

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Revision No. 214 of 2026****Reserved on: 24.04.2026****Decided on: 03.06.2026.**


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Vishwanath	..... Petitioner
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Versus

Deep Kumar	.... Respondent
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***Coram*****Hon'ble Mr Justice Rakesh Kainthla, Judge.*****Whether approved for reporting?*<sup>1</sup> No.**

For the Petitioner : Mr Paras Ram, Advocate, vice  
Mr B.R. Kashyap, Advocate.

For the Respondents : Mr Ajit Sharma, Advocate, for  
respondent No.2.

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**Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 03.01.2026 passed by the learned Sessions Judge, Hamirpur, District Hamirpur, H.P. (learned Appellate Court) vide which judgment of conviction dated 26.05.2025 and order of sentence dated 28.05.2025 passed by the learned Judicial Magistrate, First Class, Court No. III, Hamirpur, District Hamirpur, H.P. (learned Trial Court) were upheld. (*Parties shall*

<sup>1</sup>*Whether the reporters of the local papers may be allowed to see the Judgment?Yes.*

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

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'). It was asserted that the accused had issued a cheque of ₹9,00,000/- in the complainant's favour to discharge his legal liability. The complainant presented the cheque for collection to the bank, but it was dishonoured with the remarks 'insufficient funds'. The complainant issued a notice to the accused, which was duly served upon him. The accused failed to pay the amount; hence, the complaint was filed before the court to take action as per the law.

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

4. The complainant examined himself (CW-1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), claimed that he had borrowed ₹4,50,000/- from the complainant and issued a blank security cheque, which was misused by the complainant. He examined Sudesh Kumar (DW1) to prove his defence.

6. The learned Trial Court held that the accused had not disputed his signature on the cheque, and the presumption under Section 118 (a) and Section 139 of the NI Act would be triggered that the cheque was issued for the consideration to discharge the debt/liability. The plea taken by the accused that he had borrowed ₹4,50,000/- which was repaid by him, was not believable. The accused had failed to rebut the presumption attached to the cheque. The legal notice was sent to the accused, and he refused to accept it, which is a deemed service. The cheque was dishonoured with an endorsement of 'insufficient funds'. The accused had failed to repay the amount despite the deemed service of notice. Hence, the learned Trial Court convicted the accused of the commission of an offence

punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for five months, pay a fine of ₹10,00,000/- and in default of payment of fine to undergo further simple imprisonment for 40 days.

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, Hamirpur, District Hamirpur, H.P. (learned Appellate). The Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had admitted the signatures and the issuance of the cheque. The plea taken by him that he had borrowed ₹4,50,000 from the complainant and had returned it was not proved. The statement of Sudesh Kumar (DW-1) was not satisfactory. The cheque was dishonoured with an endorsement 'insufficient funds'. The accused had refused to accept the notice, which is a deemed service. He had also not paid any money to the complainant after the receipt of the summons from the Court. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Learned Trial Court had imposed an adequate sentence, and no interference was required with the judgment

and order passed by the learned Trial Court; hence, the appeal filed by the accused was dismissed.

8. The accused has filed the present revision asserting that the learned Courts below failed to appreciate that the amount was given in the year 2022 and the cheque was issued in the year 2024, which made the defence of the accused probable that the cheque was issued as a security. The complainant had not produced the income tax return to show that he had mentioned the amount in his return. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Paras Ram, learned vice counsel representing the petitioner and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent No.2/State.

10. Mr Paras Ram, learned vice counsel representing the petitioner, submitted that the learned Courts below erred in appreciating the material on record. As per the complainant, the loan was advanced in 2022, and the cheque was handed over in the year 2024, which supports the defence taken by the accused that he had taken the loan from the complainant and issued a security cheque to the complainant. The statement of Sudesh

Kumar (DW-1) was rejected without any cogent reasons. The complainant failed to produce a copy of the income tax return, and there was nothing on record to show that the complainant had the financial capacity to advance the money to the accused. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Ajit Sharma, learned Deputy Advocate General, for respondent No.2/State submitted that the dispute is between the private parties and the State has nothing to say in the matter.

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 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.

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

18. The accused admitted in his statement recorded under Section 313 of the Cr.P.C. that he had issued the cheque. However, he claimed that he had issued a blank cheque as security. Thus, the issuance of the cheque and the signatures on the cheque are not in dispute. It was laid down by the Hon'ble Supreme Court in *APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers* (2020) 12 SCC 724, that when the signature on the cheque is not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

“9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or

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

19. 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.”

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

21. 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.

22. The complaint stated in his cross-examination that he works as a Manager in Hamir Hospital and earns ₹23,000/- as monthly salary. He filed the income tax return, which was 'nil' for the year 2023-24.

