IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 708 of 2025
Reserved on: 26.10.2026
Date of Decision: 18.11.2026.

Ravi Chand ...Petitioner

Versus

V.P. Sharma ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***No.***

For the Petitioner	:	Mr Vijender Katoch, Advocate.
For the Respondent	:	Mr Naveen K. Bhardwaj, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 02.05.2025, passed by learned Additional Sessions Judge-I, Kangra at Dharamshala, District Kangra (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 01.07.2024, passed by learned Additional Chief Judicial Magistrate, Court No. 1, Kangra, District Kangra (learned

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

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 revision are that the complainant filed a complaint 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 Class-I Government contractor and the accused is a wood merchant. The complainant had cordial relations with the accused. The complainant asked the accused to supply him wood and paid ₹9,00,000/- as an advance for the supply of wood. The accused failed to supply the wood as per the specifications provided by the complainant. The complainant asked the accused to supply the wood or to return the money. The accused handed over three cheques of ₹3,00,000/-, ₹2,00,000/-, and ₹4,00,000/- to the complainant to return the money. The complainant presented the cheques to his bank, but these were dishonoured with the remarks "Funds Insufficient". The complainant sent a notice to the accused, which was returned undelivered. The accused failed to pay the money; hence, a

complaint was filed against the accused for taking action 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), Bipin Kumar (CW-2), R.S. Kanwar (CW-3) and Sanjeev Kumar (CW-4) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), admitted that the complainant is a Government Contractor and he (the accused) is a wood merchant. The accused denied the rest of the complainant's case. He stated that he had handed over three cheques to the complainant because the complainant was to supply the sand and grits, but the complainant failed to supply them. The complainant filed a false complaint. He examined Bhupender Kumar (DW-1) and Narinder Singh (DW-2) to prove his defence.

6. The learned Trial Court held that the issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The plea taken by the accused that he had to purchase sand and grits from the complainant was not proved. The accused had failed to rebut the presumption attached to the cheque. The cheques were dishonoured with the endorsement "insufficient funds". The notice was sent to the correct address, and the accused had failed to pay the money. All the ingredients of commission of an offence punishable under Section 138 of the NI Act were duly satisfied; hence, the learned Trial Court convicted the accused for the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for one year and six months, pay a fine of ₹18,00,000/-, and in default of payment of fine, to undergo simple imprisonment for six months for the commission of the aforesaid offence.

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-I, Kangra at Dharamshala, District Kangra (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 consideration to discharge the debt/liability. The accused had failed to rebut the presumption by leading satisfactory evidence. The cheques were dishonoured with an endorsement of insufficient funds. The notice was sent to the correct address and was not served because the accused was not available at home, which amounted to deemed service on the accused. The accused failed to repay the money. 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 learned Courts below failed to properly appreciate the evidence on record. The complainant had misused the security cheque issued by the accused. The complainant admitted in his cross-examination that he was an income tax payee and that he had not mentioned the loan in the income tax return, which falsified the complainant's version.

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 Vijender Katoch, learned counsel for the petitioner/accused, and Mr Naveen K. Bhardwaj, learned counsel for the respondent/complainant.

10. Mr Vijender Katoch, learned counsel for the petitioner/accused, submitted that the complainant mentioned the loans of ₹4,15,496/- in his income tax return, which falsified the complainant's version that he had advanced ₹ 9 lakh to the accused. The learned Courts below ignored the statement of Narinder Singh (DW-2). The accused had successfully rebutted the presumption attached to the cheque. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Naveen K. Bhardwaj, learned counsel for the respondent/complainant, submitted that the failure to mention the loan in the income tax return will not prove the falsity of the complainant's case. The learned Courts below have rightly appreciated the evidence, and this Court should not re-appreciate

the evidence. Therefore, he prayed that the present revision be dismissed.

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

13. 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.

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 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 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.

14. 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;

(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 that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

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

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or 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.

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

16. The accused stated in his statement recorded under Section 313 of the Cr.P.C. that he had handed over three cheques to the complainant because he (the accused) was to purchase sand and grits, which were never supplied by the complainant. This statement shows that the issuance of the cheque was not

disputed. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148,*** that where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant, it 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.
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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 presuming 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 to prove 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.

17. It was laid down in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, that where the execution of the cheque

is proved or admitted, the presumption would be attracted. It was observed:

> *"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***].

18. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that the cheque carries a presumption that it was issued in discharge of the liability for consideration, 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 Sections118and139of theNI Acthelp 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.

