

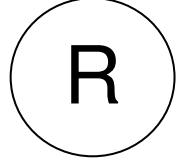


IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V.SRISHANANDA



CRIMINAL REVISION PETITION NO. 100015 OF 2021

(397(CR.PC)/438(BNSS))

BETWEEN:

SMT. MAHADEVI W/O. YALLAPPA BAGI
AGE. 57 YEARS, OCC. AGRICULTURE,
R/O. BANAHATTI, TQ. JAMKHANDI,
DIST. BAGALKOT, 587311.

...PETITIONER

(BY SRI. ASHRITH S. PATIL, ADVOCATE FOR SRI. PRASHANT F.
GOUDAR, ADVOCATE)

AND:

KRISHI LAXMI AGRO INDUSTRIES 1-C, KIADB
PLOT, TARIHAL INDUSTRIAL AREA,
TARIHAL , HUBLI, TQ. HUBLI,
DIST. DHARWAD
REPRESENTED BY ITS PROPRIETOR
SMT.HEMA W/O. JAGADISH PATIL
AGE. 35 YEARS, OCC. BUSINESS,
R/O. TARIHAL, HUBLI-580032, TQ. HUBLI, DIST.
DHARWAD.

...RESPONDENT

(BY SRI. AKIT DESAI, ADVOCATE FOR SRI. MALLIKARJUNSWAMY B.
HIEMATH, ,ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 (1) R/W
401 OF CR.P.C. 1973, PRAYING TO CALL FOR RECORDS OF THE CASE
BEARING C.C.NO.638/2009 FROM THE COURT OF THE LEARNED JMFC,
BANAHATTI AND THE RECORDS OF CRIMINAL APPEAL NO.36/2017
FROM THE COURT OF THE LEARNED 1ST ADDITIONAL DISTRICT AND
SESSIONS JUDGE, BAGALKOT SITTING AT JAMKHANDI AND ALLOW
THE PRESENT REVISION PETITION AND SET ASIDE THE JUDGMENT
AND ORDER DATED 13/03/2020 IN CRIMINAL APPEAL NO.36/2017
(PRODUCED VIDE ANNEXURE-A) PASSED 1ST ADDL. DISTRICT AND
SESSIONS JUDGE, BAGALKOT SITTING AT JAMKHANDI CONFIRMING
THE JUDGMENT AND ORDER OF CONVICTION DATED 08/05/2017





PASSED BY THE LEARNED JMFC, BANAHATTI IN C.C.NO.638/2009 FOR THE OFFENCES PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, (PRODUCED VIDE ANNEXURE-B).

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

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE V.SRISHANANDA)

Heard Sri.Arshith Patil, learned counsel appearing on behalf of Sri.Prashant F. Goudar, learned counsel for the revision petitioner and Sri.Ankith Desai, learned counsel appearing on behalf of Sri.Mallikarjunswamy B. Hiremath, learned counsel for the respondent.

2. Accused in CC No.638/2009 is the revision petitioner challenging the conviction of the revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and as against the cheque amount of Rs.3,80,000/-, fine amount of Rs.7,65,000/- was ordered of which sum of Rs.7,60,000/- was ordered to be paid as compensation with default sentence of one year and Rs.5,000/- was ordered to be paid as defraying expenses of the State.



3. The order of the learned Trial Magistrate was challenged in Crl.A.No.36/2017 and learned Judge in the First Appellate Court by considered judgment dated 13.03.2020 dismissed the said appeal.

4. Facts in brief which are utmost necessary for disposal of the revision petition are as under:

4.1. Complainant filed a private complaint under Section 200 Code of Criminal Procedure (hereinafter 'Cr.P.C.' for short) alleging the commission of offence under Section 138 of the Negotiable Instruments Act by contending that complainant is a registered manufacturer, dealer and supplier of all types of tractor and trailers, agricultural implements, rolling shutters, fabrication and general engineering works in the name and style of 'Krashi Laxmi Agro Industries' situated at Tarihal Industrial Area, Hubballi.

