

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 417 of 2025

Reserved on: 12.3.2026

Date of Decision: 08.04.2026.

Kewal Ram

...Petitioner

Versus

Himachal Pradesh Cooperative Agriculture and Rural
Development Bank Ltd ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner : Mr Atul Sharma, Advocate.

For the Respondent : Mr Narender Singh Thakur,
Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 26.04.2025 passed by learned Additional Sessions Judge-1, Shimla, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 29.09.2023, passed by learned Judicial Magistrate First Class, Chopal, District Shimla, HP (learned Trial Court) were upheld (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*)

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is a bank established under the Society Registration Act 1979, having its head office at SDA Commercial Complex, Kasumpti, Shimla and a branch office at Chopal. It is engaged in banking activities. The accused applied for a loan of ₹ 5 lakhs on 02/01/2016. The complainant disbursed the loan to the accused, and the accused signed various documents to avail the loan. The accused failed to return the amount, and he was liable to pay ₹1,77,920 till January 2021. The accused issued a postdated cheque of ₹ 1,77,920/- dated 19/01/2020 drawn on Punjab National Bank, Sarain (Ex. CW1/B). The complainant presented the cheque for realisation on 03/02/2021, but it was dishonoured with an endorsement 'payment stopped by drawer' vide memo (Ex.CW1/C). The complainant issued a legal notice (Ex.CW1/D) asking the accused to pay the amount within 15 days of the receipt of the notice. The notice was served upon the accused, but the accused failed to pay the amount; hence, the complaint

was filed before the learned Trial Court for taking action as per law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Narender Kumar (CW1) to prove its complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that the complainant had advanced a loan of ₹ 5 lakh in his favour and he had executed the necessary documents in the complainant's favour. He admitted that he had issued a postdated cheque of ₹ 1,77,920 drawn on Punjab National Bank, Sarain, Shimla, in the complainant's favour. He admitted that the complainant presented the cheque for encashment, but it was dishonoured with an endorsement 'payment stopped by the drawer'. He admitted that the complainant had issued a legal notice to him, which was duly served upon him, and he had not paid any money to the

complainant. He stated that he had paid ₹ 45,000 and ₹ 1,50,000 to the complainant. He stated that the complainant had filed a false complaint against him, and he was innocent. He did not produce any evidence in defence.

6. Learned Trial Court held that taking of the loan, the issuance of the cheque, its dishonour and service of the notice upon the accused were not disputed. A cheque carried with it a presumption that it was issued in discharge of the debt/legal liability. The accused admitted taking the loan, and he did not produce any evidence to rebut the presumption attached to the cheque. The complainant denied the suggestions made to him during his cross-examination and denied suggestions do not amount to any proof. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for three months, pay a fine of ₹2,50,000/- and in default of payment of the fine to undergo simple imprisonment for one month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge (I), Shimla, District Shimla, HP (learned Appellate Court). The learned Appellate Court held that the accused had admitted the taking of a loan, issuance of the cheque, its dishonour and the receipt of the notice. A cheque carries with it a presumption that it was issued in discharge of debt/legal liability. The accused claimed that he had made the part payment, but this plea was not proved. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below failed to properly appreciate the material placed before them. The complainant failed to produce the loan document to establish the advancement of the loan of ₹ 5 lakhs. Mr Narender (CW1)

had not produced any authority letter to establish his capacity to depose or file the complaint. The learned Courts below had wrongly invoked the presumption under Section 139 of the NI Act. The service of notice was not proved. An excessive sentence was imposed. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Atul Sharma, Ld. counsel for the petitioner/accused and Mr Narinder Singh Thakur, Ld. counsel for the respondent/complainant.

10. Mr Atul Sharma, Ld. counsel for the petitioner/accused, submitted that Narender Kumar (CW1) did not produce any authority letter to show that the bank had authorised him to file the complaint or depose before the Court. This plea was taken before the Ld. appellate Court but was not considered. The complaint was not maintainable and Ld. Courts below erred in convicting and sentencing the accused. Therefore, he prayed that the present petition be allowed and the judgments and order passed by the Ld Courts below be set aside.

11. Mr Narender Singh Thakur, Ld. counsel for the respondent/complainant, submitted that the competence of Narender Kumar (CW1) was not disputed in the cross-examination and this plea could not have been taken for the first time before the Ld. appellate Court. The accused admitted to the taking of a loan, issuance of a cheque, its dishonour and the receipt of the notice. Therefore, all the ingredients of the commission of an offence punishable under section 138 of the NI Act were duly satisfied. Ld trial Court had imposed an adequate sentence. Hence, he prayed that the present revision be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in *Malkeet Singh Gill v. State of Chhattisgarh*, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207-

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent

findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

15. It was held in *Kishan Rao v. Shankargouda*, (2018) 8

SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC

OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275], while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment

of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

16. This position was reiterated in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13, wherein it was observed at page 205:

“16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

17. A similar view was taken in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: *Bir Singh*(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GMBH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the

concurrent findings of the Trial Court and the Sessions Court.

18. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. The accused admitted the issuance of the cheque in his statement recorded under section 313 of Cr.P.C. Thus, the issuance of the cheque and the signatures on the cheque were not disputed. It was laid down by the Hon'ble Supreme Court in *APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724*, that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

“9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such a presumption is rebuttable. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of

further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.”

20. It was laid down in *N. Vijay Kumar v. Vishwanath Rao N.*, 2025 SCC OnLine SC 873, wherein it was held as under:

“6. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence.”

21. A similar view was taken in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

“ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54, have been set aside by a three-Judge Bench in *Rangappa* (supra).

16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197].

22. Thus, the learned Courts below had rightly held that the cheque was issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption.

23. The accused admitted to taking the loan in his statement recorded under section 313 of the Cr.P.C. It was laid down by the Hon'ble Supreme Court in *State of Maharashtra v. Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC

OnLine SC 421 that the Courts can rely upon the statement of the accused recorded under section 313 of the Cr.P.C. It was observed at page 742:

“51. That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence *stricto sensu*. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:

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

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See *State of Maharashtra v. R.B. Chowdhari (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95*. This Court, in the case of *Hate Singh Bhagat Singh v. State of M.B. 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468*, held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In *Narain Singh v. State of Punjab (1963) 3 SCR 678: (1964) 1 Cri LJ 730*, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be

advantageous to reproduce the relevant observations at pages 684-685:

“Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may ‘be taken into consideration’ at the enquiry or the trial. *If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.*” (emphasis supplied)

Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury

system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force.”

24. It was laid down by the Hon’ble Supreme Court in *Mohan Singh v. Prem Singh*, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933, that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at page 244:

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See *Nishi Kant Jha v. State of Bihar* (1969) 1 SCC 347: AIR 1969 SC 422: (SCC pp. 357-58, para 23)

“23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a

herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961, negatives of both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.*" (emphasis supplied)

25. It was laid down in *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213, that the statement of the accused under Section 313 Cr.P.C., in so far as it supports the prosecution's case, can be used against him for recording a conviction. It was observed at page 275: -

"52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of

recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law.”

26. This position was reiterated in *Ashok Debbarma v. State of Tripura*, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

24. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh* [(1992) 3 SCC 700: 1992 SCC (Cri) 705] held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat*, 1951

SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933 held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab (1964) 1 Cri LJ 730: (1963) 3 SCR 678*, this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in *Mohan Singh v. Prem Singh (2002) 10 SCC 236: 2003 SCC (Cri) 1514* held that: (SCC p. 244, para 27)

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

In this connection, reference may also be made to the judgments of this Court in *Devender Kumar Singla v. Baldev Krishan Singla (2005) 9 SCC 15: 2005 SCC (Cri) 1185* and *Bishnu Prasad Sinha v. State of Assam (2007) 11 SCC 467: (2008) 1 SCC (Cri) 766*. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.”

27. It was submitted in the memorandum of revision that no document was produced to show that the complainant had advanced ₹5 lakhs to the accused, and Narender Kumar (CW1) admitted in his cross-examination that the loan was not advanced in his presence. Therefore, there was no proof of advancing the loan. This submission will not help the accused because he admitted to taking a loan in his statement recorded under Section 313 CrPC. Therefore, the taking of the loan was never disputed and Ld. Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

28. It was submitted that the authority of Narender Kumar (CW1) to file the complaint or make a statement before the Court was not proved, and the complaint was not maintainable. This submission is not acceptable. The complainant had specifically asserted in para-1 of the complaint that Narender Ghunta, the Branch manager, is authorised to file the complaint on behalf of the bank. The accused filed an application under section 145 (2) of the NI Act seeking permission to cross-examine the complainant's witnesses. He mentioned in para-2 of the application that he had issued a

blank cheque as security and paid the entire cheque amount to the complainant. He never claimed that Narender (CW1) was not authorised to file a complaint or depose on behalf of the complainant. Narender Kumar (CW1) filed his proof affidavit (CW 1/A) mentioning that he was authorised to file the complaint. He was not cross-examined regarding this part of his statement. Therefore, this part of the statement was accepted as correct. It was laid down by the Hon'ble Supreme Court in *State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561* that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in *Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4*, and it was held at page 34:

“58. A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the

prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as *Browne v. Dunn (1893) 6 R 67 (HL)*, considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

“Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had

been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.”

