IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 339 of 2021
Reserved on: 07.05.2026
Date of Decision:22.06.2026

M/S B.S. Trading Company Ltd. & another ....Petitioner

Versus

Rahul Bhardwaj ....Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *Yes*

For the petitioner	:	Mr Abhinav Mohan Goel, Advocate, Legal Aid Counsel.
For the Respondent	:	Mr Adarsh K. Vashista, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the order dated 04.12.2021, passed by the learned Sessions Judge, Solan, District Solan, H.P. (learned Appellate Court) vide which judgment of conviction dated 26.03.2021 and order of sentence dated 07.04.2021, passed by the learned Additional Chief Judicial Magistrate, Kasauli, District Solan, H.P. (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.)*

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

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that parties were known to each other. The accused borrowed a sum of ₹1,00,000/- from the complainant in the year 2016 on different occasions. The accused issued a cheque of ₹1,00,000/- drawn on Punjab National Bank, Patta Mehlog, District Solan, H.P., in favour of the complainant to repay the amount. The complainant presented the cheque for collection to his bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant sent a legal notice to the accused asking him to repay the money within 15 days of its receipt, which was duly served upon him. The accused failed to repay the money despite the receipt of the notice; hence, a complaint was filed to take action against the accused.

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 (CrPC), denied the complainant's case in its entirety. He claimed that he had issued the cheque as security, and the witnesses had deposed falsely against him. He did not produce any evidence despite repeated adjournments; hence, his evidence was closed by the order of the court on 16.09.2019.

6. Learned Trial Court held that the accused admitted the issuance of the cheque in favour of the complainant. A presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The cheque was dishonoured with an endorsement ‘insufficient funds’. A legal notice was served upon the accused, but he failed to pay the amount. 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 three months, pay a compensation of ₹1,25,000/- and in default of payment of compensation, to undergo further imprisonment for one month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Solan, District Solan, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge debt/liability. The cheque was dishonoured with an endorsement 'insufficient funds'. The complainant served a legal notice upon the accused, and the accused failed to repay the amount despite the receipt of the notice; hence, the learned Trial Court had rightly convicted the accused. The sentence was not harsh or excessive, and no interference was required with the sentence imposed by the learned Trial Court; consequently, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the material placed before them. The accused was arrayed in his individual capacity, and he cannot be held liable for the acts of the firm. The notice of accusation was not

put to accused No.2, who has an independent status, and the complainant had failed to prove the existence of a legally enforceable debt; 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 Abhinav Mohan Goel, learned Legal Aid Counsel, for the petitioner/accused and Mr Adarsh K. Vashista, learned counsel, for the respondent/complainant.

10. Mr Abhinav Mohan Goel, learned Legal Aid Counsel, for the petitioner/accused, submitted that the complaint was filed against M/s B.S. Trading Co. Ltd. and Baldev Singh. Learned Trial Court had put the notice of accusation to Baldedv Singh, and no separate notice of accusation was put to M/s B.S. Trading Co. Baldev Singh could only have been held liable for the acts of the company, and the accused Baldev Singh could not have been convicted and sentenced without trying and convicting the company. The complainant has not proved the existence of a legally enforceable debt/liability, and the learned Trial Court erred in convicting and sentencing the accused. Therefore, he prayed that the present revision be allowed and the judgments and

order passed by the learned Courts below be set aside. He relied upon the judgment of the Hon'ble Supreme Court in ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde, 2008 (4) SCC 54***, in support of his submission.

11. Mr Adarsh K. Vashista, learned counsel for the respondent/complainant, submitted that M/s B.S. Trading Company Ltd. is a proprietary concern owned by Baldev Singh. It has no juristic existence, and no notice of accusation could have been put to it. The accused admitted the issuance of the cheque and learned Courts below had rightly applied the presumption contained in sections 118(a) and 139 of the N.I. Act in the present case. There is no infirmity in the judgments and order passed by learned Courts below. Hence, he prayed that the present revision be dismissed.