4.2. Accused approached the complainant for the purpose of development of her agricultural activities and placed order for two trailers and four wheeler bearing



chassis Nos.KLAI-0053 and KLAI-0054 with the complainant in a sum of Rs.3,85,000/-. The invoice was raised in that regard and delivery challan dated 25.11.2007, in the presence of the witnesses and promise to make the payment within a month after the supply of the trailers.

4.3. As per the request of the accused, complainant gave a concession in a sum of Rs.5,000/- and a cheque came to be issued in a sum of Rs.3,80,000/- drawn on Vijaya Bank, Banahatti Branch, Jamakhandi Taluk towards the payment of trailers.

4.4. Believing the words of the accused, complainant presented the said cheque for collection which came to be dishonoured with an endorsement 'funds insufficient'.

4.5. Demand was made for payment of the amount covered under the cheque, wherein accused has requested that cheque be represented so that it would be honoured. Therefore, complainant represented the cheque on 08.05.2008 and again, cheque was dishonored for 'want of funds' on 13.05.2008.



4.6. Left with no alternative, legal notice was caused which was duly served on the accused but failed to pay the amount covered under the cheque nor any reply was sent.

4.7. Therefore, complainant was constrained to file the complaint seeking recovery of the amount covered under the cheque and suitable action against the accused.

5. Learned Trial Magistrate after completing necessary formalities, recorded the evidence of the complainant and Bank Manager who is examined as C.W.2.

6. On behalf of the complainant, 17 documentary evidence were placed on record comprising of General Power of Attorney executed by the complainant Industry in favour of C.W.1, original cheque bearing No.035746 dated 30.12.2007, bank endorsement, legal notice, postal acknowledgement, signatures of the accused, tax paid receipts, temporary registration of the complainant industry, Value Added Tax registration certificate of the complainant industry, Income Tax Pan Services of the



complainant unit, tax payers counter foil, statement of account.

7. As against the material evidence placed on record by the complainant, there was no oral or documentary evidence placed on record by the accused.

8. Learned Trial Magistrate after recording the accused statement, noted that the cheque belonged to the accused and signature found therein is also belonging to the accused and there was no money in the account of the accused as on the date of presentation of the cheque on two occasions vide Ex.P.17 - statement of account and raised statutory presumption under Section 139 of the Negotiable Instruments Act and convicted the accused and passed the sentence as referred to supra.

9. Being aggrieved by the same, accused filed an appeal before the First Appellate Court in Crl.A.No.36/2017.

10. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail.



11. During the course of hearing of the appeal, additional evidence was sought to be placed on record by the accused by filing an application under Section 391 of Cr.P.C.

12. Learned Judge in the First Appellate Court noted that the material evidence placed on record was sufficient enough to reappreciate the case of the appellant and did not deem it necessary to consider the additional evidence and therefore, dismissed the application seeking additional evidence and consequently, dismissed the appeal.

13. Being further aggrieved by the same, accused is before this Court, in this revision petition on following grounds:

- *"The Petitioner has not filed any other petition or revision before any other Court, Forum or Authority.*
- *The Petitioner did not have any other alternative remedy than filing of the present Application for additional evidence under Section 391 of the Cr.P.C.*
- *The Learned Sessions Judge failed to note that, there was a serious dispute as regards to the delivery of 2*



(two) Trailers bearing Chassis No. KLAI-0053 and KLAI-0054.

- *The Appellate Court (Learned Sessions Judge) failed to note that, there was not sale transaction between the complainant and the accused and hence the question of creation of legally recoverable outstanding debt, does not arise.*
- *The Learned Sessions Judge committed a grave error in not considering the interim application filed by the Petitioner herein under Section 391 and Section 340(2) of the Cr.P.C.*
- *The Learned Sessions Judge ought to have passed an order on I.A. No. 1 filed by the present petitioner under Section 391 of the Cr.P.C. and could have exercised his power under Section 391 of the Cr. P.C.*
- *The Learned Sessions Judge ought to have entertained the additional evidence furnished by the petitioner and either decided to take such evidence to itself or directed the Magistrate to take the same.*
- *The Learned Sessions Judge though has clearly observed that, the application has been filed under Section 391 of the Cr.P.C., has completely ignored the consideration of the same while passing the impugned order dismissing the appeal of the petitioner confirming the Judgement of the Trial Court.*
- *The Leaned Sessions Judge failed to consider the endorsement given by the Regional Transport Officer (RTO) regarding non-availability of registration details*



