IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 375 of 2026
Reserved on: 30.10.2026
Date of Decision: 23.11.2026.

Ram Lok ...Petitioner

Versus

State Bank of India and Anr ....Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Petitioner	:	Mr Jitender Sharma, Advocate vice Mr M.L. Sharma, Advocate
For the Respondent No. 1	:	Ms Kiran Sharma, Advocate
For the Respondent No. 2	:	Mr Ajit Sharma, Deputy Advocate General

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 05.11.2024 passed by the learned Additional Sessions Judge, Nalagarh, District Solan, HP. (learned Appellate Court) vide which the judgment of conviction dated 14.07.2023 and order of sentence dated 31.07.2023, passed by the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan (learned Trial Court)

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

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were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is a bank and engaged in banking activities. The accused borrowed ₹5,00,000/- from the complainant on 20th August 2014 for the construction of a residential house. He agreed to repay the money along with the interest in equated monthly instalments (EMI). The accused defaulted in the repayment of the loan, and his account was declared a non-performing asset (NPA) by the complainant. The accused issued a cheque of ₹4,93,260/- to repay the loan taken by him. The complainant presented the cheque to his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused, which was served upon him, but the accused failed to repay the money. Hence, a complaint was filed before the learned Trial Court for taking action against the accused as per the law.

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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 Raj Kamal Mishra (CW1) to prove the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he had taken a loan of ₹5,00,000/- from the complainant for the construction of a residential house. He claimed that he had issued a security cheque to the complainant at the time of taking the loan. He admitted that he had not repaid the money to the complainant. He stated that he is innocent. He did not produce any evidence in his defence.

6. Learned Trial Court held that the complainant's version that the accused had issued a cheque to repay the loan was proved on record. A cheque carries with it the presumption that it was issued for consideration to discharge the debt/liability. The plea taken by the accused that he had handed

over a security cheque to the complainant at the time of taking the loan was not proved. The cheque was dishonoured with the endorsement “insufficient funds”. The notice was duly served upon the accused, and the accused failed to repay the money. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for 6 months, pay a fine of ₹7,50,000/-and in default of payment of compensation, to undergo simple imprisonment for one month for the commission of the aforesaid offence. It was ordered that out of the fine amount, ₹5,00,000/- be awarded to the complainant as compensation.

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 Addl. Sessions Judge, Nalagarh, District Solan, HP. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the complainant's version was believable. The accused had failed to rebut the presumption attached to the cheque. The

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cheque was dishonoured with an endorsement "insufficient funds", and the notice was duly served upon the accused. The 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 has filed the present revision, asserting that the complainant had failed to prove its case beyond reasonable doubt. The defence taken by the accused that he had issued a security cheque at the time of taking the loan, was highly probable, and the learned Courts below erred in rejecting it. 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 Jitender Sharma, learned vice counsel representing the petitioner/accused, Ms Kiran Sharma, learned counsel for respondent No. 1/complainant and Mr Ajit Sharma, learned Deputy Advocate General for the respondent No.2/State.

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10. Mr Jitender Sharma, learned counsel for the petitioner/accused, submitted that the defence taken by the accused, that he had issued the security cheque, was highly probable and the learned Courts below erred in rejecting it. The memo of dishonour and the track consignment report were not proved as per the law because no certificate under section 65 B of the Indian Evidence Act was annexed to them. The learned Courts below erred in relying upon these documents, and the judgments and order passed by them are not sustainable. The learned Trial Court had imposed an excessive sentence, and the learned Appellate Court erred in upholding it. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Ms Kiran Sharma, learned counsel for respondent No.1/complainant, submitted that the accused had not disputed the taking of loan and issuance of the cheque. The plea taken by him that the cheque was issued as a security at the time of taking the loan was not proved by any evidence on record. A presumption is attached to the cheque that it was issued for consideration to discharge the debt/liability. The accused did not produce any evidence to rebut the presumption. All the

ingredients of the commission of an offence punishable under section 138 of the NI Act were duly satisfied. There is no infirmity in the judgments and order passed by the learned Courts below. This Court should not re-appreciate the evidence while deciding the revision. Hence, she prayed that the present revision be dismissed.

