2026:HHC:33815

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 97 of 2014
Reserved on: 05.08.2026
Date of Decision: 12.08.2026.

Veena Devi ...Appellant

Versus

Prakash Vashisht ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *Yes*

For the Appellant	:	Mr Vivek Singh Thakur, Advocate.
For the Respondent	:	Mr Nitin Mishra, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 22.07.2013 passed by the learned Judicial Magistrate First Class Court No. 3, Shimla, H.P. (learned Trial Court) vide which the complaint filed by the appellant (complainant) before the learned Trial Court was dismissed. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused had borrowed ₹1,50,000/- from the complainant on different occasions. The complainant had withdrawn this money from her bank from time to time. The accused issued a cheque of ₹1,50,000/- to the complainant to repay the money. The complainant presented the cheque before its bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused, asking him to pay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but he failed to repay the money. Hence, a 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 examined herself (CW1) to prove her complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), stated that he knew the complainant, but denied the rest of the complainant's case. He claimed that he had handed over a blank signed cheque to the complainant as security for ₹50,000/- borrowed by him from the complainant. He had returned the money. He examined Desh Raj (DW1) and Prakash Vashisht (DW2) to prove his defence.

6. Learned Trial Court held that the loan was advanced on 06.02.2007 and 13.06.2007. The complaint was filed on 15.06.2010, which is beyond the period of 3 years prescribed for the recovery of the money. The complaint was time-barred, and no action could be taken against the accused. Hence, the learned Trial Court dismissed the complaint.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal asserting that the learned Trial Court erred in dismissing the complaint. There was no legal bar for a debtor to pay a time-

barred debt, and no fresh consideration was required for the promise to pay a time-barred debt. A cheque issued for the repayment of the time-barred debt validates the debt, and the complaint could not have been dismissed by the learned Trial Court as barred by limitation. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Vivek Singh Thakur, learned counsel for the appellant/complainant and Mr Nitin Mishra, learned counsel for the respondent/accused.

9. Mr Vivek Singh Thakur, learned counsel for the appellant/complainant submitted that the loan was advanced on 06.02.2007 and 13.06.2007. The cheque was issued on 15.01.2010. Issuance of the cheque within the period of limitation would amount to an acknowledgement. The learned Trial Court erred in holding that the complaint was regarding a time-barred debt. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside. He relied upon the following judgments in support of his submission: -

(i) ***Sasseriyil Joseph vs. Devassia 2001 Crl. L.J. 24;***

(ii) *S. Natarajan vs. Sama Dharman and another (2021) 6 SCC 413;*

(iii) *A.V. Murthy vs. B.S. Nagabasavanna (2002) 2 SCC 642;*

(iv) *Chacko Varkey vs. Thommen Thomas AIR 1958 Kerala 31 and;*

(v) *Ramakrishnan versus Gangadharan Nair & Anr 2007 Crl. L.J. 1486.*

10. Mr Nitin Mishra, learned counsel for the respondent/accused submitted that the complaint was time-barred and no action could have been taken upon it. The complainant had specifically asserted in her complaint and the statement made on oath that she had withdrawn the money from the bank. However, the copies of the passbook filed by her did not support her version and her testimony that she had advanced ₹1,50,000/- to the accused was highly doubtful. Learned Trial Court had taken a reasonable view and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Therefore, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in

Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373 that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

> **Scope of interference with an acquittal:**
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> **26.** At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.
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> **27.** In ***Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808: 1973 SCC (Cri) 1048***, this Court explained the golden thread running through criminal jurisprudence in the following words:
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>> *"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the*

doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab *v.* Jagir Singh, *a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."*

28. The decision in ***Kali Ram*** (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not a technical rule; it is a substantive safeguard flowing from the presumption of innocence.

29. In ***Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60***, this Court reiterated the limited scope of interference with acquittals. This Court observed:

"75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable."

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In ***Chandrappa v. State of Karnataka*** *(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325*, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in ***Mrinal Das v. State of Tripura*** *(2011) 9 SCC 479*, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

13. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with same rigour cannot be applied to the cases under Negotiable Instruments Act because there is a presumption that the holder had received the cheque for consideration to discharge the debt/liability. The Appellate Court is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed: -

> "**12.**... The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt

> or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.
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> **13.** For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?"

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

15. 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***.
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> > "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:

(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;

(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;

(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;

(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.

16. Complainant Veena Devi (CW1) stated that she had handed over ₹50,000/- to the accused on 06.02.2007 and ₹1,00,000/- on 13.06.2007. The accused issued a cheque on 15.01.2010. Article 19 of the Limitation Act provides a period of 3 years for money payable for money lent, and the limitation starts

running from the date of advancing the loan. Therefore, the period of limitation in the present case would be 3 years, which would expire on 12.06.2010.