of Trailers bearing Chassis No. KLAR-0053 and KLAI-0054 in the year 2007 and also failed to consider the documents produced by the Petitioner showing the issuance of Sales Certificate in Form No. 21 by the Respondent/Complainant herself showing the sale of Trailers bearing KLAI-0053 and KLAI-0054 to one Mr.Siddappa Yallappa B. Patil of Nagaral village in Mudhol Taluka of Bagalkot District on 29.03.2010 and registered before the Assistant Regional Transport Officer (ARTO), Jamkhandi on 29.03.2010. Here, this particular document of Sales Certificate issued under Rule 47(1)(a) of the Motor Vehicle Rules, has been issued by the Assistant Regional Transport Officer (ARTO), Jamkhandi under RTI disclosing the sale of the Trailers bearing Chassis No. KLAI-0053 and KLAI-0054 to Mr.Siddappa Yallappa B. Patil and not the present Petitioner/Accused and further disclosing that, both the said Trailers having been registered and given vehicle No. KA-48 T-6231 and KA-48 T-6232. The present Petitioner vide Memo dated 09.01.2020 placed before the Learned Single Judge the actual status of the Trailers bearing chassis No. KLAI-0053 and KLAI-0054 sold by the complainant. These documents would clearly establish the fact that, the documents as Exhibit P-10 and P11 produced by the Respondent/Complainant as delivery challans are created and concocted.

- *The Learned Sessions Judge committed a grave error in relying upon the documents of Tax Invoice marked as Exhibit P-10 and document of Delivery Challan marked at Exhibit P11. These 2 (two) documents does not confirm to the requirement of the issuance of Sales*



Certificate in Form 41 under Rule 47(1) of the Motor Vehicle Rules. If really these Trailers were sold by the Respondent/Complainant to the Petitioner/Accused, there would have been certainly documents registered with the registering authority on the confirmation of sale by the Respondent/Complaint. Therefore, the Learned Sessions Judge has denied the opportunity to rebut the presumptions by the Petitioner by denying to permit the Petitioner from producing evidence and raising her defence.

- *The Learned Sessions Judge failed to note that, the Trial Court, Learned Magistrate, Banahatti had allowed the application filed by the Petitioner herein under Section 259 of Cr.P.C. r/w. Section 143 of N.1.Act, 1881 converting the case from Summary Trail to Warrant Trail case on 06.07.2015.*
- *The Learned Sessions Judge also failed to note that, the Magistrate below has not provided any opportunity to the Petitioner/Accused to lead evidence immediately after the conclusion of the evidence of the Respondent/Complainant on 05.04.2017.*
- *The Learned Sessions Judge has squarely relied upon the documents produced by the Respondent/Complainant vide Exhibit P10 and P11 which does not confirm to be Tax Invoice or Sales Certificate as mandated under Rule 47 of the Motor Vehicle Rules.*



- *The Learned Sessions Judge failed to note that, the Petitioner/Accused herein has been deprived of an opportunity to rebut the presumption by the Magistrate while rejecting the application filed by the Petitioner herein seeking for direction to the Respondent/Complainant to produce the Sales Certificate and registration details of the 2 (two) Trailers bearing Chassis No. KLAI-0053 and KLAI-0054 under Section 91 of the Cr.P.C. on 28.12.2016.*
- *Both the Courts below have miserably failed to note that, there was no sale transaction between the Respondent/Complainant and the Petitioner/Accused herein and therefore there was no question of creation of any outstanding debt by the Petitioner.*
- *The Learned Sessions Judge failed to note that, there are not valid and sufficient reasons for awarding double cheque amount towards compensation without any basis.*
- *The Learned Magistrate as well as Learned Sessions Judge have not given any reason for awarding the double cheque amount as the compensation from Petitioner/Accused.*
- *It is submitted that, the Petitioner has been deprived of valuable right to defend herself and thereby rebut the presumption arisen in favour of the Respondent/Complainant.*



