IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 241 of 2015

Reserved on: 15.7.2026

Date of Decision: 21.7.2026.

Gian Chand ...Petitioner

Versus

Tej Ram & anr. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner	:	Mr Vijay Chaudhary, Advocate.
For Respondent No.1	:	Mr Vikrant Chandel, Advocate.
For Respondent No.2	:	Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 05.06.2015, passed by the Learned Sessions Judge, Mandi, District Mandi, H.P. (learned Appellate Court) vide which the judgment of conviction dated 29.11.2014 and order of sentence dated 02.12.2014, passed by learned Special Judicial Magistrate,

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

Mandi, H.P. (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint 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 is running a cloth business in the name and style of M/s Manu Cloth House at Kansa Chowk, Post Office, Dhaban District Mandi, H.P. The accused was a frequent visitor to the complainant's shop, and both parties developed cordial relations. The accused borrowed ₹1,90,000/- from the complainant to meet his domestic needs. He issued a post-dated cheque dated 24.12.2009 for ₹1,90,000/- to repay the amount. The complainant presented the cheque before Punjab National Bank, and the Punjab National Bank sent the cheque for realisation to Himachal Grameen Bank, Kanaid. However, the bank of the accused dishonoured the cheque with the endorsement that the accused had closed his account. The complainant issued a notice to the accused demanding the payment of the money within 15 days of the receipt of the notice.

The notice was duly served upon the accused, but the accused failed to repay the money. Hence, a complaint was filed before the Court 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 Kuldeep Chand (CW1) and himself (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.PC), denied the complainant's case in its entirety. He examined himself (DW1) and Mani Ram (DW2) in his defence.

6. Learned Trial Court held that the issuance of the cheque was not disputed. Therefore, a presumption would arise that the cheque was issued for the discharge of debt/ liability. The plea taken by the accused that he had issued a security cheque in favour of Mani Ram was highly improbable. The accused failed to inform the police or the bank about the issuance of the security

cheque. He had not even sent the reply to the notice. The dishonour of the cheque on the ground that the account had been closed attracted the provisions of Section 138 of the NI Act. The notice was duly served upon the accused, and he failed to repay the money. 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 one year and pay a compensation of ₹1,90,000/-.

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 Sessions Judge, Mandi, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that issuance of the cheque would trigger a presumption under Section 118(a) and 139 of the NI Act that the cheque was issued for consideration to discharge the debt/liability. The plea taken by the accused that he had issued a security cheque to Mani Ram was not probable. The cheque was dishonoured with an endorsement ‘account closed’, which also attracted the provisions of Section 138 of the NI Act. The accused had failed to repay the money despite the receipt of the notice. The sentence imposed by the learned Trial Court was

adequate. 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 judgment and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in shifting the burden of proof to the accused. The complainant had not mentioned the date of advancing the loan, which falsified his version that the loan was advanced. The testimony of Mani Ram (DW2) was wrongfully ignored by the learned Trial Court. It was duly proved by the statement of Mani Ram (DW2) that the accused had issued a cheque to one Omkar Singh as security, and this cheque was misused by the complainant. The account of the accused was closed on 31.01.2008, whereas the cheque was issued on 24.02.2009, which corroborated the plea taken by the accused that the cheque was issued as security. 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 Vijay Chaudhary, learned counsel for the petitioner/accused, Mr Vikrant Chandel. learned counsel for

respondent No.1 and Mr Ajit Sharma, learned Deputy Advocate general or respondent No.2/State.

10. Mr Vijay Chaudhary, learned counsel for the petitioner/accused, submitted that the complainant had not mentioned the date of advancing the loan in his notice or the complaint, which made his version that he had advanced the money to the accused highly improbable. The plea taken by the accused that he had issued a security cheque to Mani Ram was made probable by the fact that the account was closed on 31.01.2008 and the cheque was issued on 24.12.2009. The learned Courts below erred in rejecting the plea taken by 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. He relied upon the judgment of the Hon'ble Supreme Court, ***Vijay Vs. Laxman and another (2013) 3 SCC 86*** in support of his submission.

