IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision Nos. 81 & 392 of 2014
Reserved on: 04.08.2026
Date of Decision: 13.08.2026.

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1. **Cr. Revision No. 81 of 2014**

Deepak Chauhan ...Petitioner

Versus

Pradeep Kumar ...Respondent

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1. **Cr. Revision No. 392 of 2014**

Pradeep Kumar ...Petitioner

Versus

Deepak Chauhan ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

Cr. Revision No. 81 of 2014

For the Petitioner : Mr Ajay Chandel, Senior Advocate, Legal Aid Counsel with Mr Sidhant Jamwal, Advocate.

For the respondent : Mr Balwinder Singh, Advocate.

Cr. Revision No. 392 of 2014

For the Petitioner : Mr Balwinder Singh, Advocate.

For the respondent : Ms Ridhi Verma, Advocate.

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

Rakesh Kainthla, Judge

The present revisions are directed against the judgment dated 07.01.2014 passed by the learned Sessions Judge, (Forests) Shimla, camp at Theog (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 26.05.2011 passed by the learned Judicial Magistrate First Class, Theog, District Shimla (learned Trial Court) were partly upheld. Since both the revisions have arisen out of the common judgment, they are being taken up together for disposal. (*The 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 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 issued a cheque to the complainant on 20.04.2008 for a sum of ₹1,06,074/- to discharge his liability. The complainant presented the cheque at his 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 from the date of the receipt of the notice. The notice was sent to the correct address, but no acknowledgement was received, and the notice is deemed to be served; 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 Kedar Sharma (CW1), Rajesh (CW2) and himself (CW3) to prove his complaint.

5. The accused in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC) admitted that he had issued a cheque of ₹1,06,074/- in favour of the complainant. He admitted that the cheque was dishonoured with an endorsement "insufficient funds" and that the complainant had issued a notice to him. He admitted that he had not paid the money within the period mentioned in the notice. He claimed that he had made the payment earlier and the complainant had

misused the cheque given to him as a security. He did not produce any evidence in his defence.

6. Learned Trial Court held that the accused had not disputed the issuance of the cheque. Therefore, a presumption arose that the cheque was issued for consideration to discharge debt/liability. The accused did not produce any evidence to rebut the presumption. There was nothing in the cross-examination of the complainant to show that the accused had made the payment to him. The accused also admitted that the cheque was dishonoured with an endorsement "insufficient funds" and that the notice was issued by the complainant. He also admitted that he had not paid the money to the complainant after the receipt of the notice. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for 6 months, pay a fine of ₹1,000/- and, in default of payment of fine, to undergo simple imprisonment for 1 month. The learned Trial Court also directed the accused to pay ₹1,06,074/- as compensation to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Sessions Judge, (Forests) Shimla camp at Theog (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had admitted the issuance of the cheque. Therefore, a presumption arose that the cheque was issued for consideration to discharge the debt/liability. There was nothing in the cross-examination of the complainant to rebut the presumption. The accused had also not produced any evidence to rebut the presumption. The cheque was dishonoured with an endorsement “insufficient funds”. Notice was issued on the correct address and is deemed to be served. The learned Trial Court had sentenced the accused to pay a fine and also directed him to pay the compensation. However, the compensation can only be paid if the fine is not imposed, and the order passed by the learned Trial Court directing the payment of compensation was not sustainable. Hence, the appeal was partly allowed, and the direction of the learned Trial Court to pay the compensation was set aside.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused and the complainant have filed two separate revisions. The accused asserted in his revision that the learned Courts below failed to properly appreciate the material on record. The plea taken by the accused that the cheque was issued as a security which was misused by the complainant was highly probable. The learned Courts below erred in discarding this plea. The ingredients of commission of an offence punishable under Section 138 of the NI Act were not satisfied, and the learned Courts below erred in convicting and sentencing the accused. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. The complainant asserted in the revision filed by him that the learned Appellate Court erred in setting aside the direction to pay the compensation. The very purpose of enacting the NI Act was defeated by the judgment passed by the learned Appellate Court. The accused had not challenged the order of awarding compensation and learned Appellate Court erred in setting aside the orer. Therefore, it was prayed that the present revision be allowed and the judgment passed by the learned

Appellate Court setting aside the payment of compensation be quashed and the judgment of the learned Trial Court be restored.

