

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 137 of 2012****Reserved on: 16.07.2026****Date of Decision: 27.7.2026**

Kusum Raj

...Petitioner

Versus

Ram Chander (since deceased)
through his LRs

...Respondents

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

For the Petitioner	:	Mr Malay Kaushal, Advocate, Legal Aid Counsel.
For Respondents	:	Mr Sandeep Sharma, Advocate, for respondents No.1(a) and 1(b)
	:	Mr Ajit Sharma, Deputy Advocate General, for respondent No.2/State.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 31.05.2012, passed by the learned Sessions Judge, Mandi, District Mandi, H.P. (learned Appellate Court), vide which the judgment of conviction dated 08.05.2008 and order of sentence

dated 09.05.2008, passed by the learned Additional Chief Judicial Magistrate, Court No.1, Mandi (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).*

2. Briefly stated, the facts giving rise to the present revision are that the complainant had 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 (NI Act). It was asserted that the complainant was selling electronic goods at Jail Road, Mandi Town, District Mandi, H.P. in the name and style of M/S Rama Electronics. The accused had purchased the goods worth ₹1,65,525/- from the complainant on credit. He issued a cheque of ₹1,65,525/- to repay the money. The complainant presented the cheque at his bank, but it was dishonoured with an endorsement 'exceeds arrangement and drawer's address differ'. The complainant issued a notice to the accused, asking him to repay 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

money. Hence, the complaint was filed before the learned trial Court against the accused, seeking action against him as per law.

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

4. The complainant examined himself (CW1), Raj Kumar Sharma (CW-2), and Ved Kumar (CW3) 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 issued a blank cheque in favour of the complainant's son. He had no dealings with the complainant and had not taken any material from him. He admitted that he had received the notice. The Bank Manager had telephoned him, and he replied that payment was not to be made. He was liable to pay the money but not the money mentioned in the cheque. He examined himself (DW-1).

6. Learned Trial Court held that the accused had not disputed his signatures on the cheque and the issuance of the cheque. Therefore, a presumption arose that the cheque was

issued for consideration to discharge the debt/liability. The statement of the accused was not sufficient to rebut the presumption attached to the cheque. The plea taken by him that he had a dealing with a complainant's son and not with a complainant was not proved. The cheque was dishonoured with an endorsement 'exceeds arrangement and drawer's address differ', which attracted the provisions of Section 138 of the NI Act. The notice was duly served upon the accused, and the accused had not repaid the money to the complainant. 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 six months and pay a 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 Sessions Judge, Mandi, District Mandi, H.P. (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. The complainant was the sole proprietor of M/s Rama Electronics. The accused admitted that he used to deal with M/S Rama Electronics. The cheque carried with it a presumption that it was issued for consideration to discharge debt/liability and the accused failed to rebut the presumption. There was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the material on record. The statement made by the accused under Section 313 of the CrPC cannot form the sole basis for conviction. The presumption under Section 118(a) and Section 139 of the NI Act is rebuttable, and the material on record was sufficient to rebut the presumption. Learned Courts below erred in holding that the presumption was not rebutted. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9 I have heard Mr Malay Kaushal, learned Legal Aid Counsel, for the petitioner/accused, Mr Sandeep Sharma, learned counsel for the respondents 1(a) and 1(b), and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent No.3/State.

10. Mr Malay Kaushal, learned Legal Aid Counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The plea taken by the accused that he had issued a blank signed cheque in favour of the complainant's son was highly probable. The complainant had not produced the bills to show the amount due to him, and the learned Courts below erred in relying upon the presumption to hold that the cheque was issued for consideration. The accused can rebut the presumption by preponderance of probability, and the evidence of the accused and cross-examination of the complainant was sufficient to rebut the presumption. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon judgments of the Hon'ble Supreme Court in *Sumeti Vij v. Paramount Tech Fab Industries (2022) 15 SCC 689* and *Rajesh Jai vs. Ajay Singh (2023) 10 SCC 148* in support of his submissions.

11. Mr Sandeep Sharma, learned counsel for respondent No.1(a) and 1(b), submitted that the issuance of the cheque was not disputed, and a presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The burden would shift upon the accused to rebut the presumption. The accused had failed to rebut the presumption by leading satisfactory evidence. The Court should not interfere with the finding of fact recorded by the learned Courts below while exercising the revisional jurisdiction. Therefore, he prayed that the present revision be dismissed. He relied upon the judgment of the Hon'ble Supreme Court in *Kishan Rao v. Shankargouda* (2018) (8) SCC 165 in support of his submission.

12. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent No.2/State submitted that the dispute is between the private parties and the State has no submissions to make.

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

14. It was laid down by the Hon'ble Supreme Court in *Malkeet Singh Gill v. State of Chhattisgarh*, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that a revisional

court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207-

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in a criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction to satisfy 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. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

15. This position was reiterated in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an

error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been

framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

16 It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. 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: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy 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 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 amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material; the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or

capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

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 13, wherein it was observed at page 205:

“16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. 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. The answer to the first question is, therefore, in the negative.”

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

“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 [See: *Bir Singh*(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse 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.

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.

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

20. The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in *Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul*, 2025 SCC OnLine SC 2019 as under: -

“5.1.1. In *K.R. Indira v. Dr. G. Adinarayana* (2003) 8 SCC 300, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid, demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque, within 15 days of the receipt of the notice.”

21. The accused Kusum Raj (DW1) stated that he had dealings with Khem Chand. He used to take electronic items from Rama Electronics, and he was to pay ₹1,50,000/-. He issued a cheque of ₹1,50,000/-, in favour of Rama Electronics, but it was dishonoured by the bank because of overwriting. Khem Chand demanded another cheque, and he issued a cheque of ₹1,65,525/- in favour of Rama Electronics. The cheque was dishonoured because he had insufficient funds in his account to honour the cheque. He paid ₹1,00,000/- in cash to Rama Electronics, and a receipt was signed by Khem Chand. He had also paid ₹50,000/- by means of two bank drafts of ₹25,000/- each.

22. The statement of the accused shows that he had dealings with Rama Electronics and he had issued a cheque of ₹1,65,525/- in favour of Rama Electronics. The accused claimed that he had dealings with Khem Chand and not with the complainant. However, that is not material because Ved Kumar Sharma (CW-3) specifically stated that Ram Chand Sharma, the complainant, was the sole proprietor of Rama Electronics. Therefore, the issuance of the cheque and signatures on the cheque were not disputed.

23. Learned Courts below have rightly held that once the issuance of the cheque and the signatures on the cheque were admitted, a presumption would be triggered under Section 118(a) and 139 of the NI Act that the cheque was issued for consideration to discharge the debt/liability. It was laid down by the Hon'ble Supreme Court in *APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724*, that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

“7.2. What is emerging from the material on record is that the issuance of a cheque by the accused and the signature of the accused on the said cheque are not disputed by the accused. The accused has also not disputed that there were transactions between the parties. Even as per the statement of the accused, which was recorded at the time of the framing of the charge, he has admitted that some amount was due and payable. However, it was the case on behalf of the accused that the cheque was given by way of security, and the same has been misused by the complainant. However, nothing is on record that in the reply to the statutory notice, it was the case on behalf of the accused that the cheque was given by way of security. Be that as it may, however, it is required to be noted that earlier the accused issued cheques which came to be dishonoured on the ground of “insufficient funds” and thereafter a fresh consolidated cheque of ₹9,55,574 was given which has been returned unpaid on the ground of “STOP PAYMENT”. Therefore, the cheque in question was

issued for the second time. Therefore, once the accused has admitted the issuance of a cheque which bears his signature, there is a presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act. However, such a presumption is rebuttable in nature, and the accused is required to lead evidence to rebut such a presumption. The accused was required to lead evidence that the entire amount due and payable to the complainant was paid.

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

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

24. The presumption under Section 139 of the NI Act was explained by the Hon’ble Supreme Court in *N. Vijay Kumar v. Vishwanath Rao N.*, 2025 SCC OnLine SC 873 as under:

“5. The NI Act raises two presumptions, one under Section 118 and the other in Section 139 thereof. The Sections read as under:

“118. Presumptions as to negotiable instruments.

— Until the contrary is proved, the following presumptions shall be made: —

(a) **of consideration:** —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

X X X

139. Presumption in favour of the holder. — It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

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

probable defence. This Court, through various pronouncements, has consistently clarified the nature and extent of these presumptions and the standard of proof required by the accused to rebut them. We may consider a few such pronouncements.

6.1. In *Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm* (2008) 7 SCC 655, this Court observed as under:

“17. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. In this connection, reference may be made to a decision of this Court in *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal* [(1999) 3 SCC 35]. In para 12 of the said decision, this Court observed as under: (SCC pp. 50-51)

“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. *The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who*

will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under the law to rely upon all the evidence led in the case, including that of the plaintiff as well. In cases where the defendant fails to discharge the initial onus of proof by showing the nonexistence of the consideration, the plaintiff would invariably be held entitled to the benefit of the presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence, as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its nonexistence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.”

