

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No.34 of 2026****Reserved on: 09.01.2026.****Decided on: 25.02.2026**

Santokh Singh**..... Petitioner****Versus****Baldeep Singh****.... Respondent**

Coram**The Hon'ble Mr Justice Rakesh Kainthla, Judge.*****Whether approved for reporting?¹ No*****For the Petitioner:****Mr Suneet Goel, Senior Advocate,
with Mr Vivek Negi, Advocate.****For the Respondent:****None.**

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 27.11.2025 passed by learned Additional Sessions Judge, Nalagarh, District Solan, H.P. (learned Appellate Court) vide which judgment of conviction dated 14.12.2023 and order of sentence dated 19.12.2023 passed by learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P. (learned Trial Court) were upheld. (*Parties shall hereinafter be referred*

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

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 parties had good relations. The accused needed money to run his transport business. He sought financial help from the complainant. The complainant advanced ₹2,70,000/- to the accused. The accused issued a post-dated cheque for ₹2,70,000/- drawn on Punjab National Bank, Nalagarh, to discharge his debt. The complainant deposited the cheque at his bank, and it was dishonoured with an endorsement "insufficient funds". The complainant issued a demand notice to the accused asking him to pay the amount of ₹2,70,000/- within 15 days. Notice was served upon the accused on 3.7.2019, but he failed to pay the money. Hence, a complaint was filed before the learned Trial Court against the accused for taking action as per law.

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

4. The complainant examined himself (CW1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 Cr. P.C., did not dispute his signature on the cheque and the service of notice upon him. He did not produce any evidence in defence.

6. Learned Trial Court held that the issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused failed to produce any evidence to rebut the presumption. It was suggested by the accused to the complainant that the accused had paid ₹20,000/- to the complainant against liability, which corroborated the complainant's version that the accused had a subsisting liability towards the complainant. The cheque was dishonoured with an endorsement "insufficient funds", and the notice was duly

served upon the accused. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act, and sentenced him to undergo simple imprisonment for six months, pay a compensation of ₹4,00,000/- and, in default of payment of compensation, to undergo simple imprisonment for one month.

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, Nalagarh (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused did not lead any evidence to rebut the presumption. The cheque was dishonoured with an endorsement “insufficient funds”. Notice was duly served upon the accused, and he failed to repay the amount despite receipt of a valid notice of demand. The learned Trial Court had rightly convicted the accused. The sentence imposed by the learned

Trial Court was adequate, and no inference 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 erred in appreciating the material placed before them. The complainant failed to prove the existence of a legally enforceable debt/liability. The accused had denied the existence of any debt, and the burden was upon the complainant to establish the existence of a debt. The complainant asserted in the complaint that the cheque was issued as financial help, but stated in his cross-examination that the cheque was issued to pay the instalment of the vehicle. He failed to examine his father, in whose presence the financial help was provided. He did not produce the Income Tax Return to show his financial capacity to advance the loan. 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. Mr. Suneet Goel, learned Senior Advocate, assisted by Mr Vivek Negi, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating

the material placed before them. The complainant had not mentioned the nature of the debt/liability in the complaint or the date on which the financial help was provided. There were discrepancies in the evidence and the averments made in the complaint, and the learned Courts below failed to notice it. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set-aside.

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

11. 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 advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397

of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

12. This position was reiterated in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for

the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

13. It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275*], while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise 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 reappraising 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.”

14. 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.”

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

16. 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.

17. The accused did not dispute his signature or the issuance of the cheque in his statement recorded under Section 313 of Cr.P.C. It was suggested to the complainant in his cross-examination that the accused had paid ₹20,000/- out of his liability during the pendency of the proceedings. Learned Courts below had rightly held that this suggestion corroborated the complainant's version regarding the existence of liability. 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.”

18. It was laid down 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.”

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

“ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NIACT 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).

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 rebuttable. 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*].

20. 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.

21. It was submitted that the complainant had not mentioned the nature of the liability or the date of advancing the loan to the accused; therefore, the complaint is bad, and no action could have been taken on it. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234: 2001 SCC OnLine SC 1364* that there is no

requirement of mentioning the subsisting liability in the complaint because it is a matter of presumption. It was observed at page 240: -

17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them, the High Court could not have concluded that there was no existing debt or liability.

22. This judgment was followed by Kerala High Court in **B. Surendra Das versus State of Kerala, 2019 STPL 12260 Kerala**, wherein it was observed:-

12. It is contended by the petitioner that there is no specific averment in the complaint that the cheque was issued in discharge of the amount allegedly borrowed by him from the complainant. There is no need to make such a specific averment in the complaint. There is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability (See **M.M.T.C Limited v. Medchil Chemicals and Pharma (P) Limited, (2002) AIR SC 182**).

23. The complainant admitted in his cross-examination that the handwriting of the cheque and the signature were different. This will not make any difference. It was laid down by the Hon'ble Supreme Court in **Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197**, that a person is liable for the commission of an offence punishable under Section 138 of the Negotiable

Instruments Act even if the cheque is filled by some other person. It was observed:

“37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in the discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill in the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

39. It is not the case that the respondent accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of the exercise of undue influence or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with

knowledge of the law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft, or a receipt might not have been obtained, would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed a blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.”

