IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 62 of 2015
Reserved on: 17.9.2026
Date of Decision: 29.9.2026.

Shyam Chand ...Petitioner

Versus

Roop Singh ...Respondent

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

For the Petitioner	:	Mr T.S. Chauhan, Senior Advocate, with Ms Abhidha Bhardwaj, Advocate.
For the Respondent	:	Mr Suneet Goel, Senior Advocate, with Mr Aman Hansretta, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 21.8.2014, passed by the learned Additional Sessions Judge, Kullu (learned Appellate Court), vide which the judgment of conviction dated 7.9.2013 and order of sentence dated 7.9.2013, passed by the learned Special Judicial Magistrate, Kullu, District Kullu (learned Trial Court) were upheld. *(The*

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

parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court).

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 and the accused were known to each other. The accused owed ₹3,00,000/- to the complainant, and he issued a post-dated cheque amounting to ₹3,00,000/- drawn on UCO Bank, Kullu, to repay the amount. The complainant presented the cheque before his bank, but it was dishonoured with a memo of "insufficient funds". The complainant issued a notice to the accused asking him to pay the money within 15 days of receipt of the notice. The notice was duly served upon the accused, but he failed to repay the money despite receipt of the notice of demand. Hence, the complaint was filed before the learned Trial Court for taking action 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 to be tried.

4. The complainant examined himself (CW-1), Naresh Sehgal (CW-2), Parvesh Gautam (CW-3), and Mehar Chand (CW-4).

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.PC), denied the complainant's case in its entirety. He claimed that a false case was lodged against him. He did not produce any evidence in his defence.

6. The learned Trial Court held that the complainant's version that the accused owed ₹3,00,000/- to the complainant and had issued a cheque to repay the amount was proved. The cheque carried with it a presumption that it was issued for consideration to discharge a debt/liability. The plea taken by the accused in the complainant's cross-examination that he had borrowed a sum of ₹50,000/- and had issued the cheque to the complainant as guarantee was not proved by any evidence on record. The cheque was dishonoured with an endorsement of

"insufficient funds", and the accused failed to pay the money despite receipt of the notice of demand. All ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for six months and pay a compensation of ₹3,10,000/- 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, Kullu (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused did not dispute his signatures on the cheque, and a presumption arose that the cheque was issued for consideration to discharge a debt/liability. The accused had not led any evidence to rebut the presumption. The cheque was dishonoured with an endorsement of "insufficient funds". The notice was duly served upon the accused, and he failed to repay the money. Hence, the learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was adequate and did not

require any interference from the learned Appellate Court. 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 learned Courts below erred in appreciating the material on record. The complainant materially improved upon his initial version projected in the complaint. The plea taken by the accused that he had issued the cheque as a guarantee was wrongly ignored. The sentence imposed by the learned Trial Court is excessive. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr T.S. Chauhan, learned Senior Advocate, assisted by Ms Abhidha Bhardwaj, learned counsel for the petitioner/accused, and Mr Suneet Goel, learned Senior Advocate, assisted by Mr Aman Hansretta, learned counsel for the respondent/complainant.

10. Mr T.S. Chauhan, learned Senior Advocate for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The accused had

denied the issuance of the cheque, and the complainant was supposed to prove the existence of a legally enforceable debt/liability, which he failed to do. The complaint does not mention any particulars of the debt/liability. The learned Courts below erred in not appreciating this aspect of the case. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Suneet Goel, learned Senior Advocate for the respondent/complainant, submitted that the learned Courts below have consistently held that the issuance of the cheque was not disputed and the accused had failed to rebut the presumption. These are pure findings of fact. This Court should not interfere with the concurrent findings of facts recorded by the learned Courts below; therefore, he prayed that the present revision be dismissed.

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

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:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> > *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.
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> > (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 in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the

High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

> "27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the

record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

14. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

> **5.3.** At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755***.
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> "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
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> (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person out of that account for the discharge of any debt or other liability;
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> (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;
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> (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.

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

16. The complainant, Roop Singh (CW-1), reiterated the contents of the complaint in his proof affidavit. He stated in his cross-examination that he had paid money to the accused in June, 2011. His (the complainant's) wife was also present at the time of advancing the loan. The complainant had taken a loan of ₹2,70,000/- against the fixed deposit, and ₹30,000/- were lying with him. The accused had filled the cheque and put the signatures in his presence. He denied that he had filled the cheque. He denied that the accused had taken a loan of ₹50,000/- from him and had issued a cheque towards the

guarantee. He denied that the accused had no liability of ₹3,00,000/- and that he had misused the blank cheque.

17. The accused has not denied the issuance of the cheque. He suggested to the complainant that he had issued a blank cheque, which was misused by the complainant. 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.
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> **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.
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> **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."

18. Therefore, the suggestion made to the complainant corroborated his version that the accused had issued a cheque in favour of the complainant.

