IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 71 of 2025
Reserved on: 07.04.2026
Decided on: 18 .05.2026

Rupesh Sharma ..... Petitioner

Versus

Murlidhar .... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the Petitioner : Mr B.L. Soni, Advocate.
For the Respondent : Mr Varun Chauhan, Advocate

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 09.01.2025, passed by the learned Additional Sessions Judge, Kullu, District Kullu, H.P. (learned Appellate Court) vide which judgment of conviction and order of sentence dated 17.06.2024 passed by the learned Judicial Magistrate, First Class, Kullu, District Kullu, H.P. (learned Trial Court) were

[1] *Whether the reporters of the local papers may be allowed to see the Judgment?Yes.*

2026:HHC:17934

upheld. *(The 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 complainant is the owner in possession of the fruit-bearing orchard situated at Village Jong Post Office, Katrain, Tehsil and District Kullu, H.P. The accused purchased the fruit from the complainant and issued a cheque of ₹3,50,000/- in the complainant's favour. The complainant presented the cheque to his bank on 02.04.2013, but it was dishonoured with an endorsement 'account closed'. The complainant served a legal notice upon the accused asking him to pay the amount within 15 days. The accused received the notice on 03.05.2013, but failed to pay the amount. Hence, the complaint was filed before the learned trial Court for taking action against the accused as per the law.

2026:HHC:17934

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 (CW-1) and R.K Sharma (CW-2).

5. The accused, in his statement recorded under section 313 of the Code of Criminal Procedure (Cr.P.C.), denied the complainant's case in its entirety. He asserted that he had never carried out the fruit business and had not issued any cheque in the complainant's favour. He had handed over the cheque to Dalveer Thakur because he had money transactions with him. The accused opted to lead defence evidence but failed to produce the evidence. Hence, the learned Trial Court closed the evidence by the order of the Court.

6. Learned trial Court held that the complainant's statement that the accused had issued the cheque to him in discharge of the legal liability was acceptable. The cheque carries with it a presumption under Section 118(a) and 139 of the NI Act that it was issued for consideration to discharge

2026:HHC:17934

debt/liability. The accused failed to rebut the presumption. The cheque was dishonoured with an endorsement account closed, which also attracted the provisions of Section 138 of the NI Act. The notice was duly served upon the accused, but he failed to repay the amount to the complainant. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied; therefore, 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 five months and to pay a compensation of ₹4,75,000/- 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, Kullu District, Kullu, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned trial Court that the statement of the complainant that the accused had handed over the cheque to him regarding the payment of the apple crop was acceptable. A presumption under Section 118(a) read with 139 of the NI Act would be triggered that the cheque was issued for consideration to discharge debt/liability. The accused failed to rebut the presumption. The

2026:HHC:17934

cheque was dishonoured with an endorsement "account closed', which also attracted the provisions of Section 138 of the NI Act. The notice was duly served upon the accused, but the accused failed to repay the amount. He was rightly convicted by the learned Trial Court. The learned Trial Court had imposed an adequate sentence, and no interference was required with it; hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below failed to appreciate the defence of the accused that there existed no legal liability. The complainant failed to produce the documents on record to show that he owned any orchard. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr B.L. Soni, learned counsel for the petitioner, and Mr Varun Chauhan, learned counsel for the respondent.

10. Mr. B.L.Soni, learned counsel for the petitioner, submitted that the learned Courts below erred in appreciating the evidence on record. They proceeded on the basis that the

2026:HHC:17934

accused had admitted his signature on the cheque, and a presumption under Section 118(a) and Section 139 of the NI Act would be attracted to the present case. The accused had specifically denied in his statement recorded under Section 313 of the Cr.P.C. that the cheque bore his signature or that he owed any liability to the accused. Therefore, the burden was upon the complainant to prove the existence of legal liability. The complainant did not produce the record of his orchard to support the version that the accused had purchased the apple crop from him. The learned courts below did not appreciate this aspect. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Varun Chauhan, learned counsel for the respondent, submitted that both the learned Courts below have concurrently held that the accused had issued a cheque and the presumption under Sections 118(a) and 139 of the NI Act would be triggered. This is a concurrent finding of fact, and this court should not reappreciate the evidence while deciding a revision. Hence, he prayed that the present revision be dismissed.

2026:HHC:17934

12. I have given a 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 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.

2026:HHC:17934

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

2026:HHC:17934

> 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

2026:HHC:17934

> 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

2026:HHC:17934

> 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."

