IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 63 of 2024
Reserved on: 28.10.2026
Date of Decision: 17.11.2026.

Ram Krishan Gupta ...Petitioner

Versus

M/s H.P. Commercial Corporation ...Respondent

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

For the Petitioner : Mr Prashant Sharma, Advocate.
For the Respondent : Mr Surjeet Kumar, Advocate, vice Mr Anuj Gupta, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 24.12.2022 passed by learned Additional Sessions Judge-II, Shimla, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 01.07.2022 passed by learned Judicial Magistrate First Class, Court No. 3, Shimla, District Shimla (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

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

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is the sole proprietor of Himachal Pradesh Commercial Corporation. The accused purchased clothes from the complainant vide Bill No. 4247 dated 03.10.2016, and issued a post-dated cheque of ₹1,00,000/- to repay the money. The complainant presented the cheque to the bank, but it was dishonoured with an endorsement "exceeds arrangement". The complainant issued a legal notice to the accused asking him to repay the money. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, the 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 (CW1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the complainant's case in its entirety. He claimed that he had never purchased any cloth from the complainant and that his blank cheque was stolen from the cash box. He examined Constable Kushal (DW1) and Jyoti Prakash (DW2) to prove his defence.

6. Learned Trial Court held that the complainant's version that he had supplied the cloth to the accused was proved on record. The defence version that the accused had lost the blank signed cheque was not established. A cheque carries a presumption that it was issued for consideration to discharge debt/liability. The accused had failed to rebut the presumption. The cheque was dishonoured with an endorsement "exceeds arrangement". The notice was duly served upon the accused, and he failed to repay the money. 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 one year, pay a fine of

₹1,92,000/- and, in default of payment of the fine, to undergo further simple imprisonment for 6 months. The amount of the fine, if realised, was ordered to be paid to the complainant as compensation.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge-II, Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had purchased the cloth from the complainant and had issued the cheque to repay the money. The defence taken by the accused, that his cheque was lost and the complainant had misused it, was not proved on the balance of probabilities. The cheque was dishonoured with an endorsement "exceeds arrangement". The notice was served upon the accused, and the accused failed to repay the money. There was no infirmity in the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

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

revision, asserting that the defence taken by the accused, that the complainant had misused the cheque of the accused, was highly probable. The complainant had failed to establish the existence of legal liability. As per the complainant, the accused had purchased the cloth in the year 2016 and issued the cheque in the year 2017, which is highly improbable. 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 Prashant Sharma, learned counsel for the petitioner/accused, and Mr Surjeet Kumar, learned vice counsel representing the respondent/complainant.

10. Mr. Prashant Sharma, learned counsel for the petitioner/accused submitted that learned that the defence taken by the accused that he had lost the cheque was highly probable and the learned Courts below erred in rejecting it. The complainant has not established the existence of a legal debt/liability. The complainant's version that he had supplied the clothes to the accused in the year 2016 and the accused had issued a cheque in the year 2017 is highly improbable. Learned Courts below failed to properly appreciate the material on record.

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 Surjeet Kumar, learned vice counsel representing the respondent/complainant, submitted that the learned Courts below had rightly held that the cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. The accused had not rebutted the presumption. Both the Courts have concurrently held the accused guilty and this Court should not re-appreciate the evidence while deciding the revision. Hence, 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, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours

and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

> **"438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> *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.
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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 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 present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The complainant stated that the accused used to purchase cloth from his shop in October 2016. He had issued a bill (Ext.CW1/A) in the name of the accused. The accused issued a cheque (Ext.CW1/B) to repay the money. He presented the cheque before the bank, and it was dishonoured. He stated in his cross-examination that his concern was registered. He was an income taxpayer. The accused was running a Karayana shop earlier, and a cloth shop at the time of taking the loan. He could not say that the accused had been running a Dhaba since the year 2007. He admitted that he had not produced the books of account with the complaint. He admitted that the bill book was not verified by any sales tax officer or income tax officer. He had not brought the copy of the income tax return to the Court. He denied that he had advanced ₹40,000/-to the accused and the accused had returned the money in the instalments of ₹4,000/-. He denied that he had stolen the cheque from the cash box of the accused and misused it.

