IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 639 of 2026
Reserved on: 7.10.2026
Date of Decision: 27.10.2026.

Jagdish Sharma ...Petitioner

Versus

Dharam Pal ...Respondent

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

For the Petitioner : Mr. Rakesh Chaudhary, Advocate.

For the Respondent : Nemo.

Rakesh Kainthla, Judge

The petitioner has filed the present revision petition against the judgment dated 10.8.2026, passed by the learned Additional Sessions Judge, Kullu, District Kullu, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 4.4.2025 passed by the learned Judicial Magistrate First Class, Manali, District Kullu, H.P. (learned Trial Court) were upheld. *(The parties hereinafter shall be referred to in*

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

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

2. Briefly stated, the facts giving rise to the present petition 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 had friendly relations. The accused borrowed ₹2,00,000/- from the complainant in the last week of March 2019 for his urgent domestic needs. The accused assured to return the money within six months. The accused handed over a cheque of ₹2,00,000/- to the complainant to return the money taken by him. The complainant presented the cheque before his bank, but it was dishonoured with an endorsement of "insufficient funds." The complainant issued a legal notice to the accused on 26.10.2019, asking the accused to repay the money within 15 days of the receipt of the notice. The registered AD cover was returned with the endorsement that the addressee was not met. Hence, a 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 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) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that he had lost his bag containing signed blank cheques in Kunta Devi's house. The complainant misused the cheque. He did not produce any evidence.

6. The learned Trial Court held that the complainant's version that he had advanced money to the accused and the accused had issued a cheque for the repayment of the money was believable. The defence taken by the accused that he had lost a bag containing the signed cheques was not proved by any evidence. A cheque carries with it a presumption that it was issued for consideration to discharge a debt/liability. The cheque was dishonoured with an endorsement "insufficient funds," and

the notice was returned undelivered, which is deemed to be served. The accused had failed to repay the money despite the deemed receipt of the notice. 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 three months and pay compensation of ₹3,00,000/- 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 complainant's version was believable that he had advanced money to the accused and the accused had issued a cheque for the repayment of the money. The accused had failed to prove the defence taken by him. The cheque was dishonoured with an endorsement "insufficient funds." The notice was sent to the accused, but it was returned with the report that the addressee was not found at the address despite repeated attempts, which

amounts to deemed service. The accused had failed to repay the money. The learned Trial Court had rightly convicted and sentenced the accused, and no interference was required with the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Courts below, the accused has filed the present revision, asserting that the admission made by the complainant in his cross-examination that he had met the accused in 2019 was a material circumstance. Jiwan Lal, at whose instance the money was paid, was not examined. No document was produced regarding the payment of ₹2,00,000/- to the accused. No witness was produced to prove the advancing of the money. The learned Courts erred in applying the presumption. The plea taken by the accused that he had lost his signed cheque book was highly probable, and the learned Trial Court erred in rejecting this plea. The learned Appellate Court had failed to independently evaluate the evidence. 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. Mr Rakesh Chaudhary, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the evidence on record. The complainant had not produced any evidence to show that he had advanced ₹2,00,000/- to the accused. The defence taken by the accused that he had misplaced the bag containing the signed cheque book was highly probable, and the learned Courts below erred in rejecting it. The notice was not served upon the accused. The learned Trial Court had imposed a harsh sentence upon the accused. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

11. 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:

> **"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.
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> (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.

12. 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;
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> (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.

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

14. The complainant, Khem Raj (CW-1), reiterated the contents of the complaint in his proof affidavit (Ex. CW-1/A). He stated in his cross-examination that he had met the accused in the year 2019. He had not executed any agreement with the accused. He denied that his brother-in-law Jiwan Lal had given the cheque to him. He denied that the accused had lost his cheque book in the house of his sister-in-law. He denied that the accused had not borrowed any money from him.

15. The accused stated in his statement recorded under Section 313 of CrPC that he had misplaced a bag containing signed cheques and other documents. Therefore, the accused did not dispute his signatures on the cheques. 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 admission of the complainant's signature without admitting the execution of the

cheque 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.

16. 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***].

17. 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.

18. Therefore, the learned Courts below had rightly held that the cheque carried a presumption that it was issued for consideration to discharge the debt/liability, and the burden was upon the accused to rebut the presumption.

19. The accused claimed that he had misplaced a bag containing signed cheques and other documents. He has not produced any evidence to corroborate this version. The learned Courts below had rightly held that he had not filed any complaint before the police and had not informed the bank about the loss of the cheque. Any prudent person finding that he had lost a signed cheque book would have approached the bank to stop payment of the cheque or the Police Station to inform the police about the

loss of the cheque. However, the accused had not done so, and this plea was rightly rejected by the learned Courts below.

