IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 25 of 2025
Reserved on: 3.3.2026
Date of Decision: 08.4.2026.

Vinod Sipahiya ...Petitioner

Versus

Anuj Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner : Mr Bhupinder Pathania, Advocate.
For the Respondent : Mr Kunal Thakur, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgement dated 01.10.2024, passed by learned Additional Sessions Judge-I, Kangra, at Dharamshala, District Kangra, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 15.02.2024, passed by learned Judicial Magistrate First Class, Kangra District Kangra H.P. (learned Trial Court) were upheld *(Parties shall hereinafter be*

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

referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present 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 (NI Act), read with Section 420 of the Indian Penal Code (IPC). It was asserted that the complainant and the accused had a friendly relationship with each other. The accused approached the complainant at the Nagrota Bagwan on 10.09.2011 and sought a loan of ₹1,50,000/- for his domestic needs. The complainant paid ₹1,50,000/- to the accused on the same day through Cheque No. 394621, drawn on State Bank of Patiala, Nagrota Bagwan, Tehsil and District Kangra, H.P. The accused issued a post-dated cheque No. 613701 dated 19.12.2011 for ₹1,50,000/- drawn on State Bank of India to discharge his liability. He also executed an agreement acknowledging his liability in the presence of marginal witnesses. This agreement was attested by Mr Yashpal Kachhot, Notary Public at Kangra. The complainant presented the cheque to his bank, State Bank of India, branch office Ghorab (Nagrota Bagwan), District

Kangra, H.P., from where it was sent to the bank of the accused for collection. The bank of the accused dishonoured the cheque with an endorsement of insufficient funds. The complainant issued a notice to the accused asking him to pay the money within 15 days from the date of receipt of the notice. The notice was duly received by the accused, but he failed to pay the amount. Hence, the present complaint was filed before the learned Trial Court for taking action against the accused.

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 Anil Kumar (CW1) and himself (CW2).

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he had taken a loan of ₹1,50,000/- from the complainant, the complainant had presented the cheque, and it was dishonoured with an endorsement of insufficient funds. He stated that he had handed over three

signed cheques as security to the complainant, which were misused by the complainant. He had returned ₹ 1,20,000/- with interest and was liable to pay only ₹ 30,000/-. His signatures were obtained on blank paper. He denied the receipt of the notice. He did not produce any evidence in his defence.

6. Learned Trial Court held that the accused admitted the taking of a loan in his statement recorded under Section 313 of Cr.P.C. He also admitted the issuance of the cheques as security. Therefore, a presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The accused claimed that he had returned ₹ 1,20,000/-; however, this fact was not proved. The accused had failed to rebut the presumption attached to the cheque. He admitted that the cheque was dishonoured with an endorsement of insufficient funds. 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 two months and pay a compensation of ₹3,00,000/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-I, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the receipt of the loan was not disputed by the accused. The accused also admitted his signature on the cheque and claimed that the cheque was issued as security. Therefore, a presumption under Section 118 (a) and 139 of the NI Act arose that the cheque was issued for consideration to discharge debt/liability. The accused failed to rebut the presumption. The cheque was dishonoured with an endorsement of funds insufficient. The accused failed to pay the amount despite the receipt of a valid notice of demand. Therefore, the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under section 138 of the NI Act. The sentence imposed by the learned Trial Court was not excessive, and no interference was required with it. Hence, the learned Appellate Court dismissed the appeal.

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 on record. They had wrongly held that the cheque was issued by the accused to discharge his legal liability. The special Power of Attorney of the complainant admitted in his cross-examination that more than five cases of recovery of various amounts were pending in the Court, which showed that the accused was a money lender. He has not produced any registration of money lending, and the complaint was not maintainable. The complainant had misused the cheque by filling in an amount more than the value of the instrument. The instrument clearly stated on its face that it was valid for ₹50,000/-. Therefore, the cheque was a void instrument and no action could have been taken on it. Hence, it was prayed that the present petition be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Bhupinder Pathania, learned counsel for the petitioner/accused and Mr Kunal Thakur, learned counsel for the respondent/complainant.

10. Mr Bhupender Pathania, learned counsel for the petitioner, submitted that the cheque, on the face of it,

mentions that it was valid for ₹50,000. However, an amount of ₹1,50,000/- was filled. Therefore, the instrument was void. It also corroborates the defence taken by the accused that he had issued blank security cheques to the complainant, who had misused them. Learned Courts below failed to appreciate this important aspect. Hence, he prayed that the present petition be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Kunal Thakur, learned counsel for the respondent/accused, submitted that the cheque was dishonoured with an endorsement 'funds insufficient' and not with an endorsement that the cheque was invalid. The accused had not taken this plea before the learned Courts below, and it is impermissible to take this plea before this Court. Both the learned Courts below had rightly held the accused guilty of committing an offence punishable under Section 138 of the NI Act, and this Court should not interfere with the concurrent findings of fact. Hence, he prayed that the present revision be dismissed.

