IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 139 of 2022
Reserved on: 21.05.2026
Date of Decision: 22.06.2026

Narotam Chand ...Petitioner

Versus

Rakesh Kumar & Anr ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr Bhupinder Singh Ahuja, Advocate.
For Respondent No.1 : Mr G.R. Palsra, Advocate.
For Respondent No.2 : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 18.12.2021 passed by the learned Additional Sessions Judge, Sarkaghat, District Mandi, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 10.12.2018 passed by the learned Judicial Magistrate First Class, Court No.2, Sarkaghat, District Mandi, H.P. (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same*

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

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 Instrument Act (NI Act). It was asserted that the accused had issued a cheque of ₹7,00,000/- in favour of the complainant in discharge of business/pecuniary liability. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement of insufficient funds. The complainant sent a notice to the accused asking him to pay the amount within 15 days of the receipt of the notice. The notice was duly served upon the accused, but he failed to pay the amount despite the receipt of the notice. Hence, a complaint was filed against the accused for taking action as per the law.

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

4. The complaint examined himself (CW1), Suresh Kumar (CW2) and Rajinder Kumar (CW3).

5. The accused denied the complainant's case in its entirety in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.). He examined himself (RW1) and Mohinder Singh (RW2).

6. The learned Trial Court held that the plea taken by the accused that he had issued a blank signed cheque as security to the complainant was not probable. The accused failed to explain why the complainant would fill an amount of ₹7,00,000/- in the cheque. The evidence of the accused was not sufficient to prove that the complainant had no financial capacity to advance the amount. The cheque carries with it a presumption that it was issued for the consideration to discharge a debt/liability. The accused failed to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds', and the notice was duly served upon the accused. The accused failed to repay the amount despite the receipt of the notice of demand. 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 one year and pay a compensation of ₹85,000/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge, Sarkaghat, District Mandi, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed. The cheque carried with it a presumption that it was issued for consideration to discharge debt/liability. The evidence led by the accused was not sufficient to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds', and the notice was duly served upon the accused. The accused failed to repay the amount despite the service of the notice. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the learned Appellate Court dismissed the appeal filed by the accused.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision

asserting that the learned Courts below erred in appreciating the material on record. The complainant had no financial capacity to advance the huge loan to the accused. The plea taken by the accused that he had issued a blank security cheque in favour of the complainant, which was misused by him, was highly probable. Panchayat Secretary had categorically stated that the complainant was included in the list of persons below the poverty line, which cast a doubt on the complainant's financial capacity. The learned courts below failed to appreciate the statements of the defence witnesses. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Bhupinder Singh Ahuja, learned counsel for the petitioner/accused, Mr GR Palsra, learned counsel for the respondent No.1/complainant and Mr Lokender Kutlehria, learned Additional Advocate General for respondent No.2/State.

10. Mr Bhupinder Singh Ahuja, learned counsel for the petitioner/accused, submitted that the statement of Mohinder Singh (RW2) proved that the complainant was included in the list of persons living below the poverty line. Therefore, his version that he had advanced an amount of ₹7,00,000/- to the accused was

inherently suspect. The learned courts below failed to notice this aspect, and the judgments and order passed by them are not sustainable. Hence, he prayed that the present revision be allowed and the judgment passed by the learned Courts below be set aside. He relied upon ***Kumar Exports vs. Sharma Carpets, Criminal Appeal No. 2045 of 2008, decided on 16.12.2008,*** and ***Basalingappa vs. Mudibasappa, Criminal Appeal No. 636 of 2019, decided on 09.04.2019,*** in support of his submissions.

11. Mr G.R. Palsra, learned counsel for the respondent No.1/complainant submitted that the learned Courts below have rightly held that the issuance of the cheque and signature on the cheque are not in dispute. Hence, a presumption would arise that the cheque was issued for consideration to discharge debt/liability. The accused had failed to rebut the presumption, and the learned Courts below had rightly held him guilty. This court should not re-appreciate the evidence while exercising the revisional jurisdiction. Hence, he prayed that the present revision be dismissed.

12. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the dispute was between the private parties and the State has nothing to submit in the present matter.

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

14. 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.

15. This position was reiterated in ***State of Gujarat v. DilipsinhKishorsinh 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."

16. 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 ***SanjaysinhRamrao 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."

17. 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."

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

19. Mohinder Singh (RW2) stated that he was posted as a Secretary in the Gram Panchayat Samaila. The complainant, Rakesh Kumar, was entered at Sl. No 435-22 in the list of people below the poverty line. A person is selected in the below poverty line category in a Gram Sabha, in the presence of observers. A person falling below the poverty line is included in IRDP. He stated in his cross-examination that he was not aware that the complainant was running a shop at Samaila. He denied that the persons included in IRDP/BPL were not present in the Gram Sabha. 94 people were included in the BPL category. A person earning less than ₹2500/- per month, no Pucca house, vehicle and less than 12½ bighas land falls within the category of IRDP. He was not

aware that 94 people carried out the business; they had the Pucca house and the vehicles.

