IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 129 of 2015
Reserved on: 18.12.2025
Date of Decision: 01.01.2026

Sant Kumar ...Petitioner

Versus

R.K. Puri & others ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***No***
For the Petitioner : Mr. Maan Singh, Advocate.
For the Respondents : Mr. Vivek Sharma, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 31.03.2015 passed by learned Additional Sessions Judge-II, Mandi, District Mandi, H.P. (learned Appellate Court), vide which the judgment of conviction and order or sentence dated 24.06.2009 passed by learned Judicial Magistrate First Class, Court No.3, Mandi, District Mandi (learned Trial Court) were partly upheld. *(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.

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2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short 'NI' Act). It was asserted that the accused represented to the complainant that he was a government contractor and had taken various contracts. He requested the complainant to supply the grit and sand at the Malana project on a credit basis. The complainant supplied the material as per the requirements of the accused. The accused issued the cheque of ₹3,50,000/- drawn on State Bank of India, Bhuntar Bazaar, to discharge his liability. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement "funds insufficient". The complainant served a notice upon the accused asking him to repay the amount within a period of 15 days from the date of the receipt of the notice. The accused failed to repay the money despite the receipt of the valid notice of demand. Hence, a complaint was filed before the learned Trial Court against the accused for taking action as per the law.

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

4. The complainant examined himself (CW1) and Gopal Singh (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he had told the complainant that he was a Government contractor. He denied that the sand and grit were supplied at the Malana project. He stated that no material was supplied to him. He claimed that the cheque was issued by him as security to the complainant in August 2002 in the presence of Naveen Kaistha at Manali. He repeatedly asked the complainant to return the cheque, but the complainant evaded. He admitted that he had received a notice but claimed that a false notice was issued. He stated that there was no question of making any payment to the complainant because no material was supplied to him. He stated that he wanted to lead the defence evidence, however, he failed to produce any evidence, and the

learned Trial Court closed his evidence vide order dated 16.04.2009.

6. Learned Trial Court held that the accused admitted the issuance of the cheque, and a presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The accused admitted that he had asked the complainant to supply the sand and grit stone. His plea that no material was supplied to him was not believable. The accused failed to reply to the legal notice of demand so issued by the complainant to him. The cheque was dishonoured with an endorsement 'insufficient funds'. The service of the notice upon the accused was duly established. 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 1½ years and pay a compensation of ₹25,000/-.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused and the complainant preferred separate appeals, which were decided by the learned Additional Sessions Judge-II, Mandi, District Mandi (learned Appellate Court). Learned Appellate Court concurred with the

findings recorded by the learned Trial Court that the admission of the signatures on the cheque would trigger a presumption that the cheque was issued for consideration to discharge the debt/liability. The accused claimed that he had issued the cheque as security, but the security cheque also attracts the liability under Section 138 of the NI Act. The compensation of ₹25,000/- was highly inadequate. Hence, the compensation amount was enhanced to ₹3,50,000/-.

8. Being aggrieved from the judgment and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the material placed before them. The complainant was required to prove the existence of a debt/liability. The complainant failed to prove any receipt/bill regarding the supply of sand and the grits to the accused. The plea taken by the accused that the cheque was issued towards the security 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 Maan Singh, learned counsel for the accused/petitioner and Mr Vivek Sharma, learned counsel for the respondent/complainant.

10. Mr Maan Singh, learned counsel for the petitioner, submitted that the complaint in the present case was premature because the complainant is relying upon the presumption of service, which would be 30 days after the sending of the notice. Learned Courts below did not advert to this aspect of the case. He relied upon the judgment of this Court in ***Dyal Negi @ Hardyal versus Anil Kumar 2025:HHC:36356*** in support of his submission.