2026:HHC:17934

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

18. The ingredients of an 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.

19. The accused filed an application under Section 145 of the NI Act for cross-examination of the complainant and the witnesses, stating that he wanted to cross-examine the witnesses as the cross-examination was essential for the just

2026:HHC:17934

decision of the complaint. He had not put forward any plea in this application.

20. The complainant, Murlidhar (CW-1), denied in his cross-examination that the accused had handed over two signed blank cheques to Dalveer or that a signed blank cheque was filled by Dalveer Thakur, and the second cheque was handed over to him.

21. The accused also stated in his statement recorded under Section 313 of Cr.P.C. that he had handed over the cheques to Dalveer because he had monetary transactions with him. The accused opted to lead defence evidence but did not produce the 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 of Cr.P.C. is not sufficient to rebut the presumption. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the*

2026:HHC:17934

> *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)"

22. Therefore, the plea taken by the accused that the cheque was handed over to Dalveer cannot be accepted.

23. The conduct of the accused does not support the plea taken by him. There is no evidence that the accused had made any complaint to the police or the bank regarding the misuse of the cheque by Dalveer. He suggested to the complainant that Dalveer had misused one cheque. Therefore, it was possible for him to misuse another cheque, and any prudent person would have informed the bank regarding the possible misuse of the cheque. The accused had not made any complaint to the police or the bank regarding the possible misuse of the cheque, and his plea that he had handed over the cheques to Dalveer, who had misused them, was not acceptable.

24. The accused suggested in the cross-examination that a blank signed cheque was handed over to Dalveer, which shows that the signatures on the cheque are not disputed. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC***

2026:HHC:17934

355 that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383: -

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
>
> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
>
> ****
>
> **42.** Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

25. Therefore, learned Courts below had rightly held that the signature and the issuance of the cheque were not in dispute, and the presumption under Section 118(a) and 139 of the NI Act would be triggered that the cheque was issued for consideration to discharge the liability. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti***

2026:HHC:17934

International Fashion Linkers (2020) 12 SCC 724, that when the signature on the cheque is 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 and 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 a 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

2026:HHC:17934

debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

26. 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."

27. 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*
>
> 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).

2026:HHC:17934

> 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***].

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

29. It was submitted that the complainant had not produced the evidence of the ownership of the orchard, and the learned Courts below wrongly accepted the complainant's version that he is the owner of the orchard and had sold the apple crop to the accused. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361***, that a presumption under Section 139 of the NI Act would obviate the requirement to prove the existence of consideration. It was observed:

> **"20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the

2026:HHC:17934

recovery of the amount due. An dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

30. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

> "**22.** The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did

2026:HHC:17934

not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

> '*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound.* ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.*** *In this regard, we may make profitable reference to the decision in* ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735:***
>
> > '*10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in***

2026:HHC:17934

> ***the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts in our view were right in holding on those lines. However, the* ***accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, further achieve this result through the cross-examination of the witnesses of the complainant.*** *Ultimately,* ***it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.****'(emphasis supplied)' (underlining in original; emphasis supplied by us in bold).*

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

> "21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not

2026:HHC:17934

> giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged."

32. Therefore, the case of the complainant cannot be doubted because the record regarding the ownership/possession of the orchard was not produced.

33. The plea taken by the accused that he had issued the cheques as security to Dalveer was not proved by any evidence on record. Therefore, learned Courts below had rightly held that the cheque was issued in favour of the complainant to discharge the debt/liability.

34. The complainant stated that the cheque was dishonoured with an endorsement account closed. This is duly corroborated by the dishonoured memo (Ext.CC) in which the reason for dishonour has been mentioned as 'account closed'. 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

2026:HHC:17934

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.

35. It was laid down by the Hon'ble Supreme Court in *NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253: 1999 SCC (Cri) 524: 1999 SCC OnLine SC 508,* that when a cheque is dishonoured due to the account being closed, it will attract the provision of Section 138 of N.I. Act. It was observed at page 258:

> **7.** Further, the offence will be complete only when the conditions in provisos (*a*), (*b*) and (*c*) are complied with. Hence, the question is, in a case where a cheque is returned by the bank unpaid on the ground that the "account is closed", would it mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque"? In our view, the answer would obviously be in the affirmative because the cheque is dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time, apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being

2026:HHC:17934

closed" is a species. After issuing the cheque drawn on an account maintained, a person, if he closes "that account", apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138, as there were insufficient or no funds to honour the cheque in "that account". Further, the cheque is to be drawn by a person for payment of any amount of money due to him "on an account maintained by him" with a banker and only on "that account" the cheque should be drawn. This would be clear by reading the section along with provisos (*a*), (*b*) and (*c*).