11. Mr Vikrant Chandel. learned counsel for respondent No.1/complainant submitted that learned Courts below have consistently held that the cheque was issued for consideration and the accused had failed to rebut the presumption attached to

the cheque. These are pure findings of fact, and this Court should not interfere with the pure findings of fact while deciding the revision petition. A cheque issued as security also attracts the provisions of Section 138 of the NI Act. Therefore, he prayed that the present provision be dismissed. He relied upon the judgment of this Court in ***Rakesh Kumar Vs. Ashok Kumar Bansal 2025:HHC:43247*** in support of his submission.

12. Mr Ajit Sharma, learned Deputy Advocate General for respondent no. 2/State submitted that the dispute is between the private parties and the State has nothing to say.

13. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

14. 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.

15. 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.
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> *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."

16. 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."

17. 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.
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> **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."

18. 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.
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> **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.

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

20. Accused Gian Chand (DW1) stated that he had handed over a blank cheque to Mani Ram, and he had not taken any

money from the complainant. Mani Ram (DW2) stated that he was a member of a committee being run by Omkar Singh. He had paid ₹40,000/- in a committee of ₹1,00,000/-. Gian Chand stood as a surety and had handed over a cheque to Omkar Singh as security.

21. It is apparent from the statements of the defence witnesses that the issuance of the cheque and signatures on the cheque have not been 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."

22. 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."

23. 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*
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> 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***].

24. 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.

25. It was submitted that the complainant had not mentioned the date of advancing the money, and his version regarding the advancement of money was not believable.

Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Vijay*** (*s*upra). However, this submission will not help the petitioner. The complainant specifically stated in his cross-examination that ₹1,90,000/- was advanced by him to the accused on 24.11.2009. Therefore, it is not correct to say that the complainant had not mentioned the date of advancing the money, and the judgment in ***Vijay*** (supra) does not apply to the facts of the present case.

26. It was submitted that the date of advancing the loan should have been mentioned in the notice or the complaint, and the failure to do so will be fatal to the complainant's case. This submission would have been acceptable had the accused not asked the complainant about the date of advancing the loan in the cross-examination. Once the date of advancement of the loan was asked in the cross-examination and was brought on record, the Court cannot ignore it.

27. The accused asserted that he had handed over a cheque to Mani Ram because Mani Ram had taken a committee. Mani Ram (DW2), on the other hand, stated that Gian Chand had handed over the cheque to Omkar Singh as security for the

committee. Therefore, there is a discrepancy in the statements of Mani Ram and the accused regarding the person to whom the cheque was advanced. The accused claimed that the cheque was handed over to Mani Ram, but Mani Ram claimed that the cheque was handed over to Omkar Singh. Thus, the version of the accused that the cheque was handed over as security would become doubtful because of the discrepancy.

28. It was suggested to the complainant in the cross-examination that Mani Ram, Darshan Lal and Daulat Ram were running a security. It was also suggested to him that the cheque was handed over to Mani Ram because the complainant had taken a committee. Significantly, it was nowhere suggested to the complainant that the cheque was handed over to Omkar Singh as security. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355*** that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383:

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the

accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.

39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.

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42. Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

29. Therefore, learned Courts below had rightly discarded the version of the accused that the cheque was issued as security.

30. The complainant stated in his cross-examination that he had not maintained any record regarding the advancement of the loan. It was submitted that failure to produce the record regarding the advancement of the loan would make the complainant's version doubtful. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361***, that a presumption under Section 139 of the NI

Act would obviate the requirement to prove the existence of consideration. It was observed:

> "**20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due, and the dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

31. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

> "**22.** The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant have to

bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of a loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

'*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound.* ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto, would not negate such claim for the reason that***

the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. *In this regard, we may make profitable reference to the decision in Tedhi* ***Singh v. Narayan Dass Mahant, (2022) 6 SCC 735****:*

> *'10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts in our view were right in holding on those lines. 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.'****(emphasis supplied)'*
> *(underlining in original; emphasis supplied by us in bold).*

32. A similar view was taken in ***Sanjay Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, wherein it was observed:

> "21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged."

