

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Revision No.231 of 2025****Reserved on: 08.01.2026****Decided on: 25.02.2026.**

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Khem Singh ..... Petitioner

Versus

Nazeer Mohd. .... Respondent

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***Coram*****The Hon'ble Mr Justice Rakesh Kainthla, Judge.*****Whether approved for reporting?<sup>1</sup> Yes*****For the Petitioner: Mr K.S. Gill, Advocate.****For the Respondent: None.**

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**Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 12.08.2024 passed by learned Sessions Judge, Chamba, Distt. Chamba, H.P. (learned Appellate Court) vide which judgment of conviction dated 18.01.2024 passed by learned Judicial Magistrate, First Class, Tissa, District Chamba, H.P (learned Trial Court) was upheld, the order of sentence dated 19.01.2024 passed by the learned Trial Court was set-aside and the matter was remitted to the learned Trial Court for

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<sup>1</sup>Whether the reporters of the local papers may be allowed to see the Judgment?Yes.

passing an appropriate sentence, and the order of sentence dated 15.01.2025 which was passed by the learned Trial Court after the remand. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

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, 1881 (In short, 'NI Act'). It was asserted that the accused had undertaken the construction work of the Jio Network Tower in District Chamba. The complainant supplied labour for the construction of the tower w.e.f. 23.02.2018 till 15.04.2018. He paid ₹2,22,000/- to the labourers. The accused paid ₹72,000/- in cash and issued a cheque of ₹1,50,000/- drawn at Punjab National Bank, Kasumpti, Shimla to reimburse the money paid by the complainant. The complainant presented the cheque to the bank, but it was dishonoured with an endorsement "insufficient funds". The complainant served a notice upon the accused, asking him to repay the amount to the complainant. Notice was duly served upon the accused, but he

failed to repay the amount. Hence, a complaint was filed before the learned Trial Court for taking action as per law.

3. 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 himself (CW1) and Munish Kumar (CW2) to prove his case.

5. The accused, in his statement recorded under Section 313 of CrPC, admitted that he had constructed the Jio Network Tower, the complainant had provided three labourers to him, and he had engaged them w.e.f. 23.02.2018 till 15.04.2018. He denied the rest of the complainant's case. He asserted that an agreement was executed between him and the complainant. He paid ₹50,000/- in cash to the complainant. He had demanded 10-15 labourers from the complainant, as a minimum of 10 labourers were required to carry out the work. The complainant sent 3-4 labourers. The complainant demanded ₹50,000/- for the supply of the remaining labour. He paid ₹50,000/- to the complainant through the bank account.

The labour was supplied, who worked for one month, but thereafter, the supply was stopped. He paid ₹72,000/- in cash to the complainant and gave a blank security cheque to the complainant. The complainant failed to pay the money to the labourers, and they filed a case before the Labour Court at Chamba. Bhag Singh paid money to them. He examined Divesh Mandala (DW1), Bhag Singh (DW2) and Rishab Chaudhary (DW3) to prove his defence.

6. Learned Trial Court held that the issuance of the cheque was not disputed. A presumption arose that the cheque was issued for consideration to discharge the debt/liability. It was highly improbable that a blank security cheque would have been issued after the execution of the work. The plea taken by the accused in the Court was contrary to the plea taken by him in his application filed under Section 145(2) of the NI Act. Even a blank security cheque would give rise to the liability under Section 138 of the NI Act. The cheque was dishonoured with an endorsement “insufficient funds”, and the accused failed to repay the amount despite the receipt of a valid notice of demand. All the ingredients of commission of an offence punishable under Section 138 of the NI Act were 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 one year, pay a fine of ₹2,30,000/- and, in default, to undergo simple imprisonment for one month. It was ordered that the amount of fine, if realised, be disbursed to the complainant as compensation.

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 Sessions Judge, Chamba (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had not disputed the issuance of the cheque, and a presumption arose that the cheque was issued to discharge the debt/liability. The evidence of the accused was not sufficient to rebut the presumption. The cheque was dishonoured with an endorsement "insufficient funds". Notice was duly served upon the accused, and he failed to repay the amount despite the receipt of a valid notice of demand. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Learned Trial Court had rightly imposed the sentence of one year, but erred in imposing the fine of ₹2,30,000/- because the learned Magistrate was not

competent to impose a fine exceeding ₹10,000/- as per Section 29 of the Cr.P.C. Hence, the matter was remitted to the learned Trial Court for imposing an appropriate fine.

