

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 221 of 2015****Reserved on: 21.07.2026****Date of Decision: 29.07.2026**

Het Ram (Panchayat Secretary) ...Petitioner**Versus****Prakash Chand & another ...Respondents**

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

For the petitioner	:	Mr H.S. Rangra, Advocate.
For Respondent No.1	:	Mr R.L. Chaudhary, Advocate.
For Respondent No.2/State	:	Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 21.11.2013 passed by the learned Additional Sessions Judge, Mandi, District Mandi (learned Appellate Court), vide which the judgment of conviction dated 27.06.2012 and order of sentence dated 29.06.2012 passed by the learned Judicial Magistrate First Class, Court No. 2, Mandi (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*).

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

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 taking action against him for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant and the accused were known to each other. The accused borrowed ₹85,000/- from the complainant for his domestic requirements. He promised to return the amount within three months. The complainant demanded the money, and the accused issued a cheque of ₹85,000/- to return the money. The complainant presented the cheque at his bank, but it was dishonoured with the endorsement “insufficient funds”. The complainant sent a legal notice to the accused, asking him to repay 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, the complaint was filed before the learned Trial Court against the accused.

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 trial.

4. The complainant examined Shyam Kishore (CW1) and himself (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the complainant's case in its entirety. He claimed that a false complaint was filed against him. The complainant had filled the date himself, and there was an overwriting in the cheque. He did not produce any evidence in his defence.

6. Learned Trial Court held that the accused had issued the cheque, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption. The plea taken by the accused that there was an overwriting in the cheque will not help him because the overwriting was duly initialled by the accused. The cheque was dishonoured with endorsement "insufficient funds". The notice was duly served upon the accused, and the accused failed to repay the money despite the receipt of the notice. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. 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 three months, pay a fine of ₹95,000/- and, in default of payment of the fine, to undergo simple imprisonment for 15 days. It was ordered that out of the fine amount of ₹95,000/-, ₹90,000/- would be disbursed to the complainant as compensation.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge, Mandi (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was duly proved. The burden shifted upon the accused to rebut the presumption that the cheque was issued for consideration to discharge the debt/liability. The accused had failed to produce any evidence. The plea that there was an overwriting in the cheque would not help the accused because the overwriting was authenticated by the signatures of the accused. The cheque was dishonoured with an endorsement “funds insufficient”. The notice was duly served upon the accused, and the accused failed to repay the money. The learned Trial Court had rightly convicted the accused. The sentence imposed was adequate, which did not require any interference from the Appellate 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 had not properly appreciated the material placed before them. There were various contradictions in the statements of the complainant's witnesses. The plea taken by the accused that the cheque was filled by the complainant was not considered by the learned Courts below. The signatures and the rest of the body of the complaint were in different ink which proved the plea taken by the accused that the complainant had filled the cheque. 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 H.S. Rangra, learned counsel for the petitioner, Mr R.L. Chaudhary, learned counsel for the respondent no. 1 and Mr Jitender Sharma, learned Additional Advocate General for respondent no. 2/State.

10. Mr H.S. Rangra, learned counsel for the petitioner, submitted that learned Courts below had not properly appreciated the material placed before them. The cheque contained an overwriting and was invalid. The notice was sent to the incorrect address and was never served upon the accused. The plea taken by

the accused that the cheque was issued as a security was highly probable and learned Courts below erred in rejecting this plea. Therefore, he prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

11. Mr R.L. Chaudhary, learned counsel for the respondent no. 1/complainant submitted that the issuance of the cheque was not disputed and a presumption would apply to the present case that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption by leading any evidence. The overwriting was duly authenticated by the signatures of the accused. The notice was returned with a report that the addressee was not available at home, which is deemed service. This Court should not re-appreciate the evidence while deciding a revision. Therefore, he prayed that the present revision be dismissed.

12. Mr Jitender Sharma, learned Additional Advocate General for respondent no. 2/State submitted that the dispute is between the private parties 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 re-appreciate 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 re-appreciate 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. Mahdoom 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 complainant Prakash Chand (CW2) stated that the accused had taken a loan of ₹85,000/- and handed over a cheque (Ext.CW2/A) to return the money. He stated in his cross-examination that he had taken two cheques from the accused. One was for ₹1,00,000/- and the other was for ₹85,000/-. The cheque of ₹85,000/- was taken on 17.04.2008. He was running a furniture business. He had withdrawn the money from the bank, and he had not produced any document regarding the withdrawal. He denied that the accused had taken furniture from him and had issued a blank cheque. He denied that a false complaint was made against the accused.

22. The cross-examination of the complainant shows that the accused has not disputed the issuance of the cheque; rather, it was suggested to the complainant that the cheque was issued in lieu of the furniture taken by the accused. 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.

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.”

23. Therefore, the suggestion made to the complainant can be considered while appreciating the evidence.

24. The accused has also not disputed the issuance of the cheque in the present revision. He specifically asserted in para 4 (d) that learned Courts below had not considered the facts that the cheque was issued as a security. Therefore, the issuance of the

cheque was never disputed and learned Courts below had rightly held that the presumption applied to the present case that the cheque was issued for consideration to discharge the debt/liability. 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.”