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

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

14. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or

propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

> **"438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying 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, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
>
> *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision,

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considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. 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:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings

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> for the purpose of satisfying 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 re-appreciate the evidence and come to its own 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 tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction

under Section 138 of the NI Act, while setting aside the impugned order, observed as under:

> "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. This Court is of the view that it is not for the Revisional Court to reanalyse 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."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in the exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

15. 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:

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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:
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> (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 the 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 the 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 because 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.

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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 because 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 the First Class.

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

17. Raj Kumar Mishra (CW1) reiterated the contents of the complaint in his proof affidavit (Ex. CW1/A). He stated in his cross-examination that the accused had taken the loan on 20th August 2014. He had not brought the loan account statement of the accused. He admitted that the extent of the loan taken and returned by the accused could be ascertained from the loan file. The documents of immovable property were taken at the time of advancing the loan. He denied that the accused had issued the cheque as security and the complainant misused it.

18. The testimony of this witness that the accused had taken a loan of ₹5,00,000/- from the complainant is duly corroborated by the admission made by the accused in his statement recorded under section 313 of the CrPC, in which the accused had admitted in reply to question No.1 that the bank had sanctioned a loan of ₹5,00,000/- in his favour on 20th August, 2014 for the construction of a residential house, and he had agreed to repay the loan with interest. Therefore, the learned

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Courts below had rightly held that the bank had advanced ₹5,00,000/- to the accused as a loan.

19. It was suggested to Raj Kamal Mishra (CW1) that the bank had taken a blank security cheque at the time of advancing the loan, and he denied it. The accused also claimed in his statement recorded under section 313 of the CrPC that he had issued a blank security cheque at the time of taking the loan. Thus, the issuance of the cheque is not disputed. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the admission of the complainant's signature without admitting the execution of the cheque is sufficient to trigger the presumption contained under Section 118(a) and 139 of the NI Act. It was observed:

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.
>
> **37.** As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the

accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

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

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
>
> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise 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).
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> 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***].

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21. 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.

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22. Therefore, the learned Courts below had rightly held that the cheque carried a presumption that it was issued for consideration to discharge the debt/liability, and the burden was upon the accused to rebut the presumption.

23. It was suggested to Raj Kamal Mishra (CW1) that the accused had repaid the entire loan. He denied such suggestion. The accused did not claim in his statement recorded under section 313 of the CrPC that he had returned the loan to the bank. Therefore, even if the cheque was issued as a security, as contended by the accused, the accused had a subsisting liability towards the bank on the date of the presentation of the cheque. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456*** that the accused is liable for the dishonour of the cheque even if the cheque is issued towards security. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security, and on this ground, the criminal revision petition is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act, 1881, if any cheque is issued on account of another liability, then the provisions of Section 138 of the Negotiable Instruments Act, 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on

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> record. There is no recital in the cheque, Ext. C-1, that the cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions of Section 138 of the Negotiable Instruments Act, 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

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

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If, on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise*.
>
> 11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement the moment the loan is advanced, and the instalment falls due. It is undisputed

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that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

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

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there

> being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court." (Emphasis supplied)

25. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If, in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.
>
> 18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security ', cannot be presented

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> prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the NI Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note', and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security ', the consequence flowing therefrom is also known to the drawer of the cheque and, in the circumstances stated above, if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

26. Therefore, the accused cannot escape from the liability by taking a plea that he had issued the cheque as security.

27. The accused did not step into the witness box to prove his version. He relied upon his statement recorded under Section

313 CrPC to prove his defence, which is not sufficient. 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)

28. Therefore, the statement of the accused recorded under Section 313 of CrPC was not sufficient to rebut the presumption, and the accused cannot derive any advantage from it.

29. Ram Kamal Mishra (CW1) admitted in his cross-examination that he had not brought the loan file of the accused. It was submitted that the exact liability of the accused could not

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be ascertained in the absence of the loan file and there was no evidence of the fact that the accused was liable to pay ₹4,93,260/- to the complainant. This submission will not help the accused. It is undisputed that the accused had taken a loan of ₹5,00,000/- from the complainant. Therefore, the burden was upon the accused to prove that he had repaid the money, and the complainant is not required to prove the exact amount which the accused was liable to pay because of the presumption attached to the cheque. 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."

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30. 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 a presumption against 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 paper book 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

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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 a 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*

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> *that extent, the courts, in our view, were right in holding to 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).*

31. 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."

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32. Therefore, the complainant's version cannot be doubted because he had not produced any evidence to prove the exact amount due to it.

