IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.239 of 2025
Reserved on: 15.12.2025
Date of Decision: 01.01.2026

Prem Lata Busheri ...Petitioner

Versus

Usha Goel ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Petitioner : Mr Anil Chauhan, Advocate.
For the Respondent : None for the respondent.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 24.01.2025, passed by learned Additional Sessions Judge (CBI Court), Shimla, District Shimla, H.P. (learned Appellate Court) vide which judgment of conviction dated 17.05.2024 and order of sentence dated 25.05.2024 passed by learned Additional Chief Judicial Magistrate, Court No.1, Shimla, District Shimla, H.P. (learned Trial Court) were upheld. *(Parties shall hereinafter be*

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

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 petition are that the complainant filed a complaint against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short, 'NI Act'). It was asserted that the accused is the sole proprietor of M/s Mahalaxmi Jewellers, Lower Bazar, Shimla and is engaged in the business of selling gold, silver, diamond and other jewellery. The accused had purchased jewellery worth ₹13,10,000/- from the complainant's shop vide voucher No. 6165 dated 01.01.2016. The accused paid a sum of ₹1,10,000/- and issued two cheques of ₹3,00,000/- each drawn on the H.P. State Co-operative Bank Ltd. H.P. Secretariat, Shimla, District Shimla, H.P. The complainant presented the cheques to her bank, but they were dishonoured with the remarks 'funds insufficient'. The complainant served a legal notice upon the accused asking her to pay the money, but she issued a reply to the notice denying her liability instead of paying the money to the complainant. Hence, a complaint was filed before the learned Trial Court for taking action as per law.

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

4. The complainant examined Karan Goel, her special power of attorney (CW-1), to prove her case.

5. The accused, in her statement recorded under Section 313 of CrPC, denied the complainant's case in its entirety. She stated that her husband had taken a loan from the complainant and issued the cheque as security. She claimed that her husband had repaid the borrowed amount to the complainant. The complainant misused her cheques. The accused stated that she wanted to lead defence evidence but failed to produce any evidence; hence, her evidence was closed by the order of the Court on 26.04.2024.

6. Learned Trial Court held that the accused had not disputed the issuance of the cheque. A presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The burden would shift upon the accused to rebut

the presumption by leading evidence. The plea taken by her that the accused had issued the security cheque for a loan taken by her husband was not probable. The cheques were dishonoured with the endorsement 'funds insufficient'. Notice was served upon the accused, and she had failed to repay the amount. 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 her to undergo simple imprisonment for three months and pay a compensation of ₹10,00,000/- to the complainant.

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 (C.B.I Court), Shimla District, Shimla (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed, and a presumption under Section 118(a) and 139 of the NI Act would be attracted to the cheques that they were issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption by leading any evidence. All the ingredients

of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Learned Trial Court had imposed an adequate sentence. No interference was required with the judgment and order passed by the learned Trial Court. 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 petition asserting that the learned Courts below erred in appreciating the material on record. The accused was ready and willing to compound the matter with the complainant by paying the cheques amount. Therefore, it was prayed that the present petition be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Anil Chauhan, learned counsel for the petitioner/accused. None appeared on behalf of the respondent/complainant despite service of notice; hence, none could be heard on her behalf.

10. Mr Anil Chauhan, learned counsel for the petitioner/complainant, submitted that the learned Courts below erred in appreciating the material on record. The plea taken by the

accused that her husband had taken the loan from the complainant and she had furnished her cheques as security was highly probable, and it was wrongly rejected by the learned Courts below. The complainant failed to prove the sale of the jewellery to the accused; therefore, he prayed that the revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

12. 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 adverting 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.

13. 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.
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> **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)
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> > "*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.
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> *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."

14. 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."

15. 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.
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> **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."

16. 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.
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> **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.

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

18. The accused admitted in her statement recorded under Section 313 Cr.P.C. that cheques were issued by her. She claimed that her husband had taken a loan from the complainant, and her cheques were handed over as security. Thus, the learned Courts below had rightly held that the issuance of the cheques and signatures on the cheques 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."

19. A similar view was taken 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."

20. 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*
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> 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).
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> 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 a rebuttable presumption. 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***].

21. Thus, the Court has to start with the presumption that the cheques were issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption.

22. It was submitted that the cheque were issued in the name of Mahalaxmi Jewellers, and the complainant failed to connect herself to Mahalaxmi Jewellers. This submission is not acceptable. The complainant relied upon the certificate of registration (Ext. CW-1/K), in which Ms Usha Goel has been mentioned as the proprietor of Mahalaxmi Jewellers. Therefore, the complainant is the proprietor of Mahalaxmi Jewellers and was competent to file a complaint.