19. Therefore, the learned Courts below had rightly held that a presumption would be attracted in the present case that the cheque was issued for consideration to discharge the debt/liability, and the burden shifted upon the accused to rebut the presumption.

20. Bhupender Kumar (DW-1) stated in his affidavit (Ex. DW-1/A) that the accused had handed over three cheques to the complainant for the supply of crusher material. The accused enquired telephonically about the supply, and he had intimated the complainant about the calls. He left the job on 30.11.2012.

21. This witness was examined as a witness of the accused, and he could not have tendered his evidence on affidavit. 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 at page 101*** that only the complainant is entitled to produce evidence on affidavit and the accused cannot lead evidence on affidavit. It was observed:-

> **52.** In the light of the above, we have no hesitation in holding that the High Court was in error in taking the view that, on a request made by the accused, the Magistrate may allow him to tender his evidence on affidavit and consequently, we set aside the direction as contained in sub-para (*r*) of para 45 of the High Court judgment. The appeal arising from SLP (Crl.) No. 3915 of 2006 is allowed.

22. This position was reiterated in ***Sanu Varghese v. Shoukkathali, 2026 SCC OnLine SC 1998***, wherein it was held: -

> **4.** The issue, in a narrow compass, is as to whether the remand order was proper on the ground raised at the stage

of revision, when there is no plea of prejudice taken by the accused. The cited decision, on a detailed consideration of Section 145 of the NI Act, held that sub-section (1) provides that the evidence of the complainant may be given by him on affidavit, which was also to be read in evidence in any enquiry, trial or other proceeding under the Cr. P.C., subject to all just exceptions. The provision enables only the complainant's chief examination to be on affidavit. As far as sub-section (2) is concerned, it was held to be a discretion of the Court to call a person giving evidence to do so on affidavit and to examine him as to the facts contained therein. However, if any application is made, either by the prosecution or by the accused, that the person giving his evidence on affidavit should be called in person, to be again examined as to the facts contained therein, it must be done.

5. True, this Court found a distinction between the nature of the complainant's evidence and the evidence of the accused in a case of dishonoured cheque, in paragraph 48. The nature of the evidence of the defence may not necessarily be documentary, and the defence would adduce other kinds of evidence to rebut the presumption that the issuance of the cheque was not in discharge of any debt or liability, was the finding, which led to the conclusion that the accused cannot be permitted to be examined on affidavit.

6. The dictum has to be applied in a criminal case, specifically with reference to the prejudice caused to the accused in a completed trial. In the present case, the reading of the order of the learned Magistrate would indicate that the accused, examined as DW-1, contended that a signed blank cheque leaf was given as security for a loan of Rs. 10 lakhs, transferred by the complainant to the account of the accused. The cheque presented was for an amount of Rs. 30 lakhs. It was also the contention of the accused that on the alleged date of handing over of Rs. 20 lakhs and on the date on which the cheque was issued, the evidence of PW-1, the complainant, having been

> corroborated by PW-2, was not in station and was at Bengaluru. However, no substantive evidence regarding the unavailability of the complainant was proffered before the Court. The learned Magistrate clearly observed that the accused could very well have obtained the Call Data Records (CDRs) of the mobile of the complainant to establish his absence.

23. Therefore, the learned Trial Court erred in accepting the evidence of this witness on affidavit. However, since no prejudice was claimed by any person, the affidavit of this witness is being read.

24. Bhupender Kumar claimed that he was working with the complainant as a driver, but he could not produce any driving licence. He could not even mention the registration number of the complainant's vehicle, which makes his testimony doubtful that he was a driver with the accused. He admitted that he was only driving the vehicle and was not looking after any other work. He has not explained why he would know about the transaction between the complainant and the accused regarding the crushing material and why would the accused call him about the crushing material when he was not dealing with the business. He admitted that he was a friend of the cousin of the accused, which shows that he is not an independent person, as has been projected.

Therefore, the learned Courts below had rightly rejected the testimony of this witness.

