

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7th DAY OF FEBRUARY, 2025

BEFORE

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

CRIMINAL REVISION PETITION NO.664/2020

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BETWEEN:

1 . SUNIL YADAV
S/O SUBRAMANIRAJU
AGED ABOUT 35 YEARS
R/AT NO.83/3,
7TH MAIN, 1ST 'A' CROSS,
JAYANAGAR 2ND BLOCK
BENGALURU - 560 011. ... PETITIONER

(BY SRI. AKASH SUDHAKAR KANDE, ADVOCATE)

AND:

1 . SMT. Y.C. MANJU
W/O K. RAJASHEKAR MURHTY
AGED MAJOR
RESIDING AT NO.1312
CHENNAPPA BUILDING
1ST MAIN, 2ND CROSS
GANDHINAGAR, YELAHANKA
BANGALURU - 560 064. ... RESPONDENT

(BY SRI. T.S.CHANDRAPRABHA, ADVOCATE - ABSENT)

THIS CRIMINAL REVISION PETITION IS FILED UNDER
SECTION 397 R/W SECTION 401 OF CR.P.C PRAYING TO
SET ASIDE THE ORDER DATED 01.08.2018 PASSED BY THE
XVIII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE

BENGALURU IN C.C.NO.16747/2017 AND JUDGEMENT DATED 22.09.2020 PASSED BY THE LXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-69) IN CRL.A.NO.1748/2018.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.02.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV ORDER

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

2. This revision petition is filed against the conviction and sentence order in C.C.No.16747/2017 on the file of XVIII Addl. C.M.M, Bengaluru for the offence punishable under Section 138 of N.I Act wherein the accused was sentenced to pay fine of Rs.7,60,000/- and in default he shall undergo simple imprisonment for a period of one year and out of compensation Rs.10,000/- has to be defrayed to the State exchequer and also against the order of confirmation passed in Crl.A.No.1748/2018 on the file of LXVIII Addl. City Civil and Sessions Judge, Bengaluru.

3. The factual matrix of case of complainant before the Trial Court that this revision petitioner has availed a hand loan of Rs.6,00,000/- on 06.10.2015 to meet his financial commitments and family necessities and had undertaken to repay the same within six months with interest at 18% per annum. But, the accused has not kept up his promise and he demanded the repayment, he issued a Cheque dated 13.03.2017 for an amount of Rs.6,00,000/- and on presentation of Cheque, the same was dishonored with an endorsement 'Funds insufficient'. Thereafter, he had issued the legal notice making demand to pay the amount and inspite of service of notice, he did not comply the demand and hence filed the complaint. The Trial Court took the cognizance and secured the accused and he did not plead guilty, but he did not cross examined the PW1 and his 313 statement was dispensed and he was convicted and the same was challenged before the First Appellate Court and the First Appellate Court also having appreciated both oral

and documentary evidence placed on record, dismissed the appeal confirming the judgment of the Trial Court, hence the present revision petition is filed before this Court.

4. The main contention of the counsel appearing for revision petitioner before this Court is that the Trial Court committed an error in dispensing the 313 statement and ought to have been secured and recorded the 313 statement and the same ground was also raised before the First Appellate Court that he has not been given reasonable opportunity to defend himself and committed an error in dispensing the 313 statement of the accused, if he has afforded an opportunity to defend himself, the result would be otherwise and counsel prays this Court to remand the matter to follow the procedure.