From the above decision of this Court, it is pellucid that if the defendant is proved to have discharged the initial onus of proof showing that the existence of

consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who would be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. It is also discernible from the above decision that if the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of the presumption arising under Section 118(a) in his favour.” (Emphasis Supplied)

6.2. In *Kumar Exports v. Sharma Carpets* (2009) 2 SCC 513, this Court examined the presumptions raised by the N.I. Act, and held as follows:

“18. Applying the definition of the word “proved” in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made 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 negotiable instrument is either proved or admitted. *As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability.* A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19. The use of the phrase “until the contrary is proved” in Section 118 of the Act and use of the words “unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume”

and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that, under the particular circumstances of the case, the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. *To rebut the statutory presumptions, an accused is not expected to prove his defence beyond a reasonable doubt, as is expected of the complainant in a criminal trial.* The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently, would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. *To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and 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 they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence, and if the circumstances so relied upon are compelling, the burden may likewise shift again onto the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act, to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused also has an option to prove the nonexistence of consideration and debt or liability either by letting in evidence or, in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.” (Emphasis Supplied)

6.3. A three-Judge Bench of this Court in *Rangappa* (supra) had the occasion to consider Section 139 elaborately. The Court reiterated that where the signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability; however, this presumption is of a rebuttable nature and the onus is then on the accused to raise a probable defence. It was further stated that:

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of

the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses, and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence, and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

6.4. T.S. Thakur J., (as his lordship then was) in his supplementing opinion in *Vijay v. Laxman* (2013) 3 SCC 86, observed as under:

“20. The High Court has rightly accepted the version given by the respondent-accused herein. We say so for more than one reason. In the first place, the story of the complainant that he advanced a loan to

the respondent-accused is unsupported by any material, let alone any documentary evidence that any such loan transaction had ever taken place. So much so, the complaint does not even indicate the date on which the loan was demanded and advanced. It is blissfully silent about these aspects, thereby making the entire story suspect. We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 118 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court.”

6.5. This Court, in the case of *Baslingappa v. Mudibasappa* (2019) 5 SCC 418, summarised the principles on Sections 118(a) and 139 of the N.I. Act. The same is reproduced with profit as under:

“25. We, having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, now summarise the principles enumerated by this Court in the following manner:

25.1. Once the execution of a cheque is admitted, Section 139 of the Act mandates a presumption that

the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption, and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him, or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come into the witness box in support of his defence; Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come into the witness box to support his defence.”

6.6. Recently, a coordinate Bench of this Court in *Rajaram v. Maruthachalam* (2023) 16 SCC 125, through Gavai J., observed as under:

“27. It can thus be seen that this Court has held that once the execution of a cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has, however, been held that the presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. It has further been held that to rebut the presumption, it is open for the accused to rely on evidence led by him, or the accused can also rely on the materials submitted by the

complainant in order to raise a probable defence. It has been held that inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.”

7. The position of law, as is evident from the above, is clear.

25. Therefore, the Court has to start with the presumption that the cheque was issued for consideration to discharge the debt/liability and the burden would be upon the accused to rebut the presumption.

26. In the present case, the accused claimed that he had returned the amount by paying ₹1,00,000/- in cash and by the demand drafts of ₹25,000/-each. He relied upon the receipt (Mark ‘X’) to show the payment. This receipt is dated 24.10.2003, whereas the cheque was issued on 17.03.2004. Thus, the payment was made before the issuance of the cheque, and the payment cannot be construed to be towards the amount mentioned in the cheque. Thus, the learned courts below had rightly rejected the receipt (Mark-X).

27. The accused relied upon the certificate dated 08.03.2008, issued by Kangra Central Co-operative Bank, mentioning that the demand drafts of ₹ 25,000/- each were

purchased by the accused on 27.05.2004; this document does not show that the demand drafts were paid to Rama Electronics or were presented by Rama Electronics. Mere purchase of the demand drafts without any evidence of further delivery to Rama Electronics would not show that the amount was paid by the accused to Rama Electronics.

28. It was nowhere suggested to the complainant Ram Chand (CW-1) in his cross-examination that an amount of ₹1,00,000/- was paid in cash and two demand drafts of ₹ 25,000/- were handed over towards the payment. A party has a duty to put so much of the case to the witness as concerns him in his cross-examination. It was laid down by the Calcutta High Court in *A.E.G. Carapiet v. A.Y. Derderian*, 1960 SCC OnLine Cal 44, that the counsel is bound to put to each of his opponent's witnesses so much of his case as concerns his particular witness or in which that witness had any share. It was observed:

“9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of

justice because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining is that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.

