

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 152 of 2026****Reserved on: 11.9.2026****Date of Decision: 23.09.2026.**

Suresh Sharma

...Petitioner

Versus

Jitender Singh

...Respondent

*Coram****Hon'ble Mr Justice Rakesh Kainthla, Judge.****Whether approved for reporting?¹ Yes.*

For the Appellant : Mr Kishore Pundeer, Advocate.

For the Respondent : Ms Chehak Bhalla, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 29.11.2025 passed by the learned Additional Sessions Judge-II, Solan, H.P. (learned Appellate Court), vide which the judgment of conviction dated 25.02.2023 and order of sentence dated 07.03.2023, passed by the learned Judicial Magistrate First Class, Court No. 1, Solan, H.P. (learned Trial Court), were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

¹

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

2. Briefly stated, the facts giving rise to the present appeal/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 and the accused were known to each other. The complainant paid ₹60,000/- as a friendly loan to the accused. The accused issued a cheque of ₹50,000/- drawn on State Bank of India, Solan, to discharge part of his liability. The complainant presented the cheque before his bank, but it was dishonoured with the endorsement "funds insufficient". The complainant sent a notice to the accused, which was duly served upon the accused. The accused failed to pay the money despite receipt of a valid notice of demand. Therefore, a complaint was filed against the accused for taking action against him as per the law.

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

4. The complainant examined Mahesh Kumar (CW-1) and himself (CW-2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Cr.P.C., stated that he was not aware how the complainant came into possession of the cheque. His account was inoperative since 2014. He denied that he had received any notice from the complainant. He claimed that a false case was made against him and he had not taken any money from the complainant. He examined Smt. Kashlama (DW-1) in his defence.

6. The learned Trial Court held that the complainant's version that the accused had issued a cheque in his favour was duly proved on record. The cheque carries with it a presumption that it was issued to discharge the debt/liability. The accused failed to rebut the presumption attached to the cheque. The discrepancy in the name of the complainant in the cheque was not material. The cheque was dishonoured on the ground of insufficient funds. The notice was duly served upon the accused, and the accused failed to pay the money despite receipt of a valid notice of demand. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under

Section 138 of the NI Act and sentenced him to undergo simple imprisonment for six months, pay compensation of ₹80,000/-, and in default of payment of compensation, to further undergo simple imprisonment for one month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Solan, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the complainant's version that he had advanced money to the accused, who had issued a cheque to partially repay the amount, was believable. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. The accused had failed to rebut the presumption by leading any satisfactory evidence. The learned Trial Court had rightly convicted and sentenced the accused. There was no infirmity in the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present

revision, asserting that the learned Courts below failed to properly appreciate the material on record. The complainant had failed to disclose the date, month, and year of lending the money to the accused, or the purpose for which the money was lent. There were discrepancies in the statements of the complainant, which made his case doubtful. The cheque was issued in the name of Jatinder Singh, whereas the complaint was filed in the name of Jitender Singh. The complainant is not proved to be a payee or a holder in due course. The complainant had failed to prove his financial capacity by bringing on record any document showing his ownership of the house, vehicle, and income asserted by him. The complainant's cross-examination was sufficient to rebut the presumption attached to the cheque. There were over writings/tampering in the name of the payee and the date of the cheque in question, which amounted to a material alteration, rendering the cheque invalid. There was no proof of service of the notice, and the learned Courts below erred in holding that the notice was duly served upon the accused. 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. I have heard Mr Kishore Pundeer, learned counsel for the petitioner/accused, and Ms Chehak Bhalla, learned counsel representing the respondent/complainant.