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

34. Raj Kamal Mishra (CW1) stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This is corroborated by the memo of dishonour (Ext. C2). 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."

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35. The accused did not produce any evidence to show that he had sufficient money in his account and the cheque was wrongly dishonoured by the bank.

36. Raj Kamal Mishra (CW1) asserted that he had issued a notice to the accused which was duly served upon him. This is duly corroborated by the Track Consignment Report (Ext.C5) showing the delivery of the registered letter; therefore, the learned Courts below had rightly held that the notice was served upon the accused.

37. It was submitted that the memo of dishonour and the track consignment report are inadmissible in the absence of any certificate under section 65 B of the Indian Evidence Act. Reliance was placed upon the judgment of this Court in ***Durga Singh versus Mohar Singh 2025:HHC:43996*** in support of this submission. This submission will not help the accused. No objection was raised when the documents were being exhibited. It was held in ***Chandrabhan Sudam Sanap v. State of Maharashtra, (2025) 7 SCC 401: (2025) 3 SCC (Cri) 259: 2025 SCC OnLine SC 174,*** that when no objection regarding the absence of the certificate under Section 65B of the Indian Evidence Act was taken during the trial, such

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an objection cannot be raised before the Appellate Court. It was observed at page 426:

> **47.** In ***Sonu v. State of Haryana [Sonu v. State of Haryana, (2017) 8 SCC 570: (2017) 3 SCC (Cri) 663]***, (delivered on 18-7-2017) the following paragraphs, being crucial, are extracted hereinbelow: (SCC pp. 583-85, paras 30-32)
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> > "*30.* In ***R.V.E. Venkatachala Gounder [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752]***, this Court held as follows: (SCC p. 764, para 20)
> >
> > > '*20.* ... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (*i*) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (*ii*) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. *The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to*

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> *object becomes fatal because, by his failure, the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of a finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party is available to the party leading the evidence*. Such practice and procedure is fair to both the parties. Out of the two types of objections referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior court.'

31. It would be relevant to refer to another case decided by this Court in ***P.C. Purushothama Reddiar v. S. Perumal [P.C. Purushothama Reddiar v. S. Perumal, (1972) 1 SCC 9]***. The earlier cases referred to are civil, while this case pertains to police reports being admitted in evidence without objection during the trial. This Court did not permit such an objection to be taken at the appellate stage by holding that: (SCC p. 15, para 19)

> '*19*. Before leaving this case, it is necessary to refer to one of the contentions taken by Mr Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in

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> the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility....'

32. It is nobody's case that CDRs, which are a form of electronic record, are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity to rectify the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."(emphasis in original)

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> **48.** As rightly pointed out by Mr Raja Thakare, learned Additional Solicitor General, it was held in ***Sonu [Sonu v. State of Haryana, (2017) 8 SCC 570 : (2017) 3 SCC (Cri) 663]*** that objection about Section 65-B(4) of the Indian Evidence Act, not being complied with, cannot be taken at the appellate stage since that will deny an opportunity for the prosecution or the opposite party to rectify the defect. It was also held that the documents were not inherently inadmissible in evidence.

38. Therefore, it is impermissible to raise an objection before this Court that the documents could not have been exhibited without the certificate under Section 65B of the Indian Evidence Act, and the judgment in ***Durga Singh*** (supra) will not help the accused.

39. In any case, it was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take 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*

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> *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 the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act*. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act." (Emphasis supplied)

40. The accused admitted that he had not repaid the money to the complainant, and it was duly proved on record that the accused had failed to repay the money despite the receipt of the notice.

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

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accused of the commission of an offence punishable under Section 138 of the NI Act.

42. The learned Trial Court had sentenced the accused to undergo simple imprisonment for 6 months and pay a fine of ₹7,50,000/-, and in default of payment of the fine, to undergo 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."

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

44. In the present case, the cheque was issued for ₹4,93,260/- and the learned Trial Court had awarded the

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compensation of ₹5,00,000/-. 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***]"

45. The complainant lost interest that it would have gained by advancing the money to other people. It had to engage counsel to prosecute the complaint and was entitled to be compensated for the loss sustained by it. Hence, the compensation of ₹5,00,000/- is not excessive, requiring any interference from this Court.

46. No other point was urged.

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47. In view of the above, the present revision fails, and it is dismissed. All the pending applications, if any, also stand disposed of.

48. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

23rd November, 2026
(Nikita)