8. Learned Trial Court ordered the payment of compensation of ₹2,00,000/- and, in default of payment of compensation, to undergo further imprisonment for one month vide order dated 15.01.2025.

9. 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 erred in appreciating the material placed before them. A written agreement was executed between the parties, which was ignored by the learned Courts below. As per the complaint, the complainant had provided labour for the construction of the Jio tower; the accused had no liability towards the complainant but he had a liability towards the labourers as per the complaint. The payment was made by Bhag Singh to the labourers before the Labour Court, and the complainant could not have sought the payment from the accused. The accused had filed an application under Section 391 of the Cr. P.C., which was not decided by the learned Appellate Court. Therefore, it was

prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set-aside.

10. I have heard Mr K.S. Gill, learned counsel for the petitioner/accused. None appeared on behalf of the respondent/complainant, even though the complainant was served. Hence, none could be heard on behalf of the respondent/complainant.

11. Mr K.S. Gill, learned counsel for the petitioner/accused, submitted that the learned Appellate Court erred in disposing of the appeal without deciding the application filed under Section 391 of Cr.P.C. Learned Appellate Court could not have confirmed the conviction and remitted the matter to the learned Trial Court for passing the sentence. Therefore, he prayed that the present revision be allowed and the judgment passed by the learned Appellate Court be set-aside.

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 advertent 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 which 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

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

18. Learned Appellate Court confirmed the conviction and remitted the matter to the learned Trial Court for passing an appropriate sentence of fine. This was not permissible. It was laid down in *P. Mazher v. State of A.P.*, 2003 SCC OnLine AP 1232: 2003 Cri LJ 3269 that the Appellate Court does not have the jurisdiction to confirm the appeal and remit the matter to the learned Trial Court for passing the sentence. It was observed at page 3269: -

“3. Section 386, Cr. P.C. deals with the powers of the Appellate Court. As the appeal was filed before the learned Metropolitan Sessions Judge from a conviction, the relevant provision is Section 386(b), Cr. P.C. It reads as follows:

“386 (b): in an appeal from a conviction—

- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial; or
- (ii) alter the finding, maintaining the sentence, or
- (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.”

4. A reading of the above provision makes it clear that the Appellate Judge has the option to reverse the finding and sentence and acquit the accused of the offence of which he was charged. The Appellate Court is also at liberty to order a retrial of the accused by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial. The Appellate Court is also at liberty to alter the finding and maintain the sentence imposed by the trial Court. It has also got the opinion with or without altering the finding, altering the nature and extent of the sentence. However, it has no power to enhance the sentence given by the trial Court. Section 386(b), Cr. P.C., does not entitle the appellate Judge in an appeal from conviction to confirm the conviction and at the same time remit back the case back to the trial Court for consideration regarding the sentence alone. In my considered opinion, the learned Metropolitan Sessions Judge has committed an error in remitting the case to the trial Court regarding the sentence alone after confirming the conviction imposed by the trial Court.

5. I have come across some reported decisions to support the view taken by me regarding the powers of the appellate Court while dealing with an appeal from a

conviction given by the trial Court. The Madras High Court, in a decision reported in *Roja Kamalam v. State, AIR 1971 Madras 41: 1971 Cri LJ 61*, held that the Appellate Court cannot remand the case for passing a proper sentence, and before ordering retrial, the conviction and sentence must be set aside. In that case, the trial Court convicted the accused of the offence under Section 380, IPC, and sentenced him to suffer rigorous imprisonment for three months. In the appeal, the Sub-Divisional Magistrate confirmed the conviction and remanded the case to the Sub-Magistrate, observing that the matter should be dealt with under the provisions of the Probation of Offenders Act if the age was found to be 20. The Madras High Court held categorically that there can be no remand of a case for the purpose of passing a proper sentence.

