IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 726 of 2026
Reserved on: 03.11.2026
Date of Decision: 19.11.2026.

Sanjay Sharma ...Petitioner

Versus

Sunil Singh Patial and Anr. ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1]

For the Petitioner	:	Mr Suresh Singh Saini, Advocate.
For the Respondent No. 1	:	Mr Ajit Sharma, Deputy Advocate General

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 22.08.2026 passed by the learned Chairman, HPSTAT, exercising the powers of Addl. Sessions Judge, Hamirpur, District Hamirpur, HP. (learned Appellate Court) vide which the judgment of conviction dated 26.03.2025 and order of sentence dated 27.03.2025 passed by the learned Chief Judicial Magistrate,

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

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Hamirpur, District Hamirpur (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant and the accused were close friends. The accused borrowed ₹ 4,00,000/- from the complainant in August 2019 for his domestic needs and promised to return the money in November 2019. The complainant demanded the money from the accused, and the accused issued a cheque of ₹ 2 lakh in the complainant's favour to repay part of the loan. The complainant presented the cheque to his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused asking him to repay the money, which was served upon him. The accused failed to repay the money. Hence, a complaint was filed before the learned Trial Court for taking action against the accused as per the law.

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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 issued a security cheque to the complainant. He examined himself (DW1) to prove his defence.

6. Learned Trial Court held that the complainant's version that he had advanced a loan to the accused and the accused had issued a cheque to the complainant was duly proved. A cheque carries with it a presumption that it was issued for consideration to discharge the debt/liability. The plea taken by the accused that he had handed over a security cheque to the complainant during the business transaction was not proved. The cheque was dishonoured with the endorsement “insufficient

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funds". The notice was duly served upon the accused, and the accused failed to repay the money. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for 6 months, pay compensation of ₹2,50,000/- and in default of payment of compensation, to undergo simple imprisonment for one month.

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 Chairman, HP STAT, exercising the powers of Addl. Sessions Judge, Hamirpur, District Hamirpur, HP. (learned Appellate Court). He also filed an application for leading additional evidence to prove the statement made by the complainant in another complaint. The learned Appellate Court held that the complainant's previous statement was not relevant for the adjudication of the present complaint and there was no reason to take additional evidence on record. The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the complainant's version was

believable. The accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement "insufficient funds", and the notice was duly served upon the accused. The learned Trial Court had imposed an adequate sentence and no interference was required with the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the defence taken by the accused, that he had issued a security cheque, was duly proved on record and the learned Courts below erred in rejecting this defence. The accused had discharged the onus by the complainant's cross-examination and his testimony on oath. The application for additional evidence was wrongly rejected, and the additional evidence was necessary to prove the contradictions in the complainant's testimony. The learned Courts below erred in convicting and sentencing the accused. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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9. Mr Suresh Singh Saini, learned counsel for the petitioner/accused, submitted that the defence taken by the accused, that he had issued the security cheque, was highly probable and the learned Courts below erred in rejecting it. The complainant had failed to produce any proof of the loan advanced to the accused, and the learned Courts below erred in relying upon the presumption attached to the cheque. The application for leading additional evidence was wrongly rejected, which materially prejudiced the defence of the accused. The learned Trial Court had imposed a harash sentence, and the learned Appellate Court erred in upholding it. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

10. Mr Ajeet Sharma, learned Deputy Advocate General, for the respondent/State, submitted that the dispute is between the private parties and the State has no submissions to make.

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

12. 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:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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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.
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> > (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 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.

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> 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 the 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.

13. 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;
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> (iii) that the cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or because it exceeds the amount

arranged to be paid from that account by an agreement made with the bank;

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

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

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

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

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

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

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

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

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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 the First Class.

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

15. The accused filed an application for leading additional evidence to prove the complainant's statement in another complaint to establish the contradictions in the statements. The learned appellate Court had rightly rejected this application. The accused had not sought the re-examination of the complainant to put the previous statement to him, in the absence of which the contradictions could not have been looked into. It was laid down by the Hon'ble Supreme Court in ***Binay Kumar Singh Versus State of Bihar, 1997 (1) SCC 283***, that if a witness is to be contradicted with his previous statement, his attention must be drawn towards it. It was observed: -

"11. The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Court. This principle is delineated in S. 155 (3) of the Evidence Act, and it must be borne in mind when reading S. 145, which consists of two limbs. It is provided in the first limb of S.145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him, but the second limb provides that "if it is intended to contradict him by the writing, his attention must, before the writing can be provided, be called to those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting material to his benefit through such cross-examination, even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand, his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of S. 145.

12. In ***Bhagwan Singh's case (AIR 1952 SC 214)***, Vivian Bose, J., pointed out in paragraph 25 that during the cross-examination of the witnesses concerned, the formalities prescribed by S. 145 were complied with. The cross-examination, in that case, indicated that every circumstance intended to be used as a contradiction was put to him, point by point and passage by passage. Learned Judges were called upon to deal with an argument that witnesses' attention should have been specifically drawn to that passage in addition thereto. Their Lordships were, however, satisfied in that case that the procedure adopted was in substantial compliance with S. 145, and hence held that all that is required is that the witness must

be treated fairly and must be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner. On the facts of that case, there is no dispute with the proposition laid therein.

