

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

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BEFORE

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

CRIMINAL REVISION PETITION NO.1471 OF 2024

BETWEEN:

1. SRI. GANESH,
S/O LATE SIDDALINGASHETTY,
AGED ABOUT 54 YEARS,
RESIDING AT NO.1522, 7TH CROSS,
NEAR VIVEKANANDA CIRCLE,
VIVEKANANDA NAGARA,
MYSURU-570023.

...PETITIONER

(BY SRI. SHRIDHARA K., ADVOCATE)

AND:

1. SRI. K.R. PUTTASWAMY,
S/O LATE RAMAIAH,
AGED ABOUT 72 YEARS,
RESIDING AT NO.LIG 20,
E AND F BLOCK,
RAMAKRISHNANAGARA,
CHAMARAJA MOHALLA,
MYSURU - 570009.

...RESPONDENT

(BY SRI. YADUNANDAN N., ADVOCATE FOR
SRI. SAGAR V. SHASTRI, ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.PC (FILED U/S 438 R/W 442 BNNS) PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION PASSED BY THE I ADDL. CIVIL JUDGE AND JMFC AT MYSURU, DATED 08.02.2024 IN CC NO.120 OF 2019 AGAINST THE PETITIONER FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE



INSTRUMENT ACT AND ALSO SET ASIDE THE ORDER DATED 12.09.2024 PASSED IN CRL.APL. NO.82 OF 2024 ON THE FILE OF THE III ADDL. SESSIONS JUDGE, MYSURU, WHERE THE APPELLANT COURT HAS CONFIRMED THE ORDER OF CONVICTION DATED 12.09.2024.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This revision petition is filed praying this Court to set aside the judgment and order of conviction passed by the I Additional Civil Judge and JMFC, Mysore dated 08.02.2024 in C.C.No.120/2019 against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, ('NI Act' for short) and to set aside the order dated 12.09.2024 passed in Crl.A.No.82/2024, on the file of III Additional Sessions Judge, Mysore, wherein the Appellate Court has confirmed the order of conviction dated 12.09.2024 and to pass such other order.

3. The factual matrix of the case of the complainant before the Trial Court is that the complainant filed 138

proceedings against the petitioner, who is a retired Government employee. Now he is doing part time work at Mahajana College, Mysore. The case of the complainant is that the accused was well acquainted with him since last 10 years and the accused had approached the complainant and borrowed a sum of Rs.4,00,000/- with a promise to repay the same with 18% interest. For repayment of the said amount, the accused issued a cheque for an amount of Rs.4,00,000/- and when the said cheque was presented, the same was dishonored and hence, the complainant initiated the proceedings under Section 138 of the NI Act. The Trial Court took the cognizance and considered the evidence on record and convicted and sentenced the accused.

4. The same is challenged before the Appellate Court and the Appellate Court having re-assessed both oral and documentary evidence placed on record, confirmed the order of the Trial Court.

5. The main ground urged before this Court by the learned counsel for the petitioner is that there cannot be any 138 proceedings against the petitioner and both the Courts have committed an error. The learned counsel would contend

that, according to the complainant, the transaction was taken place on 05.10.2015 and demand has been made by the complainant on 24.10.2018 and subject matter of the cheque was given. The said cheque is barred by time and the said cheque cannot be enforced. Both the Courts ignored the facts and blindly convicted the petitioner and the finding given by both the Courts are perverse and biased. The learned counsel would vehemently contend that the complainant has categorically admitted that the transaction was taken place on 05.10.2015 and in between 05.10.2015 to 24.10.2018, there was no any documents for having corresponded with each other. When such being the case, the very cheque is time-barred and there cannot be any conviction for the offence punishable under Section 138 of the NI Act.

6. The other contention of the learned counsel for the petitioner is that no notice was served on the petitioner. In the cross-examination of P.W.1, he categorically admitted Ex.D.1 and the address mentioned in the legal notice and Ex.D.1 are altogether different and P.W.1 admitted that he has not issued the notice to the address mentioned in Ex.D.1. When the petitioner disputed the service of notice, the burden shifts on the respondent to prove the same. The respondent/complainant

failed to take any steps to summon and examine the postal authorities to prove his contention. Hence, it requires interference of this Court.

