**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Revision No. 387 of 2024**
**Reserved on: 08.10.2026**
**Decided on: 06.11.2026**

Ankit Kumar .... Petitioner

Versus

Sunil Sood & another .... Respondents

*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?[1] No.***

For the Petitioner : Mr Rahul Sharma, Advocate.

For the Respondents : Mr Shubham Ghai, Advocate, vice Mr Hemant Vaid, Advocate, for respondent No.1.

Mr Ajit Sharma, Deputy Advocate General, for respondent No.2/State.

***Rakesh Kainthla, Judge***

The present revision is directed against the judgment dated 04.04.2024, passed by the learned Additional Sessions Judge, Palampur, District Kangra, H.P. (learned appellate Court), vide which the judgment of conviction and order of sentence dated 30.07.2021, passed by the learned Additional Chief Judicial

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

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Magistrate, Palampur, District Kangra, 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).*

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 runs a business of confectionery in the name and style of Sai Keshav Confectionery. The complainant and the accused are known to each other. The accused came to the complainant and demanded ₹60,000/- as a loan for his personal requirement. The complainant advanced ₹60,000/- to the accused. The accused issued a cheque of ₹60,000/- in the complainant's favour to repay the money. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement "insufficient funds." The complainant sent a notice to the accused asking him to repay the money within 15 days of the receipt of the notice. The accused failed to repay the money despite the receipt of the

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notice. Hence, a complaint was filed before the learned Trial Court for taking action against the accused 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 himself (CW-1), Raj Kumar (CW-2), and Harnam Singh (CW-3) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), stated that he had issued a security cheque. Raj Walia is a friend of the accused. Raj Walia took a loan from the complainant and pledged the ornaments with the complainant. The accused also furnished a security cheque. Raj Walia returned the money, but the complainant did not return the security cheque. He examined Ajay Kumar (DW-1) to prove his defence.

6. Learned trial Court held that the issuance of the cheque was not disputed, and a presumption arose that the

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cheque was issued for consideration to discharge the debt/liability. The evidence led by the accused was not sufficient to rebut the presumption. The plea taken by the accused that Raj Walia had taken the loan and the accused had furnished the cheque as a security was not probable. The cheque was dishonoured with an endorsement "insufficient funds." The notice was duly served upon the accused, and the accused failed to return 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 six months and pay compensation of ₹60,000/- to the complainant.

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, Palampur, District Kangra, H.P. (learned appellate Court). The learned appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed and a presumption arose that the cheque was issued for

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consideration to discharge the debt/liability. The accused did not step into the witness box; he did not examine Raj Walia, and the defence taken by the accused that Raj Walia had taken the loan from the complainant and the accused had issued a security cheque was not proved on the balance of probabilities. The statement of Ajay Thakur was not credible. The cheque was dishonoured with an endorsement "insufficient funds," and the notice was duly served upon the accused. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were satisfied. The learned trial Court had rightly convicted the accused. The sentence imposed by the learned trial Court was adequate, 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 learned Courts below were swayed by the presumption contained in Section 118(a) and Section 139 of the NI Act. However, the presumption is rebuttable, and the evidence led by the accused was sufficient to rebut the presumption. The complainant had failed to prove the

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documents filed by him as per the law. 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 Rahul Sharma, learned counsel for the petitioner/accused, Mr Shubham Ghai, learned vice counsel representing the respondent No.1/complainant and Mr Ajit Sharma, Deputy Advocate General, for respondent No.2/State.