60. Lord Halsbury, in a separate but concurring opinion, held as under:

“My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either

to their credit or to the accuracy of the facts they have deposed to.”

61. This Court, in a judgment reported as *State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850, quoted from *Browne v. Dunn*, (1893) 6 R 67 (HL) to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (*State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850], SCC pp. 566-67, para 13)

“13. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

- (1) to test his veracity,
- (2) to discover who he is and what his position in life is, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.”

62. This Court, in a judgment reported *Muddasani Venkata Narsaiah v. Muddasani Sarojana*, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268, laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in

cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandalv. Debnath Bhagat*, AIR 1963 SC 1906. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.*, 1957 SCC OnLine P&H 177: AIR 1958 P&H 440.

16. In *Maroti Bansi Teli v. Radhabai*, 1943 SCC OnLine MP 128: AIR 1945 Nag 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A.Y. Derderian*, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359 has laid down that the party is obliged to put his case in the cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, *Kuwarlal Amritlal v. Rekhilal Koduram*, 1949 SCC OnLine MP 35: AIR 1950 Nag 83 has laid down that when

attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in *Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683* has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.”

29. Therefore, it was rightly submitted on behalf of the complainant that this plea could not have been raised before the Ld. Appellate Court, and it is impermissible to raise this plea before this Court as well.

30. The accused claimed in his statement recorded under section 313 Cr.P.C. that he had paid ₹ 45,000/- and 1,50,000 to the bank. However, no evidence was presented to prove this fact. It was held in *Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201* that the accused has to lead defence evidence to rebut the presumption and mere denial in

his statement under section 313 is not sufficient to rebut the presumption. It was observed at page 700:

“20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration.*” (Emphasis supplied)”

31. Ld. counsel for the accused had also not suggested to Narender Kumar (CW1) that any payment was made by the accused to the complainant. Therefore, this plea was not acceptable.

32. Even if the plea of the accused is accepted to be correct, the accused had taken the loan of ₹ 5 lakh, and after deducting the amount of ₹1,95,000, an amount of ₹ 3,05,000 remains payable and the cheque of ₹ 1,77,920, was issued in discharge of the legal liability.

33. The accused admitted in his statement recorded under section 313 of Cr.P.C. that the cheque was dishonoured

with an endorsement 'payment stopped by the drawer'. It was laid down by the Hon'ble Supreme Court in *Laxmi Dyechem v. State of Gujarat*, (2012) 13 SCC 375: (2012) 4 SCC (Cri) 283: 2012 SCC OnLine SC 970 that the dishonour of a cheque on the ground that the drawer stopped the payment will attract the provisions of Section 138 of the NI Act. It was observed at page 388:

12. In *Modi Cements Ltd.* [(1998) 3 SCC 249: 1999 SCC (Cri) 252], a similar question had arisen for the consideration of this Court. The question was whether dishonour of a cheque on the ground that the drawer had stopped payment was a dishonour punishable under Section 138 of the Act. Relying upon two earlier decisions of this Court in *Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd.* [(1996) 2 SCC 739: 1996 SCC (Cri) 454] and *K.K. Sidharthan v. T.P. Praveena Chandran* [(1996) 6 SCC 369: 1996 SCC (Cri) 1340], it was contended by the drawer of the cheque that if the payment was stopped by the drawer, the dishonour of the cheque could not constitute an offence under Section 138 of the Act. That contention was specifically rejected by this Court. Not only that, the decision in *Electronics Trade & Technology Development Corpn. Ltd.* [(1996) 2 SCC 739: 1996 SCC (Cri) 454] to the extent that the same held that dishonour of the cheque by the bank after the drawer had issued a notice to the holder not to present the same would not constitute an offence, was overruled. This Court observed: (*Modi Cements Ltd. case* [(1998) 3 SCC 249: 1999 SCC (Cri) 252], SCC pp. 257-58, paras 18 & 20)

“18. The aforesaid propositions in both these reported judgments, in our considered view, with great respect, are contrary to the spirit and object of Sections 138 and 139 of the Act. If we are to accept this proposition, it will make Section 138 a dead letter, for, by giving

instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability, the drawer can easily get rid of the penal consequences, notwithstanding the fact that a deemed offence was committed. Further, the following observations in para 6 in *Electronics Trade & Technology Development Corpn. Ltd. [(1996) 2 SCC 739: 1996 SCC (Cri) 454]* (SCC p. 742)

Section 138 is intended to prevent dishonesty on the part of the drawer of a negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. *Section 138 draws the presumption that one commits the offence if one issues the cheque dishonestly.*

In our opinion, do not also lay down the law correctly.

