IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 591 of 2022
Reserved on: 19.12.2025
Date of Decision: 1.1.2026.

Sandeep Kumar Sharma ...Petitioner

Versus

PNB ...Respondent

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

For the Petitioner : Mr. Nishant Khidtta, Advocate, Legal Aid Counsel.

For the Respondent : Mr. Sanjay Dalmia, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 21.10.2022, passed by learned Sessions Judge, Bilaspur, H.P. (learned Appellate Court), vide which the judgment of conviction dated 5.1.20022 and order of sentence dated 7.5.2022, passed by learned Chief Judicial Magistrate, Bilaspur, District Bilaspur, HP (learned Trial Court) were upheld *(Parties shall*

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

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 (NI Act). It was asserted that the complainant is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act. It is engaged in banking activities through various branches, and one such branch is located at Bilaspur. The accused approached the complainant for a term loan of ₹26,66,000/- for the purchase of a new AMW 2518 Tipper. The complainant sanctioned the loan and advanced a sum of ₹26,66,000/- to the accused. The amount was to be repaid in 58 equated monthly instalments of ₹45,966/- along with a contractual interest at the rate of 12.5% per annum with monthly rests. It was agreed that in case of default, a penal interest at the rate of 2% would be charged, subject to the change as per the RBI Guidelines issued from time to time. The accused defaulted on the repayment of the loan. He issued a cheque of ₹9,95,000/- to discharge part of his liability.

The complainant presented the cheque to the Bank, but it was dishonoured with an endorsement 'insufficient funds'. The complainant sent a legal notice to the accused, but it was returned with an endorsement 'unclaimed' and is deemed to be served. The accused failed to repay the amount. Hence, the complaint was filed before the learned Trial Court for taking action against the accused as per the law.

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

4. The complainant examined Ludar Ram (CW1) to prove its complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he had approached the bank for the term loan of ₹26,66,000/-. He admitted that the loan was to be repaid in 58 equated monthly instalments along with the contractual interest at the rate of 12.5% per annum with monthly rests, and 2% penal interest was to be charged in case

of default. He admitted that the cheque was dishonoured with the remarks ‘insufficient funds’. He stated that the complainant had taken the vehicle into possession. He was told that the cheque case would be withdrawn. He stated that he wanted to lead the defence evidence; however, he failed to produce the evidence despite repeated opportunities, and the learned Trial Court closed the evidence of the accused on 22.12.2021. He filed an application under Section 311 of Cr.P.C. for placing the statement of account on record, which was allowed.

6. Learned Trial Court held that the accused had admitted the taking of a loan from the complainant. The statement of Ludar Ram (CW1) that the accused had issued a cheque in discharge of the partial liability was not challenged in the cross-examination. The statement of account proved the liability of the accused. The cheque was dishonoured with an endorsement ‘insufficient funds’. The notice was deemed to be served upon the accused, and he failed to repay the amount despite the deemed service of notice. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to

undergo simple imprisonment for two years and pay a compensation of ₹13.00 lacs.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Bilaspur, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque by the accused was not disputed in the cross-examination. The accused admitted that he had taken a loan from the complainant in his statement recorded under Section 313 of Cr.P.C. The statement of account (Ex.D1) shows that an amount of ₹35,35,506/- was due on 28.2.2017. The plea taken by the accused that the cheque was issued as a security would not assist the accused because a security cheque also attracts the liability under Section 138 of the NI Act. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present

revision, asserting that the learned Courts below failed to appreciate the fact that the bank had repossessed the hypothecated vehicle. The loan was secured under CGTSME, and the insurance amount was claimed by the Bank. This amount was not deducted by the bank while calculating the balance. The plea taken by the accused that he had issued the cheque as security is highly probable. Learned Courts below erred in rejecting this plea. The loan amount has been recovered by the bank, and no further payment is to be made. 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 Nishant Khidtta, learned Legal Aid Counsel for the petitioner/accused and Mr Sanjay Dalmia, learned counsel for the respondent/complainant.

10. Mr Nishant Khidtta, learned Legal Aid Counsel for the petitioner/accused, submitted that the learned Courts below erred in convicting and sentencing the accused. Ludar Ram admitted that the bank had sold the hypothecated vehicle. The bank had also received the money under the CGTSME Scheme. Neither of these amounts was credited by the bank to the

account of the accused. The accused has no subsisting liability. Learned Trial Court had imposed two years imprisonment, which is the maximum sentence, and no justification for imposing the maximum sentence was given. Hence, he prayed that the present revision be allowed and judgments and order passed by learned Courts below be set aside.