16. His version is duly corroborated by the copy of the invoice (Ext.CW1/A), in which it was mentioned that the complainant had supplied the cloth worth ₹2,11,210/- to the accused on 03.10.2016.

17. Jyoti Prakash (DW2) produced the licence issued in the name of the accused Ram Kishan Gupta for confectionery items in the years 2007 to 2010. He stated in his cross-examination that the licence was not renewed after 2010.

18. It was submitted that the statement of this witness corroborates the defence version that the accused had never taken any cloth from the complainant. This submission will not help the accused. The licence was not renewed after July 2010, which means that the accused stopped running the confectionary shop after 2010. The cloth was purchased in October 2010. This corroborates the complainant's version that the accused was initially running a dhaba and thereafter a cloth shop. Thus, the defence evidence does not demolish the complainant's version.

19. Constable Kushal (DW1) stated that he had not brought the record because the record had been destroyed as per the rules. Therefore, his testimony does not establish the version

of the accused that he had made any complaint regarding the loss of the cheque to the police.

20. The complainant's testimony is reliable, and there is nothing in his cross-examination to show that he is making a false statement. Therefore, the learned Courts below had rightly accepted the complainant's testimony.

21. The complainant specifically stated that the accused had issued a cheque to repay the money. Thus, the execution of the cheque was duly proved on record. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the proof of the execution of the cheque by the complainant would trigger the presumption under Section 139 of the NI Act and the burden would shift upon the accused to rebut the presumption. It was observed:

> **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.

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

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

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

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and, therefore, to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

24. 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.

25. The accused did not step into the witness box to prove that his cheque was lost. He relied upon his statement recorded

under Section 313 of the CrPC to prove his defence, which is not sufficient. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201,*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 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)

26. 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.

27. The complainant's version is duly corroborated by the copy of the invoice, which strengthens the presumption attached to the cheque. Therefore, there is no infirmity in the finding

recorded by the learned Courts below that the accused had issued a cheque to repay the amount.

28. It was submitted that the cheque was issued in the name of Himachal Pradesh Commercial Corporation and the complaint filed by the complainant is not maintainable. This submission will not help the petitioner. The complainant specifically stated that he is a proprietor of Himachal Pradesh Commercial Concern. The complainant has filed Form 7 issued under the Himachal Pradesh Shops and Commercial Establishment Act (Ext.CW1/F), in which the establishment has been described as Himachal Pradesh Commercial Corporation and is shown to be owned by the complainant, Dinesh Nanda. The complainant has also filed a certificate issued by HDFC Bank (Ext.CW1/E), in which it has been certified that Himachal Pradesh Commercial Corporation is the proprietorship of Dinesh Nanda. Both these documents prove that the complainant is the owner of the Himachal Commercial Corporation. It was laid down by the Hon'ble Supreme Court in ***Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536: 2008 SCC OnLine SC 997***, that where the payee is a proprietorship concern, the complaint can be filed in

the name of the proprietorship concerned through the proprietor.

It was observed:

> **10.** As contrasted with a company incorporated under the Companies Act, 1956, which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law, where an individual carries on business in a name or style other than his name, he cannot sue in the trading name but must sue in his name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietorship concern. But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. *Section 142 requires that the complainant should be the payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.*
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> **11.**....Therefore, where the payee is a proprietary concern, the complaint can be filed: (*i*) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (*ii*) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (*iii*) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case, the complaint could have been validly filed by describing the complainant in any one of the following four methods:
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> "Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"
>
> *or*

> "M/s Shankar Finance & Investments, a sole proprietorship concern represented by its proprietor, Atmakuri Shankara Rao"
>
> *or*
>
> "Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"
>
> *or*
>
> "M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney, holder Thamada Satyanarayana.
>
> What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

29. In the present case also, the complaint has been filed by M/s Himachal Commercial Corporation through its proprietor Shri Dinesh Nanda, which is as per the judgment of the Hon'ble Supreme Court in ***Shankar Finance*** (supra) and there is no infirmity in the complaint.