13. So long as the attention of PW 32 (Sukhdev Bhagat) was not drawn to the statement attributed to him as recorded by DW-10 (Nawal Kishore Prasad), we are not persuaded to reject the evidence of PW-32 that he gave Ex. 14 statement at the venue of occurrence and that he had not given any other statement earlier thereto."

16. A similar view was taken in ***Alauddin v. State of Assam,*** ***2024 SCC OnLine SC 760,*** wherein it was observed:

"**8.** As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

> "**145. Cross-examination as to previous statements in writing**.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior

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statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict the witness must be proved subsequently. Only if the contradictory part of his previous statement is proved can the contradictions be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act, in confronting the witness by showing him the relevant part of his prior statement, is

to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

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10. We are tempted to quote what is held in a landmark decision of this Court in the case of ***Tahsildar Singh* v. *State of U.P., 1959 Supp (2) SCR 875.*** Paragraph 13 of the said decision reads thus:

> **"13.** The learned counsel's first argument is based upon the words "in the manner provided by Section145of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of this contention, reliance is placed upon the judgment of this Court in ***Shyam Singh v. State of Punjab [(1952) 1 SCC 514:1952 SCR 812***]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act, thus at p. 819:
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> > Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts, which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case, all that is necessary is to look to the former statement, of which no further proof is necessary because of the admission that it was made."
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> It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court, and similar decisions were

not considered the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. *Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement were allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it, subject to proof by the police officer.* On the other hand, the procedure

> suggested by the learned counsel may be illustrated thus: If the witness is asked, "Did you say before the police officer that you saw a gas light?" and he answers, "Yes", then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit, by a process of cross-examination, what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that, by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually said before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure." (emphasis added)

This decision is a *locus classicus*, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses'

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> prior statements based on which they were sought to be contradicted in the cross-examination."

17. It was held in ***V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 58,*** that the Courts cannot *suo motu* take cognisance of the contradiction and the same has to be brought on record as per the law. It was observed:

> **19.** Under Section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of the witness is drawn to that part, and this must be reflected in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved, and there is no need for further proof of contradiction, and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement, and it must be mentioned in the deposition. By this process, the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction; it will then be proved in the deposition of the investigating officer, who again, by referring to the police statement, will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that

part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

20. In the case at hand, PW 1 was not confronted with his statement recorded by the police under Section 161 CrPC to prove the contradiction, nor was his statement marked for the purpose of contradiction, which was read out to the investigating officer. When neither PW 1 nor the investigating officer were confronted with the statement and questioned about it, PW 1's statement recorded under Section 161 CrPC cannot be looked into for any purpose, much less to discredit the testimony of PW 1 and the prosecution version.

18. This position was reiterated in ***Anees v. State (NCT of Delhi), 2024 SCC OnLine SC 757,*** wherein it was observed:

> "**64.** The court cannot *suo motu* make use of statements to the police that have not been proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words '*if duly proved*' are used in Section 162 Cr. P.C. P.C. clearly shows that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can it be looked into, but they must be duly proved for contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction, but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.
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> **65.** Section 145 of the Evidence Act reads as follows:
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> > ***"145. Cross-examination as to previous statements in writing.—*** *A witness may be cross-examined as to*

previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

66. Under Section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of the witness is drawn to that part, and this must be reflected in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved, and there is no need for further proof of contradiction, and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement, and it must be mentioned in the deposition. By this process, the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for contradiction; it will then be proved in the deposition of the Investigating Officer, who, again, by referring to the police statement, will depose about the witness having made that statement. The process again involves referring to the police statement and culling out the part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by

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drawing attention to the parts intended for contradiction."
*[See: **V.K. Mishra v. State of Uttarakhand: (2015) 9 SCC 588**]*

19. Thus, the application could not have been allowed, and the learned appellate Court had rightly dismissed the application.

20. The complainant reiterated the contents of the complaint in his proof affidavit (Ex. CW1/A). He admitted in his cross-examination that he used to provide products to the accused for further sale. He stated that the accused had handed over the cheque to him after filling in the amount. He had withdrawn the money from the business and had not shown it in his income tax return. He denied that he had obtained blank cheques from the accused or that the accused was not liable to pay any money to him.

21. The accused stated that he had a retail shop at Hiranagar, Hamirpur, and used to take products from the complainant on credit. He had handed over security cheques of ₹two lakhs each to the complainant, who had misused them. He had no monetary transaction with the complainant. He stated in his cross-examination that he had not produced any Bill regarding the transaction between him and the complainant.