6. There is a judgment of the Calcutta High Court reported in *State v. Pulish Ghosh, 1973 Cri LJ 510*. In a food adulteration case, acting on the plea of guilty made by the accused, the Magistrate convicted the accused and sentenced him to undergo rigorous imprisonment for six months and pay a fine of Rs. 10,000.00. The accused preferred an appeal before the Sessions Judge. The Sessions Judge upheld the conviction and set aside the sentence and sent back the record to the Magistrate for imposing sentence after examination of the accused under Section 342, Cr. P.C. (Old). Thereafter, the learned Magistrate imposed a sentence of rigorous imprisonment for five months and a fine of Rs. 900.00. Again, the accused preferred an appeal before the Sessions Court. The second appeal came up before another learned Sessions Judge other than the Sessions Judge who remitted the earlier case to the Magistrate. The later Sessions Judge made a reference under Section 438, Cr. P.C. (Old) to the High Court. The High Court held that the previous Sessions Judge made a peculiar order; he upheld the conviction, set aside the sentence and sent the record to the Magistrate for imposition of sentence after examining the accused under Section 342 of the Code. The High Court held that if the Sessions Judge thought that the sentence should be reduced, he could

himself reduce the sentence. It held that the order that he made could not have been made under the powers which he, as the Appellate Court, had under Section 423 of the Old Code. It also observed that he should have realised that since he was maintaining the conviction, there was no further scope for the learned Magistrate to examine the accused under Section 342, Cr. P.C. The High Court set aside the order of the Sessions Judge.

7. There is also a similar judgment of the Delhi High Court reported in *Mukand Lal v. State, 1979 Cri LJ 105*. It was held that the order of the Sessions Judge remanding the case to the lower Court to offer an opportunity of hearing on the question of sentence is irregular.

8. There is a judgment of the Apex Court reported in *K. Bhaskaran v. Sankaran Vaidhyan Balan, 1999 Cri LJ 4606: (1999) 7 SCC 510: AIR 1999 SC 3762*. The principle of law relating to sentences to be imposed for the offence under Section 138, Negotiable Instruments Act, read with Sections 29(2) and 357(3) of Cr.P.C., is laid down in the above decision. The Supreme Court held that a Judicial Magistrate of First Class could not impose a fine exceeding Rs. 5,000.00, besides the imprisonment, and the High Court, while convicting the accused in an appeal in the same case, could not impose a sentence or fine exceeding the said limit. It held that the Magistrate can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code, no limit is mentioned, and a Magistrate can award any sum as compensation. It held while fixing the quantum of such compensation, the Magistrate has to consider what could be the reasonable amount of compensation payable to the complainant and thus even if the trial for cheque dishonour was before a Court of Magistrate of First Class in respect of a cheque which covers an amount exceeding Rs. 5,000.00, the Court has power to award compensation to be paid to the complainant.

9. In the present case, the order of the learned Metropolitan Sessions Judge confirming the conviction and at the same time setting aside the sentence and remitting the case to the Magistrate for sentence alone is

bad in law and is liable to be set aside. Therefore, the appeal in Criminal Appeal No. 68 of 1999 is to be remitted back to the learned Metropolitan Sessions Judge for fresh disposal in accordance with law. The confirmation of the conviction made by the learned Metropolitan Sessions Judge, as well as the order remitting the case back to the Magistrate regarding the sentence, are set aside. The learned Metropolitan Sessions Judge is directed to consider the appeal afresh on the merits, notwithstanding any of the observations made by the said Court in the appeal.”

19. Thus, the judgment passed by the learned Appellate Court cannot be sustained on this short ground alone.

20. The record of the learned Appellate Court shows that the accused had filed an application under Section 391 of the CrPC for taking additional evidence. This application was taken on record by the learned Appellate Court on 27.06.2024. A reply to the application was filed on 09.07.2024, on which date, the arguments were heard, and the appeal was dismissed on 12.08.2024. However, the application filed under Section 391 of Cr.P.C was not disposed of.

