IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4171 of 2013
Reserved on: 24.8.2026
Date of Decision: 09.09.2026

Naresh Kumar ...Appellant

Versus

Anil Kumar ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Appellant : Mr Rajesh Kashyap, Advocate.
For the Respondent : Mr Vishwas Kaushal, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 21.11.2011, passed by learned Sessions Judge, Kullu, H.P. (learned Appellate Court), vide which the judgment of conviction dated 15.03.2011 and order of sentence dated 20.04.2011, passed by learned Chief Judicial Magistrate, District Kullu, H.P. (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the Learned Trial Court for convenience)*.

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

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant and accused were known to each other. The accused demanded ₹5,00,000/- from the complainant for taking a fruit orchard on lease. He promised to repay the money to the complainant in the second week of April. The complainant advanced ₹5,00,000/- to the accused in cash. The accused handed over a post-dated cheque to the complainant to repay the money. The complainant presented the cheque at his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant sent a legal notice to the accused, which was served upon him. The accused failed to repay the money. Hence, the complaint was filed 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 to be tried.

4. The complainant examined himself (CW1) and Ram Lok Sharma (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the complainant's case in its entirety. He claimed that the cheque book was lost by him and he had lodged an FIR to this effect. He has not issued any cheque in the complainant's favour. The complainant misused the cheque. He examined Lal Singh (DW1) and Sher Singh (DW2) to prove his defence.

6. Learned Trial Court held that the issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The evidence led by the accused was not sufficient to rebut the presumption. The cheque was dishonoured with an endorsement "insufficient funds", and the accused failed to repay the money despite the receipt of valid notice of demand. 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 ₹10,000 and compensation of ₹5,00,000/-.

It was ordered that in case of default in the payment of fine, the accused would undergo simple imprisonment for one month.

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, Kullu, H.P. (learned Appellate Court). The learned Appellate Court held that the statements of HHC Lal Singh (DW1) and Sher Singh (DW2) established that the accused had lost the cheque book. The complainant asserted that the loan was advanced in the presence of Vishwajeet. However, Vishwajeet was not examined. The complainant has also not proved the advancing of the loan. The accused has to establish his defence on the balance of probabilities, and the cross-examination of the complainant's witnesses and the statements of defence witnesses rebutted the presumption. Learned Trial Court erred in convicting and sentencing the accused; hence the appeal was allowed, and judgment and order passed by learned Trial Court were set aside.

8. Being aggrieved by the judgment passed by learned Appellate Court, the complainant has filed the present appeal asserting that learned Appellate Court erred in acquitting the accused. A cheque carries with it a presumption of consideration

and the burden is upon the accused to rebut the presumption. The defence taken by the accused that he had lost the cheque book was highly improbable. It was suggested to the complainant's witnesses that the cheque was handed over to Vishwajeet, who had handed it over to the complainant. However, this version was changed while recording the statements of defence witnesses. Learned Appellate Court erred in relying upon this version. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Rajesh Kashyap, learned counsel for the appellant/complainant and Mr Vishwas Kashwal, learned counsel for the respondent/accused.

10. Mr Rajesh Kashyap, learned counsel for the appellant/complainant, submitted that the accused had failed to rebut the presumption attached to the cheque. The accused had taken contradictory pleas while leading the evidence and cross-examining the witnesses, which made the defence version highly improbable. The complainant was not required to lead any evidence to show that the cheque was issued for consideration because of the presumption attached to the cheque. Learned

Appellate Court ignored the presumption. Therefore, he prayed that the present appeal be allowed and the judgment passed by learned Appellate Court be set aside.

11. Mr Vishwas Kaushal, learned counsel for the respondent/accused, submitted that the accused had reported the loss of the cheque book to the police and the bank, which corroborates his version that he had lost the cheque book. The complainant did not produce any evidence to show that he had advanced any loan to the accused. The loan was advanced in the presence of Vishwajeet as per the complainant; however, he was not examined. The learned Appellate Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the Court acquitting the accused even if another view is possible. Therefore, he prayed that the present appeal be dismissed.

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

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373,*** that the Court can interfere with a judgment of acquittal only if it is

impossible, perverse, wholly unsustainable, or manifestly illegal.

It was observed:

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

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

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

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

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

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused

must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

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

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

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

14. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with same rigour cannot be applied to the cases under Negotiable Instruments Act because there is a

presumption that the holder had received the cheque for consideration to discharge the debt/liability. The Appellate Court is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed: -

> "**12....** The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.
>
> **13.** For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic

> questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?"

