IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 451 of 2015

Reserved on: 07.08.2026

Date of Decision: 19..08.2026

Dalel Singh .... **Petitioner**

Versus

Satish Kumar .... **Respondent**

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

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

For the petitioner	:	Mr B.P. Sharma, Senior Advocate, with Mr Arun Kumar, Advocate.
For the Respondent	:	Mr S.C. Sharma, Senior Advocate, with Dr Ravi Patial, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 16.09.2015, passed by learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P. (learned Appellate Court), vide which the judgment of conviction and

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

order of Sentence, dated 16.05.2015, passed by learned Judicial Magistrate, First Class Court No. 2, Ghumarwin, District Bilaspur, H.P. (learned trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is running an electronic goods shop at village and post office Berthi, Tehsil Jhandutta, District Bilaspur, H.P. The accused purchased some goods from the complainant. He issued a cheque of ₹15,000/-to pay the amount of the goods. The complainant presented the cheque at his bank, but it was dishonoured with an endorsement of 'insufficient funds'. The complainant sent a legal notice to the accused asking him to pay the money within 15 days of the receipt of the notice. The accused sent a reply to the notice denying his liability to pay the amount. Hence, the complaint was filed before the learned

Trial Court for taking action against the accused as per the law.

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

4. The complainant examined himself (CW-1). Ramesh Chand (CW-2), Vikas Gautam (CW-3), Jeevan Lal (CW-4) and Har Dev Singh (CW-5) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that the complainant was not running any electronic goods shop, but he used to recharge the mobile. He used to pay money to the complainant from time to time. The complainant filed a false complaint against him. He admitted that the cheque was presented by the complainant and it was dishonoured with an endorsement 'insufficient funds'. He admitted that the complainant had sent a legal notice to him and he had sent a reply to the notice. He claimed that he was not liable to pay any money to the complainant because he

had not taken any money from him. He stated that the complainant and 2- 4 persons came to him in 2009 and forcibly snatched the cheque from him. He did not produce any evidence in his defence.

6. Learned trial Court held that the complainant's version was duly corroborated by his witnesses. The plea taken by the accused that the cheque was taken from him forcibly was not probable. He had suggested to the complainant that his cheque book had fallen in the complainant's shop and the complainant had misused it, which falsifies the defence taken by him. The conduct of the accused in not making any complaint to the police regarding forcible snatching of the cheque made it difficult to rely upon this version. 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, and pay a compensation of ₹20,000/- 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 Additional Sessions Judge,

Ghumarwin, District Bilaspur, H.P. (learned Appellate Court). The learned Appellate Court held that the accused did not dispute his signatures on the cheque, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The plea taken by the accused that the cheque was snatched from him was not probable. The cheque was dishonoured with endorsement 'insufficient funds'. The notice was duly served upon the accused, and the accused failed to pay the money despite the receipt of valid notice of demand. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The sentence imposed by the learned Trial Court was adequate, which did not require any interference. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the cheque was drawn on Punjab National Bank, Mehatpur, and the complaint was not maintainable at Ghumarwin. The accused failed to prove that he was running an electronic goods shop at Barthi. He failed to produce the bill book to support the version that the

accused had purchased articles from him. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Mr B.P. Sharma, learned Senior Advocate, assisted by Mr Arun Kumar, learned counsel for the petitioner and Mr S.C. Sharma, learned Senior Advocate, assisted by Dr Ravi Patial, Advocate, for the respondent.

