IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 412 of 2015

Reserved on: 30.07.2026

Date of Decision: 12.08.2026

Raju .... **Petitioner**

Versus

Uttam Kaur & others .... **Respondents**

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the petitioner	:	Mr Sandeep Kumar Pandey, Advocate.
For the Respondent	:	None

Rakesh Kainthla, Judge

The present revision is directed against the judgment 16.10.2015, passed by the learned Additional Sessions Judge, Solan, District Solan, H.P. (learned Appellate Court), vide which judgment of conviction dated 20.04.2012

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

and order of sentence dated 10.05.2012, passed by the learned Judicial Magistrate, First Class, Court No. II, Kasauli, District Solan, H.P. (learned trial Court) were partly upheld *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant Satpal Singh (since deceased) filed a complaint before the learned trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused is carrying on the business under the name and style of M/s Vicky Electronics. The complainant is also running a business under the name and style of M/s Singh Sons at Parwanoo. The accused issued a cheque of ₹1,59,195/- to the complainant to discharge part of his liability. The complainant presented the cheque at his bank, but it was dishonoured with the remarks 'exceeds arrangements'. The complainant issued a 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 pay the amount. Hence, the

complaint was filed before the learned trial Court for taking action as per the law.

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

4. The complainant died during the pendency of the proceeding and was substituted by his legal representatives. The legal representative Hardeep Singh (CW-1) appeared before the Court to prove the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that Satpal was running a business under the name and style of M/S Singh Sons at Parwanoo, H.P. and he (the accused) was carrying on the business under the name and style of M/S Vicky Electronics at Nerwa, Chopal. He denied the rest of the complainant's case. He stated that he had not issued any cheque to the complainant. He had taken the articles from the complainant and had returned the articles

worth ₹75,000/-. A false complaint was filed against him. He did not produce any evidence in his defence.

6. Learned trial Court held that the accused admitted the status of the complainant as the proprietor of M/S Singh Sons. It was duly proved that Satpal Singh was running the business in the name and style of M/S Singh Sons. The complainant's version that the accused had issued the cheque was not disputed in the cross-examination. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. The cheque was returned with an endorsement 'exceeds arrangement'. The notice was duly served upon the accused, and the accused failed to repay the money despite the service of the notice of demand. Hence, the trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for one year and pay a fine of ₹ 3,18,000/-. It was ordered that ₹ 3,00,000/- would be paid 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-I, Solan, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned trial Court that the issuance of the cheque was not disputed. The status of the complainant was admitted by the accused in his statement recorded under Section 313 CrPC. The plea taken by the accused that he had returned the defective articles was not established. The cheque was dishonoured with an endorsement 'exceeds arrangement'. The notice was duly served upon the accused. The sentence of one year imposed by the learned trial Court was excessive. Therefore, the appeal was partly allowed, and the sentence was reduced to six months.

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 erred in appreciating the material placed before them. The cheque was issued to a registered company, and the complainant was not authorised to file the present complaint. The cheque was issued as a security, and the provisions of Section 138 of the NI Act were not attracted to the present case. The sentence of

fine in excess of ₹5,000/- could not have been imposed. 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 Sandeep Pandey, learned counsel for the petitioner/accused. None appeared on behalf of the respondents/legal representatives of the complainant, and no power of attorney was also filed on their behalf. Hence, none could be heard on their behalf.

10. Mr Sandeep Kumar Pandey, learned counsel for the petitioner, submitted that learned Courts below erred in appreciating the material placed before them. The complainant had failed to prove the exact amount to be paid by the accused to the complainant. The plea taken by the accused that he had returned the defective material to the complainant was highly probable and was wrongly ignored by the learned trial Court. The cheque was issued in the name of M/s Singh Sons, and the complainant has not filed any authorisation from M/s Singh Sons to file the complaint. The learned Magistrate could not have awarded a fine in excess of ₹ 5,000/-. The compensation and fine also could not have

been awarded. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

12. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed: -

> "**7.** Before parting, we would like to accentuate upon the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sannhita, 2023) encapsulates the power of High Courts and Session Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying 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, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of record. 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:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 own 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 tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

