



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 10TH DAY OF APRIL, 2026

BEFORE

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

CRIMINAL REVISION PETITION NO.100203 OF 2021
(397(CR.PC)/438(BNSS))

BETWEEN:

SHRI GUNDU SIDRAY BIRJE
AGE: 53 YEARS, OCC. PVT. SERVICE,
R/O. H.NO.670, GOKAK ROAD,
KANABARGI, TQ. AND DIST. BELAGAVI.

...PETITIONER

(BY SRI. YASH R. NADKARNI FOR SRI. VITTHAL S TELI, ADVOCATES)

AND:

SHRI PUNDALIK GUNDU PATIL
AGE: 51 YEARS, OCC. BUSINESS,
R/O.580, MAHAVEER NAGAR,
PEERANWADI, TQ. AND DIST. BELAGAVI.

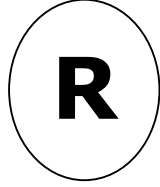
...RESPONDENT

(BY SRI. S.H. YADAWAD, ADVOCATE (VC))

THIS CRIMINAL REVISION PETITION FILED UNDER SECTION 397(1) R/W. 401 OF CR.P.C SEEKING TO SET ASIDE THE JUDGMENT DATED 29/04/2021 IN CRIMINAL APPEAL NO.207/2018 BY THE VIII ADDL. DISTRICT AND SESSIONS JUDGE, BELAGAVI WHEREIN CONFIRMING THE JUDGMENT DATED 02/05/2018 PASSED BY THE V-JMFC, BELAGAVI IN C.C.NO.615/2013(OLD), C.C.NO.486/2017(NEW) FOR OFFENSE UNDER SECTION 138 OF NI ACT AND THEREBY ACQUIT THE PETITIONER/ACCUSED AND ANY OTHER RELIEF AS THIS HON'BLE DEEMS FIT, IN THE INTEREST OF JUSTICE.

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

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



**ORAL ORDER**

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

2. This revision petition is filed questioning the conviction order dated 02.05.2018 passed in CC No.486/2017 (Old CC No.615/2013) by the trial Court and the confirmation order dated 29.04.2021 passed in Crl.A.No.207/2018 by the appellate Court and praying this Court to set aside the conviction and confirmation order.

3. The factual matrix of the case of the respondent/complainant before the trial Court is that, the complainant and the accused are friends and well acquainted with each other. The accused had availed hand loan of Rs.2,50,000/- from the complainant in the month of September and November 2010. For repayment of the said loan, he had issued the cheque bearing No.405549 for an amount of Rs.2,50,000/- dated 01.03.2013 in the name of the complainant. When the said cheque was presented for payment, the same was returned with an endorsement "funds



insufficient". The statutory notice was issued by the complainant and the same was served on the accused on 02.03.2013, but the accused did not comply with the demand notice and no reply was given. Hence, the complaint was filed and cognizance was taken. The complainant got examined himself as PW1 and marked the documents as Exs.P1 to P5. The statement of the accused was also recorded. Thereafter, the trial Court having considered that the accused has not led any evidence and no rebuttal evidence and nothing is elicited through the mouth of PW1 to disprove the case of the complainant, convicted the accused and directed to pay a fine of Rs.2,61,000/- within a period of 6 months and in default of payment of fine, he shall undergo simple imprisonment for a period of six months. The same was challenged before the appellate Court and the appellate Court having considered both oral and documentary evidence, confirmed the conviction order passed by the trial Court. Being aggrieved by the conviction and confirmation order, the present revision petition is filed.



4. In the revision petition, for the first time, the ground is raised before this Court that the trial Court committed an error in recording the 313 statement at the time of appearance of the accused. The counsel brought to the notice of this Court the order sheet dated 28.08.2015, wherein the trial Judge noted that the accused is present, substance of the accusation is orally stated to the accused. The accused pleaded not guilty and submitted that he has got defence to make. The trial Court having considered the judgment of the Apex Court in the case of ***Indian Bank Association and other Vs. Union of India and others***¹, comes to a conclusion that sworn statement of the complainant is treated as the evidence of the complainant. The cheque is marked as Ex.P1, Bank Endorsement is marked as Ex.P2, Notice issued is marked as Ex.P3, Postal Receipt is marked as Ex.P4 and Postal Acknowledgment is marked as Ex.P5. The trial Court also recorded the statement of the accused under Section 313 of Cr.P.C. and the accused has chosen to lead his evidence and hence, having considered that the accused appeared through

¹ (2014) 5 SCC 590



counsel and also the warrant, which was issued was recalled to give an opportunity to cross-examine PW1 and even without any application, fair opportunity was given to the accused and the accused also cross examined the PW1 and after the closure of the prosecution evidence, the trial Judge made an observation that already 313 statement was recorded vide order dated 03.06.2017 and posted the matter for defence evidence. But accused did not choose to lead any defence evidence.