11. Mr Sanjay Dalmia, learned counsel for the respondent/complainant, submitted that the accused admitted in his statement recorded under Section 313 Cr.P.C. that he had taken the loan for purchasing the vehicle. The statement of account shows that the sale was made after the dishonour of the cheque. The amount was duly credited to the account of the accused. The plea taken by the accused that the whole amount has been paid to the bank is falsified by the statement of account. Learned Courts below have concurrently held that the accused had committed an offence punishable under Section 138 of the NI Act. This Court should not reappreciate the evidence while exercising revisional jurisdiction. Hence, he prayed that the present petition be dismissed.

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

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

> "**10.** Before 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."

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.
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> **15.** It would be apposite to refer to the judgment of this Court in ***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."

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)
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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

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

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

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to

> act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

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

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

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

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

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

19. 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."

20. It was specifically stated in para-3 (iii) of the Revision Petition that the accused had issued the cheque as security while executing the agreement, and the bank had assured the accused that it was a process of raising the loan. The statement of Ludar Ram (CW1) in his affidavit that the accused had issued a cheque to discharge part of the liability was not challenged in the cross-examination. Therefore, both the learned Courts below had rightly held that the issuance of the cheque and the signatures on the cheque were 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."

21. 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."

22. 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 Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

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

24. The complainant admitted in his statement recorded under Section 313 of Cr.P.C. that he had taken the loan of ₹26,66,000/-, which was to be repaid in 58 equal monthly instalments along with a contractual interest at the rate of 12.5% per annum. Thus, the taking of a loan and the rate of interest are not in dispute.

25. The accused filed a statement of account (Ex. D1) which shows that an amount of ₹35,35,506/- was due on 28.2.2017. Thus, the accused had a subsisting liability of more than ₹9,95,000/- on 7.3.2017, the date of issuance of the cheque. Thus, the defence evidence supports the complainant's version that the accused was liable to pay the amount mentioned in the cheque.

26. It was submitted that the cheque was issued as security. This plea will not help the accused. It has been found above that the accused had a liability of more than the cheque amount on the date of issuance of the cheque. Therefore, the

complainant had the authority to present the cheque even if it was issued as security. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456***, that even if the cheque is issued towards the security, the accused is liable. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security, and on this ground, the criminal revision petition is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

27. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458*** that issuing a cheque toward security will also attract the liability for the commission of an offence punishable under Section 138 of the NI Act. It was observed: -

"10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*

11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in ***Indus Airways (supra)*** is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for the discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of ***Indus Airways (supra)***, where the purchase order had been cancelled, and a cheque issued towards advance payment for the pur-

> chase order was dishonoured. In that case, it was found that the cheque had not been issued for the discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature, where the cheque was for repayment of a loan instalment which had fallen due, though such a deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.
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> 13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court." (Emphasis supplied)

28. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is

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given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security, cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note', and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute.

> When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

29. Therefore, the accused cannot escape from the liability on the ground that he had issued the cheque as security to the complainant.

30. It was submitted that the bank had sold the vehicle, and the payment was not credited to the account. This submission is incorrect. The statement of account (Ex. D1) shows that ₹3,02,000/- and ₹9,08,000/- were credited in the account of the accused on 15.12.2017 and 29.12.2017, respectively, towards the sale proceeds. Further, this amount was realised after the dishonour of the cheque and will not affect the liability of the accused. It was laid down by the Hon'ble Supreme Court in ***Rajneesh Aggarwal v. Amit J. Bhalla*, *(2001) 1 SCC 631*,** that any payment made after the cause of action had arisen would not wipe out the offence. It was observed:-

> "**7.** So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fides, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of the deposit of money in the court or that an order of quashing of a criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence."

31. Therefore, no advantage can be derived from the sale proceeds recovered by the complainant after the dishonour of the cheque.