25. Narinder Singh (DW-2) stated that the complainant had only shown a loan of ₹4,15,496/- in his income tax return. It was submitted that the failure to show the loan amount in the statement of account made the complainant's case highly doubtful. This submission cannot help the accused. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed: -

> 10. It would further be noticed that the learned trial Magistrate has acquitted the accused on the ground that the loan has not been shown in the Income Tax Return furnished by the complainant, and while recording such finding, has placed reliance upon the judgment of the Hon'ble Delhi High Court in ***Vipul Kumar Gupta vs. Vipin Gupta 2012 (V) AD (CRI) 189***. However, after having perused the said judgment, it would be noticed that the amount in the said case was ₹ 9 lacs, and it is in that background that the Court observed as under: -
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> > "9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of

> this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors that have been enumerated by the learned ACMM also. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts; the factum of the loan having been given by him, because, by no measure, an amount of ₹ 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or year when the loan was sought or given. The appellant has presented a cheque, which obviously is written with two different inks, as the signature appears in one ink, while the remaining portion, which has been filled in the cheque, is in a different ink. All these factors prove the defence of the respondent to be plausible to the effect that he had issued these cheques by way of security to the appellant for getting a loan from the Prime Minister Rojgar Yojana. The respondent/accused has only to create doubt in the version of the appellant, while the appellant has to prove the guilt of the accused beyond a reasonable doubt, in which, in my opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal against the impugned order, as there is no infirmity in the impugned order."

26. Therefore, the complainant’s version cannot be discarded because he had not shown the loan amount in the Income Tax Return filed by him.

27. The accused claimed that he was to purchase the sand and grits from the complainant. He has not produced any satisfactory evidence to show that the accused was running the crusher. He has also not provided the purpose for which the sand and grits were required by him. It was nowhere suggested to the complainant that he was running a stone crusher or that he had entered into any agreement with the accused to supply the sand and the grits. 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,

> "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."

28. 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: -

> "**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***]
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> **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 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.

29. Therefore, the version that the complainant had agreed to supply the sand and grits to the accused and the accused had issued the cheque in favour of the complainant for the supply was rightly rejected by the learned Courts below.

30. It was suggested to the complainant that the accused had issued the security cheques in favour of the complainant. It

was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355,*** that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 383:

> "**38.** Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
>
> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except for the concession on the point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.
>
> ****
>
> **42.** Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused."

31. The accused had taken contradictory pleas, and his version was rightly rejected by the learned Courts below.

32. The complainant stated in his cross-examination that an estimate was prepared regarding the supply of the wood and

he had not produced the copy of the estimate. It was submitted that the failure to produce the estimate would make the complainant's case doubtful. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361***, that a presumption under Section 139 of the NI Act would obviate the requirement to prove the existence of consideration. It was observed:

> "**20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due, and the dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

33. 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 on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of a loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

'*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point, which has not been done by the petitioners. Pausing here, the*

Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound. ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing 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 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, 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).*

34. 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."

35. Therefore, the complainant's version could not have been discarded because the estimate was not brought on record.

36. There is no other evidence to show that the cheque was not issued for consideration to discharge the debt/liability. Thus, the learned Courts below have rightly held that the accused had issued the cheques in discharge of the debt/liability.

37. The complainant stated that the cheques were dishonoured with an endorsement "Funds Insufficient". This is duly corroborated by the memos of dishonour (Ex. CW-1/E, Ex. CW-1/F, and Ex. CW-1/G), wherein the reason for dishonour has been mentioned as "Funds Insufficient".

38. Sanjeev Kumar (CW-4) proved that the memos of dishonour were issued by the bank. 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."

39. In the present case, the accused did not claim that he had sufficient funds in his account and the cheques were wrongly dishonoured by the bank. Therefore, the learned Courts below have rightly held that the cheques were dishonoured with the endorsement "Funds Insufficient".

40. The complainant stated that he had issued the notice to the accused, which was returned unclaimed. This is duly corroborated by the registered letter (Ex. CW-2/D), in which it was mentioned that the addressee was not found despite repeated visits to the house. It was laid down by the Hon'ble Supreme Court in ***D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456,*** that when a notice has been returned with the report that the addressee was not available or the premises were locked, a presumption arises that notice was duly served and the burden would be upon the accused to show that the report is incorrect. It was observed at 462:

> "**14.** If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly, if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him, and consequently, he can never be prosecuted. There is good authority to support the proposition that once the complainant, the payee of the cheque, issues notice to the drawer of the cheque, the cause of action to

file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice, which may be returned with an endorsement that the addressee is not available at the given address.

xxxxx

18. This Court noted the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case, the notice was returned as "unclaimed" and not as refused. The Court posed the question, "Will there be any significant difference between the two so far as the presumption of service is concerned?" Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. This Court dismissed the appeal preferred by the drawer, holding that where the notice is returned by the addressee as unclaimed, such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (*c*) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the

> appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. The aforesaid decision is significant for two reasons. Firstly, it was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

41. It was laid down by the Hon'ble Supreme Court of India in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that when a notice is returned unclaimed, it is deemed to be served. It was observed:

> "8. Since in ***Bhaskaran's case (supra)***, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service."

