IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 663 of 2023
Reserved on: 02.12.2025
Date of Decision: 01.01.2026

Ram Sharma ...Petitioner

Versus

Pankaj Chadha ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Petitioner : Ms Pragti, Advocate, vice Mr Digvijay Singh, Advocate.

For the Respondent : None.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 22.11.2023, passed by learned Sessions Judge, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court) vide which the judgment of conviction dated 27.02.2019 and order of sentence dated 28.02.2019 passed by learned Chief Judicial Magistrate, Kangra, District Kangra, 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.)*

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

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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 read with Section 142 of the Negotiable Instruments Act (in short, 'NI Act'). It was asserted that the complainant paid ₹55,610/- through a cheque dated 23.11.2010, ₹1,00,000/- through a cheque dated 21.09.2010, and ₹1,00,000/- on 11.08.2011 to the accused. Thus, the complainant had advanced a friendly loan of ₹2,60,000/- to the accused in the years 2010 and 2011. The accused issued a cheque of ₹2,60,000/- in favour of the complainant to discharge the existing debt/liability. The complainant presented the cheque to the bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant issued a notice to the accused, which was returned with the endorsement that the address of the accused was incorrect. Hence, a complaint was filed before the learned Trial Court for taking action against the accused.

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

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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) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of Cr. P.C. denied the complainant's case. He stated that the amount was given to the firm McLeodganj Helpline. He, Pankaj (the complainant), Ramesh and Mohinder were partners of the firm. The cheque pertains to the business transaction of the firm. The amount was received for purchasing the stock of the firm. The complainant did not want to continue in the firm and wanted to sell his share. The cheque was taken from the accused with an understanding that it would not be presented. However, the complainant presented the cheque within one month. The accused had no legal liability towards the complainant. Complainant deposed falsely to extract money from the accused. He examined Ramesh Chand (DW1) to prove his defence.

6. Learned Trial Court held that the accused did not dispute the execution of the cheque. This admission would trigger a presumption that the cheque was issued for consideration to discharge the debt/liability. The version of the accused that the

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money was advanced for purchasing the assets of the firm was not established. The dishonour memo established that the cheque was dishonoured with an endorsement 'insufficient funds'. The notice was sent to the correct address, and it was returned with the endorsement that the addressee was not present at home. 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 and sentenced him to undergo simple imprisonment for six months, pay a compensation of ₹3,50,000/- and, in default, to undergo simple imprisonment for one month.

7. Being aggrieved by the judgment and the order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge Kangra at Dharmshala, District Kangra (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the admission of the signatures on the cheque would trigger a presumption under Section 118(a) and 139 of the NI Act that the cheque was issued for consideration to discharge the liability. The plea taken by the accused that the money was deposited by the complainant in the firm was not probable. The accused failed to

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rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement 'insufficient funds'. The statement of Ramesh Chand (DW1) did not establish the defence taken by the accused. The cheque was dishonoured with an endorsement 'funds insufficient'. The notice was duly sent to the correct address of the accused and was returned with the report that the addressee was not available at home, which is deemed service upon the accused. The learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was not excessive, and no interference was required with the judgment and order passed by the learned Trial Court. Consequently, 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 appreciate the material on record. There was no evidence to show that the cheque was issued to discharge any liability. The testimony of the complainant was not credible, and the learned Courts below erred in relying upon it. The complainant was a partner of McLeodganj Helpline. He did not want to continue with the firm. The cheque was issued by the accused under pressure,

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and the complainant misused it. 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 Ms Pragti, Advocate, vice Mr Digvijay Singh, Advocate for the petitioner. None appeared on behalf of the respondent/complainant. Therefore, none could be heard on behalf of the complainant.

10. Ms Pragti, learned counsel representing the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. As per the complaint, ₹55,610/-, ₹1,00,000/- and ₹1,00,000/- was advanced to the accused on different dates which is ₹2,55,610/- and not ₹2,60,000/-. Therefore, the accused had no liability of ₹2,60,000/-. The cheque could not have been presented for ₹2,60,000/- without making an endorsement. The plea taken by the accused that the amount was paid to Mcleodganj Helpline was duly corroborated by the statement of account in which the payment was shown to have been made to Mcleodganj Helpline and not to the accused. Learned Courts below failed to appreciate the significance of the statement of account. The plea taken by the accused that the cheque was issued towards the investment in the

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firm and not a friendly loan was highly probable. Therefore, she prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. I have given considerable thought to the 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.

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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)
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> > 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. Sauer-***

> ***milch 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 ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, 2025 SCC OnLine SC 2019*** as under: -

> "**5.1.1.** In ***K.R. Indira v. Dr. G. Adinarayana (2003) 8 SCC 300***, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice."