10. Mr Kishore Pundeer, learned counsel for the petitioner/accused, submitted that the complainant had not mentioned the date of advancing the loan. The statement of the complainant was contradictory, which made his case doubtful. The complainant had failed to prove his financial capacity to advance ₹60,000/- to the accused. The cheque was issued in the name of Jatinder Singh, whereas the complaint was filed by Jitender Singh. There was no proof of the fact that Jatinder Singh and Jitender Singh are the same person. The accused had specifically denied the issuance of the cheque or his signature on it. Therefore, the presumption under Section 118(a) and Section 139 of the NI Act would not be triggered in the present case. The learned Courts below erred in relying upon the presumption to convict the accused. Therefore, he prayed that the present revision be allowed and the judgments and orders passed by the learned Courts below be set aside. He relied upon the judgment of *John K. Abraham Vs. Simon C. Abraham and another*, 2014(2) SCC 236 in support of his submissions.

11. Ms Chehak Bhalla, learned counsel for the respondent/complainant, submitted that the complainant's version that he had advanced ₹60,000/- to the accused and the accused had issued a cheque of ₹50,000/- to repay part of the loan was proved on record. This Court should not re-appreciate the evidence while deciding the revision petition. The learned Trial Court had rightly pointed out that the discrepancy in the name was not sufficient, and the complainant was in possession of the cheque in his own right as a holder in due course. Therefore, the presumption was rightly applied by the learned Courts below. There is no infirmity in the judgments and order passed by the learned Courts below; hence, she prayed that the present revision be dismissed.

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

13. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in *Kuntegowda v. Thurubaiah*, 2026 SCC OnLine SC 1485 as under:

5.3. At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*,

(2000) 2 SCC 745; 2000 SCC (Cri) 546; (2000) 100 COMP CAS 755.

“10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

- (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person out of that account for the discharge of any debt or other liability;
- (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
- (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
- (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that

the phrase “debt or other liability” means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

- i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.
- ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.
- iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.
- iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.
- v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.
- vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.
- vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

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

15. The complainant reiterated the contents of the complaint in his affidavit. He stated in his cross-examination that he was working as a transporter w.e.f. 1990 till 2017. He had a vehicle bearing registration number HP-64-1197 in the year 2016. His source of income in the years 2015 and 2016 was the vehicle and the rent from the house. He was earning ₹30,000/- per month from the vehicle and ₹20,000/- as rent. He had three persons dependent upon him. He and the accused were friends. He did not remember the day when the accused had contacted him for taking the loan. He volunteered to say that three years had expired. He had paid ₹50,000/- after 15 days of the payment of ₹10,000/-. No person was present at that time. ₹10,000/- was paid for 2-3 days. ₹50,000/- was taken by saying that the accused would return ₹60,000/- after three months. He was not an income tax payee and was not aware that cash payments of more than ₹10,000/- could not be made. The accused had handed over two cheques to him together in the shop of Ashok. The cheques were filled. He had presented one cheque in Corporation Bank and another cheque before Canara Bank. He could not say whether his name was recorded as Jatinder or Jitender in Corporation Bank. He was recalled for further cross-examination

on 07.07.2022 and stated that he had paid the money to the accused in the year 2016. The accused had not disclosed the purpose for which the loan was being taken. The money was advanced for 15–20 days as a loan to the accused. He denied that a false complaint was made and that the accused had never taken a loan of ₹60,000/- from him.

16. It was submitted that the testimony of the complainant is not satisfactory because he had made contradictory versions regarding the period for which the loan was advanced. The learned Trial Court had rightly held that the statement of the complainant was recorded in the years 2018 and 2022, whereas the transaction had taken place in the year 2016. Thus, a considerable period had elapsed between the transaction and the statement on oath. Human memory fails with time, and the discrepancy regarding the period for which the loan was advanced would not be sufficient to discard the complainant's case.

17. In the present case, the memo of dishonour (Ext.C-3) shows that the cheque was sent to Corporation Bank. Mahesh Kumar (CW-1) stated that the cheque was received from Canara

Bank. It was submitted that there is a material discrepancy regarding the name of the bank. This submission will not help the petitioner. Mahesh Kumar (CW-1) stated that the bank had issued a memo (Ext.C-3), which mentions Corporation Bank. He subsequently clarified that the cheque was received from Corporation Bank, and the name of Canara Bank was mentioned due to a clerical error. Therefore, he has explained his earlier statement that the cheque was received from Canara Bank by saying that it was a clerical error and the cheque was received from Corporation Bank. Thus, not much advantage can be derived from this clerical error committed by (CW-1).

