IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 578 of 2024
Reserved on: 8.7.2026
Date of Decision: 21.7.2026.

Anil Gurang ...Petitioner

Versus

Munish Bahadur ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Petitioner	:	Mr Rajul Chauhan, Advocate, Legal Aid Counsel.
For the Respondent	:	Nemo.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 12.08.2024, passed by the learned Additional Sessions Judge, Nurpur, District Kangra, H.P. (learned Appellate Court), vide which the judgment of conviction dated 13.10.2023 and order of sentence dated 13.10.2023, passed by the learned Judicial Magistrate First Class, Indora, District Kangra, 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 to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused and complainant had cordial relations with each other. The accused wanted to establish a new immigration and foreign placement office at Pathankot. He required money for this purpose. He requested the complainant to lend him money and promised to return the money within a short time. The complainant advanced ₹3,50,000/- to the accused. The accused failed to return the money, and when the complainant made repeated demands, the accused issued a cheque of ₹3,50,000/- in favour of the complainant to repay the debt. The complainant presented the cheque at his bank, but it was returned with an endorsement 'insufficient funds'. The complainant served a notice upon the accused, asking him to repay the money within 15 days of the service of the notice. The notice was duly received by the accused,

but the accused failed to return the money. Hence, a complaint was filed against the accused for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW1) to prove his complaint.

5. The accused in his statement recorded under Section 313 of the Cr.PC denied that he had borrowed money from the complainant. However, he admitted his signature on the cheque and the issuance of the cheque. He denied that he had received any notice. He claimed that he had purchased a vehicle from the complainant, and issued a cheque as security. He had paid all the installments but the complainant seized the vehicle from him. He examined himself (DW1).

6. Learned Trial Court held that the issuance of the cheque and signatures on the cheque were not disputed. Therefore, a presumption would arise that the cheque was issued

for consideration to discharge the debt/liability. The statement of the accused was not sufficient to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused, and the accused failed to repay the amount. 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 of one year, pay a compensation of ₹5,00,000/- and, in default of the payment of compensation, to undergo simple imprisonment for two 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, Nurpur, District Kangra, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the Learned Trial Court that issuance of the cheque and the signatures on the cheque were not disputed. 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 'insufficient funds'. The notice was duly served upon the accused, and the accused had not

repaid the money despite the service of the notice upon him. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The learned Trial Court had imposed an adequate sentence, and no interference was required with the sentence imposed by the learned Trial Court. 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 complainant failed to prove the advancement of the loan. The defence taken by the accused that he had purchased a car from the complainant for ₹5,50,000/- and issued a cheque to the complainant as security was highly probable. The complainant had seized the vehicle sold by him and failed to return it despite repeated demands. 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 Mr. Rajul Chauhan, learned Legal Aid Counsel for the petitioner/accused. None appeared on behalf of the respondent; therefore, none could be heard.

10. Mr Rajul Chauhan, learned Legal Aid Counsel for the petitioner, submitted that the financial capacity of the complainant to lend the amount of ₹3,50,000/- was highly doubtful. The plea taken by the accused that he had purchased a vehicle from the complainant was highly probable, and learned Courts below erred in rejecting such a plea. 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 adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

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.
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> **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."

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)
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>> 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. ..."
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> **13.** Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in

SanjaysinhRamrao 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 accused admitted his signature on the cheque in his statement recorded under Section 313 of the Cr.PC. He also

claimed that he had issued the cheque in favour of the complainant as security. Therefore, learned Courts below had rightly held that the issuance of the cheque and signatures on the cheque were not disputed. 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."

19. This position was reiterated 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."

20. 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).
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> 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.
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> 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***].

21. 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.

22. The complainant had not paid the money by cheque or through a bank transfer, which means that the money was lying in cash with him. Therefore, the complainant was required to produce satisfactory evidence of the disbursal of ₹350,000/- to the accused. The complainant stated in his cross-examination that he was running a fast food joint and his monthly income was ₹20,000-25,000. He was not doing any other work. This

admission in the cross-examination shows that the complainant's yearly income would be ₹2,40,000/- to ₹3,00,000/-. The complainant was running a fast food joint, which means that he would have required the money for the raw materials. Thus, the net saving of the complainant would be much less.

23. Once it is so held, the financial capacity of the complainant would become vulnerable. ₹3,50,000/- stated to have been advanced by the complainant to the accused is equivalent to the yearly income of the complainant. It is difficult to believe that the complainant would have that much money lying with him at home.

24. It was submitted that the complainant is not required to prove the existence of liability, and the burden is upon the accused to rebut the presumption. This submission will not help the complainant. The cross-examination of the complainant made it doubtful that he had advanced money to the accused, and the learned Trial Court was justified in insisting upon the proof of advancing the loan. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh Versus Narayan Dass Mahant (2022) 6 SCC 735***

that the accused has a right to demonstrate that the complainant did not have the financial capacity to advance the loan stated to have been advanced by him. It was observed: -

> "9....However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

25. It was held by the Hon'ble Supreme Court in ***Basalingappa Versus Mudibasappa (2019) 5 SCC 418,*** that where the financial capacity to pay ₹6,00,000/- was questioned and there was no satisfactory reply, the accused had raised a probable defence. It was observed: -

> " 30. We are of the view that when evidence was led before the Court to indicate that apart from a loan of Rs. 6 lakhs given to the accused, within 02 years, an amount of Rs. 18 lakhs has been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. The court cannot insist on a person to lead negative

evidence. The observation of the High Court that the trial court's finding that the complainant failed to prove his financial capacity for lending money is perverse cannot be supported. We fail to see how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence."

26. 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 financial capacity of the accused is not established, the accused is entitled to acquittal. It was observed:

> "**29**....Furthermore, there was no financial capacity or acknowledgement in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further, the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent, nor has he been able to explain as to how a cheque issued by the respondent, allegedly in favour of Mr Mallikarjun, landed in the hands of the instant holder, that is, the appellant."

27. A similar view was taken in ***John K. Abraham Versus Simon C. Abraham & Another (2014) 2 SCC 236,*** wherein it was held:-

> "9. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavy upon the complainant to have shown that he had required funds for having advanced the money to the

> accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."

28. In the present case, the complainant's evidence was not sufficient to establish his financial capacity, and the learned Courts below erred in accepting the complainant's version that he had advanced the money to the accused and the accused had issued a cheque to the complainant to discharge the debt/liability.

29. The learned Courts below proceeded on the basis that the cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. However, this presumption is not absolute but is rebuttable, and the moment evidence is led, the presumption would stand rebutted. 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'."

30. In the present case, the cross-examination of the complainant made his financial capacity doubtful, and the presumption would be displaced.

31. Learned Courts below failed to realise the significance of the admission made by the complainant regarding his financial capacity in the cross-examination. Hence, the judgments passed by the learned Courts below cannot be sustained.

32. In view of the above, the present revision is allowed the judgment of conviction dated 13.10.2023, and order of sentence dated 13.10.2023, passed by learned Judicial Magistrate First Class, Indora, District Kangra, H.P., as affirmed by learned Additional Sessions Judge, Nurpur, District Kangra, H.P., are ordered to be set aside. The fine, if deposited, be refunded to the petitioner/accused after the expiry of the period of limitation, in

case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

33. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

34. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

21st July, 2026
(Chander)