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19. The accused admitted in his statement recorded under Section 313 of the Cr.PC that the cheque bears his signature. He stated that he had handed over the cheque to the complainant under pressure, with an understanding that the cheque would not be presented to the bank. Thus, the signatures on the cheque and the issuance of the cheque are not in dispute. 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. 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."

21. This position was reiterated 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.
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> **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 Singhv. Mukesh Kumar, (2019) 4 SCC 197***].

22. Thus, the learned Courts below were justified in raising the presumption that the cheque was issued in discharge of the liability for consideration.

23. The complainant specifically stated in paragraph 1 of his proof affidavit (Ext.CW1/A) that he had advanced a friendly loan of ₹2,60,000/- to the accused. He had paid ₹55,610/- through a cheque on 23.11.2010, ₹ 1,00,000/- through a cheque dated 21.09.2010 and ₹1,00,000/- to the accused on 11.08.2011. He relied upon the statement of account (Ext.CW1/H) in support of this plea.

24. The statement of account (Ext.CW-1/H) shows that ₹1,00,000/- was paid on 21.09.2010 and ₹55,610/- was paid on

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23.11.2010 to Mcleodganj Help. This statement does not show any payment to the accused Ram Sharma.

25. The complainant admitted in his cross-examination that he and the accused were partners in a partnership firm. He denied that the accused had issued a cheque to cover up the loss of the partnership firm. He stated that he had advanced the friendly loan to the accused because of a previous acquaintance. He specifically denied that he was a business partner with the accused, and he had no reason to advance the friendly loan to the accused. He volunteered to say that the partnership was never acted upon.

26. The admission made by the complainant in his cross-examination that he and the accused were partners in a partnership firm corroborates the version of the accused that the complainant and the accused were partners in McLeodganj Helpline. This version is also corroborated by the statement of account in which the payment has been made to Mcleodganj Helpline and not to the accused.

27. Learned Trial Court did not consider the statement of account (Ext.CW1/H) and proceeded with the presumption attached to the cheque. Similarly, the learned Appellate Court did

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not notice that the complainant had relied upon the statement of account (Ext.CW1/H) but stated that the suggestion of the accused to the complainant regarding the friendly loan would corroborate the version of the complainant. The significance of the statement of account (Ext.CW1/H) and the fact that the amount was shown to have been paid to Mcleodganj helpline and not to the accused was not appreciated by the learned Appellate Court.

28. Therefore, the version of the complainant that he had advanced a sum of ₹2,60,000/- as a friendly loan to the accused was falsified by the statement of account, which showed that the payment was made to M/s Mcleodganj Helpline and not to the accused. The complainant failed to connect the accused to M/s Mcleodganj Helpline, and he failed to demonstrate that the accused was liable to repay the amount taken by the M/s Mcleodganj Helpline.

29. Learned Courts below proceeded on the basis that even if the cheque was issued regarding the business of the firm, it would not absolve the accused of his liability. This conclusion cannot be sustained. If the firm were dissolved, all the partners would be liable and not the accused alone. Further, it was never claimed by the complainant that he had a partnership with the

accused, which was dissolved, and the accused paid the money to him as his share of the partnership firm. It is trite to say that the Court has to find the case set up by a party, and it is impermissible to find a third case which has not been set up by any party. Since the complainant never asserted that the partnership firm was dissolved, it is impermissible to hold the accused liable as a partner of the firm.

30. Learned Courts below proceeded on the basis that the admission of the signatures on the cheque and issuance of the cheque would trigger a presumption under Section 118(a) and 139 of the NI Act. There can be no dispute that the admission of the signatures and issuance of the cheque would attract a liability under Section 118(a) and 139 of the NI Act. However, the presumption is rebuttable, and when the evidence of the complainant shows that the money was paid to M/s Mcleodganj Help and not to the accused, the presumption is rebutted.

31. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275*** that the presumption applies in the absence of evidence and disappears after the production of the evidence. It was observed:

> "38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:
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> > "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule'."

32. Therefore, the judgments and order passed by the learned Courts below cannot be sustained and are ordered to be set aside. The accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine/compensation amount, if deposited by the petitioner/accused be refunded to him after the expiry of the statutory period of limitation in case of no further appeal, and in case of appeal, it shall be dealt with as per the orders of the Hon'ble Apex Court.

33. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave,

the petitioner on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

34. The present petition stands disposed of, so also the pending miscellaneous application(s), if any.

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

(Rakesh Kainthla)
Judge

1st January, 2026
(Nikita)