



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 569 of 2025

Reserved on: 19.11.2025

Date of Decision: 27.11.2025

Padam Chand Verma

....Petitioner

Versus

Supriya Atwal & Anr.

.... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹No

For the Petitioner : Mr. Prem P Chauhan, Advocate.

For the Respondents : Nemo.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 27.08.2025 passed by learned Additional Sessions Judge II, Solan, District Solan, H.P. (learned Appellate Court) vide which the judgment of conviction dated 26.03.2024 and order of sentence dated 10.04.2024 passed by learned Judicial Magistrate, First Class, Court no. 1, Solan District Solan (learned Trial Court) were partly

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

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 revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused issued a cheque of ₹ 6 lakh to the complainant to discharge his liability. The complainant presented the cheque to the bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant served a legal notice upon the accused, asking him to pay the amount. The notice was duly served upon the accused, but he failed to repay the amount. Hence, a complaint was filed before the learned Trial Court.

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 herself (CW-1) to prove her complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he had issued the cheque to the complainant. He stated that he had entered into an agreement to sell the property to the complainant. The property was not partitioned and was to be sold only after the partition. He had handed over the cheque as security; the complainant presented the cheque before the partition of the property. He examined Neeraj Sharma (DW1) and Mahinder Kumar (DW2) to prove his defence.

6. Learned Trial Court held that the accused admitted the issuance of the cheque. There is a presumption that the cheque was issued for consideration in discharge of the debt/liability. The burden is upon the accused to rebut the presumption. The plea taken by him that he had issued a security cheque was not probable. The statements of defence witnesses were not sufficient to rebut the presumption. The cheque was dishonoured with an endorsement 'funds insufficient'. The notice was duly served upon the accused, who had failed to repay the amount. Hence, the learned Trial Court convicted the accused of the commission of an



offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for three months and pay a compensation of ₹6,20,000/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the complainant and accused filed separate appeals, which were decided by the learned Additional Sessions Judge II, Solan, District Solan, H.P. (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The burden shifted upon the accused to rebut the presumption. The plea taken by the accused that he had issued the cheque as security was not probable. The statements of the defence witnesses only proved that the partition had taken place, but did not prove that the cheque was not to be presented before the partition. The cheque was dishonoured with the endorsement 'funds insufficient'. The notice was duly served upon the accused, and the accused failed to repay the amount. Learned Trial Court had awarded inadequate compensation. Hence, the appeal filed by the complainant was

allowed and the compensation was enhanced to ₹ 7,05,000/-, and the appeal filed by the accused was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present petition, asserting that the learned Courts below erred in appreciating the evidence on record. The testimony of the complainant was not corroborated by any independent evidence, and the learned Trial Court erred in relying upon the uncorroborated testimony of the complainant. The complainant had backed out of the deal and presented the cheque even though the accused had got the land partitioned. Learned Appellate Court wrongly enhanced the compensation amount from ₹6,20,000/- to ₹7,05,000/-. Learned Appellate Court failed to appreciate that the accused had spent money to get the land partitioned, and he had no financial capacity to pay the amount of compensation. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. Mr Prem P Chauhan, learned Counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material placed before them. The cheque was

issued as security and was to be presented if the accused was unable to get the land partitioned. The accused got the land partitioned, but the complainant presented the cheque before the partition of the land. Time is not an essence of the contract of the sale of the land. The cheque was presented without any legally enforceable debt. The learned Courts below failed to appreciate this aspect. Learned Appellate Court awarded excessive compensation. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

11. It was laid down by the Hon'ble Supreme Court in *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 aforesaid. 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 reappraise 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 reappraise 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 reappraising 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. 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.

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

17. 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.”

18. The accused admitted in his statement recorded under Section 313 of the Cr.PC that the cheque bears his signature. Thus, learned Courts below had rightly held that the issuance of the cheque and signatures on the cheque were not in dispute. 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 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 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.”

19. 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.”

20. A similar view was taken in *Sanjay 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 a rebuttable presumption. 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].

21. Thus, the learned Courts below were justified in raising the presumption that the cheque was issued in discharge of the liability for consideration.