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- *The Learned Session Judge ought not to have decided the appeal bearing Criminal Appeal No. 36/2017 on merit without deciding the interim application filed by the Petitioner under Section 391 of Cr.P.C.*
- *The Learned Sessions Judge as well as Magistrate have failed to note that, there is no outstanding legally returnable debt as against the present Petitioner from the Respondent/Complainant. Therefore, the question of issuance of cheque in lieu of discharge of debit outstanding does not arise.*
- *The Learned Sessions Judge as well as Magistrate have failed to consider the settled position of Law declared by the Hon'ble Supreme Court of India. There was no fair trial and providing an opportunity was not given to the Petitioner/Accused to raise her defence and prove innocence. Adducing evidence in support of the defence is a valuable right. Denial of such right will lead denial to a fair trial.*
- *The Learned Sessions Judge has miserably failed to note that, the Trial Court has not provided any opportunity to the present Petitioner/Accused to lead her defence evidence, on the contra the Trial Court though was trying Warrant Trial Case, as on the conclusion of the Respondent/Complainant witness, has posted the matter for settlement under Section 313 of Cr.P.C. by ignoring to provide opportunity to the defence.*



- *The conduct of the Trial Court in C.C.No.638/2009 by the JMFC, Banahatti and the hearing of the Appeal vide Criminal Appeal No. 36/2017 by the Learned Ist Additional District & Sessions Judge, has seriously resulted into a graved mis-carriage of justice causing denial of access to justice to the Petitioner."*

14. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition vehemently contended that the approach of the First Appellate Court in not considering the additional evidence has resulted in grave miscarriage of justice which would actually establish that accused was innocent of the offence alleged against her and therefore, sought for allowing the revision petition and allow the additional evidence and remit the matter to the First Appellate Court for fresh disposal in accordance with law.

15. He would emphasize that the trailers were not at all delivered to the accused and therefore, the additional evidence would throw light on to the defence that has been taken by the accused and thus, sought for allowing the revision petition.



16. He would also emphasize that there was no legally recoverable debt covered under Ex.P.2 – cheque and therefore, the order passed by the learned Trial Magistrate confirmed by the First Appellate Court is suffering from serious legal infirmity and thus, sought for allowing the revision petition.

17. Per contra, learned counsel for the respondent/complainant supports the impugned orders.

18. He would further contend that the material on record would conclusively establish that the cheque at Ex.P.2 came to be issued by the revision petitioner for purchase of two trailers and therefore, the initial burden was discharged by placing invoice and necessary documents by the complainant.

19. He would also contend that to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act, accused has not at all rebutted by stepping into the witness box or by effective cross-examination or by placing documentary evidence on



record and therefore, the learned Trial Magistrate convicting the accused is just and proper.

20. It is also his contention that the First Appellate Court did not deem it necessary to consider the additional evidence inasmuch as the transaction stood proved and the additional defence that was sought to be placed on record was an afterthought and post transaction documents and therefore, had no bearing whatsoever on the disputed question in the *lis* and thus, rejection thereof is just and proper and sought for dismissing the revision petition.

21. In reply, learned counsel for the revision petitioner places reliance on the following judgments:

- i. In the case of ***Brigadier Sukhjeet Singh (Retired) MVC v. State of Uttar Pradesh and Others*** reported in **(2019) 16 SCC 712** wherein in paragraph Nos.23 to 26 is held as under:

"23. *The key words in Section 391(1) are "if it thinks additional evidence to be necessary". The word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal. The appeal has*



been filed by the accused, who have been convicted. The powers of the appellate court are contained in Section 386. In an appeal from a conviction, an appellate court can exercise power under Section 386(b), which is to the following effect:

"386. (b) *in an appeal from a conviction—*

- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or*
- (ii) alter the finding, maintaining the sentence, or*
- (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"*

24. *Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the appellate court to secure ends of justice. The scope and ambit of Section 391 CrPC has come up for consideration before this Court in Rajeswar Prasad Misra v. State of W.B. [Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] Hidayatullah, J., speaking for the Bench held that a wide discretion is conferred*



on the appellate courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. Following was laid down in paras 8 and 9: (AIR p. 1892)

"8. ... Since a wide discretion is conferred on appellate courts, the limits of that courts' jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There the resemblance ends and it is hardly proper to construe one section with the aid of observations made by this Court in the interpretation of the other section.