33. Therefore, the complainant's version cannot be doubted because of the failure to produce any record regarding the advancement of the loan.

34. The complainant admitted in his cross-examination that he was an income tax payer. It was submitted that the complainant had not produced the income tax return to prove that a loan was advanced to the accused. This submission will also not help. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed: -

10. It would further be noticed that the learned trial Magistrate has acquitted the accused on the ground that the loan has not been shown in the Income Tax Return furnished by the complainant, and while recording such finding, has placed reliance upon the judgment of the Hon'ble Delhi High Court in ***Vipul Kumar Gupta vs. Vipin Gupta 2012 (V) AD (CRI) 189***. However, after having perused the said judgment, it would be noticed that the amount in the said case was ₹ 9 lacs, and it is in that background that the Court observed as under: -

"9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors that have been enumerated by the learned ACMM. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts, the factum of the loan having been given by him because by no measure, an amount of ₹ 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or year when the loan was sought or given. The appellant has presented a cheque, which obviously is written with two different inks, as the signature appears in one ink, while the remaining portion, which has been filled in the cheque, is in a different ink. All these factors prove the defence of the respondent to be plausible to the effect that he had issued these cheques by way of security to the appellant for

> getting a loan from the Prime Minister Rojgar Yojana. The respondent/accused has only to create doubt in the version of the appellant, while the appellant has to prove the guilt of the accused beyond a reasonable doubt, in which, in my opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal against the impugned order, as there is no infirmity in the impugned order."

35. Thus, the complainant's version cannot be doubted because he had not produced the income tax return to prove that he had advanced the loan to the accused.

36. It was submitted that the account was closed on 31.1.2008, whereas the cheque was issued on 24.12.2009. Hence, the defence of the accused is made probable that the cheque was issued as security. This submission cannot be accepted. First, Kuldeep Chand (CW1) stated that the account was closed because of the zero balance and not because it was consciously closed by the accused. Secondly, an inference cannot be drawn that the cheque was issued as a security merely because the account was closed before the issuance of the cheque. Therefore, this submission will not assist the accused.

37. There was no other evidence to rebut the presumption attached to the cheque. Therefore, learned Courts below had

rightly held that the accused had failed to rebut the presumption attached to the cheque.

38. Kuldeep Chand (CW1) proved that the cheque was dishonoured with an endorsement ‘account closed’. This was not challenged in the cross-examination; therefore, the same is to be accepted as correct. His statement is duly corroborated by the dishonour memo (Ex.CW1/A) in which the reason for dishonour was mentioned as ‘account closed’. 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.

39. It was laid down by the Hon'ble Supreme Court in *NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253: 1999 SCC (Cri) 524: 1999 SCC OnLine SC 508,* that when a cheque is

dishonoured due to the account being closed, it will attract the provision of Section 138 of N.I. Act. It was observed at page 258:

> **7.** Further, the offence will be complete only when the conditions in provisos (*a*), (*b*) and (*c*) are complied with. Hence, the question is, in a case where a cheque is returned by the bank unpaid on the ground that the "account is closed", would it mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque"? In our view, the answer would obviously be in the affirmative because the cheque is dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time, apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is a species. After issuing the cheque drawn on an account maintained, a person, if he closes "that account", apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138, as there were insufficient or no funds to honour the cheque in "that account". Further, the cheque is to be drawn by a person for payment of any amount of money due to him "on an account maintained by him" with a banker and only on "that account" the cheque should be drawn. This would be clear by reading the section along with provisos (*a*), (*b*) and (*c*).
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> ********
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> **15.** In view of the aforesaid discussion, we are of the opinion that even though Section 138 is a penal statute, it is the duty of the court to interpret it consistently with the

legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence, and the legislative purpose is to promote the efficacy of banking and ensure that in commercial or contractual transactions, cheques are not dishonoured, and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and shew the transactions in their true light" (Wilmot, C.J.) or (by Maxwell) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited". Hence, when the cheque is returned by a bank with an endorsement "account closed", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