10. I have heard Mr Ajay Chandel, learned Senior Advocate, Legal Aid Counsel assisted by Mr Sidhant Jamwal, learned counsel for the accused, and Mr Balwinder Singh, learned counsel for the complainant.

11. Mr Ajay Chandel, learned Senior Counsel for the accused, submitted that learned Courts below erred in appreciating the material on record. It was specifically mentioned in the complaint that the notice was sent to the correct address and was deemed to be served. No acknowledgement showing the delivery of the notice to the accused was placed on record. Learned Courts below applied the presumption of service, but such a presumption can be applied after 30 days from the date of issuance of the notice. The accused had 15 days available to him to pay the money. However, the complaint was filed before the expiry of 15 days and is premature. Learned Courts below failed to notice this aspect. Hence, he prayed that the judgments and order passed by the learned Courts below be set aside. He relied upon the judgment of this

Court in ***Sant Kumar vs. R.K. Puri & others 2026:HHC:29*** in support of his submission.

12. Mr Balwinder Singh, learned counsel for the complainant, submitted that the learned Courts below had rightly appreciated the material on record. The accused admitted that he had issued the cheque in favour of the complainant which was dishonoured with an endorsement "insufficient funds". He also admitted that the complainant had issued a notice to him. Thus, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The plea that the complaint was premature was not taken before the learned Courts below, and it is impermissible to take this plea before this Court. The learned Appellate Court had erred in setting aside the direction to pay compensation which defeated the purpose of enacting the NI Act to compensate the complainant for the loss caused to him. Therefore, he prayed that the revision filed by the complainant be allowed, the revision filed by the accused be dismissed, and the judgment passed by the learned Appellate Court be modified.

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

14. It was laid down by the Hon'ble Supreme Court in ***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.
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> > *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.
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> 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.

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

16. 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:
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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;

(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.

17. The complainant asserted in para 3 of the complaint that he had issued a notice dated 27.05.2008 through his advocate demanding the payment of amount within 15 days from the date of service of notice. The notice was sent to the accused at his correct address, but no acknowledgment was received. The registered letter was also not returned. Learned Trial Court held in para 15 that the receipt of demand notice was not disputed, and the accused was duty-bound to reply to the notice or pay the money. The learned Appellate Court held in para 11 that notice

(Ext.PW1/C) was issued vide postal receipt (Ext.PW1/D). The accused failed to pay the amount despite the receipt of the notice. None of the Courts has adverted to the date of service of the notice.

18. It was laid down by the Hon'ble Supreme Court in ***Subodh S. Salaskar v. Jayprakash M. Shah, (2008) 13 SCC 689: (2009) 3 SCC (Cri) 834: 2008 SCC OnLine SC 1174*** that where a notice was sent by registered post acknowledgment due, the presumption of service of notice can be raised within a reasonable time and 30 days must be held to be sufficient for service of notice. It was observed at page 699:

> "**23.** Thirty days ordinarily must be held to be sufficient for service of notice. In fact, when the service of notice is sought to be effected by speed post, ordinarily, the service takes place within a few days. Even under Order 5 Rule 9(5) of the Code of Civil Procedure, 1908, a summons is presumed to be served if it does not come back within thirty days. In a situation of this nature, there was no occasion for the Court to hold that service of notice could not be effected within a period of thirty days."

