

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 58 of 2025****Reserved on: 21.07.2026****Date of Decision: 29.07.2026**

Dola Singh**...Petitioner****Versus****H.P. State Co-operative Agriculture and Rural Development Bank
Ltd & Anr.****...Respondents**

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

For the Petitioner	:	Mr N.K. Bhardwaj, Advocate.
For Respondent No.1	:	Mr Narender Singh Thakur, Advocate.
For Respondent No.2/State	:	Mr Tarun Pathak, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 15.01.2025 passed by the learned Sessions Judge, Kullu, District Kullu, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 01.05.2024 passed by the learned Judicial Magistrate First Class, Banjar, District Kullu HP (learned Trial Court) were upheld. (*The parties shall*

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

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 complainant is a cooperative society and is engaged in banking activities. The accused availed a loan of ₹10,00,000/- from the complainant and issued a cheque of ₹95,000/- to partly repay the amount borrowed by him. The complainant presented the cheque at its bank, but it was dishonoured with the remarks “funds insufficient”. The complainant sent a legal notice to the accused asking him to pay 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 loan. Hence, a complaint was filed before the Court for taking action against the accused.

3. The 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 trial.

4. The complainant examined Dhale Ram (CW1) to prove its complaint.

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

6. The learned Trial Court held that the accused had not disputed the issuance of the cheque and his signatures. Therefore, a presumption applied that the cheque was issued for consideration to discharge the debt/liability. The burden was upon the accused to rebut the presumption, but he failed to produce any evidence to rebut the presumption. The cheque was dishonoured with endorsement “insufficient funds”. 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 2 months and pay a compensation of ₹1,00,000/-.

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 Kullu, District Kullu, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had not disputed the issuance of the cheque, and a presumption applied that the cheque was issued for consideration to discharge the debt/liability. The complainant failed to rebut the presumption by producing any evidence. The plea taken by the accused that the complaint was not filed by the proper officer was not sustainable because an authority letter issued by the Managing Director in favour of the complainant of Branch Manager was placed on record. The Branch Manager is also a Principal Officer and competent to file the complaint. The cheque was dishonoured with endorsement “insufficient funds”. The notice was duly served upon the accused, and the accused failed to repay the money. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Learned Trial Court had imposed an adequate sentence and no interference was required with the judgment and order passed by the learned Trial Court. Consequently, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below failed to appreciate the

material placed before them. The complainant had misused the security cheque taken at the time of advancing the loan. No authority letter was placed on record to show that the Branch Manager was authorised to file the complaint. No ledger was placed on record to prove the exact liability of the accused. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Mr N.K. Bharadwaj, learned counsel for the petitioner/accused, Mr Narinder Singh Thakur, learned counsel for respondent no. 1 and Mr Tarun Pathak, learned Deputy Advocate General for the respondent no. 2/State.

10. Mr N.K. Bharadwaj, learned counsel for the petitioner/accused submitted that learned Courts below failed to appreciate the material placed before them. The defence taken by the accused that the cheque was issued as a security which was misused by the complainant was highly probable from the statement of the accused. The complainant has not placed the authority of the Branch Manager to file the complaint, and the complaint was not maintainable. The notice did not mention the name of the person on whose behalf the notice was issued, and the notice was defective. Hence, he prayed that the present revision be allowed and the

judgments and order passed by learned Courts below be set aside. He relied upon the judgments in *Jaipur Thar Gramin Bank, Branch Jaisalmer vs. State 2022(1) Civil Court Cases 668 (Rajasthan)* and *Mansa Central Co-operative Bank Ltd vs. Lachhman Singh 2023(4) Civil Court Cases 460 (P&H)* in support of his submission.

11. Mr Narinder Singh Thakur, learned counsel for the respondent No.1 submitted that the testimony of Dhale Ram (CW1) that he was authorised to file the complaint was not challenged in the cross-examination and this plea cannot be taken before this Court. The accused had not disputed the issuance of the cheque and learned Courts below had rightly applied presumption to the present case. All the ingredients of the commission of the offence punishable under Section 138 of the NI Act were duly satisfied. There is no infirmity in the judgments and order passed by learned Courts below and this Court should not re-appreciate the evidence while deciding the present revision. Hence, he prayed that the present revision be dismissed. He relied upon the judgment of this Court in *Kewal Ram vs. HP Cooperative Agriculture and Rural Development Bank Ltd. 2026:HHC:10810* in support of his submissions.

12. Mr Tarun Pathak, learned Deputy Advocate General for the State submitted that the dispute is between the private persons and the State has no submissions to make.

13. I have given 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 advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in a 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. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and

cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

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)

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. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material; the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

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.

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.

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. The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in *Kaveri Plastics v. Mahdoo Bawa Bahrudeen Noorul*, 2025 SCC OnLine SC 2019 as under: –

“5.1.1. In *K.R. Indira v. Dr. G. Adinarayana* (2003) 8 SCC 300, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid, demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque, within 15 days of the receipt of the notice.”