10. Mr B.P. Sharma, learned Senior Advocate for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The defence taken by the accused was highly probable, and the learned Courts below erred in rejecting it. The complainant failed to prove that he was running a shop. He had also not produced any bill to support his version that he had sold some articles to the accused. The cheque was not issued in discharge of the legally enforceable debt/liability and learned Courts below erred in relying upon the presumption. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr S.C. Sharma, learned Senior Advocate for the respondent complainant, submitted that learned Courts below

had rightly relied upon the presumption. The accused never disputed his signatures on the cheque. He had taken contradictory pleas, and the learned Courts below had rightly rejected those pleas. This Court should not interfere with the concurrent findings recorded by the learned Court below while exercising revisional jurisdiction. Hence, he prayed that the present revision be dismissed. He relied upon the judgment of the Hon'ble Supreme Court in ***Electronics Trade & Tech. Development vs. Indian Technologists & Engineers, 1998 STPL 21 SC, I.C.D.S. Ltd. vs. Beemna Shabeer and another 2002 STPL 13799 SC*** and the judgment of this Court in Criminal ***Revision No. 181 of 2017, titled Hari Chand v.s H.P.State Co-Operative Bank Limited and another,*** decided on 11.09.29, in support of his submission.

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

13. 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 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 Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
>
> > "**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 the 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.

14. The present revision 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.***

"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. The accused claimed in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C) that 2-4 persons came to him at night in the year 2009 and snatched a cheque from him. He suggested to the complainant in his cross-examination that he had lost his cheque book in

the complainant's shop, the complainant had taken a signed cheque out of it and filed a false complaint. These two versions clearly show that the signatures on the cheque were not disputed. Learned Courts below have rightly held that once the signatures on the cheque were admitted, A presumption would arise that the cheque was issued for consideration to discharge the debt/liability. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724***, that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

> "9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such a presumption is rebuttable. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more

particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of a reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

17. 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."

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

> <u>*"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*</u>
>
> 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 arise 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***].

19. 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.

20. It was submitted that the complainant had not produced any sale tax license of the shop or the bill book to

prove that he had sold some articles to the accused. This submission will not help the accused. It was held in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361,*** that the complainant is not required to produce any evidence regarding consideration because of the presumption contained in Section 139 of the NI Act, and his case could not have been doubted because of discrepancies. It was observed at page 293:

> "**20.** The trial court and the High Court proceeded as if the appellant is to prove a debt before a civil court wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of a cheque carries a statutory presumption of consideration. The holder of a cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.
>
> **xxxxx**
>
> **28.** The accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the trial court and the High Court. Both courts not only erred in law but also committed perversity when the due amount is said to be disputed only on account of discrepancy in the cartons, packing material or the rate to determine the total liability as if the appellant was proving his debt before the civil court. Therefore, it is presumed that the cheques in question were drawn for consideration and the holder of the cheques, i.e. the

appellant, received the same in discharge of an existing debt. The onus, thereafter, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption, which onus has not been discharged by the respondent."

21. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

> "**22.** The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of a loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such

a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

'*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound.* ***Just taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.*** *In this regard, we may make profitable reference to the decision in Tedhi* ***Singh v. Narayan Dass Mahant, (2022) 6 SCC 735:***

> '*10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under***

Section 138 of the NI Act are not a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. *To that extent, the courts, in our view, were right in holding on those lines. However, the* ***accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant.*** *Ultimately,* ***it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.***’*(emphasis supplied)’ (underlining in original; emphasis supplied by us in bold).*

22. 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 proceeding 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."

23. Therefore, the complainant's version cannot be doubted because he has not produced the licence of the shop or the bill book showing the sale of articles to the accused.

24. Vikas Gautam (CW-3) stated that the accused was liable to pay money for the mobile recharge and the electronic articles purchased by him. The accused handed over a cheque in his presence and told the complainant that it would be honoured on presentation. He stated in his cross-examination that his shop is at some distance from the complainant's shop. The accused had purchased a mobile from the complainant, and he used to get the mobile recharged from the complainant. His testimony corroborates the complainant's version that the accused had handed over the cheque to him for the repayment of the mobile and the recharge.