“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. This Court is of the view that it is not for the Revisional Court to reanalyse 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."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

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

14. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

5.3. At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755***.

> "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
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> (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;
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> (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
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> (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
>
> (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
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> (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

15. Hardeep Singh (CW-1) reiterated the contents of the complaint in his proof affidavit (Ext.CW-1). He stated in his cross-examination that the cheque was issued in the name of the company. It was submitted that the complaint could not have been filed on behalf of the company by Satpal Singh. This submission is only stated to be rejected. The accused admitted in his statement recorded under Section 313 of the CrPC that Satpal Singh was running the business under the name and style of M/s Singh Sons at Parwanoo, and the fact that Satpal Singh was the owner of M/s Singh Sons is not in dispute. It was laid down by the Hon'ble Supreme Court in ***State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421*** that the Courts can rely upon the statement of the accused recorded under section 313 of the Cr.P.C. It was observed at page 742:

> "**51.** That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:
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> > "313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any

> other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See ***State of Maharashtra v. R.B. Chowdhari (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95***. This Court, in the case of ***Hate Singh Bhagat Singh v. State of M.B. 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468,*** held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In ***Narain Singh v. State of Punjab (1963) 3 SCR 678: (1964) 1 Cri LJ 730***, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

> "Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3),

> the answers given by the accused may 'be taken into consideration' at the enquiry or the trial. *If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him*, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety." (emphasis supplied)

Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (*b*) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), asd the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force."

16. It was laid down by the Hon'ble Supreme Court in ***Mohan Singh v. Prem Singh, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933***, that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at page 244:

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See ***Nishi Kant Jha v. State of Bihar (1969) 1 SCC 347: AIR 1969 SC 422***: (SCC pp. 357-58, para 23)

> "23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961 negatives of both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood according to the

report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime*." (emphasis supplied)

17. It was laid down in ***Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213***, that the statement of the accused under Section 313 Cr.P.C., in so far as it supports the prosecution's case, can be used against him for recording a conviction. It was observed at page 275: -

> "**52.** It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law."

18. This position was reiterated in ***Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014***

SCC OnLine SC 199, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

> **24.** We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in ***State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700: 1992 SCC (Cri) 705*** held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in ***Hate Singh Bhagat Singh v. State of Madhya Bharat, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933*** held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In ***Narain Singh v. State of Punjab (1964) 1 Cri LJ 730: (1963) 3 SCR 678,*** this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.
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> **25.** This Court in ***Mohan Singh v. Prem Singh (2002) 10 SCC 236: 2003 SCC (Cri) 1514*** held that: (SCC p. 244, para 27)

"27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."

In this connection, reference may also be made to the judgments of this Court in ***Devender Kumar Singla v. Baldev Krishan Singla (2005) 9 SCC 15: 2005 SCC (Cri) 1185*** and ***Bishnu Prasad Sinha v. State of Assam (2007) 11 SCC 467: (2008) 1 SCC (Cri) 766***. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved, and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC."

19. It was laid down by the Hon'ble Supreme Court in ***Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536: (2008) 3 SCC (Cri) 558: 2008 SCC OnLine SC 997***, that there is no distinction in law between a proprietary concern and an individual trading under a trading name. It was observed at page 540: -

10. As contrasted with a company incorporated under the Companies Act, 1956, which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law, where an individual carries on business in a name or style other than his name, he cannot sue in the trading name but must sue in his name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietary concern. But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be the payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.

11. The next question is where a proprietary concern carries on business through an attorney holder, and whether the attorney holder can lodge the complaint. The attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor, and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (*i*) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (*ii*) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (*iii*) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case, the complaint could have been validly filed by describing the complainant in any one of the following four methods:

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"

or

"M/s Shankar Finance & Investments, a sole proprietary concern represented by its proprietor, Atmakuri Shankara Rao"

or

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"

or

"M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney, holder Thamada Satyanarayana.

