IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 750 of 2026
Reserved on: 29.10.2026
Date of Decision: 23.11.2026.

Sandeep Kumar ...Petitioner

Versus

Narender Kumar ...Respondent

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

For the Petitioner : M/s Jia Lal and Manjeet Pasreecha, Advocates.

For the Respondent : Nemo

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 19.05.2026 passed by learned Additional Sessions Judge-II Mandi, District Mandi (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 02.01.2026 passed by learned Judicial Magistrate First Class, Chachiot at Gohar, District Mandi, H.P. (learned Trial Court), were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

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

2026:HHC:50396

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant and the accused had a friendly relationship with each other. The accused borrowed ₹45,000/- from the complainant in April 2023 for his domestic needs. He promised to return the money within 6 months. The complainant demanded the money from the accused in October 2023 and the accused issued a cheque to the complainant to repay the money. The complainant presented the cheque to his bank but it was dishonoured with the remarks "insufficient funds". The complainant issued a notice to the accused, which was duly served upon him. However, the accused failed to repay the money. Hence, the complaint was filed against the accused for taking action against him as per the law.

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

2026:HHC:50396

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), admitted that he had a friendly relationship with the complainant, that he had borrowed ₹45,000/- from the complainant in April 2023 for domestic needs and had promised to return the money within 6 months. The accused also admitted that he had issued a cheque of ₹45,000/-, which was dishonoured on presentation with the endorsement "insufficient funds". He admitted that he had received the notice and had not paid the money to the complainant. He admitted that the witnesses had deposed correctly against him. He expressed his willingness to pay the amount to the complainant.

6. Learned Trial Court held that the complainant's version was duly corroborated by the material on record. The accused claimed in the application filed under Section 145(2) of the NI Act that the complainant had taken a security cheque which was misused by him. However, this plea was not proved. The issuance of the cheque was not disputed, and the burden

2026:HHC:50396

shifted upon the accused to rebut the presumption. The accused had not led any evidence to rebut the presumption. The cheque was dishonoured with the endorsement "insufficient funds". The notice was duly served upon the accused and the accused had not repaid 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 1 month, pay compensation of ₹50,000/- and, in default of payment of compensation to undergo further simple imprisonment for 7 days.

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, Mandi, District Mandi (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. Even if the cheque was issued as a security, the accused had failed to prove that the money taken by him from the complainant was returned. Hence, the complainant was within his right to present the cheque. The cheque was

2026:HHC:50396

dishonoured with endorsement "insufficient funds". The notice was duly served upon the accused, and he had failed to repay the money despite the receipt of the 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. 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 learned Courts below erred in appreciating the material on record. The cheque was issued on 03.10.2023, and the legal notice was served upon the accused on 18.10.2023. The complaint was filed on 09.11.2023. Hence, the complaint was premature. The accused had rebutted the presumption by putting the necessary question to the complainant. The accused asserted that he had repaid the money to the complainant, and this was ignored by the learned Courts below. The complainant had not produced his income tax return to show his financial capacity to lend the money. Therefore, it was prayed that the present revision be allowed and the

2026:HHC:50396

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

9. M/s Jia Lal and Manjeet Pasreecha, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in rejecting the defence taken by the accused, that the complainant had taken the security cheque at the time of advancing the loan. The complaint was premature as it was filed within 15 days available to the accused to pay the money. Therefore, they prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

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

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional

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

> **"438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
>
> *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
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> (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

2026:HHC:50396

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 the exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

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

its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

12. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

> **5.3.** At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755.***
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> "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
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> (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person out of that account for the discharge of any debt or other liability;
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> (ii) that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (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

2026:HHC:50396

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.

13. The present revision has to be decided as per the judgments of the Hon'ble Supreme Court.

14. The complainant reiterated the contents of the complaint in his proof affidavit (Ext.CW1/A). He stated in his cross- examination that the accused is his friend and previously he had worked as a conductor on a bus. He had given ₹45,000/- to the accused in April 2023, and the accused had promised to return the money within 5-6 months. He demanded the money in October, and the accused issued a cheque in his favour. He denied that he had obtained the cheque at the time of repairing the vehicle of the accused. He admitted that he used to file the income tax return but did not remember whether he had mentioned the money advanced to the accused as a loan in his returns.

15. The accused admitted in his statement recorded under Section 313 of the CrPC that he had a friendly relationship with the complainant and he had borrowed ₹45,000/- from the

complainant in April 2023. He also admitted that he had issued a cheque in October 2023 after the complainant had demanded the money from him. Therefore, the complainant's version that the accused had borrowed the money from him and had issued a cheque to return the money was duly corroborated by the statement of the accused recorded under Section 313 of the CrPC. It was laid down by the Hon'ble Supreme Court in ***State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421,*** that the Courts can rely upon the statement of the accused recorded under Section 313 of the CrPC. It was observed at page 742:

> **"51.** That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:
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> > "313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."
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> Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section.

2026:HHC:50396

Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See ***State of Maharashtra v. R.B. Chowdhari (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95***. This Court, in the case of ***Hate Singh Bhagat Singh v. State of M.B. 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468,*** held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In ***Narain Singh v. State of Punjab (1963) 3 SCR 678: (1964) 1 Cri LJ 730***, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

> "Under Section 342 of the Code of Criminal Procedure, by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may 'be taken into consideration' at the enquiry or the trial. *If the accused person, in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him*, but if he does not confess and, in explaining circumstances appearing in the evidence against him, sets up his

2026:HHC:50396

> own version and seeks to explain his conduct, pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety." (emphasis supplied)
>
> Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated into two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (*b*) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), asd the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force."