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

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

rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207-

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

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

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

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.
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> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it

> may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

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

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

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

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

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the

> material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

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

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

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

18. The ingredients of an offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, 2025 SCC OnLine SC 2019*** as under: -

> **5.1.1.** In ***K.R. Indira v. Dr. G. Adinarayana (2003) 8 SCC 300***, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

19. The complainant asserted in para-1 of the complaint that the accused is a trading company. He mentioned in the memo of parties that B.S. Trading Company was being sued through its sole proprietor. Cheque (Ext. CW1/B) bears the seal of B.S Trading Co., proprietor. Thus, it is apparent that B.S Trading Co is a sole proprietorship concern. It was laid down by the Hon'ble Supreme Court in ***Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536: (2008) 3 SCC (Cri) 558: 2008 SCC OnLine SC 997***, that there is no distinction in law between a proprietary concern and an

individual trading under a trading name. It was observed at page 540: -

> **10.** As contrasted with a company incorporated under the Companies Act, 1956, which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law, where an individual carries on business in a name or style other than his name, he cannot sue in the trading name but must sue in his name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietary concern. But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be the payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.
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> **11.** The next question is where a proprietary concern carries on business through an attorney holder, and whether the attorney holder can lodge the complaint. The attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor, and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (*i*) by the proprietor of the proprietary concern, describing himself as the sole

proprietor of the "payee"; (*ii*) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (*iii*) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case, the complaint could have been validly filed by describing the complainant in any one of the following four methods:

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"

or

"M/s Shankar Finance & Investments, a sole proprietary concern represented by its proprietor, Atmakuri Shankara Rao"

or

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"

or

"M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney, holder Thamada Satyanarayana.

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he were the complainant."

20. A similar view was taken in ***Nexus Health & Beauty Care (P) Ltd. v. National Electrical Office, 2012 SCC OnLine HP 5383,*** wherein it was observed: -

> **"26.** The complaint is not happily worded. No doubt, in the memo of parties, the complainant has referred to the complainant's 'M/s National Electrical Office', but in para 2, it has been pleaded that the complainant is providing services of Industrial Electrical fitting under

the name and style of 'National Electrical'. Again, in the memo of parties, Subhash Bharwal has been referred to as proprietor, but in para 1 of the complaint, the complainant has described itself as a firm. In evidence by way of affidavit Ex.CW-1/A, it has been stated that the complainant is providing services of Industrial Electrical fitting under the name and style of 'National Electrical'. Subhash Pharwal is its sole proprietor. The cheque Ex.C-1 has been issued in the name of 'National Electricals'. The complaint is loosely drafted. But in the complaint, the complainant has described itself as 'National Electrical' in the body of the complaint.

27. On the face of the complaint and affidavit, Ex. CW-1/A, prima facie, it cannot be said that the complainant is a firm, namely M/s National Electrical Office. The complainant in the body of the complaint has described the complainant as 'National Electrical', a sole proprietorship concern of Subhash Bharwal. It will be too technical to throw out the complaint due to loose drafting. At this stage, if the pleadings of the petition are seen, the petition is also not less loosely drafted. It starts with the sentence 'complainant issued a cheque for Rs. 2.00 lacs'. The complainant did not issue a cheque of Rs. 2,00,000/-. The cheque was allegedly issued by the accused petitioners. Not only in the opening para of the petition, but in other places also, the petitioners have used loose expressions. In para 3 of the petition before grounds, it has been pleaded that the "complainant aggrieved and dissatisfied with the order summoning the accused and taking cognisance of the case by the Judicial Magistrate, files this petition". The substance of the complaint or petition is to be seen, and it should not be thrown out merely on technicalities of loose drafting. It emerges from the complaint that the complainant is the 'National Electrical' sole proprietorship concern of Subhash Bharwal. In view of ***Milind Shripad Chandurkar*** (supra),

it cannot be said that the complaint is not maintainable."