32. The statement of account (Ex.D1) shows that the CGTMSE claim was credited on 27.11.2017 and was debited on 30.12.2017 and 23.1.2018. It was submitted that this amount was realised by the complainant and should not have been debited from the account of the accused. This submission cannot be

accepted. It was laid down by the Kerala High Court in ***Ajeet Kumar Kurup v. State Bank of Travancore WP (c) No. 25332 of 2016, decided on 19.08.2016,*** that the CGTMSE Scheme is an insurance scheme to protect the interest of the bank, and the benefits are to be reimbursed after realising the dues from the borrower. It was observed:

> "3. As noted above, the case of the petitioners is that since the credit facility availed by the second petitioner is covered by the CGTMSE Scheme, they have no liability to liquidate the outstanding in the account. The petitioners, having obtained a judgment from this Court earlier permitting them to liquidate the liability in the loan account in instalments, according to me, are not entitled to file a fresh writ petition on the aforesaid ground. In other words, this is a contention which might, and ought to have been raised in the earlier writ petition. Further, there is also no substance in the contention of the petitioners that they have no liability to liquidate the outstanding in the loan account since the credit facility availed by the second petitioner is covered by the CGTMSE Scheme. CGTMSE Scheme is an insurance scheme to protect the interest of the banks in the event of default by the borrowers, and the premium payable for the coverage of the loan under the scheme is debited from the account of the borrowers based on the terms of the agreements executed by the borrowers. The benefits of the Scheme are to be reimbursed by the banks after realising the dues from the borrowers concerned. If the contention of the petitioners is accepted, the borrowers will have no obligation to repay the loans/credit facilities availed."

33. A similar view was taken by this Court in ***Jeet Ram Vs. HP Gramin Bank 2023:HHC:2849***, wherein it was observed:-

> "11. During proceedings of the case, Ms. Devyani Sharma, learned senior counsel appearing for the respondent-complainant/bank invited attention of this court to Credit Guarantee Fund Scheme for Micro and Small Enterprises, under which, some amount is alleged to have been recovered, to state that amount, if any, recovered under this scheme is liable to be repaid to the Central Government."

34. A similar view was taken in ***Indian Overseas Bank vs. Global Marine Products 2003 STPL 580 Kerala,*** wherein it was observed:

> "9. The appellant has contended that though the total loss claimed by the appellant was much more, the ECGC of India Ltd. admitted only a lesser amount and paid the same. It is clear from Clause 18 of Ext. A65 agreement entered into between the appellant and the ECGC of India Ltd. that the amount paid by the Corporation to the appellant is on condition that the appellant should institute recovery proceedings against exporter or any other person from whom such recovery can be effected towards the insured debt and after recovery the amount as well as the cost incurred for recovery should be apportioned between the appellant and the ECGC of India Ltd. in accordance with the proportion stipulated in the agreement. Therefore, the payments made by the ECGC to the appellant, being insured is only for the purpose of making good the proportionate loss admitted by the ECGC, subject to recovery of the same under due process of law from the exporter or from any other person from whom such amount can be recovered and apportioned as per the ratio provided in the insurance agreement. Hence,

> that amount paid by the ECGC to the appellant in terms of the insurance agreement cannot be credited to the account of the first defendant exporter from whom the amounts are due and to be recovered by the appellant towards the claim."

35. Therefore, the submission that the accused is entitled to the benefit of the money under the CGTMSE Scheme cannot be accepted.

36. The accused did not produce any evidence to rebut the presumption. He relied upon his statement recorded under Section 313 Cr.P.C. to establish his 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. 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)"

37. Therefore, no advantage can be derived from the statement of the accused recorded under Section 313 of Cr.P.C.

38. There is no other evidence to show that the cheque was not issued in discharge of the debt/liability, hence the learned Courts below had rightly held that the accused had failed to rebut the presumption contained under Section 118 (a) and Section 139 of the NI Act.

39. Ludar Ram (CW1) stated that the cheque was dishonoured with an endorsement 'insufficient funds'. He filed the return memo (Ex.C3). The accused admitted in his statement recorded under Section 313 Cr.P.C. that the cheque was dishonoured with the remarks 'insufficient funds'. Therefore, the plea of the complainant that the cheque was dishonoured because of insufficient funds has to be accepted as correct.