42. This position was reiterated in ***Priyanka Kumari vs. Shailendra Kumar (13.10.2023- SC Order): MANU/ SCOR/ 133284/ 2023,*** wherein it was observed:

> "As it was held by the Hon'ble Supreme Court in ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 Supreme Court Cases 51***0, that when notice is returned as 'unclaimed', it shall be deemed to be duly served upon the addressee, and it is a proper service of notice. In the case of ***Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014) 12 SCC 685 (2014)***, the Hon'ble Court, while interpreting Section 27 of the General Clauses Act, 1897 and also Section 114 of the Evidence Act, 1872, held as under: -
>
> "Section 114 of the Evidence Act, 1872, enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that, despite the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

43. A similar view was taken in ***Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458,*** wherein it was observed:

> **"13.** Section 27 of the General Clauses Act, 1887, deals with service by post:
>
> > "27. **Meaning of Service by post.**-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the

> service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

14. The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:

14.1 In ***Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264,*** which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*"

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881, it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso to Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: ***C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555***]

14.3 The findings in ***C.C. Alavi*** (supra) were followed in Vishwabandhu ***v. Srikrishna (2021) 19 SCC 549***. In this case, the summons issued by the Registered AD post was received back with the endorsement "refusal". In accordance with

> Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.
>
> 14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506***; and ***V.N. Bharat v. DDA (2008) 17 SCC 321.***

44. In the present case, the accused has not proved that he was not responsible for non-service; therefore, the learned Courts below had rightly held that the notice was deemed to be served upon the accused.

45. 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 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)

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

47. Thus, it was duly proved that the accused had issued a cheque to the complainant which was dishonoured with an endorsement "funds insufficient" and the accused had failed to repay the money despite the receipt of valid 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 learned Trial Court had rightly convicted the accused.

48. It was submitted that a single complaint could not have been filed regarding the three cheques. This submission cannot be accepted. The cheques were part of a single transaction and a single notice was issued for the dishonour of the cheques; therefore, it was permissible to file a single complaint. It was laid down by the Allahabad High Court in ***Vinay Patni v. State of U.P., 2012 SCC OnLine All 3681*** that a common complaint can be filed for the dishonour of three cheques when they were issued for the same transactions and a common notice was issued. It was observed:

> **17.** The third contention of the learned Counsel for the revisionist that the demand notice as well as the complaint was illegal for combining three separate causes of action cannot be accepted for the reason that though the three cheques might have been given separately to the complainant, all these cheques were drawn on the same account and, as per the complaint allegations, were in lieu of payment of a common loan amount. Further, they were presented for collection on the same date through a single account, in the manner desired by the accused, and that the information of the cheques returning unpaid was also received on the same date; and a common notice of demand was also made. It was, therefore, one transaction and to state that there has to be separate complaint with respect to each cheque that was dishonoured, will not be

> correct in view of subsection (1) of section 220, Cr. P.C. Moreover, even if it is assumed that they constituted three separate offences, a common trial would not be hit by section 219, Cr. P.C. inasmuch as the number of offences did not exceed three. Thus, viewed from any angle, a common complaint as well as a common demand notice was not illegal. The view that I am taking is also supported by decisions of several High Courts, namely, the Madras High Court in the case of *K. Govindraj* v. *Ashwin Barai 1998 (94) Company Cases 236*, the Punjab & Haryana High Court in the case of *Anita* v. *Anil K. Mehra 1998 (94) Company Cases 584*, as well as the Andhra Pradesh High Court in the case of *B. Venkat Narendra Prasad* v. *State of Andhra Pradesh 2003 Cri.LJ 2506*.

49. Gujarat High Court also held in ***Satish Kumar Jayantilal Shah, 1999 STPL 21 Gujarat*** that a joint trial can be held for dishonour of four cheques issued for the same transaction. It was observed:

> 14. It must be remembered that as per the allegations made by the complainant in his complaint, the present petitioner had taken goods on credit from the complainant during the period running between January 10, 1992, and January 8, 1993. It is the further claim of the complainant that towards his dues for the goods taken on credit, these four cheques were given by him; now, if these averments made in the complaint are taken into consideration along with the provisions of Section 220 of the Code of Criminal Procedure, then it would be quite clear that the issuance of these four cheques could be said to be part of the same transaction. If the issuance of these four cheques is said to be part and parcel of the same transaction, then taking cognisance of the four cheques and framing a charge for those four cheques could not be said to be any illegality as the said action would be covered by the provisions of

Section 220 of the Code of Criminal Procedure.

