IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION No.782 OF 2023
(397(Cr.PC) / 438(BNSS)
C/W CRIMINAL REVISION PETITION No.858 OF 2023

IN CRL.RP No.782/2023

BETWEEN:

MR DYANI ANTONY PAUL
S/O LATE JOSEPH PAUL,
AGED ABOUT 40 YEARS,
R/AT NO.1-77, VAILANKANNI COTTAGE,
MURODY ROAD,
PADAVINANGADY, KONCHADY POST,
MANGALURU-575 008.

...PETITIONER

(BY SRI RAJASHEKAR.S, ADVOCATE)

AND:

SRI ANIL HEGDE
S/O BHASKAR HEGDE,
AGED ABOUT 60 YEARS,
R/AT FLAT NO.1102, SAI PALACE,
BALLALBAGH
MANGALURU-575 008.

...RESPONDENT

(BY SRI DINESH KUMAR RAO.K, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE PORTION OF THE JUDGMENT DATED 01.04.2023 PASSED IN CRL.A.NO.102/2021 ON THE FILE OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU, BY WHICH THE ORDER DATED 09.08.2021

PASSED IN C.C.NO.6784/2019 ON THE FILE OF THE J.M.F.C IV COURT CAME TO BE MODIFIED.

IN CRL.RP No.858/2023

BETWEEN:

MR ANIL HEGDE
S/O LATE BHASKAR HEGDE,
AGED ABOUT 59 YEARS,
R/AT FLAT NO.1102,
SAI PALACE, BALLAL BAGH,
MANGALURU – 575003

...PETITIONER

(BY SRI. DINESHKUMAR RAO K, ADVOCATE)

AND:

MR DYANI ANTONY PAUL
S/O LATE JOSEPH PAUL,
AGED ABOUT 37 YEARS,
R/AT NO.1-77, VAILANKANNI COLLEGE,
MUGRODY ROAD,
PADAVINANGADY,
KONCHADY POST,
MANGALURU – 575008

...RESPONDENT

(BY SRI. RAGHAVENDRA SHENOY M, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 01.04.2023 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE D.K., MANGALURU IN CRL.A.NO.102/2021 CONFIRMING THE JUDGMENT AND ORDER DATED 09.08.2021 IN C.C.NO.6784/2019 PASSED BY THE JMFC IV COURT, MANGALURU D.K., CONVICTING THE PETITIONER FOR THE OFFENCE PUNISHABLE UNDER

SECTION 138 OF NEGOTIABLE INSTRUMENT ACT AND ACQUIT THE PETITIONER OF CHARGE LEVELED AGAINST HIM.

THESE APPEALS HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE V SRISHANANDA)

Heard.

These two revision petitions in Crl.RP No.782/2023 is filed by the complainant and Crl.RP No.858/2023 is filed by the accused challenging the Order passed by the learned Judge in the First Appellate Court in Crl.A No.102/2021, whereby, the Order of the Trial Court in C.C.No.6784/2019 convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, imposing fine of Rs.6,08,57,000/- of which Rs.6,08,50,000/- was ordered to be paid as compensation to the complainant and balance sum of Rs.7,000/- to be appropriated towards defraying expenses of the State, and in default, to undergo simple imprisonment for a period of two years was modified by reducing the default sentence from two years to six months.

2. Facts of the case which are utmost necessary for disposal of the present revision petitions are as under:

2.1 A private complaint came to be filed on the file of the JMFC IV Court, Mangaluru, Dakshina Kannada, alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2.2 In the complaint it has been contended that the complainant is the owner of the small scale industrial unit situated in premises bearing Door No.6-54 measuring 700 square feet comprised in Sy.No.40/5(P) measuring 12 cents and 7 cents of the property which is further comprised in Sy.No.40/8 of Idya village, Mangaluru taluk, along with the machineries, equipments and industrial plant.

2.3 Complainant had leased the above industrial unit to the accused under a lease agreement. The industrial unit was called 'Prem Prasad Bottling'.

3. It is further contented by the complainant that there was difficulty to run the said industrial unit on the part of the accused and he failed to pay the dues in respect of lease rentals. Therefore, accused was requested to surrender the unit with all equipments.

4. Accused having realised that he cannot run the industrial unit any longer, surrendered the entire unit by executing a deed of surrender on 18.01.2019 and liability of the accused as on the date of deed of surrender was crystallized in a sum of Rs.5,15,73,798/-. Towards the repayment of said liability, accused passed on two cheques bearing Nos.968221 and 968224 dated 01.02.2019 and 26.02.2019 in a sum of Rs.3,00,00,000/- and Rs.2,15,73,798/- respectively.

5. Those cheques were presented for collection and were dishonored with an endorsement 'funds insufficient'. Thereafter, complainant got issued a legal notice on 15.03.2019 calling upon the accused to pay the amount covered under the cheques within fifteen days. Notice was duly served on the accused on 16.03.2019. But an untenable reply was caused by the accused on 28.03.2019. Therefore, complainant sought for taking necessary action against the accused.

6. Learned Trial Magistrate, after taking cognizance of the offence, completed necessary formalities and summoned the accused and plea was recorded. Accused pleaded not guilty. Therefore, trial was held.

7. In order to prove the case of the complainant, complainant got examined himself as PW-1 and placed on record 20 documents which are exhibited and marked as Exhibits P-1 to P-20, comprising of original cheques, Bank endorsements, office copy of the legal notice, postal receipt and acknowledgment, reply notice, surrender agreement, trade license, lease agreement, pass books, certified copy of the statement of account, photocopy of the trade license, photocopy of the FIR in Crime No.54/2019, photocopy of the sale deed dated 10.08.2012, photocopy of the trade license and Income Tax Returns.

