IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 289 of 2026
Reserved on: 15.09.2026
Date of Decision: 29.09.2026.

Rakesh Kumar ...Petitioner

Versus

Kangra Central Co-operative Bank Ltd. ...Respondent

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

For the petitioner : Mr Ravi Kumar Patial, Advocate.
For the Respondent : Mr Sohan Singh Rathore, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 05.12.2025 passed by learned Additional Sessions Judge, Hamirpur, District Hamirpur (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 25.10.2024 passed by learned Judicial Magistrate First Class, Court No. 3, Hamirpur (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is a banker engaged in banking activities. The accused obtained a house loan of ₹5,00,000/- from the complainant on 17.06.2017. He agreed to repay the money as per the terms and conditions settled between the parties. The accused failed to repay the money as per the agreement, and the complainant asked the accused to regularise the loan account. The accused issued a cheque of ₹6,00,000/- in the complainant's favour. The complainant presented the cheque, but it was dishonoured with an endorsement "funds insufficient". The complainant issued a notice asking the accused to repay the money within 15 days from the receipt of the notice. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, a complaint was filed for taking action against the accused as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence

punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Chander Bhushan (CW1) to prove its complaint.

5. The accused admitted in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC) that he had taken the loan from the complainant. He asserted that he had issued a blank security cheque for the repayment of the loan. He did not produce any evidence in his defence.

6. The learned Trial Court held that the accused has not disputed the taking of the loan. The plea taken by him that he had issued a security cheque for the repayment of the loan will not help him because a cheque issued as a security also attracts the provisions of Section 138 of the NI Act. The accused did not produce any receipt of the repayment, and no suggestion to this effect was given to the witness of the complainant. Hence, his plea that he had repaid the money to the complainant was not acceptable. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability and the burden is upon the accused to rebut the presumption. He failed to

do so. The cheque was dishonoured with endorsement "insufficient funds". The complainant issued a notice to the accused asking him to pay the amount. The notice was duly served upon the accused, but the accused failed to repay the money. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for 3 months, pay ₹7,10,000 /- as fine and, in default of payment of fine, to undergo additional 15 days' simple imprisonment. It was ordered that an amount of ₹7,05,000/- be paid to the complainant as compensation.

7. Being aggrieved by the judgment passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge, Hamirpur (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court 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 accused had not disputed the taking of the

loan, and the plea taken by him that he had issued the cheque as a security will not help him, as the cheque issued towards the security would also give rise to a liability under Section 138 of the NI Act. The accused had failed to rebut the presumption attached to the cheque. The plea taken by him that he had repaid the money was not proved on the balance of probabilities. The cheque was dishonoured with an endorsement "insufficient funds", and the notice was duly served upon the accused. The accused had failed to repay the money despite the receipt of valid notice of demand. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Learned Trial Court had imposed an adequate sentence and no interference was required with the judgment and order passed by learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by learned Courts below, the accused has filed the present revision asserting that learned Courts below erred in appreciating the material on record. The imprisonment of 3 months and compensation of ₹7,10,000/- imposed by the learned Trial Court is harsh. There was no justification to impose a fine and pay it to the State. 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 Ravi Kumar Patial, learned counsel for the petitioner, and Mr Sohan Singh Rathore, learned counsel for the respondent.

10. Mr Ravi Kumar Patial, learned counsel for the petitioner, submitted that the learned Courts below failed to appreciate the material on record. The plea taken by the accused that he had repaid the loan was highly probable, and the learned Courts below erred in rejecting this plea. The learned Trial Court had imposed a harsh punishment without any justification. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Sohan Singh Rathore, learned counsel for the respondent, submitted that the accused has not disputed the taking of the loan and the issuance of the cheque. The plea taken by him that he had repaid the money is not supported by any material on record. He has not produced any proof of repayment, and no such suggestion was given to the complainant's

witnesses. The learned Courts below had rightly appreciated the evidence and this Court should not re-appreciate the evidence while exercising a revisional jurisdiction. 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 vs. 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.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the

evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation 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:

(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;

(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.

15. The present revision has to be decided as per the judgments of the Hon'ble Supreme Court.

16. The accused asserted in his statement recorded under Section 313 of the CrPC that he had issued a blank signed security cheque in favour of the complainant. Learned Courts below had

rightly held that the admission of the signatures on the cheque or the plea taken by the accused that he had issued a blank cheque in favour of the complainant is sufficient to trigger the presumption contained in Section 118(a) and 139 of the NI Act. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the contention of the accused that a blank cheque leaf was voluntarily signed and handed over by him to the complainant 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.

17. 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*
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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).
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> 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***].

18. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that a statutory presumption arises on the admission or proof of the execution of the negotiable instrument, 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.

19. Therefore, the learned Courts below had rightly applied the presumption to the present case.

20. The accused has not disputed the taking of the loan. He claimed that he had repaid the money. However, he has not produced any evidence in his defence and relied upon his statement recorded under Section 313 of the CrPC to prove his

defence, which is not sufficient. 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. 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)"

21. Therefore, the statement of the accused recorded under Section 313 of Cr.P.C. was not a legally admissible statement, and the accused cannot derive any advantage from it.

22. The learned Courts below have concurrently held that the accused had not suggested to the complainant's witness in his cross-examination that he had repaid the money to the complainant. It was laid down by the Hon'ble Supreme Court in ***Ravinder Kumar Sharma Vs. State of Assam (1999) 7 SCC 435*** that,

generally speaking, while cross-examining a witness, so much of the case as concerns the witness should be put to him. It was observed: -

> 29. The High Court was, in our opinion, wrong in concluding that there was the absence of reasonable and probable cause because the action, in view of the notification of the Central Government, was unauthorised or illegal. Illegality does not by itself lead to such a conclusion. Further, there is no truth in the appellant's case that on 1-10-1977, at the time of seizure, he informed Defendants 2 and 3 about the gazette notification. The point is that such an assertion was not made even in the bail application moved after arrest. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, we do not find sufficient pleading on this aspect. In any case, we find that no question was put when the 2nd defendant was cross-examined. As pointed out by ***Sarkar on Evidence*** (15th Edn., 1999, Vol. 2, p. 2179) in the context of Section 138 of the Evidence Act,
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> > "Generally speaking, when cross-examining, a party's counsel should put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share."