5. The counsel in support of his argument he relied upon the judgment reported in **(2022) 4 KarLJ 467** in case of **Mr.G.H.Abdul Kadri V/s Mr.Mohammed Iqbal** wherein this Court having considered the material on

record, comes to the conclusion that it is not in dispute that petitioner did not appear before the Court and held that no other resource was availed to secure him and record the evidence in his presence and comes to the conclusion that if any reason presence of accused cannot be secured, despite exhausting every mode of service, especially in relation to offences under special laws, including Negotiable Instruments Act and if evidence is to be recorded in absence of accused, law requires to be amended. The legislature must think of bringing suitable amendment to Code of Criminal Procedure or to special law to enable Court to conduct proceedings in the absence of accused. The amendment, perhaps, may deter unscrupulous elements who would resort to avoiding service of summons or execution of warrant against them and set-aside the order directed the parties to appear before the Magistrate for disposal of the matter in a fresh and also given liberty to apply under Section 145 of N.I Act for cross examining the

complainant and his witnesses and also given liberty to adduce defence evidence. The counsel relying upon this judgment would contend that an opportunity has to be provided to the petitioner to cross examine the witness and adduce his evidence. Though complainant has represented through counsel, the counsel did not appear before the Court and this Court having noticed the absence of counsel for respondent to address arguments, taken as no arguments.

6. Having heard the revision petitioner's counsel and also the principles laid down in the judgment, the point that would for consideration of this Court are:

- 1) Whether this Court can exercise the revisional jurisdiction that Trial Court committed an error in dispensing the 313 statement in respect of the revision petitioner and committed an error in passing conviction and sentence whether the First Appellate Court also committed an error in affirming the judgment and whether it requires*

interference of this Court exercising the revisional jurisdiction?

2) What Order?

7. Having considered the material on record, it is not in dispute that private complaint was filed invoking section 138 of N.I Act and it is also not in dispute that Cheque was presented and the same was dishonored and the revision petitioner did not give any reply even after service of notice and cognizance was taken and also summons was served on him but he did not chose to appear and hence non-bailable warrant was issued and thereafter he appeared before the Court and obtained the bail. It is also not in dispute that plea was recorded and an opportunity was given to cross examine the witness and he did not cross examine the witness and hence taken as no cross and 313 statement was dispensed. Thereafter also an application was also filed under Section 311 by the accused and the same was allowed on cost of Rs.500/- and even

after allowing the application also, not cross examine the witness and again sought for time and further time was also granted on further cost of Rs.500/- and both the costs are not paid and not cross examined the witness. Hence, taken as no cross and once again 313 statement was dispensed and also given an opportunity to lead the defense evidence and after giving opportunity to lead defence evidence when the sufficient time was given, he did not chose to lead defence evidence also. Thereafter taken as no defence evidence and heard the complainant's counsel and passed the judgment.

8. It is important to note that the Apex Court in the judgment reported in the year **(2022) 11 SCC 705** in case of ***Gimpex (P) Ltd V/s Manoj Goel***, held that regarding dishonor of Cheque and nature of offence/proceedings under, and object of provision, reiterated that the same is quasi criminal, in that while it arises out of a civil wrong, the law, however, imposes a criminal penalty in the form of

imprisonment or fine, object of enacting Section 138, held, is to provide security to creditors and instill confidence in the banking system of the country, further held that, given its nature and object, it is the compensatory aspect of the remedy under Section 138 of N.I. Act that should be given priority as opposed to the punitive aspect. It is categorically held that the nature of the offence under Section 138 of N.I. Act is quasi-criminal in that, while it arises out of a civil wrong, the law, however, imposes a criminal penalty in the form of imprisonment or fine and also held that Section 138 can be said to a "civil sheep" in a "criminal wolf's " clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a Court in Cheque bouncing cases. Thus, under the Section 138 of N.I. Act, parties are encouraged to settle the dispute resulting in ultimate closure of the case rather than continuing with a protracted litigation before the Court. This is beneficial for the

complainant as it results in early recovery of money; alteration of the terms of the contract for higher compensation and avoidance of litigation. Equally, the accused is benefited as it leads to avoidance of a conviction and sentence or payment of a fine. It also leads to unburdening of the judicial system, which has a huge pendency of complainants filed under Section 138 of the N.I Act. Having considered the principles laid down in the judgment this Court would like to analyze the material on record, this Court already stated what had taken place before the Trial Court.