8. As against the material evidence placed on record on behalf of the complainant, accused got examined himself as DW-1 and placed on record certified copy of the orders passed in O.S No.367/2019 on interlocutory application, certified copies of the sale deeds dated 10.08.2012 and 28.06.2013, certified copy of the order sheet, certified copy of the judgment in MA No.19/2019 and certified true copy of complaint filed by Deputy Director of Enforcement against the complainant, accused and others before the adjudicating authority.

9. Thereafter, learned Trial Judge heard the arguments of the parties and on cumulative consideration of the oral and documentary evidence on record, convicted the accused, *inter alia*, holding in paragraph Nos.28 to 37 as under:

> *"28. Further to prove the relationship of landlord and tenant, the counsel for the complainant argued that, as per Ex.D-2 sale Deed the complainant is the owner of property bearing no.6-54 and as per Ex.P19 trade licence for the year 2011-12 the accused was running 'prem prasad bottling company in the premises bearing no.6-54. Further, in the complaint filed by the Deputy Director of Enforcement before the Adjudicating Authority, it is clearly mentioned that, the accused is running the business in the property bearing no.6-54 under the name 'Prem Prasad Bottling company'. The accused has not disputed the Ex.D2, Ex.P19 and Ex.D6 documents. That apart, the Ex.P9 Surrender cum agreement. Ex.P11 and P12 Lease agreements executed by the accused shows that, he was tenant under the complainant. In all the documents executed by the accused his signatures were not disputed. Therefore, it is clear that, the complainant is the owner of property bearing no.6-54 and the accused was the tenant under the complainant. The accused has forged the document by writing/2 after the property no.6-54 in the trade license issued by Mangaluru City Corporation in the year 2015-2016 as per Ex.P16. The forgery made by the accused clearly visible on the document itself. The accused has never carried his business in the building bearing no. 6-54/2 on the other hand he was carrying business under the name*

'Prem Prasad Bottling in building bearing no. 6-54 which is belonged to the complainant. In fact the property bearing D.No.6-54/2 was sold by one Mr. Bharath Kumar in favour of the brother of complainant Mr.Lawrence Paul vide sale deed dated 10.08.2012. When such being the case, the question of owning the industrial unit in property no.6-54/2 under the name 'Prem Prasad Bottling by the accused does not arise at all. The said sale deed is also confronted to the accused and on admission by him the same was marked as Ex.P18. In the said sale deed the accused and his wife are signatories to the document as witnesses. When admittedly the property bearing no.6-54/2 was sold to the brother of complainant way back in the year 2012, it is clear that, the accused was not running the industry in the property bearing no. 6-54/2. The burden is on the accused to prove the possession of property bearing no.6-54/2. In spite of calling upon the accused to produce documents to prove the possession in respect of property bearing no.6-54/2 the accused has not produced the same. In this regard the learned counsel for the complainant also drawn the attention of this Court to the cross examination of DW1 and the same is reproduced herein below:

ಸದರಿ 19 ಸೆಂಟ್ಸ್ ಜಾಗದಲ್ಲಿ ಒಟ್ಟು 2 ಬಿಲ್ಡಿಂಗ್ ಇವೆ. ಇನ್ನೊಂದು ಬಿಲ್ಡಿಂಗ್‌ನ ಡೋರ್ ಸಂಖ್ಯೆ 6-54 ಆಗಿರುತ್ತದೆ. ಸದರಿ ಬಿಲ್ಡಿಂಗ್ ಸಂಖ್ಯೆ 6-54/2 ನನಗೆ 2000ನೇ ಇಸವಿಯಿಂದ ಸ್ವಾಧೀನ ಹೊಂದಿರುತ್ತದೆ. ಬಿಲ್ಡಿಂಗ್ ಸಂಖ್ಯೆ 6-54/2 ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತೆರಿಗೆ ಪಾವತಿಸಿದ ಬಗ್ಗೆ ನನ್ನ ಬಳಿ ದಾಖಲೆ ಇಲ್ಲ. ಸದರಿ ಬಿಲ್ಡಿಂಗ್ ಸಂಖ್ಯೆ 6-54/2 ನನ್ನ ಅತ್ತೆಯ ಹೆಸರಿನಲ್ಲಿ ನಗರ ಪಾಲಿಕೆ ದಾಖಲೆಗಳಲ್ಲಿ ಇರುವ ಬಗ್ಗೆ ದಾಖಲೆ ಹಾಜರುಪಡಿಸಬಹುದಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಹಾಜರುಪಡಿಸಬಹುದು

ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಬಿಲ್ಡಿಂಗ್ ಸಂಖ್ಯೆ6-54/2 ಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನನಗೆ trade licence 2000 ರಿಂದ 2018 ರವರೆಗೆ ಇತ್ತು. ನಿಡಿ-5 ದಾಖಲೆಯ ಪ್ರಕಾರ ಸೊತ್ತಿನ ಸಂಖ್ಯೆ 6-54/2 ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನಾನು ನನಗೆ ಸೇರಿದ ಸೊತ್ತು ಎಂದು ಸಾಧನೆ ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ.

29. From the aforesaid evidence, the learned counsel for the accused argued that, when admittedly the accused has claimed ownership of property bearing no.6-54/2 before the Court, it is clear that, the accused has forged the trade licence Ex.P16. For having forged the documents the brother of complainant namely Mr.Lawrence Paul has lodged a complaint before Surathkal Police Station and FIR was registered against the accused. The accused had deliberately forged the document Ex.P16 trade license by inserting /2 to the property bearing D.No. 6-54. Even no authentication is made by the authority for having made correction in the document which clearly goes to show that, the accused had forged the property number. In this regard the learned counsel for complainant also drawn the attention of this Court to the cross examination of DW-1. The relevant portion of DW-1 is reproduced herein below:

ಸೊತ್ತಿನ ಸಂಖ್ಯೆ 6-54/2 ಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನನ್ನ ವಿರುದ್ಧ ಪಿರ್ಯಾದಿದಾರರ ಅಣ್ಣನ ಹೆಂಡತಿ forgery ಕೇಸನ್ನು ಸುರತ್ಕಲ್ ಪೋಲಿಸ್ ಠಾಣೆಯಲ್ಲಿ ದಾಖಲಿಸಿರುತ್ತಾರೆ. ಎಂದರೆ ಸರಿ, ಸದರಿ ಬಿಲ್ಡಿಂಗ್ ಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಡೋರ್ ಸಂಖ್ಯೆ forgery ಮಾಡಿದ್ದೇನೆಂದು ನನ್ನ ವಿರುದ್ಧ FIR ದಾಖಲಾಗಿದೆ ಎಂದರೆ ಸರಿ.