18. The complainant specifically stated that the accused had handed over the cheque to him. The accused claimed in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.) that he had not issued any cheque in favour of the complainant and he could not say how the complainant came into possession of the cheque. However, he did not appear in the witness box to state this fact on oath. It was held in *Sumeti Vij v. Paramount Tech Fab Industries*, (2022) 15 SCC 689: 2021 SCC OnLine SC 201 that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under

section 313 is not sufficient to rebut the presumption. 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)”

19. Therefore, the version of the accused was rightly rejected by the learned Courts below that he had not issued any cheque in favour of the complainant.

20. The accused claimed in his statement recorded under Section 313 of the CrPC that his account was inoperative since 2014. However, he did not suggest this fact to Mahesh Kumar (CW1), who had brought the record of the account of the accused. Hence, this version is not acceptable.

21. There is nothing in the cross-examination of the complainant to show that he is making a false statement. Thus, the learned Courts below had rightly held that the presumption

would be triggered that the cheque was issued for consideration to discharge the debt/liability. This presumption was explained by the Hon'ble Supreme Court 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.”

22. It was laid down by the Hon'ble Supreme Court in *Kuntegowda*(supra) that a statutory presumption arises on the admission or proof of the execution of the negotiable instrument, and the burden is upon the accused to rebut this presumption. It was observed:

5.7.A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any

consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and, therefore, to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

23. It was submitted that the complainant had failed to prove the financial transaction and the advancing of the loan. No person was examined to prove that the loan was advanced in his presence. No document was produced to this effect. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in *Uttam Ram v. Devinder Singh Hudan*, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361, that a presumption under Section 139 of the NI Act would obviate the requirement to prove the existence of consideration. It was observed:

“20. The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due, and the dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that

the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.”

24. This position was reiterated in *Ashok Singh v. State of U.P.*, 2025 SCC OnLine SC 706, wherein it was observed:

“22. The High Court, while allowing the criminal revision, has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of a loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as ‘Firozabad’). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant.

Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in *S. S. Production v. Tr. Pavithran Prasanth*, 2024 INSC 1059, we opined:

*'8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point, which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound. Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto would not negate such claim for the reason that the cheques having been issued and signed by the petitioners have not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. In this regard, we may make profitable reference to the decision in *Tedhi Singh v. Narayan Dass Mahant*, (2022) 6 SCC 735:*

'10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time, when the

complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts, in our view, were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, 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).

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

“21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceeding and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the

bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged.”

26. Therefore, the complainant’s version cannot be discarded simply because he had not produced any document to establish the plea of advancing the loan.

27. It was submitted that the complainant had failed to prove his financial capacity. He claimed that he owned a house and a car, but no documents were produced on record. This submission will not help the petitioner. 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....”

28. This position was reiterated in *Kuntegowda*(supra) wherein it was observed:

6.7. Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan; therefore, the argument and defence of the accused on this aspect fall flat.

29. In the present case, the accused had not sent any reply to the notice questioning the complainant's financial capacity, and he is not entitled to say that the complainant did not have the financial capacity to advance the loan.

30. It was suggested to the complainant that an amount in excess of ₹10,000/- cannot be advanced in cash. This suggestion will not help the accused. It was laid down by this Court in *Surinder Singh vs. State of H.P.* 2018(1) D.C.R. 45 that contravention of Section 269 SS of the Income Tax Act will give

rise to a penalty, but will not invalidate the transaction. It was observed: -

5. The relevant portion of Section 269 SS of the IT Act reads thus: -

"(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is (twenty) thousand rupees or more. Provided....."