16. It was laid down by the Hon'ble Supreme Court in ***Mohan Singh v. Prem Singh, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933***, that the statement made by the accused under Section 313 CrPC can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at page 244:

> **27.** The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if

the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See ***Nishi Kant Jha v. State of Bihar (1969) 1 SCC 347: AIR 1969 SC 422***: (SCC pp. 357-58, para 23)

> "23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961, negatives of both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one, as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime*." (emphasis supplied)

17. It was laid down in ***Ramnaresh v. State of Chhattisgarh,***

2026:HHC:50396

(2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213, that the statement of the accused under Section 313 Cr.P.C., insofar as it supports the prosecution's case, can be used against him for recording a conviction. It was observed at page 275: -

> "**52.** It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law."

18. This position was reiterated in ***Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199***, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

> **24.** We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in the Section 313 statement cannot be brushed aside. This Court in ***State of Maharashtra v.***

2026:HHC:50396

Sukhdev Singh [(1992) 3 SCC 700: 1992 SCC (Cri) 705 held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court, in ***Hate Singh Bhagat Singh v. State of Madhya Bharat, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933,*** held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In ***Narain Singh v. State of Punjab (1964) 1 Cri LJ 730: (1963) 3 SCR 678,*** this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in ***Mohan Singh v. Prem Singh (2002) 10 SCC 236: 2003 SCC (Cri) 1514*** held that: (SCC p. 244, para 27)

> "27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."

In this connection, reference may also be made to the judgments of this Court in ***Devender Kumar Singla v. Baldev Krishan Singla (2005) 9 SCC 15: 2005 SCC (Cri) 1185*** and ***Bishnu Prasad Sinha v. State of Assam (2007) 11 SCC 467: (2008) 1 SCC (Cri) 766***. The above-mentioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being that he is not making the statement on oath, but all the same, the

2026:HHC:50396

> confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.
>
> **26.** We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved, and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC."

19. Thus, the complainant's version was rightly accepted by the learned Courts below that he had advanced ₹45,000/- to the accused and the accused had issued a cheque to repay the money.

20. The accused suggested to the complainant that the cheque was issued towards the repair of the vehicle. However, this suggestion was denied by the complainant. A denied suggestion does not amount to any proof and the accused cannot derive any advantage from it. The statement of the accused recorded under Section 313 of the CrPC also does not establish this suggestion, as the accused has nowhere asserted that he owned a vehicle which was got repaired from the complainant.

21. The accused admitted his liability to repay the money and expressed his willingness to pay the money to the complainant. Thus, he never disputed his liability to pay the

2026:HHC:50396

amount, and the learned Courts below have rightly held that the accused had failed to rebut the presumption attached to the cheque that it was issued for consideration to discharge the debt/liability.

22. The complainant asserted that the cheque was presented before the bank but it was dishonoured with endorsement "insufficient funds". The accused also admitted in his statement recorded under Section 313 of the CrPC that the cheque was dishonoured because of "insufficient funds". The memo of dishonour (Ext.CW1/C) also shows that the cheque was dishonoured with endorsement "insufficient funds". 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."

2026:HHC:50396

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

24. The complainant stated that he had issued a notice to the accused which was duly served upon him. This is duly corroborated by the acknowledgment (Ext.CW1/F). The accused also admitted in his statement recorded under Section 313 of the CrPC that the notice was duly received by him. Therefore, the receipt of the notice by the accused was not in dispute and learned Courts below had rightly held that the notice was duly served upon him.

25. It was submitted that the complaint is premature. The legal notice was served upon the accused on 18.10.2023 and the complaint was filed on 09.11.2023. It is difficult to appreciate this submission. The notice was served upon the accused on 18.10.2023, and the accused had 15 days to repay the money. Thus, he could have paid the money on or before 02.11.2023. The complainant had a right to file a complaint within 30 days

2026:HHC:50396

thereafter, and the complaint was filed on 09.11.2023 within the limitation. Hence, the complaint cannot be said to be premature.

26. The learned Trial Court had sentenced the accused to undergo simple imprisonment for 1 month and pay compensation of ₹50,000/-. 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."

27. Keeping in view the deterrent nature of the punishment, the sentence of 1 month cannot be said to be excessive.

28. In the present case, the cheque was issued on 03.10.2023, and the sentence was imposed on 02.01.2026 after the lapse of more than 2½ years. It was laid down by the Hon'ble

2026:HHC:50396

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***]"

29. The complainant lost interest that he would have gained by investing the money. He had to engage a counsel to prosecute the complaint and was entitled to be compensated for it. The learned Trial Court had only awarded a compensation of ₹5,000 on the cheque amount of ₹45,000/-, which cannot be said to be excessive, requiring any interference from this Court.

30. It was submitted that the learned Trial Court had awarded the sentence in default of the payment of compensation,

2026:HHC:50396

which is not permissible. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: (2010) 3 SCC (Civ) 744: (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612,*** that the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

> **"26.** From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to prison or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated."

2026:HHC:50396

31. This position was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013: 2012 SCC OnLine SC 486,*** wherein it was observed at page 729:

> "**29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code provides that compensation is ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that, in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the above-mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is

2026:HHC:50396

that the order to pay compensation may be enforced by awarding a sentence in default.

> **30.** In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

32. Therefore, it is permissible to award imprisonment in default of compensation, and there is no infirmity in the order passed by the learned Trial Court.

33. No other point was urged.

34. In view of the above, the present revision fails, and it is dismissed.

35. The present revision stands disposed of, and so do the pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

23rd November, 2026
(Nikita)