

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 604 of 2023

Reserved on: 06.07.2026

Date of Decision: 16.07.2026

Rashpal Singh

...Petitioner

Versus

Nichu Ram Jilta

....Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the petitioner : Mr Kishore Pundeer, Legal
Aid Counsel.

For the Respondent : Mr Sunny Rawat, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 10.11.2023 passed by the learned Additional Sessions Judge Rohru, H.P. (Learned Appellate Court) vide which the Judgment of conviction dated 25.04.2023 and order of sentence dated 29.04.2023, passed by the learned Additional Chief Judicial Magistrate, Court No.1 Rohru,

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

District Shimla, (learned Trial Court) were upheld. (*The 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 against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (N I Act). It was asserted that parties were known to each other. The accused approached the complainant in the year 2018 and demanded ₹4,35,000/- from the complainant for the construction of his house. The complainant paid ₹2,00,000/- through cheque and ₹2,35,000/- in cash in December 2018. The accused promised to repay the amount in August during the apple season. The complainant demanded the money, and the accused issued a cheque of ₹4,35,000/- on 04.08.2020 to repay the money. The complainant presented the cheque to its bank, but it was dishonoured with an endorsement 'drawer's signature differs'. The complainant issued a notice to the accused, but the accused failed to repay the amount. Hence, the complaint

was filed before the learned Trial Court for taking action against the accused 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 (CW1) and Gopal (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedures (CrPC), admitted that he had issued a cheque, but stated that the cheque was issued for ₹2,00,000/-. He admitted that a legal notice was received by him. He stated that he had taken ₹2,00,000/- from the complainant. He examined himself (DW-1) in his defence.

6. Learned Trial Court held that the accused admitted the issuance of the cheque and his signature. Therefore, a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption. The cheque was dishonoured

with an endorsement 'drawer's signatures differ', which also attracted the provisions of Section 138 of the N I Act. The complainant admitted the receipt of ₹20,000/-, but the date of payment was not mentioned. Therefore, it was difficult to connect the payment to the present case. The notice was sent to the correct address and was presumed to be served. The accused failed to repay the amount. All the ingredients of the commission of an offence punishable under Section 138 of the N I Act were duly satisfied. Hence, the learned Trial Court convicted the accused and sentenced him to undergo simple imprisonment for one year, pay ₹5,00,000/- as compensation and in default of payment of compensation, to further undergo simple imprisonment for three months.

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, Rohru, Shimla, H.P. (learned Appellate Court). Learned Appellate held that the complainant's version was proved by his witness. The accused had failed to prove the defence taken by him. The sentence imposed by the learned Trial Court was adequate,

and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgment 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 plea taken by the accused was proved on the balance of probability. The complainant had failed to prove that the cheque was issued for consideration. The notice was not served upon the accused. Therefore, it was prayed that the present revision be allowed and the judgment and order passed by the learned Courts below be set aside.

9. I have heard Mr Kishore Pundeer, learned Legal Aid Counsel, for the petitioner/accused and Mr Sunny Rawat, learned counsel for the respondent/complainant.

10. Mr Kishore Pundeer, learned Legal Aid Counsel, for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The burden was upon the complainant to establish that he had paid ₹4,35,000/- to the accused. His statement on oath was contrary to the complaint filed by him, which made the

advancement of the loan highly doubtful. The complainant claimed that he had kept the money for the construction of the house, and it is highly improbable that he would advance the money to the accused instead of constructing the house. Therefore, he prayed that the present revision be allowed and that the judgments and order passed by learned Courts below be set aside. He relied upon a judgment of the Bombay High Court in *Anant Bondre vs. Alfred David Fernandes and Anr.* :2014(1) AIR BomR (Cri) 144 and judgment of Delhi High Court in *M/s Kushal Infra Project Industries India Ltd. vs. M/s R.L.Verma, & Sons (Huf) and other* 2025: NCDHC 5093 in support of his submissions.

11. Mr Sunny Rawat, learned counsel for the respondent/complainant, submitted that the issuance of the cheque is not in dispute, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption, and he was rightly held guilty by the learned Trial Court. This Court should not interfere with the pure findings of fact recorded by the learned Courts below while deciding the revision. 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 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 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 complainant asserted in para 1 of the complaint and para 1 of the proof affidavit (Ext C-1/CW-1) that he had paid ₹2,00,000/- through a cheque on 13.05.2018 and ₹2,35,000/- in cash in December 2018; however, he changed this version in the Court and stated in his cross-examination that he had paid the money to the accused in the bazar in the form of a cheque of ₹2,00,000/- and cash of ₹2,35,000/-. The payment of ₹ 2,00,000/- was made by means of a cheque on 13.03.2018, and the amount of ₹ 2,35,000/- was paid on 19.03.2018 in cash.

19. Therefore, the complainant has made contradictory statements regarding the date of the payment of the money in cash. First, he stated in the complaint that the amount in cash was paid in December 2018. He stated on oath that the cheque and cash were handed over on the same day in March. He again stated that the cheque was handed over and cash was paid on different dates in March. 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 complainant made contradictory statements regarding the payment of the consideration, the presumption attached to the cheque stood rebutted. It was observed:

30. Admittedly, the appellant was able to establish that the signature on the cheque in question was of the respondent and in regard to the decision of this Court in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40, a presumption is to ideally arise. However, in the above-referred context of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

31. The trial court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt, as the very issuance of a cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on white paper and not on stamp paper, as presented by the appellant, creates another set of doubts in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

20. It was submitted that the cheque carried with it a presumption that it was issued for consideration to discharge the liability. There can be no dispute with the proposition of law that a cheque carries with it a presumption that it was issued for consideration in discharge of the liability; however, the presumption is rebuttable, and can be rebutted by the cross-examination of the complainant's witnesses or the evidence led by the accused. It was laid down by the Hon'ble Supreme Court in *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418: 2019 SCC OnLine SC 491 that the accused can rely upon the material submitted by the complainant to rebut the presumption. It was observed at page 433:

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him, or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

21. It was laid down by the Hon'ble Supreme Court in *Rajesh Jain v. Ajay Singh*, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275 that the presumption applies in the absence of evidence and disappears after the evidence is produced. It was observed:

“38. John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law] on Evidence states as follows:

“The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption ‘disappears as a rule of law and the case is in the Jury's hands free from any rule’.”

22. The complainant stated in his cross-examination that he had kept ₹2,35,000/- in cash in his home to construct the house. It was rightly submitted on behalf of the accused that a person would not advance the money kept by him for constructing his house to another, and that too without interest, because the cost of construction goes on increasing day by day, and he would not be able to construct the house after some time with the same amount due to inflation. This admission made the complainant's case highly suspect.

23. Learned Courts below were swayed by the presumption and failed to examine the evidence critically and appreciate the impact of the cross-examination of the complainant. Had they looked at the evidence with more care and caution, they would have discovered that the presumption

was rebutted. Hence, the judgment and order passed by the learned courts below cannot be sustained.

24. In *Anant Bodre* (supra), the Bombay High Court held that the burden can be discharged by the accused on the balance of probability, which is undisputed. In *M/s Kushal Infra Project* (supra), the Delhi High Court held that the cheque has to be issued for the amount due and not for a larger amount. Both these propositions are well settled and do not require any comment from this Court.

25. No other points urged.

26. In view of the above, the present revision is allowed, and the judgment of conviction dated 25.04.2023 and order of sentence dated 29.04.2023, passed by the learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, in Criminal Case No. RBT 470-3 of 2021/2020 as affirmed by the learned Additional Sessions Judge, Rohru, H.P. vide judgment dated 10.11.2023 in Criminal Appeal RBT No. 61-R/10 of 2023 are ordered to be set aside, and the accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine/compensation amount, if deposited by the

petitioner/accused be refunded to him after the expiry of the statutory period of limitation in case of no further appeal, and in case of appeal, it shall be dealt with as per the orders of the Hon'ble Apex Court.

27. 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 ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall be effective for six months with a stipulation that in the event of a 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.

28. The present revision stands disposed of, so also the pending miscellaneous application(s), if any.

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

(Rakesh Kainthla)
Judge

16th July, 2026
(ravinder)