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

17. The complainant reiterated the contents of the complaint in his proof affidavit. He stated in his cross-examination that he had also handed over ₹5,00,000/- to Parveen Gupta. He was not aware that Vishwajeet was running Alpine Finance Agency. He admitted that he had handed over the money to the accused for purchasing the apple orchard at the instance of Vishwajeet. He used to file an income tax return. He denied that the accused had taken a loan from Alpine Finance Agency and had handed over a blank cheque. He denied that he had taken the blank cheque from Vishwajeet and misused it. He denied that he was taking advantage of the cheques handed over to Vishwajeet.

18. The cross-examination of the complainant shows that the accused has not disputed the issuance of the cheque and it was suggested to the complainant that the cheque was issued to Vishwajeet. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355*** that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383: -

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
>
> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
>
> ****
>
> **42.** Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

19. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724,*** that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

> "9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such a presumption is rebuttable. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of a reverse onus clause and

> therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

20. This position was reiterated in ***N. Vijay Kumar v. Vishwanath Rao N., 2025 SCC OnLine SC 873***, wherein it was held as under:

> "6. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence."

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

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
>
> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability 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***].

22. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that 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. It was observed:

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and therefore to disprove the presumptions, something which is probable has to be brought on record

> for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

23. The accused changed the version suggested to the complainant in his statement recorded under Section 313 CrPC and the defence evidence. He claimed in his statement recorded under Section 313 CrPC that he had lost the cheque book. He examined HHC Lal Singh, who proved the entry (Ext.D1) lodged by Jeeto Devi stating that she was running a shop. The owner, Vikram Kamboj, was threatening to evict her from the shop. She had obtained an injunction order from the Court. However, Vikram Kamboj and his son Gagan Kamboj were threatening to forcibly evict her. The lock of the shop was broken, and the articles were stolen. It is not explained how this report made by Jeeto Devi would assist the accused. She has not mentioned anything about the accused Anil Kumar or the cheque book of Anil Kumar. Thus, learned Appellate Court erred in relying upon this report.

24. Sher Singh (DW2) stated that accused Anil Kumar had made a complaint regarding the theft of the cheque book and

other articles. He had also supplied the copy of the report to the bank. He also referred to the report marked "D", which is the same report proved by HHC Lal Singh (DW1). It has already been found out above that the report mark "D" does not refer to the accused, but to Vijay Kamboj and Jeeto Devi. Thus, it is difficult to see how this report would have established the defence of the accused.

25. Therefore, learned Appellate Court misread the report to hold that this report probablized the version of the accused and rebutted the presumption attached to the cheque. Such a conclusion could not have been drawn by any reasonable person reading the report.

26. Learned Trial Court also held that the complainant had not produced any evidence regarding the advancing of the loan. He did not examine Vishwajeet, who was stated to be present at the time of advancing of the loan and handing over of the cheque. This finding cannot be sustained. A cheque carries with it a presumption that it was issued for valid consideration to discharge the debt/liability. Therefore, the complainant is not under any obligation to produce the evidence of advancing of the loan. It was laid down by the Hon'ble Supreme Court in ***Uttam***

Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361, that a presumption under Section 139 of the NI Act would obviate the requirement to prove the existence of consideration. It was observed:

> "**20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the 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, and the dishonour of a cheque carries a statutory presumption of consideration. The holder of the 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."

27. 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 by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts*** *and/or Income Tax Returns,* ***the***

same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. *In this regard, we may make profitable reference to the decision in* ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735****:*

> *'10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts, in our view, were right in holding on those lines. However, the* ***accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, further achieve this result through the cross-examination of the 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).*

28. 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."

29. Therefore, the complainant's version cannot be doubted because no evidence of advancing the loan was produced.

30. The accused did not appear in the witness box to prove the version that he had lost his cheque book. The document produced by him does not support such an inference. Therefore, the version of the accused could not have been relied upon in the absence of evidence. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under section 313 is not sufficient to rebut the presumption. It was observed at page 700:

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

31. Therefore, learned Appellate Court erred in relying upon the statement of the accused to hold that it was sufficient to rebut the presumption.