25. 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.”

26. 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].

27. 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.

28. It was submitted that the complainant admitted in his cross-examination that he had taken two cheques of ₹1,85,000/- which means that the complainant had taken ₹1,85,000/- in lieu of ₹85,000/- stated to have been advanced by him. This submission will not help the accused. The complainant has nowhere stated that he had filed a complaint regarding the cheque of ₹1,00,000/-. He claimed that the accused had taken the amount mentioned in the cheques for his domestic needs, which means that the accused had taken an amount of ₹1,85,000/- as per his cross-examination. Since the present complaint was confined to the cheque of ₹85,000/-. Therefore, it was not necessary to aver the facts relating to the issuance of the cheque of ₹1,00,000/-. Thus, this admission in the cross-examination will not help the accused.

29. The accused stated in his cross-examination that he had withdrawn the money from the bank, but he had not produced any document to prove this fact. It was submitted that the complainant's version regarding the withdrawal of the money from the bank and advancing it to the accused cannot be accepted without any document. This submission will not help the accused. In *Uttam Ram v. Devinder Singh Hudan*, (2019) 10 SCC 287: (2020) 1 SCC (Cri) 154: (2020) 1 SCC (Civ) 126: 2019 SCC OnLine SC 1361, the Trial Court had dismissed the complaint after holding that the complainant's evidence regarding sale of apple crop was doubtful because of discrepancies in the number of cartons. This judgment was upheld by this Court. The Hon'ble Supreme Court set aside the judgments of this Court and the Trial Court after holding that the complainant is not required to produce any evidence regarding the sale of the apple crop because of the presumption contained in Section 139 of the NI Act and his case could not have been doubted because of discrepancies. It was observed at page 293:

“20. The trial court and the High Court proceeded as if the appellant is to prove a debt before a 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. A dishonour of a cheque carries a statutory presumption of consideration. The holder of a 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.

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28. The accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the trial court and the High Court. Both courts not only erred in law but also committed perversity when the due amount is said to be disputed only on account of discrepancy in the cartons, packing material or the rate to determine the total liability as if the appellant was proving his debt before the civil court. Therefore, it is presumed that the cheques in question were drawn for consideration and the holder of the cheques, i.e. the appellant, received the same in discharge of an existing debt. The onus, thereafter, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption, which onus has not been discharged by the respondent.”

30. 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 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).

31. 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.”

32. Therefore, the complainant's version cannot be discarded because he had not produced any document to show the withdrawal of the money from the bank.

33. The plea taken before this Court that the cheque was issued as a security was never taken by him before the learned Trial Court. He nowhere stated in his statement recorded under Section 313 of the Cr.P.C. that he had issued the cheque in favour of the complainant as a security. It was suggested to the complainant that the cheque was issued in lieu of the furniture taken by the accused, clearly showing that the cheque was towards the liability to pay the money for the furniture. Therefore, there was no evidence to show that the cheque was issued as a security and learned Courts below cannot be faulted for not considering this plea.

34. The cross-examination of the complainant does not disprove the fact that the cheque was issued for consideration to discharge the debt/liability. The accused did not produce any evidence to show that the cheque was not issued towards the debt/liability. He had not even stated this fact in his statement recorded under Section 313 of the Cr.P.C. Therefore, learned Courts

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

35. The cheque (Ext.CW2/A) shows that the words THOUS after the word EIGHTY were scored off. It was submitted that the alteration in the cheque would make it invalid. This submission will not help the accused. The complainant specifically stated in his cross-examination that the overwriting/cutting was initialled by the accused. This is also evident from the cheque, wherein the signatures have been put above the overwriting and below it. Therefore, the overwriting was duly authenticated. The accused never claimed that the signatures on the cheque were not put by him. Therefore, the cheque cannot be held to be bad because of some overwriting in it.

36. The complainant stated that the cheque was dishonoured with an endorsement “funds insufficient”. This is duly corroborated by the Memorandum (Ext.CW2/B) in which the reason of dishonour has been mentioned as “funds insufficient”. 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 arises 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.”

37. In the present case, the complainant did not produce any evidence to show that the contents of the memo of dishonour are

incorrect. Therefore, learned Courts below had rightly held that the cheque was dishonoured with endorsement 'insufficient funds.'

38. The complainant stated that he had issued a notice (Ext.CW2/C) to the accused asking him to pay the money. The notice was returned with an endorsement that the addressee was not available in the panchayat despite repeated visits, and it be returned. It was submitted that the address mentioned on the notice is incorrect and the notice was never served upon the accused. This submission cannot be accepted. There is a presumption of correctness to the endorsement made by the Public Official in discharge of the official duties, which has not been rebutted by the accused; rather, the accused has given the same address in the notice of accusation and his statement recorded under Section 313 of the Cr.P.C. Thus, the submission that the notice was sent to the incorrect address cannot be accepted.