40. Ludar Ram (CW1) stated that a notice was issued to the accused, which was returned with the report 'unclaimed'. His statement is corroborated by the envelope (Ex.C6) in which an endorsement was made that 'the addressee was not residing at the address mentioned in the notice.' This was the same

address upon which the service of the accused was effected. The accused also furnished the same address in his statement recorded under Section 313 Cr.P.C. and the notice of accusation. Therefore, the notice was sent to the correct address. It was laid down by the Hon'ble Supreme Court in ***D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456: (2006) 3 SCC (Cri) 114: 2006 SCC OnLine SC 629***, that a notice returned with an endorsement "house locked" would lead to a presumption that the notice was validly served and the burden would be upon the accused to show that the report is incorrect. It was observed at page 462:

> "**14.** If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly, if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc. etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him, and consequently, he can never be prosecuted. There is good authority to support the proposition that once the complainant, the payee of the cheque, issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he

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does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the post-man for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice, which may be returned with an endorsement that the addressee is not available at the given address.

xxxxx

18. This Court noticed the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case, the notice was returned as "unclaimed" and not as refused. The Court posed the question, "Will there be any significant difference between the two so far as the presumption of service is concerned?" Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. This Court dismissed the appeal preferred by the drawer, holding that where the notice is returned by the addressee as unclaimed, such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (*c*) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. The aforesaid decision is significant for two reasons. Firstly, it

> was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

41. It was laid down by the Hon'ble Supreme Court of India in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that when a notice is returned unclaimed, it is deemed to be served. It was observed:

> "8. Since in ***Bhaskaran's case (supra)***, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service."

42. This position was reiterated in ***Priyanka Kumari vs. Shailendra Kumar (13.10.2023- SC Order): MANU/ SCOR/ 133284/ 2023,*** wherein it was observed:

> "As it was held by the Hon'ble Supreme Court in ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another,***

*(1999) 7 Supreme Court Cases 51*0, that when notice is returned as 'unclaimed', it shall be deemed to be duly served upon the addressee, and it is a proper service of notice. In the case of ***Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014) 12 SCC 685 (2014)***, the Hon'ble Court, while interpreting Section 27 of the General Clauses Act 1897 and also Section 114 of the Evidence Act 1872, held as under: -

> "Section 114 of the Evidence Act, 1872, enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that, despite the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

43. A similar view was taken in ***Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458,*** wherein it was observed:

> **"13.** Section 27 of the General Clauses Act, 1887, deals with service by post:
>
> > "27. **Meaning of Service by post.**-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the

> expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

14. The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:

> 14.1 In ***Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264,*** which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*"
>
> 14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881 it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to

> file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: ***C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555***]
>
> 14.3 The findings in ***C.C. Alavi*** (supra) were followed in***Vishwabandhu v. Srikrishna (2021) 19 SCC 549***. In this case, the summons issued by the Registered AD post was received back with endorsement "refusal". In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.
>
> 14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506***; and ***V.N. Bharat v. DDA (2008) 17 SCC 321***.

44. In the present case, the accused has not proved that he was not responsible for non-service; therefore, the learned Courts below had rightly held that the notice was deemed to be served upon the accused.

45. Therefore, it was duly proved on record that the accused had issued a cheque in discharge of his liability, which was dishonoured with an endorsement 'funds insufficient', and the accused failed to repay the amount despite the deemed service of notice upon him. Hence, all the ingredients of commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Thus, the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

46. The learned Trial Court sentenced the accused to undergo simple imprisonment for two years, which is the maximum sentence provided by the legislature for the commission of an offence punishable under Section 138 of the NI Act. 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 NI 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."

47. The learned Trial Court or the learned Appellate Court have not assigned any reason as to why the maximum sentence should have been awarded. No aggravating circumstances justifying the imposition of the maximum sentence were brought on record. Hence, the sentence of two years cannot be upheld.

48. The cheque was issued in the year 2017. The accused had to face the agony of trial. He pursued the remedy of appeal and revision and has spent about eight years in litigation. Keeping in view the time spent by the accused and the deterrent nature of the crime, the sentence is reduced to six months' imprisonment.

49. Learned Trial Court ordered the payment of compensation of ₹13.00 lacs. The cheque amount was ₹9,95,000/- and the cheque was issued on 7.3.2017. The sentence was imposed on 7.5.2022 after the lapse of more than five years. The complainant had lost interest that it would have gained by advancing the loan to other persons. It had to engage a

counsel to pursue the complaint before the learned Trial Court. 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***]"

50. Therefore, the amount of ₹13.00 lacs cannot be said to be excessive, and no interference is required with it.

51. No other point was urged.

52. In view of the above, the revision is partly allowed, and the sentence of two years imprisonment imposed by the learned Trial Court is reduced to six months imprisonment.

Subject to this modification, the rest of the judgments and order passed by the learned Courts below are upheld.

53. A copy of this judgment along with records of the learned Courts below be transmitted forthwith.

(Rakesh Kainthla)
Judge

1st January, 2026
(Chander)