



CGHC010321382024



2026:CGHC:31884

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 997 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta Aged About 39 Years R/o House No. 317, Near Paani Tanki, Samta Colony, P. S. Saraswati Nagar, Tahsil And District Raipur Chhattisgarh,..(Complainant)

--- Appellant

versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra R/o House No. 18, Gulmohar Park, Chirhuldih, Ramnagar, P. S. Gudhiyari, District Raipur Chhattisgarh,..(Accused)
2. State Of Chhattisgarh Through District Magistrate, Raipur Chhattisgarh

--- Respondent(s)

CRR No. 596 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra Aged About 42 Years R/o House No.18, Gulmohar Park (Ramnagar- Kota Main Road) Chirhuldih, Ramnagar, Police Station Gudiyari, Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta Aged About 39 Years R/o House No. 317, Near Pani Tanki, Samta Colony, Police Station Saraswati Nagar, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applciant(s)

CRR No. 604 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra, Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramsagar- Kotamain Road) Chirhuldih, Ramsagar Police Station Gudiyari, Raipur Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra,gupta Aged About 39 Years R/o House No. 317, Near Pani Tanki, Samta Colony, Police Station Saraswati Nagar, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 606 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra, Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramnagar - Kota Main Road) Chirhuldih, Ramnagar Police Station Gudiyari, Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta, Aged About 39 Years Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh, Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 609 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhbhra Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramnagar- Kota Main Road) Chirhuldih, Ramnagar, P. S. Gudiyari, Raipur, Tahsil And District Raipur Chhattisgarh.Accused (On Bail), District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta Aged About 39 Years R/o House No. 317, Near Pani Tanki, Samta Colony, P. S. Saraswati Nagar, Tahsil And District Raipur Chhattisgarh.Comp., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 614 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra, Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramsagar Kota Main Road) Chirhuldih, Ramsagar, Police Station Gudiyaari, Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta Aged About 39 Years R/o House No. 317, Near Pani Tanki, Samta Colony, Police Station Saraswati Nagar, Tashil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Collector Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 607 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra, Aged About 42 Years R/o House No. 18, Gulmoharpork (Ramsagar, Kota, Main Road) Chirhuladih Ramsagar, Police Station Gudiyaari, Raipur Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta Aged About 39 Years R/o House No. 317,near Pani Tanki, Samta, Colony Police Station Saraswati Nagar, Tashil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 605 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra, Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramnagar - Kota Main Road) Chirhuldih, Ramnagar Police Station Gudiyaari, Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta, Aged About 39 Years R/o House No. 317, Near Pani Tanki, Samta Colony, Police Station Saraswati Nagar, Tahsil And District Raipur Chhattisgarh., District : Raipur,

Chhattisgarh

2. State Of Chhattisgarh, Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 603 of 2019

- Vinod Chhabra S/o Late Shri Tulsidas Chhabra, Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramnagar - Kota Main Road) Chirhuldih, Ramnagar Police Station Gudiyari, Raipur, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta, Aged About 39 Years Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

CRR No. 594 of 2019

- Vinod Chhabra S/o Late Shri Tulsidar Chhabra Aged About 42 Years R/o House No. 18, Gulmohar Park (Ramnagar - Kota Main Road) Chirhuldih, Ramnagar, Police Station Gudiyari, Raipur, Tahsil And District Raipur Chhattisgarh. (Accused), District : Raipur, Chhattisgarh

---Applicant

Versus

1. Anand Kumar Gupta S/o Mahesh Chandra Gupta Aged About 39 Years Through - Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through - Collector Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Non-Applicant(s)

ACQA No. 996 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta Aged About 39 Years R/o House No. 317, Near Paani, Tanki, Samta Colony, Police Station - Saraswati Nagar, Tahsil And District - Raipur Chhattisgarh. (Complainant)

---Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra S/o Late Shri Tulsi Das Chhabra, R/o House No - 18, Gulmohar Park, Chirhuldih, Ramnagar, Police Station - Gudhiyari, District - Raipur Chhattisgarh. (Accused)

2. State Of Chhattisgarh Through District Magistrate Raipur, Chhattisgarh.

--- Respondent(s)

ACQA No. 1000 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta, Aged About 39 Years R/o House No. 317, Near Paani Tanki, Samta Colony, P.S.-Saraswati Nagar, Tahsil And District-Raipur (C.G.)

---Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra, R/o House No. 18, Gulmohar Park, Chirhuldih, Ramnagar, P.S.-Gudhiyari, District-Raipur (C.G.)
2. State Of Chhattisgarh, Through- District Magistrate, Raipur (C.G.)

--- Respondent(s)

ACQA No. 1002 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta, Aged About 39 Years R/o House No. 317, Near Paani Tanki, Samta Colony, P.S.-Saraswati Nagar, Tahsil And District-Raipur (C.G.)

---Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra, R/o House No.-18, Gulmohar Park, Chirhuldih, Ramnagar, P.S.-Gudhiyari, District-Raipur (C.G.)
2. State Of Chhattisgarh, Through District Magistrate, Raipur (C.G.)

--- Respondent(s)

ACQA No. 1004 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta Aged About 39 Years R/o House No. 317, Near Paani Tanki, Samta Colony, P.S.- Saraswati Nagar, Thana- And District- Raipur, Chhattisgarh,...(Complainant)

---Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra Through District Magistrate Raipur, Chhattisgarh.
2. State Of Chhattisgarh Through District Magistrate Raipur, Chhattisgarh.

--- Respondent(s)

ACQA No. 1014 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta Aged About 39

Years R/o House No.317, Near Paani Tanki, Samta Colony, Police Station
Saraswati Nagar, Tahsil And District Raipur Chhattisgarh

---Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra R/o House No.-18,
Gulmohar Park, Chirhuldih, Ramnagar, Police Station Gudhiyari, District
Raipur Chhattisgarh
2. State Of Chhattisgarh Through District Magistrate Raipur Chhattisgarh

--- Respondent(s)

ACQA No. 1013 of 2024

- Anand Kumar Gupta S/o. Shri Mahendra Chandra Gupta Aged About 39
Years R/o. House No. 317, Near Paani Tanki, Samta Colony, P.S. Saraswati
Nagar, Tahsil And District - Raipur (C.G.) (Complainant)

---Appellant

Versus

1. Vinod Chhabra S/o. Late Shri Tulsi Das Chhabra R/o. House No. 18,
Gulmohar Park, Chirhuldih, Ramnagar, P.S. Gudhiyari, District - Raipur
(C.G.) (Accused)
2. State Of Chhattisgarh Through - District Magistrate, Raipur (C.G.)

--- Respondent(s)

ACQA No. 1003 of 2024

- Anand Kumar Gupta S/o. Shri Mahendra Chandra Gupta Aged About 39
Years R/o. House No. 317, Near Paani Tanki, Samta Colony, P.S. Saraswati
Nagar, Tahsil And District - Raipur (C.G.) (Complainant)

---Appellant

Versus

1. Vinod Chhabra S/o. Late Shri Tulsi Das Chhabra R/o. House No. - 18,
Gulmohar Park, Chirhuldih, Ramnagar, P.S. - Gudhiyari, District - Raipur
(C.G.) (Accused)
2. State Of Chhattisgarh Through - District Magistrate Raipur (C.G.)

--- Respondent(s)

ACQA No. 1001 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Gupta, Aged About 39 Years R/o
House No. 317, Near Paani Tanki, Samta Colony, P.S. - Saraswati Nagar,
Tahsil And District - Raipur, Chhattisgarh.

---Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra, R/o House No. 18, Gulmohar Park, Chirhuldih, Ramnagar, P.S. Gudhiyari, District - Raipur, Chhattisgarh.
 2. State Of Chhattisgarh Through District Magistrate Raipur Chhattisgarh.
- Respondent(s)

ACQA No. 994 of 2024

- Anand Kumar Gupta S/o Shri Mahendra Chandra Gupta, Aged About 39 Years R/o House No. 317, Near Paani Tanki, Samta Colony, P.S.-Saraswati Nagar, Tahsil And District-Raipur (C.G.)
- Appellant

Versus

1. Vinod Chhabra S/o Late Shri Tulsi Das Chhabra, R/o House No.-18, Gulmohar Park, Chirhuldih, Ramnagar, P.S.-Gudhiyari, District-Raipur (C.G.)
 2. State Of Chhattisgarh, Through District Magistrate, Raipur (C.G.)
- Respondent(s)

