



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 602 of 2025

Reserved on: 19.11.2025

Date of Decision: 26.11.2025

Ashwani Kumar

....Petitioner

Versus

Sapna Devi

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹No

For the Petitioner : Ms Reeta Hingmang, Advocate.

For the Respondent : Nemo.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 04.09.2025 passed by learned Additional Sessions Judge-II, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 12.11.2024 passed by learned Additional Chief Judicial Magistrate Court no. 1, Kangra, District Kangra (learned Trial

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

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 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 complainant had paid ₹5 lakhs by cheque and ₹2,00,000/- in cash to the accused on 12th April 2019 to purchase the land at Palampur. The accused visited the complainant's house on 19th August 2019 and asked for ₹4,70,000/-, which the complainant paid after withdrawing it from her bank account. The accused failed to sell the land to the complainant. The complainant demanded ₹ 11,70,000/- paid by her to the accused. The accused returned ₹20,000/- in January 2021 and issued a cheque of ₹11,50,000/- (Ex. CW1/B) to discharge his legal liability. The complainant presented the cheque to her bank, but it was returned with an endorsement 'insufficient funds'(Ex. CW1/C). The complainant served a legal notice (Ex. CW1/D) upon the accused, asking him to repay 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 his signature on the cheque but denied the rest of the complainant's case. He stated that the agreement to sell was executed between him and the complainant's brother. He did not produce any evidence in 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. However, the accused failed to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice



was deemed to be 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 one year and six months, pay a fine/compensation of ₹23,00,000/- and in default of payment of fine to undergo further simple imprisonment for six months.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the Additional Sessions Judge-II, Kangra at Dharamshala, District Kangra, 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 would arise that the cheque was issued for consideration to discharge the debt/liability. The burden shifted upon the accused to rebut the presumption. The accused failed to rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused, and the accused failed to repay the amount. Learned Trial Court had imposed an adequate sentence, and no interference was required with the judgment and

order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused filed the present petition, asserting that the learned Courts below erred in appreciating the evidence on record. The defence taken by the accused that the agreement regarding the sale of land was between him and the complainant's brother, and the accused had never issued the cheque to the complainant, was not considered. The omission, contradictions and discrepancies in the statements of witnesses were ignored. 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. Ms Reeta Hingmang, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material placed before them. The defence taken by the accused that he had entered into an agreement with the complainant's brother was probable. The complainant failed to prove her financial capacity. The contradictions in the statement of the complainant were ignored. The complaint was barred by

limitation. Therefore, she 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 Cr.PC that the cheque bears his signature. Thus, the 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. This position was reiterated 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 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*].

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 entered into an agreement to sell the land with the complainant's brother. This was not suggested to the complainant in her cross-examination; rather, it was suggested to her that she had failed to get the sale deed executed despite repeated requests made by the accused. This suggestion shows that the agreement was between the complainant and the accused. Therefore, the plea of the accused that he had entered into an agreement with the complainant's brother was not proved by the cross-examination of the complainant.

23. The accused did not lead any evidence to prove that he had entered into an agreement with the complainant's brother. He did not file any such agreement on record. 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 statement, and the accused cannot derive any advantage from it.

25. It was submitted that the complainant had not produced the agreement to sell executed with her, and the existence of the liability was not proved. This submission will not help the accused. It was laid down by the Hon’ble Supreme Court in *Uttam Ram v.*

Devinder Singh Hudan, (2019) 10 SCC 287; (2020) 1 SCC (Cri) 154; (2020) 1 SCC (Civ) 126; 2019 SCC OnLine SC 1361, that a presumption under Section 139 of 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. An 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.”

26. 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 the complainant would 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 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, further achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.'(emphasis supplied)'

(*underlining in original; emphasis supplied by us in bold*).

27. A similar view was taken in *Sanjabij Tari* (*supra*), 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.”

28. Therefore, no advantage can be derived from the fact that the agreement to sell was not produced before the Court.

29. It was submitted that the complainant has failed to establish the financial capacity to pay the amount. This submission will not help the accused. The complainant was not cross-examined regarding her financial capacity to pay the amount. The transaction was not disputed in the cross-examination because it was suggested to her that she had not got the sale deed executed despite repeated requests. No reply to the notice challenging the complainant's financial capacity was sent. 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 expected to lead evidence regarding his financial capacity unless it is challenged in 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 proceedings 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. 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.”

30. In the present case, the financial capacity was not challenged in the cross-examination or the statement made by the accused recorded under Section 313 of CrPC; hence, the submission

that the complainant had failed to prove her financial capacity is not based on the material on record.

31. There was no other evidence to rebut the presumption, and the learned Courts below had rightly held that the accused had failed to rebut the presumption.

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



33. 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'.

34. The complainant stated that she had issued a notice (Ext.CW1/D) to the accused. She also proved the postal receipt (Ext. CW1/E). This notice was sent to the address at which the service of the accused was effected; therefore, it was sent to the correct address and is deemed to be served under Section 27 of the General Clauses Act. No evidence was led to rebut the presumption, and the learned Courts below had rightly held that the notice was deemed to be served upon the accused.

35. 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 repay 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)*

36. 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 deemed receipt of the notice.

37. It was submitted that the notice was sent on 16.04.2021 and the complaint was filed on 16.06.2021; hence, the complaint is barred by limitation. This submission is not acceptable. The Hon'ble Supreme Court excluded the period of limitation w.e.f. 15.3.2020 till 28.2.2022, including that prescribed under Section 138 of the proviso (b) and (c) in **Cognisance for Extension of Limitation**,

in re, (2022) 3 SCC 117: 2022 SCC OnLine SC 27, wherein it was observed at page 119: -

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [*Cognizance for Extension of Limitation, In re*, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50], 27-4-2021 [*Cognizance for Extension of Limitation, In re*, (2021) 17 SCC 231: 2021 SCC OnLine SC 373] and 23-9-2021 [*Cognizance for Extension of Limitation, In re*, 2021 SCC OnLine SC 947], it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 and 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022, is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws,



which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

38. Therefore, the limitation period w.e.f. 15.03.2020 till 28.02.2022, is to be excluded. The complaint was filed before the expiry of the extended period of limitation, and the same cannot be said to be barred by limitation.

39. 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 deemed 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.

40. Learned Trial Court sentenced the accused to undergo simple imprisonment for one year and six 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.”

41. Therefore, the sentence of one year and six months is not excessive.

42. Learned Trial Court ordered the accused to pay a fine/compensation of ₹23,00,000/-. The cheque was issued on 25.02.2021. The sentence was imposed on 12.11.2024 after the lapse of 3½ 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, learned Appellate Court and this 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]”

43. Hence, the compensation cannot be said to be excessive.
44. No other point was urged.
45. In view of the above, the present revision fails and it is dismissed, and so are the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

26th November, 2025
(Nikita)