9. Additional evidence may be necessary for a variety of reasons which it is hardly necessary (even if was possible) to list here. We do not propose to do what the legislature has refrained from doing, namely, to control discretion of the



appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise."

25. *This Court again in Rambhau v. State of Maharashtra [Rambhau v. State of Maharashtra, (2001) 4 SCC 759 : 2001 SCC (Cri) 812] had noted the power under Section 391 CrPC of the appellate court. Following was stated in paras 1 and 2: (SCC p. 761)*

"1. There is available a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory



provisions (Section 391) would reveal the same...

2. A word of caution however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused. This Court in Rajeswar Prasad Misra v. State of W.B. [Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] in no uncertain terms observed that the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it. This Court was candid enough to record however, that it is the concept of justice which ought to prevail and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard."

26. *From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 CrPC of the appellate court. All powers are conferred on the court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people."*



- ii. In the case of ***Indus Airways Private Limited v. Magnum Aviation Private Limited and Another*** reported in **(2014) 12 SCC 539** wherein in paragraph Nos.9 to 15 it has been held as under:

"9. The Explanation appended to Section 138 explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in



the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.

10. *In Swastik Coaters [Swastik Coaters (P) Ltd. v. Deepak Bros., 1997 Cri LJ 1942 (AP)] , the Single Judge of the Andhra Pradesh High Court while considering the Explanation to Section 138 held:*

"... Explanation to Section 138 of the Negotiable Instruments Act clearly makes it clear that the cheque shall be relatable to an enforceable liability or debt, and as on the date of the issuing of the cheque there was no existing liability in the sense that the title in the property had not passed on to the accused since the goods were not delivered. ..."

11. *The Gujarat High Court in Shanku Concretes [Shanku Concretes (P) Ltd. v. State of Gujarat, 2000 Cri LJ 1988 (Guj)] dealing with Section 138 of the NI Act held that to attract Section 138 of the NI Act, there must be subsisting liability or debt on the date when the cheque was delivered. The very fact that the payment was agreed to some future date and there was no debt or liability on the date of delivery of the cheques would take the case out of the purview of Section 138 of the NI Act. While holding so, the Gujarat*



High Court followed a decision of the Madras High Court in Balaji Seafoods [Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd., (1999) 1 CTC 6 (Mad)] .

12. *In Balaji Seafoods [Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd., (1999) 1 CTC 6 (Mad)] , the Madras High Court held: (CTC pp. 8-9, para 7)*

"7. Section 138 of the Negotiable Instruments Act makes it clear that where the 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 under Section 138 of the Act. The Explanation reads that for the purposes of this section, 'debt or other liability' means a legally enforceable debt or liability."

13. *The Kerala High Court in Ullas [Supply House v. Ullas, 2006 Cri LJ 4330 (Ker)] had an*



occasion to consider Section 138 of the NI Act. In that case, the post-dated cheque was issued by the accused along with the order for supply of goods. The supply of goods was not made by the complainant. The accused first instructed the bank to stop payment against the cheque and then requested the complainant not to present the cheque as he had not supplied the goods. The cheque was dishonoured. The Single Judge of the Kerala High Court held:

"... Ext. P-1 cheque cannot be stated to be one issued in discharge of the liability to the tune of the amount covered by it, which was really issued, as is revealed by Ext. D-1, as the price amount for 28 numbers of mixies, which the complainant had not supplied. ..."