30. From the aforesaid evidence the learned counsel for complainant vehemently argued that, if at all the property bearing D.No.6-54/2 is owned by the accused he could have produced tax paid receipt and

such other documents to show that, he is in possession of the said premises. However, no documents were produced to show that, the accused is in possession of property bearing no.6-54/2. Therefore, it is clear that, the accused was tenant under the complainant in property bearing D.No.6-54 and he had executed surrender deed as per Ex.P9 in view of his default in making payment of dues to the complainant. The accused has never disputed his signatures in Ex.P9, Ex.P11 and Ex.P12 documents. Once the signature is admitted the contents of the documents also deemed to be admitted. The burden is on the accused to disprove the execution of the documents with cogent material evidence. However, except denial the accused has not produced any documents to disprove the execution of Ex.P9, Ex.P11 and Ex.P12 documents. In Ex.P9 surrender deed the wife of accused has also signed the document as witness. In all the documents executed by the accused the wife of accused namely Smt. Shilpa A. Hegde is a witness to the documents. Therefore, the wife of the accused is the material witness to depose evidence in respect of the documents executed by the accused. However, the accused has not chosen to examine his wife which further discloses that, the accused in order to avoid his liability had taken false defence stating that, the documents Ex. P9, Ex.P.11 and Ex.P12 were created by the complainant.

31. That apart, the civil suit filed by the complainant is for permanent prohibitory injunction and not for declaration of title. The order was passed on IA as per Ex.D1 was not attained finality. Hence, the same

cannot become relevant in this case. So far as attachment of property by the directorate of Enforcement, it is to be noted that, the said attachment is only a provisional one which do not disturb the owner of the property in enjoying the property. The surrender deed executed will not amounting to transfer of property. The ownership of the property is with the complainant himself and the attachment order will not in any way prohibits execution of surrender deed by the tenant of the premises. It is just nothing but handing over the possession to the owner who is legally entitled to. The burden is on the accused to prove that he is in possession of property bearing no. 6-54/2 and carrying business under the name and style 'Prem Prasad Bottling' in the said premises. The accused has not placed any documents to show that, he was put in possession of property bearing no. 6-54/2. That apart, the accused has also failed to explain when exactly he had issued the disputed cheques to the complainant. In his reply notice as per Ex.P8 he contended that, the cheques were issued in the year 2012, whereas in his defence evidence he deposed that, during 2012 to 2016 he had borrowed loan of Rs.1,85,000,00/- and towards security he had issued blank cheques. The complainant has also called upon the accused to summon and examine his banker so as to prove when exactly the cheque book pertaining to Ex.P1 and Ex.P2 cheques were issued. Though the accused deposed that, he had obtained the cheque book in respect of Ex.P1 and P2 cheques between 2012 to 2016, but has failed to substantiate the said contention. Since the accused had admitted issuance cheque in favour of complainant and

also his signature in cheques, the presumption under section 118 and section 139 of NI Act goes in favour of complainant and the burden shifts on accused to rebut such presumption. The initial burden of complainant is discharged on proof of issuance of cheques and signature. The learned counsel for the complainant also argued that, if the accused able to prove that, he had borrowed only Rs.1,85,000,00/- from the complainant, then the complainant will not succeed in this case and if not, the case of the complainant is held to be proved. The learned counsel for the complainant also relied upon a decision of Hon'ble Apex Court reported in AIR(SCW)-2015-0-3040 T. VasanthaKumar V/s Vijayakumari wherein It was held that, 'in the present case since the cheque as well as the signature has been accepted by the accused respondent, the presumption under section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or ability.

Further, in another decision reported in ***AIR 2007 Kar 91 in J Ramaraj Vs Iliyaz Khan the Hon'ble High Court of Karnataka*** *held that 'when the petitioner did not avail the opportunity of calling for the records nor produced the records from his end to show that, no transaction was taken place and when he could not duly discharge the burden, the presumption under section 139 of the Negotiable Instruments the Act goes against the petitioner and presumption stands unrebutted'.*

32. Having heard the rival submissions of both learned counsel for complainant and the accused. I have

given my anxious consideration towards case record coupled with oral and documentary evidence adduced. At the very outset, it is to be noted that, the acquaintance of complainant and accused with each other is not in dispute. The issuance of Ex.Pl and Ex.P2 cheques by the accused to the complainant and the signatures in the cheques also not disputed by the accused. Therefore, this Court drawn initial presumption under section 139 of NI Act in favour of the complainant that, the cheques in question were issued towards discharge of legally enforceable debt or liability. The burden shifts on the accused to rebut the said presumption by raising a probable defence. For this purpose the accused has come up with the story that, the cheques in question were obtained by the complainant as security towards borrowal of loan of Rs.1,85,00,000/- in the year 2012 and inspite of repayment of the said amount by selling properties of his mother and his sister to the complainant, the said cheques were misused by the complainant. Therefore, the burden is on the accused to establish first that, he had borrowed Rs.1,85,00,000/- only from the complainant in the year 2012 and had repaid the same by selling properties of his mother and his sister. If the accused is able to prove the said defence then the prosecution can fall. Admittedly, no documents were got executed by either of the parties in respect of the transaction. The complainant in his evidence has clearly deposed that, he had lent loan of Rs.2.20,00,000/- to the accused in installments from June-2012 to December-2014. In support of the same, the complainant has produced his bank pass books as per Ex.P13 and Ex.P14 and statement of account