40. This Court also took the same view in ***Bal Krishan Sharma v. Tek Ram, 2006 SCC OnLine HP 105: 2006 Cri LJ 1993*** and observed:

"**9.** The provisions contained in this chapter are primarily designed to provide an additional criminal remedy, over and above the civil remedies available to the payee or holder in due course of a cheque. This chapter protects the interests of a payee or holder in due course of a dishonoured cheque. The object of the chapter is to enhance the acceptability of the cheque in the settlement of financial liabilities by making the drawer liable for penalties. It is noticed that for establishing the requirements of Section 138, there is no burden on the part of the complainant to prove before a Court the entire details of the transactions resulting in the issuance of the cheque. As observed by the Apex Court in ***Kusum Ingots and Alloys Limited v. Pennar Peterson Securities Ltd., II (2000) SLT 375: I (2000) CCR 260 (SC): I (2000) BC 300: (2000) 2 SCC 745***, the object of bringing Section 138 on statute is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Looking at the object of incorporating Chapter VIII in the Act, the expression "on account maintained by him" used in Section 138 of the Act, as noticed above, cannot be interpreted to give it an artificial or unrealistic meaning. What the provision says is that the cheque must be drawn on the account that the accused *maintained* with the Bank. The status of the account, when the cheque was drawn, whether it was *live* or *dead*, is irrelevant. What the provision says is that the accused must have an account that is maintained or has been maintained with the Bank. The Legislature has not used the present continuous tense. The expression used is "on an account maintained by him" and not "maintained by him". The cheque, in my view, should have a reference to an account of the accused, irrespective of the fact whether such an account was *live* or *dead* on the date of issuance of the cheque. The interpretation of the expression "on an account maintained by him" as given by the learned Trial Magistrate and contended by the learned Counsel for the accused is artificial and beyond the legislative intent. While interpreting the provision, the legislative purpose and goal have to be kept in mind. We cannot lose sight of the fact that in this era, financial transactions are not dependent on cash and therefore financial transactions by other modes, including "cheques", have to be attached to credibility.

10. The following observations of the Supreme Court in ***NEPC Micon Ltd. v. Magma Leasing Ltd., II (2006) BC 316 (SC): IV (1999) SLT 254: III (1999) CCR 4 (SC) : (1999) 4 SCC 253***, are apposite:

"10. This Court in the case of *Kanwar Singh* v. *Delhi Admn.* While construing Section 418(i) of the Delhi Municipal Corporation Act, 1959, observed—

'It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the Legislature, which is to suppress mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.

11. Further, while interpreting the statutory provision rule dealing with penalty under the Drugs and Cosmetics Act, 1940 and the rules in the case of ***Swantraj v. State of Maharashtra***, this Court held that every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the one from the rule in *Heydon's case* of suppressing the evil and advancing the remedy. The Court held that what must tilt the balance is the purpose of the statute, its potential frustration and judicial avoidance of the mischief by a construction whereby the means of licensing meet the ends of ensuring pure and potent remedies for the people. The Court observed that this liberty with language is sanctified by great Judges and textbooks. *Maxwell* instructs us in these words—

"There is no doubt that the office of the Judge is to make such construction as will suppress the mischief, and advance the remedy, and suppress all evasions for the continuance of the mischief. To carry out effectively the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: '*quando aliquid prohibetur, prohibetur et omne pe quod devenitur ad illud*.'

11. This manner of construction has two aspects. One is that the Courts, mindful of the mischief rule, will not be averse to narrowing the language of a statute so as to allow persons within its purview to escape its net. The other is that the statute may be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby falling outside the Act. When the Courts find an attempt at concealment, they will, in the words of Wilmot, C.J., 'brush away the cobweb varnish, and show the transactions in their true light'."

