IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 356 of 2015
Reserved on: 07.10.2026
Date of Decision: 14.10.2026.

Saleem Khan ...Petitioner

Versus

Sabri Begum ...Respondent

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

For the Petitioner	:	Mr Sanjeev Kuthiala, Senior Advocate with Ms Tamanna Sharma, Advocate.
For the respondent/State	:	Mr Jagan Nath, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 11.06.2015 passed by learned Additional Sessions Judge-II, Solan, H.P. (learned Appellate Court) vide which the judgment of conviction dated 11.03.2011 and order of sentence dated 19.03.2011 passed by learned Judicial Magistrate First Class, Kasauli, District Solan, H.P. (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the*

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

same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused had good relations with the complainant. The accused borrowed ₹14,00,000/- from the complainant and promised to repay it within 1 month. The complainant lent ₹14,00,000/- to the accused on 27.08.2007. The accused handed over a cheque on 27.09.2007 for ₹14,00,000/- to repay the amount. The complainant presented the cheque before his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused asking her to pay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but the accused failed to repay the amount. Hence, the complaint was filed before the learned Trial Court for taking action against the accused as per the law.

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

4. The complainant examined himself (CW1) to prove his complaint.

5. The accused, in her statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the complainant's case in its entirety. She stated that the complainant had misused the cheque handed over by her to some other person because of enmity. She examined Jagat Singh Rana (DW1) to prove her defence.

6. Learned Trial Court held that the complainant's version that he had advanced money to the accused and that the accused had issued a cheque to repay the amount was believable. The cheque was dishonoured with endorsement “insufficient funds”. The complainant issued a notice to the accused asking her to repay the money within 15 days of the receipt of the notice. The notice was duly served upon the

accused, but she failed to repay the money. Therefore, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced her to undergo simple imprisonment for 2 years and pay compensation of ₹50,000/-.

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-II Solan, District Solan, H.P. (learned Appellate Court). The learned Appellate Court held that the complainant had presented the cheque twice and had issued notice twice, which is not permissible, as the cheque can be presented once and notice can be issued once. Reliance was placed upon the judgment of the Hon'ble Supreme Court of India in ***Sadanandan Bhadran vs. Madhavan Sunil Kumar (1998) 6 SCC 514*** and other judgments in support of this conclusion. The complainant's testimony that he had advanced a huge amount of ₹14,00,000/- to the accused was highly improbable. The complainant had ₹50,000/- and ₹1,00,000/- in his account. He had not produced any proof of the financial capacity. The learned Trial Court erred in holding that the complainant's version was believable. The judgment

and order passed by the learned Trial Court were not sustainable. Hence, the learned Appellate Court allowed the appeal and set aside the judgment and order passed by the learned Trial Court.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the complainant has filed the present revision asserting that the learned Appellate Court erred in acquitting the accused. The judgment of ***Sadanandan Bhadran*** (supra) has been overruled by ***MSR Leathers vs. S. Palaniappan and another (2013) 1 SCC 177,*** and the learned Appellate Court had failed to take notice of this judgment. The cheque carried with it a presumption that it was issued for consideration, and the burden was upon the accused to rebut the presumption. The complainant specifically stated that he was running a shop. He had sold a vehicle and had money with him to lend to the accused. The learned Appellate Court failed to notice these averments. Therefore, it was prayed that the present revision be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Sanjeev Kuthiala, learned Senior Advocate, assisted by Ms Tamanna Sharma, learned counsel for the petitioner/complainant and Mr Jagan Nath, learned counsel for the respondent/accused.