32. The complainant admitted that he was an income tax payee. It was submitted that the complainant had not filed the income tax return to show that he had mentioned the amount in the income tax return. This submission will not help the accused. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed: -

> 10. It would further be noticed that the learned trial Magistrate has acquitted the accused on the ground that the loan has not been shown in the Income Tax Return furnished by the complainant, and while recording such finding, has placed reliance upon the judgment of the Hon'ble Delhi High Court in

Vipul Kumar Gupta vs. Vipin Gupta 2012 (V) AD (CRI) 189. However, after having perused the said judgment, it would be noticed that the amount in the said case was ₹ 9 lacs, and it is in that background that the Court observed as under: -

> "9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors that have been enumerated by the learned ACMM also. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts, the factum of the loan having been given by him because by no measure, an amount of ₹ 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or year when the loan was sought or given. The appellant has presented a cheque, which obviously is written with two different inks, as the signature appears in one ink, while the remaining portion, which has been filled in the cheque, is in a different ink. All these factors prove the defence of the respondent to be plausible to the effect that he had issued these cheques by way of security to the appellant for getting a loan from the Prime Minister Rojgar Yojana. The respondent/accused has only to create doubt in the version of the appellant, while the appellant has to prove the guilt of the accused beyond a reasonable doubt, in which, in my opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal

against the impugned order, as there is no infirmity in the impugned order."

33. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that contravention of Section 269 SS of the Income Tax Act will give rise to a penalty, but will not invalidate the transaction. It was observed: -

> 5. The relevant portion of Section 269 SS of the IT Act reads thus: -
>
> > "(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or
> >
> > (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
> >
> > (c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is (twenty) thousand rupees or more. Provided....."
>
> 6. Section 271D provides for a penalty for failure to comply with the aforesaid provisions, which reads thus:
>
> > "271D. Penalty for failure to comply with the provisions of Section 269-SS - (1) If a person takes or accepts any loan or deposit in contravention of the provisions of Section 269-SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.
> >
> > (2) Any penalty impossible under sub-section (1) shall be imposed by the Joint Commissioner."
>
> 7. A collective reading of both the aforesaid Sections would go to show that even though contravention of Section 269-SS of the IT Act would be visited with a strict penalty

on the person taking the loan or deposit. However, Section 271D does not in any manner suggest or even provide that such a transaction would be null and void. The payer of money in cash, in violation of Section 269 SS of the IT Act, can always have the money recovered.

8. The object of introducing Section 269 of the IT Act has been succinctly set out by the Hon'ble Supreme Court in ***Asstt. Director of Inspection Investigation vs. A.B. Shanthi (2002) 6 SCC 259***, wherein it was observed as under: -

> "8. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give a false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false entries in his accounts; he shall not escape by giving a false explanation for the same. During search and seizures, unaccounted money is unearthed, and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends, and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main objection of Section 269-SS was to curb this menace."

9. In light of the aforesaid observations, it cannot but be said that Section 269-SS only provides for the mode of accepting payment or repayment in certain cases so as to counteract evasion of tax. However, Section 269-SS does not declare all transactions of loans by cash in excess of ₹20,000/- as invalid, illegal or null and void, as the main object of introducing the provision was to curb and unearth black money.

34. A similar view was taken by the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> **"19.** Recently, the Kerala High Court in ***P.C. Hari v. Shine Varghese, 2025 SCC OnLine Ker 5535*** has taken the view that a debt created by a cash transaction above ₹20,000/-

> (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above ₹ 20,000/- (Rupees Twenty Thousand).
>
> **20.** However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961, is subject to a penalty only under Section 271D of the IT Act, 1961. Further, neither Section 269SS nor Section 271D of the IT Act, 1961, states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited with a penalty only as prescribed. Consequently, the view that any transaction above Rs. 20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in ***P.C. Hari*** (supra) is set aside."

35. Hence, the transaction cannot be doubted because it was carried out in cash.

36. It was submitted that the complainant has not proved his financial capacity to advance the loan. The submission will not help the accused. First, it was suggested to the complainant that he had advanced the loan at the instance of Vishwajeet Singh, which shows that the advancing of the loan is not in dispute. Further, the accused had not issued any reply to the

notice received by him challenging the complainant's financial capacity to advance the loan. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh v. Narayan Dass Mahant*, *(2022) 6 SCC 735: 2022 SCC OnLine SC 302*** that the complainant is not required to show his financial capacity unless it is challenged by sending a reply to the notice. It was observed at page 740:

> **"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 proceeding under Section 138 of the NI Act is 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...."

37. This position was reiterated in ***Kuntegowda*** (supra) wherein it was observed:

> **6.7.** Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of

> financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan and therefore the argument and defence of the accused on this aspect falls flat.

38. In the present case, the accused had not sent any reply to the notice questioning the complainant's financial capacity, and he is not entitled to say that the complainant did not have the financial capacity to advance the loan.