23. It was submitted that the accused had failed to establish the financial capacity to advance the loan to the complainant. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in *Tedhi Singh v. Narayan Dass Mahant*, (2022) 6 SCC 735: 2022 SCC OnLine SC 302 that the complainant is not required to show his financial capacity unless it is challenged by sending a reply to the notice. It was observed at page 740:

“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 proceeding under Section 138 of the NI Act is 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....”

24. In the present case, the accused asserted in the application filed under Section 145 (2) of the NI Act that he had no dischargeable debt. He never challenged the financial

capacity of the complainant, and the complainant was not required to prove his financial capacity.

25. It was submitted that the complainant had not filed the income tax return to show that he had mentioned the loan amount in the income tax return. This submission will not help the accused. 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 that 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."

26. It was submitted that the cheque was issued in the year 2024, whereas the loan was advanced in the year 2022. The fact that no action was taken for two years supports the version of the accused that he had issued the cheque as security to the complainant. This submission is not acceptable. A person getting the loan from the other is not expected to pay it

immediately because, had he the means to repay the amount, he would not have taken the loan in the first instance. Thus, it cannot be expected in a loan transaction that the amount would be paid immediately after the loan is taken, and a time lapse is inevitable. Thus, the mere fact that the accused had issued the cheque after two years does not falsify the complainant's case.

27. The accused examined Suresh Kumar (DW-1). He stated that the accused intended to sell his land to the complainant, and transferred ₹4,50,000/- to the account of the accused. The complainant took a blank cheque from the accused and did not pay any cash to the accused. He stated in his cross-examination that an agreement to sell was executed between the complainant and the accused, and he had witnessed the agreement.

28. The statement made by this witness was contrary to the defence taken by the accused in his statement recorded under section 313 of the Cr.P.C., wherein the accused had claimed that the money was borrowed by him from the complainant and the cheque was issued as security. The accused nowhere claimed that any sale agreement was executed. Secondly, the learned Courts below had rightly pointed out that

the agreement to sell was not produced to corroborate his version. Thirdly, his statement is inherently suspect. If the complainant intended to purchase the land from the accused and had paid ₹4,50,000/-/-, the complainant would have filed a suit for specific performance. The complainant could never have contemplated at the time of executing the agreement to sell that the accused would not sell the land to him. The complainant would have gained nothing by the blank cheque when he had intended to purchase the land. Therefore, the learned Courts below had rightly rejected the testimony of Sudesh Kumar (DW-1).

29. It was submitted that the complainant had not produced any record of the withdrawal of the money. This submission will not help the accused. The accused did not dispute the receipt of ₹4,50,000/- from the complainant. He admitted this fact in his statement recorded under section 313 of the Cr. P.C. and his witness also admitted that the amount of ₹4,50,000/- was transferred to the account of the accused. Thus, the part of the transaction is not disputed. As far as the rest is concerned, the cheque carries with it a presumption of consideration and the complainant is not required to prove the existence of consideration. 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.”

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

“22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a

financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did 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).

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

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

32. It was submitted that the complainant claimed to have advanced ₹4,50,000/- in cash, which is violative of Section 269SS of the Income Tax Act. Therefore, no action can be taken upon such an advance. This submission will not help the accused. It was laid down by this Court in *Surinder Singh vs. State of H.P.* 2018(1) D.C.R. 45 that contravention of Section 269 SS of the Income Tax Act will give rise to a penalty, but will not invalidate the transaction. It was observed: -

5. The relevant portion of Section 269 SS of the IT Act reads thus: -

"(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit' or  
(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or  
(c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is (twenty) thousand rupees or more. Provided....."

6. Section 271D provides for a penalty for failure to comply with the aforesaid provisions, which reads thus:

"271D. Penalty for failure to comply with the provisions of Section 269-SS - (1) If a person takes or accepts any loan or deposit in contravention of the provisions of Section 269-SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

(2) Any penalty impossible under sub-section (1) shall be imposed by the Joint Commissioner."

7. A collective reading of both the aforesaid Sections would go to show that even though contravention of Section 269-SS of the IT Act would be visited with a strict penalty on the person taking the loan or deposit. However, Section 271D does not in any manner suggest or even provide that such a transaction would be null and void. The payer of money in cash, in violation of Section 269 SS of the IT Act, can always have the money recovered.

8. The object of introducing Section 269 of the IT Act has been succinctly set out by the Hon'ble Supreme Court in *Asstt. Director of Inspection*

*Investigation vs. A.B. Shanthi (2002) 6 SCC 259*, wherein it was observed as under: -

"8. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give a false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false entries in his accounts, he shall not escape by giving a false explanation for the same. During search and seizures, unaccounted money is unearthed, and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends, and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main objection of Section 269-SS was to curb this menace."