10. Mr Sanjeev Kuthiala, learned Senior Advocate for the petitioner/complainant, submitted that the learned Appellate Court erred in setting aside the well-reasoned judgment passed by the learned Trial Court. The learned Appellate Court relied upon the judgment of ***Sadanandan Bhadran*** (supra), but this judgment was overruled by the Hon'ble Supreme Court in ***MSR Leathers*** (supra). The learned Appellate Court failed to take notice of the judgment of the Hon'ble Supreme Court in ***MSR Leathers*** (supra). The cheque carries with it a presumption that it was issued for consideration, and the complainant is not required to prove his financial capacity. Learned Appellate Court erred in holding that the complainant had no financial capacity to lend the amount. Therefore, he prayed that the present revision be allowed and the judgment passed by the Learned Appellate Court be set aside. He relied upon the following judgments in support of his submissions:

1. *MSR Leathers vs. S. Palaniappan and another (2013) 1 SCC 177;*
2. *MSR Leathers vs. S. Palaniappan and another (2013) 10 SCC 568;*
3. *Kamlesh Kumar vs. State of Bihar and another (2014) 2 SCC 424;*
4. *Mahesh Kumar (Dead) by LRs. cs. Vinod Kumar and others (2012) 4 SCC 387.*

11. Mr Jagan Nath, learned counsel for the respondent/accused, submitted that the accused has a right to challenge the complainant's financial capacity and once such a challenge has been laid, the burden is upon the complainant to prove that he had the financial capacity. The cross-examination of the complainant has made his financial capacity suspect, and the learned Appellate Court had rightly acquitted the accused. Therefore, he prayed that the present revision be dismissed. He relied upon the following judgments in support of his submission.

1. *Prem Chand Vijay Kumar vs. Yashpal Singh and another (2005) 4 SCC 417;*
2. *S.L. Constructions and another vs. Alapati Srinivasa Rao and another (2009) 1 SCC 500;*
3. *Tameeshwar Vaishnav vs. Ramvishal Gupta (2010) 2 SCC 329; and*
4. *Sadanandan Bhadran vs. Madhavan Sunil Kumar (1998) 6 SCC 514*

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

13. The present revision has been filed against an acquittal. It was laid down in ***Mahabir v. State of Haryana*, *(2025) 11 SCC 361: 2025 SCC OnLine SC 184*,** that the High Court can hear a revision against an order of acquittal; however, it cannot convert an acquittal into a conviction. It was observed at page 378: -

> ***"Precedents explaining the position of law***
>
> **38.** This Court in ***Bindeshwari Prasad Singh v. State of Bihar [Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650: 2002 SCC (Cri) 1448]***, laid down that there is a limit on the powers of the High Court as a Revisional Court, prohibiting it from converting a finding of acquittal into one of conviction. Para 12 reads thus: (SCC pp. 654-55)
>
> > "*12.* We have carefully considered the material on record, and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401, in terms, provides that nothing in Section 401 shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal

into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See ***D. Stephens v. Nosibolla [D. Stephens v. Nosibolla, 1951 SCC 184], K. Chinnaswamy Reddy v. State of A.P. [K. Chinnaswamy Reddy v. State of A.P., 1962 SCC OnLine SC 32: AIR 1962 SC 1788], Akalu Ahir v. Ramdeo Ram [Akalu Ahir v. Ramdeo Ram, (1973) 2 SCC 583: 1973 SCC (Cri) 903], Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu [Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu, (1975) 4 SCC 477: 1975 SCC (Cri) 543]*** and ***Mahendra Pratap Singh v. Sarju Singh [Mahendra Pratap Singh v. Sarju Singh, 1967 SCC OnLine SC 187: AIR 1968 SC 707]*** .)"

39. This Court in ***Joseph Stephen v. Santhanasamy [Joseph Stephen v. Santhanasamy, (2022) 13 SCC 115]***, laid down that on a plain reading of sub-section (3) of Section 401CrPC, it has to be held that sub-section (3) of Section

401CrPC prohibits/bars the High Court from converting a finding of acquittal into one of conviction. Para 10 reads thus: (SCC p. 125)

> "*10*. Applying the law laid down by this Court in the aforesaid decisions and on a plain reading of sub-section (3) of Section 401CrPC, it has to be held that sub-section (3) of Section 401CrPC prohibits/bars the High Court from converting a finding of acquittal into one of conviction. Though, as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure, etc., however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial court and/or the first appellate court, as the case may be."