pertaining to his bank account for the period 01.04.2011 to 30.06.2016 as per Ex.P15 which clearly discloses that, on various dates huge amount of money were transferred to the account of accused. The accused has also not disputed the Ex.P13 to Ex.P15 documents. It is to be noted that, the entries found in Ex.P15 account statement are presumed to be genuine as per section 4 of Bankers Book Evidence Act. The burden is on the accused to rebut the presumption by adducing, probable evidence. However, the accused has not produced documents to show that, he had only liability of Rs.1,85,00,000/- due towards the complainant and the said amount was already cleared. Though the accused has produced sale deed as per Ex.D2 and Ex.D3 which do not discloses that, the said sale deeds were executed towards repayment of earlier loan borrowed from the complainant. On the other hand, on perusal of Ex.D2 and Ex.D3 the sale consideration amount were paid by the complainant through RTGS transfer to the account of the vendor i.e., the mother of the accused.

33. The accused also contended that, in the sale deeds Ex.D2 and Ex.D3 only the market value of the property was shown and the properties were sold in respect of clearance of loan due to the complainant. But in his cross examination he clearly admitted that, the market value of the properties sold to the complainant were more than Rs.2 Crores as on the date of execution of sale deeds. If at all the accused had liability of Rs.1,85,000,00/- only to the accused why should he conveyed the properties for lesser value has to be answered by the accused himself. In the absence of specific recitals in the Ex.D2 and Ex.D3 sale deeds as to

selling of properties towards repayment of loan already borrowed, it cannot be held that, the accused had cleared the loan by conveying properties to the complainant. In this regard it is useful to refer to section 91 of Evidence Act which provides that, when the terms of contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of such terms of contract, grant or other disposition of property or of such matter, except the document itself.

34. From the aforesaid provision it is clear that, no other evidence can be substituted so long as the writing exists. Since, Ex.D2 and Ex.D3 sale deeds were registered documents, have presumptive value under the law. Another aspect to be noted here that, as contended by the accused the properties were conveyed to the complainant in the year 2012-2013 as per Ex.D2 and Ex.D3 for clearance of earlier loan. However, on perusal of Ex. P15 statement of account, it clearly discloses that, the accused had borrowed amount from the complainant even after execution of sale deeds. The accused has not whispered anything on this aspect. The accused has failed to prove that, Ex.D2 and Ex.D3 sale deeds were executed towards repayment of earlier loan.

35. That apart, contrary to his defence, the accused in his cross examination has clearly admitted that, in his IT returns he declared that, he had liability of Rs. 1,90,70,000/- due to towards the complainant and he did not made any efforts to clear the said loan even thereafter. The said IT returns was marked, as Ex.P20 by

way of confrontation. If really the accused had sold the property in the year 2012 in respect of loan amount due to the complainant, why did he shown in his IT returns the amount due to the complainant as Rs.1,90,70,000/- is to be answered by the accused. If at all the accused had only liability of Rs.1,85,00,000/- towards the complainant he ought to have stated so in his IT returns instead of mentioning Rs.1,90,70,000/-. Ex.P20 IT Returns is for the assessment year 2015-16. When the accused himself admitted that, he did not made any efforts to return the amount shown in Ex.20 IT returns even thereafter, it is clear that, he had liability due towards the complainant and accordingly, issued Ex.P1 and Ex.P2 cheques towards discharge of his liability. Furthermore, on perusal of Ex.D6 the complaint lodged by directorate of enforcement, Bangaluru against the complainant herein, the accused and others before Adjudication Authority under the provisions of Prevention of Money Laundering Act 2002, the accused herein had given statement before the enquiry officer stating that, even though he is the proprietor of M/s 'Prem Prasad Bottling', the entire investment to the extent of Rs.1,85,00,000/- was made by his friend Mr.Dany Antony Paul the complainant herein. From the above statement it is clear that, the accused had liability due towards the complainant apartment of loan borrowed. The accused has not disputed the Ex.D6 document. Therefore, in the absence of documents to show that, the amount of Rs.1,85,00,000/-was repaid to the complainant, it cannot be held that, the defence of accused is probable.

36. Further, to establish the relationship of landlord and tenant and arrears of rental dues, the complainant has produced two Lease Agreements as per Ex.P11 and Ex P12 and Surrender deed as per Ex.P9. Though the accused has denied the execution of the documents in favour of the complainant, but has categorically admitted his signatures in the said documents. Therefore, the burden is on the accused to disprove the execution of Ex.P9, Ex.P11 and Ex.P12 documents. The accused is not an ordinary person to issue signed blank stamp papers and signed blank sheets to the complainant. On the other hand, he is a businessmen running an industry in supply of mineral water bottles having vast knowledge in the business field. No reasonable prudent man is expected to hand over blank signed papers to an individual. The accused has never whispered anything as to Ex.P11 and Ex.P12 documents in his reply notice. It is only during evidence, the accused had taken the defence that, he had issued two signed blank cheques, signed blank stamp papers and other few signed blank papers to the complainant and the same were misused by the complainant. Except denial of execution of documents the accused has not placed any cogent material evidence to disprove the Ex.P9, Ex.P11 and Ex.P12 documents. Even the accused has not taken any steps to get return of signed blank cheques, stamp paper and other signed blank papers even after alleged repayment of Joan. What prevented the accused to initiate legal action against the complainant for having misuse of cheques and signed blank papers has not been properly accused deposed that, he had lodged a complaint before explained by the

accused. Though in his evidence the accused deposed that, he had lodged a complaint before jurisdictional police in this regard, but has not produced the complaint or copy of FIR registered against the complainant.