9. This Court also would like to rely upon the judgment of Bombay High Court reported in **(2025) SCC Online Bom 145** in case of **Navneet Singh Gogia and another V/s State of Maharashtra and another** and Bombay High Court also in similar set of facts taken note of finding of Trial Court and also the First Appellate Court and also taken note of the factual aspects of that particular

case. Even also taken note of issue is whether the question need to be decided on the basis of earlier settled approach compulsory recording of statement under Section 313 or whether question need to be decided by considering the provisions of chapter 17 of N.I Act and so also taken note of conduct of Trial of a criminal case and so also specification of offences. It is also important to note that even Bombay High Court taken note of Section 143, Section starts with 'non-obstant clause'. But, subsection (1) mentions ' the provisions of sections 262 to 265 ' (both inclusive) of the Code shall, as far as may be, apply to such trials and also taken note of principles of natural justice as envisaged under Section 273 of Cr.P.C which mandates evidence has to be recorded in the presence of the accused except as otherwise expressly provided. The Bombay High Court also discussed with regard to Section 205, Section 317 and Section 299 of Cr.P.C. Even discussed in paragraph No.22 in order to deal with the contingency, cases remained

pending for absence of the accused, the legislatures while enacting the Bharaiya Nagarik Suraksha Sanhita, 2023 have incorporated new provisions dealing procedure to be adopted when the accused did not appear in spite of adopting several mode and power of the Court to examine the accused under Section 313 of Cr.P.C itself lays down the purpose, the same is enabling the accused personally to explain any circumstances appearing in the evidence against him. The Bombay High Court also discussed even with regard to Section 313 (1) (b) mandates the Court to question the accused, 'can it be said that in these cases the learned Magistrate was justified in not following the said mandate ' and before answering the same also taken note of provisions of Negotiable Instruments Act and also taking of cognizance and mode of service and power of Court to try cases summarily under Section 260 since the proceedings under Section 138 of N.I Act is summary proceedings and also discussed with regard to when the

accused is taking advantage of protection granted by criminal procedure code, how the criminal Court is required to be in with such a situation in an issue. The Bombay High Court also taking note of all these facts into consideration, and even the judgment of the Apex Court in the case of ***Indian Bank Association V/s Union of India*** and so also ***TGN Kumar V/s State of Kerala*** wherein the High Court of Kerala issued guidelines were also considered and held that it is prerogative of the Magistrate, the question also considered in the judgment of the Hon'ble Supreme Court in case of ***Basavaraj R.Patil V/s State of Karnataka*** and also held that the judgments which have been referred does not give any guidance how to deal with present controversy and it only gives general guidance about necessity of recording Section 313 statement.

10. It is also important to note that the very purpose of giving an opportunity to the accused to explain the incriminating circumstances against him and in that way it

is for his benefit. But, if Court finds it is causing prejudice to him by insisting upon physical presence, the Court has dwelled upon a mechanism to record it in non traditional way and also an observation is made by this Court in Crl.R.P.No.1323/2019 in the case of **G.H.Abdul Kadari V/s Mohammed Iqbal** has set-aside the conviction and remanded the matter to the trial Magistrate and granted liberty to the accused to cross examine the witnesses and also an observation is made that speedy trial does not mean jumping the stage in criminal trial. It is also important to note that there was an emphasis on the insertion of Sections 143 to 147 of N.I Act for speedy disposal of such prosecutions. In a case of prosecution under Section 138 of N.I Act, when the accused remained absent.