6. Section 271D provides for a penalty for failure to comply with the aforesaid provisions, which reads thus:

"271D. Penalty for failure to comply with the provisions of Section 269-SS - (1) If a person takes or accepts any loan or deposit in contravention of the provisions of Section 269-SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

(2) Any penalty impossible under sub-section (1) shall be imposed by the Joint Commissioner."

7. A collective reading of both the aforesaid Sections would go to show that even though contravention of Section 269-SS of the IT Act would be visited with a strict penalty on the person taking the loan or deposit. However, Section 271D does not in any manner suggest or even provide that such a transaction would be null and void. The payer of money in cash, in violation of Section 269 SS of the IT Act, can always have the money recovered.

8. The object of introducing Section 269 of the IT Act has been succinctly set out by the Hon'ble Supreme Court in *Asstt. Director of Inspection Investigation vs. A.B. Shanthi* (2002) 6 SCC 259, wherein it was observed as under: -

"8. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give a false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false entries in his accounts; he shall not escape by giving a false explanation for the same. During search and seizures, unaccounted money is unearthed, and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends, and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main objection of Section 269-SS was to curb this menace."

9. In light of the aforesaid observations, it cannot but be said that Section 269-SS only provides for the mode of accepting payment or repayment in certain cases so as to counteract evasion of tax. However, Section 269-SS does not declare all transactions of loans by cash in excess of ₹20,000/- as invalid, illegal or null and void, as the main object of introducing the provision was to curb and unearth black money.

31. A similar view was taken by the Hon'ble Supreme Court in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

"19. Recently, the Kerala High Court in *P.C. Hari v. Shine Varghese*, 2025 SCC OnLine Ker 5535 has taken the view that a debt created by a cash transaction above ₹20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that

the presumption under Section 139 of the Act will not be attracted in cash transactions above ₹ 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961, is subject to a penalty only under Section 271D of the IT Act, 1961. Further, neither Section 269SS nor Section 271D of the IT Act, 1961, states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited with a penalty only as prescribed. Consequently, the view that any transaction above Rs. 20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in *P.C. Hari* (supra) is set aside."

32. Hence, the transaction cannot be doubted because it was carried out in cash.

33. The cheque (Ext. C-1) has been issued in the name of Jatinder Singh, whereas the complaint has been filed in the name of Jitender Singh. It was submitted that the complainant is not proved to be a holder in due course or the payee of the cheque. This submission will not help the petitioner. The pay-in slip (Ext.C-2) shows that the name of the holder is Jatinder Singh, which was mentioned in the cheque. The complainant's bank never objected to the deposit of the cheque on the ground that it

was in the name of some other person. It was held in *Y. Sreelatha v. Mukanchand Bothra*, 2002 SCC OnLine Mad 30: (2002) 1 MWN (Cri) DCC 68 that a difference in the name of the payee cannot be a reason to hold that the complainant is not a payee. It was observed at page 72:

16. Next, it is contended that the name of the payee has not been correctly mentioned.

17. It is true that the name of the complainant is Mukanchand Bothra. It is the case of the complainant that he received the cheques from the accused, which were drawn in favour of the complainant and presented the cheques for collection at Karnataka Bank, where his account is maintained. When the cheques were sent to the State Bank of India, T. Nagar Branch, in which the account of the accused is maintained, it was returned only with the endorsement “not arranged for”, and accordingly, the intimation of dishonour of the cheques was sent by the Karnataka Bank to the complainant. Thus, it is clear that the cheques were not returned on the ground that the name of the payee was not correctly mentioned.

18. On the other hand, a suggestion was put to the complainant that those cheques were issued by the accused in favour of the complainant Mukanchand Bothra only as security in the capacity of guarantor. It is also noticed that no suggestion was put in the cross-examination that the complainant was not the payee, but someone else.