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

20. A similar view was taken in ***Nexus Health & Beauty Care (P) Ltd. v. National Electrical Office, 2012 SCC OnLine HP 5383,*** wherein it was observed: -

"**26.** The complaint is not happily worded. No doubt, in the memo of parties, the complainant has referred to the complainant's 'M/s National Electrical Office', but in para 2, it has been pleaded that the complainant is providing services of Industrial Electrical fitting under the name and style of 'National Electrical'. Again, in the memo of parties, Subhash Bharwal has been referred to as proprietor, but in para 1 of the complaint, the complainant has described itself as a firm. In evidence by way of affidavit Ex. CW-1/A, it has been stated that the complainant is providing services of Industrial Electrical fitting under the name and style of 'National Electrical'. Subhash Pharwal is its sole proprietor. The cheque Ex.C-1 has been issued in the name of 'National Electricals'. The complaint is loosely drafted. But in the complaint, the complainant has described itself as 'National Electrical' in the body of the complaint.

27. On the face of the complaint and affidavit, Ex. CW-1/A, prima facie, it cannot be said that the complainant is a firm, namely M/s National Electrical Office. The complainant in the body of the complaint has described the complainant as 'National Electrical', a sole proprietorship concern of Subhash Bharwal. It will be too technical to throw out the complaint due to loose drafting. At this stage, if the pleadings of the petition are seen, the petition is also not less loosely drafted. It starts with the sentence 'complainant issued a cheque for Rs. 2.00 lacs'. The complainant did not issue a cheque of Rs. 2,00,000/-. The cheque was allegedly issued by the accused petitioners. Not only in the opening para of the petition, but in other places also, the petitioners have used loose expressions. In para 3 of the petition before grounds, it has been pleaded that the "complainant aggrieved and dissatisfied with the order summoning the accused and taking cognisance of the case by the Judicial Magistrate, files this petition". The substance of the complaint or petition is to be seen, and it should not be thrown out merely on technicalities of loose drafting. It emerges from the complaint that the complainant is the 'National Electrical' sole proprietorship concern of Subhash Bharwal. In view of ***Milind Shripad Chandurkar*** (supra), it cannot be said that the complaint is not maintainable."

21. It was laid down in ***Parvesh Kaur v. State of Punjab, 2022 SCC OnLine P&H 4065,*** that a proprietorship concern has

no legal identity and cannot be impleaded as a party. It was observed: -

> "**8.** Furthermore, in fact, the law as enunciated by the Hon'ble Supreme Court of India in the case of ***Raghu Lakshminarayanan v. Fine Tubes (2007) 5 SCC 103***, draws a clear distinction emerging therefrom that only the proprietor can be held liable under Section 138 of the Act, as the proprietorship concern has no separate legal identity; it means and includes sole proprietor and vice versa. Thus, a sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, the proprietor and the firm being one and the same. The para as relevant reads thus: —
>
>> "It is a settled position in law that the concept of vicarious liability introduced in the Negotiable Instruments Act is attracted only against the Directors, partners or other persons in charge and control of the business of the company, or otherwise responsible for its affairs. Section 141 of the NI Act does not cover within its ambit the proprietary concern. The proprietary concern is not a juristic person so as to attract the concept of vicarious liability. The concept of vicarious liability is attracted only in the case of a juristic person, such as a company registered under the provisions of the Companies Act, 1956, a partnership firm registered under the provisions of the Partnership Act, 1932 or an association of persons, which ordinarily would mean a body of persons which is not incorporated under any statute. The proprietary concern stands absolutely on a different footing. A person may carry on a business in the name of the business concern, being the proprietor of such proprietary concern. In such a case, the proprietor of a proprietary concern alone can be held responsible for the conduct of business carried

on in the name of such proprietary concern. Therefore, Section 141 of the Negotiable Instruments Act has no applicability in a case involving the offence committed by a proprietary concern."