30. The complainant asserted that the cheque was dishonoured with an endorsement "exceeds arrangement". He filed the memo of dishonour (Ext.CW1/C) issued by HDFC Bank showing the reason for dishonour "exceeds arrangement". A perusal of the memo (Ext.CW1/C) shows that it does not bear the official seal or the signatures of any person. It was laid down by this Court in ***Rajinder Singh Verma vs. B.K. Hanchnmani***

(30.04.2019 - HPHC): MANU/HP/0437/2019 that a computer-generated memo of dishonour not having the official seal is inadmissible. It was observed: -

> "9. Even if, assumingly, the complainant may, upon recourse to an appropriate remedy, be cast under the provisions of Section 45 of the Indian Evidence Act, rather could therethrough strive to prove the aforementioned cheque, borne in Ex. CW1/A, carrying the authentic signatures of the accused, (a) and, thereafter, it was permissible for the complainant to rely upon the statutory provisions, cast under the provisions of Section 139 of the Negotiable Instruments Act, qua his holding it in discharge of a contractual or other legal liability arising inter se between him and the accused. Nonetheless, dehors, the aforecurative recoursings, for, hence, dispelling the effect of Ex. CW1/A, rather than being feigned, in the testification rendered hence by the complainant, to, hence assuredly contain the signatures of the accused, also, the mandate, of Section 146 of the Negotiable Instruments Act, provisions whereof stand extracted hereinafter, was, also vis-a-vis, Ex. CW1/B, the purported return memo given, Ex. CW1/A, hence enjoined, to be cogently satiated.
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> > "146. Bank's slip prima facie evidence of certain facts. The Court shall, in respect of every proceeding under this Chapter, on production of a bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.
>
> Even though the court is statutorily empowered to, qua the apposite return memo hence enunciating, the, declining to honour the negotiable instrument concerned, rather avail the apposite therewith presumption, as engrafted therein, (a) yet the afore presumption would be aptly galvanised

upon the memo evidently carrying thereon the official mark and seal of the bank concerned. However, the afore presumption, as occurring therein, and, with a statutory coinage, "unless and until such fact is disproved", is rebuttable, only upon, adduction into evidence, the return memo, (b) whereupon hence, it would also stand proven qua it not carrying the official mark or seal of the bank concerned. The evidence in consonance with the afore-mentioned statutory coinage, occurring in the last part of Section 146 of the N.I. Act is, prima facie, rather upsurging, given, Ex. CW1/B evidently not carrying the seal or official mark of the bank concerned, (I) AND, with one Naresh Kumar, Accounts Officer from ICICI Bank, The Mall Shimla, upon his stepping into the witness box, rather showing his inability to bring the original of Ex. CW1/B, given it not being traceable in the apposite records, (ii) and, when only on production, of the original in the Court of EX. CW1/B, and, evident existence thereon, of the afore statutorily mandated requirements, of it, hence carrying the official mark or seal of the bank concerned, would, hence enable, the, marshalling, of, the statutory presumption qua the apposite cheque being declined, to be honoured, to, rather hold the fullest conclusivity or sway, (iii) besides it would benumb any endeavour of the defence, to rely, upon the afore statutory coinage, occurring in the last part of Section 146 of the N.I. Act, (iv) reiteratedly, for want of production of the original of Ex. CW1/B, this court is constrained to conclude qua the statutory requirement of Ex. CW1/B on its presentation, for its being honoured, hence, being declined to be honoured, rather remaining, within the ambit of Section 146 of the N;l. Act, to be hence, disproven.

31. Madhya Pradesh High Court has also held in ***Satyendra Tiwari v. State of M.P., 2014 SCC OnLine MP 6786: ILR 2014 MP 1679: (2014) 3 MP LJ 574*** that a memo of dishonour not bearing the banker’s seal is invalid. It was observed at page 1685: -

"**Endorsement Memo**

29. Another reason given by the learned court to acquit the accused was that the complainant failed to prove the submission of the cheque (Ex. P-1) in the bank.