19. That apart, when the statutory notice was issued by the complainant as payee of the cheques with reference to the dishonour of the cheques, the accused, who received it, did not choose to send any reply raising this sort of plea. Therefore, a mere spelling mistake by writing the name of the complainant in the cheques as Mukalchand Bothra,

instead of Mukanchand Bothra, cannot be a ground to hold that the complainant is not the payee of the cheques. Therefore, this point also would fail.

34. In *Hemanth Pavel Gracias v. Socorro Santan Fernandes*, 2008 (1) Civil Court Cases 743 (Bom), the cheque was issued in the name of Pavel Hemanth Gracias, whereas the complainant admitted that his name was Hemanth Pavel Gracias. It was held that this was not material to invalidate the cheque. It was observed:-

7. The learned Magistrate has also concluded that the Complainant was not the payee of the cheque. As per the accused as well as the learned Magistrate, the Complainant Hemant Pavel Gracias is not the payee as contemplated by clause (a) of section 142 of the Act, as the cheque issued was in the name of Pavel Hemant Gracias. The Complainant has admitted in his cross-examination that his correct name is Hemant Pavel Gracias and Pavel is his middle name. The Complainant has stated that the entire cheque was filled in by the accused, though the accused has pleaded that he had given a blank cheque. The cheque was deposited in the account of the Complainant held by him in Citizen Co-operative Bank, Canacona. It was not the case of the said Bank that Pavel Hemant Gracias, in whose name the cheque stood, was a different individual than Hemant Pavel Gracias, who had an account with them. In any event, it must be observed that it is the very case of the accused that a blank cheque was given by the accused to the Complainant and, as per the Complainant himself, the cheque was written by the accused. There is nothing in the cross-examination of the Complainant even to remotely suggest that the other details, besides the signature of the accused, were filled in by the Complainant, and this goes against the story of a

blank cheque. The learned Counsel on behalf of the accused contends that since the cheque was not in the name of the Complainant Hemant Pavel Gracias but was in the name of Pavel Hemant Gracias, the same ought to have been returned by the Complainant to the accused to be duly corrected. In my view, the interchanging of the first and the middle name does not make the Complainant into a different individual, and in any event that was not the case of the Bank of the Complainant who accepted the cheque and sent it for collection, but it was dishonoured for a different reason, namely because the funds were insufficient. Very often, many of us in this State write our names with surname first. That does not make us different individuals. Middle name cannot be mistaken for father's name. Since the accused had admitted that the cheque was given by him to the Complainant, there was no question of the Complainant not being the payee of the same only because there was a mix-up of the first and middle name of the Complainant. The contention of the accused and the finding of the learned Magistrate that the Complainant was not the payee in terms of clause (a) of section 142 of the Act cannot be upheld.

35. It was observed in *N. Ravindran v. Shahjahan*, 2021 SCC OnLine Ker 3921r, that the cheque was issued in the name of "Lakshmi Finance", whereas the complaint was filed in the name of "M/s Lakshmi Finance". It was held to be not material. It was observed:-

The appellant/complainant is the Managing Partner of a firm by name 'Lakshmi Finance', which is stated to be a partnership firm. Reading of the judgment dated 04.05.2006 in C.C. No. 453/2004 shows that the accused was acquitted on the sole ground that the subject cheque was drawn in favour of 'Lakshmi Finance' and not 'M/s.

Lakshmi Finance', though it is seen from the partnership deed that the name of the firm is '*M/s. Lakshmi Finance*'.

3. Though the notice ordered in this appeal to the 1st respondent/accused was duly served on the 1st respondent/accused, there is no appearance for the 1st respondent. The abbreviation '*M/s*' which is short for '*Messrs* ', is normally a salutation intended to refer to a group of unincorporated persons, such as a partnership firm. The absence of such salutation while drawing the cheque by the 1st respondent/accused cannot be a ground for the accused to be acquitted. Such a view is as good as saying that if the payee is not referred to in the cheque as "Mr", the accused has to be acquitted.

