

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 334 of 2026

Reserved on: 6.7.2026

Date of Decision: 16.7.2026.

Naresh Kumar

...Petitioner

Versus

Surender Kumar Goel

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : M/s Raman Parashar and Virender Singh, Advocates.

For the Respondent : Nemo.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 06.04.2026, passed by the learned Additional Sessions Judge-I, Solan District, Solan, HP, (learned Appellate Court) vide which the judgment of conviction dated 23.08.2024 and order of sentence dated 03.09.2024, passed by the learned Additional Chief Judicial Magistrate, Kasauli, District Solan, H.P. (learned

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

Trial Court) were upheld. (*The parties shall hereinafter be referred 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 petition 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 (NI Act). It was asserted that the complainant had advanced ₹5,00,000/- to the accused on 09.07.2020 on his demand through cheque. The accused assured to repay the amount within 6 months. The complainant demanded the money after 6 months, but the accused prevaricated. He issued a cheque of ₹5,00,000/- in favour of the complainant on 20.02.2022 to repay the money. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant issued a legal notice to the accused, which was duly served. However, the accused failed to repay the money despite the receipt of the notice of demand. Hence, the complaint was filed before the learned Trial Court 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 Rohit (CW1), himself (CW2), Chandan (CW3) and Amarjeet (CW4) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedures (Cr.PC), admitted that he had borrowed ₹5,00,000/- from the complainant in July 2020, which was paid through a cheque to him. He admitted that he had received a legal notice. He did not produce any evidence in his defence.

6. The learned Trial Court held that the accused had admitted the taking of the money, issuance of the cheque and the receipt of the notice. A presumption arose that the cheque was issued for consideration to discharge the debt/liability. The admission made by the accused in his statement recorded under Section 313 of the Cr.PC strengthened the presumption that the

cheque was issued for consideration. The cheque was dishonoured with an endorsement 'insufficient funds'. The accused failed to repay the money despite the receipt of a valid notice of demand. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. 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 9 months and pay a compensation of ₹ 5,70,000/-.

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, Solan, District Solan, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused admitted the complainant's case that he had borrowed 5,00,000/- from the complainant. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused. 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 holding that there was no valid service of notice. The notice was sent to village Anhech, whereas the name of the petitioner's village is Nahech. The notice was served upon some person who signed it as Naresh. The delivery report was only marked and not exhibited; hence, it cannot be read in evidence. In the absence of proof of the date of service, a presumption would have to be applied, and the complaint would be premature. Therefore, 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 M/s Raman Parashar and Virender Singh, learned counsel for the petitioner/accused,

10. Mr Raman Parashar, learned counsel for the petitioner/accused, submitted that the notice was not served upon the accused. It was sent to a different address, and the

learned Courts below erred in convicting and sentencing 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. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

12. 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.

13. 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.

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.”

14. 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.”

15. 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.”

16. A similar view was taken in *Sanjabij Tari v. Kishore S.*

Borcar, 2025 SCC OnLine SC 2069, wherein it was observed:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: *Bir Singh*(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. 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.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

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

18. The complainant reiterated the contents of the complaint in his proof affidavit (Ex.CW2/A). He stated in his cross-examination that he had an annual income of ₹8-10 lacs from his karyana shop. He had paid the money to the accused through a cheque, and no written document was prepared. He

had mentioned the payment to the accused in his Income Tax Return. The accused had handed over two cheques to him, first on 20.02.2022 and second on 25.02.2022. He denied that he had filled the amount in the cheque.

19. The accused admitted in his statement recorded under Section 313 of the Cr.PC. that he had borrowed ₹5,00,000/- from the complainant and the complainant had paid the money to him through cheque. He had also admitted his signature on the cheque and the issuance of the cheque. It was laid down by the Hon'ble Supreme Court in *State of Maharashtra v. Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421 that the Courts can rely upon the statement of the accused recorded under section 313 of the Cr.P.C. It was observed at page 742:

“51. That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence *stricto sensu*. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:

“313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other

inquiry into, or trial for, any other offence which such answers may tend to show he has committed.”

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See *State of Maharashtra v. R.B. Chowdhari* (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95. This Court, in the case of *Hate Singh Bhagat Singh v. State of M.B.* 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468, held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In *Narain Singh v. State of Punjab* (1963) 3 SCR 678: (1964) 1 Cri LJ 730, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

“Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused

may 'be taken into consideration' at the enquiry or the trial. *If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.*" (emphasis supplied)

Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force."

20. It was laid down by the Hon'ble Supreme Court in *Mohan Singh v. Prem Singh*, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933, that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at page 244:

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend

credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See *Nishi Kant Jha v. State of Bihar* (1969) 1 SCC 347: AIR 1969 SC 422: (SCC pp. 357-58, para 23)

“23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961, negatives of both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the*

exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.” (emphasis supplied)

21. It was laid down in *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213, that the statement of the accused under Section 313 Cr.P.C., in so far as it supports the prosecution’s case, can be used against him for recording a conviction. It was observed at page 275: -

“52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law.”

22. This position was reiterated in *Ashok Debbarma v. State of Tripura*, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It

was held at page 761: -

24. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh* [(1992) 3 SCC 700: 1992 SCC (Cri) 705] held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat*, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933 held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab* (1964) 1 Cri LJ 730: (1963) 3 SCR 678, this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in *Mohan Singh v. Prem Singh* (2002) 10 SCC 236: 2003 SCC (Cri) 1514 held that: (SCC p. 244, para 27)

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

In this connection, reference may also be made to the judgments of this Court in *Devender Kumar Singla v. Baldev Krishan Singla* (2005) 9 SCC 15; 2005 SCC (Cri) 1185 and *Bishnu Prasad Sinha v. State of Assam* (2007) 11 SCC 467; (2008) 1 SCC (Cri) 766. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved, and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.”

23. Thus, the learned Courts below had rightly held that the issuance of the cheque and the signatures on the cheque were not in dispute. 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 considering the fact that 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 legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.”

24. It was laid down 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.”

25. A similar view was taken 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].

26. Thus, the Court has to start with the presumption that the cheque was issued in discharge of the liability for

consideration, and the burden is upon the accused to rebut this presumption.

27. The complainant's cross-examination does not show that the cheque was not issued for consideration. The accused admitted that he had borrowed ₹5,00,000 from the complainant, and the existence of consideration was duly proved. The complainant's version was duly corroborated by the statement of Rohit, who proved the statement of account (Ex.CW1/A), in which the payment of ₹5,00,000 is shown to have been made by means of a cheque. Thus, the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

28. Amarjeet (CW4) proved that the cheque was dishonoured with an endorsement 'funds insufficient'. This is duly corroborated by the return memo (Ex.CW2/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.”

29. 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.’

30. The complainant asserted that he had issued a notice to the accused, which was duly served upon him. It was submitted that the notice was not sent to the correct address and was sent to Village Anhech instead of Village Nahech. This submission will not help the accused. Both the learned Courts below have concurrently held that the accused admitted the receipt of notice. Therefore, the plea that the notice was not received by him is not acceptable. It was laid down in *C.C. Allavi Haji vs. Pala Pelly Mohd.* 2007(6) SCC 555, that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the

advantage of the fact that notice was not received by him. It was observed:

*“It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court, along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in *Bhaskaran’s case* (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act.”* (Emphasis supplied)

31. The accused did not claim that he had repaid the amount to the complainant; therefore, it was duly proved on record that the accused had failed to repay the amount despite the receipt of the demand notice.

32. Therefore, the learned Trial Court had rightly held that the accused had issued the cheque to discharge his liability, the cheque was dishonoured with an endorsement 'insufficient funds' and the accused failed to pay the money despite the receipt of notice of demand. Hence, all the ingredients of the commission of offences punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused for the commission of an offence punishable under Section 138 of the NI Act. Act.

33. Learned Trial Court sentenced the accused to undergo simple imprisonment for 9 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.”

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

35. In the present case, the cheque was issued on 20.02.2022. The Learned Trial Court imposed the sentence on 03.09.2024 after the lapse of two and a half years. 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]”

36. In the present case, the complainant had to engage counsel. He lost interest in the money that he would have gained by investing it somewhere. He was entitled to be compensated for the loss, and the amount of ₹70,000/- awarded as compensation cannot be said to be excessive, requiring any interference from the Court.

37. No other point was urged.

38. In view of the above, there is no infirmity in the judgments passed by the learned Courts below; hence, the present petition fails, and it is dismissed, so also the pending applications, if any.

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

(Rakesh Kainthla)
Judge

16th July, 2026
(Chander)