17. It was laid down by the full bench of Gujarat High Court in ***Hindustan Apparel Industries v. Fair Deal Corpn. AIR 2000 Guj 261***, that when a cheque is issued within the period of limitation, it amounts to the acknowledgement of liability within the meaning of Section 19 of the Limitation Act and the period of limitation would be extended by the issuance of such cheque. It was observed:

> What is important to be noticed from the above-noted decisions of the Hon'ble Supreme Court is that, in the first place, a cheque is undoubtedly an acknowledgement of right or debt or liability, and when the same is not issued as a post-dated cheque, the date of issuance of the cheque would assume importance. Whether subsequently it is honoured or dishonoured. It is thus at the stage of issuance of the cheque that there surfaces an intention on the part of the debtor to acknowledge the liability/ right/debt owing to the person in whose favour the cheque is issued. In case the cheque is honoured, it would undoubtedly amount to part payment in writing, and the same would fall under section 19 of the Act (section 20 of the previous Act). While dealing with such part payment in the context of the date of such part payment, the facts of each case will assume importance in the light of the aforesaid two decisions of the Hon'ble Supreme Court. In this view of the position of law reflecting upon issuance of a cheque, it has to be stated that a cheque would prima

facie amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque. Such an admission of payment of debt is to be determined with reference to the point of time at which the purported admission was made, that is to say, when the cheque was issued. Merely because subsequently such a cheque is dishonoured and the admission is retracted, the admission or the acknowledgement can hardly be said to cease as an admission/acknowledgment of liability. To hold otherwise would be contrary to fair play between the parties, and justice and equity. With profound respect to the Bench in ***Chintaman Dhundiraj v. Sadguru Narayan Maharaj Datta Sansthan, AIR 1956 Bom 553***, we are unable to endorse the view expressed on the question in the said decision. We endorse the view expressed by the Patna High Court in ***Rajpati Prasad's case, AIR 1981 Patna 187***, which is recent in point of time in so far as decisions referred to on behalf of the plaintiff are concerned. The view expressed by the learned single judge in the referring judgment also merits acceptance.

In the result, we answer the question as under:

> "The payment by cheque which is dishonoured would amount to acknowledgement of a debt and a liability. By necessary consequence, there will be saving of limitation as envisaged by section 18 of the Act."

18. Therefore, the issuance of the cheque on 15.01.2010 would have the effect of extending the period of limitation and the conclusion drawn by the learned Trial Court that the complaint was time-barred is not acceptable.

19. The accused claimed in his statement recorded under Section 313 of the Cr.P.C. that he had issued a blank signed cheque

as a security. Thus, the issuance of the cheque and the 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 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."

20. 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."

21. 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***].

22. 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.

23. The complainant asserted in para 2 of the complaint that she had advanced the money to the accused by withdrawing it from the bank on different occasions. She stated that she had withdrawn ₹50,000/- on 06.02.2007 and ₹1,00,000/- on 13.06.2007 from Punjab National Bank Sanjauli and UCO Bank. She has filed the copies of the passbook (Ext.CW1/B and Ext.CW1/A). The copy of the passbook (Ext.CW1/A) mentions that ₹50,000/- were withdrawn on 06.02.2007. ₹30,000/- were withdrawn from the UCO Bank as per the passbook (Ext.CW1/B)

on 13.06.2007. ₹15,000/- were withdrawn on 11.06.2007 from the UCO Bank and ₹35,000/- were withdrawn on 11.06.2007 from PNB as per the passbook (Ext.CW1/A). Therefore, even if the amount withdrawn on 11.06.2017 is taken into consideration, the complainant had withdrawn ₹80,000/- and not ₹1,00,000/- as asserted by her. She never stated that she had kept the cash in her home and had advanced the money to the accused by adding this amount to the withdrawn amount. Her specific case is that she had withdrawn the money from the bank. Therefore, the statement of account produced by her does not corroborate her version that the money was withdrawn by her and was advanced to the accused. Thus, the record produced by the complainant rebuts the presumption of consideration attached to the cheque.

24. There is a presumption that the cheque was issued for consideration to discharge the debt/liability; however, the presumption is rebuttable, and can be rebutted by the cross-examination of the complainant's witnesses or the evidence led by the accused. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275*** that the presumption applies in the absence of evidence and disappears after the evidence is produced. It was observed:

> "38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:
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> > "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule'."

25. In the present case, the presumption was rebutted by the complainant's evidence.

26. Therefore, the judgment of acquittal passed by the learned Trial Court is sustainable although on different grounds, and no interference is required with it.

27. The judgments in ***Chacko Varkey*** (supra), ***Ramakrishnan*** (supra), ***Sasseriyil Joseph*** (supra), ***S. Natarajan*** (supra), ***A.V. Murthy*** (supra) deal with time barred which are not relevant because the cheque was issued within limitation. Hence, no advantage can be derived from the cited judgments.

28. No other point was urged.

29. In view of the above, the present appeal fails, and it is dismissed. Pending applications, if any, also stand disposed of.

30. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/ learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondents on receipt of notice thereof shall appear before the Hon'ble Supreme Cour

31. A copy of the judgment, along with a record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

12th August, 2026
(Nikita)