5. The counsel for the petitioner would also submit that the plea and 313 statement was recorded on the very same day and ought to have recorded the 313 statement after the completion of the evidence of the prosecution witness i.e. after the cross-examination of PW. He brought to the notice of this Court Section 313 of Cr.P.C. and contends that very conviction and the confirmation suffers from its legality and correctness and hence, it requires interference of this Court.

6. Per contra, the counsel appearing for the respondent/complainant, who appeared through VC brought to notice of this Court that it is a summons-case and brought to



notice of this case this Court Section 251 of Cr.P.C. and contends that under Section 251 of Cr.P.C., when the case is a summons-case and summary trial, substance of the accusation to be stated when the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. The counsel referring this Section would submit that the order sheet is very clear that the accused was present and the substance of the accusation was stated to him and he did not plead guilty, claims defence and opportunity was given to cross-examine PW1 and to lead defence evidence, but the accused did not lead any defence evidence. The counsel would contend that it is not in dispute that cheque was given and notice was given, but no reply was given and not laid any defence evidence by rebutting the evidence of the complainant and hence, the trial Court rightly comes to the conclusion that the complainant has proved the case and the appellate Court also considered the same. For the first time raised the ground



of technicality that 313 statement was recorded earlier point of time, not after the cross-examination and counsel would submit that when the complainant examined himself and got marked the documents and relies upon the chief evidence, based on the chief evidence only 313 statement was recorded and no need to once again record the 313 statement after the cross-examination of PW1.

7. In reply to this argument, counsel appearing for the revision petitioner would submit that in view of Section 273 of Cr.P.C., evidence to be taken in the presence of the accused and hence, the procedure adopted by the trial Court is not correct and hence it suffers from its legality and correctness.

8. Having heard the counsel appearing for the revision petitioner and the counsel appearing for the respondent and also considering the material available on record, the points that would arise for consideration are:

- 1) Whether the trial Court committed an error in convicting the accused and the appellate Court committed an error in confirming the judgment



of trial Court and the same suffers from its
legality and correctness?

2) What order?

9. Having perused the material on record, it is not in dispute that the complainant was examined before the trial Court and his sworn statement was recorded on 22.06.2013, cognizance was taken, issued the process and thereafter, the accused did not appear before the Court and hence, NBW was issued and he was secured by issuing the NBW and an application was filed for recalling the NBW and the same was recalled on 25.02.2015. The records also disclose that subsequent to recalling of the warrant, the accused was present before the Court on 28.08.2015 and also the order sheet reveals that in the presence of the accused, statement of accusation is orally stated to the accused and he pleaded not guilty and submitted that he has got defence to make. The trial Judge having considered the principles laid down in the judgment of ***Indian Bank Association (supra)*** treated the sworn statement of the complainant as the evidence of the complainant and also the documents of Exs.P1 to P5 marked



in the presence of the accused and at that time, the accused has not raised any objection with regard to the principles laid down in the judgment of the Apex Court as well as marking of the document. No doubt, there is no any plea form and also it has to be noted that for having marked these documents, the statement of the accused was recorded under Section 313 and order sheet also reveals that an opportunity is given to cross-examine PW1 by fixing the date on 28.09.2015.

10. Now this Court has to consider Section 251 of Cr.P.C., which was brought to the notice of this Court by the counsel appearing for the respondent/complaint. This Court would like to extract Section 251 of Cr.P.C., which reads as follows:

"251. Substance of accusation to be stated.—*When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."*

11. Having considered Section 251 of Cr.P.C., in a case of trial of summons cases by Magistrate, it is very clear that



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when the accused was brought before the Court, the particulars of the offence upon which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make. But in the case on hand, the substance of the accusation was made to the accused and he also in terms of Section 251 Cr.P.C. claims that he has got defence to make and also the provision is very clear that it shall not be necessary to frame a formal charge, in a case of summary trial in respect of summons cases. Hence, there is a force in the contention of the counsel appearing for the complainant/respondent that accusation was stated to the accused and he also makes the statement that he has got defence to make and he did not plead guilty. In terms of Section 251 of Cr.P.C., accusation was brought to the notice of the accused and he did not plead guilty and he claims the defence.

