

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 88 of 2025

Reserved on: 12.12.2025

Date of Decision: 01.01.2026

Virender Singh Thakur

.... Petitioner

Versus

Rishab Singh Thakur

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹

For the Petitioner : Ms. Neelam, Advocate, vice
Mr. T.K. Verma, Advocate.

For the Respondent : Mr. Arun K. Verma,
No.1. Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 28.12.2024, passed by learned Sessions Judge (Forests), District Shimla, H.P. (learned Appellate Court) vide which the judgment of conviction dated 21.12.2022 and order of sentence dated 26.12.2022 passed by learned Chief Judicial

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

Magistrate, Shimla, District Shimla, (learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

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). It was asserted that the parties had known each other for the last 12 years. The complainant lent ₹50,000, ₹35,000, and ₹50,000 (total ₹1,35,000) to the accused on 13.04.2018, 16.04.2018, and 27.04.2018, respectively, in the presence of one Mohit Yadav. The accused issued two cheques of ₹49,000/- each on 10.09.2019 and 25.09.2019, respectively, to discharge his liability. The complainant presented the cheques to his bank, but they were dishonoured with the endorsement 'payment stopped by the drawer'. The complainant served a legal notice upon the accused, but the accused failed to repay the money after receipt of the legal notice. Hence, the complaint was filed

before the learned Trial Court to take action against the accused as per the 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 (CW-1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the case of the complainant in its entirety. He claimed that he had stood guarantor of the complainant for his car loan and had furnished the cheques as security. He examined Narotam Kumar (DW-1), Shakuntla Thakur (DW-2) and himself (DW-3) to prove his defence.

6. Learned Trial Court held that the accused admitted his signature on the cheques, and a presumption would arise that the cheques were issued to discharge the liability. The plea taken by the accused that he had furnished the cheques as a guarantor for the car loan of the complainant was not

proved. The cheques were dishonoured with an endorsement 'payment stopped by the drawer'. The notice was served upon the accused, but he failed to repay the amount despite receipt of the notice. Hence, the accused was convicted of the commission of an offence punishable under Section 138 of the NI Act and was sentenced to undergo simple imprisonment for six months and pay a compensation of ₹1,10,000/-.

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 (Forests), District Shimla, H.P. (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had not disputed the issuance of the cheques; therefore, a presumption would arise that the cheques were issued for consideration to discharge the legal liability. The accused failed to rebut the presumption attached to the cheques. The statement of Nartotam Kumar (DW-1) falsified the version of the accused that the cheques were furnished by him as guarantor to the car loan of the complainant. The cheques were dishonoured with an endorsement 'payment stopped by the drawer'. The notice

was duly served upon the accused, but he failed to repay the amount. The learned Trial Court imposed an adequate sentence, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused filed the present revision asserting that the learned Courts below erred in appreciating the material on record. The accused had rebutted the presumption attached to the cheque by leading evidence. The defence evidence was wrongly ignored. Mohit Yadav, in whose presence the money was lent, was not examined, and an adverse inference should have been drawn against the complainant. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Ms Neelam, vice Mr T.K. Verma, learned counsel for the petitioner/accused, and Mr Arun K. Verma, learned counsel for the respondent/complainant.

10. Ms Neelam, learned vice counsel representing the petitioner/accused, submitted that the learned Courts below

erred in appreciating the evidence on record. There was no evidence regarding the advancement of the loan, and Mohit Yadav, in whose presence the loan was advanced, was not examined; hence, an adverse inference should have been drawn against the complainant. Hence, she prayed that the present petition be allowed, and the judgments and order passed by the learned Courts below be set aside.

11. Mr Arun K. Verma, learned counsel for the respondent/complainant, submitted that the plea taken by the accused that he had furnished the cheques to the bank and these were misused by the complainant was falsified by the statement of Narotam Kumar (DW-1). Both the learned Courts below have concurrently held that the ingredients of Section 138 of the NI Act were duly satisfied, and this Court should not interfere with the concurrent findings of fact. Hence, he prayed that the present revision 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 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 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.

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.”

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

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

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or 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.”

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

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

17. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

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.

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. Accused Varinder Singh (DW-3) admitted his signatures on cheques (Ext. CW-1/B and Ext. CW-1/C). It was laid down by the Hon'ble Supreme Court in *APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers* (2020) 12 SCC 724, that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

“9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such a presumption is rebuttable. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.”

20. A similar view was taken in *N. Vijay Kumar v. Vishwanath Rao N.*, 2025 SCC OnLine SC 873, wherein it was held as under:

“6. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence.”

21. This position was reiterated in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

“ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

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 a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: *Bir Singhv. Mukesh Kumar, (2019) 4 SCC 197*].