11. Mr. Vivek Sharma, learned counsel for the respondent/complainant, submitted that this plea was never taken before the learned Trial Court or the learned Appellate Court, and it is impermissible to take this plea before this Court. The learned Courts below have concurrently held that the ingredients of the commission of an offence punishable under Section 138 of the NI Act are duly satisfied, and this Court should not interfere with the concurrent findings of fact recorded by the learned Courts below. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207-

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

"**14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*12*. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a

> routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

15. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651* that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > 5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be

> treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> “*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose

> decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

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

18. The ingredients of an offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, 2025 SCC OnLine SC 2019*** as under: -

> **5.1.1.** In ***K.R. Indira v. Dr. G. Adinarayana (2003) 8 SCC 300***, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

19. The complainant stated in the complaint that the cause of action arose to him on 12.06.2003, when the cheque was dishonoured and again when the accused failed to repay the amount within the requisite period despite the notice dated 16.06.2003. The complainant, R.K. Puri (PW1), stated that he sent a notice to the accused on 16.06.2003 through his Advocate. The accused failed to pay the amount despite the receipt of a valid notice of demand. Thus, the complainant has not specified the date of service of notice upon the accused, and he is relying upon the presumption of the service.

20. It was laid down by the Hon'ble Supreme Court in ***Subodh S. Salaskar v. Jayprakash M. Shah, (2008) 13 SCC 689: (2009) 3 SCC (Cri) 834: 2008 SCC OnLine SC 1174*** that where a notice was sent by registered post acknowledgement due, the presumption of service of notice can be raised within a reasonable time and 30 days must be held to be sufficient for service of notice. It was observed at page 699:

> "**23.** Thirty days ordinarily must be held to be sufficient for service of notice. In fact, when the service of notice is sought to be effected by speed post, ordinarily, the service takes place within a few days. Even under Order 5 Rule 9(5) of the Code of Civil Procedure, 1908, a summons is presumed to be served if it does not come back within thirty days. In a situation of this nature, there was no occasion for the Court to hold that service of notice could not be effected within a period of thirty days."

21. The Jharkhand High Court considered this question in ***Manoj Kumar Nag v. State of Jharkhand, 2021 SCC OnLine Jhar 458*** and held that when there is no evidence regarding the service, the presumption regarding the delivery of the notice can be made after thirty days of the issuance. It was observed:

> "**22.** This Court finds that there is no material on record regarding the service of legal notice dated 03.03.2008 dispatched by registry on 04.03.2008 upon the petitioner, and it is not the case of the complainant that the legal notice was returned unserved or returned for any other reason. This court is also of the considered view that a presumption regarding service of notice sent through

registered cover can be drawn only upon expiry of 30 days from the date of dispatch of notice, as has been held by the Hon'ble Supreme Court in the judgment reported in ***(2008) 13 SCC 689 (Subodh S. Salaskar v. Jayprakash M. Sah)***. In the said judgment, the notice was sent through speed post, and although the actual date of service of notice was not known, the Complainant proceeded on the basis that the same was served within a reasonable period. It was held that if the presumption of notice within the reasonable period is raised, the deemed service at best can be taken to be 30 days from the date of its issuance and the accused was required to make payment in terms of the said notice within 15 days thereafter and the complaint petition therefore could have been filed after expiry of 15 days given to the accused for payment of money after receipt of notice."

22. A similar view was taken in ***Anil Kumar Goel v. State of U.P., 2021 SCC OnLine All 410,*** wherein it was observed:

> "**18.** Coming to the facts of the present case, the notice having been sent on 19.09.2012, if the presumption of service of notice within a reasonable time is raised, shall be deemed to have been served, at best, within a period of 30 days from the date of issuance thereof, i.e. 19.09.2012. The applicant was required to make payment in terms of the said notice within 15 days thereafter, i.e. on or about 3.11.2012. The complaint, therefore, should have been filed by 03.12.12. Admittedly, the complaint was filed on 19.11.2012, and therefore, at this stage, it cannot be said that no proceedings under Section 138 of the Act could be drawn against the applicant."

23. Madhya Pradesh High Court has also taken a similar view in ***Vishal Gupta vs. Kishan Batham (04.08.2023 - MPHC): MANU/MP/2098/2023,*** wherein it was observed:

> "11. Thus, the learned Trial Court committed no mistake in holding that in the absence of any proof of service of notice on a particular day to the accused, it would be deemed to be served on the 30th day of the dispatch of notice."