39. Ram Lok Sharma (CW2) proved that the cheque was received in the bank for realisation, but it was dishonoured with endorsement "insufficient funds". He admitted in his cross-examination that, as per the statement of account, the accused never had more than ₹200/- in his account, which shows that the accused did not have sufficient balance to honour the cheque and corroborates the memo of dishonour that the funds were insufficient to honour the cheque.

40. The complainant asserted that he had issued a notice to the accused which was duly served upon him. He filed the acknowledgement card (Ext.C5) which bears the signatures of

the accused. This corroborates the complainant's version that the notice was duly served upon the accused.

41. Therefore, learned Trial Court had rightly held that the accused had issued a cheque in favour of the complainant to discharge the debt, which was dishonoured with an endorsement "insufficient funds" and the accused failed to pay the money despite the receipt of valid notice of demand and all the ingredients of the commission of an offence punishable under Section 138 of NI Act were duly satisfied.

42. Learned Trial Court sentenced the accused to undergo simple imprisonment for 6 months, pay a fine of ₹10,000/- and ₹5,00,000/- as compensation to the complainant, and in default of payment of the fine to undergo further simple imprisonment for one month. 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."

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

44. Learned Trial Court sentenced the accused to pay compensation of ₹5,00,000/- and pay a fine of ₹10,000/-. This was not permissible. Section 357 of the Cr.P.C. provides that when the Court imposes a sentence of which fine forms a part, the Court may order the disbursement of the part of the fine as compensation, *inter alia*. It was laid down by the Hon'ble Supreme Court of India in ***R. Vijayan v. Baby*, *(2012) 1 SCC 260: 2011 SCC OnLine SC 1363*** that where a fine has been imposed by the Court, the compensation can be awarded out of it and it is impermissible to award separate compensation. It was observed at page 263:

> **7.** Section 357(3) has been the subject-matter of judicial interpretation by this Court in several decisions. In ***State of Punjab v. Gurmej Singh [(2002) 6 SCC 663: 2002 SCC (Cri) 1460],*** this Court held: (SCC p. 669, para 9)
>
> > "9. ... A reading of sub-section (3) of Section 357 would show that the question of award of compensation would arise where the court imposes a sentence of which fine does not form a part."

This Court also held that Section 357(3) will not apply where a sentence of fine has been imposed.

8. In ***Sivasuriyan v. Thangavelu [(2004) 13 SCC 795 : (2006) 1 SCC (Cri) 532]*** this Court held: (SCC p. 796, para 4)

> "4. In view of the submissions made, the only question that arises for consideration is whether the court can direct payment of compensation in exercise of power under sub-section (3) of Section 357 in a case where fine already forms a part of the sentence. Apart from sub-section (3) of Section 357, there is no other provision under the Code whereunder the court can exercise such power:"

After extracting Section 357(3) of the Code, the Court proceeded to hold thus: (SCC p. 796, para 5)

> "5. On a plain reading of the aforesaid provision, it is crystal clear that the power can be exercised only when the court imposes sentence by which fine does not form a part. In the case in hand, a court having sentenced to imprisonment, as also fine, the power under sub-section (3) of Section 357 could not have been exercised. In that view of the matter, the impugned direction of the High Court directing payment of compensation to the tune of Rs One lakh by the appellant is set aside."

9. It is evident from sub-section (3) of Section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. The reason for this is obvious. Sub-section (1) of Section 357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when the compensation is, in the opinion of

> the court, recoverable by such person in a civil court. Thus, if compensation could be paid out of the fine, there is no need to award separate compensation. Only where the sentence does not include a fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act of the accused person requires to be compensated, it is permitted to award compensation under Section 357(3).

45. Thus, the learned Trial Court could not have imposed a fine and awarded the compensation at the same time.

46. The accused had issued a cheque of ₹5,00,000/-, and he was entitled to be compensated for the loss sustained by him. Thus, the amount of compensation cannot be set aside. However, the amount of fine has to be set aside as it was wrongly imposed.

47. Therefore, in view of the above, the present appeal is partly allowed; the judgment passed by learned Appellate Court is ordered to be set aside while the judgment of conviction and order of sentence of imprisonment and payment of compensation awarded by learned Trial Court are ordered to be restored. The order of payment of fine imposed by the learned Trial Court is set aside and the fine amount, if deposited, be adjusted towards the compensation awarded by the learned Trial Court.

48. A copy of this judgment, along with the record of the learned Trial Court, be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

9th September, 2026
(Nikita)