All Acquittal Appeals

- | | |
|----------------------|---|
| For Appellant | : Mr. Devershi Thakur, Advocate |
| For Respondent No. 1 | : Ms. Ankita Goswami, Advocate holding the
brief of Mr. Pushpendra Kumar Patel, Advocate |
| For State | : Mr. Anil S. Pandey, Government Advocate |

All Criminal Revisions

- | | |
|-------------------------|---|
| For Applicants | : Ms. Ankita Goswami, Advocate holding the
brief of Mr. Pushpendra Kumar Patel, Advocate |
| For Non-Applicant No. 1 | : Mr. Devershi Thakur, Advocate |
| For State | : Mr. Anil S. Pandey, Government Advocate |

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

27.07.2026

1. These acquittal appeals and criminal revisions have been preferred against the judgments passed by the learned Judicial Magistrate First Class, Raipur in complaint claim cases dated 11.12.2018, whereby, the accused was convicted and sentenced to pay a fine only and in default of payment of fine, Simple Imprisonment for certain period and appeals, which were dismissed by the learned Sessions Court vide judgment dated 25.03.2019.

2. The details of Complaint Case Number, Cheque Number, amount, date of judgment, fine amount imposed by the learned Court below, jail sentence in default of payment of fine, are given herein-below :-

Sr. No.	Cases filed in the High Court of Chhattisgarh	Criminal Complaint Case Numbers	Cheque Nos .	Amount (In rupees)	Date of Judgment of Trial Court	Fine amount imposed by the learned Court below	Jail Sentence in default of payment of fine
1.	CRR No. 614/2019	1076/2016	342286	80,000/-	11.12.2018	1,00,000/-	3 months
2.	CRR No. 594/2019	1075/2016	342285	80,000/-	11.12.2018	1,00,000/-	3 months
3.	CRR No. 596/2019	1068/2016	342287	80,000/-	11.12.2018	1,00,000/-	3 months
4.	CRR No. 603/2019	1073/2016	342292	80,000/-	11.12.2018	1,00,000/-	3 months
5.	CRR No. 604/2019	1070/2016	342291	80,000/-	11.12.2018	1,00,000/-	3 months
6.	CRR No. 605/2019	1071/2016	342290	80,000/-	11.12.2018	1,00,000/-	3 months
7.	CRR No. 606/2019	1069/2016	342288	80,000/-	11.12.2018	1,00,000/-	3 months
8.	CRR No. 607/2019	1077/2016	342293	80,000/-	11.12.2018	1,00,000/-	3 months
9.	CRR No. 609/2019	1072/2016	342289	80,000/-	11.12.2018	1,00,000/-	3 months
10.	AQUA No. 997/2024	1071/2016	342290	80,000/-	11.12.2018	1,00,000/-	3 months
11.	AQUA No. 994/2024	1072/2016	342289	80,000/-	11.12.2018	1,00,000/-	3 months
12.	AQUA No. 996/2024	1069/2016	342288	80,000/-	11.12.2018	1,00,000/-	3 months
13.	AQUA No. 1000/2024	1068/2016	342287	80,000/-	11.12.2018	1,00,000/-	3 months
14.	AQUA No. 1001/2024	1070/2016	342291	80,000/-	11.12.2018	1,00,000/-	3 months
15.	AQUA No. 1002/2024	1076/2016	342286	80,000/-	11.12.2018	1,00,000/-	3 months
16.	AQUA No. 1003/2024	1075/2016	342285	80,000/-	11.12.2018	1,00,000/-	3 months
17.	AQUA No. 1004/2024	1073/2016	342292	80,000/-	11.12.2018	1,00,000/-	3 months
18.	AQUA No.	1077/2016	342293	80,000/-	11.12.2018	1,00,000/-	3 months

	1013/2024						
19.	AQUA No. 1014/2024	1074/2016	340761	2,00,000/-	11.12.2018	2,20,000/-	1 month

