act reads as follows:

**“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 indorsement:—**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 deals with presumptions as to negotiable instruments. Unless the contrary is proved, the presumption of transaction between the two emerges, once the instrument is issued bearing the signature of the accused. Sections 138 and 139 of the Act read as follows:

**“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, 5 [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 of other liability” means a legally enforceable debt or other liability.

**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 section 138 for the discharge, in whole or in part, of any debt or other liability.”**

Section 138 deals with dishonor of a cheque that is issued by the accused in favour of the complainant. So, the complainant becomes the holder of the cheque. Section 139 deals with presumption in favour of a holder. Section 139 presumes, unless contrary is proved, that the holder of a cheque has received the cheque of a nature referred to in Section 138 towards any debt or any liability. Therefore, the presumption though rebuttable, has to be rebutted by the accused in the trial. The orders of both the learned Magistrate and the Appellate Court are quoted hereinabove. The presumption, though the accused strenuously made efforts to rebut, has failed in his rebuttal. Therefore, it is a clear case where the evidence is goaded against the accused vindicating presumption against him.

10. It becomes apposite, in this regard, to refer to the judgment of the Apex Court in **BASALINGAPPA v. MUDIBASAPPA**<sup>1</sup> wherein it is held as follows:

".... ....

**26.** Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of PW 1, when the specific question was put that cheque was issued in relation to loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ext. D-2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs 18 lakhs. During his cross-examination, when financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.

**27. There was another evidence on the record i.e. copy of plaint in OS No. 148 of 2011 filed by the**

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<sup>1</sup> (2019) 5 SCC 418

**complainant for recovery of loan of Rs 7 lakhs given to one Balana Gouda in December 2009. Thus, there was evidence on record to indicate that in December 2009, he gave Rs 7 lakhs in sale agreement, in 2010, he made payment of Rs 4,50,000 towards sale consideration and further he gave a loan of Rs 50,000 for which complaint was filed in 2012 and further loan of Rs 6 lakhs in November 2011. Thus, during the period from 2009 to November 2011, amount of Rs 18 lakhs was given by the complainant to different persons including the accused, which put a heavy burden to prove the financial capacity when it was questioned on behalf of the accused, the accused being a retired employee of State Transport Corporation, who retired in 1997 and total retirement benefits, which were encashed were Rs 8 lakhs only. The High Court observed that though the complainant is retired employee, the accused did not even suggest that pension is the only means of survival of the complainant. Following observations were made in para 17 of the judgment [*Mudibasappa v. Basalingappa*, 2018 SCC OnLine Kar 3625] of the High Court: (*Mudibasappa case*[*Mudibasappa v. Basalingappa*, 2018 SCC OnLine Kar 3625], SCC OnLine Kar)**

**"17. Though the complainant is retired employee, the accused did not even suggest that pension is the only means for survival of the complainant. Under these circumstances, the trial court's finding that the complainant failed to discharge his initial burden of proof of lending capacity is perverse."**

**28.** There is one more aspect of the matter which also needs to be noticed. In the complaint filed by the complainant as well as in examination-in-chief the complainant has not mentioned as to on which date, the loan of Rs 6 lakhs was given to the accused. It was during cross-examination, he gave the date as November 2011. Under Section 118(b), a presumption shall be made as to date that every negotiable instrument was made or drawn on such date. Admittedly, the cheque is dated 27-2-2012, there is not even a suggestion by the complainant that a post-dated cheque was given to him in November 2011 bearing the date 27-2-2012. Giving of a cheque on 27-2-2012,

which was deposited on 1-3-2012 is not compatible with the case of the complainant when we read the complaint submitted by the complainant especially para 1 of the complaint, which is extracted as below:

"1. The accused is a very good friend of the complainant. The accused requested the complainant a hand loan to meet out urgent and family necessary a sum of Rs 6,00,000 (Rupees Six lakhs) and on account of long standing friendship and knowing the difficulties, which is being faced by the accused the complainant agreed to lent hand loan to meet out the financial difficulties of the accused and accordingly the complainant lent hand loan Rs 6,00,000 (Rupees Six lakhs) dated 27-2-2012 in favour of the complainant stating that on its presentation it will be honoured. But to the surprise of the complainant on presentation of the same for collection through his bank the cheque was returned by the bank with an endorsement "Funds Insufficient" on 1-3-2012."