21. It was laid down in ***Parvesh Kaur v. State of Punjab,*** ***2022 SCC OnLine P&H 4065,*** that a proprietorship concern has no legal identity and cannot be impleaded as a party. It was observed: -

> "**8.** Furthermore, in fact, the law as enunciated by the Hon'ble Supreme Court of India in the case of ***Raghu Lakshminarayanan v. Fine Tubes (2007) 5 SCC 103***, draws a clear distinction emerging therefrom that only the proprietor can be held liable under Section 138 of the Act, as the proprietorship concern has no separate legal identity, which means and includes sole proprietor and vice versa. Thus, a sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, the proprietor and the firm being one and the same. The para as relevant reads thus:—
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> > "It is a settled position in law that the concept of vicarious liability introduced in the Negotiable Instruments Act is attracted only against the Directors, partners or other persons in charge and control of the business of the company, or otherwise responsible for its affairs. Section 141 of the NI Act does not cover within its ambit the proprietary concern. The proprietary concern is not a juristic person so as to attract the concept of vicarious liability. The concept of vicarious liability is attracted only in the case of a juristic person, such as a company registered under the provisions of the Companies Act, 1956, a partnership firm registered under the provisions of the Partnership Act, 1932 or an association of persons, which ordinarily would mean a body of persons that is not incorporated under any statute. The proprietary concern stands

absolutely on a different footing. A person may carry on a business in the name of the business concern, being the proprietor of such proprietary concern. In such a case, the proprietor of a proprietary concern alone can be held responsible for the conduct of business carried on in the name of such proprietary concern. Therefore, Section 141 of the Negotiable Instruments Act has no applicability in a case involving the offence committed by a proprietary concern."

9. Still further, in ***M. M. Lal v. State NCT of Delhi, 2012 (4) JCC 284***, the High Court of Delhi, while following the dictum of the Hon'ble Supreme Court of India, held that

"It is well settled that a sole proprietorship firm has no separate legal identity and, in fact, is a business name of the sole proprietor. Thus, any reference to a sole proprietorship firm means and includes the sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of a partnership firm or association of individuals. Thus, in the case of a proprietorship concern, only the proprietor can be held liable under Section 138 NI Act as the proprietorship

> concern and the proprietor are one and the same."
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> 10. In view of the law as enunciated above, there was no legal requirement of the proprietorship firm to have been arrayed as an accused.

22. A similar view was taken by the Allahabad High Court in ***Dhirendra Singh v. State of U.P., 2020 SCC OnLine All 1130,*** and it was held that a proprietorship concern is not a juristic person that can be impleaded under Section 141 of the Negotiable Instruments Act. It was observed: -

> "**10.** A plain reading of the provision makes it clear that if the person committing the offence is a "company", in that event every natural person responsible for such commission, as also the artificial person, namely the company, shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly. Also, certain other natural persons may be held guilty, if so proved.
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> **11.** Perusal of the registration of the firm, Annexure no. 1, it transpires that the petitioner is the proprietor of the firm, namely M/S. Rashmi Arosole& Chemical Avas Vikas Colony, Sector 10, Sikandara Agra. Perusal of the registration certificate of the firm, petitioner Dhirendra Singh, is the proprietor of the firm, and it is clear that this is a sole proprietorship firm. Thus, the main question arises whether in a sole proprietorship firm indictment of the firm arraign as a party is necessary or not.
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> **12.** Thus, the phrase "association of individuals" necessarily requires such an entity to be constituted by two or more individuals, i.e. natural persons. On the contrary, a sole-proprietorship concern, by its very description, does not allow for ownership to be shared or be joint, and it defines, restricts and dictates the

ownership to remain with one person only. Thus, "associations of individuals" are absolutely opposed to sole-proprietorship concerns, in that sense and aspect.

13. A 'partnership', on the other hand, is a relationship formed between persons who willfully form such a relationship with each other. Individually, in the context of that relationship, they are called 'partners', and collectively, they are called the 'firm', while the name under which they set up and conduct their business/activity (under such relationship) is called their 'firm name'.