3. The accused Vinod Chhabra issued various cheques to the complainant for discharge of liabilities, and subsequently those cheques were presented before the Syndicate Bank, Branch Station Road, Raipur and HDFC Bank, Branch Devendra Nagar, Raipur and those cheques were dishonoured. The complainant received intimations given by the concerned Bank with regard to dishonour of cheques, and thereafter, legal notices were served upon the accused within prescribed period and complaint cases were filed under Section 138 of Negotiable Instrument Act.
4. The accused participated in the proceedings, parties led evidence, and thereafter, the learned Trial Court passed judgment in all cases and imposed fine only as mentioned in chart.
5. Both the parties preferred appeals before the learned Sessions Court. The learned Sessions Court dismissed the appeals preferred by the accused. Those orders have been challenged by filing criminal revisions. The complainant had preferred acquittal appeals under Section 372 of CrPC. Those appeals were dismissed being non-maintainable. Thereafter complainant filed acquittal appeals under Section 378(4) of CrPC.
6. Learned counsel appearing for the accused would contend that the complainant failed to establish the fact with regard to issuance of cheques in discharge of liability. She would submit that the signatures denied by the accused over cheques were not examined by a handwriting expert. It is also argued that the complainant failed to lead evidence to establish the fact that

cheques were issued in discharge of liability and no other corroborating evidence was led before the learned trial Court. She would pray to allow these criminal revisions.

7. On the other hand, learned counsel appearing for complainant would oppose. Mr. Devershi Thakur, Advocate would submit that the cheques were issued by accused in discharge of liabilities and this fact was proved by complainant leading cogent evidence. He would contend that no application was moved by accused to examine validity of signatures put on cheques by handwriting expert. He would contend that the complainant examined himself and proved the fact that cheques were issued in discharge of liabilities and the accused failed to controvert said piece of evidence. It is also argued that the cheques issued by accused, were presented before the concerned Banks and those cheques were dishonoured on account of insufficient fund and intimations were duly received by the complainant from the concerned Banks.

Mr. Devershi Thakur would further argue that legal notices were served upon the accused, but he failed to reply those notices and failed to refund the amounts of cheques. He would contend that initially appeals were preferred under Section 372 of CrPC before the learned Sessions Court against the judgment passed by the learned Trial Court, but those appeals were dismissed treating them not maintainable. He would contend that these appeals have been preferred by the complainant under Section 378(4) of CrPC along with applications for grant of leave. He would submit that the learned Courts below committed error of law while imposing only fine upon the accused. He would submit that the learned trial Court should have sentenced the accused person in accordance with the provisions of Section

138 of the Negotiable Instrument Act. He would pray to allow acquittal appeals preferred by the complainant.

8. Mr. Anil S. Pandey, Government Advocate appearing for the State would support the judgment passed by the learned Courts below.
9. I have heard learned counsel for the parties and perused the documents placed on record.
10. Section 138 of N.I. Act reads as under :-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall

apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

11. Bare reading of the above-quoted provision would make it clear that a person who has committed an offence under Section 138 of Negotiable Instrument Act may be punished with imprisonment up to two years or with fine which may extend to twice the amount of the cheque or with both. Thus, the penal provision given in the Section 138 of Negotiable Instrument Act is discretionary and it is not necessary for the Court concerned to punish an accused with imprisonment for a particular period or with fine. In these cases, the learned Trial Court instead of imprisonment, imposed fine

assigning sufficient reasons.

12. To establish a *prima facie* case against an accused under Section 138 of Negotiable Instrument Act, the complainant has to prove its ingredients, which are :-

- i. There was a legally enforceable debt.
- ii. Cheque was drawn from account of Bank for discharge.
- iii. Cheque so issued was returned due to insufficiency of fund.

13. With regard to the criminal revisions preferred by the accused, the complainant before the learned Trial Court proved the facts that cheques were issued by accused in discharge of liability or legally enforceable debts. Cheques were drawn from account of Bank, and subsequently, those cheques were returned due to insufficiency of funds. The complainant issued statutory notice to the accused, but he failed to refund the amount, and thereafter, complaint cases were filed. The complainant examined himself and proved all the documents but the accused failed to controvert the evidence led by the complainant.

14. The evidence led by the complainant remained unrebutted, and therefore, the learned Trial Court convicted the accused and imposed fine amount only. The learned appellate Court affirmed the findings recorded by the learned trial Court.

15. The revisional powers of Criminal Court is limited while exercising the jurisdiction and it cannot be used to reappreciate any evidence. It is continued to check that order passed by the subordinate Court does not suffer from any error of law.