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

23. Accused Varinder Singh Thakur (DW-3) stated that he had furnished the guarantee of the car loan taken by the complainant. This plea was falsified by Narotam Kumar (DW-1), who stated in his cross-examination that no cheque was taken from the accused Varinder Singh Thakur. This witness was put forward as a witness of truth by the accused, and his testimony falsifies the version of the accused that he had furnished the cheques (Ext.CW-1/B and Ext. CW-1/C) at the time of taking the loan.

24. Shakuntla Thakur (DW-2) stated that the accused demanded ₹1,50,000/- from the complainant and the complainant advanced ₹1,35,000/-. The money was paid in two instalments in her presence, and she was not present at the time of advancing the third instalment. She admitted in

her cross-examination that the complainant had advanced ₹50,000/- and ₹30,000/- to the accused in her presence. This money was to be returned within one year, but the accused failed to return it. She was also put forward as a witness of truth by the accused; therefore, her testimony that the complainant had advanced ₹1,35,000/- out of which two instalments of ₹50,000/- and ₹35,000/- were advanced in her presence has to be accepted as correct.

25. Therefore, the learned Courts below had rightly held that defence evidence corroborated the complainant's case instead of rebutting the presumption.

26. It was submitted that the complainant asserted in paragraph 3 of the complaint that the money was advanced in the presence of Mohit Yadav. The complainant failed to examine Mohit Yadav, and an adverse inference should be drawn against the complainant. This submission is not acceptable. The accused admitted his signatures on the cheques, which triggered the presumption under Section 118(a) and 139 of the NI Act that the cheques were issued for consideration to discharge the debt/liability. It was laid down

by the Hon'ble Supreme Court in *Uttam Ram v. Devinder Singh Hudan*, (2019) 10 SCC 287: (2020) 1 SCC (Cri) 154: (2020) 1 SCC (Civ) 126: 2019 SCC OnLine SC 1361, that a presumption under Section 139 of 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.”

27. 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).

28. 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.”

29. Therefore, the complainant's case cannot be doubted because of the non-examination of Mohit Yadav.

30. Accused Varinder Singh Thakur (DW-3) stated in his examination-in-chief that he had not taken any money

from the complainant and was not required to pay any money to the complainant. This statement corroborates the testimonies of Shakuntla Thakur (DW-2) and the complainant that the accused had failed to return the money.

31. The accused did not lead any other evidence to rebut the presumption, and the learned Courts below rightly held that the accused had failed to rebut the presumption attached to the cheque.

32. The complainant stated that the cheque was dishonoured with an endorsement 'payment stopped by the drawer'. This is duly corroborated by the memos of dishonour (Ext.CW1/D and Ext.CW-1/E), in which the reason for dishonour was mentioned that 'payment stopped by the drawer'. 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.”

33. 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 ‘payment stopped by the drawer’.

34. It was laid down by the Hon’ble Supreme Court in *Laxmi Dychem v. State of Gujarat*, (2012) 13 SCC 375: (2012) 4 SCC (Cri) 283: 2012 SCC OnLine SC 970 that the dishonour of a cheque on the ground that the drawer stopped the payment will attract the provisions of Section 138 of the NI Act. It was observed at page 388:

12. In *Modi Cements Ltd.* [(1998) 3 SCC 249: 1999 SCC (Cri) 252], a similar question had arisen for the consideration of this Court. The question was whether dishonour of a cheque on the ground that the drawer had stopped payment was a dishonour punishable under Section 138 of the Act. Relying upon two earlier decisions of this Court in *Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd.* [(1996) 2 SCC 739: 1996 SCC (Cri) 454] and *K.K. Sidharthan v. T.P. Praveena Chandran* [(1996) 6 SCC 369: 1996 SCC (Cri) 1340], it was contended by the drawer of the cheque that if the payment was stopped by the drawer, the dishonour of the cheque could not constitute an

offence under Section 138 of the Act. That contention was specifically rejected by this Court. Not only that, the decision in *Electronics Trade & Technology Development Corpn. Ltd. [(1996) 2 SCC 739: 1996 SCC (Cri) 454]* to the extent that the same held that dishonour of the cheque by the bank after the drawer had issued a notice to the holder not to present the same would not constitute an offence, was overruled. This Court observed: (*Modi Cements Ltd. case [(1998) 3 SCC 249: 1999 SCC (Cri) 252]*, SCC pp. 257-58, paras 18 & 20)

“18. The aforesaid propositions in both these reported judgments, in our considered view, with great respect, are contrary to the spirit and object of Sections 138 and 139 of the Act. If we are to accept this proposition, it will make Section 138 a dead letter, for, by giving instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability, the drawer can easily get rid of the penal consequences, notwithstanding the fact that a deemed offence was committed. Further, the following observations in para 6 in *Electronics Trade & Technology Development Corpn. Ltd. [(1996) 2 SCC 739: 1996 SCC (Cri) 454]* (SCC p. 742)

Section 138 is intended to prevent dishonesty on the part of the drawer of a negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. *Section 138 draws the presumption that one commits the offence if one issues the cheque dishonestly.*

In our opinion, do not also lay down the law correctly.