39. It was laid down by the Hon'ble Supreme Court in *D. Vinod Shivappa v. Nanda Belliappa*, (2006) 6 SCC 456: (2006) 3 SCC (Cri) 114: 2006 SCC OnLine SC 629, that a notice returned with an endorsement "house locked" would lead to a presumption that the notice was validly served and the burden would be upon the accused to show that the report is incorrect. It was observed at page 462:

“14. If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly, if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc. etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him, and consequently, he can never be prosecuted. There is good authority to support the proposition that once the complainant, the payee of the cheque, issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice, which may be returned with an endorsement that the addressee is not available at the given address.

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18. This Court noticed the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case, the notice was returned as “unclaimed” and not as refused. The Court posed the question, “Will there be any significant difference between the two so far as the presumption of service is concerned?” Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could

profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. This Court dismissed the appeal preferred by the drawer, holding that where the notice is returned by the addressee as unclaimed, such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (c) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. The aforesaid decision is significant for two reasons. Firstly, it was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address.”

40. It was laid down by the Hon’ble Supreme Court of India in *C.C. Allavi Haji vs. Pala Pelly Mohd.* 2007(6) SCC 555, that when a notice is returned unclaimed, it is deemed to be served. It was observed:

“8. Since in *Bhaskaran's case (supra)*, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice

is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service.”

41. This position was reiterated in *Priyanka Kumari vs. Shailendra Kumar* (13.10.2023- SC Order): MANU/ SCOR/ 133284/ 2023, wherein it was observed:

“As it was held by the Hon'ble Supreme Court in *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, (1999) 7 Supreme Court Cases 510, that when notice is returned as 'unclaimed', it shall be deemed to be duly served upon the addressee, and it is a proper service of notice. In the case of *Ajeet Seeds Limited Vs. K. Gopala Krishnaiah* (2014) 12 SCC 685 (2014), the Hon'ble Court, while interpreting Section 27 of the General Clauses Act, 1897 and also Section 114 of the Evidence Act, 1872, held as under: -

"Section 114 of the Evidence Act, 1872, enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that, despite the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

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

“13. Section 27 of the General Clauses Act, 1887, deals with service by post:

“27. **Meaning of Service by post.**-Where any [Central Act] or Regulation made after the commencement of

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

14. The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:

14.1 In *Madan and Co. v. Wazir Jaivir Chand* (1989) 1 SCC 264, which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled “Protection of a Tenant against Eviction”, states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, “*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*”

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881, it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: *C.C. Alavi Haji v. Palapetty Mouhammed* (2007) 6 SCC 555]

14.3 The findings in *C.C. Alavi* (supra) were followed in *Vishwabandhu v. Srikrishna* (2021) 19 SCC 549. In this case, the summons issued by the Registered AD post was received back

with endorsement “refusal”. In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in *C.C. Alavi* (supra) stands adopted by this Court in various judgments of this Court in *Greater Mohali Area Development Authority v. Manju Jain* (2010) 9 SCC 157; *Gujarat Electricity Board v. Atmaram Sungomal Posani* (1989) 2 SCC 602; *CIT v. V. K. Gururaj* (1996) 7 SCC 275; *Poonam Verma v. DDA* (2007) 13 SCC 154; *Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund* (2007) 14 SCC 753; *Union of India v. S.P. Singh* (2008) 5 SCC 438; *Municipal Corpn., Ludhiana v. Inderjit Singh* (2008) 13 SCC 506; and *V.N. Bharat v. DDA* (2008) 17 SCC 321.

43. In the present case, the accused has not proved that he was not responsible for non-service; therefore, the learned Courts below had rightly held that the notice was deemed to be served upon the accused.

44. In any case, it was laid down in *C.C. Allavi Haji vs. Pala Pelly Mohd.* 2007(6) SCC 555, that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take advantage of the fact that notice was not received by him. It was observed:

“It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act,

*make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court, along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in **Bhaskaran's case** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act.” (Emphasis supplied)*

45. The accused did not claim that he had repaid the money to the complainant, and it was duly proved on record that the accused had failed to repay the amount despite the receipt of the notice.

46. Therefore, it was duly proved on record that the accused had issued a cheque to the complainant to repay the money taken by him, which was dishonoured with an endorsement “insufficient funds” and the accused failed to repay the money despite the deemed receipt of a notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

47. Learned Trial Court had sentenced the accused to undergo simple imprisonment for three months and pay a fine of ₹95,000/-. 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.”

48. Keeping in view the deterrent nature of the punishment, the sentence of three months cannot be said to be excessive.

49. The cheque was issued for ₹85,000/- on 17.04.2008. The Learned Trial Court imposed the sentence on 29.06.2012 and awarded ₹90,000/- as compensation 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]”

50. The complainant lost interest on the amount which he would have gained by investing the money in the bank. He had to engage a counsel to prosecute the complaint before the Court, and he was entitled to be compensated for it. Hence, the compensation of ₹5,000/- is inadequate. However, the complainant has not filed any complaint or any appeal for enhancement of the sentence and no interference is required with the fine imposed by the learned Trial Court.

51. No other point was urged.

52. In view of the above, the present revision fails and is dismissed.

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

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

(Rakesh Kainthla)
Judge

29th July, 2026
(Nikita)