16. The Hon'ble Supreme Court in the matter of *Kaptan Singh and Others vs. State of M.P. and Another* reported in (1997) 6 SCC 185, in para 5 held as under :-

“5. From a conspectus of the above decisions it follows that the revisional power of the High Court while sitting in judgment over and order of acquittal should not be exercised unless there exists a manifest illegality in the judgment or order of acquittal or there is grave miscarriage of justice. Read in the context of the above principle of law we have no hesitation in concluding that the judgment of the trial Court in the instant case is patently wrong and it has caused grave miscarriage of justice. The High Court was therefore fully justified in setting aside the order of acquittal. From the judgment of the trial Court we find that one of the grounds that largely weighed with it for acquitting the appellants was that an Inspector of CID who had taken up the investigation of the case and was examined by the defence (D.W.3) testified that during his investigation he found that the story as made out by the prosecution was not true and on the Contrary the plea of the accused (appellants) that in the night of the incident a dacoity with murder took place in the house of Baijnath by unknown criminals and the appellants were implicated falsely was true . It is trite that result of investigation can never be legal evidence; and this Court in *Vijender etc. Vs. State of Delhi* (JT 1977 (3) SC 131), made the following comments while comments while dealing with this issue:

"The reliance of the trial Judge on the result of investigation to base his findings is again patently wrong. If the observation of the trial judge in this regard is taken to its logical conclusion it would mean that a finding of guilt can be recorded against an accused without a trial, relying solely upon the police report submitted under [Section 173](#) Cr.P.C., which is the outcome of an investigation. The result of investigation under chapter XII of the Criminal procedure code is a conclusion that an investigating officer draws on the basis of materials collected during

investigating officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance thereupon under [Section 190\(1\) \(b\)](#) cr. p. c. and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence, The trial conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof. Since this is law, elementary principle of criminal law, we need not dilate on this point any further."

The High Court was, therefore, fully justified in commenting upon the trial court's impermissible and undue reliance on the evidence of DW 3 and , for that matter, the result of his investigation . Incidentally it may be mentioned that ignoring the report of investigation submitted by the Inspector the Magistrate took cognizance of the offences alleged against the appellants and committed the case to the court of Session. There are other patent infirmities in the judgment of the trial Court to which the High Court has adverted but in case any reason given by us for this comment of ours creates an unconscious impression upon the trial Court, we refrain from doing so.

17. Revisional power should be applied in a situations where the order contains a manifest illegality that results in a miscarriage of justice.
18. Having considered concurrent findings recorded by learned Courts below and law laid down by the Hon'ble Supreme Court in matter of Kaptan Singh(supra), I do not find any good ground to interfere with the judgments passed by learned Courts below against accused, accordingly all criminal revisions are hereby dismissed.
19. With regard to contention made by Mr. Devershi Thakur, in Section 138 of

the N.I. Act the word “or” has been employed and discretion has been conferred to the Criminal Court sentencing the convicted person for offence under Section 138 of the N.I. Act, Thus, there is a discretion left with the Criminal Court either to sentence the accused with imprisonment or to punish the accused with the sentence of fine upon considering the facts and circumstances of the case.

20. In the matter of *Damodar S. Prabhu v. Sayed Babalal H.* reported in (2010) 5 SCC 663, their Lordships of the Supreme Court while examining the object sought to be achieved by provisions of Section 138 of the N. I. Act and purpose underlying the punishment provided therein has held that Section 138 of the N.I. Act cases are meant to secure payment of money by holding as under:-

“17. Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant’s interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.”

21. Very recently, in the matter of *Somnath Sarkar v. Utpal Basu Mallick* and another reported in (2013) 16 SCC 465, their Lordships of the Supreme Court while considering the punishment to be imposed under Section 138 of the N.I. Act have held in no uncertain term that under Section 138 of the N.I. Act, only fine sentence can be imposed by the Criminal Court and observed as under:-

“15.....Suffice it to say that the High Court was competent on a plain reading of Section 138 to impose a sentence of fine only upon the appellant. Inasmuch as the High Court did so, it committed no jurisdictional error.....”

22. Thus, from the provisions contained in Section 138 of the N.I. Act and going by the law laid down by Their Lordships of the Supreme Court in aforesaid judgments it is quite vivid that Criminal Court sentencing the accused for commission of offence under Section 138 of the N.I. Act is competent to impose sentence of fine only as imposition of jail sentence is not mandatory as it is discretion vested with the Criminal Court either to impose jail sentence or sentence of fine only depending on the facts and circumstances of particular case.