11. This Court also would like to rely upon the judgment of this Court passed in Crl.R.P.No.437/2010 in case of **R.V.Kulkarni V/s Dakshina Murthy** dated

28.06.2012 wherein this Court deprecated the conduct with accused in consistently remaining absent in spite of remand of the matter by the First Appellate Court for recording the statement under Section 313 of Cr.P.C and after first remand in appeal against conviction, the accused remained absent. The judgment was pronounced and the same was challenged and even after remand also he was absent and held that the accused has effectively taken advantage of the legal positions. The order of the remand by the First Appellate Court was set-aside and the judgment of the conviction was sustained wherein also held that the accused cannot take the advantage. There is no justification having held that there is failure of justice on account of the statement of the respondent, accused statement has not been recorded under Section 313 Cr.P.C. Having due regard to the fact that this was a summons case and respondent himself has to blame for non-compliance with the said

provision, no fault could be found either with the petitioner or the Trial Court.

12. The Bombay High Court in the judgment referred supra, having considered all these factual aspects and also the principles laid down in the judgments also comes to the conclusion that when it is found that the accused is not attending the trial and not sought for dispensing the personal attendance and not represented by the advocate. The trial Judge is justified in proceeding in the absence of the accused and without recording 313 statement and also in the judgment of Apex Court in case of ***Mohanraj & Others v. Shah Brothers Ispat Private Ltd*** reported in ***(2021) 6 SCC 258*** has dealt with nature of cases under Section 138 quasi criminal and further observed that Section 138 of N.I. Act proceedings was said to be 'civil sheep' in a 'criminal Wolf's ' and clothing and the same has referred supra.

13. Having taken note of this fact into consideration, Court has to examine the material on record, the Bombay High Court also in the case reported in **(2022) SCC Online Bom 10161** in case of **Prakash Chimanlal Sheth V/s T.Ramalinga Nadar and others** also with regard to the same issue is concerned with regard to dispensation of 313 statement is concerned, in detail discussed the same. Even referring the Section 313 of Cr.P.C in paragraph No.21 of the judgment and also taken note of law commission and its 41st report considered the aforesaid judgments of the Apex Court and various other point of view and then made the report after reaching the conclusion that in summons cases, where the personal appearance of the accused has been dispensed with, either under Section 205 or under Section 540-A, the Court should have a power to dispense with his examination and also the said recommendation has been followed by the parliament and section 313 of the code, as is presently worded, is the result of it. It would

appear prima facie that the court has discretion to dispense with the physical presence of an accused during such questioning only in summons cases and in all other cases it is incumbent on the court to question the accused personally after closing prosecution evidence.

14. It is also important to note that in the said judgment also discussed the judgment of Apex Court in the case of ***Ramnaresh V/s State of Chattishgarh*** reported in ***(2012) 4 SCC 257*** wherein it is observed with regard to Section 313 that it is obligation to put material evidence to the accused under Section 313 of Cr.P.C, one of the main objects of recording a statement under this provision of Cr.P.C is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward the defense, if the accused so desires. But, once he does not avail this opportunity, then consequences in law must follow. Where the accused take benefit of this opportunity, then his statement made under Section 313 of

Cr.P.C insofar as it support the case of prosecution, can be used against him for rendering conviction.

15. It is also important to note that considering the factual aspect of the case as well as proceedings under Section 138 of N.I. Act, it is settled law that same has to be concluded expeditiously in the light of guidelines issued by the Courts from time to time for speedy disposal of the cases, the scope of Section 142, 143 and 145 of N.I Act, it was not necessary for the Trial Court to wait for accused to make his appearance. The Court is empowered to proceed with the case without recording the statement of the accused under Section 313 of Cr.P.C. The mere use of word 'may' cannot be held to confer a discretionary power on the Court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice. If the accused has not bothered to remain present before the Court and also Court has to take note of the fact that complainant is running from pillar to pillar after filing of

the case and when the material discloses that the accused did not bothered, Court has to exercise discretion and proceed with the case by dispensing with statement under Section 313 of the Code. The accused has no regard for directions of the Court. When such being the case, it is the discretion of the Magistrate to dispense with the recording of Section 313 of Cr.P.C.

