



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 408 of 2026

Reserved on: 02.07.2026

Date of Decision: 16.07.2026

Upasana Jhina

...Petitioner

Versus

Smt. Meena Chandel

....Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the petitioner : Mr Rohan Tomar, Advocate.

For the Respondent : Nemo.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 16.03.2026, passed by the learned Sessions Judge, Shimla, H.P. (learned Appellate Court) vide which judgment of conviction and order of sentence dated 28.03.2025, passed by the learned Additional Chief Judicial

¹. Whether reporters of the local papers may be allowed to see the judgment? Yes



Magistrate, Shimla, District Shimla, H.P. (learned Trial Court) were upheld. *(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 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 parties had a cordial relationship. The accused required money, and the complainant advanced ₹11,00,000/- to the accused. The accused transferred ₹1,00,000/- to the complainant's account and issued a cheque of ₹ 10,00,000/-. The complainant presented the cheque at her bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant issued a notice to the accused asking her to repay the money. The notice was duly served upon the accused, but she failed to repay the money. Hence, the complaint was filed against the accused for taking action as per the law.

3. Learned trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of



accusation was put to her for the commission of an offence punishable under Section 138 of the NI Act, to which she pleaded not guilty and claimed to be tried.

4. The complainant examined herself to prove her complaint.

5. The accused, in her statement, recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that she had a cordial relationship with the complainant and that she had approached the complainant for the financial help of ₹11,00,000/-. She denied that the complainant had paid ₹10,00,000/- through bank transfer and ₹1,00,000/- in cash. She admitted that she had returned ₹1,00,000/- to the complainant. She claimed that she had paid the money to the complainant in cash. She did not produce any evidence in her defence.

6. The learned Trial Court held that the cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. The accused claimed that she had issued the cheque as security, and the issuance of the cheque was not disputed. A presumption would be triggered by such an admission. The accused was



required to rebut the presumption by producing the evidence; however, the accused had failed to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused. 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 her to undergo simple imprisonment for 3 months and pay a compensation of ₹ 13,50,000/- 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 Sessions Judge, Shimla, District, Shimla. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned trial Court that the issuance of the cheque was not disputed. Therefore, a presumption would be triggered that the cheque was issued for consideration to discharge the debt/liability. The accused did not produce any evidence to rebut the presumption. The notice was duly served upon the accused, and the complainant had received an acknowledgement to



this effect. 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. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused filed a revision asserting that the learned Courts below failed to appreciate the material on record. The defence taken by the accused that she had handed over a blank security cheque to the complainant was highly probable. The certificate under Section 65B of the Indian Evidence Act was not annexed to the computer-generated documents. The complainant had failed to produce any Income Tax records to show her financial capacity. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned courts below be set aside.

9. Mr Rohan Tomar, learned counsel for the petitioner/accused, submitted that the learned Courts below



erred in appreciating the material on record. The complainant has relied upon the statements of account to prove her version; however, the statements were not supported by the certificate under Section 65B of the Indian Evidence Act, and they were inadmissible. The plea taken by the accused that she had issued a security cheque for the amount of ₹1,00,000/- borrowed by her was highly probable. The learned Courts below erred in rejecting this plea. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned courts below be set aside.

10. I have given a 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 *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 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 that 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.

12. 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 aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”



13. 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.”



14. 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.”

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

16. The accused claimed before the learned Trial Court and this Court that the cheque was issued as security. Learned Courts below had rightly held that once the issuance of a cheque and the signatures are admitted, a presumption would arise that the cheque (Ext.C-2/CW-1) 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: -

“9. Coming back to the facts in the present case and because 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.”

17. A similar view was taken in *N. Vijay Kumar v. Vishwanath Rao N.*, 2025 SCC OnLine SC 873, wherein it was held as under:

“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.”

18. This position was reiterated 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

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 arises against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54, have been set aside by a three-Judge Bench in *Rangappa* (supra).



16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

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].

19. Therefore, the Court has to start with the presumption that the cheque was issued for consideration to discharge the debt/liability.

20. It was submitted that the statement of account did not contain the certificate under Section 65B of the Indian Evidence Act, and it was not admissible. Therefore, there was no proof of the fact that the amount was transferred in favour of the accused. This submission will not help the accused. Once a presumption is raised that the cheque was issued for consideration to discharge the debt/liability, the complainant would not be required to prove the existence of the consideration. 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.”

21. 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 of 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 being issued and signed by the petitioners has 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, 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).



22. 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 proceedings 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.”

23. Therefore, the complainant's version cannot be doubted because the statement of account produced by her did not contain the certificate under Section 65B of the Indian Evidence Act.