****

15. In view of the aforesaid discussion, we are of the opinion that even though Section 138 is a penal statute, it is the duty of the court to interpret it consistently with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence, and the legislative purpose is to promote the efficacy of banking and ensure that in commercial or contractual transactions, cheques are not dishonoured, and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and shew the transactions in their true light" (Wilmot, C.J.) or (by Maxwell) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited". Hence, when the cheque is returned by a bank with an endorsement "account closed", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

2026:HHC:17934

36. This Court also took the same view in ***Bal Krishan Sharma v. Tek Ram, 2006 SCC OnLine HP 105: 2006 Cri LJ 1993*** and observed:

> "**9.** The provisions contained in this chapter are primarily designed to provide an additional criminal remedy, over and above the civil remedies available to the payee or holder in due course of a cheque. This chapter protects the interests of a payee or holder in due course of a dishonoured cheque. The object of the chapter is to enhance the acceptability of the cheque in the settlement of financial liabilities by making the drawer liable for penalties. It is noticed that for establishing the requirements of Section 138, there is no burden on the part of the complainant to prove before a Court the entire details of the transactions resulting in the issuance of the cheque. As observed by the Apex Court in ***Kusum Ingots and Alloys Limited v. Pennar Peterson Securities Ltd., II (2000) SLT 375: I (2000) CCR 260 (SC): I (2000) BC 300: (2000) 2 SCC 745***, the object of bringing Section 138 on statute is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Looking at the object of incorporating Chapter VIII in the Act, the expression "on account maintained by him" used in Section 138 of the Act, as noticed above, cannot be interpreted to give it an artificial or unrealistic meaning. What the provision says is that the cheque must be drawn on the account that the accused *maintained* with the Bank. The status of the account, when the cheque was drawn, whether it was *live* or *dead*, is irrelevant. What the provision says is that the accused must have an account that is maintained or has been maintained with the Bank. The Legislature has not used the present continuous tense. The expression used is "on an account maintained by him" and not "maintained by him". The cheque, in my view, should have a reference to an account of the accused, irrespective of the fact whether such an account was *live* or *dead* on the date of issuance of the cheque. The

2026:HHC:17934

interpretation of the expression "on an account maintained by him" as given by the learned Trial Magistrate and contended by the learned Counsel for the accused is artificial and beyond the legislative intent. While interpreting the provision, the legislative purpose and goal have to be kept in mind. We cannot lose sight of the fact that in this era, financial transactions are not dependent on cash and therefore financial transactions by other modes, including "cheques", have to be attached to credibility.

10. The following observations of the Supreme Court in ***NEPC Micon Ltd. v. Magma Leasing Ltd., II (2006) BC 316 (SC): IV (1999) SLT 254: III (1999) CCR 4 (SC) : (1999) 4 SCC 253***, are apposite:

> "10. This Court in the case of *Kanwar Singh* v. *Delhi Admn.* While construing Section 418(i) of the Delhi Municipal Corporation Act, 1959, observed—
>
> > 'It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the Legislature, which is to suppress mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.
>
> 11. Further, while interpreting the statutory provision rule dealing with penalty under the Drugs and Cosmetics Act, 1940 and the rules in the case of ***Swantraj v. State of Maharashtra***, this Court held that every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the one from the rule in *Heydon's case* of suppressing the evil and advancing the remedy. The Court held that what

2026:HHC:17934

must tilt the balance is the purpose of the statute, its potential frustration and judicial avoidance of the mischief by a construction whereby the means of licensing meet the ends of ensuring pure and potent remedies for the people. The Court observed that this liberty with language is sanctified by great Judges and textbooks. *Maxwell* instructs us in these words—

> "There is no doubt that the office of the Judge is to make such construction as will suppress the mischief, and advance the remedy, and suppress all evasions for the continuance of the mischief. To carry out effectively the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: '*quando aliquid prohibetur, prohibetur et omne pe quod devenitur ad illud*.'

11. This manner of construction has two aspects. One is that the Courts, mindful of the mischief rule, will not be averse to narrowing the language of a statute so as to allow persons within its purview to escape its net. The other is that the statute may be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby falling outside the Act. When the Courts find an attempt at concealment, they will, in the words of Wilmot, C.J., 'brush away the cobweb varnish, and show the transactions in their true light'."