30. When a cheque is drawn by a person on an account maintained by him for payment of any amount or discharge of liability or debt and is returned by the bank with endorsements like (i) refer to drawer, (ii) exceeds arrangement, (iii) instruction for stoppage of payment, (iv) insufficient funds and like other usual endorsements, it amounts to dishonour within the meaning of section 138 of the N.I. Act.

31. Cheque to be presented within six months from the date of the cheque to the bank on which it was drawn, and if it is presented beyond that time, the complaint is not maintainable. In this case in hand the cheque (Ex.P-1) was presented within time.

32. In fact, the learned trial Court initially committed a grave mistake while issuing summons for the appearance of the accused on the assumption that the case had been disclosed, while the bankers' seal was totally missing of the bankers' written memo; in such circumstances, the summons was not required to issue against the accused.

33. Learned trial Court, after scrutinising the statement of the complainant in this regard and after examining the cheque (Ex. P-1) with returning endorsement (Ex. P-2), found that there is a lack of a banker's seal on the endorsement memo (Ex. P-2).

34. It is pertinent to mention here that even after committing an initial error, the learned trial Court gave an appropriate opportunity to the complainant to examine the Manager or any authorised Officer of the Punjab and Sindh Bank, the Banker who returned the Cheque (Ex.P.-1) vide their endorsement memo (Ex.P.-2) under the caption "Fund Insufficient", but the complainant failed to comply. In such a situation, endorsement memo (Ex.P.-2) has no evidentiary value as a public document, but is a mere piece of paper."

32. It was held in ***Krishnapal v. Hari Singh, 2024 SCC OnLine MP 2516*** that the Bank is required to put the seal and the signatures on the cheque return memo as per the guidelines issued by the RBI and in the absence of the seal and the signatures, the memo does not carry a presumption under Section 146 of the NI Act. It was observed: -

> "**5.** Having gone through the record, it is found that the said document Ex-P/2 has no seal of the said bank and signature of the authority; therefore, it is in violation of guidelines issued by the Reserve Bank of India vide its letter No. **RBI/2011-12/121 DPSS.CO. CHD NO. 120/03.06.01/2011-12 dated 25.07.2011**. The said guidelines are required to be and are hereby reproduced hereunder:—
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> "RBI/2011-12/121
>
> DPSS.CO. CHD.No. 120/03.06.01/2011-12 July 25, 2011
>
> The Chairman and Managing Director/Chief Executive Officer
>
> All Scheduled Commercial Banks, including RRBs
>
> /Urban Co-operative Banks/State Co-operative Banks/
>
> District Central Co-operative Banks
>
> Madam/Dear Sir,
>
> Dishonour/Return of Cheques - Need to Sign/Initial the Cheque Return Memo
>
> Please refer to our circular DPSS. CO. CHD. No. 485/03.06.01/2010-11 dated September 1, 2010 on Dishonour/Return of Cheques - Need to Mention the 'Date of Return' in the Cheque Return Memo, wherein

citing the criticality of the document in case of recourse to legal action, it has been indicated that instruments returned unpaid should have a signed/initialed objection slip on which a definite and valid reason for refusing payment must be stated, as prescribed in Rule 6 of the Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH).

Certain instances of banks not signing the Cheque Return Memos, stating that the Memos are computer-generated and therefore no signature is necessary, have been brought to our notice. Such practices are a violation of instructions contained in Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH), which is issued under the Payment and Settlement Systems Act, 2007, read with the Payment and Settlement Systems Regulations 2008.

Banks are, therefore, advised to strictly adhere to the instructions and sign/initial the Cheque Return Memos as laid down in Rule 6 of URRBCH.

Yours faithfully,

(Pankaj Ekka)

Deputy General Manager

6. In view of the guidelines, it can be predicated that not signing the cheque return memo by the Bankers and issuing them without any signature will be a violation of the instructions contained in the uniform regulations and rules of bankers. Hence, the petitioner cannot benefit from the law laid down in ***Guneet Bhasin*** (Supra). On this aspect, the learned trial Court, relying upon the judgment of this Court rendered in ***Satyendra Tiwari*** (Supra), opined that a dishonour memo of a bank without a seal has no evidentiary value as a public document and it would be treated as only a mere piece of paper. The aforesaid law laid down in ***Satyendra Tiwari*** (Supra) still holds the field; hence, the contentions of the petitioner as to accepting the

> endorsement memo (Ex. P/2) are evidently found without merit."