37. Coming to the crucial document which made the complainant to agitate his right before the Court i.e., Ex. P9 surrender cum agreement, the same was executed on 18.01.2019 wherein it appears that the accused had surrender back the industrial premises namely 'Prem Prasad Bottling' to the complainant along with machineries and other equipments to the complainant and had issued the Ex.P1 and Ex.P2 cheques in respect of the amount due to the complainant. The accused has not at all disputed his signatures in Ex.P9 surrender deed. That apart the wife of accused also signed as a witness to the document. Though the accused contended that, he had issued signed blank stamp paper and signed blank papers at the time of obtaining loan from the complainant, but has failed to substantiate the same with cogent material evidence. It is well settled that, once the signature in a document is admitted, the contents thereof also deemed to be admitted and the person who disputes execution of the documents, the burden is on such person to disprove the same with cogent material evidence. Mere denial of contents of the document will not serve any purpose."

10. Being aggrieved by the same, accused filed an appeal before the District Court in Criminal Appeal No.102/2021.

11. After securing the records, learned Judge in the First Appellate Court heard the arguments of the parties and on re-appreciation of the material evidence on record, upheld the order of conviction but modified the default sentence from two years to six months *inter alia* holding in paragraph Nos.27 to 41 as under:

> *"27. It is borne out from the evidence that accused has taken another contention that Prem Prasad Industrial Unit was situated in property bearing Door No.6-54/2 of Iddya village. It is pertinent to note that as per Ex.P.18, the brother of the complainant acquired the ownership of the said property through registered sale deed dated 10.8.2012. In the cross examination accused admitted that the property was earlier belongs to his wife, she sold the property in favour of one Bharath Kumar and he in turn sold the property in favour of brother of the complainant. He also admits that he and his wife attested as witnesses to the said document. When accused and his family parted with the possession of both properties bearing Door No.6 54 and 6-54/2 in favour of complainant and his brother, the contention of the accused that he was running the Prem Prasad Bottling Company in his own building is not tenable contention.*
>
> *28. In this case Ex.P9 surrender deed is also produced by the complainant stating that, accused has surrendered the building and also issued two cheques towards the due amount. Accused has denied his*

signature on Ex.P9. The wife of the accused has shown as witness to document Ex.P9/surrender deed. Even though accused denied his signatures on Ex.P9, Ex.P11 and Ex.P12, he has not taken any steps to prove his defence. In the reply marked at Ex.P8 also accused never raised contention that complainant has taken signatures on blank stamp papers. In his chief examination also he only deposed that he has not executed lease deeds and surrender deeds in favour of complainant. In the cross examination also execution of Ex.P11 and Ex.P12 is not specifically denied.

29. In Ex.P9/surrender deed it is clearly mentioned that accused received hand loan of Rs.2,20,000/. He issued cheque bearing No.968221 for Rs.3,00,00,000/ and another cheque bearing No.968224 for Rs.2,15,73,798/ drawn on Corporation Bank, M.G.Road Branch, Mangalore in favour of complainant towards arrears of the amount and towards hand loan and also interest thereon is due from him to complainant. Cheques mentioned in Ex.P9 surrender deed are Ex.P1 and Ex.P2. In view of the same this court proceeds to examine whether non-mentioning of the as to the amount due from the accused under different heads in the complaint is fatal to the case of the complainant. The Hon'ble Supreme Court in its decision reported in (2019) 10 SCC 287 Uttam Ram Vs. Devinder Singh Hudan and another, held that.

> *"once cheque is proved to be issued, it carries statutory presumption of consideration. Once agent of respondent admitted settlement of due amount and in absence of any other evidence*

the courts below could not dismiss complaint only on account of discrepancies in determination of amount due or oral evidence in regard thereto, when written document crystallizes the amount due for which the cheque was issued."

30. In this case even though complainant has not mentioned different heads under which amount due by the accused, Ex.P9 surrender deed crystallizes the amount due for which cheques were issued. In Ex.P9 it is clearly mentioned that cheques were issued towards repayment of hand loan of Rs.2,20,00,000/ along with other dues. Ex.P20 Income Tax Returns of the accused also corroborates that in the year 2015-16 itself accused owes Rs.1,90,70,000/ to the complainant. Accused in his evidence clearly admitted that after submission of I.T. Returns for the year 2015-16, he has not paid that amount. Ex.P11 and Ex.P12 further substantiates that complainant and accused entered into a lease agreement, wherein accused admitted to pay monthly rental to the complainant. As such contentions raised by the learned counsel for the accused that complainant has no authority to lease the premises and amount mentioned in cheques is more than the amount due are not tenable contentions.

31. The another contention raised is that, debt is time barred debt as such debt is not legally enforceable debt. It is strenuously contended by the learned counsel for the appellant/ accused that transaction was transpired in between 2012 to 2016. Complainant in his evidence also admits that he paid in total

Rs.2,20,00,000/ to the accused on various dates from June 2012 to December 2014. Evidently cheques Ex.P1 and Ex.P2 bear date 1.2.2019 and 26.2.2019. As such it is contended that there is no legally enforceable debt under the cheques Ex.P1 and Ex.P2. Ex.P9 surrender deed dated 18.1.2019 is produced by the complainant to show that accused issued Ex.P1 and Ex.P2 cheques towards amount due to the complainant on the date of execution of document. The said document even though is disputed by the accused, in this case accused has not taken steps to disprove the same. In view of Ex.P9, this court further proceeds to examine whether the transaction in question covered under time barred debt.

32. It is pertinent to refer Sec.25 of Contract Act and Section 29(1) of Limitation Act. Sec.25 of Contract Act states that a contract without consideration is void, but there are three exceptions found in clauses 1 to 3 of the said Section. Section 25(3) is relevant for discussion. Its requirement is that there must be a promise made in writing and signed by the persons to be charged therewith (Promissor) or his agent generally or specifically authorized on his behalf to pay wholly or in part a debt of which the creditor might have enforced payment, but for the law of limitation of suits. That means, Section 25(3) applies to a situation where there was a past valid contract and if the debt payable under that contract cannot be recovered on account of expiry of limitation period to file a suit, if the debtor or his duly authorized agent makes a promise in writing, it constitutes a lawful contract which can be enforced.