20. He is a public official and has deposed based on the record. Nothing was suggested to him in his cross-examination that he was making a false statement or that he had any motive to depose against the complainant. Therefore, his testimony is to be accepted as correct.

21. The complainant stated in his cross-examination that he was not aware that he was in the IRDP category. He admitted that he falls within the jurisdiction of the Gram Panchayat Samaila. The fact that he has not specifically denied that he belonged to the IRDP/BPL category corroborates the statement of Mohinder Singh (RW2) that the complainant was included in the list of the IRDP/BPL category.

22. Once it is held so, the complainant's income would be less than ₹2,500/- per month. An amount of ₹7,00,000/- would be equivalent to about 24 years' income of the complainant. The complainant would have to spend some money to survive, and his statement that he had advanced ₹ 7,00,000/- to the accused would become doubtful. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh Versus Narayan Dass Mahant (2022) 6 SCC 735*** that the

accused has a right to demonstrate that the complainant did not have the financial capacity to advance the loan stated to have been advanced by him. It was observed: -

> "9....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."

23. It was held by the Hon'ble Supreme Court in ***Basalingappa Versus Mudibasappa (2019) 5 SCC 418,*** that where the financial capacity to pay ₹6,00,000/- was questioned and there was no satisfactory reply, the accused had raised a probable defence. It was observed: -

> " 30. We are of the view that when evidence was led before the Court to indicate that apart from a loan of Rs. 6 lakhs given to the accused, within 02 years, an amount of Rs. 18 lakhs has been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. The court cannot insist on a person to lead negative evidence. The observation of the High Court that the trial court's finding that the complainant failed to prove his financial capacity for lending money is perverse cannot be supported.

> We fail to see how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence."

24. It was laid down by the Hon'ble Supreme Court in ***Dattatraya v. Sharanappa, (2024) 8 SCC 573: (2024) 3 SCC (Cri) 776: 2024 SCC OnLine SC 1899*** that when the financial capacity of the accused is not established, the accused is entitled to acquittal. It was observed:

> "**29.**...Furthermore, there was no financial capacity or acknowledgement in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further, the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent, nor has he been able to explain as to how a cheque issued by the respondent, allegedly in favour of Mr Mallikarjun, landed in the hands of the instant holder, that is, the appellant."

25. A similar view was taken in ***John K. Abraham Versus Simon C. Abraham & Another (2014) 2 SCC 236***, wherein it was held:-

> "9. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavy upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."

26. The complainant has only relied upon the presumption contained in Section 118(a) and 139 of the NI Act. He has not

produced any evidence to support his version. He claimed that he had advanced ₹4 lacs from his home and had borrowed ₹3,00,000/- from his father-in-law. He has not produced his father-in-law to support his version that the complainant had taken an amount of ₹3,00,000/- from him. The complainant's financial capacity to have ₹4 lacs in cash was suspect because he was included in the IRDP/BPL list, having the income of less than ₹2500/- per month. Therefore, the essential ingredient that the complaint had advanced the amount to the accused and the accused had issued the cheque to repay the loan, was not fulfilled.

27. The learned Trial Court noticed the statement of Mohinder Singh (RW2) in para 23 of the judgment but failed to notice its significance. The learned Appellate Court noticed the plea taken by the accused that the complainant did not have the financial capacity to pay ₹7,00,000/-, but held that the testimony was not sufficient to discard the complainant's version. The accused had admitted the receipt of ₹3,00,000/-, and the financial capacity of the complainant was not disputed. This reasoning cannot be sustained. Even if the accused had acknowledged the receipt of ₹3,00,000/-, he cannot be held liable for the dishonour of a cheque of ₹7,00,000. He could only have been held liable for the dishonour of the cheque of ₹3,00,000/-.

28. The accused is not required to prove his defence beyond a reasonable doubt, and it is sufficient that he creates a doubt regarding the complainant's case on the preponderance of probability. In the present case, it has been established on the preponderance of probability that the complainant did not have the financial capacity to advance ₹7 lacs to the accused. Hence, the accused is entitled to an acquittal.

29. The judgments in ***Kumar Exports*** (supra) and ***Basalingappa*** (supra) deal with the presumption under Section 139 of the NI Act and are not relevant.

38. In view of the above, the present revision is allowed and the judgment of conviction and order of sentence dated 10.12.2018, passed by learned Judicial Magistrate First Class, Court No.2, Sarkaghat, District Mandi, H.P., affirmed by learned Additional Sessions Judge, Sarkaghat, District Mandi, H.P. vide judgment dated 18.12.2021, are ordered to be set aside. The accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine amount, if deposited, be refunded to him after the expiry of the period of limitation in case no appeal is filed, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court.

39. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner is directed to furnish bail bonds in the sum of ₹25,000/-with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

40. A copy of this judgment, along with the record of the learned Courts below, be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

22nd June, 2026
(Nikita)