14. *The reasoning of the Delhi High Court in the impugned order [Magnum Aviation (P) Ltd. v. State, (2010) 172 DLT 91 : (2010) 118 DRJ 505] is as follows: (DRJ p. 508, para 8)*

"8. If at the time of entering into a contract it is one of the conditions of the contract that the purchaser has to pay the amount in advance then advance payment is a liability of the purchaser. The seller of the items would not have entered into contract unless the advance



payment was made to him. A condition of advance payment is normally put by the seller for the reason that the purchaser may not later on retract and refuse to take the goods either manufactured for him or procured for him. Payment of cost of the goods in advance being one of the conditions of the contract becomes liability of the purchaser. The purchaser who had issued the cheque could have been asked to make payment either by draft or in cash. Since giving cheque is a mode of payment like any other mode of payment, it is normally accepted as a payment. The issuance of a cheque at the time of signing such contract has to be considered against a liability as the amount written in the cheque is payable by the person on the date mentioned in the cheque. Where the seller or manufacturer, on the basis of cheques issued, manufactures the goods or procures the goods from outside, and has acted upon the contract, the liability of the purchaser gets fastened, the moment the seller or manufacturer acts upon the contract and procures the goods. If for any reason, the seller fails to manufacture the goods or procure the goods it is only under those circumstances that no liability is created. However, where the goods or raw material have been procured for the purchaser by seller or goods have been manufactured by the seller, it



cannot be said that the cheques were not issued against the liability. I consider that if the liability is not construed in this manner, the sole purpose of making dishonour of the cheque as an offence stands defeated. The purpose of making or enacting Section 138 of the NI Act was to enhance the acceptability of cheque in settlement of commercial transactions, to infuse trust into commercial transactions and to make a cheque as a reliable negotiable instrument and to see that the cheques of business transactions are not dishonoured. The purpose of Negotiable Instrument Act is to make an orderly statement of rules of law relating to negotiable instruments and to ensure that mercantile instruments should be equated with goods passing from one hand to other. The sole purpose of the Act would stand defeated if after placing orders and giving advance payments, the stop payments are issued and orders are cancelled on the ground of pricing of the goods as was done in this case."

15. *The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the NI Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of*



such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the NI Act. The Delhi High Court has travelled beyond the scope of Section 138 of the NI Act by holding that the purpose of enacting Section 138 of the NI Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability.”



iii. In the case of **Sri. Veeramaheswara Credit Co-Operative Society Ltd. v. Sri. C.H. Veerabhadrapa** reported in **2013 SCC OnLine KAR 349**, in paragraph Nos.8 and 9, it has been held as under:

"8. As there are two different cheques in both the criminal cases and the signature on the cheque - Ex. P2 is not in dispute, a presumption arises under S. 139 of NI Act to the effect that the cheque was issued towards repayment of dues. Anyhow, to rebut the said presumption though the respondent has placed reliance on the document Ex. D1. Subsequent to filing of this appeal the appellant has produced the documents i.e., copy of loan application/sanction order, copy of loan agreement, copy of promissory note and the copy of revenue receipt. Perusal of these documents would reveal that the respondent has raised loan of Rs. 20,000 but anyhow, these documents will have to be proved by the appellant in accordance with law. As the appellant is a co-operative society, it appears that in the interest of justice, the matter requires remittal.

9. So far as service of notice is concerned, the Trial Court has observed that on the acknowledgement - Ex. P7, the address of respondent is on a piece of paper which has been pasted. Therefore, it appears that it is



not accepted as Ex. P7 is a document to prove the service of notice to respondent, but anyhow the endorsement made by postal official to obtain the signature of the addressee, the words referred to therein are on both the acknowledgment and also on pasted address. Hence, an inference could be drawn that the address was pasted prior to the endorsement made by the postal official under Ex. P7. This circumstance will have to be considered by the Trial Court while disposing of the matter after remittal. Anyhow, as the appellant contend that there are two transactions, one in the name of respondent and another in the name of his son, it is necessary to consider the said aspect afresh and dispose of the case in accordance with law."

22. This Court having heard the arguments of both the parties, perused the material on record meticulously including the principles of law enunciated in the aforesaid judgments.

23. On such perusal of the material on record, it is crystal clear that Ex.P.2 – cheque belongs to the accused and signature found therein is not in dispute inasmuch as cheque is not returned with an endorsement that the



'signature did not tally' but with 'insufficient funds' on both the occasions.

24. C.W.2 is the bank official who has been examined on behalf of the complainant and in his cross-examination, except suggesting that the signature in Ex.P.2 is not the signature of the accused, no other materials are found.

25. Likewise, a suggestion is made to C.W.2 that the cheque is improperly dishonoured though there was sufficient fund in the account of the accused.