10. Mr Rahul Sharma, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The plea taken by the accused that Raj Walia had taken the loan from the complainant and the accused had issued a cheque as a security for the repayment of the loan was highly probable. The complainant failed to produce any evidence to prove the transaction between the complainant and the accused, and the learned Courts below erred in relying upon the complainant's uncorroborated testimony. The learned trial Court had imposed a harsh sentence, and the learned appellate Court erred in confirming it. Therefore, he prayed that the present revision be

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allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Shubham Ghai, learned counsel for the respondent/complainant, submitted that issuance of the cheque is not disputed, and the learned Courts below had rightly held that a presumption would apply to the present case that the cheque was issued for consideration to discharge the debt/liability. The accused had not stepped into the witness box, and he had also not examined Raj Walia to prove that the complainant had advanced any loan to Raj Walia or that the accused had issued the cheque as security. There is no proof of the fact that Raj Walia had returned the amount so taken by him. The learned Courts below had rightly appreciated the evidence on record, and this Court should not re-appreciate the evidence while deciding the revision. Hence, he prayed that the present revision be dismissed.

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

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13. I have given a 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 and sentence 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:
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> > "**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, 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.

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**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 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 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.
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> 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 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.

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15. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda (supra)*** 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***.
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> "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;
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> (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;
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> (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 that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
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> (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;
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> (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 first class.

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

17. The accused claimed in his statement recorded under Section 313 of the Cr.P.C. that he had issued a security cheque for

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the repayment of the loan by Raj Walia. Ajay Kumar (DW-1) also stated that the accused had handed over two blank cheques to the complainant. The statements of the accused and Ajay Kumar show that 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 statement of the accused regarding issuance of a blank 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 the 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.
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> **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.

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

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> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
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> 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.
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> 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***].

19. 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

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> 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.

20. 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.

21. The complainant denied in his cross-examination that the accused had only taken a loan of ₹15,000/- and that he had issued two blank security cheques in the presence of Pawan, Ajay, and Raj Kumar. He denied that the accused had returned ₹15,000/- along with interest. He denied that the accused had demanded the cheque and he (the complainant) had sought time to return the cheque. No suggestion was put to the complainant that Raj Walia had taken the loan and the accused had issued the

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cheque as a security for the repayment of the loan by Raj Walia. This plea was taken for the first time by the accused in his statement recorded under Section 313 of the Cr.P.C. It was laid down by the Hon'ble Supreme Court in ***Ravinder Kumar Sharma Vs. State of Assam (1999) 7 SCC 435*** that, generally speaking, so much of the case as concerns the witness should be put to him in his cross-examination. It was observed: -

> 29. The High Court was, in our opinion, wrong in concluding that there was the absence of reasonable and probable cause because the action, in view of the notification of the Central Government, was unauthorised or illegal. Illegality does not by itself lead to such a conclusion. Further, there is no truth in the appellant's case that on 1-10-1977, at the time of seizure, he informed Defendants 2 and 3 about the gazette notification. The point is that such an assertion was not made even in the bail application moved after arrest. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, we do not find sufficient pleading on this aspect. In any case, we find that no question was put when the 2nd defendant was cross-examined. As pointed out by ***Sarkar on Evidence*** (15th Edn., 1999, Vol. 2, p. 2179) in the context of Section 138 of the Evidence Act,
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> > "Generally speaking, when cross-examining, a party's counsel should put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share."

22. This position was reiterated in ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268: 2016 SCC OnLine SC 435***, wherein it was observed at page 294: -

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"**15.** Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed; PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure; one is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906]***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. The party is required to put his version to the witness. If no such questions are put, the Court will presume that the witness's account has been accepted, as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***]

**16.** In ***Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60]***, it has been laid down that the matters sworn to by one party in the pleadings, not challenged either in pleadings or cross-examination by the other party, must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359]*** has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court in ***Kuwarlal Amritlal v. Rekhlal Koduram [Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83]*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court ***in Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683***] has laid down that it cannot be too strongly emphasised that the system

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> of administration of justice allows for cross-examination of the opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

23. Thus, the plea taken by the accused that he had issued a security cheque for the repayment of the loan taken by Raj Walia is suspect.

24. The accused did not step into the witness box to prove this version. He relied upon his statement recorded under Section 313 of the CrPC to prove his defence. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201,*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 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)

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25. 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.

26. The accused did not examine Raj Walia, who is stated to have taken the loan from the complainant. The learned appellate Court had rightly held that the version of the accused would become doubtful in the absence of the statements of the accused or Raj Walia.

