

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.717 of 2025

Date of Decision: 18.08.2026

Harvinder Singh

.....Petitioner

Versus

Akhil Kumar

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Vinod Chauhan, Advocate.

For the Respondent: Mr. Devender K. Sharma, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**in short 'BNSS'**), lays challenge to judgment dated 28.10.2025, passed by the learned Additional Sessions Judge, Sarkaghat, District Mandi, Himachal Pradesh, in Criminal Appeal No.05/2025, affirming judgment of conviction dated 27.01.2025 and order of sentence dated 29.01.2025, passed by the learned Judicial Magistrate First Class, Court No.1, Sarkaghat, District Mandi, H.P., in Criminal Complaint No.102/2019, titled as *Akhil Kumar Vs. Harvinder Singh*, whereby Court below, while holding the petitioner-accused (**hereinafter referred to as 'accused'**) guilty of having committed an offence punishable under Section 138 of the Negotiable Instruments Act (**in short the 'Act'**), convicted and sentenced him to undergo simple imprisonment for

a period of six months and pay compensation to the respondent (**hereinafter, 'complainant'**) to the tune of ₹1,50,000/-.

2. Precisely, the facts of the case as emerge from the record are that the complainant, while claiming himself to be the sole proprietor of a firm functioning and carrying on business under the name and style of 'M/s Lala Badari Prashad Filling Station', filed a complaint under Section 138 of the Act, alleging therein that the accused had been purchasing diesel on credit from the complainant and had accumulated a liability to the tune of ₹1,20,000/-. Though accused, with a view to discharge the aforesaid lawful liability, issued a Cheque bearing No.699461 dated 02.08.2019, amounting to ₹1,20,000/-, drawn on Punjab National Bank, Dera Parol, Hamirpur, in favour of the complainant. However, said cheque, upon presentation to the bank concerned was returned with remarks "Funds Insufficient" vide return memo dated 03.08.2019. Immediately, after receipt of aforesaid return memo, complainant served accused with legal notice dated 07.08.2019, thereby calling upon him to make the payment good within stipulated time, but since needful was not done, complainant instituted complaint under Section 138 of the Act in the competent Court of law on 27.08.2019.

3. Learned trial Court, on the basis of the evidence adduced on record, vide judgment/order dated 27.1.2025/29.1.2025, held the petitioner-accused guilty of having committed an offence punishable under

Section 138 of the Act and convicted and sentenced him as per the description given hereinabove.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence recorded by learned trial Court, accused preferred an appeal in the Court of learned Additional Sessions Judge, Sarkaghat, District Mandi, H.P., but the same was dismissed vide judgment dated 28.10.2025. In the aforesaid background, accused has approached this Court in the instant proceedings, praying therein to set-aside the judgment of conviction and order of sentence recorded by the court below.

5. Vide order dated 22.12.2025, this Court suspended the substantive sentence imposed by the Court below, subject to the petitioner-accused furnishing bail bonds and depositing 30% of the compensation amount within a period of four weeks. Aforesaid order has been duly complied with. Though opportunity was granted to petitioner-accused to settle the dispute with the complainant, but he refused to avail the same and insisted that case at hand be decided on its own merits.

6. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Vinod Chauhan, learned counsel representing the petitioner, is that the learned Additional Sessions Judge, while affirming the judgment of conviction and order of sentence passed by the trial Court, failed to appreciate the evidence in its right perspective, as a

result of which, findings to the detriment of the petitioner-accused have come to the fore. He further submitted that both the Courts below failed to take note of the fact that the complaint instituted by the complainant was premature and as such, could not have been entertained. He submitted that as per own case of the complainant, he, after having received return memo dated 03.08.2019, served petitioner-accused with legal notice dated 07.08.2019, thereby calling upon him to make the payment good within 15 days, but before expiry of aforesaid period, he proceeded to institute complaint under Section 138 of the Act and as such, same could not have been entertained. He submitted that legal notice dated 07.08.2019 sent to the petitioner-accused was attempted to be served upon the petitioner on 13.08.2019, but since he was not found at the given address, registered envelope containing therein legal notice was returned back to the complainant, which was received by him on 20.08.2019. He submitted that after receipt of undelivered registered letter containing legal notice, complainant ought to have waited till the expiry of 15 days from the date of receipt of intimation, i.e. 13.08.2019 and as such, complaint could have been filed by the complainant after 28.08.2019, however, same came to be filed on 27.08.2019, one day prior to the expiry of the mandatory 15-day period, from the date of receipt of intimation with regard to receipt of notice by the accused. He also placed reliance upon judgment passed by coordinate Bench

