

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05<sup>TH</sup> DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

**CRIMINAL REVISION PETITION No.606/2020**

**BETWEEN:**

K. Kuppuraj,  
S/o. Kannappa,  
Aged about 58 years,  
R/o No.1/7, G.No.10<sup>th</sup> Street,  
Near Chikkabajene Mane,  
Ulsoor,  
Bengaluru – 560 008,  
Karnataka.

...Petitioner

(By Sri. Vinod Kumar M, Advocate)

**AND:**

J. Thirilokamurthy,  
S/o. late P.M. Devanna,  
Aged about 60 years,  
R/o Panathur Village,  
Varthur Hobli,  
Bengaluru East Taluk – 560 087,  
Karnataka.

...Respondent

This Criminal Revision Petition is filed under Section 397 read with Section 401 Cr.P.C. praying to set aside the judgment/order of conviction dated 27.01.2018 passed in C.C.No.52506/2013 by the 58<sup>th</sup> A.C.M.M. at Bengaluru and the judgment dated 12.08.2020 passed by the XXVI Addl. City Civil and Sessions Judge at Bengaluru in

Crl.A.No.25017/2018 and acquit the petitioner from the offence punishable under Section 138 of N.I.Act.

This criminal revision petition coming on for *Orders*, this day, the Court through video conference made the following:

**ORDER**

Heard learned counsel for petitioner. Perused records.

2. Petitioner is before this Court under Section 397 of Cr.P.C. challenging the concurrent judgments rendered by the courts below convicting the petitioner under Section 138 of Negotiable Instruments Act and sentencing to pay fine of Rs.10,50,000/- and in default to undergo simple imprisonment for three months.

3. The contention of the learned counsel for petitioner is that the complainant has failed to prove his capacity to pay huge sum of Rs.10,00,000/- to the petitioner/accused. The plea taken up by the complainant that he had sold his two pieces of land in the year 2005 and after seven years of the said sale he had lent Rs.10,00,000/- to the petitioner/accused, could not have

been believed by the courts below, without there being cogent proof in support of the said plea. Further, the learned counsel pointed out that the trial Court failed to provide adequate opportunity to the petitioner/accused to substantiate his defence. The application filed by the petitioner/accused under Section 91 of Cr.P.C. to summon the records from the bank to show that at relevant time the complainant was not in possession of such huge amount, has been rejected by the trial Court; as a result, there was no proper opportunity to the petitioner/accused to substantiate his defence. Further he contends that the trial Court has also failed to appreciate the defence taken up by the petitioner in proper perspective. As such, there is miscarriage of justice and hence seeks to interfere in the impugned judgments.

4. On considering the submissions urged by learned counsel for petitioner and on going through the findings recorded by the courts below, I am unable to accept the submission advanced by the learned counsel for

petitioner. Insofar as the capacity of the complainant to advance hand loan of Rs.10,00,000/- to the petitioner/accused is concerned, the complainant has produced two Sale deeds at Ex.P9 and Ex.P10 and has deposed on oath that after discharging the loan due by him, the remaining amount was paid to the petitioner/accused. This probable explanation has not been rebutted or falsified in the cross-examination. Even otherwise, in view of the presumption attached to the cheque, under Section 139 of N.I.Act, burden is on the petitioner/accused to show that he has not received any consideration from the complainant in respect of the cheque alleged to have been issued by him. The contention set up by the petitioner/accused that he had issued the said cheque to one Anitha, adopted daughter of Sri. Lakshman Gowda from whom he borrowed a sum of Rs.50,000/- has not been substantiated or probablised to any extent. The aforesaid Anitha is not examined before the Court. No material has been produced to show that at any point of time, petitioner/accused has borrowed Rs.50,000/- from Sri. Lakshman Gowda. There is also

nothing on record to show that when the demand has been made by the complainant for Rs.10,00,000/-, accused has taken any action against the aforesaid Anitha for the alleged misuse of the cheque by her. All these circumstances, therefore go to show that only to escape from the liability arising on account of dishonour of the cheque, petitioner/accused has come up with a lame excuse, which has been rightly disbelieved by the trial Court.

5. This Court in exercise of power under Section 397 of Cr.P.C. cannot re-appreciate the evidence and arrive at a different conclusion, even if different view is possible from the evidence. The jurisdiction under Section 397 of Cr.P.C. could be exercised only when the decision under challenge is found grossly erroneous, non-compliance with the provisions of law; finding of fact affecting the decision is not based on evidence; non-consideration of the material evidence and that the lower court has exercised the discretion arbitrarily or perversely and acted in excess of its jurisdiction or abused its power resulting in failure of

justice. No such errors or illegalities are found in the impugned order.

6. On going through the material on record and the contentions urged by the learned counsel for petitioner, I do not find any error or infirmity in the impugned judgments either in the matter of appreciating the evidence or in the findings recorded by the courts below. Even the sentence awarded by the trial Court does not call for any interference. As a result, I do not find any good ground to admit the petition.

Hence, criminal petition is ***dismissed*** at the admission stage.

**Sd/-  
JUDGE**