33. Section 29(1) of the Limitation Act clearly states that nothing in this Act shall affect Section 25 of the Indian Contract Act. Thus by virtue of a new contract coming into force under Section 25, it becomes enforceable and it has nothing to do with the past contract which has become unenforceable due to lapse of time.

34. The meaning that can be ascribed to the expression legally enforceable debt or liability found in explanation to Section 138 of N.I.Act is a debt or liability arising out of legally enforceable contract. Even if in respect of a time barred debt, an agreement comes into existence subsequently according to Section 25(3) of the Contract Act, it becomes a new contract which is enforceable. Sections 18 and 19 of the Limitation Act only extend the period of Limitation if there is acknowledgment of debt before the limitation period expires. Even if there is no acknowledgement of debt or liability in terms of Sections 18 or 19 of the Limitation Act, if a new agreement comes into existence according to Section 25(3), it is a valid contract and thus a cheque issued in this connection, if dishonoured, attracts penal action under Section 138 of N.I.Act.

35. In view of Ex.P9 a new contract in writing came into existence according to Sec.25(3) of Indian Contract Act. In Ex.P9 there is recital to the effect that accused issued two cheques also towards repayment of Rs.2,20,00,000/ borrowed by him as hand loan. It was in this connection that the cheques in question were issued and when they were dishonoured, respondent/

complainant had to initiate action U/s. 138 of N.I.Act. Therefore, the cheques were issued in connection with legally enforceable debt and it was not a time barred debt. The opinion of this court is fortified by the judgment of Hon'ble High Court of Karnataka reported in ILR. 2022 KAR 2071 K.R.Sudhir Vs. K.S.Suresh Raju. As such the contention raised by the appellant that the loan is time barred is not feasible contention.

36. The another contention raised by the learned counsel is that 313 statement of the accused is not recorded in its proper perspective. On careful examination of the trial court records, trial court has recorded 313 statement of the accused on 25.2.2020 and also on 17.3.2020. Learned magistrate has clearly readout gist of the evidence which incriminates accused in the 313 statement. Learned counsel except raising the contention has not made out any grounds to establish prejudice occasioned to the accused. As such the said contention not holds any water.

37. The trite proposition of law is that, it is always not necessary for the accused to step into witness-box and to deposed before the court to prove his contentions. It is trite proposition of law that accused can prove his contention by way of cross-examining the complainant witnesses. In this case accused not disputed with regard to issuance of cheques. There is a clear and cogent evidence available that cheques belong to the accused which bears his signature. When such being the case it is incumbent upon the accused to give explanation under what circumstances he parted with the possession of Ex.P1

and Ex.P2. In his statement U/s.313 of Cr.P.C., accused plainly denied the allegation. No explanation was offered by the accused with regard to possession of cheques belong to him in the hands of the complainant. When such being the case the burden is on the accused to disprove that cheques were not issued towards legally enforceable debt.

38. There is an evidence of the complainant that cheques belong to the accused. Cheque bears the signature of the accused. Accused not disputed his signature on the cheques. The explanation offered by the accused in his evidence is not reasonable explanation. As such this court proceeded to examine Section 118 and 139 of Negotiable Instrument Act as they provided for statutory presumption. The statute mandates that once the signature of accused on the cheque is established then the 'reverse onus' clause become operative. In such a situation the obligation shifts upon the accused to discharge the presumption imposed upon.

39. The Hon'ble Supreme Court in its decision reported in (2009) 2 SCC 513 in the case of Kumar Exports v/s Sharma Carpets and another decision of the Hon'ble Supreme Court reported in AIR 2019 SC 1983 in the case of Basalingappa v/s Mudibasappa held that presumption under Section 118 and 139 of N.I.Act are rebuttable presumptions. It is further held that rebuttal does not require proof beyond reasonable doubt. Something probable has to be brought on record. In this case the accused has not elicited any admissions from the mouth of complainant nor rebut the presumptions

available to the complainant as provided under Section 118 and 139 of N.I.Act. The bare denial of passing of consideration would not aid the case of the accused. The Hon'ble Supreme Court clearly held that a probable defence needs to be raised which must meet the standard of 'preponderance of probability', and not mere possibility.

40. The Hon'ble Supreme Court in its decision reported in (2019) 4 SCC 197 in the case of Bir Singh v/s Mukesh Kumar held that even a blank cheque leaf, voluntarily signed and handed over by the accused which is towards some payment, would attract presumption under Section 139 of N.I.Act, in the absence of any cogent evidence to show that cheque was not issued in discharge of debt.

41. Ex.P1 & Ex.P2 were the cheques belong to the account of the accused. Accused never denied his signature on cheques marked at Ex P1 & Ex.P2. Such being the case the defence raised by the accused in the considered opinion of this court not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant evidence to disprove or to rebut the presumption available to the complainant, the accused in the opinion of this court has not discharged his onus in proving his contention. As such the point No.1 taken up for consideration is held in affirmative and point No.2 taken up for consideration is held in Negative."

12. Being further aggrieved by the same, accused and complainant have filed the present revision petitions before this Court.

13. Sri Dineshkumar K. Rao, learned counsel for the accused reiterating the grounds urged in the revision petition vehemently contended that the facts of the case on hand are not properly appreciated by both the Courts while convicting the accused for the offence under Section 138 of the Negotiable Instruments Act resulting in miscarriage of justice.