19. The Jharkhand High Court considered this question in ***Manoj Kumar Nag v. State of Jharkhand, 2021 SCC OnLine Jhar 458*** and held that when there is no evidence regarding the service, the

presumption regarding the delivery of the notice can be made after thirty days of the issuance. It was observed:

> "**22.** This Court finds that there is no material on record regarding the service of legal notice dated 03.03.2008 dispatched by registry on 04.03.2008 upon the petitioner, and it is not the case of the complainant that the legal notice was returned unserved or returned for any other reason. This court is also of the considered view that a presumption regarding service of notice sent through registered cover can be drawn only upon expiry of 30 days from the date of dispatch of notice, as has been held by the Hon'ble Supreme Court in the judgment reported in ***(2008) 13 SCC 689 (Subodh S. Salaskar v. Jayprakash M. Sah)***. In the said judgment, the notice was sent through speed post, and although the actual date of service of notice was not known, the Complainant proceeded on the basis that the same was served within a reasonable period. It was held that if the presumption of notice within the reasonable period is raised, the deemed service at best can be taken to be 30 days from the date of its issuance and the accused was required to make payment in terms of the said notice within 15 days thereafter and the complaint petition therefore could have been filed after expiry of 15 days given to the accused for payment of money after receipt of notice."

20. A similar view was taken in ***Anil Kumar Goel v. State of U.P., 2021 SCC OnLine All 410,*** wherein it was observed:

> "**18.** Coming to the facts of the present case, the notice having been sent on 19.09.2012, if the presumption of service of notice within a reasonable time is raised, it shall be deemed to have been served, at best, within a period of 30 days from the date of issuance thereof, i.e. 19.09.2012. The applicant was required to make payment in terms of the said notice within 15 days thereafter, i.e. on or about

> 3.11.2012. The complaint, therefore, should have been filed by 03.12.12. Admittedly, the complaint was filed on 19.11.2012, and therefore, at this stage, it cannot be said that no proceedings under Section 138 of the Act could be drawn against the applicant."

21. Madhya Pradesh High Court has also taken a similar view in ***Vishal Gupta vs. Kishan Batham (04.08.2023 - MPHC): MANU/MP/2098/2023,*** wherein it was observed:

> "11. Thus, the learned Trial Court committed no mistake in holding that in the absence of any proof of service of notice on a particular day to the accused, it would be deemed to be served on the 30th day of the dispatch of notice."

22. This position was reiterated in ***Damodar Mallick vs. The State of Jharkhand and Ors. (08.01.2024 - JHRHC): MANU/JH/0024/2024*** wherein it was observed:

> "9. It is crystal clear from plain reading of Section 138 of the N.I. Act that the drawer of a cheque, if it fails to make the payment of the amount of the cheque to the payee within 15 days of the receipt of the demand notice, then the cognisance of the offence can be taken by a learned Judicial Magistrate for the offence punishable under Section 138 of the N.I. Act. The question arises what if, there is no document to suggest that the demand notice in writing given by the complainant-opposite party No. 2 has been served upon the drawer of the cheque, as has been held by the Hon'ble Supreme Court of India in the case of the ***Subodh S. Salaskar vs. Jayprakash M. Shah & Another reported in MANU/SC/3298/2008 : (2008) 13 SCC 689*** and which principle of law has been reiterated by this Court in the case of ***Md. Siraj vs. State of Jharkhand & Another passed in Cr.M.P. No. 1677 of 2022 dated 21st of November, 2023***;

that the law is well settled that in case there is no material to suggest that such demand notice was ever served upon drawer of the cheque or any material that such demand notice has returned unserved within the period of 30 days from the date of the issue of such notice, such demand notice is deemed to have been served on expiry of the period of 30 days from the date of issue of such notice and the cognizance of the offence punishable under Section 138 of the N.I. Act can be taken if the drawer of the cheque fails to pay the amount as per the cheque within 15 days of such deemed service of notice. So considering the claim of the complainant that the notice was sent on 15.05.2019 and the complaint was filed on 14.06.2019 without any material to suggest that during that period the petitioner had received notice of demand and 15 days have elapsed after receipt of such notice of demand on or before 14.06.2019, this Court has no hesitation in holding that the complaint is pre-mature, hence, the cognizance is bad in law."