9. In light of the aforesaid observations, it cannot but be said that Section 269-SS only provides for the mode of accepting payment or repayment in certain cases so as to counteract evasion of tax. However, Section 269-SS does not declare all transactions of loans by cash in excess of ₹20,000/- as invalid, illegal or null and void, as the main object of introducing the provision was to curb and unearth black money.

33. A similar view was taken by the Hon'ble Supreme Court in *Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069*, wherein it was observed:

"19. Recently, the Kerala High Court in *P.C. Hari v. Shine Varghese, 2025 SCC OnLine Ker 5535* has taken the view that a debt created by a cash transaction above ₹20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139

of the Act will not be attracted in cash transactions above ₹ 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961, is subject to a penalty only under Section 271D of the IT Act, 1961. Further, neither Section 269SS nor 271D of the IT Act, 1961 states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs. 20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in *P.C. Hari* (supra) is set aside."

34. Hence, the transaction cannot be disputed because part of it was carried out in cash.

35. Therefore, the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque and the cheque was issued in the complainant's favour to discharge the debt/liability.

36. The complainant asserted that the cheque was dishonoured with remarks 'insufficient funds'. This is duly corroborated by the cheque returning memo (Ext.CW-1/C), wherein the reason for 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.”

37. 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.’

38. The complainant asserted that he had issued a notice, but the accused refused to receive it. This is duly corroborated by the registered cover (Ext.CW-1/F), which bears the endorsement ‘refused’. It was suggested to the complainant that an incorrect endorsement was made in connivance with the postal staff. The complainant denied such a suggestion. Learned Appellate Court had rightly pointed out that official acts are presumed to have been done regularly, and a denied suggestion is not sufficient to rebut this presumption.

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

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

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

“13. Section 27 of the General Clauses Act, 1887, deals with service by post:

“27. **Meaning of Service by post.**—Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the

document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”.

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

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

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881, it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: *C.C. Alavi Hajiv. Palapetty Mouhammed (2007) 6 SCC 555*]

14.3 The findings in *C.C. Alavi* (supra) were followed in *Vishwabandhu v. Srikrishna (2021) 19 SCC 549*. In this case, the summons issued by

the Registered AD post was received back with endorsement “refusal”. In accordance with Sub-Rule (5) of Order V Rule 9ofCPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in *C.C. Alavi* (supra) is adopted by this Court in various judgments of this Court in *Greater Mohali Area Development Authority v. Manju Jain* (2010) 9 SCC 157; *Gujarat Electricity Board v. Atmaram Sungomal Posani* (1989) 2 SCC 602; *CIT v.V. K. Gururaj* (1996) 7 SCC 275; *Poonam Vermav. DDA* (2007) 13 SCC 154; *Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund* (2007) 14 SCC 753; *Union of India. S.P. Singh* (2008) 5 SCC 438; *Municipal Corpn., Ludhianav. Inderjit Singh* (2008) 13 SCC 506; and *V.N. Bharat v. DDA* (2008) 17 SCC 321.

41. Therefore, the learned Courts below had rightly held that notice was deemed to have been served upon the accused.

42. In any case, it was laid down in *C.C. Allavi Haji vs. Pala Pelly Mohd.* 2007(6) SCC 555, that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

“It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of

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

43. The accused did not claim that he had paid the money to the complainant after receiving the summons from the complainant.

44. Therefore, the learned Trial Court had rightly held that the accused had issued the cheque to discharge his liability, the cheque was dishonoured with an endorsement ‘insufficient funds’ and the accused failed to pay the money despite the deemed receipt of notice of demand. Hence, all the ingredients of the commission of offences punishable under Section 138 of

the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused for the commission of an offence punishable under Section 138 of the NI Act.

45. Learned Trial Court had sentenced the accused to undergo simple imprisonment for five months and pay a compensation of ₹10,00,000/- to the complainant, and in default of payment of fine, to undergo further simple imprisonment for 40 days. It was laid down by the Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138 that the penal provision of section 138 is 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.”

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

47. In the present case, the cheque was issued on 16.04.2024, and the sentence was imposed on 28<sup>th</sup> May, 2025, after about one year. 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]”

48. In the present case, the complainant lost the interest that he would have gained by investing the money. He had to engage a counsel to prosecute the complaint, and compensation of ₹1,00,000/- on the amount of ₹9,00,000/- is not excessive.

49. Learned Trial Court had imposed the fine and ordered the payment of the fine as compensation to the

complainant. Therefore, the learned Trial Court was competent to impose the default sentence.

50. No other point was urged.

51. In view of the above, there is no infirmity in the judgments passed by the learned Courts below; hence, the present revision fails, and it is dismissed, so also the pending applications, if any.

52. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

**(Rakesh Kainthla)**  
**Judge**

**03<sup>rd</sup> June, 2026.**  
(ravinder)