33. Bombay High Court held in ***Vandana v. Abhilasha, 2018 SCC OnLine Bom 2086: (2019) 2 Mah LJ 645: 2018 ACD 950: (2018) 4 Bom CR (Cri) 774*** that a computer-generated document requires a certificate under Section 65(b)(4) and in the absence of the certificate, the memo is not admissible. It was observed at page 649: -

> "**9.** In this context, section 146 of the aforesaid Act is relevant, which reads as follows:
>
> "**146.** ***Bank's slip prima facie evidence of certain facts.***— *The Court shall, in respect of every proceeding under this Chapter, on production of a bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.*"
>
> **10.** The said provision states the manner in which a complainant can prove dishonour of a cheque. The complainant is required to produce a slip or memo having an official mark on it, denoting that the cheque has been dishonoured. If such a document is placed on record by the complainant, it constitutes *prima facie* evidence of dishonour and a presumption operates as to the fact of the dishonour of the cheque, unless and until such fact is disproved. Thus, once such a memo or slip issued by the bank bearing its official mark concerning dishonour of a cheque is placed on record by the complainant, the burden is clearly on the accused to disprove the fact of dishonour of a cheque.
>
> **11.** But, there cannot be any doubt about the fact that section 146 of the said Act provides for one of the modes of proving dishonour of cheques, and it certainly cannot be

the only mode of proving the same. In the present case, the memo purportedly issued by the bank showing dishonour of cheque, admittedly, does not bear the official mark of the bank. It was for this reason that the said document was not exhibited during the evidence. Thus, the mode specified in section 146 of the said Act was not satisfied in the present case, and consequently, no presumption arose about the dishonour of the cheque in question. In such a situation, the appellant claims that the dishonour of the cheque was proved because a statutory notice was issued by her to the respondent. It was pointed out that specific pleadings were made in the complaint filed before the Court stating dishonour of the said cheque and that when the respondent had failed to adduce any evidence in support of her defence, the statements made by the appellant in this statutory notice and the complaint were enough to prove dishonour of the cheque. It was submitted that when there was no denial on the part of the respondent about the deposit and dishonour of the cheque in question, the trial Court could not have held that the appellant had failed to prove the fact of dishonour of the cheque. It was further contended that when the findings were rendered on the question of discharge of legal debt, and it was found by the trial Court that the appellant had indeed advanced a hand loan for the amount stated in the cheque to the respondent, there was no reason why the trial Court could have held that the fact of dishonour of the cheque was not proved by the appellant.

12. While examining the said contentions raised on behalf of the appellant, it is necessary to keep in mind that the present case concerns criminal liability alleged against the respondent. Although proceedings under the aforesaid Act are *quasi*-criminal in nature, the fact is that when the offence under section 138 of the said Act is said to have been proved, criminal liability is fixed upon the accused (respondent in the present case) and therefore, the evidence on record and the burden of proof have to be analysed on the touchstone of proof beyond reasonable doubt. The burden of proof clearly lies upon the appellant

in the present case to prove basic facts that would constitute an offence under section 138 of the aforesaid Act. Under the said provision, the offence is deemed to have been committed the moment the cheque in question is returned by the bank unpaid. Therefore, it is necessary that there is proof of return or dishonour of the cheque in question before it can be said that an offence under section 138 of the Act has been committed.

13. When the complainant (appellant in the present case) asserted that the cheque was returned or dishonoured, it was for her to prove this basic fact; section 146 of the said Act provides that if the complainant places on record a slip or memo issued by the bank having the official mark of the bank thereon, denoting that the cheque was dishonoured, it would be presumed that such cheque was dishonoured until such fact was disproved. Thus, if such a document were placed on record by the appellant in the present case, it would constitute *prima facie* evidence of dishonour of the cheque, and the burden would have been entirely on the respondent to disprove such a fact. But, when the memo produced in the present case by the appellant did not bear the official mark of the bank, there was no document as contemplated under section 146 of the said Act to presume that the fact of dishonour of the cheque had been proved by the appellant. The burden continued to lie on the appellant to prove the basic fact of dishonour of the cheque, in the facts and circumstances of the present case.