40. This Court in ***Joseph Stephen [Joseph Stephen v. Santhanasamy, (2022) 13 SCC 115]***, holds that first, the High Court has to pass a judicial order to treat an application for revision as a petition of appeal. The High Court has to pass a judicial order because sub-section (5) of Section 401CrPC provides that if the High Court is satisfied that such revision application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do. While treating the application for revision and dealing with the same as a petition of appeal, the High Court has to record the satisfaction as provided under sub-section (5) of Section 401CrPC. Para 14 reads thus: (SCC p. 126)

> "*14*. Now so far as the power to be exercised by the High Court under sub-section (5) of Section 401CrPC, namely, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly, is concerned, firstly, the High Court has to pass a judicial order to treat the application for revision as a petition of appeal. The High Court has to pass a judicial order because sub-

section (5) of Section 401CrPC provides that if the High Court is satisfied that such revision application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do. While treating the application for revision as a petition of appeal and dealing with the same accordingly, the High Court has to record the satisfaction as provided under sub-section (5) of Section 401CrPC. Therefore, where under the CrPC an appeal lies, but an application for revision has been made to the High Court by any person, the High Court has jurisdiction to treat the application for revision as a petition of appeal and deal with the same accordingly as per sub-section (5) of Section 401CrPC, however, subject to the High Court being satisfied that such an application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do and for that purpose the High Court has to pass a judicial order, may be a formal order, to treat the application for revision as a petition of appeal and deal with the same accordingly."

41. This Court in ***Ganesha v. Sharanappa [Ganesha v. Sharanappa, (2014) 1 SCC 87 : (2014) 1 SCC (Cri) 8]***, in para 11, clarifies that: (SCC p. 91)

... Interference with the order of acquittal in revision is called for only in exceptional cases — where there is manifest error of law of procedure resulting in miscarriage of justice, and where the acquittal has been caused by shutting out evidence which otherwise ought to have been considered or where material evidence which clinches the issue has been overlooked. In such exceptional cases, the High Court can set aside an order of acquittal, but it cannot convert it into one of conviction. The only course left to the High Court in such exceptional cases is to order retrial.

42. This Court in ***Santhakumari v. State of T.N. [Santhakumari v. State of T.N., (2023) 15 SCC 440 : (2025) 2 SCC (Cri) 790]***, laid down that the order passed by the High Court is in the teeth of the provisions of sub-section (2) of Section 401CrPC as interpreted by this Court in ***Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218]***. Paras 5 and 6 respectively read thus: (***Santhakumari case [Santhakumari v. State of T.N., (2023) 15 SCC 440 : (2025) 2 SCC (Cri) 790]***, SCC pp. 441-42)

> "5. Having considered the submissions, since it is not in dispute that the proposed accused were not served notice of the revision proceedings, the order passed by the High Court is in the teeth of the provisions of sub-section (2) of Section 401 of the Code as interpreted by this Court in ***Manharibhai Muljibhai Kakadia [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218]***.
>
> 6. The decision in ***Manharibhai Muljibhai Kakadia [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218]*** has also been followed in ***Bal Manohar Jalan [Bal Manohar Jalan v. Sunil Paswan, (2014) 9 SCC 640 : (2014) 5 SCC (Cri) 256]***, wherein it was held: (SCC p. 644, para 9)
>
> > '9. In the present case, a challenge is laid to the order dated 4-3-2009 at the instance of the complainant in the revision petition before the High Court, and by virtue of Section 401(2) of the Code, the accused mentioned in the first information report get the right of hearing before the Revisional Court, although the impugned order [**Sunil Paswan v. State of Bihar, 2011 SCC OnLine Pat 600**] therein was passed without their participation. The appellant, who is an accused person, cannot be deprived of hearing on the face

of the express provision contained in Section 401(2) of the Code and, on this ground, the impugned order [***Sunil Paswan v. State of Bihar, 2011 SCC OnLine Pat 600]*** of the High Court is liable to be set aside, and the matter has to be remitted.' "