21. The accused Dola Singh (DW1), stated that he had applied for a house loan of ₹10,00,000/-. He was asked to produce a cheque book. He opened the account and handed over the blank cheques to the Manager. The cheques did not contain any amount or the date. He had not handed over any cheque after taking the loan. The cheque (Ext.CW1/B) was blank without any date or without any amount. The date and the amount were filled by the Manager. He admitted in his

cross-examination that he had taken a loan of ₹10,00,000/- from the bank. He also admitted his signature on the cheque (Ext.CW1/B). He admitted that he had received the notice but had not sent any reply to it. He admitted that he had mortgaged his land to take a loan.

22. It is apparent from the testimony of this witness that he has admitted the issuance of the cheque and his signatures on the cheque. 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.”

23. 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.”

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

“ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1–Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to

mention that observations to the contrary by a two-Judge Bench in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54, have been set aside by a three-Judge Bench in *Rangappa* (supra).

16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197].

25. 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.

26. The accused admitted that he had taken the loan of ₹10,00,000/- in the year 2017. He has nowhere stated that he had repaid the loan. The cheque of ₹95,000/- was issued on 07.08.2021, and in the absence of any proof of the repayment of the loan, the complainant's version is acceptable that the accused was liable to pay an amount of ₹95,000/-. Therefore, learned Courts below had rightly held that the accused was liable. It was laid down by this Court in *Hamid Mohammad Versus Jaimal Dass* 2016 (1) HLJ 456, that the accused is liable for the dishonour of the cheque even if the cheque is issued towards the security. It was observed:

“9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security, and on this ground, the criminal

revision petition is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act, 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act, 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque Ext. C-1 that the cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions of Section 138 of the Negotiable Instruments Act, 1881. See 2016 (3) SCC page 1 titled *Don Ayengia v. State of Assam & another*. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails.”

27. It was laid down by the Hon'ble Supreme Court in *Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited*, 2016(10) SCC 458 that issuing a cheque toward security will also attract the liability for the commission of an offence punishable under Section 138 of the NI Act. It was observed: –

“10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in *Indus Airways Private Limited versus Magnum Aviation Private Limited* (2014) 12 SCC 53 with reference to the explanation to Section 138 of the Act and the expression “for the discharge of any debt or other liability” occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for “discharge of debt or liability” depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*

11. Reference to the facts of the present case clearly shows that though the word “security” is used in clause 3.1(iii) of the

agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in *Indus Airways (supra)* is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for the discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of *Indus Airways (supra)*, where the purchase order had been cancelled, and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for the discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature, where the cheque was for repayment of a loan instalment which had fallen due, though such a deposit of cheques towards repayment of instalments was also described as “security” in the loan agreement. In applying the judgment in *Indus Airways (supra)*, one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a

subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court.” (Emphasis supplied)

28. This position was reiterated in *Sripati Singh v. State of Jharkhand*, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

“17. A cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security', cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount

of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the NI Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note', and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.”

29. Therefore, the accused cannot escape from the liability by taking a plea that he had issued the cheque as security.

30. The accused claimed that he had not filled the cheque and the manager had filled it. This plea will not help the accused. It has already been found out above that the accused had taken a loan of ₹10,00,000/- from the complainant and he has not led any evidence to show the return of the amount. Therefore, the plea taken by the complainant that he had a subsisting liability of ₹95,000/- is acceptable. Thus, the complainant had sufficient authority to fill the

amount of ₹95,000/- and present the cheque. 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 a person is liable for the commission of an offence punishable under section 138 of the Negotiable Instruments Act even if some other person fills the cheque. It was observed:

“33. A meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill in the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case that the respondent accused him of either signing the cheque or parting with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would

attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

31. This position was reiterated in *Oriental Bank of Commerce v. Prabodh Kumar Tewari*, 2022 SCC OnLine SC 1089, wherein it was observed:

“12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.

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32. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.

32. Therefore, the cheque is not bad even if it is not filled in by the drawer.

33. Dhale Ram (CW1) specifically stated in his proof affidavit (Ext.CW1/A) that he was a Branch Manager conversant with the facts of the case and duly authorised to file the complaint on behalf of the bank. He was not cross-examined regarding this fact. No question was asked of him about his authority to file the complaint before the Court. Thus, his testimony that he was competent to file the complaint had remained unrebutted. It was laid down by the Hon’ble Supreme Court in *State of Uttar Pradesh Versus Nahar Singh*, 1998 (3)

SCC 561 that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in *Arvind Singh v. State of Maharashtra*, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4, and it was held at page 34:

“58. A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs, mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as *Browne v. Dunn* (1893) 6 R 67 (HL), considered the principles of appreciation of evidence. Lord Chancellor Herschell held that it is essential to the proper conduct of a cause, where it is

intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

“Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.”