23. The notice was sent on 27.05.2008 and would be deemed to be served on 27.06.2008. It was laid down by this Court in ***Vasudev vs. Rama Rani 2017 (2) ShimLC 1175*** that the first day of the period when the limitation starts running has to be excluded while computing the period of limitation. The accused had 15 days to pay the amount thereafter. However, the complainant filed the complaint on 24.06.2008 before the expiry of the period of 15 days available to the accused. Therefore, the complaint was premature having been filed within 15 days available to the accused to pay the amount. It was laid down b15/y the Hon'ble Supreme Court in ***Gajanand Burange v. Laxmi Chand***

Goyal, 2022 SCC OnLine SC 1711, that no action can be taken on a premature complaint, and the same is liable to be dismissed. It was observed:

> **5.** The issue which is raised in this appeal is no longer res integra and is covered by a three-judge bench decision of this Court in ***Yogendra Pratap Singh*** **v.** ***Savitri Pandey (2014) 10 SCC 713***. Two issues were formulated for decision before the three-judge Bench, which were:
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> > "1.1. (i) Can cognisance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,
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> > 1.2. (ii) If the answer to Question 1 is in the negative, can the complainant be permitted to present the complaint again, notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?"
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> **6.** The first issue was resolved by paragraph 35 of the judgment, which is extracted below:
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> > "35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines "complaint. According to this definition, a complaint means any allegation made orally or in writing to a Magistrate with a view to taking action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognisance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint

filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eyes of the law. It is not the question of prematurity of the complaint, where it is filed before the expiry of 15 days from the date on which notice has been served on him; it is no complaint at all under the law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognisance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognisance of an offence can be taken on the basis of such a complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque."

7. In the present case, while the notice was received by the appellant on 8 November 2005, the complaint was filed before the period of fifteen days was complete. The complaint could have been filed only after 23 November 2005, but was filed on 22 November 2005. In view of the legal bar which is created by Section 142 of the NI Act, as explained in the three-judge Bench decision of this Court, taking of cognisance by the Court was contrary to the law and the complaint was not maintainable before the expiry of the period of fifteen days from the date of its receipt by the appellant."

24. Therefore, the submission made on behalf of the accused has to be accepted as correct that the complaint was premature and no action could have been taken on it.

25. It was submitted that the accused admitted in his statement recorded under Section 313 of the Cr.P.C. that the complainant had issued a notice to the accused on 27.05.2008. However, this admission will not make any difference because it is presumed that the notice was served upon the accused. However, the question is the date of service of the notice upon the accused, and there is no admission of the accused regarding the date of service in his statement recorded under Section 313 of the Cr.P.C. Thus, no advantage can be derived from the admission made by the complainant.

26. It was submitted that this question was not raised before the learned Courts below and it is impermissible to raise this question before this Court. The submission cannot be accepted. The question of the complaint being within limitation is jurisdictional, and once it was found that the complaint was premature, the learned Courts below did not have the jurisdiction

to decide the matter, and this Court can always go into the jurisdictional issue while deciding the revision.

27. Therefore, in view of the above, the revision filed by the accused is allowed, and the judgment and order passed by the learned Judicial Magistrate First Class, Theog, Shimla, H.P. dated 26.05.2011 as partly affirmed by the learned Sessions Judge (Forests), Shimla camp at Theog, H.P. in Cr. Appeal No. 48-T/10 of 2013/2012 is ordered to be set aside, whereas the revision filed by the complainant is ordered to be dismissed. The fine/compensation amount, if deposited, be refunded to the respondent/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

28. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety each in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation

that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

29. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

13th August, 2026
(Nikita)