21. The Hon’ble Supreme Court also held in *Namdeo versus Tukaram Civil Appeal No. 5185 of 2008 decided on 18.08.2008*, that where an application under Order 41 Rule 27 of CPC was not properly disposed of, the judgment passed by the First Appellate Court is bad. It was observed:

“We find that the first appellate Court did not reject the application under Order 41 Rule 27 CPC, nor did it assign any reasons while recording that only production of the documents was allowed. We are of the view that the procedure adopted was incorrect. The first appellate Court ought to have passed an order in respect of the application under Order 41 Rule 27 CPC, either allowing or rejecting the application. The first appellate Court has considered the application as if it were one under Order 13 Rule 1 CPC and not under Order 41 Rule 27 CPC. The High Court ought to have therefore interfered in the matter by raising an appropriate question of law. It failed to do so. The judgments, therefore, call for interference.”

22. Similarly, it was held in *Jatinder Singh v. Mehar Singh*, (2009) 17 SCC 465= 2008 SCC OnLine SC 1425 that where the High Court had failed to decide the application for leading additional evidence, the matter is required to be remitted to the High Court. It was observed:

“4. While deciding the second appeal, however, the High Court had failed to take notice of the application under Order 41 Rule 27 of the Code of Civil Procedure and decide whether additional evidence could be permitted to be admitted into evidence. In our view, when an application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure was filed by the appellants, it was the duty of the High Court to deal with the same on the merits. That being the admitted position, we have no other alternative but to set aside the judgment of the High Court and remit the appeal back to it for a decision afresh in the second appeal, along with the application for acceptance of additional evidence in accordance with the law.”

23. A similar view was taken by this court in *Mani Devi v. Suresh Chand, 2021 SCC OnLine HP 7126= (2021) 2 Latest HLJ 874*, wherein it was observed:

“12. A perusal of the “zimni” order dated 31.05.2007 revealed that the plaintiff on the said date had filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure for adducing additional evidence. On 20.06.2007, a reply on behalf of the respondents was filed to the said application and the main appeal was ordered to be listed for arguments along with the application under Order 41 Rule 27 of the Code of Civil Procedure. Thereafter, the appeal came to be adjourned on various occasions due to one or other reasons. Finally, the appeal came to be decided on 05.11.2007. The record further reveals that the application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure filed by the plaintiff before the lower Appellate Court remained pending throughout and was not decided either separately or along with the appeal.

13. There is no absolute right granted by the Code of Civil Procedure to adduce additional evidence at the appellate stage. Nonetheless, the Court hearing an appeal has the power to allow a party to adduce additional evidence, subject, however, to the interdict provided in Order 41 Rule 27 of the Code of Civil Procedure. The allowance of the prayer to adduce additional evidence, in the given circumstances of the case, may have the effect of changing the outcome of the case.

14. Undisputedly, the plaintiff had the right to invite a decision, on her prayer to adduce additional evidence, from the Lower Appellate Court. The absence of adjudication on application under Order 41 Rule 27 of the Code of Civil Procedure amounts to the refusal of the exercise of jurisdiction vested in the Lower Appellate Court, which has the potential to cause prejudice to the plaintiff.”

24. This position was reiterated in *Satish Chand Surana versus Raj Kumar Meshram [(2022) 3 CivCC 191 = (2022) 1 RCR(Civil) 598*, wherein it was observed:

“7. Learned counsel for the appellant-plaintiff submits that the High Court has dismissed the first appeal of the plaintiff without deciding the application filed by him under Order XLI Rule 27 of the CPC, seeking permission to adduce additional evidence. Learned Counsel further submits that the appellant has a good case on the merits.

8. It is well-settled that, ordinarily, the Appellate Court should not travel beyond the record of the lower court. Section 107 of the CPC carves out an exception to this general rule, enabling the Appellate Court to take additional evidence subject to the conditions prescribed in Order 41 Rule 27 of the CPC. Thus, grant or refusal of the opportunity for the production of additional evidence at the appellate stage is within the discretion of the appellate court. Dismissal of the main appeal without deciding the application for additional evidence would result in a miscarriage of justice. The First Appellate Court, being the last court of facts and evidence, should permit the production of additional evidence where the explanation furnished by the party is satisfactory, and the documents in question are vital to establish the case.

9. It is also necessary to observe here that the application for permission to file additional evidence should contain the list of documents giving full particulars thereof, and copies sought to be filed as additional evidence should be served on the other side. However, the High Court cannot completely ignore the application filed by the appellant and pronounce the judgment. If the appellant makes out a case for allowing the application, the material produced along with the application has to be

considered at the time of final disposal of the appeal in accordance with the law.