14. He would further point out that the alleged deed of surrender is not proved by the complainant with cogent and convincing evidence on record. Mere marking of the deed of surrender would not *ipso facto* result in proof of execution of the deed of surrender marked at Exhibit P-9 and thus, there is no legally recoverable debt under Exhibits P-1 and P-2 and thus sought to allow the revision petition filed by the accused.

15. He would further contend that the Enforcement Directorate ('ED' for short) has initiated action against the complainant and as a retaliation, complainant got concocted the deed of surrender and then misused two blank cheques which were given as security at the time of taking the industrial

unit on lease. This aspect of the matter is not considered by both the Courts in proper perspective resulting in miscarriage of justice and thus sought for allowing the petition.

16. It is also contended that admission elicited in cross-examination of PW-1 that complainant is not the owner of 'Prem Prasad Bottling Company' and he was running 'Prem Sagar Bottling Company' is totally ignored by both the Courts which has got a great bearing while appreciating the legally recoverable debt under Exhibits P-1 and P2.

17. He also pointed out that both the Courts failed to notice that ED initiated action against the complainant and there was an order of attachment of properties by the ED vide Exhibit D-6. DW-1 has specifically deposed before the ED that he has advanced an amount of Rs.1,85,00,000/- which contradicts the case setup before the Court that the accused was due in a sum of Rs.5,15,73,798/-.

18. He further pointed out that in the Income Tax Returns marked at Exhibit P-20, PW-1 has shown the due in a sum of Rs.1,90,70,000/- as loan amount insofar as the accused is concerned. Therefore, there cannot be any liability under Exhibits P-1 and P-2.

19. Sri Dineshkumar K.Rao, learned counsel also points out that PW-1 in his examination-in-chief itself has stated that he has lent a loan in a sum of Rs.2,20,00,000/- which is contrary to the documents placed by him and said aspect of the matter is not considered by both the Courts, resulting in miscarriage of justice and thus sought for allowing the revision petition filed by the accused.

20. He also emphasized that the cross-examination of DW-1 vis-à-vis the oral testimony of DW-1 and the documents marked with Exhibits D-1 to D-6 would make it clear that there is no legally recoverable debt as is claimed by the accused and contents of the reply notice is not even considered by both the Courts resulting in miscarriage of justice and sought for allowing the revision petition.

21. Insofar as the revision petition filed by the complainant, Sri Dinesh Kumar K Rao, would contend that the First Appellate Court in its discretion has reduced the default sentence from two years to six months which is perfectly in order and therefore, sought for dismissal of the revision petition filed by the complainant.

22. *Per contra*, Sri Rajashekhar, learned counsel for the complainant while opposing the revision grounds urged on behalf of the accused, contented that both the Courts have recorded factual finding based on the cumulative analysis of the material evidence on record and has clearly held that Exhibits P1 and P2 were issued towards the dues that were payable under the surrender agreement marked at Exhibit P-9.

23. He would further contend that this Court in the revisional jurisdiction, cannot revisit into the factual aspects as is held in the case of ***Sanjabij Tari vs. Kishore S. Borcar and another*** reported in ***2025 SCC OnLine SC 2069*** and sought for dismissal of the revision petition.

24. He would further contend that the proceedings before the ED has got nothing to do while appreciating the case on hand insofar as the liability of the accused to pay the amount covered under Exhibits P-1 and P-2 and thus sought for dismissal of the revision petition filed by the accused.

25. It is his further contention that, learned Judge in the First Appellate Court without proper analysis of the material on record, arbitrarily reduced the default sentence from two years to six months and therefore revision petition filed by the

complainant insofar as modification of the default sentence needs to be allowed and sought for suitable orders.

26. In the light of the rival contentions urged by the learned counsel for the parties, this Court meticulously perused the records and bestowed its anxious consideration to every point that has been addressed on behalf of the parties.

27. On such consideration of the material on record, there is no dispute that the cheque marked at Exs.P.1 and 2 are belonging to accused and signature found therein is that of the accused.

28. Admittedly, cheques are dishonoured for want of funds in the account of the accused. There is no dispute that a running unit in the name 'Prem Prasad Bottling Company' with all machineries situated in the land bearing No.40/5P and 40/8, Idya village, Mangaluru Taluk, was taken on lease by the accused and a separate lease agreement was executed. Accused could not run the unit. Therefore, it was surrendered to the complainant vide Ex.P.9. Signature found in Ex.P.9 is that of the accused.

29. Admittedly, contents of Ex.P.9 would make it clear that there was due in a sum of Rs.5,15,73,798/- payable by accused to the complainant. How the said sum is arrived at is also explained by stating that sum of Rs.2,15,73,798/- and sum of Rs.80,00,000/- being the arrears of amount and sum of Rs.2,20,00,000/- being the amount received by the accused as hand loan which was paid over a period of time.

30. In other words, all the liabilities of the accused to the complainant was crystallized under Ex.P.9. In cross-examination of P.W.1 not a single suggestion is put to P.W.1 with regard to the veracity of Ex.P.9. Pertinently, cross-examination is conducted on 13.02.2020 at the first instance and again on 12.03.2020. What made the learned counsel for the accused to dispute Ex.P.9 and contents thereof is not forthcoming on record.

31. Several other questions were put to P.W.1 with regard to 'Prem Prasad Bottling Company' and there is extensive cross-examination on Exs.P.11 and 12 (lease agreements) but there is no whisper with regard to Ex.P.9 (surrender agreement).

32. So also, it is pertinent to note that in the entire examination-in-chief of D.W.1, there is no mention as to

veracity of Ex.P.9 and D.W.1 has not stated that signature found in Ex.P.9 is not his signature or that he has not executed Ex.P.9.

33. Silence of the accused with regard to Ex.P.9 whereunder the dues of accused to the complainant is crystallized is significant while considering the case set up by the accused. However, in the cross-examination of D.W.1, when Ex.P.9 is confronted to him, he denied his signature and he also stated that the liability under Exs.P.9, 11 and 12 is incorrect. If it is so, what prevented the accused to refer the signature found in Ex.P.9 to hand writing expert is a question that remains unaltered.