20. On a careful reading of Section 138 of the Act, we are unable to subscribe to the view that Section 138

of the Act draws a presumption of dishonesty against the drawer of the cheque if he without sufficient funds to his credit in his bank account to honour the cheque issues the same and, therefore, this amounts to an offence under Section 138 of the Act. For the reasons stated hereinabove, we are unable to share the views expressed by this Court in the above two cases, and we respectfully differ with the same regarding the interpretation of Section 138 of the Act to the limited extent as indicated above.” (emphasis in original)

13. We may also, at this stage, refer to the decisions of this Court in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd.* [(2002) 1 SCC 234; 2002 SCC (Cri) 121], where to this Court considering an analogous question held that even in cases where the dishonour was on account of “stop-payment” instructions of the drawer, a presumption regarding the cheque being for consideration would arise under Section 139 of the Act. The Court observed: (SCC p. 240, para 19)

“19. Just such a contention has been negated by this Court in *Modi Cements Ltd. v. Kuchil Kumar Nandi* [(1998) 3 SCC 249; 1999 SCC (Cri) 252]. It has been held that even though the cheque is dishonoured by reason of a ‘stop-payment’ instruction, an offence under Section 138 could still be made out. It is held that the presumption under Section 139 is also attracted in such a case. The authority shows that even when the cheque is dishonoured by reason of ‘stop-payment’ instructions by virtue of Section 139, the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course, this is a rebuttable presumption. The accused can thus show that the ‘stop-payment’ instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were

sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid reasons, including that there was no existing debt or liability at the time of presentation of a cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus, a court cannot quash a complaint on this ground.”

14. To the same effect is the decision of this Court in *Goaplast (P) Ltd. v. Chico Ursula D'Souza [(2003) 3 SCC 232: 2003 SCC (Cri) 603: 2003 Cri LJ 1723]* where this Court held that “stop-payment instructions” and consequent dishonour of a post-dated cheque attract the provision of Section 138. This Court observed: (SCC pp. 232g-233c)

“Chapter XVII, containing Sections 138 to 142, was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. The said provisions were intended to discourage people from not honouring their commitments by way of payment through cheques. The court should lean in favour of an interpretation which serves the object of the statute. *A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque.*

In view of Section 139, it has to be presumed that a cheque is issued in the discharge of any debt or other liability. The presumption can be rebutted by

adducing evidence, and the burden of proof is on the person who wants to rebut the presumption. *This presumption, coupled with the object of Chapter XVII of the Act, leads to the conclusion that by countermanding payment of a post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts, which, in other words, can be said to be taking advantage of one's own wrong.*” (emphasis supplied)

35. The complainant stated that he had served a notice upon the accused. Acknowledgement (Ext.CW-1/K) bearing the signatures was placed on record. Thus, the learned Courts below had rightly held that the notice was served upon the accused.

36. Therefore, it was duly proved on record that the accused had issued the cheques in discharge of his liability, which were dishonoured with an endorsement ‘payment stopped by the drawer’, and the accused failed to repay the amount despite the receipt of the notice of demand. Therefore, all the ingredients of the commission of offences punishable under Section 138 of N. I Act were satisfied, and the learned Trial Court had rightly convicted the accused of

the commission of an offence punishable under Section 138 of the NI Act.

37. The learned Trial Court had sentenced the accused to undergo simple imprisonment for six months. It was laid down by the Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138 that the penal provision of Section 138 of the N.I.Act is a 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.”

38. Therefore, the sentence of six months is not excessive.

39. The learned Trial Court had awarded a compensation of ₹ 1,10,000/-. The two cheques were issued for ₹49,000/- each. Thus, the total amount of the cheque was ₹98,000/- and a compensation of ₹ 11,000/- was awarded on

the cheque amount. The complainant lost interest on the amount that he would have obtained by investing the money. The complainant had to pay the litigation expenses for filing the complaint. He was entitled to be compensated for the same. 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]"

40. In the present case, the learned Trial Court ordered payment of compensation of ₹1,10,000/-. The cheques were issued on 10.09.2019 and 25.09.2019, amounting to ₹49,000/-

each. The compensation was awarded on 26.12.2022 after the lapse of three years; hence, the compensation of ₹11,000/- was grossly inadequate. However, the complainant has not preferred any appeal against the inadequacy of the amount of compensation, and no interference is required with the amount of compensation awarded by the learned Trial Court, as affirmed by the learned Appellate Court.

41. No other point was urged.

42. In view of the above, the present petition fails, and the same is dismissed, so also pending application(s), if any.

43. Records of the learned Courts below be sent back forthwith, along with a copy of this judgment.

(Rakesh Kainthla)
Judge

1st January, 2026
(ravinder)