12. Their Lordships proceeded to observe:

> "15. In view of the aforesaid discussion, we are of the opinion that even though Section 138 is a penal statute, it is the duty of the Court to interpret it consistently with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the

2026:HHC:17934

> Act has created a contractual breach as an offence, and the legislative purpose is to promote the efficacy of banking and ensure that in commercial or contractual transactions, cheques are not dishonoured, and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and show the transactions in their true light" (Wilmot C.J.) or (by *Maxwell*) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited" Hence when the cheque is returned by a Bank with an endorsement "account closed". It would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

13. If the interpretation as contended by the learned Counsel for the accused and the Trial Court is to be accepted, then a person who receives the cheque will have to ensure that the account is alive. If he does not, he runs the risk of losing his money and the denial of benefits under Section 138 of the Act. This certainly cannot be the legislative intent. Any account holder with the intent to defeat the provisions of Section 138 of the Act may retain a cheque leaf after closing his account with the Bank to defraud any honest payee. Should such a dishonest account holder be permitted to escape the proceedings under Section 138 of the Act?

14. Learned Counsel for the accused would contend that the observations in ***NEPC Micon Limited*** were that if a cheque is dishonoured on the ground that the account is closed then it would come within the sweep of Section 138 of the Act but if the cheque is issued on a closed

2026:HHC:17934

> account, then such an act of a dishonest person would not fall within the mischief of Section 138 of the Act. It is true that the ***NEPC case*** does not specifically deal with the cheques issued on accounts closed prior to the date of issuance of the cheque. Nevertheless, this case does not indicate that such cases are intended to be taken out of the sweep of Section 138 of the Act. In my opinion, the expression "on an account maintained by him" necessarily includes an account which was maintained by him, *i.e.*, the account which has been closed, as also the account which is still maintained by him.
>
> **15.** The Supreme Court in ***N.A. Issac v. Jeemon P. Abraham, III (2006) BC 422 (SC): VI (2004) SLT 154: IV (2004) CCR 124 (SC): 2005 (1) Civil Court Cases 690 (SC)***, interpreted Section 138 of the Act and observed that contention that this provision will not be applicable when the cheque is issued from an already closed account cannot be upheld as such an interpretation would defeat the object of insertion of the provision in the Act. Their Lordships observed: "Section 138 does not call for such a narrow construction". Their Lordships approved that the expression used in Section 138 of the Act includes the cheques issued on a closed account.
>
> **16.** For the reasons recorded above, the findings recorded by the Trial Magistrate holding that Section 138 of the Act is not applicable to a cheque drawn on a closed account, cannot be upheld."

37. Thus, the accused would be liable for the commission of an offence punishable under Section 138 of N.I. Act when the cheque was dishonoured with an endorsement of the account closed.

38. The complainant stated that he had issued a notice to the accused, which was duly served upon him. He denied in his cross-examination that the accused had not received the

2026:HHC:17934

notice. A denied suggestion does not amount to any proof. Learned Courts below had rightly held that even if the notice was not served upon the accused, he had an option of paying the money within 15 days of the receipt of the summons from the Court. It was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court, along with a copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act.* In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium

2026:HHC:17934

> to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act." (Emphasis supplied)

39. The accused did not claim that he had repaid the amount to the complainant; therefore, it was duly proved on record that the accused had failed to repay the amount despite the deemed receipt of the notice

40. Therefore, it was duly proved before the learned Trial Court that the accused had issued a cheque to discharge his legal liability, the cheque was dishonoured with an endorsement 'insufficient funds', and the accused had failed to pay the money despite the receipt of a notice of demand. Hence, all the ingredients of the offence punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused for the commission of the offence punishable under Section 138 of the NI Act.

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

> "6. The object of Section 138 of the Negotiable

2026:HHC:17934

> 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."

42. Keeping in view the deterrent nature of the sentence to be awarded, the sentence of six months of simple imprisonment cannot be said to be excessive, and no interference is required with it.

43. The learned Trial Court had directed the accused to pay a fine, in the form of compensation of ₹4,75,000/-. The cheque was issued on 25.03.2013, and the sentence was imposed by the learned Trial Court on 17.06.2024. 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

2026:HHC:17934

> 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***]"

44. In the present case, the cheque was issued for an amount of ₹3,50,000/- and the interest accrued @ 9% per annum for 11 years is ₹3,46,500/-Learned Trial Court only awarded a compensation of ₹4,75,000/-, which included the cheque amount of ₹3,50,000/-. Therefore, a compensation of ₹1,25,000/- was awarded, which cannot be said to be excessive, and no interference is required with the sentence awarded by the learned Trial Court.

45. No other point was urged

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

47. The records of the learned Courts below be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

18th May, 202
(ravinder)