**29.** Thus, there is a contradiction in what was initially stated by the complainant in the complaint and in his examination-in-chief regarding date on which loan was given on one side and what was said in cross-examination in other side, which has not been satisfactorily explained. The High Court was unduly influenced by the fact that the accused did not reply to the notice denying the execution of cheque or legal liability. Even before the trial court, appellant-accused has not denied his signature on the cheque.

**30. We are of the view that when evidence was led before the court to indicate that apart from loan of Rs 6 lakhs given to the accused, within 2 years, amount of Rs 18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse, cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court**

**when it was based on consideration of the evidence, which was led on behalf of the defence.**

**31.** This Court had occasion to consider the expression "perverse" in *Gamini Bala Koteswara Rao v. State of A.P.* [*Gamini Bala Koteswara Rao v. State of A.P.*, (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372] , this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered with only (*sic* when the) judgment is against the weight of evidence. In para 14 following has been held: (SCC p. 639)

"14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

**32. The High Court without discarding the evidence, which was led by defence could not have held that the finding of trial court regarding financial capacity of the complainant is perverse. We are, thus, satisfied that the accused has raised a probable defence and the findings of the trial court that the complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable."**

The Apex Court holds that when evidence led before the Court to indicate the loan given to the accused by the complainant, it was

incumbent upon the complainant to have explained his financial capacity. This is explained in the case at hand. The only contention raised is with regard to a BPL card which has been suitably explained by the complainant.

11. The Apex Court, later, in **TEDHI SINGH v. NARAYAN DASS MAHANT**<sup>2</sup>, has held as follows:

“ .... .... ”

**10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then**

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<sup>2</sup> (2022) 6 SCC 735

come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”

The Apex Court holds that in a case under Section 138 of the Act, the complainant need not, in the first instance, demonstrate that he had financial capacity to lend. Only at the time of evidence rebutting a reply set up by the accused, if adequate evidence is produced to demonstrate that would suffice.

12. Later, the Apex Court in **DATTATRAYA v. SHARANAPPA**<sup>3</sup> has held as follows:

“.... .... .”

**8.** Aggrieved by the decision of the trial court, the appellant moved the High Court of Karnataka in *Dattatraya v. Sharanappa* [*Dattatraya v. Sharanappa*, 2023 SCC OnLine Kar 235] , which went on to observe that, admittedly, there was a contradiction in the statement of the appellant as to when the cheque was issued in his favour. Furthermore, as was laid down in the decision of this Court in *Rangappa v. Sri Mohan* [*Rangappa v. Sri Mohan*, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] , the presumption under Section 139 of the NI Act, 1881 is a rebuttable one. **The contention of the respondent as to the financial capacity of the appellant to grant a loan in his favour was to be discharged by him, and being unable to do so, it shall be presumed that a loan transaction had not taken place.** Accordingly, the findings of the trial court were affirmed in the impugned judgment dated 3-3-2023 [*Dattatraya v. Sharanappa*, 2023 SCC OnLine Kar 235].

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<sup>3</sup> (2024) 8 SCC 573

.... ....

**29.** Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross-examination relatable to the time of presentation of the cheque by the respondent as per the statements of the appellant. This is to the effect that while the appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the respondent, after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgment in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent nor has he been able to explain as to how a cheque issued by the respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the appellant.

.... ....