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

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

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

> "**14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to

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

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 aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

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

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > 5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has

already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

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

> “*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is

> shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

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

> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

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

> "**27.** It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: ***Bir Singh***(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008)***

> *14 SCC 457*, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> **28.** Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

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

18. The cheque (Ex.C6) bears an endorsement of Multi City Cheque payable at par at all branches of SBI and valid for ₹50,000/- and under. The Reserve Bank of India has issued a policy on Policy On Multi-City (Payable at Par) CTS-2010 Standard Cheques. Clause 4 of the policy reads as follows: -

> There will be a cap on payment of MCC at non-home branches with legend/ ceiling mentioned on the Cheques as detailed hereunder:- "Valid up to Rs.......lacs at non-Home branch"

19. A bare perusal of this clause shows that a cap has been fixed for payment at non-home branches, which would be mentioned on Multi City Cheques.

20. Clause 6 of the Policy provides for the payment of multi-city cheques at a non-home branch and reads as under:-

> "The payment of MCCs at a non-home branch will be restricted as per the limit of the Cheque (as per the legend mentioned on the Cheque as narrated hereinabove)."

21. Thus, the multi-city cheque can be honoured for the amount mentioned in the cheque as per the policy issued by the Reserve Bank of India. It was laid down by the Hon'ble Supreme Court of India in ***Pro Knits v. Canara Bank*, *(2024) 10 SCC 292: 2024 SCC OnLine SC 1864*** that instructions issued by the Reserve Bank of India are binding on the banking companies. It was observed at page 296:

> "**8.** At this juncture, it would also be apt to refer to the relevant provisions contained in the Banking Regulation Act, 1949. Section 21 of the said Act empowers the Reserve Bank of India to control advances by banking companies. The said section inter alia provides that where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interest of the depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any company in particular and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined. *Sub-section (3) of Section 21 states that every banking company shall be bound to comply with any directions given to it under the said section*. Further, Section 35-A of the said Banking Regulation Act reads as under:
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> "**35-A.** ***Power of the Reserve Bank to give directions*.**—(1) Where the Reserve Bank is satisfied that—
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> (*a*) in the public interest; or
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> (*aa*) in the interest of banking policy; or

(*b*) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(*c*) to secure the proper management of any banking company generally,

It is necessary to issue directions to banking companies generally or to any banking company in particular. It may, from time to time, issue such directions as it deems fit, *and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.*

(2) Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect." (emphasis supplied)

9. Thus, Section 21 read with Section 35-A makes it clear that the directions issued by the Reserve Bank of India to the banking companies are binding on them and they are bound to comply with such directions."

22. Delhi High Court dealt with the multi-city cheques and the policy of Reserve Bank of India in ***Boston Beverages Pvt. Ltd. v. Kingston Beverages, 2014 SCC OnLine Del 7233*** held that, as per the policy, a multicity cheque of more than ₹ 10 lakh cannot be accepted by a non-home branch of the Royal Bank and has to be presented at the home branch. It was observed:-

"15....In order to regulate the same, the Reserve Bank of India also issued a policy which is known as Policy on Multi-city/payable at par CTS 2010 Standard Cheques.

> The perusal of the said policy would reveal that a certain limit has been prescribed on payment of multi-city cheques at non-home branches, as mentioned therein.
> 16. According to the said policy, in case cheque account of multicity cheque to be presented at non-home branch in case of saving bank account, is more than Rs.10,00,000/- (Rupees Ten lakhs) then same would not be accepted by non-home branch of the drawee bank and thus, it has to be presented at the home branch of the drawee bank for its encashment. The same is the position with regard to other types of bank accounts, like current accounts, cash credits, etc."

23. In the present case, the cheque mentions the cap of ₹50,000/-, and it could have been presented for such an amount before the non-home branch. The complainant had presented the cheque before the State Bank of India, Ghorab, whereas the cheque was drawn at the State Bank of India, Palampur. Therefore, the cheque was presented before the non-home branch and should have been within the specified amount of ₹50,000/- mentioned on the cheque, and the submission that the cheque was void has to be accepted as correct. Neither of the learned Courts below did advert to this important aspect of the case.

24. It was submitted that this plea was not taken before the learned Courts below and cannot be taken before this Court. This submission cannot be accepted. It was specifically suggested to the complainant, Anuj Kumar (CW2), in his cross-

examination that the accused had handed over three cheques of ₹50,000/- as security, and he had filled an invalid amount in the cheque. The accused had taken a loan of ₹1,50,000/-. He had issued a cheque, which was valid at the non-home branch of ₹50,000 and would have been required to issue three cheques for the payment of ₹1,50,000/-. Therefore, the plea taken by him that the cheque was invalid as more than the permissible amount was filled in it was specifically suggested to the complainant. Both the learned Courts below failed to appreciate the significance of this fact and thereby committed a jurisdictional error while entertaining and deciding the complaint.

25. Therefore, the present revision is allowed and judgment of conviction and order of sentence dated 15.2.2024, passed by learned Judicial Magistrate First Class, Kangra, District Kangra, H.P., in Criminal Case No. 158-III/2015, titled Anuj Kumar Vs. Vinod Saphiya, affirmed by learned Additional Sessions Judge (I), Kangra at Dharamshala, District Kangra, H.P., in Criminal Appeal No.7-D/X/2024, titled Vinod Saphiya Vs. Anuj Kumar is ordered to be set aside, and the accused is

acquitted of the commission of an offence punishable under section one 38 of the NI Act.

26. The pending miscellaneous application(s), if any, also stand disposed of.

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

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

(Rakesh Kainthla)
Judge

8th April, 2026
(Chander)