10. In the instant appeal, it is clear that the High Court has proceeded to dismiss the appeal without considering the application filed by the appellant-plaintiff. In our view, the High Court has to consider the matter afresh in the light of the observations made above.”

25. Similar consideration will apply to the Criminal Courts as well; therefore, the judgment passed by the learned Appellate Court without disposing of the application filed under Section 391 Cr.P.C. cannot be sustained.

26. Learned Appellate Court held that the learned Magistrate had no jurisdiction to impose a fine in excess of ₹10,000/-. Learned Appellate Court failed to notice Section 143 of the NI Act, which empowers a Magistrate to impose a fine exceeding ₹5,000/-. It was laid down by the Hon'ble Supreme Court in *R. Vijayan v. Baby, (2012) 1 SCC 260: 2011 SCC OnLine SC 1363* that the Magistrate is competent to impose a fine exceeding ₹5,000/- after insertion of Section 143 of the NI Act. It was observed at page 265:

“13. It is of some interest to note, though it may not be of any assistance in this case, that the difficulty caused by the ceiling imposed by Section 29(2) of the Code has been subsequently solved by the insertion of Section 143 in the Act (by Amendment Act 55 of 2002) with effect from 6-2-2003. Section 143(1) provides that, notwithstanding

anything contained in the Code, all offences under Chapter XVII of the Act should be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the Code (relating to summary trials) shall, as far as may be, apply to such trials. The proviso thereto provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term extending one year and an amount of fine exceeding Rs 5000, in case of conviction in a summary trial under that section. In view of the conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in Section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under Section 138 of the Act, a First-Class Magistrate may impose a fine exceeding Rs 5000, the ceiling being twice the amount of the cheque.”

27. It was held by the Delhi High Court in *Bharti Sahni v. Vikas Sehrawat, 2025 SCC OnLine Del 7686*, that a Magistrate has jurisdiction to impose a fine exceeding ₹10,000/- in the proceedings under Section 138 of the NI Act. It was observed:

“34. *In the end*, a Legal objection has been taken that under *Section 29 of the Cr. P.C.*, the First-Class Magistrate, has the power to impose a fine of a maximum of Rs. 10,000/-. Therefore, the fine of Rs. 10,65,000/- as imposed by the Ld. Metropolitan Magistrate is illegal and against the mandate of law.

35. In this context, it may be observed that the trial has been held under a Special Act i.e. Negotiable Instruments Act wherein Section 138 itself provides that in case the offence is proved under Section 138, the person convicted may be punished with an imprisonment of a term, which may extend to two years and the fine which may extend to twice the amount of the cheque or with both. This being a conviction in a trial under the Special Act, it would prevail over the general law as contained in Cr. P.C. The

cheque amount was Rs. 6,00,000/- and the jurisdiction of the Ld. Metropolitan Magistrate to impose the fine, was double the cheque amount. Therefore, the fine imposed in the sum of Rs. 10,65,000/- is within the jurisdiction of the learned Metropolitan Magistrate.”

28. A similar view was taken by the M.P. High Court in ***Sitaram v. Kanhaiyalal, 2022 SCC OnLine MP 5478: ILR 2022 MP 1480***, wherein it was observed at page 1483: -

“7. In the Negotiable Instruments Act, as per provision of Section 138, a Magistrate can punish the accused with imprisonment for a term which may extend to two years or with a fine which may extend to twice the amount of the cheque or with both. It is true that, as per provisions of Section 29 of the Cr. P.C. Judicial Magistrate First Class cannot impose fine of more than Rs. 10,000/-, but in this context amendment of Section 143 dated 6.2.2003 is pertinent by which a provision has been made that in case of any conviction in a summary trial, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. In this regard, the judgment pronounced by the Hon'ble Supreme Court in the case of ***R. Vijayan v. Baby, (2012) 1 SCC 260***, is helpful. Relevant portion of the aforesaid judgment is reproduced hereinbelow:—

“13 In view of the conferment of such special power and jurisdiction upon the First-Class Magistrate, the ceiling as to the amount of fine stipulated in section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under section 138 of the Act, a First-Class Magistrate may impose a fine exceeding Rs. 5000/-, the ceiling being twice the amount of the cheque.”