26. Learned Trial Magistrate did take into consideration these two issues in the judgment wherein it is found that Ex.P.17 being the statement of account, did not have the balance to the tune of more than Rs.42,000/- at any given point of time.

27. Admittedly, cheque is issued in a sum of Rs.3,80,000/-. Cheque was presented at the first instance and it was dishonoured and later on, amount was demanded by the complainant and there was a request to



represent the same and as such, cheque was again represented on 08.05.2008. Again the cheque was dishonoured for 'want of funds' and there was no reply to the legal notice. Non reply to the callings of the legal notice exposes the hollowness in the claim of the accused.

28. Complainant having examined and placed on record necessary oral and documentary evidence, also examined his banker as C.W.2, discharged the initial burden to raise the statutory presumption under Section 139 of the Negotiable Instruments Act.

29. No doubt, such a presumption is a rebuttable presumption.

30. In order to rebut the presumption, it was the accused who was required to place such material evidence on record or atleast establish from the effective cross-examination of C.Ws.1 and 2. As discussed supra, except suggesting that signature of the accused is not found in Ex.P.2, no other material is forthcoming.



31. On the contrary, complainant has produced before the Court, the invoice, GST certificate and necessary tax paid receipts in respect of the sale of trailers to the accused.

32. Therefore, following the dictum of the Hon'ble Apex Court in the case of ***Rajesh Jain v. Ajay Singh*** reported in ***(2023) 10 SCC 148***, it was the accused who was required to examine before the Court that there was no legally recoverable debt covered under Ex.P.2.

33. In the absence of any such evidence placed before the Trial Court, learned Trial Magistrate convicting the accused is just and proper.

34. However, before the First Appellate Court, an application under Section 391 of Cr.P.C. came to be filed by the accused to place additional evidence on record.

35. The additional evidence is the certified copy of the extract obtained from the Regional Transport Office and a receipt issued by the complainant to the accused on 17.11.2007 for having accepted Rs.5,000/- and Form A



issued by the Regional Transport Office, Dharwad, seeking for furnishing the details as to two trailers having chassis number referred to supra.

36. Admittedly, except the receipt dated 17.11.2007, all other documents have come into being after initiating the action by the complainant.

37. The order of the Trial Court is dated 08.05.2017 and the documents sought for by the complainant is in the year 2017 and 2020.

38. In other words, after the appeal came to be filed, the documents are obtained by the accused to establish that there was no legally recoverable debt. Receipt dated 17.11.2017, issued by the complainant to the accused, is also after the conviction order came to be passed and document that is sought to be placed on record allegedly obtained from the Regional Transport Office is also after passing of the order of conviction.



39. In other words, though there was sufficient opportunity for the accused to place on record, during the trial, the documents that is now sought to be placed on record by way of additional evidence, were available as on the date of dishonour of the cheque itself.

40. What efforts have been made by the accused to place on record those documents and what prevented the accused to place those documents before the Trial Court in order to rebut the presumption available to the complainant is not spelt out in the application.

41. In other words, as an afterthought, additional evidence is sought to be placed on record.

42. On perusal of the additional evidence for the sake of appreciating the arguments of learned counsel for the revision petitioner, would make it clear that the contention of the accused that trailer were not delivered is not established.



43. In other words, who obtained the delivery of the trailers at the first instance and thereafter, to whom it is transferred, is not forthcoming from the records of the Regional Transport Office.

44. However, cross-examination to P.W.1 would only make it clear that temporary registration and insurance policy was not taken by the complainant in order to deliver the same to the accused.

45. P.W.1 has clearly denied the suggestion in cross-examination and answered that it is not the responsibility of the manufacturer either to obtain temporary registration or to obtain the policy.

46. On the contrary, there is positive evidence on record by P.W.1 answering that it is the accused who took delivery of two trailers which were manufactured with the chassis number by the complainant.



47. In other words, when there is a delivery taken by accused, legally recoverable debt under the invoice has been established by the complainant by placing necessary oral and documentary evidence on record.