9. Still further, in ***M. M. Lal v. State NCT of Delhi, 2012 (4) JCC 284***, the High Court of Delhi, while following the dictum of the Hon'ble Supreme Court of India, held that

> "it is well settled that a sole proprietorship firm has no separate legal identity and, in fact, is a business name of the sole proprietor. Thus, any reference to a sole proprietorship firm means and includes the sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of a partnership firm or association of individuals. Thus, in the case of a proprietorship concern, only the proprietor can be held liable under Section 138 NI Act as the proprietorship concern and the proprietor are one and the same."

10. In view of the law as enunciated above, there was no legal requirement of the proprietorship firm to have been arrayed as an accused.

22. A similar view was taken by the Allahabad High Court in ***Dhirendra Singh v. State of U.P., 2020 SCC OnLine All 1130,*** and it was held that a proprietorship concern is not a juristic person that can be impleaded under Section 141 of the Negotiable Instruments Act. It was observed: -

> "**10.** A plain reading of the provision makes it clear that if the person committing the offence is a "company", in that event every natural person responsible for such commission, as also the artificial person, namely the company, shall be deemed to be guilty of the offence and be liable to be proceeded against and punished accordingly. Also, certain other natural persons may be held guilty, if so proved.
>
> **11.** Perusal of the registration of the firm, Annexure no. 1, it transpires that the petitioner is the proprietor of the firm, namely M/S. Rashmi Arosole& Chemical Avas Vikas Colony, Sector 10, Sikandara, Agra. Perusal of the registration certificate of the firm, petitioner, Dhirendra Singh, is the proprietor of the firm, and it is clear that this is a sole proprietorship firm. Thus, the main question arises whether in a sole proprietorship firm indictment of the firm arraigning as a party is necessary or not.
>
> **12.** Thus, the phrase "association of individuals" necessarily requires such an entity to be constituted by two or more individuals, i.e. natural persons. On the contrary, a sole-proprietorship concern, by its very description, does not allow for ownership to be shared or be joint, and it defines, restricts and dictates the ownership to remain with one person only. Thus, "associations of individuals" are absolutely opposed to sole-proprietorship concerns, in that sense and aspect.
>
> **13.** A 'partnership', on the other hand, is a relationship formed between persons who willfully form such a

relationship with each other. Individually, in the context of that relationship, they are called ‘partners’, and collectively, they are called the ‘firm’, while the name under which they set up and conduct their business/activity (under such relationship) is called their ‘firm name’.

14. While a partnership results in the collective identity of a firm coming into existence, a proprietorship is nothing more than a cloak or a trading name acquired by an individual or a person for the purpose of conducting a particular activity. With or without such a trade name, it (sole proprietary concern) remains identified to the individual who owns it. It does not bring to life any new or other legal identity or entity. No rights or liabilities arise or are incurred by any person (whether natural or artificial), except that rights or liabilities otherwise attach to the natural person who owns it. Thus, it is only a ‘concern’ of the individual who owns it. The trade name remains the shadow of the natural person or a mere projection or an identity that springs from and vanishes with the individual. It has no independent existence or continuity.

15. In the context of an offence under section 138 of the Act, by virtue of Explanation (b) to section 141 of the Act, only a partner of a ‘firm’ has been artificially equated to a ‘director’ of a ‘company’. It's a legal fiction created in a penal statute. It must be confined to the purpose for which it has been created. Thus, a partner of a ‘firm’ entails the same vicarious liability towards his ‘firm’ as a director does towards his ‘company’, though a partnership is not an artificial person. So also, upon being thus equated, the partnership ‘firm’ and its partner/s has/have to be impleaded as an accused person in any criminal complaint that may be filed alleging an offence committed by the firm. However, there is no indication in the statute to stretch that legal fiction to a sole proprietary concern.

> **16.** Besides, in the case of a sole proprietary concern, there are no two persons in existence. Therefore, no vicarious liability may ever arise on any other person. The identity of the sole proprietor and that of his 'concern' remain one, even though the sole proprietor may adopt a trade name different from his own, for such 'concern'. Thus, even otherwise, conceptually, the principle contained in section 141 of the Act is not applicable to a sole-proprietary concern."