25. Learned Courts below have rightly pointed out that the accused has taken contradictory pleas. He stated in the reply to the notice (Ext.C-4) that the complainant was doing the business of mobile recharging, and the accused had

recharged his mobile. The complainant obtained a cheque of ₹ 15,000/- forcibly from the accused at Barthi. He suggested to the complainant that his cheque book was misplaced in the complainant's shop and the complainant had misused the signed cheque from the cheque book. He asserted in his statement recorded under Section 313 of the CrPC that the cheque was taken forcibly from him. Thus, learned Courts below were justified in not relying upon such contradictory evidence.

26. Learned Courts below had also rightly pointed out that the conduct of the accused in not making the complaint to the police falsifies his version that the cheque was snatched from him. Any normal person would have made the complaint regarding the forcible snatching of the cheque. He would have intimated the bank about this fact and stopped the payment of the cheque. The accused asserted in the reply (Ext.C-4) that he was going to make a complaint against the complainant; however, no such complaint was shown to have been made by the accused. Thus, learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

27. The accused admitted in his statement recorded under Section 313 of the CrPC that the cheque was dishonoured because of 'insufficient funds'. Jeevan Lal (PW-4) stated that the cheque (Ext.C-2) was dishonoured because of 'insufficient funds'. His testimony is corroborated by the memo of dishonour (Ext.C-4/A) in which the reason for dishonour has been mentioned as insufficient funds. 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.

28. Therefore, learned Courts below have rightly held that the cheque was dishonoured with an endorsement 'insufficient funds'.

29. The accused admitted that he had received the notice. He had even sent a reply to the notice, which shows that the notice was received by him. The accused did not make the payment of the money, and it was duly proved that the accused had failed to repay the money despite the receipt of a notice of demand.

30. It was submitted that the complaint could not have been filed at Ghumarwin because the cheque was drawn at Mehatpur, Una, District Una, H.P. This submission will not help the accused. The cheque was presented by the complainant in Gramin Bank, Barthi, where the complainant had an account. It was laid down by the Hon'ble Supreme Court in ***Jai Balaji Industries Ltd. v. Heg Ltd., 2025 SCC OnLine SC 2581*** that the Courts at the place where the cheque is presented in an account maintained by the payee will have jurisdiction to decide the complaint filed under Section 138 of the NI Act. It was observed:

> **76.** In view of the aforesaid discussion, it is as clear as a noon day that the jurisdiction to try a complaint filed under Section 138 in respect of a cheque delivered for collection through an account, i.e., an account payee cheque, is vested in the court within whose local jurisdiction the branch of the bank in which the payee maintains the account, i.e., the payee's home branch, is

situated. Therefore, we find no force in the petitioner's argument that as per the relevant provisions of the CrPC, the jurisdiction to try the complaint under Section 138 is vested in the court within whose local bounds the drawee bank is situated where the cheque was dishonoured. We say so because the enactment of the Amendment Act, 2015 and the introduction of Section 142(2) thereby, being a special legislation, occupies the field over a general procedural legislation, *viz.* CrPC.

31. Therefore, the Court at Ghumarwin, District Bilaspur, H.P., exercising jurisdiction over Barthi, has the jurisdiction to decide the complaint, and there is no infirmity in the cognisance and the trial of the accused.

32. The learned trial Court has sentenced the accused to undergo simple imprisonment for 6 months and pay compensation of ₹20,000/-. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138*** that the penal provision of Section 138 is deterrent in nature. It was observed at page 203:

> "6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without

serious intention to honour the promise implicit in the issuance of the same."

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

34. The cheque was issued for ₹15,000/- on 11.11.2009. The learned trial Court imposed the sentence on 16.05.2015 after the lapse of 6 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***]"

35. The complainant lost interest on the amount which he would have gained by investing the money in the bank. He had to engage a counsel to prosecute the complaint before the Court, and he was entitled to be compensated for it. Hence, the compensation of ₹5,000/- on the cheque amount of ₹15,000/- is grossly inadequate. However, the complainant has not filed any appeal for enhancement of the sentence; therefore, no interference is required with the fine imposed by the learned trial Court.

36. No other point was urged.

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

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

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

(Rakesh Kainthla)
Judge

19th August, 2026.
(Ravinder)