14. In such a situation, a mere statement made in the statutory notice and the complaint filed before the Court would not constitute proof of dishonour of the cheque, unless further evidence to corroborate the same was placed on record on behalf of the appellant. The appellant is not justified in claiming that such statements would suffice as proof of dishonour of the cheque because the respondent failed to enter the witness box in support of her defence. As the complainant, it was for the appellant to prove the fact of dishonour of the cheque by cogent evidence. The appellant could have examined the bank

official to prove that the cheque had indeed been dishonoured, but she failed to do so.

15. The appellant could have placed on record a certificate contemplated under section 65-B of the Indian Evidence Act, 1872, in respect of the memo of the Bank, which was allegedly a computer-generated electronic record. But no such evidence was placed on record. The trial Court has also held that there was a lack of evidence to show even the deposit of the cheque because the deposit slip was not placed on record by the appellant. But, a perusal of the cheque in question (Exhibit-21) does show that the stamp of the bank in which the cheque was deposited is very much present on the cheque. To that extent, the trial Court was not right in holding that even the proof of deposit of the cheque was not on record. Yet, this fact alone does not take the case of the appellant any further because the stamp affixed on the cheque shows only the name of the bank, and there is nothing to signify the date on which the cheque was deposited in the bank. Even as per the case of the appellant, the cheque in question was deposited twice, and it is clear that there is no cogent evidence placed on record by the appellant to show dishonour of the said cheque.

16. When the basic fact of dishonour of the cheque was not proved by the appellant, and the burden was not discharged, an offence under section 138 of the said Act could not be said to have been committed by the respondent. Another important aspect of the present case is that when there is a lack of evidence to show dishonour of the cheque and consequently the date when the cheque was dishonoured, there is no reference point to ascertain whether the notice for demand of payment was issued by the appellant to the respondent within the period of 30 days of receipt of information from the bank regarding return of the cheque as unpaid, as provided under proviso (b) to section 138 of the said Act. This is the reason why the trial Court has held that the appellant failed to prove that she made a demand for payment of the amount within the

> statutory period, as the statutory period could not be computed in the facts of the present case.
>
> **17.** Analysis of the provisions of the said Act, particularly sections 138, 142 and 146 thereof, shows that cognisance of the offence under section 142 of the said Act could not have been taken by the Court in the present case because the basic fact of dishonour of cheque could not be proved by the appellant. The appellant failed to prove dishonour of the cheque by any mode other than the one provided under section 146 of the said Act. The memo of return of cheque in the present case admittedly did not bear the official mark of the Bank, due to which presumption in favour of the appellant did not arise. Therefore, the complaint in the present case was correctly rejected by the trial Court, thereby acquitting the respondent.

34. It was laid down in ***Tejendrasingh v. Ravindrakumar, 2019 SCC OnLine Bom 60: (2019) 3 Mah LJ 612: 2019 ACD 229: (2019) 2 RCR (Cri) 475: PLR (2019) 193 IJ 14: (2019) 1 Bom CR (Cri) 900*** that when the document does not bear the official mark/seal, the presumption under Section 146 of the NI Act cannot be drawn. It was observed:

> "ii. Admittedly, the UCO Bank representative is not examined. The Trial Court refused to accept the bank memo issued by that bank. It does not bear the seal of the bank. I agree with the Trial Court. The presumption under section 146 of the N.I. Act will not come to his rescue. There has to be a seal on the bank slip before the presumption as to dishonour can be drawn. I could have given the benefit of this lacuna even if a proper person from SBI, that is, the signatory of the letter, could have been examined. It seems that while conducting the prosecution, these minor procedural aspects are overlooked."