7. The learned counsel for the petitioner in support of his arguments relied upon the judgment of this Court passed in **Crl.A.No.545/2010** dated 28.02.2014 and brought to the notice of this Court paragraph No.15, wherein it is observed that the view taken by Kerala High Court in the case of **SASSERIYIL JOSEPH v. DEVASSIA** reported in **2001 Crl.L.J. 24**, has been confirmed by the Supreme Court in **Special Leave to Appeal (Crl.) No.1785/2001**. This Court also held that there are no reasons for the Court to differ from the view taken by the Kerala High Court and confirmed by the Supreme Court and that the cheque was time barred. The learned counsel also relied upon the following judgments:

- (i) (2000) 2 Ker.L.J. 447 – Sasseriyil Joseph v. Devassia.
- (ii) (2014) 1 NIJ 444 – Amulya Patowary v. Amarendra Choudhury.
- (iii) (2021) 1 Air Kar R 600 – Bidar Urban Co-operative Bank Ltd. v. Girish.
- (iv) (2009) 4 PLR (Delhi) 1 – Vijay Polymers Pvt. Ltd. and another v. Vinnay Aggarwal.

- (v) (2025) AIR (SC) 4446 – Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul.

8. Per contra, the learned counsel for the respondent relies upon the judgment of this Court passed in Crl.R.P.No.400/2026 c/w Crl.A.No.323/2019, Crl.R.P.No.401/2016 dated 22.03.2025, wherein this Court in detail considered the issue involved with regard to deeming provision under Section 25(3) of the Indian Contract Act, 1872 ('ICA' for short. The original debt, therefore, through Section 25(3) of the ICA Act becomes legally recoverable and enforceable to the extent of the amount the cheque has been given. The learned counsel also relies upon the following judgments:

- (i) (2000) 2 SCC 642 – A.V. Murthy v. B.S. Nagabasavanna.
- (ii) 2003 SCC OnLine Ker 420 – Dr. K.K. Ramakrishnan v. Dr. K.K. Parthasaradhy and another.
- (iii) 2006 SCC OnLine Kar 583 – H. Narasimha Rao v. R. Venkataram.
- (iv) 2013 (2) Mh.L.J. – Dinesh B. Chokshi v. Rahul Vasudeo Bhatt and another.
- (v) CRM-M-39414-2021 – Sultan Singh v. Tej Partap.
- (vi) 2025 SCC OnLine Raj 5241 – Ratiram Yadav v. Gopal Sharma.

9. Having heard the learned counsel for the petitioner and the learned counsel for the respondent, the issue involved between the parties is whether a cheque can be given after the transaction is time-barred and the same could be validated by issuing a cheque subsequently. Hence, the question that arises for consideration of this Court are:

- (i) Whether the Trial Court committed an error in convicting the accused for the offence punishable under Section 138 of the NI Act after lapse of 3 years from the date of transaction and issuance of cheque after 3 years requires interference of this Court?
- (ii) What order?

Point No.(i):

10. Having considered the material on record, there is no dispute with regard to the initiation of proceedings under Section 138 of the NI Act. The main contention urged before this Court by the learned counsel for the petitioner is that the cheque issued is time barred. No doubt, the cheque is issued after three years of the original transaction between the parties. But with regard to the validity of the cheque is concerned, the Court has to take note of the fact. It has to be noted that the Kerala judgment in the case of **Sasseriyl**

Joseph (supra) was upheld by the Apex Court in SLP (Crl.) No.1785/2001 with regard to time barred debt is concerned. It is important to note that the Apex Court only dismissed the same and validity of the cheque has not been discussed with regard to Section 25(3) of the ICA and no law was laid down except confirming the said order and hence, the very contention of the learned counsel for the petitioner that the Supreme Court affirming the judgment of Kerala High Court comes to the aid of the petitioner, cannot be accepted.