50. The Karnataka High Court held in ***S. Kamakoti v. I. Sarfaraz Nawaz, 2019 SCC OnLine Kar 518,*** that the complaints for dishonour of three cheques issued as part of the same transaction can be tried together. It was observed:

> **12.** A harmonious construction of Sections 219 and 220 of Cr.P.C. would indicate that legislative intent is that in one complaint the accused can be proceeded against for dishonour of a maximum of three cheques and for offences committed in respect of more than three cheques, a separate complaint has to be registered and consequently tried. In other words, if more than three cheques are issued relating to the same transaction, then considering the purpose, sequence of events, nature of allegation, proximity of commission and unity of action, it can be tried by filing one complaint. Thus, the essential requirement or parameter would be the commonness, or that it should arise out of the same transaction. It all depends on facts and circumstances of each case and no straight jacket formula can be prescribed in this regard.

51. A similar view was taken by the Madhya Pradesh High Court in ***Prashant Sharma v. Yogesh Agrawal*, *2015 SCC OnLine MP 5015: (2015) 3 MP LJ 362*** wherein it was observed at page 364:

> **12.** As per the facts of the case in hand, in one transaction, the amount was borrowed by the petitioner, and for repayment of the amount, three different cheques were issued by the petitioner in discharge of his legal liability, meaning that, at the moment when all the cheques were dishonoured, the offence will be deemed to have been committed jointly by the petitioner for all three dishonoured cheques. The position would have been

> different if the cheques were issued in discharge of liability of different transactions and in that event accrual of cause of action would have arisen at the place where the offence of dishonour of the cheque takes place. The respondent, therefore, has got a strong case in his favour.

52. It was laid down by the Kerala High Court in ***Balachandran v. Sajan Mathew, 2026 SCC OnLine Ker 2301***, that a single complaint is maintainable regarding the dishonour of more than one cheque when one cause of action has arisen. It was observed: -

> 11. An identical issue came up for consideration before a learned Single Judge of this Court in ***Mohamed v. State of Kerala [2004 KHC 1129]***. There, the case also related to six cheques issued by the accused as part of the same transaction, and the prosecution was launched by the institution of a single complaint after the accused failed to make payment of the cheque amount as demanded in a consolidated single notice. By relying on the law laid down by the Hon'ble Supreme Court in Mohan Baitha (supra), this Court had held in that decision that the prosecution is perfectly maintainable since the offences involved were constituted out of one series of acts so connected as to form the same transaction as dealt with in Section 220 Cr. P.C. The same view has been adopted by the Delhi High Court in ***Pawan Dhanpatrai Malhotra v. Mahender Khari [2024 SCC OnLine Del 3951],*** wherein also the issue related to the dishonour of four cheques, and the prosecution launched upon a single complaint after sending a single legal notice.

53. Therefore, the submission that a single complaint was not maintainable is not acceptable.

54. Thus, 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.

55. The learned Trial Court had sentenced the accused to undergo simple imprisonment for one year and six months and pay a fine of ₹18,00,000/-. 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."

56. Even if the deterrent nature of punishment is concerned, the sentence of one year and six months is excessive and is required to be reduced. Considering the nature of offence,

and that the accused had faced the agony of trial, appeal and revision, the sentence is reduced to one year.

57. In the present case, the cheques were issued in the year 2012, and the sentence was imposed in the year 2024 after the lapse of twelve years. 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***]" Considering all these circumstances, the amount of ₹10,000/- as compensation on the amount of ₹15,000 after the four years for the loss of interest and the litigation expenses cannot be said to be excessive, requiring any interference from this court.

58. The complainant lost the interest that he would have gained by investing the amount. He had to engage an advocate to pursue the complaint, and he was entitled to be compensated for it. Considering the time between the issuance of the cheque and the date of imposition of the sentence, the compensation of ₹9,00,000/- on the cheque amount of ₹9,00,000/- cannot be said to be excessive, requiring any interference from this Court.

59. No other point was urged.

60. In view of the above, the present revision is partly allowed and sentence is reduced to simple imprisonment of one year. Subject to this modification, the rest of the judgment and order are upheld. All the pending applications, if any, also stand disposed of.

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

(Rakesh Kainthla)
Judge

18th November, 2026
(Chander)