35. The Hon'ble Supreme Court also held in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1: (2020) 4 SCC (Civ) 1: (2020) 3 SCC (Cri) 1: (2020) 2 SCC (L&S) 587: 2020 SCC OnLine SC 571*** that the certificate under Section 65(b)(4) of the Indian Evidence Act is mandatory, in the absence of which the computer-generated document cannot be relied upon. It was observed at page 27: -

> "**23.** Section 65-B(1) opens with a non obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.
> **24.** Section 65-B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65-B(2)(*a*) to 65-B(2)(*d*) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections (2)(*a*) to (2)(*d*) must be satisfied cumulatively.
> **25.** Under sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a

person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" — whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing *any* of the following things ..." must be read as doing *all* of the following things, it being well settled that the expression "any" can mean "all" given the context (*see*, for example, this Court's judgments in ***Banwarilal Agarwalla v. State of Bihar [Banwarilal Agarwalla v. State of Bihar, (1962) 1 SCR 33: AIR 1961 SC 849: (1961) 2 Cri LJ 12***: "*3.* The first contention is based on an assumption that the word "any one" in Section 76 means only "one of the directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in Section 76 was raised in ***Chief Inspector of Mines v. Lala Karam Chand Thapar, AIR 1961 SC 838 : (1961) 2 Cri LJ 1****and it has been decided there that the word "any one" should be interpreted there as "every one". Thus, under Section 76, every one of the shareholders of a private company owning the mine, and every one of the directors of a public company owning the mine, is liable to prosecution. No question of violation of Article 14 therefore arises*." (SCR p. 35: AIR p. 850, para 3)(emphasis supplied)] and ***Om Parkash v. Union of India [Om Parkash v. Union of India, (2010) 4 SCC 17 : (2010) 2 SCC (Civ) 1***, "*70.* Perusal of the opinion of the Full Bench in *B.R. Gupta-1* [***Balak Ram Gupta v. Union of India, 1987 SCC OnLine Del 227: AIR 1987 Del 239***] would clearly *indicate with regard to interpretation of the word "any" in Explanation 1 to the first proviso to Section 6 of the Act which expands the scope of stay order granted in one case of landowners to be automatically extended to all those landowners, whose lands are covered under the notifications issued under Section 4 of the Act*, irrespective of the fact whether there was any separate order of stay or not as regards their lands. The logic assigned by the Full Bench, the relevant portions whereof have been reproduced hereinabove, appears to be reasonable, apt, legal and

> proper." (SCC p. 43, para 70)(emphasis supplied). This being the case, the conditions mentioned in Section 65-B(4) must also be interpreted as being cumulative.

36. In the present case also, the memo does not bear the signatures and the seal. It is also not accompanied by any certificate under Section 65B of the Indian Evidence Act regarding the authenticity. Therefore, no reliance can be placed upon the memo (Exhibit CW1/C) to hold that the cheque was dishonoured with an endorsement "exceeds arrangement".

37. The complainant did not examine any official of the bank to prove that the accused did not have sufficient funds in the account to honour the cheque or that the cheque was drawn in excess of the arrangement made with the bank. Thus, there was no evidence to show that the cheque was dishonoured with an endorsement "exceeds arrangement".

38. Hence, the essential requirement of the cheque under Section 138 that the cheque should have been dishonoured for insufficient arrangement or exceeds arrangement is lacking in the present case. The learned Courts below have relied upon the memo of dishonour to conclude that the complainant's version was believable that the cheque was dishonoured with an endorsement "exceeds arrangement", whereas the memo was

not admissible, as held by this Court and the other High Courts. Therefore, the learned Courts below erred in holding that all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

39. In view of the above, the judgments and order passed by the learned Courts below cannot be sustained. Hence, the present revision is allowed, and the judgment of conviction and order of sentence dated 01.07.2022 passed by the learned Judicial Magistrate First Class, Court No.3, Shimla, as affirmed by learned Additional Sessions Judge-II Shimla, dated 24.12.2022, are ordered to be set aside, and the accused is acquitted of the charged offences. The fine, if deposited, be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

40. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with

one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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

(Rakesh Kainthla)
Judge

17th November, 2026
(Nikita)