

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 310 of 2025

Reserved on: 25.05.2026

Decided on: 22.06.2026

Tilak Raj ... Petitioner

Versus

Suresh Kumar ... Respondent

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

*Whether approved for reporting?*¹ No.

For the Petitioner : Mr Javed Khan, Advocate.

For the Respondent : Mr Vijay Chaudhary, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 05.03.2025, passed by the learned Additional Sessions Judge, District Chamba, H.P. (learned Appellate Court) vide which judgment of conviction dated 28.05.2024, and order of sentence dated 22.06.2024 passed by the learned Chief Judicial Magistrate Chamba, District Chamba, 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 the reporters of the local papers may be allowed to see the Judgment?Yes.

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'). It was asserted that the complainant and the accused had cordial relations with each other. The accused demanded ₹1,80,000/- from the complainant and assured him to repay the amount in the first week of October 2019. The complainant advanced an amount of ₹1,80,000/- to the accused. He requested the accused to return the money in the first week of October 2019. The accused issued a cheque of ₹1,80,000/- drawn on State Bank of Patiala, Julkhari Branch, District Chamba, H.P. The complainant presented the cheque, but it was dishonoured with the remarks 'kindly contact Drawer/Drawee Bank please'. The complainant served a notice upon the accused asking him to pay the money within 15 days. The notice was duly received by the accused, but he failed to repay the amount. Hence, a complaint was filed before the learned trial Court for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, 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 parties were called upon to produce the evidence, and the complainant examined himself (CW1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 Criminal Procedure Code (Cr.P.C.), stated that he had issued some cheques to the complainant but had not handed over any cheque to the complainant on 10.10.2024. He admitted that he had received the notice. He stated that he was innocent and that he had issued a blank cheque. The complainant filed a false complaint against him by filling up ₹1,80,000/-. He did not produce any evidence in his defence.

6 The learned Trial Court held that the accused admitted the issuance of the cheque and his signature on the cheque, therefore, presumption would be attracted under Sections 118 and 139 of the NI Act that the cheque was issued for consideration to discharge the debt/liability. The burden would shift upon the accused to rebut the presumption. The plea taken by the accused that he had issued a blank cheque to the complainant was not substantiated on record. Therefore, the learned Trial Court

convicted the accused and sentenced him to undergo simple imprisonment for six months and pay a compensation of ₹3,00,000/-

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge, Chamba, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had not disputed his signature on the cheque. The complainant had sufficient authority to fill out the amount on a signed cheque. The burden is upon the accused to show that the cheque was not issued for consideration to discharge the debt/liability. The evidence of the accused was insufficient to prove such a fact. Learned Trial Court had rightly convicted and sentenced the accused, and no interference was required with the judgment and order passed by the learned Trial Court. Hence, the appeal filed by the accused was dismissed.

8. 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 plea taken by the accused that he had issued a security cheque for the repayment of

₹50,000/- was highly probable and learned Courts below erred in rejecting this plea. An excessive sentence was awarded; therefore, it was prayed that the present revision be allowed and the judgment and order passed by the learned Courts be set aside.

9. I have heard Mr Javed Khan, learned counsel for the petitioner/accused and Mr Vijay Chaudhary, learned counsel for the respondent/complainant.

10. Mr Javed Khan, learned counsel for the petitioner/accused, submitted that the cheque was dishonoured with an endorsement 'kindly contract Drawer/Drawee Bank please'. The cheque was drawn on the State Bank of Patiala and was dishonoured by the State Bank of India. The cheque was not valid on the date of the presentation, and the learned Courts below failed to notice this aspect. Therefore, he prayed that the present revision be allowed and the judgment and order passed by the learned Courts below be set aside.

11. Mr Vijay Chaudhary, learned counsel for the respondent/complaint submitted that this plea was not taken before the learned Trial Court, Appellate Court or even before this Court in the memorandum of revision; therefore, it is impermissible to take this plea during the arguments. The learned Courts below had rightly held that the issuance of the cheque and

the signatures of the accused were not disputed. A presumption arose from the admission made by the accused, and the burden was upon the accused to rebut the presumption. The accused failed to rebut the presumption, and the learned Courts below had rightly held him guilty. Both the learned Courts below have recorded concurrent findings of facts and this court should not interfere with the concurrent findings of fact while deciding a revision petition. He relied upon the judgment of this Court in *M/s Asia Trade Links vs. M/s Sharma Electronics 2024:HHC:5402* in support of his submission.

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

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

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal

Procedure Code (in short “CrPC”) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

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

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

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the

orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

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

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v.*

Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275], while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise 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 reappraising the oral evidence. ...”

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

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

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

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

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

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

18. The 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 cheque dated 10.10.2010 (Ext.CW-1/B) was drawn on State Bank of Patiala, it was presented before State Bank of India, who dishonoured it and issued the memo (Ext.CW-1/C) dated 15.10.2019 mentioning 'kindly contract Drawer/Drawee Bank and please'. State Bank of Patiala had merged with State

Bank of India, as per the Notification issued by the Government of India, titled Acquisition of State Bank of Patiala Order 2017 w.e.f. 01.04.2017. The State Bank of India issued a notification asking the customers of State Bank of Patiala and other merged banks to take new cheque books and mentioned that the validity of the cheque books issued by the erstwhile banks would end on 31.12.2017. Therefore, as per the notification issued by the Government of India, the cheque was not valid on 15.10.2019, when it was dishonoured. Therefore, an endorsement was made 'kindly contract Drawer/Drawee Bank please'.

20. Neither of the learned Courts below looked into this aspect. They never enquired why the cheque drawn on the State Bank of Patiala was presented before the State Bank of India and State Bank of India and whether such a cheque could have been honoured by the State Bank of India. They proceeded on the basis that the signatures on the cheque were admitted and a presumption would be attracted, and nothing more was required to be done. Therefore, both the learned Courts below proceeded on the jurisdictional error because they failed to look into the validity of the cheque. Since the first requirement is that a valid cheque should have been drawn, which was not satisfied, the accused could not have been tried, convicted and sentenced. In *M/s Asia*

Trade Links (supra), the question of a valid cheque had not arisen, and the cited judgment does not apply to the present case.

21. It was submitted that the plea regarding the invalidity of the cheque was not taken before the learned Courts below, and this plea cannot be taken before this Court. This submission cannot be accepted. Presentation of a valid cheque is the foundational requirement for filing the complaint, and if a person is tried and convicted based on an invalid cheque, it would be an error of jurisdiction, which can always be assailed in the revisional jurisdiction; hence, the submission that the plea cannot be taken before this Court cannot be accepted.

22. Therefore, the learned Courts below erred in holding the accused guilty and the judgments and order passed by the learned Courts below cannot be sustained

23 In view of the above, the present revision is allowed, and the judgments of the learned Courts below are set aside. Pending miscellaneous application(s), if any, also stand disposed of.

24. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of *Bhartiya Nagarik Suraksha Sanhita, 2023*) the petitioner/accused is directed to furnish bail bonds in the sum of ₹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/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court

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

(Rakesh Kainthla)
Judge

22nd June, 2026.
(ravinder)