34. Therefore, prime contention canvassed on behalf of the accused/petitioner that debt is not proved, cannot be countenanced in law.

35. Further, it is significant to note that accused and the complainant are not strangers. Several proceedings which ensued between the parties and orders passed thereon admitted by D.W.1 in his cross-examination would belie the contentions urged on behalf of the accused.

36. In fact, there is a finding that accused has gone to the extent of altering the documents issued by the competent Municipal Authorities. Though same may not have any serious bearing on the issue which is directly involved in the present *lis*, when accused is denying his signature on Ex.P.9 the finding recorded against the accused in the civil proceedings assumes importance.

37. Be that what it may. If the accused is of the opinion that there is no liability under Ex.P.9 and if it is his case that it is a concocted document, it is for him to establish that signature found therein is not that of the accused by referring it to the hand writing expert.

38. Accused having failed to take such measures, probative value of Ex.P.9 as accepted by the Trial Court confirmed by the First Appellate Court cannot be brushed aside by this Court, that too, in the limited power of revisional jurisdiction.

39. Thus the material available on record was sufficient enough to hold that the complainant was entitled to the presumption under Section 139 of the Negotiable Instruments Act, 1881.

40. No doubt, it is a rebuttable presumption. To rebut the said presumption available to the complainant accused has lead his defence evidence by examining himself as D.W-1.

41. As referred to supra, in his examination-in-chief itself, D.W-1 did not depose anything about Ex.P.9 which is a document under which the liability of the accused is confirmed.

42. In his examination-in-chief he says that he has not executed any lease deed or surrender deed. But to substantiate the same, he did not examine the witness to the documents or referred the lease deed and surrender deed to the hand writing expert.

43. Accused referring to the proceedings initiated by the ED has got nothing to do insofar as the *lis* on hand.

44. It is the specific case of the accused that since he has been examined as a witness and he has deposed against the complainant that complaint has misused the signed blank cheques which were in his custody and signed stamp paper which was in his custody to create the documents, he has proved his case.

45. If the version of the accused that misappropriation of blank cheques and blank stamp papers is to be accepted, accused being business man should have taken necessary action against the complainant by filing a criminal complaint for the alleged misuse.

46. Crowning all these aspects of the matter, for the year 2015-2016 in the Income Tax Returns filed by the accused, he has shown that he was due in a sum of Rs.1,90,70,000/- to the complainant. The said Income Tax Returns was confronted to the accused in his cross-examination and he has admitted the same and, it was marked as Ex.P.20.

47. The very fact of showing that accused was due in a sum of Rs.1,90,70,000/- to the complainant would falsify the defence that has been put up by the accused, perhaps, with an intention to avoid or at the most postpone the liability.

48. These aspects of the matter has been taken note of by the learned Trial Magistrate and learned Judge in the First Appellate Court in a judicious manner and categorically recorded a finding of guilt of accused for the offence punishable under Section 138 of the Negotiable Instruments Act which

requires no interference whatsoever by this Court, that too, in the revisional jurisdiction.

49. Having said so, complainant has filed the revision petition challenging the order reducing the default sentence from two years to six months.

50. The default sentence is reduced by the First Appellate Court using discretion. Discretion has been exercised by the learned Judge in the First Appellate Court at paragraphs 42 to 48 of its judgment, which reads as under:

> *"WITH REGARD TO SENTENCE:*
>
> *42. Point No.3: On careful examination of the sentence the learned magistrate sentenced the accused to pay fine of Rs.6,08,57,000/ with default sentence of two years of simple imprisonment and also ordered to pay compensation of Rs.6,08,50,000/ U/s.357(3) of Cr.P.C. to the complainant.*
>
> *43. Section 65 of IPC provides that term for which the court directs offender to be imprisoned in default of payment of a fine shall not exceed 1/4th of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.*
>
> *44. Section 138 of Negotiable Instruments Act provides for maximum imprisonment of two years or*

with fine. On careful examination, the default sentence passed in this case by the learned magistrate is not in accordance with law. As such this court proceeds to examine the powers of the appellate court with regard to passing of sentence.

Section 386(b)(iii) and proviso to Sec.386 provides that;

> *386. Power of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-*
>
> *(a) xxxxx*
>
> *(b) xxxxx*
>
> *(I) xxxxx*
>
> *(ii)xxxxx*
>
> *(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;*
>
> *Provided further that appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed than might have been inflicted for that offence*

by the court passing the order or sentence under appeal.

45. On careful examination of the above stated provision, the appellate court can alter the sentence, the only rider is that appellate court is not empowered to enhance the same and not to inflict greater punishment than the one might have been inflicted by the trial judge.

46. The default sentence passed is not in consonance with the Section 65 of IPC. Taking into consideration this court proceeds to modify the sentence as follows;

47. Accused is sentenced to pay fine of Rs.6,08,57,000/- and out of which complainant is entitled for compensation of Rs. 6,08,50,000/- as provided U/s. 357(1)(b) of Cr.P.C. The remaining amount of Rs.7,000/- is ordered to be defrayed to the State. In default to payment of fine, the accused shall undergo simple imprisonment for six months.

48. It is made clear that serving default sentence by the accused will not absolve the accused from paying the fine amount. As such the point No.3 taken up for consideration is held partly in the affirmative."

51. The reasons assigned by the learned Judge in the First Appellate Court is sound and the apprehension expressed by the complainant that accused may serve default sentence whereby his right to recover the amount from the accused

would vanish, is also taken care of in paragraph 48, referred to supra.

52. Thus, this Court does not find any reasons whatsoever to interfere with the discretionary order of reduction of default sentence by the First Appellate Court in the revisional jurisdiction.

53. In view of the foregoing discussion, the following:

ORDER

Revision Petitions are ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm