IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.674 of 2023
Reserved on: 06.07.2026
Date of Decision: 18.07.2026
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Rakesh Kumar
.........Petitioner
Versus
Vishal Pathania
....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Maan Singh, Advocate.

For the Respondents: Mr. Ravinder Singh Chandel, Advocate

Sandeep Sharma, J.

Instant criminal revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, lays challenge to judgment dated 04.10.2023 passed by the learned Additional Sessions Judge, Kullu, District Kullu, Himachal Pradesh, in Criminal Appeal No.25 of 2023, affirming the judgment of conviction and order of sentence dated 01.04.2023, passed by the learned Chief Judicial Magistrate, Lahaul & Spiti at Kullu, H.P. in

Criminal complaint No.1093-I/2019//420-I/2015, whereby the Court below, while holding the petitioner-accused (in short the "**accused**") guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (in short the "**Act**"), convicted and sentenced him to undergo simple imprisonment for a period of three months and pay compensation to the tune of Rs.3,50,000/- to the respondent-complainant (in short the "**complainant**").

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that complainant instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that accused, who was well-known to him, borrowed a sum of Rs.2,70,000/- from him with the assurance that he will return the same very soon. He alleged that with a view to discharge his aforesaid liability, accused issued cheque bearing No.959377 dated 21.08.2013 amounting to Rs.2,70,000/- in favour of the complainant, but aforesaid cheque on its presentation to the bank concerned was dishonoured with the remarks “Funds insufficient” vide return memo dated 12.11.2013. Since accused failed to make the payment good within the stipulated period, despite his having received legal notice, complainant had no option, but to initiate proceedings under Section 138 of the Act in the competent Court of law.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 01.04.2023, held the accused guilty of his having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per the description given herein above.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the Court below, accused preferred an appeal before the learned Additional Sessions Judge, Kullu, District Kullu, Himachal Pradesh, but same was dismissed vide judgment dated 04.10.2023. In the aforesaid background, accused has approached this Court in the instant proceedings, praying therein for his acquittal after setting-aside the judgment of conviction and order of sentence recorded by the Court below.

5. Vide order dated 22.12.2023, Co-ordinate Bench of this Court stayed the substantive sentence imposed by the Court below subject to the accused depositing 20% of the compensation amount and furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount within a period of four weeks. However, fact remains that aforesaid order never came to be complied with despite repeated opportunities, as a result thereof, vide order dated 31.03.2025, interim protection granted vide aforesaid order came to an end. Repeatedly matter was adjourned, enabling the accused either to settle the matter with the complainant or to deposit the amount in the Registry of this Court, but in vain. Record/file reveals that more than ten opportunities came to be afforded to the accused to do the needful and as such, this Court has no option, but to decide the petition on its own merits.

6. Having heard learned counsel for the parties and perused material available on record vis-a-vis reasoning assigned in the impugned judgment passed by the learned Additional Sessions Judge, Kullu, District Kullu, Himachal Pradesh, whereby judgment of conviction and order of sentence recorded by the learned trial Court came to be upheld, this Court is not persuaded to agree with Mr. Maan Singh, learned counsel for the accused, that learned Courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the Courts below have dealt with each and every aspect of the matter meticulously and there is no scope left for this Court to interfere. Accused, in his statement recorded under Section 313 of Cr.P.C, simply denied the case/allegations of the complainant, however, despite repeated opportunities, failed to lead any defence evidence to rebut the evidence of the complainant. Pattern of cross-examination conducted upon the complainant nowhere suggests that accused had set up a defence with regard to non-issuance of the cheque as well as signatures thereupon. Accused nowhere disputed his signatures over the cheque in question. Since factum with regard to issuance of cheque as well as signatures thereupon never came to be disputed, no illegality otherwise can be said to have been committed by courts below, while invoking Sections 118 and 139 of the Act, which talk about presumption in favour of holder of cheque that cheque in question was issued towards discharge of lawful liability.

7. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption person seeking to rebut such presumption is expected to raise probable defence. However, in the case at hand, despite sufficient opportunities, accused failed to lead cogent and convincing evidence to probablize his defence.

8. The Hon'ble Apex Court in ***M/s Laxmi Dyechem V. State of Gujarat, 2013(1) RCR(Criminal)***, has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely on the materials submitted by the complainant. Needless to say, if the accused/drawer of the cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, statutory presumption under Section 139 of the Negotiable Instruments Act, regarding commission of the offence comes into play. It would be profitable to reproduce relevant paras No.23 to 25 of the judgment herein:

> *"23. Further, a three judge Bench of this Court in the matter of Rangappa vs. Sri Mohan [3] held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable*

presumption under Section 139 is a device to prevent undue delay in the course of litigation. The Court however, further observed that it must be remembered that the offence made punishable by Section 138can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose money is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant accused cannot be expected to discharge an unduly high standard of proof". The Court further observed that it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is all preponderance of probabilities.

24. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.

25. It is no doubt true that the dishonour of cheques in order to qualify for prosecution under Section 138 of the NI Act precedes a statutory notice where the drawer is called upon by allowing him to *avail the opportunity to arrange the payment of the amount covered by the cheque and it is only when the drawer despite the receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount, that the said default would be considered a dishonour constituting an offence, hence punishable. But even in such cases, the question whether or not there was lawfully recoverable debt or liability for discharge whereof the cheque was issued, would be a matter that the trial court will have to examine having regard to the evidence adduced before it keeping in view the statutory presumption that unless rebutted, the cheque is presumed to have been issued for a valid consideration. In view of this the responsibility of the trial judge while issuing summons to conduct the trial in matters where there has been instruction to stop payment despite sufficiency of funds and whether the same would be a sufficient ground to proceed in the matter, would be extremely heavy."*

9. To the contrary, complainant, with a view to prove his case, examined himself as CW-1, and tendered his evidence by way of affidavit Ext.CA, reiterating therein the facts as averred in the complaint. Besides above, he also proved on record the documents i.e Ext.CB, return memo Ext. CC, legal notice Ext.CD, postal receipt Ext.CE and undelivered registered letter Ext.CF. If the cross-examination conducted upon this witness is perused in its entirety, it can be safely concluded that accused was unable to extract anything contrary to what this witness stated in his examination-in-chief. In his cross-examination, he deposed that his father is having 10-12 bighas land, from which he earns Rs.1,00,000/- to Rs.1,50,000/- per year. While stating that his father had retired from the Forest Department, he categorically stated that apart from accused, he did not lent any amount to anyone else. While stating that he had given the amount to the accused in the year 2013 at Bhuntar Taxi Stand, he stated that sum of Rs.1,00,000/- was taken by him as a loan from Sabji Mandi, whereas Rs.1,70,000/- was lying with him at home. He deposed that sum of Rs.1,00,000/- was borrowed by him from Nank Chand shop No.5, but in that regard, no document was ever prepared by Nanak Chand. While admitting that he had also not prepared any document pertaining to the transaction in question, he denied that accused had not given the cheque to him. He deposed that accused had given him cheque on 21.08.2013. He further deposed that he had not filed any income tax return. He denied that cheque Ext.CB was blank, which was taken by him from Nanku. He also denied that accused never borrowed any amount from him.

10. Pattern of cross-examination conducted upon afore witness clearly reveals that though accused attempted to deny his liability, but he set up a defence that cheque Ext.CB was blank and same was issued to Nanku. However, aforesaid defence never came to be probablized by leading cogent and convincing evidence. By putting a suggestion with regard to issuance of blank cheque, may be through Nanku, accused virtually admitted factum with regard to his having issued cheque as well as signatures thereupon.

11. Complainant also examined Manoj Kumar as CW-1A, who is an official of the Punjab National Bank, Bhunter Branch. He proved on record the extract of cheque return register Ext.CW1/A and the statement of account Ext.CW1/B.

12. If the evidence led on record by the respective parties is read in conjunction, this Court sees no reason to differ with the findings returned by the Courts below that complainant successfully proved on record that accused had issued Cheque towards discharge of his lawful liability. Defence otherwise attempted to set up could not be proved by the accused by leading cogent and convincing evidence. Otherwise also, by now it is well-settled that a person is liable for the commission of offence punishable under Section 138 of the Act even if the Cheque is filled by some other person. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197, wherein it was observed as under:

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
> 38. answered in the negative.
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> 40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.
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> 41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of

> context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant- complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.
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> 42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act."

13. Since factum of issuance of Cheque by the accused as well as his signatures thereupon was never disputed, presumption as available under Sections 118 and 139 of the Act rightly came to be invoked in the case of the accused that Cheque in question was issued in discharge of lawful liability. Since no evidence worth credence ever came to be led on record to rebut the presumption, no illegality can be said to have been committed by the Courts below while holding accused guilty for the commission of offence punishable under Section 138 of the Act.

14. Though no specific defence ever came to be taken by the accused with regard to non-service of statutory demand/legal notice or premature filing of the complaint, but during proceedings of the case at hand, Mr. Maan Singh, learned counsel for the accused, vehemently argued that legal notice Ext.CD was never served upon the accused. He further submitted that complaint under Section 138 of the Act ought not to have been entertained by the complainant being premature, but both the Courts below ignored the aforesaid material aspect of the matter. He submitted that return memo Ext.CC was received by the complainant on 12.11.2013, pursuant to which the statutory legal notice (Ext. CD) was issued on 22.11.2013, however, thereafter complainant, without waiting for expiry of 45 days, proceeded to file complaint under Section 138 of the Act on 03.01.2014 and as such, same, being premature, deserves outright rejection. He further submitted that bare perusal of undelivered registered letter Ext.CF suggests that legal notice was not served upon the accused as he was not found on the address given on the registered envelope and as such, service, if any, of the accused could have been presumed after expiry of 30 days from the date of receipt of issuance of legal notice dated 22.11.2013 i.e. 22.12.2013 and thereafter, further 15 days' time was required to be given to the accused for making payment. However, in the instant case, complainant proceeded to institute complaint under Section 138 of the Act before expiry of 45 from the date of issuance of the legal notice dated 22.11.2013. In support of aforesaid submissions, he placed reliance upon the judgements passed by the Hon'ble Apex Court in ***M.D. Thomas Vs. P.S. Jaleel and another, (2009) 14 Supreme Court Cases 398*** and ***V. Raja Kumari Vs. P. Subbarama Naidu, 2004(8) SCC 774.***

15. To the contrary, Mr. Ravinder Singh Chandel, learned counsel for the respondent, vehemently argued that plea raised at the behest of the accused with regard to complaint being premature and non-service of statutory demand notice is not maintainable at this stage because such defence never came to be raised during trial. He placed heavy reliance upon the judgment passed by the Hon'ble Apex Court in ***C.C. Alavi Haji Vs. Palapetty Muhammed & Anr. 2007***

(06) SCC 555, wherein it came to be that when a notice is returned with an endorsement 'refused', it is deemed to be served. Though this Court finds that plea with regard to non-service of demand notice never came to be raised by the accused during trial, but even if same is taken for consideration, being legal arguments raised in the instant proceedings, this Court finds that complainant had attempted to serve the accused with legal notice on his correct address, but yet he could not be served as he was not found available on the given address as is evident from the endorsement given on the undelivered letter. Once the complainant had attempted to serve the accused with legal notice on his correct address, on which he subsequently came to be served with the summons in the complaint filed under Section 138 of the Act, accused can be deemed to have been served with legal notice. Hon'ble Apex Court in ***C.C. Alavi Haji*** (supra), held that though Section 138 of the Act does not require that the notice should be given only by post, yet in a case where the sender has dispatched the notice by post with correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 can be invoked in such a case. Afore Court further held that in this situation, service of notice is deemed to have been effected on the addressee unless he proves that it was not really served and that he was not responsible for such non-service.

16. A similar view was taken in ***Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458***, wherein it was observed:

> *"13. Section 27 of the General Clauses Act, 1887, deals with service by post:*
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> > *"27. Meaning of Service by post.- Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".*
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> *14. The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:*

14.1 In Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264, which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee." 14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555] 14.3 The findings in C.C. Alavi (supra) were followed in Vishwabandhu v. Srikrishna (2021) 19 SCC 549. In this case, the summons issued by the Registered AD post *was received back with endorsement "refusal". In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra. 14.4 A similar position as in C.C. Alavi (supra) stands adopted by this Court in various judgments of this Court in Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506; and V.N. Bharat v. DDA (2008) 17 SCC 321.*

17. In the instant case, the postman visited the house of the accused on 29.11.2013 and made an endorsement that the addressee was not found at home. Since the date on which the envelope was returned is not legible, this Court, taking note of the fact that the legal notice dispatched on 22.11.2013 reached the address of the accused on 29.11.2013, has reason to presume and believe that undelivered envelope would have been received back by the complainant on or about 05.12.2013.

18. Hon'ble Apex Court in ***C.C. Alavi Haji*** (supra) held that the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of Section 138 of the Act. For this reason, Clause (c) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. Relevant para of the afore judgment is extracted hereinbelow:-

> *"16. As noticed above, the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of* Section 138. *In D.Vinod Shivappa Vs. Nanda Belliappa, AIR 2006 SUPREME COURT 2179, this Court observed:*
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> > *One can also conceive of cases where a well intentioned drawer may have inadvertently missed to make necessary arrangements for reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses*

induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that Clause (c) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice.

To repeat, the proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons.

19. Reliance is also placed upon the judgment passed by Punjab and Haryana High Court in CRM-A No.1920-MA of 2016 (O&M), titled as ***Vee Kay Concast Pvt. Ltd. Vs. M/s Stanely Products and Anr.*** Relevant paras of the afore judgment are extracted hereinbelow:-

*"7. Section 27 of General Clauses Act (in short "**GC Act**") reads as under:-*

> *"27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

*8. The Hon'ble Supreme Court in **C.C Alavi** (supra) held that Section 27 of GC Act gives rise to a presumption that service of notice has been effected, when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. Similar view has been taken by the Hon'ble Supreme Court in **Subodh S. Salaskar Vs. Jay Prakash M. Shah and another, (2008) 13 SCC 689 and M/s Madan & Company Vs. Wazir Jaivir Chand, 1989 1 SCC 264.***

9. Apart from above, Section 114 of the Indian Evidence Act, 1872 (for short 'IE Act') to be read with Illustration (f) *thereunder, which provides that when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would has happened, unless there are circumstances in a particular case, to show that the common course of business was not followed. Thus, Section 114 of IE Act enables the Court to presume the existence of any fact, which, it thinks, is likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular cases.*

10. When aforesaid legal proposition is made applicable to communications sent by post, Section 114 of IE Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. However, it is important to note that Section 27 of GC Act refers to a specific presumption, comparing to the presumption that is raised under Section 114 of IE Act, which is general in nature.

11. In view of the above legal position, though there is presumption of service by notice when sent under registered post, however, in case the registered cover containing the notice is not received back as undelivered, no time limit is *provided within which service of notice upon the addressee is to be presumed. In this regard, Rule 99 of the Indian Post Office Rules, 1933 (for short 'Rules of 1933') is relevant, which provides as under:-*

> *"If an addressee of a value payable postal article omits to take delivery of it within 7 days, following the days of its presentation or the date of delivery of an intimation or its arrival to him or to his accredit agent, or in the case of an article sent out for delivery through a village postman, the date of return to the post office of the village postman, after its first presentation or delivery of intimation of its arrival to the addressee or his accredit agent, the article shall be returned to the sender on the 8th day.*
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> *Provided that if in the meantime the addressee has applied in writing to the post office for the detention of the article for a further period not exceeding seven days beginning with the said eighth day and pays with the application a fee of rupees three for each day of such further period in the case of value payable parcels and rupees two for each day of such further period in the case of other value payable articles, the article shall not be returned to the sender until the expiration of the further period covered by the application. Any fee so paid shall in no circumstances be returned."*

12. A perusal of the Rules of 1933 indicates that in case the addressee of the article omits to take delivery thereof within 07 days following date of presentation, the article is to be returned to the sender on the 8th day, unless the addresses has applied within next seven days for its detention.

13. Since in the present case, the notice sent through registered AD post was not returned to the sender i.e. applicant-complainant as undelivered on the 8th day or thereafter, so it is to be presumed that addressee of the notice i.e. respondents-accused must have received the same within 07 days. As such, it is held that service of notice, in such circumstances, is to be assumed within a period of 07 days and therefore, the period of 15 days for making payment shall begin on the expiry of 07 days from the date of posting of the legal notice through registered AD post.

14. The factual matrix of the case indicates that there is specific denial by the respondents-accused with regard to receipt of legal notice and in such a scenario, provisions of Section 27 of GC Act would come into play and presumption in favour of the applicant-complainant arises with regard to service of notice on the correct address mentioned in the registered AD post and neither the contrary has been proved by the respondents-accused nor the registered AD post was received back undelivered by the applicantcomplainant. Therefore, in view of the aforementioned provisions, it is *presumed that the respondents-accused must have received the legal notice through registered AD post and in such a scenario, period of 07 days for the service of notice is to be taken into account and after the presumed service of notice, the respondents-accused had the opportunity to make the payment demanded vide legal notice, within a period of 15 days.*

15. Since the legal notice in this case was posted through registered AD post on 23.01.2013, it is to be assumed that said notice was received by the addressee-accused on or before 30.01.2013 and the period of 15 days for making the payment shall begin from 31.01.2013, which will expire on 14.02.2013 and therefore, the complaint (supra) filed on 11.03.2013, being within next one month, is held to be within limitation."

20. In view of aforesaid law taken into consideration, coupled with the fact that accused was unable to rebut the presumption that complainant served him with legal notice on his correct address, it is presumed that accused must have received the legal notice through registered AD post and in such a scenario, period of 07 days for the service of notice is to be taken into account and after the presumed service of notice, whereafter the accused had the opportunity to make the payment demanded vide legal notice, within a period of 15 days. Moreover, as has been held by Hon'ble Apex Court in ***C.C.Alavi Haji*** (supra), very purpose and object of issuing legal notice is to provide an opportunity to the accused to make payment within 15 days so as to avoid the ordeal of criminal trial. Admittedly, in the case at hand, after receipt of summons from the learned trial Court, accused failed to pay the amount demanded in the legal notice within the stipulated period of 15 days.

21. Having scanned pleadings as well as evidence adduced on record by the complainant, this court finds that complainant successfully proved all the ingredients of Section 138 of the Act. Similarly, factum with regard to signatures and issuance of cheque by the accused towards discharge of lawful liability stands duly established on record.

22. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the Courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case ***"State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri"*** *(*1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

> *"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 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 re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."*

23. True it is that the Hon'ble Apex Court in ***Krishnan and another*** *Versus* ***Krishnaveni and another,*** **(1997) 4 Supreme Court Case 241**; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal Court in its judicial process or illegality of sentence or order, but learned counsel representing the accused has failed to point out any material irregularity committed by the Courts below while appreciating the evidence and as such, this Court sees no reason to interfere with the well reasoned judgments passed by the Courts below.

24. Consequently, in view of the discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well-reasoned judgments recorded by the Courts below, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld.

25. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The petitioner is directed to surrender himself before the learned trial Court within two months to serve the sentence as awarded by the learned trial Court, if not already served. Interim direction, if any, stands vacated. Bail bonds, if any, are discharged. Pending applications, if any, also stand disposed of.

July 18, 2026 **(Sandeep Sharma),**
(sunil) **Judge**