23. It was submitted that the complaint was filed in the name of Usha Goel and not in the name of Mahalaxmi Jewellers. The cheque was issued in the name of Mahalaxmi Jewellers, and the complaint should have been filed in the name of Mahalaxmi Jewellers. This submission cannot be accepted. It was laid down by

the Hon'ble Supreme Court in ***Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536: (2008) 3 SCC (Cri) 558: 2008 SCC OnLine SC 997***, that there is no distinction in law between a proprietary concern and an individual trading under a trading name. It was observed at page 540: -

> **10.** As contrasted with a company incorporated under the Companies Act, 1956, which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law, where an individual carries on business in a name or style other than his name, he cannot sue in the trading name but must sue in his name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietary concern. But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be the payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.
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> **11.** The next question is where a proprietary concern carries on business through an attorney holder, and whether the attorney holder can lodge the complaint. The attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor, and the initiation is by the grantor represented by his attorney

holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (*i*) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (*ii*) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (*iii*) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case, the complaint could have been validly filed by describing the complainant in any one of the following four methods:

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"

or

"M/s Shankar Finance & Investments, a sole proprietary concern represented by its proprietor, Atmakuri Shankara Rao"

or

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"

or

"M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney, holder Thamada Satyanarayana.

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

24. A similar view was taken in ***Nexus Health & Beauty Care (P) Ltd. v. National Electrical Office, 2012 SCC OnLine HP 5383,*** wherein it was observed: -

"**26.** The complaint is not happily worded. No doubt, in the memo of parties, the complainant has referred to the complainant's 'M/s National Electrical Office', but in para 2, it has been pleaded that the complainant is providing services of Industrial Electrical fitting under the name and style of 'National Electrical'. Again, in the memo of parties, Subhash Bharwal has been referred to as proprietor, but in para 1 of the complaint, the complainant has described itself as a firm. In evidence by way of affidavit Ex.CW-1/A, it has been stated that the complainant is providing services of Industrial Electrical fitting under the name and style of 'National Electrical'. Subhash Pharwal is its sole proprietor. The cheque Ex.C-1 has been issued in the name of 'National Electricals'. The complaint is loosely drafted. But in the complaint, the complainant has described itself as 'National Electrical' in the body of the complaint.

27. On the face of the complaint and affidavit, Ex. CW-1/A, prima facie, it cannot be said that the complainant is a firm, namely M/s National Electrical Office. The complainant in the body of the complaint has described the complainant as 'National Electrical', a sole proprietorship concern of Subhash Bharwal. It will be too technical to throw out the complaint due to loose drafting. At this stage, if the pleadings of the petition are seen, the petition is also not less loosely drafted. It starts with the sentence 'complainant issued a cheque for Rs. 2.00 lacs'. The complainant did not issue a cheque of Rs. 2,00,000/-. The cheque was allegedly issued by the accused petitioners. Not only in the opening para of the petition, but in other places also, the petitioners have used loose expressions. In para 3 of the petition before grounds, it has been pleaded that the "complainant aggrieved and dissatisfied with the order summoning the accused and taking cognisance of the case by the Judicial Magistrate, files this petition". The substance of the complaint or petition is to be seen, and it should not be thrown out merely on technicalities of loose drafting. It emerges from the complaint that the complainant is the 'National Electrical' sole proprietorship concern of Subhash

> Bharwal. In view of ***Milind Shripad Chandurkar*** (supra), it cannot be said that the complaint is not maintainable."

25. In the present case, the complaint was filed in the name of Smt. Usha Goel, Proprietor of Mahalaxmi Jewellers, which is as per the judgment of the Hon'ble Supreme Court, therefore, the submission that the complaint is not proper cannot be accepted.

26. It was submitted that the complainant examined her power of attorney, Karan Goel, which is fatal to her complaint. This submission will not help the petitioner. It was laid down by ***Naresh Potteries v. Aarti Industries*, *(2025) 256 Comp Cas 606: 2025 SCC OnLine SC 18*** that a power of attorney can file and appear on behalf of the complainant. It was observed:-

> "**19.** After discussing the discretionary powers of the Magistrate, this court went on to hold that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under section 138 of the Negotiable Instruments Act. This court, however, cautioned that an exception to the above would be when the power of attorney holder does not have personal knowledge about the transactions, in which case, he cannot be examined. Nevertheless, this court clarified that where the power of attorney holder of the complainant is in charge of the business of the complainant payee and the power of attorney holder alone is personally aware of the transactions, there is no reason why he cannot depose as a witness, however, such personal knowledge must be explicitly asserted in the complaint and a power of attorney holder who has no personal knowledge of the transactions cannot be examined as a witness in the case."