**32. Moreover, affirming the findings of the trial court, the High Court observed [Dattatraya v. Sharanappa, 2023 SCC OnLine Kar 235] that while the signature of the respondent on the cheque drawn by him as well as on the agreement between the parties herein stands admitted, in case where the concern of financial capacity of the creditor is raised on behalf of an accused, the same is to be discharged by the complainant through leading of cogent evidence."**

It is laid down that where the concern of financial capacity of the creditor/complainant is raised by the accused, the same is to be proved by the complainant before the concerned Court. The onus is

not on the complainant at the threshold to prove his capacity or financial wherewithal.

13. The Apex Court later, in **ASHOK SINGH v. STATE OF U.P.**<sup>4</sup>, has held as follows:

“ .... .... ”

**22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such stand/statement of the appellant.**

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<sup>4</sup> 2025 SCC OnLine SC 706

Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in *S. S. Production v. Tr. Pavithran Prasanth*, 2024 INSC 1059, we opined:

*'8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. **Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.** In this regard, we may make profitable reference to the decision in *Tedhi Singh v. Narayan Dass Mahant*, (2022) 6 SCC 735:*

*'10. The trial court and the first appellate court have noted that **in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the***

**complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the crossexamination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.**

*(emphasis supplied)*

*(underlining in original; emphasis supplied by us in bold)*

On a coalesce of the judgments rendered by the Apex Court what would unmistakably emerge is that the complainant has demonstrated issuance of cheques towards financial transactions and the financial wherewithal towards the transaction.

14. As observed hereinabove, this Court is exercising its revisional jurisdiction under Sections 397 and 401 of the Cr.P.C. The jurisdiction is not akin to an appellate Court. The Apex Court in

**MALKEET SINGH GILL v. STATE OF CHHATTISGARH**<sup>5</sup> holds as follows:

“.... .... ....

**10.** Before advertent to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. **The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests 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. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”**

The Apex Court holds, a revisional Court is not an appellate Court and it can only rectify the patent defect, errors of jurisdiction or the law. The Apex Court, later, in **STATE OF GUJARAT v. DILIPSINH KISHORSINH RAO**<sup>6</sup>, has held as follows:

“.... .... ....

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<sup>5</sup> (2022) 8 SCC 204

<sup>6</sup> (2023) 17 SCC 688

**13.** The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in *State of Maharashtra v. Som Nath Thapa* [*State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820] and *State of M.P. v. Mohanlal Soni* [*State of M.P. v. Mohanlal Soni*, (2000) 6 SCC 338 : 2000 SCC (Cri) 1110] has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

**14. The power and jurisdiction of the Higher Court under Section 397CrPC which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.”**

The Apex Court holds that the object of Sections 397 and 401 of the Cr.P.C., is only to set right a patent defect or error of jurisdiction or law or perversity which has crept in such proceedings. The Apex Court in **SANJABIJ TARI v. KISHORE S.BORCAR**<sup>7</sup> holds as follows:

“ .... .... ”

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<sup>7</sup> 2025 SCC OnLine SC 2069

**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) 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.]). **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; 2008 SCC OnLine SC 1495.], 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."**

*(Emphasis supplied in each instance)*

The Apex Court, in unequivocal terms, holds that in exercise of revisional jurisdiction the High Court cannot set aside concurrent factual findings. The revisional Court cannot re-analyse or re-interpret the evidence on record. Its object, as laid down in several cases, is limited to setting right a patent defect or error of jurisdiction.

15. In the light of the aforesaid unequivocal facts and orders of both the Courts on cogent evidence, that this Court cannot sit in appeal over both the orders in revisional jurisdiction and obliterate the crime. This power is unavailable, as is held by the Apex Court

in the afore-quoted judgments. The law is clearly goaded against the petitioner. I do not find any error of jurisdiction or perversity in the orders, to re-appreciate the evidence and come to my own conclusion, other than the evidence that has already been appreciated by the two Courts. I decline to exercise my jurisdiction to set aside the concurrent factual findings leading to conviction of the accused.

16. Finding no merit in these petitions, the petitions stand ***dismissed.***

Interim order, if any operating, shall stand dissolved.

**SD/-  
(M.NAGAPRASANNA)  
JUDGE**

BKP  
CT:SS