43. The decision in ***Manharibhai Muljibhai [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218]*** was referred to and relied upon in ***Bal Manohar Jalan v. Sunil Paswan [Bal Manohar Jalan v. Sunil Paswan, (2014) 9 SCC 640 : (2014) 5 SCC (Cri) 256]***, wherein it was inter alia, held that: (***Bal Manohar Jalan case [Bal Manohar Jalan v. Sunil Paswan, (2014) 9 SCC 640 : (2014) 5 SCC (Cri) 256***], SCC p. 644, para 9)

"9. ... The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order [***Sunil Paswan v. State of Bihar, 2011 SCC OnLine Pat 600***] of the High Court is liable to be set aside...."

44. This Court in ***Nandini Satpathy v. P.L. Dani [Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424: 1978 SCC (Cri) 236]*** held that the right to consult an advocate of choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied such right. The spirit and ethos of Article 22(1) is that it is fundamental to the rule of law that the service of a lawyer shall be available for consultation to the accused person under circumstances of near custodial interrogation. Moreover, the right against self-incrimination is best practised and best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyers' presence is a constitutional claim in some circumstances of our country, and in the context of Article 20(3), is an assurance of awareness and observance of the right to silence.

> **45.** Thus, it is as clear as a noonday that the High Court committed an egregious error in reversing the acquittal and passing an order of conviction in exercise of its revisional jurisdiction and that too without affording any opportunity of hearing to the appellants herein."

14. The present revision has to be decided as per the parameters laid down in the aforesaid judgment.

15. Learned Trial Court held that the successive presentation of the cheque and issuance of the notices are not permissible and the complaint was not maintainable. Reliance was placed upon the judgment of Hon'ble Supreme Court in ***Sadanandan Bhadran*** (supra); however, this judgment was overruled by Hon'ble Supreme Court in ***MSR Leathers vs. S. Palaniappan and another (2013) 1 SCC 177,*** and it was held that there is nothing in the NI Act to prevent the repeated presentation of the cheque or issuance of successive notices. It was observed:

> "**33.** Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default, which was followed by a statutory notice and a failure to pay, had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made

> in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or any other similar reason. There is, in our opinion, no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.
>
> *****
>
> **35.** In the result, we overrule the decision in the ***Sadanandan case [(1998) 6 SCC 514: 1998 SCC (Cri) 1471]*** and hold that the prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in light of the observations made above."

16. This position was reiterated in ***Kamlesh Kumar v. State of Bihar (2014) 2 SCC 424,*** and it was held that the complainant could present the cheque repeatedly and issue the notices successively. It was observed:

> "**8.** In the present case, the complainant had not filed the complaint on the dishonour of the cheque in the first instance, but presented the said cheque again for

> encashment. This right of the complainant in presenting the same cheque for the second time is available to him under the aforesaid provision."

17. This position was reiterated 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,*** wherein it was observed at page 203:

> "**7.** Having regard to the object of Section 138 of the Negotiable Instruments Act, a prosecution based on a second or successive default in payment of the cheque amount is not impermissible simply because no statutory notice had been issued after the first default and no proceeding for prosecution had been initiated. As held by this Court in ***MSR Leathers v. S. Palaniappan [MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177: (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458]***, there is no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second time or successive times."

18. A similar view was taken in ***MSR Leathers vs. S. Palaniappan and another (2013) 10 SCC 568*** and ***Mahesh Kumar*** (supra).

19. The judgments in ***Tameeshwar Vaishnav*** (supra), ***S.L. Constructions and another*** (supra), ***Prem Chand Vijay Kumar*** (supra) cannot be followed in view of the subsequent judgment

in ***MSR Leathers*** (supra), which had specifically overruled ***Sadanandan Bhadran*** (supra).