19. The suggestion that the accused had issued a blank signed cheque in favour of the complainant is sufficient to trigger the presumption contained in Section 118(a) and Section 139 of the NI Act that the cheque was issued for consideration to discharge a debt/liability. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148,*** that where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant, it is sufficient to trigger the presumption contained under Section 118(a) and 139 of the NI Act. It was observed: -

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. ***[Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]]***. Therefore, mere admission of the drawer's signature, without admitting the execution of

> the entire contents of the cheque, is now sufficient to trigger the presumption.
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> **37.** As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

20. It was laid down in ***Sanjabij Tari v. Kishore S. Borcar,*** ***2025 SCC OnLine SC 2069,*** that where the execution of the cheque is proved or admitted, the presumption would be attracted. It was observed:

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

21. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda***(supra) that the cheque carries a presumption that it 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 Sections118and139of theNI Acthelp 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.

22. Therefore, the learned Courts below had rightly held that a presumption would be attracted in the present case that the cheque was issued for consideration to discharge the debt/liability, and the burden would shift upon the accused to rebut the presumption.

23. The accused suggested to the complainant in his cross-examination that he had borrowed ₹50,000/- from the complainant and returned them. The complainant had taken the blank cheque from the accused as a security. However, the accused nowhere claimed in his statement recorded under Section 313 of the CrPC that he had issued a blank signed security cheque in favour of the complainant towards the repayment of the loan of ₹50,000/- taken from the complainant. He did not produce any evidence to support this version. A denied

suggestion does not amount to any proof and could not have been used to discard the complainant's case.

24. It was submitted that the complainant has not given the details of the liability due to him. This submission will not help the accused because the cheque carries a presumption that it was issued for consideration to discharge a debt/liability. Therefore, it was not necessary to mention the details of the loan taken by the accused or the date when the amount was advanced.

25. It was submitted that the complainant claimed that he had handed over the money to the accused in the presence of his wife after taking the money from the UCO Bank against the fixed deposit receipt. He has not examined his wife to corroborate his version. He has also not produced the official of the UCO Bank to prove that the complainant had taken a loan of ₹2,70,000/- against the FDR. This submission will not help the accused. 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

obviates 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."

26. 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 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 been issued and signed by the petitioners have 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).*

27. 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."

28. Therefore, the complainant's version cannot be doubted simply because the complainant failed to examine his wife or the official from the UCO Bank to prove the advancing/taking of the loan.

29. There is nothing in the complainant's cross-examination to show that he was making a false statement. The cross-examination of the complainant does not show that the accused did not have any liability to pay the amount mentioned in the cheque. The accused had also not led any evidence to prove this plea. Therefore, the learned Courts below had rightly

held that the accused had issued a cheque in favour of the complainant for ₹3,00,000/- to discharge his debt/liability.

30. The complainant stated that the cheque was dishonoured with an endorsement of "insufficient funds". The memo of dishonour (Ex. C-2) mentions the reason for dishonour as "insufficient funds". Parvesh Gautam (CW-3) stated that he had brought the statement of account of the accused. A cheque was received from UCO Bank, Kullu, for collection, which was dishonoured with an endorsement of "insufficient funds". His statement is corroborated by the statement of account (Ex. CW-3/A), in which a balance of ₹405/- was shown in the account on 16.9.2011, which was insufficient to honour the cheque. He stated in his cross-examination that he had not signed the memo of dishonour, which is not sufficient to doubt his testimony because Section 146 of the NI Act creates a presumption regarding the correctness of the memo of dishonour. The burden is upon the accused to rebut the presumption. The accused failed to produce any evidence, and the learned Courts below had rightly held that the cheque was dishonoured with an endorsement of "insufficient funds".

31. The complainant stated that he had issued a legal notice asking the accused to repay the money within 15 days of the receipt of the notice, which was delivered to the accused. His statement is duly corroborated by the acknowledgement (Ex.C-5), which bears the signatures of the accused. Therefore, it was duly proved on record that the accused had received the notice.

32. There is no evidence that the accused had repaid the money within 15 days from the date of the receipt of the notice. Hence, the learned Trial Court had rightly held that all ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

33. The learned Trial Court had sentenced the accused to undergo simple imprisonment for six months and pay compensation of ₹3,10,000/-. 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."

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

35. The cheque was issued for ₹3,00,000/- on 30.9.2011. The learned Trial Court had imposed the sentence on 7.9.2013. The learned Trial Court awarded compensation of ₹3,10,000/-, which means that compensation of ₹10,000/- was awarded over the cheque amount of ₹ 3,00,000/-. 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***]"

36. The complainant lost interest that he would have earned by investing the amount, and he had to engage a counsel to prosecute the complaint. He was entitled to be compensated for the loss sustained by him. Hence, the compensation of ₹10,000/- cannot be said to be excessive; rather, the same appears to be on the lower side, but since no appeal was preferred against the order of compensation, no interference is required with it.

37. No other point was urged.

38. In view of the above, the present revision fails, and it is dismissed. All the pending applications, if any, also stand disposed of.

39. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

29th September, 2026
(Chander)