22. The accused claimed that he had issued a security cheque, which was to be presented if he was unable to get the land partitioned. He examined Neeraj Sharma (DW1) to prove that the land was partitioned. He also examined Mahinder Kumar (DW2) to

prove that the land was to be sold to the complainant after the partition. The defence evidence will not help the accused. Mohinder Kumar stated in his cross-examination that he was not aware of any talks between the parties after the execution of the agreement. Thus, the testimony of this witness does not prove that the cheque was issued as security to be presented if the accused was unable to get the land partitioned. The complainant denied in her cross-examination that the cheque was issued as security. No agreement was produced to show that the complainant had received the cheque as security and agreed to present it if the accused was unable to get the land partitioned.

23. The accused did not examine himself to prove the plea taken by him. He relied upon the statement recorded under Section 313 of Cr.P.C. to prove his defence. It was held in *Sumeti Vij v. Paramount Tech Fab Industries*, (2022) 15 SCC 689: 2021 SCC OnLine SC 201 that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 of Cr.P.C. is not sufficient. It was observed at page 700:

“20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the

Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration.*" (Emphasis supplied)"

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

25. Mr Prem P Chauhan, learned counsel for the accused, submitted that time is not an essence of the contract of the immovable property, and the complainant erred in presenting the cheque before the partition of the property. This submission will not help the accused. The accused asserted that the security cheque was handed over in January 2017 and the partition was effected in November 2018. His plea that the cheque was handed over in January 2017 is not supported by any material. The cheque was dated 20.03.2018. Hence, his plea that he had issued a security cheque is not established on record. Once the accused had issued a cheque to return the amount to the complainant, he terminated the contract, and the plea that the time was not the essence of the contract will not help him.

26. Mohinder Singh (DW2) admitted that the complainant had paid ₹11 lakhs to the accused to purchase the property. It is undisputed that the land was not partitioned on the date of issuance of the cheque. The accused did not claim that he had returned the money to the complainant. Therefore, the accused had a liability to pay the money to the complainant, and the complainant had sufficient authority to present the cheque (even if issued as a security) to the bank. It was laid down by this Court in *Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456*, that even if the cheque is issued towards the security, the accused is liable. It was observed:

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

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

“10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in *Indus Airways Private Limited versus Magnum Aviation Private Limited* (2014) 12 SCC 53 with reference to the explanation to Section 138 of the Act and the expression “for the discharge of any debt or other liability” occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for “discharge of debt or liability” depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*

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

12. Judgment in *Indus Airways (supra)* is clearly distinguishable. As already noted, it was held therein that liability aris-



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

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court.” (Emphasis supplied)

28. This position was reiterated in *Sripati Singh v. State of Jharkhand*, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732, and it was held that a cheque issued as security is not waste paper and a

complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

“17. A cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security, cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated

under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note' and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.”

29. Therefore, the learned Courts below had rightly held that the accused cannot escape from the liability on the ground that he had issued the cheque as security to the complainant.

30. There was no other evidence 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.

31. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This is duly corroborated by the cheque returning memo (Ext.CW1/C) in which the reason for dishonour of the cheques was given as 'insufficient funds'. 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.”

32. In the present case, no evidence was produced to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured with an endorsement ‘funds insufficient’.

33. The complainant stated that she had issued a notice (Ext.CW1/D) to the accused. She proved the track consignment report (Ext. CW1/F). Thus, learned Courts below had rightly held that the notice was duly served upon the accused.

34. 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 the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in *Bhaskaran’s case* (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act.” (Emphasis supplied)*

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

36. Therefore, it was duly proved before the learned Trial Court that the cheque was issued in discharge of the legal liability, which was dishonoured with an endorsement 'insufficient funds', and the accused failed to repay the money despite the receipt of a notice of demand. Hence, all the ingredients of the offence punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused for the commission of the offence punishable under Section 138 of the NI Act.

37. Learned Trial Court sentenced the accused to undergo simple imprisonment for three 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 provisions of Section 138 of the NI Act is deterrent in nature. It was observed at page 203:

"6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same."

38. Therefore, the sentence of three months is not excessive.

39. Learned Trial Court ordered the accused to pay a fine of ₹6,20,000/-, which was enhanced to ₹ 7,05,000/- by the learned Appellate Court.

40. The cheque was issued on 20.03.2018. The sentence was imposed on 10.04.2024 after the lapse of six years. The complainant lost the interest that she would have gained by investing the money. She had incurred the legal expenses for prosecuting the complaint before the learned Trial Court and the learned Appellate Court. 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]”

41. Thus, the amount of ₹1,05,000/- awarded as a compensation on an amount of ₹6,00,000/- is not excessive

41. No other point was urged.

43. In view of the above, the present revision fails and is dismissed, so also the pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

27th November, 2025
(Nikita)