23. Therefore, M/S Singh Sons had no independent juristic existence, and Satpal Singh was competent to file the complaint as the sole proprietor. Hence, the submission that the complaint was not filed by the payee or a duly authorised person is not correct.

24. The accused suggested to Hardeep Singh in the cross-examination that the accused had returned the defective material. He also made a similar statement in his statement recorded under Section 313 of the CrPC. The complainant denied the suggestion, and the accused did not step into the witness box to prove the fact. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 is not sufficient to rebut the presumption. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration.*" (Emphasis supplied)"

25. Therefore, learned Courts below had rightly rejected the version of the accused.

26. The issuance of the cheque was not disputed. It was specifically asserted in para 3 (E) of the revision petition that the cheque was issued as a security and the provisions of Section 138 of the NI Act did not apply to the present case, which shows that the issuance of the cheque and signatures on the cheque are not disputed. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724,*** that when the issuance of a cheque and signature on the cheque are not disputed, a presumption arose 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."

27. 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."

28. 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***].

29. 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.

30. The accused claimed that the cheque was issued as security. Learned Courts below had rightly held that even if a cheque was issued as a security, the accused would be liable for the dishonour of the security cheque. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456***, that even if the cheque is issued towards the security, the accused is liable. 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."

31. 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)

32. 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."

33. It was submitted that no documents were produced to show the extent of liability of the accused. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Ashok Singh v. State of U.P., 2025 SCC OnLine***

SC 706, that even if the disbursal of loan has not been proved by producing the documents, the same will not affect the complainant's case because of the presumption contained in Sections 118(a) and 139 of the NI Act. 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, further achieve this result through the cross-examination of the complainant's 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).*

34. 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."

35. Therefore, the complainant's version cannot be doubted because he has not produced the record of the supply of the articles to the accused.

36. The cross-examination of the complainant is not sufficient to rebut the presumption attached to the cheque. The accused has not produced any evidence to rebut the presumption. Hence, learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

37. The complaint asserted that the cheque was dishonoured with an endorsement 'exceeds arrangements'. The memorandum (Ext. CW1/C) mentions the reason for dishonour of the cheque as 'exceed arrangements'. Section 145 of the NI Act provides a presumption of correctness to the memo of dishonour and the burden is upon the accused to rebut this presumption. 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.

38. The accused has not produced any evidence to rebut the presumption and learned Courts below had rightly held that the cheque was dishonoured with an endorsement 'exceeds arrangement'.

39. Hardeep Singh stated that a notice was issued to the accused, which was duly served upon him. This is duly corroborated by the acknowledgement (Ext.CW1/M). The accused did not lead any evidence to show that the acknowledgement does not bear his signature. Hence, the plea of the complainant has to be accepted as correct that the notice was duly served upon the accused.

40. 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 a 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).

41. The accused did not claim that he had paid the money to the complainant after receiving the summons from the complainant.

42. Thus, it was duly proved that the accused had issued a cheque in favour of the complainant to discharge his debt/liability, which was dishonoured with an endorsement 'exceeds arrangement' and the accused failed to repay the amount despite the receipt of the notice of demand. Hence, all the ingredients of the commission of an offence punishable

under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

43. The learned trial Court had imposed the sentence of one year, which was reduced by the learned Appellate Court to six months. 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."

44. Therefore, the sentence of six months cannot be said to be excessive considering that a deterrent sentence is to be awarded.

45. The learned trial Court imposed a fine of ₹3,18,000 /-out of which ₹3,00,000/- was ordered to be paid to the complainant as compensation. It was submitted that a fine of ₹3,18,000/- could not have been imposed. This submission cannot be accepted. Proviso to section 143(1) provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment not exceeding one year and an amount of fine exceeding ₹5,000/-. It was laid down by the Hon'ble Supreme Court in ***R. Vijayan v. Baby, (2012) 1 SCC 260: 2011 SCC OnLine SC 1363*** that the Magistrate is competent to impose a fine exceeding ₹5,000/- after insertion of Section 143 of the NI Act. It was observed at page 265:

> "**13.** It is of some interest to note, though it may not be of any assistance in this case, that the difficulty caused by the ceiling imposed by Section 29(2) of the Code has been subsequently solved by the insertion of Section 143 in the Act (by Amendment Act 55 of 2002) with effect from 6-2-2003. Section 143(1) provides that, notwithstanding anything contained in the Code, all offences under Chapter XVII of the Act should be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the Code (relating to summary trials) shall, as far as may be, apply to such trials. The proviso thereto provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term extending to one year and an amount of fine exceeding Rs 5000, in case of conviction in a summary trial under that section. In view of the conferment of

such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in Section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under Section 138 of the Act, a First-Class Magistrate may impose a fine exceeding Rs 5000, the ceiling being twice the amount of the cheque."

46. It was held by the Delhi High Court in ***Bharti Sahni v. Vikas Sehrawat, 2025 SCC OnLine Del 7686*,** that a Magistrate has jurisdiction to impose a fine exceeding ₹10,000/- in the proceedings under Section 138 of the NI Act. It was observed:

> "**34.** *In the end*, a Legal objection has been taken that under ***Section 29 of the Cr. P.C.***, the First-Class Magistrate has the power to impose a fine of a maximum of Rs. 10,000/-. Therefore, the fine of Rs. 10,65,000/- as imposed by the Ld. Metropolitan Magistrate is illegal and against the mandate of law.
>
> **35.** In this context, it may be observed that the trial has been held under a Special Act i.e. Negotiable Instruments Act wherein Section 138 itself provides that in case the offence is proved under Section 138, the person convicted may be punished with an imprisonment of a term, which may extend to two years and the fine which may extend to twice the amount of the cheque or with both. This being a conviction in a trial under the Special Act, it would prevail over the general law as contained in Cr. P.C. The cheque amount was Rs. 6,00,000/- and the jurisdiction of the Ld. Metropolitan Magistrate to impose the fine was double the cheque amount. Therefore, the fine imposed in the sum of Rs. 10,65,000/- is within the jurisdiction of the learned Metropolitan Magistrate."

47. A similar view was taken by the M.P. High Court in ***Sitaram v. Kanhaiyalal*, *2022 SCC OnLine MP 5478: ILR 2022 MP 1480*,** wherein it was observed at page 1483: -

> "**7.** In the Negotiable Instruments Act, as per the provisions of Section 138, a Magistrate can punish the accused with imprisonment for a term which may extend to two years or with a fine which may extend to twice the amount of the cheque or with both. It is true that, as per the provisions of Section 29 of the Cr. P.C. Judicial Magistrate First Class cannot impose fine of more than Rs. 10,000/-, but in this context amendment of Section 143 dated 6.2.2003 is pertinent by which a provision has been made that in case of any conviction in a summary trial, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. In this regard, the judgment pronounced by the Hon'ble Supreme Court in the case of ***R. Vijayan v. Baby, (2012) 1 SCC 260,*** is helpful. Relevant portion of the aforesaid judgment is reproduced hereinbelow: —
>
> > "13 In view of the conferment of such special power and jurisdiction upon the First-Class Magistrate, the ceiling as to the amount of fine stipulated in section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under section 138 of the Act, a First-Class Magistrate may impose a fine exceeding Rs. 5000/-, the ceiling being twice the amount of the cheque."
>
> **8.** It is true that in Section 143(1) of the Negotiable Instruments Act, another proviso has been added that if summary trial is not possible, the accused will be tried by way of summons trial and the Magistrate will rehear the case in the manner provided by said Code. But in the aforesaid provision, there is no bar that if a trial is conducted in a summons manner, the Magistrate cannot impose the fine twice the cheque amount. In this

regard, the order of the Chhattisgarh High Court in ***Atharva Agro Chemical Pvt. Ltd. v. Gopal Chand Barik, decided on 4.2.2021 in Criminal Misc. Petition No. 357/2013*** is relevant, whereby the Chhattisgarh High Court, relying on the judgment of the Apex Court in the case of ***R. Vijayan*** (supra), has held as under: —