14. While a partnership results in the collective identity of a firm coming into existence, a proprietorship is nothing more than a cloak or a trading name acquired by an individual or a person for the purpose of conducting a particular activity. With or without such a trade name, it (sole proprietary concern) remains identified to the individual who owns it. It does not bring to life any new or other legal identity or entity. No rights or liabilities arise or are incurred by any person (whether natural or artificial), except that otherwise attach to the natural person who owns it. Thus, it is only a 'concern' of the individual who owns it. The trade name remains the shadow of the natural person or a mere projection or an identity that springs from and vanishes with the individual. It has no independent existence or continuity.

15. In the context of an offence under section 138 of the Act, by virtue of Explanation (b) to section 141 of the Act, only a partner of a 'firm' has been artificially equated to a 'director' of a 'company'. It's a legal fiction created in a penal statute. It must be confined to the purpose for which it has been created. Thus, a partner of a 'firm' entails the same vicarious liability towards his 'firm' as a director does towards his 'company', though a partnership is not an artificial person. So also, upon being thus equated, the partnership 'firm' and its partner/s has/have to be impleaded as an accused person in any criminal

> complaint that may be filed alleging offence committed by the firm. However, there is no indication in the statute to stretch that legal fiction to a sole proprietary concern.
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> **16.** Besides, in the case of a sole proprietary concern, there are no two persons in existence. Therefore, no vicarious liability may ever arise on any other person. The identity of the sole proprietor and that of his 'concern' remain one, even though the sole proprietor may adopt a trade name different from his own, for such 'concern'. Thus, even otherwise, conceptually, the principle contained in section 141 of the Act is not applicable to a sole-proprietary concern."

23. Therefore, the B.S. Trading Company does not have any independent existence, and it was not required to be impleaded, no notice of accusation was required to be put to it, and it was not required to be convicted before fastening the liability upon Baldev Singh. Baldev Singh and M/S B.S. Trading Company are the same in law; hence, the submission that the conviction of Baldev Singh is bad because no notice of accusation was put to M/S B.S Trading Company and no conviction of M/s B S Trading Company was recorded, is not acceptable.

24. Mr Abhinav Mohan Goel, learned Legal Aid Counsel, for the petitioner, submitted that the existence of legal debt is not a matter of presumption under Section 139 of the N. I Act, and the complainant is required to prove the

existence of the legally enforceable debt by leading evidence. He relied upon the judgment of the Hon'ble Supreme Court in ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde, 2008 (4) SCC 54,*** in support of his submission. This judgment was considered by the Hon'ble Supreme Court in ***Rangappa v. Sri Mohan, (2010) 11 SCC 441: 2010 SCC OnLine SC 583,*** and it was held that the observations made in ***Krishan Janardhan Bhat*** (supra) may not be correct. It was observed:

> "26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in ***Krishna Janardhan Bhat [(2008) 4 SCC 54: (2008) 2 SCC (Cri) 166]*** may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is, of course, in the nature of a rebuttable presumption, and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."

25. In similar circumstances, the Hon'ble Supreme Court had held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106, 18*** that once the presumption had been drawn, the onus shifted to the accused and unless the accused

discharged the onus, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of fund or non-examination of the witnesses. It was observed: -

> "18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing a loan to the accused and the want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused, and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing a loan to the appellant-accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence."

26. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram Versus Devinder Singh Hudan and another (2019) 10 SCC 287*** that the complainant is not to prove the debt as in a civil court in view of the presumption, but only to prove that the cheque was issued by the accused. It was observed:

> "20. The Trial Court and the High Court proceeded as if

> the appellant were to prove a debt before a civil court; 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. 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. It was laid down in ***P. Rasiya v. Abdul Nazer, 2022 SCC OnLine SC 1131,*** that the complainant is not to state the nature of the transaction or the source of funds. It was observed:

> "By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the Complainant has not specifically stated the nature of transactions and the source of funds. However, the High Court has failed to note the presumption under Section 139 of the N.I. Act. As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque are not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a

> statutory presumption, and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary. The aforesaid has not been dealt with and considered by the High Court."