24. This position was reiterated in ***Damodar Mallick vs. The State of Jharkhand and Ors. (08.01.2024 - JHRHC): MANU/JH/0024/2024*** wherein it was observed:

> "9. It is crystal clear from plain reading of Section 138 of the N.I. Act that the drawer of a cheque; if it fails to make the payment of the amount of the cheque to the payee within 15 days of the receipt of the demand notice, then the cognisance of the offence can be taken by a learned Judicial Magistrate for the offence punishable under Section 138 of the N.I. Act. The question arises what if, there is no document to suggest that the demand notice in writing given by the complainant-opposite party No. 2 has been served upon the drawer of the cheque, as has been held by the Hon'ble Supreme Court of India in the case of the ***Subodh S. Salaskar vs. Jayprakash M. Shah & Another reported in MANU/SC/3298/2008 : (2008) 13 SCC 689*** and which principle of law has been reiterated by this Court in the case of ***Md. Siraj vs. State of Jharkhand & Another passed in Cr.M.P. No. 1677 of 2022 dated 21st of November, 2023***; that the law is well settled that in case there is no material to suggest that such demand notice was ever served upon drawer of the cheque or any material that such demand notice has returned unserved within the period of 30 days from the date of the issue of such notice, such demand notice is deemed to have been served on expiry of the period of 30 days from the date of issue of such notice and the cognizance of the offence punishable under Section 138 of the N.I. Act can be taken if the drawer of the cheque fails to pay the amount as per the cheque within 15 days of such deemed service of notice. So considering the claim of the complainant that the notice was sent on 15.05.2019 and the complaint was filed on 14.06.2019 without any

> material to suggest that during that period the petitioner had received notice of demand and 15 days have elapsed after receipt of such notice of demand on or before 14.06.2019, this Court has no hesitation in holding that the complaint is pre-mature, hence, the cognizance is bad in law."

25. The notice was sent on 16.06.2003 and would be deemed to be served on 16.07.2003. It was laid down by this Court in ***Vasudev vs. Rama Rani 2017 (2) ShimLC 1175*** that the first day of the period when the limitation starts running has to be excluded while computing the period of limitation. The accused had 15 days to pay the amount thereafter. Therefore, the complaint filed on 31.07.2003 was premature, having been filed within a period of 15 days available to the accused to repay the amount. It was laid down by the Hon'ble Supreme Court in ***Gajanand Burange v. Laxmi Chand Goyal, 2022 SCC OnLine SC 1711,*** that no action can be taken on a premature complaint, and the same is liable to be dismissed. It was observed:

> **5.** The issue which is raised in this appeal is no longer res integra and is covered by a three-judge bench decision of this Court in ***Yogendra Pratap Singh*** **v.** ***Savitri Pandey (2014) 10 SCC 713***. Two issues were formulated for decision before the three-judge Bench, which were:
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> > "1.1. (i) Can cognisance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required

to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,

1.2. (ii) If the answer to Question 1 is in the negative, can the complainant be permitted to present the complaint again, notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?"

6. The first issue was resolved by paragraph 35 of the judgment, which is extracted below:

"35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines "complaint. According to this definition, a complaint means any allegation made orally or in writing to a Magistrate with a view to taking action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognisance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eyes of the law. It is not the question of prematurity of the complaint, where it is filed before the expiry of 15 days from the date on which notice has been served on him; it is no complaint at all under the law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognisance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognisance of an offence can be taken on the basis of such a complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has

> expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque."
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> **7.** In the present case, while the notice was received by the appellant on 8 November 2005, the complaint was filed before the period of fifteen days was complete. The complaint could have been filed only after 23 November 2005, but was filed on 22 November 2005. In view of the legal bar which is created by Section 142 of the NI Act, as explained in the three-judge Bench decision of this Court, taking of cognisance by the Court was contrary to the law and the complaint was not maintainable before the expiry of the period of fifteen days from the date of its receipt by the appellant."

26. Therefore, the submission made on behalf of the accused has to be accepted as correct that the complaint was premature and no action could have been taken on it.

27. It was submitted that the accused admitted in his statement recorded under Section 313 of Cr.P.C. that he had received the notice from the complainant. This admission will not make any difference because the question is not whether the notice was served upon the accused, but whether the complaint was filed within 15 days after the receipt of the notice. The admission will not help in determining this question.

28. Thus, the submission that the complaint is premature has to be accepted as correct. Neither of the learned Courts below

adverted to this aspect of the case, and the judgments and order passed by the learned Courts below cannot be sustained; hence, the present revision is allowed, and the judgments and order passed by the learned Courts below are set aside. The petitioner/accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine, if deposited be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same will be dealt with as per the orders of the Hon'ble Supreme Court of India.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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30. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

1st January, 2026
(Nikita)