36. Orissa High Court also held in *Sree Metaliks Ltd. and Ors. vs. Agarwal Fuel Corporation (P) Ltd. and Ors.* (07.07.2021 - ORIHC) : MANU/OR/0241/2021 that spelling mistakes in the name of the payee do not make it bad. It was observed:

15.2. Another contention is raised that there is a spelling difference in the name of the company, i.e. complaint-company. But, I am of the opinion that it may be only a spelling mistake and is of no substance.

37. In the present case, the accused never pleaded that he had issued a cheque to Jatinder Singh, who was some other person, and not to the complainant, Jitender Singh. He simply denied that he had issued any cheque in favour of any person. Therefore, the discrepancy in the spelling is not sufficient to hold that the petitioner is not the payee.

38. It was submitted that the date and time of advancing the loan have not been mentioned, which makes the complainant's case suspect. This submission cannot be accepted. There is a presumption that the cheque was issued for consideration to discharge the debt/liability and it is not necessary to state the details of the transactions. In *John K. Abraham* (supra), the money was advanced despite the fact that the earlier loan was not repaid, and this was held to be material. In these circumstances, it was held that the absence of the detail of advancing the loan would be material. In the present case, the loan was not repaid despite the non-return of the earlier loan, and the cited judgment does not apply to the present case.

39. Therefore, the learned Courts below had rightly held that the accused had issued a cheque towards the repayment of part of the loan taken by him, and the accused had failed to rebut the presumption attached to the cheque.

40. The complainant stated that the cheque was dishonoured with endorsement "insufficient funds". This was proved by the statement of Mahesh Kumar (CW-1), who stated that the cheque was dishonoured because the account of the

accused did not have sufficient amount to honour the cheque. There is nothing in his cross-examination to show that he was making a false statement. Thus, the learned Courts below have rightly held that the cheque was dishonoured with endorsement “insufficient funds”.

41. The complainant asserted that he had issued a notice (Ext. C-4) to the accused, which was duly received by the accused. The accused claimed that he had not received any notice, but he has not appeared in the Court to deny the version of the complainant. Therefore, the learned Courts below have rightly held that the notice was duly served upon the accused.

42. The accused failed to pay the money despite the receipt of a valid notice of demand. Therefore, all the ingredients of commission of an offence punishable under Section 138 of the NI Act were duly satisfied in the present case.

43. The learned Trial Court sentenced the accused to undergo simple imprisonment for six months and pay compensation of ₹80,000/- for the loss sustained by him, and in default of payment of compensation, to undergo further simple imprisonment for one month. 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.”

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

45. The learned Trial Court had imposed a compensation of ₹80,000/- on 07.03.2023. The cheque was issued on 08.09.2016. Thus, the compensation was awarded for seven years after the issuance of the cheque. 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]”

46. The complainant had to engage a counsel to prosecute the complaint. He was deprived of the money which he could have invested to get returns. Therefore, the compensation of ₹30,000/- on the cheque amount of ₹50,000/- cannot be said to be excessive, requiring any interference from this Court.

47. The learned Trial Court had imposed a sentence of one month in default of the payment of compensation. It was laid down by the Hon’ble Supreme Court in *K.A. Abbas v. Sabu Joseph*, (2010) 6 SCC 230: (2010) 3 SCC (Civ) 744: (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612, that the Courts can impose a sentence of

imprisonment in default of payment of compensation. It was observed at page 237:

“26. From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated.”

48. This position was reiterated in *R. Mohan v. A.K. Vijaya Kumar*, (2012) 8 SCC 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013: 2012 SCC OnLine SC 486, wherein it was observed at page 729:

“29. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in *Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]*, this Court stated that the above-mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in *Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]* are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in

setting aside the sentence imposed in default of payment of compensation.

49. Thus, there is no infirmity in imposing a sentence of imprisonment in case of default in the payment of compensation.

50. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

23rd September, 2026
(Chander)