24. This position was reiterated in *Oriental Bank of Commerce vs. Prabodh Kumar Tewari 2022 O Supreme (SC) 837*,

wherein it was observed:

“12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.

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15. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces

evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.”

25. Therefore, the cheque is not bad even if it is not filled in by the drawer.

26. The accused did not step into the witness box to establish this version. It was held in *Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201* that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under section 313 is not sufficient 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 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)”

27. The complainant stated in his cross-examination that his bus was attached to the Indian Cord Clothing company. He used to earn ₹1,10,000/- per month and ₹13,00,000/- per

year. This part of the statement has remained unshaken, and there is nothing to show that he was making a false statement. Thus, the financial capacity of the complainant to advance the money was proved.

28. The complainant stated in his cross-examination that the money was paid in the presence of his father. It was submitted that the complainant's father was not examined, and there is no corroboration of the complainant's testimony regarding the advancement of a loan 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 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.”

29. 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 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 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).

30. 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 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.”

31. Therefore, the complainant's case cannot be doubted because of the non-examination of his father.

32. The complainant admitted in his cross-examination that he used to file an Income Tax Return. He had filed the Income Tax Return of ₹5,00,000/- at the relevant time. It was submitted that the complainant had not produced his Income Tax Return to show that he had mentioned the amount advanced to the accused in the return. This submission will not help the accused. Even if it is presumed, for the sake of argument that the amount was not reflected in the Income Tax Return, it would not make any difference to the complainant's case. It was laid down by this Court in *Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45* that the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed: -

10. It would further be noticed that the learned trial Magistrate has acquitted the accused on the ground that the loan has not been shown in the Income Tax Return furnished by the complainant, and while recording such finding has placed reliance upon the judgment of the Hon'ble Delhi High Court in *Vipul Kumar Gupta vs. Vipin Gupta 2012 (V) AD (CRI) 189*. However, after having

perused the said judgment, it would be noticed that the amount in the said case was ₹ 9 lacs, and it is in that background that the Court observed as under: -

"9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors which have been enumerated by the learned ACMM also. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts, the factum of the loan having been given by him because by no measure, an amount of ₹ 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or year when the loan was sought or given. The appellant has presented a cheque, which obviously is written with two different inks, as the signature appears in one ink, while the remaining portion, which has been filled in the cheque, is in a different ink. All these factors prove the defence of the respondent to be plausible to the effect that he had issued these cheques by way of security to the appellant for getting a loan from the Prime Minister Rojgar Yojana. The respondent/accused has only to create doubt in the version of the appellant, while the appellant has to prove the guilt of the accused beyond a reasonable doubt, in which, in my

opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal against the impugned order, as there is no infirmity in the impugned order."

33. Thus, no advantage can be derived from the fact that the Income Tax Return was not filed before the learned Trial Court.

34. There is no other evidence to rebut the presumption attached to the cheque, and the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

35. The complainant stated that the cheque had dishonoured with the endorsement "insufficient funds". This was duly proved by memo (Ex.C3/CW1) wherein the reason of dishonour was mentioned as "insufficient funds." It was laid down by the Hon'ble Supreme Court in *Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83: (2010) 1 SCC (Civ) 625: (2010) 2 SCC (Cri) 1: 2010 SCC OnLine SC 155 that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

24. Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's

slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable.

36. In the present case, no evidence was produced to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured with an endorsement 'insufficient funds.'

37. The accused admitted in his statement recorded under Section 313 of Cr.P.C that he had received the notice; thus, the receipt of notice was not disputed.

38. Thus, the learned Courts below had rightly held that all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied, and there is no infirmity in the judgment convicting the accused of the commission of an offence punishable under Section 138 of the NI Act.

39. Learned Trial Court sentenced the accused to undergo simple imprisonment for six months and pay compensation of ₹4,00,000/- to the complainant. 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.”

40. Keeping in view the deterrent nature of the punishment, the sentence of six months cannot be said to be excessive.

41. The learned Trial Court awarded the compensation of ₹4,00,000/-. Thus, the learned Trial Court had only awarded the compensation of ₹1,30,000/- of the cheque amount of ₹2,70,000/-. The cheque was issued for ₹2,70,000/- on 31.05.2019. The sentence was imposed on 19.12.2023 after a lapse of more than 4 1/2 years. 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*]”

42. Hence, the amount of ₹1,30,000 awarded on the cheque amount of ₹2,70,000/- cannot be said to be excessive.

43. It was submitted that the learned Trial Court could not have awarded the sentence of imprisonment in case of default in the payment of compensation. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: 2010 SCC OnLine SC 612*, the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

“26. From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under

Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated.”

44 This position was reiterated in *R. Mohan v. A.K. Vijaya Kumar*, (2012) 8 SCC 721: 2012 SCC OnLine SC 486, wherein it was observed at page 729:

“29. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to

Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in *Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]*, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in *Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]* are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

45. Thus, there is no infirmity in imposing a sentence of imprisonment in case of default in the payment of compensation.

46. No other point was urged.

47. In view of the above, the present revision petition fails, and is dismissed and so are the pending applications, if any.

(Rakesh Kainthla)
Judge

25 February, 2026.
(Yogesh)