28. The accused stated in his statement recorded under Section 313 of the Cr.P.C that he had issued the cheque as security. 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 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."

29. This position was reiterated 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."

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

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE 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 rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

31. 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.

32. The accused claimed that the cheque was issued as security. Learned Courts below had rightly held that even if a cheque was issued as a security, the accused would be liable for the dishonour of the security cheque. It was laid down by

this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456,*** that even if the cheque is issued towards the security, the accused is liable. It was observed:

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

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

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well

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

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

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

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

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

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

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

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

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

35. The accused did not step into the witness box to establish this version. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under section 313 is not sufficient to rebut the presumption. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration.*" (Emphasis supplied)"

36. Therefore, the plea taken by the accused that the cheque was issued as security was not established.

37. The complainant stated in his cross-examination that he used to supply Toffee and Biscuits, etc., to the accused. He denied that he had obtained the signatures of the accused on the blank signed cheques. He had supplied the articles on credit, but he could not mention the date of supplying the articles. He had not maintained any record regarding the supply of the articles.

38. The cross-examination of the complainant shows that the business transactions between the complainant and the accused are not disputed. It was suggested to the complainant that he had obtained blank signed cheques from the accused, and the complainant denied this suggestion. A denied suggestion does not amount to any proof and could not have been used to discard the complainant's case.

39. It was submitted that the complainant had not produced the bills regarding the supply of the articles to the accused, and his version should not have been accepted. This Hon'ble Supreme Court in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** held that even if the disbursal of a loan has not

been proved by producing the documents, the same will not affect the complainant's case because of the presumption contained in 118(a) and 139 of the NI Act. 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 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 a 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, 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).*

40. 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."

41. Therefore, the complainant's version cannot be doubted because he has not produced the record of the supply of the articles to the accused.

42. The cross-examination of the complainant is not sufficient to rebut the presumption attached to the cheque. The accused has not produced any evidence to rebut the presumption. Hence, learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

43. The complainant asserted that the cheque was dishonoured with an endorsement ‘insufficient funds’. The memorandum (Ext. CW1/C) mentions the reason for dishonour of the cheque as ‘funds insufficient’. Section 145 of the NI Act provides a presumption of correctness to the memo of dishonour, and the burden is upon the accused to rebut this presumption. 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.

44. The accused has not produced any evidence to rebut the presumption, and learned Courts below had rightly held that the cheque was dishonoured with an endorsement 'funds insufficient'.

45. The complainant stated that he had issued a notice to the accused, which was duly served upon him. This was not suggested to be incorrect and is deemed to be accepted. Thus, it was duly proved that the complainant had issued a notice to the accused, which was duly served upon the accused.

46. 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).

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

48. Thus, it was duly proved that the accused had issued a cheque in favour of the complainant to discharge his debt/liability, which was dishonoured with an endorsement 'insufficient funds' and the accused failed to repay the

amount despite the deemed receipt of the notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly 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.

49. Learned Trial Court had imposed a sentence of three months upon the accused. 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."

50. Therefore, the sentence of three months cannot be said to be excessive, considering that a deterrent sentence is to be imposed.

51. The learned Trial Court had awarded a compensation of ₹1,25,000/-. The order was pronounced on 07.04.2021. The cheque was issued on 25.09.2017. Thus, the sentence was imposed after more than three years of the issuance of the cheque. 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***]"

52. The interest on the amount of ₹ 1,00,000/- for three years at the rate of 9% per annum would be ₹ 27,000/-, and a compensation of ₹25,000/- on the cheque amount of

₹1,00,000/- cannot be said to be excessive, requiring any interference from this Court.

53. The learned Trial Court imposed a sentence of simple imprisonment of one month in default of payment of compensation. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: 2010 SCC OnLine SC 612,*** the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237: -

> "**26.** From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at

> the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated."

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

> "**29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it

> was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.
>
> **30.** In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

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

56. No other point was urged.

57. In view of the above, the present revision petition fails and is dismissed.

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

(Rakesh Kainthla)
Judge

22nd June, 2026.
(ravinder)