10. On this point the most important and decisive authority is *Browne v. Dunn*, reported in (1893) 6 R 67. It is a decision of the House of Lords where Lord Herschell, L.C., Lord Halsbury, Lord Morris and Lord Bowen were all unanimous on this particular point. Lord Chancellor Herschell, at page 70 of the report, observed:

“Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness

you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses.”

11. Lord Halsbury, the other member of the House of Lords, at page 76 of the same report said:

“My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.”

12. In fact Lord Halsbury described the situation as a “perfect outrage” at page 77 of the said report. After quoting the evidence, the learned Lord said:

“My Lords, it seems to me that it would be a perfect outrage and violation of the proper conduct of a case at *Nisi Prius* if, after the learned counsel had declined to cross-examine the witness upon that evidence, it is not to be taken as a fact that witness did complain of the plaintiff's proceedings, that he did receive advice, that he went round to Mr. Dunn as a solicitor, and that he did sign that retainer, the whole case on the other side being that the retainer was a mere counterfeit proceeding and not a genuine retainer at all.”

13. The same view is expressed in the 13th Edition of *Odger on Pleading and Practice* at page 261 and the 9th Edition of *Phipson on Evidence* at pages 497-98.”

29. A similar view was taken in *Ravinder Kumar Sharma v. State of Assam*, (1999) 7 SCC 435: 1999 SCC OnLine SC 887, wherein it was held: -

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,

“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.”

30. This position was reiterated in *CBI v. Mohd. Parvez Abdul Kayyum*, (2019) 12 SCC 1: (2019) 4 SCC (Cri) 32: 2019 SCC OnLine SC 832, wherein it was observed:

155. It was also urged that Mohamed Parvez was produced at Civil Hospital at the time when the statement was recorded, rendering the confessional statement unreliable. No such question during his cross-

examination has been put to PW 21 as to the presence of Parvez Sheikh, A-9, in hospital at 10 a.m. A-9 was required to be produced before the Magistrate on 9-6-2003, i.e. within 48 hours as required under Section 32 of POTA. Neither did he state so in the written retraction of the confessional statement that he was at the time in the hospital when the confessional statement is said to have been recorded. It was necessary to discredit the recording of the confession by PW 21 to put it in the cross-examination and to seek his explanation. Cross-examination is not a matter of procedure but a matter of substance as held in *Maroti Bansi Teli v. Radhabai* [*Maroti Bansi Teli v. Radhabai*, 1943 SCC OnLine MP 128: AIR 1945 Nag 60], *Karnidan Sarda v. Sailaja Kanta Mitra* [*Karnidan Sarda v. Sailaja Kanta Mitra*, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683], *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] and *Jai Shankar Prasad v. State of Bihar* [*Jai Shankar Prasad v. State of Bihar*, (1993) 2 SCC 597: 1993 SCC (L&S) 646: AIR 1993 SC 1906; *Bhoju Mandal v. Debnath Bhagat*, AIR 1963 SC 1906].

31. Thus, the failure to put the payment to the complainant in his cross-examination will show that the accused had abandoned this version.

32. The statement of account of Rama Electronics (Ext.CW3/B) also does not show the deposit of the demand draft of ₹25,000/- in the year 2004. Thus, the version of the accused that the demand drafts of ₹25,000/- each were paid to Rama Electronics is not acceptable.

33. The accused Kusum Dass (DW-1) stated that Rama Electronics had promised free service to the customer, but no free service was provided. Hence, he had to spend ₹ 18,000/-. The defective material worth ₹30,000/- is lying with him. This part of the statement will not assist the accused, as this was not suggested to the complainant. No document was produced to show that free service was to be provided by Rama Electronics and not by the manufacturer. No proof of the payment of ₹18,000/- towards the free service was produced. The accused stated that he had the defective material worth ₹30,000/- but he has not furnished the details of the product. He had not sent any notice to the complainant regarding the charges for free service or the cost of defective material. Hence, the amount claimed by the accused cannot be deducted.

34. There is no other material to show that the cheque was not issued for consideration. The submission that the accused has to prove his defence on the preponderance of probability is unexceptionable, but does not apply to the present case because of the admission of the dealing between the complainant and the accused and issuance of the cheque of

₹1,65,525/- in the name of Rama Electronics. Hence, the judgments of *Sumeti Vij* (supra) and *Rajesh Jain* (supra) do not apply to the present case.