27. Karan Goel (CW-1) specifically stated that the accused visited his shop and purchased the jewellery worth ₹13,10,355/-. He issued a bill in favour of the accused. The accused had paid ₹1,10,000/-and issued two cheques for the remaining amount. He stated in his cross-examination that Bill (Ext.CW-1/B) was in his handwriting. His testimony shows that he had effected the sale and had personal knowledge regarding the circumstances leading to the issuance of the cheques; hence, the complaint cannot be discarded because the complainant did not appear before the Court and examined her special power of attorney.

28. The accused, in her statement recorded under Section 313 of Cr.P.C., stated that her husband had taken the loan from the complainant. She had sent a reply (Mark -X) to the notice claiming that she had not purchased any ornaments against the voucher. The complainant had obtained blank cheques and the signatures of the accused. The accused returned the amount and demanded blank cheques, but these were not returned.

29. Thus, it is apparent that the earliest version propounded by the accused was that she had taken money herself and had issued the cheques. The defence was changed in the

statement recoded under Section 313 of Cr.P.C that the loan was taken by the husband of the accused and the accused had issued the cheques. The accused never suggested to Karan Goal (CW1) that she had issued the cheques as security for the loan of her husband. Thus, the defence taken by the accused was highly contradictory and could not have been relied upon.

30. The accused did not step into the witness box to prove the defence taken by her. She relied upon her statement recorded under Section 313 of Cr.P.C. to prove her defence. 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. 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. The complainant's version was duly corroborated by the voucher/Cash Credit Memo (Ext.CW-1/B), in which a total sale of ₹13,10,000/- and details of the cheques have been mentioned. This bill was duly signed by the accused and supported the complainant's version. The accused did not lead any evidence to rebut the presumption and took contradictory defences. Learned Courts below were justified in holding that the accused had failed to rebut the presumption attached to the cheques.

32. The complainant asserted that the cheques were dishonoured with the endorsement 'funds insufficient'. She filed memos of dishonour (Ext.CW-1/E and Ext. CW-1/F), in which it was mentioned that cheques were dishonoured with the endorsement 'funds insufficient'. It was laid down by the Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, *(2010) 3 SCC 83: (2010) 1 SCC (Civ) 625: (2010) 2 SCC (Cri) 1: 2010 SCC OnLine SC 155*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> "**24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the

> presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable."

33. The accused did not lead any evidence to rebut the presumption. Thus, it was duly proved that the cheques were dishonoured with the endorsement 'funds insufficient'.

34. The complainant stated that a notice was sent to the accused on 30.04.2016. The accused sent a reply to the notice showing that she had received notice. She did not repay the amount. Thus, the learned Courts below had rightly held that the accused had failed to repay the amount despite the receipt of a valid notice of demand.

35. Thus, it was duly proved on record that accused had issued the cheques to discharge her legal liability, which were dishonoured with the endorsement 'funds insufficient' and the accused failed to repay despite receipt of valid notice of demand, hence, all the ingredients of the commission of offence punishable under Section 138 of NI Act were duly satisfied and the learned Trial Court had rightly convicted the accused for the commission of an offence punishable under Section 138 of NI Act.

36. Learned Trial Court sentenced the accused to undergo simple imprisonment for three 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 provisions of Section 138 of the N.I.Act is 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. Therefore, the sentence of three months is not excessive.

38. The learned Trial Court ordered the accused to pay ₹10,00,000/-. The two cheques were issued for ₹3,00,000/-each, which means that the learned Trial Court had awarded the compensation of ₹4,00,000/-. The cheques of ₹3,00,000/-each were issued on 15.01.2016 and 20.01.2016, respectively. The compensation was imposed on 25.05.2024 after the lapse of eight years. The complainant lost the interest that she would have

gained by investing the money. The complainant incurred legal expenses for prosecuting the complaint before the learned Trial Court and defending the appeal filed before the learned Appellate Court. Therefore, she was entitled to be compensated for the same. 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. Hence, the compensation cannot be said to be excessive.

40. No other point was urged.

41. In view of the above, the present revision fails and is dismissed, so also pending miscellaneous application(s), if any.

42. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

01st January, 2026.
(ravinder)