20. The accused did not step into the witness box to prove his version. He relied upon his statement recorded under Section 313 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 CrPC was not sufficient to rebut the presumption, and the accused cannot derive any advantage from it.

22. It was submitted that the complainant has not produced any evidence to prove the advancing of the loan to the accused, and the complainant's version is doubtful. 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 would obviate the requirement to prove the existence of consideration. It was observed:

> "**20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due, and the dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

23. 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).*

24. 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."

25. Therefore, the complainant's version cannot be doubted because he had not produced any evidence to prove the advancing of the loan to the accused.

26. The statement of the complainant is consistent, and there is nothing in his cross-examination to show that he is making a false statement. The learned Courts below have

concurrently held that the testimony of the complainant is reliable, and there is no infirmity in this finding recorded by the learned Courts below.

27. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This is corroborated by the memo of dishonour (Ext. CW1/C). 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."

28. 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'.

29. The complainant stated that he had issued a notice to the accused, which was returned unclaimed. This is duly corroborated by the registered-AD (Ext. CW1/F), in which it was mentioned that the addressee was not found at the address despite repeated attempts. It was laid down by the Hon'ble Supreme Court in ***D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456,*** that when a notice has been returned with the report that the addressee was not available or the premises were locked, a presumption arises that notice was duly served and the burden would be upon the accused to show that the report is incorrect. It was observed at 462:

> "**14.** If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly, if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him, and consequently, he can never be prosecuted. There is good authority to support the proposition that once the complainant, the payee of the cheque, issues notice to the drawer of the cheque, the cause of action to

file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice, which may be returned with an endorsement that the addressee is not available at the given address.

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18. This Court noted the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case, the notice was returned as "unclaimed" and not as refused. The Court posed the question, "Will there be any significant difference between the two so far as the presumption of service is concerned?" Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. This Court dismissed the appeal preferred by the drawer, holding that where the notice is returned by the addressee as unclaimed, such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (*c*) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the

> appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. The aforesaid decision is significant for two reasons. Firstly, it was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

30. It was laid down by the Hon'ble Supreme Court of India in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that when a notice is returned unclaimed, it is deemed to be served. It was observed:

> "8. Since in ***Bhaskaran's case (supra)***, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service."

31. This position was reiterated in ***Priyanka Kumari vs. Shailendra Kumar (13.10.2023- SC Order): MANU/ SCOR/ 133284/ 2023,*** wherein it was observed:

> "As it was held by the Hon'ble Supreme Court in ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 Supreme Court Cases 510***, that when notice is returned as 'unclaimed', it shall be deemed to be duly served upon the addressee, and it is a proper service of notice. In the case of ***Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014) 12 SCC 685 (2014)***, the Hon'ble Court, while interpreting Section 27 of the General Clauses Act, 1897 and also Section 114 of the Evidence Act, 1872, held as under: -
>
> "Section 114 of the Evidence Act, 1872, enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that, despite the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

32. A similar view was taken in ***Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458,*** wherein it was observed:

> **"13.** Section 27 of the General Clauses Act, 1887, deals with service by post:
>
> > "27. **Meaning of Service by post.**-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the

service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

14. The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:

14.1 In ***Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264,*** which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*"

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881, it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: ***C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555***]

14.3 The findings in ***C.C. Alavi*** (supra) were followed in Vishwabandhu ***v. Srikrishna (2021) 19 SCC 549***. In this case, the summons issued by the Registered AD post was received back with the endorsement "refusal". In accordance with

> Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.
>
> 14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506***; and ***V.N. Bharat v. DDA (2008) 17 SCC 321.***

33. In the present case, the accused has not proved that he was not responsible for non-service; therefore, the learned Courts below had rightly held that the notice was deemed to be served upon the accused.

34. 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)

35. 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 deemed receipt of the notice.

36. Therefore, it was duly proved on record that the accused had issued a cheque to discharge his liability, which was dishonoured with an endorsement "insufficient funds", and the accused failed to repay the money despite the deemed receipt of a notice of demand. Hence, all the ingredients of the commission

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

37. The learned Trial Court had sentenced the accused to undergo simple imprisonment for three months and pay compensation of ₹3,00,000/-. 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."

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

39. In the present case, the cheque was issued on 20.08.2019, and the learned Trial Court imposed the sentence on 4th April 2025 after the lapse of nearly six years. 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***]"

40. The learned Trial Court had awarded compensation of ₹1,00,000/- on the cheque amount of ₹2,00,000/-, which cannot be said to be excessive, requiring any interference by this Court.

41. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

27th October, 2026
(Chander)