35. The complainant stated that the cheque was dishonoured with an endorsement 'exceeds arrangement and drawer's address differs'. Raj Kumar Sharma (CW2) stated that the cheque was received for collection, but there was insufficient amount in the bank. Therefore, the cheque was dishonoured. The accused stated in his statement recorded under Section 313 of the CrPC that he had received a call from the bank regarding the receipt of the cheque and he had asked the bank not to make the payment; therefore, the dishonour of the cheque is not disputed.

36. It was submitted that the statement of the accused recorded under Section 313 of the CrPC cannot be used for recording conviction. The submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in *State of Maharashtra v. Sukhdev Singh*, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421 that the Courts can rely upon the statement of the accused recorded under Section 313 of the Cr.P.C. It was observed at page 742:

“51. That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence *stricto sensu*. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:

“313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.”

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See *State of Maharashtra v. R.B. Chowdhari* (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95. This Court, in the case of *Hate Singh Bhagat Singh v. State of M.B.* 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468, held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In *Narain Singh v. State of Punjab* (1963) 3 SCR 678: (1964) 1 Cri LJ 730, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

“Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution

have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may 'be taken into consideration' at the enquiry or the trial. *If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.*" (emphasis supplied)

Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforesaid observations apply with equal force."

37. It was laid down by the Hon'ble Supreme Court in

***Mohan Singh v. Prem Singh*, (2002) 10 SCC 236: 2003 SCC (Cri) 1514:**

2002 SCC OnLine SC 933, that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at page 244:

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See *Nishi Kant Jha v. State of Bihar* (1969) 1 SCC 347: AIR 1969 SC 422: (SCC pp. 357-58, para 23)

“23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961 negatives of both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram

Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.*" (emphasis supplied)

38. It was laid down in *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213, that the statement of the accused under Section 313 Cr.P.C., in so far as it supports the prosecution's case, can be used against him for recording a conviction. It was observed at page 275: -

"52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution,

can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law.”

39. This position was reiterated in *Ashok Debbarma v. State of Tripura*, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

24. We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh* [(1992) 3 SCC 700: 1992 SCC (Cri) 705] held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in *Hate Singh Bhagat Singh v. State of Madhya Bharat*, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933 held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab* (1964) 1 Cri LJ 730: (1963) 3 SCR 678, this Court held that when the accused confesses to the commission of the offence with which he is charged,

the court may rely upon the confession and proceed to convict him.

25. This Court in *Mohan Singh v. Prem Singh* (2002) 10 SCC 236: 2003 SCC (Cri) 1514 held that: (SCC p. 244, para 27)

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

In this connection, reference may also be made to the judgments of this Court in *Devender Kumar Singla v. Baldev Krishan Singla* (2005) 9 SCC 15: 2005 SCC (Cri) 1185 and *Bishnu Prasad Sinha v. State of Assam* (2007) 11 SCC 467: (2008) 1 SCC (Cri) 766. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved, and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.”

40. Therefore, the statement made by the accused will lend corroboration to the testimony of Raj Kumar (CW-2) that the cheque was dishonoured because of insufficient funds.

41. The complainant stated that he had issued a notice to the accused, which was served upon him. The complainant filed the acknowledgement (Ext.CH), which bears the signatures of one Kusum Raj. The accused admitted in response to question No.6 in his statement recorded under Section 313 of the CrPC, that he had received a notice. Thus, the issuance and service of the notice were duly proved.

42. The accused did not claim that he had repaid the money to the complainant after the receipt of notice.

43. Therefore, it was duly proved that the accused had issued a cheque in favour of the complainant to repay the debt, which was dishonoured with an endorsement 'exceeds arrangement and the drawer's address differs ', and the accused had failed to repay the money despite the receipt of valid notice of demand. Therefore, 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.

44. The Learned Trial Court sentenced the accused to undergo imprisonment for six months and pay ₹50,000/- as compensation. 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.”

45. Keeping in view the fact that the sentence is deterrent, the sentence of six months cannot be said to be excessive.

46. The cheque was issued for ₹1,65,525/- and the learned Trial Court has awarded a compensation of ₹50,000/- which is less than the cheque amount. However, the complainant has not preferred any appeal for enhancement of compensation,

and it is not possible to interfere with the compensation awarded by the learned Trial Court even though it is inadequate.

47. No other point was urged.

48. Therefore, there is no infirmity in the judgment and order passed by the learned Courts below, and no interference is required with them. Consequently, the present revision fails, and the same is dismissed.

49. Records of the learned Courts below be sent back forthwith, along with a copy of this judgment.

(Rakesh Kainthla)
Judge

27th July, 2026.
(Ravinder)