27. Ajay Kumar (DW-1) stated that Raj Walia required money in the year 2011. He, Raj Walia, and Ankit went to the complainant. Raj Walia pledged his gold chain with the complainant, and the complainant advanced ₹25,000/- to Raj Walia. The complainant stated that the weight of the gold chain was less, and the accused issued two blank cheques in favour of the complainant. The transaction between the complainant and Raj Walia is over, and the complainant had returned the gold chain to Raj Walia. He stated in his cross-examination that he was a friend of the accused. He was not aware that the accused had received the notice and had not repaid the money. He denied

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that the accused had taken ₹60,000/- from the complainant and had issued the cheque to repay the money.

28. The testimony of this witness is inherently improbable. As per the version of this witness, he, Raj Walia, and the accused had gone to the complainant to take the loan. Raj Walia had handed over a gold chain as pledge. However, the complainant claimed that the weight of the gold chain was less, after which the accused handed over the cheque as security to the complainant. It is not explained as to why the accused would be carrying a cheque book with him. He was not to take any loan from the complainant. Raj Walia had already brought the gold chain with him to secure the repayment of the loan, and the accused had no justification to bring the cheque book and hand over the blank cheque to the complainant.

29. Further, the conduct of the accused does not support the testimony of this witness. The accused never made any complaint to any person, including the bank, that he had handed over the blank cheques to the complainant for the repayment of the loan by Raj Walia and the complainant was not returning the cheque despite the repayment of the loan. Any prudent person

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finding that his blank security cheques are lying with another for a transaction, which was complete, would have taken steps to secure the blank cheques issued by him. The absence of any such step by the accused makes his version doubtful that he had handed over blank signed cheques for a transaction which was completed and cheques were not returned to him.

30. The accused did not send any reply to the notice claiming that he had handed over blank signed cheques to the complainant. The accused never suggested to the complainant that the cheque was taken as a security and the complainant had misused it. Thus, the evidence on record was insufficient to rebut the presumption, and there is no infirmity in the findings recorded by the learned Courts below that the accused had failed to rebut the presumption attached to the cheque.

31. The complainant stated that the cheque was dishonoured with an endorsement "insufficient funds." This is duly corroborated by the cheque return memo (Exhibit C-2), in which the reason for dishonour of the cheque has been mentioned as "insufficient funds." It was laid down by the Hon’ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh***

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***B. Thakore*, *(2010) 3 SCC 83; (2010) 1 SCC (Civ) 625; (2010) 2 SCC (Cri) 1; 2010 SCC OnLine SC 155,*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> "**24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable."

32. In the present case, the accused did not claim that he had sufficient funds in his account, and the cheque was wrongly dishonoured by the bank. Therefore, learned Courts below had rightly held that the cheque was dishonoured, with an endorsement 'funds insufficient'.

33. The complainant stated that he had issued a notice to the accused, which was duly served upon him. This is duly corroborated by the acknowledgement (Exhibit C-5), which bears the signatures of the accused. Thus, the learned Courts below had rightly held that the notice was duly served upon the accused.

34. 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

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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 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)

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

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

37. The learned trial Court sentenced the accused to undergo simple imprisonment for six months and pay compensation of ₹60,000/- 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."

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

39. In the present case, the cheque was issued for ₹60,000/- and the learned Trial Court had awarded ₹60,000 as compensation. 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***]"

40. The complainant had to spend money to prosecute the complaint. He lost the interest that he would have gained by investing the amount. Hence, the amount of compensation of

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₹60,000/- is less; however, the complainant has not filed any appeal, and no interference is required with the sentence imposed by the learned Trial Court.

41. No other point was urged.

42. In view of the above, the present revision fails, and it is dismissed. The pending application(s), if any, also stand disposed of.

43. The record of the learned Courts below be returned with a copy of the judgment.

**(Rakesh Kainthla)**
**Judge**

**06th November, 2026**
**(Ravinder)**