8. It is true that in Section 143(1) of the Negotiable Instruments Act, another proviso has been added that if summary trial is not possible, the accused will be tried by way of summons trial and the Magistrate will rehear the

case in the manner provided by said Code. But in the aforesaid provision, there is no bar that if a trial is conducted in a summons manner, the Magistrate cannot impose the fine twice the cheque amount. In this regard, the order of the Chhattisgarh High Court in *Atharva Agro Chemical Pvt. Ltd. v. Gopal Chand Barik*, decided on 4.2.2021 in *Criminal Misc. Petition No. 357/2013* is relevant, whereby Chhattisgarh High Court, relying on the judgment of the Apex Court in the case of *R. Vijayan* (supra), has held as under: —

“17. In the matter of *R. Vijayan v. Baby*, (2012) 1 SCC 260, their Lordships of the Supreme Court culled out the following principle contained in the provisions of Chapter-XVII of the Act, which states as under: —

“(i) The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (Section 138), thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned.”

Their Lordships, in the later part of judgment, while considering the intention of the legislature for enacting Section 138 of the NI Act, have held as under:

—

“17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque

amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or another by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers), view the proceedings under Section 138 of the Act as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour becoming secondary.

18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a “victim” in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as, invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss)

and direct payment of such amount as compensation. Directions to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts not only increase the credibility of the cheque as a negotiable instrument but also the credibility of the courts of justice

19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated due to the need to have uniformity and consistency in decision-making. In the same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eyes of the law, will give rise to a certain amount of **uncertainty in the minds of litigants** about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner, as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that, in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded **within six months** from the date of the **filing** of the complaint, such cases seldom reach finality before three or four years, let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of

criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases.”

18. In the matter of *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197, the Supreme Court, following the principle of law laid down in *R. Vijayan* (supra), held that Section 138 of the NI Act is both punitive as well as compensatory and restitutive, and also provides for enforcement of civil liability for realisation of cheque amount. It was held as under:—

“25. In *R. Vijayan v. Baby*, (2012) 1 SCC 260, this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as also compensatory and restitutive. It provides a single forum and a single proceeding for the enforcement of criminal liability by reason of dishonour of a cheque and for the enforcement of the civil liability for realisation of the cheque amount, thereby obviating the need for the creditor to move two different fora for relief. This Court expressed its anguish that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided.”

Thereafter, while granting the appeal and confirming the conviction of the respondent therein, their Lordships of the Supreme Court sentenced him only to a fine, which was enhanced to Rs. 16 lakhs and further directed the same to be paid as compensation to the complainant. It was held as under: —

“40. The appeals are allowed. The judgment and order of the High Court are set aside. The conviction of the respondent under Section 138 of the Negotiable Instruments Act is confirmed. However, the respondent-accused is sentenced

only to a fine, which is enhanced to Rs. 16 lakhs and shall be paid as compensation to the appellant complainant. The fine shall be deposited in the trial court within eight weeks from the date, failing which the sentence of imprisonment of one year as imposed by the trial court shall revive. There shall be no order as to costs.”

19. Thus, it is quite vivid that under Section 138 of the NI Act, Criminal Court is competent to levy fine up to twice the cheque amount and direct payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of cheque under Section 357(1)(b) of the CrPC and as such, the power under Section 357(3) of the CrPC cannot be exercised by Criminal Court in the cheque dishonour cases.”

29. Therefore, the learned Appellate Court erred in holding that the learned Magistrate could not have imposed a fine exceeding the limit prescribed under Section 29 of the Cr.P.C.

30. In view of the above, the present revision is allowed and judgment dated 12.08.2024 passed by learned Sessions Judge, Chamba is ordered to be set aside, and the matter is remitted to learned Sessions Judge, Chamba, who shall decide the application filed under Section 391 of Cr.P.C and proceed to dispose of the matter thereafter, as per the law.

31. Parties through their respective counsel are directed to appear before learned Appellate Court on 24 .03.2026.

32. Records of the learned Courts below be sent back forthwith, along with a copy of this judgment.

**(Rakesh Kainthla)**  
**Judge**

**25 February, 2026.**

*(Yogesh)*