

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 503 of 2024

Reserved on: 06.05.2026

Decided on: 24.06.2026

Virbhadar Singh Petitioner

Versus

Rajiender Kumar & another Respondents

Coram

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

***Whether approved for reporting?*¹ No.**

For the Petitioner : Mr Praveen Chandel, Legal Aid Counsel

For the Respondent : Mr Jitender K. Sharma, Additional Advocate General, for respondent No.2.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 20.01.2024, passed by learned Additional Sessions Judge-I, Mandi, District Mandi, H.P. (learned Appellate Court) vide which judgment of conviction and order of sentence dated 01.04.2023 passed by the learned

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

Judicial Magistrate, First Class, Thunag, District Mandi, 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*).

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 parties were known to each other. The accused issued a cheque of ₹5,00,000 drawn on Punjab National Bank, Janjehli, District Mandi, H.P., in favour of the complainant to discharge his legal liability. The complainant presented the cheque before the bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant sent a legal notice to the accused asking him to pay the amount within 15 days of the date of receipt. The notice was duly served upon the accused, but the accused failed to repay the amount despite the service of the notice. Hence, the 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 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 examined himself (DW-1) to prove his defence.

6. The learned Trial Court held that the accused admitted the issuance of the cheque and a presumption would be triggered that the cheque was issued to discharge debt. The accused asserted that he had furnished the security cheque for some transaction between the complainant and Gulab Singh. This defence was not proved on the balance of probability. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused, and he failed to repay the amount despite the receipt of the notice. Hence, the learned

Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for six months, pay a compensation of ₹5,70,000/- and in default of payment of compensation, to undergo further simple 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 Additional Sessions Judge-I, Mandi, District Mandi, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had admitted the signatures and the issuance of the cheque. Hence, a presumption would arise that the cheque was issued to discharge the debt/liability. The accused failed to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were satisfied. Learned Trial Court had imposed an adequate sentence, and no interference was

required with the judgment and order passed by the learned trial Court. Hence, the appeal 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 evidence. The complainant had failed to prove that the cheque was issued to discharge the debt, and the learned Courts below erred in relying upon the presumption. Therefore, it was prayed that the present petition be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Parveen Chandel, learned Legal Aid Counsel for the petitioner/accused and Mr Jitender K. Sharma, learned Additional Advocate General for respondent number 2/State.

10. Mr Parveen Chandel, learned Legal Aid Counsel for the petitioner/accused, submitted that the learned Courts below erred in convicting and sentencing the accused. The complainant had failed to prove that he had advanced the loan to the accused, and the accused had issued the cheque to repay the loan. The accused had appeared in the

Court as a witness and denied the allegations made by the complainant. The learned courts below erred in ignoring the statement of 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.

11. Mr Jitender K. Sharma, learned Additional Advocate General for the respondent/State, submitted that the dispute is between private persons and the State has nothing to say in the present matter. Hence, he prayed that appropriate orders be passed.

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.

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)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation

in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

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

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

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

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

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

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

18. The 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 accused (DW-1) admitted in his cross-examination that the cheque belongs to him and bears his signature. He also admitted that he had to repay the cheque amount to the complainant and had not paid anything to him since the filing of the complaint. He admitted that he had given the cheque to the complainant to discharge the loan and not as security. These admissions show that the complainant's version that the accused had taken a loan from him and issued the cheque to repay that debt was duly admitted by the accused. 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 because 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 a legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.”

20. A similar view was taken in *N. Vijay Kumar v. Vishwanath Rao N.*, 2025 SCC OnLine SC 873, wherein it was held as under:

“6. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence.”

21. This position was reiterated in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

“ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54, have been set aside by a three-Judge Bench in *Rangappa* (supra).

16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is 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].

22. Thus, the learned Courts below were justified in raising the presumption that the cheque was issued in discharge of the liability for consideration. The accused failed to rebut the presumption; rather, he admitted the complainant's case in his cross-examination, and the first ingredient was duly satisfied.

23. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This was duly corroborated by the dishonour memos (Ext. CW-1/C and Ext.CW-1/D). 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.”

24. In the present case, no evidence was produced to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured with an endorsement ‘insufficient funds.’

25. It was submitted that the cheque could not have been presented repeatedly. This submission is not acceptable. It was laid down by the Hon’ble Supreme Court in *MSR Leathers v. S. Palaniappan (2013) 1 SCC 177* that there is nothing in the NI Act to prevent the repeated presentation of the cheque or issuance of successive notices. It was observed:

“33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default, which was followed by a statutory notice and a failure to pay, had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served

upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or any other similar reason. There is, in our opinion, no real or qualitative difference between a case where default is committed, and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.

35. In the result, we overrule the decision in the *Sadanandan case [(1998) 6 SCC 514: 1998 SCC (Cri) 1471]* and hold that the prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in light of the observations made above.”

26. This position was reiterated in *Kamlesh Kumar v. State of Bihar (2014) 2 SCC 424*, and it was held that the complainant could present the cheque repeatedly and issue the notices successively. It was observed:

“8. In the present case, the complainant had not filed the complaint on the dishonour of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under the aforesaid provision.”

27. 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 138, wherein it was observed at page 203:

"7. Having regard to the object of Section 138 of the Negotiable Instruments Act, a prosecution based on a second or successive default in payment of the cheque amount is not impermissible simply because no statutory notice had been issued after the first default and no proceeding for prosecution had been initiated. As held by this Court in *MSR Leathers v. S. Palaniappan* [*MSR Leathers v. S. Palaniappan*, (2013) 1 SCC 177: (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458], there is no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second time or successive times."

28. Therefore, there is no bar in the successive presentation of the cheque and issuance of the notice.

29. The complainant stated that he had issued a notice which was duly served upon the accused. He relied upon the postal acknowledgement (Ext.CW-1/G), which shows that the registered letter was delivered to the accused. The accused admitted in his statement on oath that the notice was served upon him. He also admitted that he had not paid anything to the complainant since the filing of the

complaint. Therefore, it was duly proved that the complainant had served a notice upon the accused and the accused had failed to repay the amount despite the service of the notice.

30. Thus, it was duly proved on record that the accused had issued a cheque to the complainant to discharge debt/liability, which was dishonoured with an endorsement 'insufficient funds' and the accused failed to repay the amount despite the receipt of a valid notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

31. Learned Trial Court sentenced the accused to undergo simple imprisonment for six months and pay a compensation of ₹5,70,000/-. 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.”

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

33. In the present case, the cheque was issued on 28.04.2021. The learned Trial Court imposed the sentence on 01.04.2023, after the lapse of nearly 2 years. The complainant lost interest on the money which he would have gained by depositing it in his bank or investing it somewhere. He also paid the money to the learned counsel for prosecuting the complaint. The complainant was entitled to be compensated for the same. 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]”

34. Learned Trial Court had awarded a compensation of ₹5,70,000/- on an amount of ₹5,00,000/-, which means a compensation of ₹70,000/- was awarded. Compensation of ₹70,000/- as an interest for two years on an amount of ₹5,00,000/- cannot be said to be excessive.

35. The learned Trial Court imposed simple imprisonment for one month in default of payment of compensation. It was submitted that the learned Trial Court could not have sentenced the accused to undergo imprisonment in default of payment of compensation. This submission is not acceptable. 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, that 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.”

36. 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.

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

38. No other point was urged.

39. In view of the above, the present revision fails, and it is dismissed, so also the pending applications, if any.

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

(Rakesh Kainthla)
Judge

24th June, 2026.
(ravinder)