



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 23th OF JUNE, 2026

CRIMINAL REVISION No. 1377 of 2021

ISMILE

Versus

UMASHANKAR

Appearance:

Shri Deepak Kumar Rawal – Advocate for the petitioner.

Shri Kamal Kumar Tiwari – Advocate for the respondent.

Reserved on : 29.04.2026

Pronounced on : 23.06.2026

ORDER

This criminal revision, filed under Section 397/401 of the Cr.P.C., 1973 is preferred being aggrieved by the order dated 03.02.2021 in CRA No.50/2020 by Fifth Additional Sessions Judge, Ujjain arising out of judgment dated 13.03.2020 in SC NIA No.01/2018 by JMFC, Ujjain whereby; conviction of the revision petitioner under Section 138 of the N.I. Act, 1881 and sentence of 1 year S.I. and a compensation of Rs.6,50,000/- with default stipulation of 2 months S.I. under Section 357(3) of the Cr.P.C., 1973 awarded by the trial court has been affirmed by the First Appellate Court.

2. The facts of the case in brief are that the complaint was filed on 20.10.2020 disclosing the offence under Section 138 of the N.I. Act with the averments that both were acquainted to each other. Accused executed an agreement to sale dated 02.01.2014 for consideration of



Rupees Five Lakhs of house situated at 52-53 Pratap Nagar, Panwasa, District Ujjain admeasuring 111.41 sq. mt. in the presence of witness Jagdambaprasad Shrivastava s/o Shri Biharilal Shrivastava, r/o Nilganga Road, House No.81, Ujjain and received an amount of Rupees Four Lakh on the same date as per consideration. Sale deed was to be executed after receiving the rest of consideration as amount of Rupees One Lakh and respondent further paid to the revision petitioner rest of consideration amount to the tune of Rupees One Lakh within the stipulated time and asked the revision petitioner to execute the sale deed, then the revision petitioner revealed that the sale house is mortgaged and it has to be redeemed and thereafter, the sale deed can be executed.

3. On repeated requests, the revision petitioner informed that he requires Rs. 3,50,000/- for redemption of the house and, thereafter, he can execute the sale deed and respondent arranged the amount of Rs.3,50,000/- in parts but revision petitioner/ accused did not execute the sale deed as per agreement dated 02.06.2014 and ultimately he denied to execute the sale deed of the aforesaid house submitting that he requires the aforementioned house for the residential requirement of the family members and submitted that he has mortgaged the house with the bank and have obtained the loan and for refund of the amount of Rupees Five Lakh received in two parts and the amount of cost of Rupees Fifty Thousand a cheque dated 13.11.2017 was handed over to the respondent. Cheque was presented for collection but was returned with a note that “the account is blocked”. Notice dated 21.11.2017 was issued through Advocate and the notice was served on revision petitioner on 25.11.2017 but a false reply dated 04.12.2017 was forwarded; accordingly, the complaint was filed.



4. Particulars of the offence under Section 138 of NI Act were read over and accused claimed for trial and respondent/ complainant and submitted his evidence in affidavit filed under Section 145 of the NI Act and further adduced the documents (Ex.P-1 to P-8). In examination under Section 313 of the Cr.P.C., he took the defence of false implication submitting that amount of Rupees Five Lakh in cheque has been wrongly mentioned. His defence in the reply to the notice was that due to the accidental injuries, he obtained an amount of Rs.2,25,000/- from the respondent/complainant and after getting the loan from Bank he refunded the amount with interest. Respondent had advanced the money after getting twenty four blank cheques and the documents of the house and stamp of Rs.100/-. He returned only ten blank cheques but retained rest of the cheques and this case has been filed on the strength of blank cheques and the blank stamp has been misused. Revision petitioner examined Ramendra Kumar Jha, a Manager of UCO Bank as (DW-1) in his defence and adduced the documents (Ex.D-1) i.e. statement of account for the period of 01.01.2014 to 02.12.2019 maintained with UCO Bank by revision petitioner/accused.

5. Appreciating the evidence, trial court found proved that agreement dated 2.06.2014 (Ex. P-8) was executed by the revision petitioner for sale of his house situated at 52-53 Pratap Nagar, Panwasa, District Ujjain for a consideration of Rs.5,00,000/- and cheque (Ex.P-1) dated 20.11.2017 was issued to refund the consideration amount and the cheque was presented for payment and despite the notice, amount was not refunded and recorded the finding of conviction and the sentence was passed as mentioned in para 1 of the judgment and the appellate court affirmed those findings.



6. Challenging the findings of both the courts this revision petition has been preferred on the ground that the finding of the trial court and the appellate court are perverse and the trial court was wrong in believing complainant witnesses and discarding defence version. Judgment of the both the courts were wrong in drawing unwarranted inferences. Trial court has overlooked the fact that the evidence given by the witnesses are corroborated with each other and with the facts of this case. They referred on the Apex Court judgments in the case of *N. Vijay Kumar vs. Vishwanath Rao N.* reported in *2025 (5) SCC 300* and *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel* reported in *2022 INSC 1065*.

7. Heard.

8. Counsel for the respondent has opposed the revision petition.

9. Perused the record.

10. The ratio in *Dashrathbhai (supra)* and *N. Vijay Kumar (supra)* is to the effect that the burden of proof on the accused is only to raise a probable defence by showing a preponderance of probabilities and testimony of defence witness Ramendra Kumar Jha and further argued that the defence of DW-1 established that he made the payment to revision petitioner and his defence discharges his burden.

11. In paragraph 19, the Trial Court observed that, according to the bank statement (Ex. D-1), the Revision Petitioner had transferred an amount of Rs. 3,14,056/- to the Respondent. The complaint itself discloses the said payment in the relevant paragraph of the complaint. Therefore, the defence raised by the Revision Petitioner regarding the aforesaid payment cannot be accepted in view of the principles laid down in *Dashrathbhai Trikambhai Patel (supra)* and *N. Vijay Kumar (supra)*.



12. Accordingly, no illegality, perversity, or infirmity is found in the findings recorded by the courts below. The conviction of the Revision Petitioner under Section 138 of the Negotiable Instruments Act, 1881, therefore, does not warrant interference. The sentence imposed is also proportionate to the facts and circumstances of the case.

13. As per the status report dated 07.04.2026 received from the Office of the Superintendent, Central Jail, Ujjain, the Revision Petitioner had already undergone the sentence imposed and was released on 21.02.2022. Consequently, no interference with the sentence is called for.

14. With the aforesaid, revision stands disposed of.

15. Copy of judgment alongwith record be remitted back to the trial court concerned for necessary compliance and information.

**(GAJENDRA SINGH)
JUDGE**

Vatan