24. It was submitted that the complainant did not file any income tax return to show her financial capacity. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in *Tedhi Singh v. Narayan Dass Mahant*, (2022) 6 SCC 735: 2022 SCC OnLine SC 302 that the complainant is not required to show his financial capacity



unless it is challenged by sending a reply to the notice. It was observed at page 740:

“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 proceeding under Section 138 of the NI Act is 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....”

25. In the present case, the accused had not sent any reply to the notice, and the complainant was not required to prove her financial capacity in the present proceedings.

26. The complainant admitted in her cross-examination that the transaction made with the accused was mentioned in the income tax return and that she had not annexed a copy of the income tax return with the complaint.

27. It was submitted that the Complainant had failed to prove the income tax return to corroborate her version, and her version was wrongly accepted by the learned courts below. This submission cannot be accepted. It was laid down by this Court in *Surinder Singh vs. State of H.P.* 2018(1) D.C.R. 45 that



the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed: -

10. It would further be noticed that the learned trial Magistrate has acquitted the accused on the ground that the loan has not been shown in the Income Tax Return furnished by the complainant, and while recording such finding, has placed reliance upon the judgment of the Hon'ble Delhi High Court in *Vipul Kumar Gupta vs. Vipin Gupta 2012 (V) AD (CRI) 189*. However, after having perused the said judgment, it would be noticed that the amount in the said case was ₹ 9 lacs, and it is in that background that the Court observed as under: -

"9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors that have been enumerated by the learned ACMM. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts, the factum of the loan having been given by him because by no measure, an amount of ₹ 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or year when the loan was sought or given. The appellant has presented a cheque, which obviously is



written with two different inks, as the signature appears in one ink, while the remaining portion, which has been filled in the cheque, is in a different ink. All these factors prove the defence of the respondent to be plausible to the effect that he had issued these cheques by way of security to the appellant for getting a loan from the Prime Minister Rojgar Yojana. The respondent/accused has only to create doubt in the version of the appellant, while the appellant has to prove the guilt of the accused beyond a reasonable doubt, in which, in my opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal against the impugned order, as there is no infirmity in the impugned order."

28. Therefore, the complainant's case cannot be doubted because the income tax return was not produced.

29. There is no other material to rebut the presumption attached to the cheque, and the Learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

30. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This was duly corroborated by the cheque return memo (Ext.C3/CW-1). It was laid down by the Hon'ble Supreme Court in *Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83; (2010) 1 SCC (Civ) 625; (2010) 2 SCC (Cri) 1: 2010 SCC OnLine SC 155 that the memo issued by the Bank is



presumed to be correct, and the burden is upon the accused to rebut the presumption. It was observed at page 95:

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

31. The accused did not produce any evidence to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured because of the endorsement 'insufficient funds'.

32. The complainant stated that she had issued the notice to the accused, which was duly served upon her. The acknowledgement (Ext.C6/CW-1) proved that the notice was duly served upon the accused. Therefore, the denial by the accused was rightly rejected by the learned Courts below. 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 the 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 a 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).

33. The accused did not claim that she had paid the money to the complainant after receiving the summons from the Court.

34. Thus, it was duly proved that the accused had issued a cheque in favour of the complainant to discharge the debt/liability, which was dishonoured with an endorsement insufficient funds, and the accused failed to repay the amount



despite the receipt of the 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.

35. Learned Trial Court had sentenced the accused to undergo simple imprisonment for 3 months. 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.”



36. Keeping in view the deterrent nature of the punishment, the sentence of 3 months cannot be said to be excessive.

37. The learned Trial Court awarded a compensation of ₹13,50,000/-. The cheque was issued on 06.02.2019, and the sentence was awarded on 28.03.2025 after the lapse of 6 years; the complainant lost the interest that it would have gained by depositing the money. She had to spend money to pursue the complaint before the learned Trial Court and was entitled to be compensated for it. It was laid down by the Hon'ble Supreme Court in *Kalamani Tex v. P. Balasubramanian*, (2021) 5 SCC 283; (2021) 3 SCC (Civ) 25; (2021) 2 SCC (Cri) 555; 2021 SCC OnLine SC 75 that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding



compensation, and unless there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [*R. Vijayan v. Baby*, (2012) 1 SCC 260, para 20: (2012) 1 SCC (Civ) 79: (2012) 1 SCC (Cri) 520]”

38. An amount of ₹10,00,000/- would earn an interest of ₹5,40,000/- for 6 years on an interest rate of 9% per annum. Thus, the compensation of ₹3,50,000/- awarded by the learned Trial Court cannot be said to be excessive, requiring any interference from this Court.

39. No other point was urged.

40. In view of the above, the present revision petition fails, and it is dismissed.

41. The present petition stands disposed of, and so are the pending applications, if any.

(Rakesh Kainthla)
Judge

16th July, 2026.
(ravinder)