12. Their Lordships proceeded to observe:

> "15. In view of the aforesaid discussion, we are of the opinion that even though Section 138 is a penal statute, it is the duty of the Court to interpret it consistently with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence, and the legislative purpose is to promote the efficacy of banking and ensure that in commercial or contractual transactions, cheques are not dishonoured, and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and show the transactions in their true light" (Wilmot C.J.) or (by *Maxwell*) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited" Hence when the cheque is returned by a Bank with an endorsement "account closed". It would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

13. If the interpretation as contended by the learned Counsel for the accused and the Trial Court is to be accepted, then a person who receives the cheque will have to ensure that the account is alive. If he does not, he runs the risk of losing his money and the denial of benefits under Section 138 of the Act. This certainly cannot be the legislative intent. Any account holder with the intent to defeat the provisions of Section 138 of the Act may retain a cheque leaf after closing his account with the Bank to defraud any honest payee. Should such a dishonest account holder be permitted to escape the proceedings under Section 138 of the Act?

14. Learned Counsel for the accused would contend that the observations in ***NEPC Micon Limited*** were that if a cheque is dishonoured on the ground that the account is closed then it would come within the sweep of Section 138 of the Act but if the cheque is issued on a closed account, then such an act of a dishonest person would not fall within the mischief of Section 138 of the Act. It is true that the ***NEPC*** *case* does not specifically deal with the cheques issued on accounts closed prior to the date of issuance of the cheque. Nevertheless, this case does not indicate that such cases are intended to be taken out of the sweep of Section 138 of the Act. In my opinion, the expression "on an account maintained by him" necessarily includes an account which was maintained by him, *i.e.*, the account which has been closed, as also the account which is still maintained by him.

15. The Supreme Court in ***N.A. Issac v. Jeemon P. Abraham, III (2006) BC 422 (SC): VI (2004) SLT 154: IV (2004) CCR 124 (SC): 2005 (1) Civil Court Cases 690 (SC)***, interpreted Section 138 of the Act and observed that contention that this provision will not be applicable when the cheque is issued from an already closed account cannot be upheld as such an interpretation would defeat the object of insertion of the provision in the Act. Their Lordships observed: "Section 138 does not call for such a narrow construction". Their Lordships approved that the expression used in

> Section 138 of the Act includes the cheques issued on a closed account.
>
> **16.** For the reasons recorded above, the findings recorded by the Trial Magistrate holding that Section 138 of the Act is not applicable to a cheque drawn on a closed account, cannot be upheld."

41. Thus, the accused would be liable for the commission of an offence punishable under Section 138 of N.I. Act when the cheque was dishonoured with an endorsement of the account closed.

42. The complainant stated that he had issued a notice to the accused, which was duly served upon him. This is corroborated by the acknowledgement (Ex.CW1/E), which shows the delivery of the registered letter. The accused did not deny on oath that he had not received the notice. Hence, the learned Courts below had rightly accepted the complainant's version that the notice was served upon the accused.

43. The accused never stated that he had repaid any money to the complainant after the receipt of the notice. Thus, it was duly proved that the accused had failed to repay the money despite the receipt of a valid notice of demand.

44. Therefore, it was duly proved on record that the accused had issued a cheque in favour of the complainant to

repay the amount taken by him from the complainant, the cheque was dishonoured with an endorsement 'account closed', and the accused had failed to repay the money despite the receipt of a valid notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

45. Learned Trial Court had sentenced the accused to undergo simple imprisonment for one year. 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 a 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."

46. Keeping in view the deterrent nature of the sentence to be awarded, the sentence of one year cannot be said to be excessive.

47. Learned Trial Court had directed the accused to pay a compensation of ₹1,90,000/-, which was the cheque amount. 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***]"

48. The learned Trial Court had not granted any compensation to the complainant and had merely directed the

accused to repay the cheque amount, which is highly inadequate. The complainant has not filed any appeal, and it is not possible to interfere with the order of compensation passed by the learned Trial Court in the absence of an appeal.

49. No other point was urged.

51. In view of the above, the present revision fails and is dismissed. The present petition stands disposed of, so are the pending miscellaneous application(s), if any

52. The records of the learned Courts below be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

21st July, 2026
(Chander)