23. This position was reiterated in ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268; 2016 SCC OnLine SC 435***, wherein it was observed at page 294: -

> "**15.** Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to

the factum of execution of the sale deed; PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure; one is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906]***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. The party is required to put his version to the witness. If no such questions are put, the Court will presume that the witness's account has been accepted, as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***]

16. In ***Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60]***, it has been laid down that the matters sworn to by one party in the pleadings, not challenged either in pleadings or cross-examination by the other party, must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359]*** has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court in ***Kuwarlal Amritlal v. Rekhlal Koduram [Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83]*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to

> challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court *in* ***Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683]*** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

24. Therefore, learned Courts below had rightly held that the plea taken by the accused regarding the repayment of the loan was not acceptable.

25. Once the accused admitted the taking of a loan of ₹5,00,000 /- and had failed to prove the repayment of any loan amount, the accused was liable to pay money to the complainant. Hence, the plea taken by the accused that the cheque was issued by him as a security will not help him. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456*** that the accused is liable for the dishonour of the cheque even if the cheque is issued towards security. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to

> the complainant as security, and on this ground, the criminal revision petition is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act, 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act, 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque, Ext. C-1, that the cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions of Section 138 of the Negotiable Instruments Act, 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

26. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, 2016(10) SCC 458,*** that issuing a cheque toward security will also attract the liability for the commission of an offence punishable under Section 138 of the NI Act. It was observed: -

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If, on the date of the cheque, liability or*

debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.

11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in ***Indus Airways (supra)*** is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for the discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of ***Indus Airways (supra)***, where the purchase order had been cancelled, and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for the discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature, where the cheque was for repayment of a loan instalment which had fallen due, though such a deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a

> transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.
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> 13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court." (Emphasis supplied)

27. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If, in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of

the cheque would be entitled to present the same. On such a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security ', cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the NI Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note', and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security ', the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstances stated above, if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

28. Therefore, the accused cannot escape from the liability by taking a plea that he had issued the cheque as security.

29. There was no other evidence to rebut the presumption attached to the cheque and learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

30. Chander Bhushan (CW1) stated that the cheque was presented before the bank and it was dishonoured with an endorsement "funds insufficient". His statement is duly corroborated by the cheque return memo (Ext.CW1/D). It was laid down by the Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, *(2010) 3 SCC 83; (2010) 1 SCC (Civ) 625; (2010) 2 SCC (Cri) 1; 2010 SCC OnLine SC 155,*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> "**24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable."

31. In the present case, the accused did not claim that he had sufficient funds in his account, and the cheque was wrongly dishonoured by the bank. Therefore, learned Courts below had rightly held that the cheque was dishonoured, with an endorsement 'funds insufficient'.

32. Chander Bhushan (CW1) stated that the complainant had issued a notice to the accused asking him to pay the money. The notice was duly served upon the accused. This is duly corroborated by the information regarding the registered AD (Ext.CW1/K). Therefore, the notice was duly served upon the accused.

33. In any case, it was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post can, within 15 days of receipt of summons from the court in respect of the complaint under*

> *Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court, along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act*. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act." (Emphasis supplied)

34. The accused did not claim that he had repaid the money to the complainant, and it was duly proved on record that the accused had failed to repay the amount despite the receipt of the notice.

35. Therefore, it was duly proved on record that the accused had issued a cheque in the complainant's favour to repay the loan taken by him, which was dishonoured with an endorsement "funds insufficient". The complainant had issued a notice to the accused which was duly served upon him, and the accused had failed to repay the money. Therefore, all the

ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied and learned Trial Court had rightly convicted the accused.

36. Learned Trial Court had sentenced the accused to undergo simple imprisonment for 3 months and pay a fine of ₹7,10,000/-. 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."

37. Considering the nature of the offence, the sentence of three months cannot be said to be excessive.

38. Learned Trial Court had ordered the accused to pay a fine of ₹7,10,000/-, out of which ₹7,05,000/- was ordered to be paid to the complainant as compensation. The cheque was issued

on 03.07.2021 for ₹6,00,000/-. The sentence was imposed on 25.10.2024 and compensation of ₹7,05,000/- was awarded, which means that only compensation of ₹1,05,000/- was awarded to the complainant. The complainant lost the money that it would have gained by extending the loan to other persons. The complainant had to engage an Advocate to prosecute the complaint before the learned Trial Court. Therefore, it was entitled to be compensated for the loss sustained by it. 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*]"

39. It was submitted that the learned Trial Court erred in awarding the amount of ₹5,000/- to the State; this submission cannot be accepted. The learned Trial Court had imposed a fine upon the accused, and the learned Trial Court had discretion to order the payment of compensation to any person who was found entitled to it as per Section 357 of the CrPC; otherwise, the fine is payable to the State. Learned Trial Court held that the complainant had sustained loss in the present transaction and the compensation was ordered to be paid to the complainant. In these circumstances, the State would have been entitled to the balance of the fine amount, and there is no infirmity in awarding the fine to the State.

40. No other point was urged.

41. In view of the above, the present revision fails, and it is dismissed; so also the pending application(s), if any, also stand disposed of.

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

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

(Rakesh Kainthla)
Judge

29th September, 2026
(Nikita)