of this Court in **Cr. Revision No. 129 of 2015**, titled as **Sant Kumar v. R. K. Puri and Ors.**, decided on 01.01.2026, wherein afore Court while taking note of various judgments passed by the Hon'ble Apex Court as well as other Constitutional Courts proceeded to hold that in the cases where service of notice is not proved, service of the same shall be presumed after expiry of 30 days from the date of issuance of notice and thereafter, further 15 days' time shall be given to the petitioner-accused to make the payment, meaning thereby in the case where service is not proved, 45 days from the date of issuance of legal notice are required to be given to the accused before initiation of complaint under Section 138 of the Act.

7. To the contrary Mr. Devender K. Sharma, learned counsel for the respondent/complainant while supporting the impugned judgments passed by the courts below vehemently argued that present revision petition is not maintainable and as such, same deserves to be dismissed. While making this Court peruse record of the Courts below, Mr. Sharma, submitted that plea of complaint being premature has been raised for the first time in the instant proceedings and during trial, no such prayer was made. He further submitted that otherwise also, it is none of the defence of the accused that he did not receive the notice, rather he had virtually admitted factum with regard to his having received notice. If so, lodging of complaint, if any, prior to expiry of 45 days may not be of much relevance as far as adjudication of

the case at hand is concerned. Besides above, Mr. Sharma further submitted that this Court has a very limited jurisdiction under Section 442 of BNSS (earlier Section 397 of the Cr.P.C.), to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the courts below. In support of his aforesaid submission, Mr. Sharma, placed reliance upon judgment rendered by the Hon'ble Apex Court in **C.C. Alavi Haji v. Palapetty Muhammed and Anr. (2007) 6 SCC 555**, which shall be discussed in later part of the judgment.

8. I have heard learned counsel representing the parties and gone through the record carefully.

9. True, it is that while exercising power under Section 442 of BNSS, this Court has very limited power to re-appreciate the evidence available on record, but in the present case, this Court solely with a view to ascertain that the judgments passed by both the Courts below are not perverse and same are based upon correct appreciation of evidence available on record, undertook an exercise to meticulously examine the evidence available on record to reach a fair and just decision in the case.

10. As far as scope of power of this Court, while exercising revisionary jurisdiction under Section 397 (now Section 442 of BNSS) is concerned, the Hon'ble Apex Court in **Krishnan and another v. Krishnaveni and another, (1997) 4 Supreme Court Case 241**, has held

that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order. The relevant para of the judgment is reproduced as under:-

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order

11. Hon’ble Apex Court in **Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204** has reiterated that a revisional court is not an appellate court and it can only rectify the patent defect, or errors of jurisdiction or the law. Relevant Para of afore judgment reads as under:

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

12. Similar view came to be taken by the Hon’ble Apex Court in **State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688**, wherein it was held as under:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where

scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the

charge is a much-advanced stage in the proceedings under CrPC.”

13. Now being guided by afore exposition of law, this Court shall make an endeavour to ascertain the correctness of the rival submissions made at the behest of the parties vis-à-vis factual matrix of the case.

14. Since specific plea has been raised with regard to complaint being premature, this Court shall deal with same at the first instance. Having carefully perused complaint filed by the respondent under Section 138 of Act, this Court finds that cheque bearing No.699461 dated 02.08.2019 amounting to ₹1,20,000/- issued by the petitioner towards discharge of lawful liability, was presented by the complainant before State Bank of India, Sarkaghat, however afore bank returned the cheque with remarks “insufficient funds” vide memo dated 03.08.2019. Information with regard to the dishonour of the cheque was received by the complainant on 05.08.2019, whereafter complainant served accused with legal notice dated 07.08.2019 through his counsel. Record reveals that legal notice dated 07.08.2019 was sent on the correct address, but same could not be served upon accused for the reason that he was not found present on the given address and as such, report/endorsement was made by the process server on 13.08.2019. Undelivered registered letter containing legal notice was received by the complainant on 20.08.2019. Complaint was filed on 27.08.2019, as is evident from the endorsement given by the Court concerned, meaning

thereby that complainant filed complaint under Section 138 of the Act before expiry of 15 days from the date of intimation i.e. 13.08.2019. Though in the cases where there is no specific proof with regard to service of legal notice, complainant is required to wait for 45 days before instituting complaint under Section 138 of the Act. Since in the case at hand, legal notice was sent on the correct address, but same could not be served upon the petitioner-accused on account of his being not present on the given address, coupled with the fact that endorsement qua non-delivery of registered letter was made by the process server on 13.08.2019, complainant was required to wait for 15 days from the date of intimation i.e. 13.08.2019. However, in the instant case, he proceeded to file complaint under Section 138 of the Act one day prior to expiry of 15 days period.