16. Having considered the principles laid down in the judgments referred supra, in a case of **TGN Kumar V/s State of Kerala** and also the judgment of this Court as well as Bombay High Court judgment and also Apex Court judgments referred supra, in keeping the same and also the judgment of Apex Court in **Ramnaresh's** case of Supreme Court as well as Indian Bank Association, the Court has to take note of the very object in bringing N.I Act particularly Section 138, Section 143 and Section 147 taken note of the objectives of amendment Act, 2002 particularly dealing with cases of dishonor of Cheque and to achieve object of

speedy summary trial in view of the amended provisions and the same has to be given effect.

17. The learned counsel for revision petitioner though contend that the Trial Court committed an error in relying upon the Indian Bank case, dispensed the 313 statement and Court has to take note of the material and also the judgment which is relied upon by the revision petitioner's counsel in a case reported in **(2022) 4 KARLJ 467**, Court has to take note of the factual aspects of the case. The judgment relied upon by this Court which is referred above in case of **Mr.G.H.Abdul Kadri V/s Mr.Mohammed Iqbal** and in that case when the summons was issued, the same was served but accused did not appear before the Trial Court. The Trial Court proceeded without securing him before the Court, but in the case on hand, it has to be noted that the Trial Court issued the summons against him and same was served, but he did not appear and then taken the recourse of issuance of non-

bailable warrant. Thereafter, he had appeared before the Court and even he was subjected for recording of plea and he did not plead guilty and claims trial. Hence, an opportunity is given to consider the evidence available on record under Section 145 of N.I Act, posted the case for cross-examination of witness, but he did not chose to cross examine the witness when the case set-down for cross-examination of PW1. The Trial Court has given an opportunity, but he did not utilize the opportunity and then only the Court taken as no cross and also dispensed with 313 statement and even after dispensing 313 statement also once again an application was filed under Section 311 of Cr.P.C and the same was allowed by imposing cost of Rs.500/- and posted the case for cross-examination of PW1 and he did not choose to cross examine the witness and again sought time and time was also given by imposing further cost of Rs.500/- and he did not choose to cross examine the witness by paying the cost. Hence, taken as nil

and thereafter dispensed the 313 statement once again. Even after dispensing the 313 statement also case was posted for defence evidence of the accused and given several time to lead his defense evidence also, he did not choose to lead defense evidence also and he did not make any application again for recalling of witness to cross examine him and he did not bothered to appear before the Court. When such being the case, it is not the duty of the Court to issue non-bailable warrant and secure the accused and once already taken recourse to secure him by issuing NBW, each and every stage the Court cannot issue NBW and secure him and once he claims the trial without pleading guilty and he shall co-operate and take the opportunity to cross examine the witness and inspite of several opportunity was given for cross-examination and lead his defense evidence, but he did not do so. He did not avail the said benefit and in view of the discussions of the judgments which have been referred above by the different

High Court as well as the Apex Court judgment, I do not find any error committed by the Trial Court in dispensing the 313 statement since he did not avail any opportunity for cross examine the witness and lead any defense evidence and then only Court was proceeded to dispense the 313 statement. Even inspite of opportunity was given to lead defense evidence also, did not avail the opportunity and hence, now the counsel cannot contend for remand the matter only on the ground that 313 statement was not recorded. Both the Bombay High Courts discussed in detail in both the orders referred supra and this Court also discussed in ***R.V.Kulkarni's*** case for dispense of non examination of 313 statement as the opportunity was not availed inspite of sufficient time was given.

18. Having considered the factual aspects of this case is concerned, not a case for remanding the matter only on the ground that 313 statement was not recorded and the same is a discretion of the Magistrate to dispense the same

having considered the factual aspects of the case and hence I do not find any error committed by the Trial Court in dispensing the same and proceeded against the petitioner and the same cannot be a whims and fancy of the accused to seek for remand the matter when the opportunity was given to him and not utilized the same and no grounds to set-aside the order and remand the matter for fresh consideration.

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

ORDER

The Revision Petition is ***dismissed***.

Sd/-
(H.P. SANDESH)
JUDGE

RHS