> "17. In the matter of ***R. Vijayan*** v. ***Baby***, ***(2012) 1 SCC 260***, their Lordships of the Supreme Court culled out the following principle contained in the provisions of Chapter-XVII of the Act, which states as under: —
>
> > "(i) The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (Section 138), thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned."
>
> Their Lordships, in the later part of the judgment, while considering the intention of the legislature for enacting Section 138 of the NI Act, have held as under: —
>
> > "17. The apparent intention is to ensure that not only the offender is punished, but also that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of the cheque, under Section 357(1)(b) of the Code and the

provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or another by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers), view the proceedings under Section 138 of the Act as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour becoming secondary.

18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a "victim" in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as, invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Directions to pay compensation by

way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts not only increase the credibility of the cheque as a negotiable instrument but also the credibility of the courts of justice

19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated due to the need to have uniformity and consistency in decision-making. In the same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eyes of the law, will give rise to a certain amount of **uncertainty in the minds of** litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner, as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that, in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded **within six** months from the date of the **filing** of the complaint, such cases seldom reach finality before three or four years, let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful

complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases."

18. In the matter of ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***, the Supreme Court, following the principle of law laid down in ***R. Vijayan*** (supra), held that Section 138 of the NI Act is both punitive as well as compensatory and restitutive, and also provides for enforcement of civil liability for realisation of cheque amount. It was held as under: —

> "25. In ***R. Vijayan v. Baby, (2012) 1 SCC 260,*** this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as well as compensatory and restitutive. It provides a single forum and a single proceeding for the enforcement of criminal liability by reason of dishonour of a cheque and for the enforcement of the civil liability for realisation of the cheque amount, thereby obviating the need for the creditor to move two different fora for relief. This Court expressed its anguish that some Magistrates went by the traditional view that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided."

Thereafter, while granting the appeal and confirming the conviction of the respondent therein, their Lordships of the Supreme Court sentenced him only to a fine, which was enhanced to Rs. 16 lakhs and further directed the same to be paid as compensation to the complainant. It was held as under: —

> "40. The appeals are allowed. The judgment and order of the High Court are set aside. The conviction of the respondent under Section 138 of the Negotiable Instruments Act is confirmed. However,

> the respondent-accused is sentenced only to a fine, which is enhanced to Rs. 16 lakhs and shall be paid as compensation to the appellant complainant. The fine shall be deposited in the trial court within eight weeks from the date, failing which the sentence of imprisonment of one year as imposed by the trial court shall revive. There shall be no order as to costs."

> 19. Thus, it is quite vivid that under Section 138 of the NI Act, Criminal Court is competent to levy fine up to twice the cheque amount and direct payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of cheque under Section 357(1)(b) of the CrPC and as such, the power under Section 357(3) of the CrPC cannot be exercised by Criminal Court in the cheque dishonour cases."

48. Therefore, the legislature has conferred a jurisdiction upon a Magistrate to impose a fine exceeding ₹5,000/- and the submission that the learned Magistrate was not competent to impose a fine of ₹ 3,18,000/- cannot be accepted.

49. It was submitted that the learned trial Court had imposed a fine as well as compensation. This submission is only stated to be rejected. The learned trial Court had imposed a fine of ₹3,18,000/- and had ordered the disbursement of compensation out of this amount. Section 357(1) of the CrPC provides that the Court can pay the compensation out of the

fine amount and there is no infirmity in awarding compensation out of the fine amount.

50. The cheque was issued for ₹1,59,195/- on 26.12.2004; the learned trial Court imposed the sentence on 10.05.2012 after the lapse of eight years. 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***]"

51. The complainant lost the interest that it would have gained by investing the amount and had to engage a

counsel to prosecute the complaint. Hence, the compensation of ₹3,00,000/- is not excessive, requiring interference from the Court.

52. No other point was urged.

53. In view of the above, the present revision petition fails, and it is dismissed.

54. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

12th August, 2026.
(Ravinder)