15. At this juncture, it is apt to take note of judgment passed by the coordinate Bench of this Court in **Sant Kumar** (supra), relevant paras of same read as under:

“19.The complainant stated in the complaint that the cause of action arose to him on 12.06.2003, when the cheque was dishonoured and again when the accused failed to repay the amount within the requisite period despite the notice dated 16.06.2003. The complainant, R.K. Puri (PW1), stated that he sent a notice to the accused on 16.06.2003 through his Advocate. The accused failed to pay the amount despite the receipt of a valid notice of demand. Thus, the complainant has not specified the date of service of notice upon the accused, and he is relying upon the presumption of the service.

20.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 acknowledgement 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.”

21.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.”

22.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, 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.”

23.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.”

24. 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.”

25.The notice was sent on 16.06.2003 and would be deemed to be served on 16.07.2003. 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. Therefore, the complaint filed on 31.07.2003 was premature, having been filed within a period of 15 days available to the accused to repay the amount. It was laid down by 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:

“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,

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?”

6. The first issue was resolved by paragraph 35 of the judgment, which is extracted below:

“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.”

26. 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.

27. It was submitted that the accused admitted in his statement recorded under Section 313 of Cr.P.C. that he had received the notice

from the complainant. This admission will not make any difference because the question is not whether the notice was served upon the accused, but whether the complaint was filed within 15 days after the receipt of the notice. The admission will not help in determining this question.

28. Thus, the submission that the complaint is premature has to be accepted as correct. Neither of the learned Courts below adverted to this aspect of the case, and the judgments and order passed by the learned Courts below cannot be sustained; hence, the present revision is allowed, and the judgments and order passed by the learned Courts below are set aside. The petitioner/accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine, if deposited be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same will be dealt with as per the orders of the Hon'ble Supreme Court of India.

16. Afore judgment is based upon judgment passed by the Hon'ble Apex Court in **Gajanand Burange v. Laxmi Chand Goyal, 2022 SCC OnLine SC 1711**, wherein it has been specifically held that no action can be taken on a premature complaint and the same deserves to be dismissed. Though at this stage, Mr. Sharma, attempted to argue that once factum with regard to receipt of notice never came to be refuted by the petitioner-accused, he is estopped from raising plea of complaint being premature, however, this Court is not persuaded to agree with his afore submissions. In his statement recorded under Section 313 CrPC, petitioner-accused has specifically denied factum with regard to his having received legal notice and as such, he can

only be presumed to be served after expiry of 30 days from the date of receipt of notice. In terms of Section 138 (b) of the Act, complainant is required to issue notice within 30 days from the date of receipt of return memo calling upon the accused to make payment good within fifteen days from the date of receipt of notice, meaning thereby, in total, 45 days are required before filing of complaint.

17. Judgment passed in **C.C. Alavi Haji** (supra), pressed into service by Mr. Sharma, may not be applicable in the present facts and circumstances of the case. In the afore case, though accused set up a defence that he did not receive any notice because he was staying abroad. In afore case, Hon'ble Apex Court held that requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to

the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act.

18. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court is persuaded to agree with Mr. Chauhan, learned counsel for the petitioner that there is a patent illegality in the judgments passed by the courts below and as such, this Court while exercising revisionary jurisdiction can intervene. As such, present petition is allowed and judgments of conviction and order of sentence dated 28.10.2025 and 27.01.2025/29.01.2025 passed by the Courts below are quashed and set aside. Bail bonds, if any, discharged. Amount, if any, deposited before the Registry of this Court as well as learned trial Court in the instant proceedings are ordered to be released in favour of the petitioner after expiry of 90 days by which time, complainant can file appropriate proceedings, laying therein challenge to the instant judgment.

19. Needless to say, in terms of the judgment rendered by the Hon'ble Apex Court in *Gajanand Burange* (supra), respondent/complainant shall be at liberty to institute a fresh complaint on the same cause of action within a period of one month. Having taken note of the fact that Cheque is of the year 2019, this Court hopes and trusts that Court below would make all out efforts to conclude the trial expeditiously, preferably within a period of six months.

In the afore terms, present petition is disposed of along with pending applications, if any.

August 18, 2026
(Rajeev Raturi)

**(Sandeep Sharma),
Judge**