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22. The accused suggested to the complainant that the complainant had taken security cheques from the accused. The accused admitted in his statement recorded under section 313 of the CrPC and on oath that he had issued a security cheque in the complainant's favour. He asserted before this Court in para 7 of the revision petition that the defence of the accused regarding handing over the security cheques was probable. These pleas show that the accused has not disputed the issuance of the cheque and his signatures on the cheque. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the admission of the complainant's signature without admitting the execution of the cheque is sufficient to trigger the presumption contained under Section 118(a) and 139 of the NI Act. It was observed:

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.
>
> **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.

23. 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*
>
> 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).
>
> 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.
>
> 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

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accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

24. 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

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> that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

25. 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.

26. The accused claimed that he had issued a security cheque in the complainant's favour. The complainant denied in his cross-examination that he had taken security cheques from the accused. A denied suggestion does not amount to any proof, and the accused cannot derive any advantage from it. The accused stated in his cross-examination that he had not produced any Bill regarding the business transaction with the accused. He had not made any complaint to the police or the bank regarding the misuse of the cheque, which is contrary to normal human conduct. Any person knowing that his security cheque was lying with the other person would intimate the bank not to honour it. Thus, the plea taken by the accused that he had issued security cheques in the complainant's favour was rightly rejected by the learned Courts below.

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27. It was submitted that the complainant has not produced any proof of the payment of the money to the accused, and the learned Courts below erred in relying upon the complainant's version. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361***, that a presumption under Section 139 of the NI Act would obviate the requirement to prove the existence of consideration. It was observed:

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

28. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

> "**22.** The High Court, while allowing the criminal revision, has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the

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

> '*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High*

Court has taken the view that evidence had to be adduced on this point, which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound. ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing a statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto would not negate such claim for the reason that the cheques having been issued and signed by the petitioners have not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.*** *In this regard, we may make profitable reference to the decision in* ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735****:*

> *'10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts, in our view, were right in holding to those lines. However, the* ***accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by***

> ***pointing to the materials produced by the complainant himself. He can further, more importantly, further achieve this result through the cross-examination of the witnesses of the complainant.*** *Ultimately,* ***it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.****'(emphasis supplied)' (underlining in original; emphasis supplied by us in bold).*

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

> "21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceeding and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged."

30. Therefore, the complainant's version cannot be doubted because he had not produced any evidence to prove the advancing of the loan to the accused.

31. The complainant admitted in his cross-examination that he had not shown the loan transaction in the income tax

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return. It was submitted that this admission would make the complainant's case doubtful. This submission cannot be accepted. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed:-

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

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

32. Therefore, the complainant's version could not have been doubted simply because he had not mentioned the loan amount in the income tax return.

33. The complainant’s statement is consistent; there is nothing in his cross-examination to show that he is making a false statement, and the learned Courts below have rightly accepted his testimony.

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34. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This is corroborated by the memo of dishonour (Ext. CW1/C). 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."

35. The accused did not produce any evidence to show that he had sufficient money in his account and the cheque was wrongly dishonoured by the bank.

36. The complainant asserted that he had issued a notice to the accused which was duly served upon him. This is duly corroborated by the track consignment report (Ext. CW1/F) showing the delivery of the registered letter; therefore, the learned Courts below had rightly held that the notice was served upon the accused.

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37. In any case, it was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court, along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act*. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act." (Emphasis supplied)

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

39. Therefore, it was duly proved on record that the accused had issued a cheque to discharge his liability, which was dishonoured with an endorsement "insufficient funds", and the accused failed to repay the money despite the receipt of a notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

40. The learned Trial Court had sentenced the accused to undergo simple imprisonment for 6 months, pay compensation of ₹2,50,000/-, and in default of payment of compensation, to undergo simple imprisonment for one month. 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."

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

42. In the present case, the cheque was issued for ₹2,00,000/- and the learned Trial Court had awarded the compensation of ₹2,50,000/-. It was laid down by the Hon'ble Supreme Court in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75,*** that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

> 19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The

> provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation, and unless there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [***R. Vijayan v. Baby, (2012) 1 SCC 260, para 20: (2012) 1 SCC (Civ) 79: (2012) 1 SCC (Cri) 520***]"

43. The complainant lost interest that he would have gained by investing the money. He had to engage an advocate to prosecute the complaint and was entitled to be compensated for the loss sustained by him. Hence, the compensation of ₹50,000/- on the cheque amount of ₹ 2,00,000/- is not excessive, requiring any interference from this Court.

44. The learned Trial Court had imposed a sentence of imprisonment in default of payment of compensation. It was submitted that this is impermissible. 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."

45. 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 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 puts compensation 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 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.

46. Therefore, there is no infirmity in the sentence in default of payment of compensation.

47. No other point was urged.

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48. In view of the above, the present revision fails, and it is dismissed. All the pending applications, if any, also stand disposed of.

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

(Rakesh Kainthla)
Judge

19th November, 2026
(ravinder)