12. Now, the question before this Court is with regard to recording of 313 statement and the date of appearance of the accused and stating the accusation made against him on the very day. Now this Court has to consider the very



provision of Section 313 of Cr.P.C. This Court would like to extract Section 313 of Cr.P.C., which reads thus:

"313. Power to examine the accused.—(1) *In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—*

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court



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may permit filing of written statement by the accused as sufficient compliance of this section.]”

13. Having considered Section 313 of Cr.P.C., it is very clear that in every enquiry or trial, for the purpose of enabling the accused personally to explain incriminating circumstances against the accused and 313 (1)(a) is very clear that may at any stage without previously warning the accused put such questions to him as the Court considers necessary and also sub-section (b) is very clear that shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case, provided that in a summons case where the Court has dispensed with the personal attendance of the accused, it may also dispense with the examination under clause (b).

14. Having considered the proviso, it is very clear that on examination of the prosecution witness, 313 statement has to be recorded. But, nowhere in 313 statement, it is stated that only after the cross examination of prosecution witness, 313 statement has to be recorded. But prosecution only relies upon the document of Exs.P1 to P5, which has been



considered as evidence of the prosecution witness i.e. statement as well as documentary evidence of Ex.P1 to P5 and no other documents are placed by the prosecution or adduced any evidence before the trial Court after the 313 statement. When such being the case and also when the accused though cross examined PW1, even not led any defence evidence before the trial Court. When these are the circumstances clearly discloses that when there was no any further evidence of the prosecution, if any further evidence was led after recording the 313 statement, then the very technicality raised by the counsel appearing for the revision petitioner, would have been some force. But whatever the material placed before the Court, which discloses incriminating evidence against the accused, was put to him by recording the 313 statement on the very day itself and the same will not cause any prejudice to the petitioner, except the technicality. It is not the case of the petitioner that 313 statement was not recorded, but it was recorded, not after the cross examination, but after treating the sworn statement as the evidence of the complainant and marking the documents of Ex.P1 to P5 of the



prosecution witness and hence, it will not cause any prejudice on the part of the petitioner. When such material available before the Court, only on the ground of technicality, this Court cannot interfere with the original jurisdiction.

15. No doubt, the counsel brought to the notice of this Court Section 273 of Cr.P.C. and this Court would like to extract Section 273 of Cr.P.C., which reads as follows:

273. Evidence to be taken in presence of accused.—*Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:*

[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.]

16. Having considered Section 273 of Cr.P.C., it is very clear that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceedings shall be taken in the presence of the accused, or when his personal



attendance is dispensed with, in the presence of his pleader. It is very clear that the evidence to be taken in presence of the accused and no dispute with regard to Section 273 is concerned and all evidence must be recorded in the presence of the accused. But in the case on hand, the accused was very much present on the date of accusation stated to him on the particular date and the accused did not plead guilty and claims the defence and an opportunity was also given to him and also in his presence, in view of the principles laid down in the judgments of the Apex Court in the case of **Indian Bank Association** (supra), the same was treated as the evidence of the complainant and also got marked the documents Exs.P1 to P5 in the presence of the accused. Hence, the very contention of the counsel appearing for the petitioner that evidence ought to have been recorded in the presence of the accused and accused also not disputes the fact that it was considered as the evidence of the complainant in his presence as well as documents are marked as Ex.P1 to P5 in the presence of the accused, hence, it will not come to the aid of the revision petitioner.



17. On merits also, the issuance of cheque is not disputed and bouncing of the cheque and causing of statutory notice after the bouncing of the cheque is also not disputed and notice was also served and no reply was given and in view of the judgment of the Apex Court in the case of **Rangappa vs. Mohan**², it is very clear that if no reply was given and not disputed the very demand and also in the case on hand, nothing is elicited in the cross examination of PW1 and also accused not led any rebuttal evidence before the trial Court invoking Section 139 of NI Act and when the presumption arises in favour of the complainant having produced the documents of Ex.P1 to P5 and when there is no serious dispute with regard to the issuance of cheque. Under the circumstances on merits also, I do not find any illegality committed by the trial Court and hence on merits also, the petitioner is not entitled for exercising of revisional jurisdiction.

18. Hence, considering all the material available on record, I do not find any illegality committed by the trial Court

² 2010 (5) KCCR 4063



and the same does not suffer from any legality and its correctness and hence, the revision petitioner not made out any ground to entertain the revision petition. Hence, I answered the point as "negative".

19. In view of the discussions made above, I proceed to pass the following:

ORDER

The revision petition is ***dismissed***.

**SD/-
(H.P.SANDESH)
JUDGE**

JTR
CT:PA
LIST NO.: 1 SL NO.: 11