11. It is also important to note that the learned counsel for the respondent relied upon the Division Bench judgment of Kerala High Court in the case of **Dr. K.K. Ramakrishnan** (supra), wherein the earlier judgment in the case of **Sasseriyl Joseph** (supra), was not accepted by the Division Bench. It is also to be noted that this Court in Crl.R.P.No.400/2016 while passing the judgment taken note of the judgments of different High Courts as well as the Apex Court, particularly in the case of **A.V.Murthry** (supra), **K. HYMAVATHI v. THE STATE OF ANDHRA PRADESH AND ANOTHER** reported in **(2023) 14 SCR 412** and several judgments were discussed and definite finding is given considering the judgment of Kerala High Court in the case of **Dr. K.K. Ramakrishnan** (supra), **RAJEEV**

KUMAR v. STATE NCT OF DELHI AND ANOTHER reported in **2024 SCC Online Del 6421**, judgment of the Apex Court in the case of **S. NATARAJAN v. SAMA DHARMAN** reported in **(2021) 6 SCC 413** and also discussed the judgment of **RANGAPPA v. MOHAN** passed in Crl.A.No.1020/2010, **M. BALAJI v. PERIM JANARDHANA RAO** reported in **2020 SCC Online Mad 28058**, wherein at paragraph No.60 of the said judgment, discussed with regard to sub-section (3) of Section 25 of ICA deals with acknowledgment time barred debt. Having considered the material in detail, in paragraph No.37, the Apex Court held that furnishing of a cheque of a time barred debt effectively resurrects the debt itself by a fresh agreement through the deeming provision under Section 25(3) of ICA. The original debt therefore, through Section 25(3) of the ICA, becomes legally recoverable and enforceable to the extent of the amount the cheque has been given. It is further held that by the act of drawing a cheque, the promisor i.e., the drawer, is effectively stating that he has a liability to pay the drawee. Drawing of the cheque in itself, is acknowledgment of which would trigger the provisions under Section 138 of NI Act. To deny a complaint/drawee of invoking the penal provisions of

Section 25(3) of the ICA recognizing a fresh agreement to pay, would be an unfortunate disentitlement.

12. The Apex Court in the case of **S. Natarajan** (supra), held that whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact. The Punjab and Haryana High Court in the case of **Sultan Singh** (supra), held that a debt which has become time barred can be enforced in case ingredients of Section 25(3) of the ICA are fulfilled. The Delhi High Court in the case of **TARUN SAMDARSHI v. STATE (NCT OF DELHI) AND ANOTHER** reported in **2019 SCC ONLINE DELHI 6711**, comes to a definite conclusion that if cheque is issued, even if it is for time barred debt, Section 25(3) of ICA can be invoked. When the accused has acknowledged the debt in writing, he cannot contend that the liability is a time barred liability. This Court also would like to rely upon the judgment of Delhi High Court in the case of **SHARDHA NAND BANSAL v. ASHOK KUMAR BHALLA** passed in Crl.R.P.No.44/2025 dated 25.09.2025, wherein also discussion was made with regard to Section 25(3) of the ICA. The Bombay High Court in the case of **Dinesh B. Chokshi** (supra) also discussed with regard to Section 25(3) of the ICA.

13. Having considered all these materials on record and also the principles laid down in the judgments referred supra, it is very clear that once the cheque is issued, even if it is for the time barred debt also, there is a deemed provision under Section 25(3) of Contract Act. The first contention of the counsel appearing for the petitioner that the Trial Court committed an error in convicting cannot be accepted.

14. The other contention of the learned counsel for the petitioner is that no notice was served on the petitioner. To that effect, the Trial Court also taken note of copy of legal notice Ex.P.3, three postal receipts Ex.P.4 and Ex.P.5 postal acknowledgment and hence, there is no proper service cannot be accepted. The Trial Court also taken note of that D.W.1 in his chief-examination himself stated that he frequently borrowed loan from the complainant and also with regard to the complainant having capacity to lend the amount. Apart from that, notice was duly served on the said address and acknowledgement was also returned to the Court and notice issued by the complainant to the correct address of the accused is taken note of in paragraph No.17. On perusal of Ex.P.3 legal notice and also the cause title of the complaint, the addresses mentioned in both are one and the same. Hence, there was no

proper service of notice cannot be accepted. Both the Trial Court and also the Appellate Court taken note of the same and scope of revision is also very limited and when the legality issue is raised in the revision and when order not suffers from its legality and correctness, the question of interfering by exercising the revision powers does not arise. Hence, I answer the point in the negative.

Point No.(ii):

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

ORDER

The petition is dismissed.

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

MD