23. Findings recorded by the learned Sessions Court with regard to dismissal of appeals appear to be just and proper as the proper forum available to the complainant was to approach the High Court according to the provisions of Section 378(4) of CrPC instead the complainant filed appeals before the learned Sessions Court under Section 372 of CrPC.

24. The law with regard to interference in acquittal appeals, the Hon'ble Supreme Court in the matter of *Dattatraya vs. Sharanappa* reported in (2024) 8 SCC 573 in para 33 held as under :-

“33. The instant case pertains to challenge against concurrent findings of fact favouring the acquittal of the respondent, it would be cogent to delve into an analysis of the principles underlining the exercise of power to adjudicate a challenge against acquittal bolstered by concurrent findings. The following broad principles can be culled out after a

comprehensive analysis of judicial pronouncements:

33.1. Criminal jurisprudence emphasises on the fundamental essence of liberty and presumption of innocence unless proven guilty. This presumption gets emboldened by virtue of concurrent findings of acquittal. Therefore, this Court must be extra-cautious while dealing with a challenge against acquittal as the said presumption gets reinforced by virtue of a well-reasoned favourable outcome. Consequently, the onus on the prosecution side becomes more burdensome pursuant to the said double presumption.

33.2. In case of concurrent findings of acquittal, this Court would ordinarily not interfere with such view considering the principle of liberty enshrined in Article 21 of the Constitution of India, unless perversity is blatantly forthcoming and there are compelling reasons.

33.3. Where two views are possible, then this Court would not ordinarily interfere and reverse the concurrent findings of acquittal. However, where the situation is such that the only conclusion which could be arrived at from a comprehensive appraisal of evidence, shows that there has been a grave miscarriage of justice, then, notwithstanding such concurrent view, this Court would not restrict itself to adopt an oppugnant view. [Vide State of U.P. v. Dan Singh (1997 3 SCC 747)]

33.4. To adjudge whether the concurrent findings of acquittal are "perverse" it is to be seen whether there has been failure of justice. This Court in Babu v. State of Kerala, (2010 9 SCC 189) clarified the ambit of the term "perversity" as: (SCC p. 199, para 20)

20.... if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the

vice of irrationality."

33.5. In situations of concurrent findings favouring the accused, interference is required where the trial court adopted an incorrect approach in framing of an issue of fact and the appellate court whilst affirming the view of the trial court, lacked in appreciating the evidence produced by the accused in rebutting a legal presumption. [Vide *Rajesh Jain v. Ajay Singh*, 2023 10 SCC 148.]

33.6. Furthermore, such interference is necessitated to safeguard interests of justice when the acquittal is based on some irrelevant grounds or fallacies in reappreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside. Sav in cases where the court severed the connection between the accused and criminality committed by him upon a cursory examination of evidences. [Vide *State of Punjab v. Gurpreet Singh* (2024 4 SCC 469) and *Rajesh Prasad v. State of Bihar*(2022 3 SCC 471).

25. In the acquittal appeal preferred by the complainant, there is fundamental essence of liberty and presumption of innocence in favour of the accused. This presumption gets strength by virtue finding recorded by the learned Trial Court. Further when two views are possible, then this Court would not ordinarily interfere and reverse the finding of acquittal.

26. Further, the Hon'ble Supreme Court while dealing with appeal against acquittal, in the matter of *State of Madhya Pradesh vs. Ramesh and Another reported in (2011) 4 SCC 786* in para 15 held as under :-

“15. We are fully alive of the fact that we are dealing

with an appeal against acquittal and in the absence of perversity in the said judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. It is settled proposition of law that the appellate court being the final court of fact is fully competent to reappreciate, reconsider and review the evidence and take its own decision. Law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court and there can be no quarrel to the said legal proposition that if two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

27. Having considered above-discussed facts, findings recorded by the learned trial Court, provisions of Section 138 of Negotiable Instrument Act and law laid down by the Hon'ble Supreme Court. I do not find any good ground to interfere with the judgments passed by the learned trial Court, accordingly, these Acquittal Appeals are hereby **dismissed**.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

Siddhant