48. Therefore, taking note of all these aspects of the matter and especially in the absence of any reply notice and any contra evidence placed on record, this Court is of the considered opinion that the dismissal of the appeal by the First Appellate Court and also rejecting the additional evidence, if not providing proper reasons, would not be a ground to interfere with the order of the First Appellate Court

49. Now advertent to the decisions placed on record by learned counsel for the revision petitioner is concerned, in the case of **Brigadier Sukhjeet Singh (Retired) MVC** referred to supra, their Lordships were of the opinion that the word 'necessary' used in Section 391 of Cr.P.C. should be construed to meet the ends of justice.



50. In the case on hand, the factual aspects are very clear that accused was required to discharge his burden by placing necessary evidence on record.

51. He having failed to establish the said aspect of the matter, cannot be permitted to fill in the *lacuna* in his conduct of the case before the Trial Court by resorting to Section 391 of the Cr.P.C.

52. In the case of ***Indus Airways Private Limited*** referred to supra, their Lordships, while dealing with the legally recoverable debt in paragraph No.9, was of the opinion that the expression 'debt or other liability' would mean that 'legally enforceable debt or other liability'.

53. In the case on hand, the sale of trailers is the transaction and invoice raised vide Exs.P.10 and 11 would make it clear that there existed a legally recoverable debt.

54. Likewise, in paragraph No.15, their Lordships set aside the order of the High Court on the ground that the High Court clearly flawed inasmuch as it failed to keep in mind the distinction between the civil liability and criminal



liability under Section 138 of the Negotiable Instruments Act.

55. In the case on hand, no such ambiguity would arise, inasmuch as, accused failed to establish that she did not take delivery of the trailers and cheque issued towards payment of cost of the trailers vide Exs.P.10 and 11 stood dishonoured and thereby, the offence committed by the accused is duly established by the material evidence placed on record.

56. Therefore, viewed from any angle, both the decisions are not applicable to the case on hand.

57. Now turning to the order that has been passed by the co-ordinate Bench of this Court, in view of the authoritative pronouncement of the Hon'ble Apex Court in the case of **Rajesh Jain** referred to supra, further discussion with regard to the principles of law enunciated in the case of **Sri. Veeramaheswara Credit Co-Operative Society Ltd.** referred to supra is not necessary.



58. Moreover, when no evidence is placed on record in the trial, additional evidence would not be permitted to be placed on record as a rule.

59. View of this Court, in this regard, is supported by the principles of law enunciated by the Hon'ble Apex Court in the case of ***Ajitsinh Chehuji Rathod v. State of Gujarat***, reported in ***(2024) 4 SCC 453***.

60. Relevant paragraph of the said judgment, is culled out hereunder:

"8. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice."



61. Applying the above principle, this Court is of the considered opinion that the accused has not made out any ground muchless good grounds to interfere with the well reasoned order of the Trial Court and the order passed by the First Appellate Court.

62. However, both the Courts have missed out a fact that *lis* is between two private parties and no State machinery is involved. Thus, imposition of Rs.5,000/- towards the defraying expenses of the State needs to be set aside and to that extent, case is made out by the revision petitioner for interference.

63. Hence, the following:

ORDER

- i. Revision Petition is ***allowed in part.***
- ii. While maintaining the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act,



fine amount of Rs.7,65,000/- is reduced to sum of Rs.7,60,000/-.

- iii. Entire amount of Rs.7,60,000/- is ordered to be paid as compensation to the complainant under due identification.
- iv. Sum of Rs.5,000/- imposed by the Trial Court confirmed by the First Appellate Court towards defraying expenses of the State is hereby set aside not only on the ground that no State machinery is involved, but also, the Trial Court cannot impose more than double the cheque amount as the fine amount in the trial under Section 138 of the Negotiable Instruments Act.
- v. The amount in deposit, if any, is ordered to be withdrawn by the complainant under due identification.
- vi. Balance amount to be paid by the accused on or before **20th February, 2026.**



vii. Office is directed to return the Trial Court Records along with the copy of this Order forthwith, for issue of modified conviction warrant.

Ordered accordingly.

Sd/-
(V.SRISHANANDA)
JUDGE

KAV
CT-CMU
LIST NO.: 1 SL NO.: 9