20. On a careful reading of Section 138 of the Act, we are unable to subscribe to the view that Section 138 of the Act draws a presumption of dishonesty against the drawer of the cheque if he without sufficient funds to his credit in his bank account to honour the cheque issues the same and, therefore, this amounts to an offence under Section 138 of the Act. For the reasons stated hereinabove, we are unable to share the views expressed by this Court in the above two cases, and we respectfully differ with the same regarding the interpretation of Section 138 of the Act to the limited extent as indicated above.” (emphasis in original)

13. We may also, at this stage, refer to the decisions of this Court in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd. [(2002) 1 SCC 234: 2002 SCC (Cri) 121]*, where to this Court considering an analogous question held that even in cases where the dishonour was on account of “stop-payment” instructions of the drawer, a presumption regarding the cheque being for consideration would arise

under Section 139 of the Act. The Court observed: (SCC p. 240, para 19)

“19. Just such a contention has been negated by this Court in *Modi Cements Ltd. v. Kuchil Kumar Nandi* [(1998) 3 SCC 249: 1999 SCC (Cri) 252]. It has been held that even though the cheque is dishonoured by reason of a ‘stop-payment’ instruction, an offence under Section 138 could still be made out. It is held that the presumption under Section 139 is also attracted in such a case. The authority shows that even when the cheque is dishonoured by reason of ‘stop-payment’ instructions by virtue of Section 139, the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course, this is a rebuttable presumption. The accused can thus show that the ‘stop-payment’ instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid reasons, including that there was no existing debt or liability at the time of presentation of a cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus, a court cannot quash a complaint on this ground.”

14. To the same effect is the decision of this Court in *Goaplast (P) Ltd. v. Chico Ursula D'Souza* [(2003) 3 SCC 232: 2003 SCC (Cri) 603: 2003 Cri LJ 1723] where this Court held that “stop-payment instructions” and consequent dishonour of a post-dated cheque attract the provision of Section 138. This Court observed: (SCC pp. 232g-233c)

“Chapter XVII, containing Sections 138 to 142, was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking

operations and giving credibility to negotiable instruments in business transactions. The said provisions were intended to discourage people from not honouring their commitments by way of payment through cheques. The court should lean in favour of an interpretation which serves the object of the statute. *A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque.*

In view of Section 139, it has to be presumed that a cheque is issued in the discharge of any debt or other liability. The presumption can be rebutted by adducing evidence, and the burden of proof is on the person who wants to rebut the presumption. *This presumption, coupled with the object of Chapter XVII of the Act, leads to the conclusion that by countermanding payment of a post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts, which, in other words, can be said to be taking advantage of one's own wrong.*” (emphasis supplied)

34. The accused admitted in his statement recorded under section 313 of Cr.P.C. that the notice was served upon him. Therefore, the plea taken by him in the memorandum of revision that no notice was served upon him is not acceptable.

35. The accused did not claim that he had paid the money to the complainant after the receipt of notice. Therefore, the Ld. Courts below had rightly held that all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

36. Learned Trial Court had sentenced the accused to undergo simple imprisonment for two months. It was laid down by the Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138 that the penal provision of section 138 is a deterrent in nature. It was observed at page 203:

“6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.”

37. Keeping in view the deterrent sentence to be awarded, the sentence of two months cannot be said to be excessive, and no interference is required with it.

38. Learned Trial Court had awarded a compensation of ₹2,50,000/-. The cheque was issued on 19.01.2021. The compensation was awarded on 29.09.2023 after the lapse of two years and six months. The complainant lost money that it would have gained by lending the money to someone. It had to engage a counsel to prosecute the complaint filed by him. Therefore, it was entitled to be compensated for its loss. It was laid down by the Hon'ble Supreme Court in *Kalamani Tex v. P. Balasubramanian*, (2021) 5 SCC 283; (2021) 3 SCC (Civ) 25; (2021) 2 SCC (Cri) 555; 2021 SCC OnLine SC 75 that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation, and unless there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [*R. Vijayan v. Baby*, (2012) 1 SCC 260, para 20; (2012) 1 SCC (Civ) 79; (2012) 1 SCC (Cri) 520]"

39. Therefore, the compensation of ₹2,50,000/- cannot be said to be excessive.

40. No other point was urged.

41. In view of the above, the present revision fails, and it is dismissed, and so are the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

8th April, 2026
(Nikita)