20. Thus, learned Appellate Court erred in holding that it was impermissible to repeatedly present the cheque and issue the notice to the accused.

21. The complainant stated in his cross-examination that he was running a medical store at Baddi which was registered. He maintained the record regarding the sale made in the shop. He owned 10 bigha of land at Barotiwala. He had an account in Jogendra Cooperative Bank, Barotiwala. He had ₹50,000/- in his account located in Barotiwala and ₹1,00,000/- in the account in Baddi. He had sold a vehicle bearing registration No. HP-15-2123 in March 2007 for ₹3 lac to ₹3.5 lac. He filed an income tax return and could produce it before the Court.

22. The complainant's cross-examination makes his financial capacity highly doubtful. He himself admitted that his one account had ₹1,00,000/- and the other account had ₹50,000/-. He claimed that he had sold a vehicle for ₹3-3.5 lakhs. Even if all this amount is added together, it would be

₹5,00,000/-, insufficient to pay ₹14,00,000/- to the accused; hence, the learned Appellate Court was justified in doubting the complainant's financial capacity, and there is no infirmity in the approach of the learned Appellate Court.

23. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh Versus Narayan Dass Mahant (2022) 6 SCC 735*** that the accused has a right to demonstrate that the complainant did not have the financial capacity to advance the loan stated to have been advanced by him. It was observed: -

> "9....However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

24. It was held by the Hon'ble Supreme Court in ***Basalingappa Versus Mudibasappa (2019) 5 SCC 418,*** that where the financial capacity to pay ₹6,00,000/- was questioned and

there was no satisfactory reply, the accused had raised a probable defence. It was observed: -

> " 30. We are of the view that when evidence was led before the Court to indicate that apart from a loan of Rs. 6 lakhs given to the accused, within 02 years, an amount of Rs. 18 lakhs has been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. The court cannot insist on a person to lead negative evidence. The observation of the High Court that the trial court's finding that the complainant failed to prove his financial capacity for lending money is perverse cannot be supported. We fail to see how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence."

25. It was laid down by the Hon'ble Supreme Court in ***Dattatraya v. Sharanappa, (2024) 8 SCC 573; (2024) 3 SCC (Cri) 776: 2024 SCC OnLine SC 1899*** that when the financial capacity of the accused is not established, the accused is entitled to acquittal. It was observed:

> **"29.**...Furthermore, there was no financial capacity or acknowledgement in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further, the appellant has not been able to show as to when the said loan was advanced in favour of the respondent, nor has he been able to explain as to how a cheque issued by the respondent, allegedly in favour of Mr Mallikarjun, landed in the hands of the instant holder, that is, the appellant."

26. A similar view was taken in ***John K. Abraham Versus***

Simon C. Abraham & Another (2014) 2 SCC 236, wherein it was held:-

> "9. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavy upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."

27. It was submitted that there is a presumption that the cheque was issued for consideration to discharge the debt/liability. However, this presumption is not absolute but is rebuttable, and the moment evidence is led, the presumption would stand rebutted. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275,*** that the presumption applies in the absence of evidence and disappears after the evidence is produced. It was observed:

> "38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:
>
> > "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but

> if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule'."

28. In the present case, the complainant's cross-examination made his financial capacity doubtful, and the presumption would be displaced.

29. Therefore, the learned Appellate Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with a reasonable view of the Court acquitting the accused, even if another view is possible.

30. No other point was urged.

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

32. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent is directed to furnish personal bond in the sum of ₹50,000/- with one surety of the like amount each to the satisfaction of the learned trial Court, which shall be effective for six months with a stipulation that

in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court

33. A copy of the judgment, along with the record of the learned Court below, be sent back forthwith.

(Rakesh Kainthla)
Judge

14th October, 2026
(Nikita)