60. Lord Halsbury, in a separate but concurring opinion, held as under:

“My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind,

nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.”

61. This Court, in a judgment reported as *State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850, quoted from *Browne v. Dunn*, (1893) 6 R 67 (HL) to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (*State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850], SCC pp. 566-67, para 13)

“13. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

- (1) to test his veracity,
- (2) to discover who he is and what his position in life is, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.”

62. This Court, in a judgment reported *Muddasani Venkata Narsaiah v. Muddasani Sarojana*, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268, laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version

in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal v. Debnath Bhagat*, AIR 1963 SC 1906. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.*, 1957 SCC OnLine P&H 177: AIR 1958 P&H 440.

16. In *Maroti Bansi Teli v. Radhabai*, 1943 SCC OnLine MP 128: AIR 1945 Nag 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A.Y. Derderian*, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359 has laid down that the party is obliged to put his case in the cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, *Kuwarlal Amritlal v. Rekhlal Koduram*, 1949 SCC OnLine MP 35: AIR 1950 Nag 83 has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of

the Patna High Court in *Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683* has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.”

34. Therefore, it was rightly submitted on behalf of the complainant that this plea could not have been raised before the Ld. appellate Court, and it is impermissible to raise this plea before this Court as well. In *Jaipur Thar Gramin Bank* (supra), the accused had disputed the authority of the manager to file the complaint, which is not the case here. Hence, the cited judgment does not apply to the present case.

35. The accused admitted taking of the loan, and there is no evidence that the loan was repaid. Therefore, it was duly proved that the cheque was issued for repayment of the debt taken by the accused.

36. Dhale Ram (CW1) stated that the cheque was presented before the bank and it was dishonoured with endorsement “insufficient funds”. He has filed the copy of the cheque return memo. (Ext.CW1/E) which shows that the reason for dishonour was

“funds insufficient”. 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.”

37. In the present case, the accused has not stated in his statement that he had sufficient funds in his account and the cheque was wrongly dishonoured by the bank. Therefore, learned Courts below had rightly held that the cheque was dishonoured with an endorsement “funds insufficient”.

38. Dhale Ram (CW1) stated that the complainant had issued a notice (Ext.CW1/D) to the accused, asking him to pay the money within 15 days of the receipt of the notice. He filed the acknowledgement (Ext.CW1/G). The accused, Dola Singh (DW1), admitted in his cross-examination that he had received the notice and the acknowledgement (Ext.CW1/G) is signed by him. Therefore, the service of notice upon the accused was duly proved.

39. It was submitted that the name of the persons on whose behalf the notice was issued was not mentioned in the notice, and the notice is bad. This submission is only stated to be rejected. It was specifically stated in the notice (Ext.CW1/D) that the notice was issued on behalf of HP State Co-operative Bank, Agricultural and Rural Development Bank Ltd., Branch Banjar. The cheque was also issued in the name of Himachal Pradesh Cooperative Agriculture and Rural Development Bank. The complaint was also filed in the name of the bank. Therefore, the name of the person on whose behalf the notice was issued was specifically mentioned, and the judgment of the Punjab and Haryana High Court in *Mansa Central Co-operative Bank Ltd* (supra) does not apply to the present case.

40. The accused has not claimed that he had repaid the money after the service of the notice.

41. Therefore, it was proved on record that the accused had issued a cheque in favour of the complainant to repay the debt, which cheque was dishonoured with an endorsement “insufficient funds” and the accused failed to repay the money despite the receipt of valid notice of demand. Therefore, 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.

42. The learned Trial Court sentenced the accused to undergo simple imprisonment for 2 months and pay a compensation of ₹1,00,000/-. It was laid down by the Hon'ble Supreme Court in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138 that the penal provision of section 138 is deterrent in nature. It was observed at page 203:

“6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.”

43. Keeping in view the deterrent nature of the punishment, a sentence of one year cannot be said to be excessive.

44. The accused had issued a cheque of ₹95,000/- and the learned Trial Court awarded a compensation of ₹ 1,00,000/- which means that the learned Trial Court had only awarded a compensation of ₹5,000/- to the complainant. 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]”

45. The complainant was deprived of the interest to which it would have been entitled, had it advanced the money to other persons. The complainant had to engage a counsel and to prosecute the complaint before the learned Trial Court, and it was entitled to be compensated for it. Considering all these circumstances, the compensation of ₹5,000/- is inadequate. However, the complainant failed to file any appeal for enhancement of the sentence and no interference is required with the amount of compensation awarded by the learned Trial Court.

46. No other point was urged.

47. In view of the above, there is no infirmity in the judgments and order passed by the learned Courts below. Hence, the present revision fails and is dismissed.

48. The present revision stands disposed of, and so are the pending miscellaneous application(s), if any.

49. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

29th July, 2026
(Nikita)