IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 736 of 2026
Reserved on: 04.11.2026
Date of Decision: 23.11.2026.

Ajay Kumar ...Petitioner

Versus

Ramesh Kumar ...Respondent

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

For the Petitioner : Mr Rajiv Rai, Advocate.
For the Respondent No. 1 : Nemo

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 01.10.2026 passed by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, HP. (learned Appellate Court) vide which the judgment of conviction dated 08.02.2024 and order of sentence dated 14.02.2024 passed by the learned Additional Chief Judicial Magistrate, Court No. 1, Ghumarwin, District Bilaspur (learned Trial Court) were upheld. *(The parties*

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

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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 had cordial relations. The accused asked for a loan of ₹ 15 lakh from the complainant on 18th May 2014 to discharge the bank loan. The complainant advanced money on different dates. It was agreed that the accused would transfer his land measuring 10 Biswas to the complainant on failure to return the money. An agreement was executed between them to this effect. The accused failed to return the money, and he issued a cheque for ₹ 15 lakhs to return the money. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement of insufficient funds. The complainant issued a notice to the accused, which was returned with an endorsement: addressee absent. 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), Vipin Kumar (CW2) and Surinder Kumar (CW3) 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 lost the cheque book and had filed a complaint before the police. He examined Nitin Chaudhary (DW1), Gagan Sharma (DW2) and MHC Yogender Singh (DW3) 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 the presumption that it was issued for consideration to discharge the debt/liability. The defence taken by the accused that he had lost his cheque book was insufficient to rebut the presumption attached to the cheque. The cheque was

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dishonoured with the endorsement “insufficient funds”. The notice was sent to the correct address and was returned unclaimed, which is deemed service. The accused failed to repay the money. All the ingredients of the 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 three months and to pay compensation of ₹18,00,000/-.

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, Ghumarwin, District Bilaspur, H.P. (Learned Appellate Court). 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 deemed to be served upon the accused. The learned Trial Court had imposed an adequate sentence and no interference was required with the

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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 complainant is a moneylender, he does not possess any license, and the complaint filed by him was not maintainable. The accused had filed an application for stopping the payment, which was duly proved on record. The bank erred in dishonouring the cheque with the endorsement insufficient funds. The essential ingredients of commission of an offence punishable under section 138 of the NI Act were not satisfied. The complainant had failed to prove his financial capacity to advance the loan. 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.

9. Mr Rajiv Rai, learned counsel for the petitioner/accused, submitted that the complainant is a moneylender, and he could not have filed the complaint without a license. The plea taken by the accused that he had misplaced

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the cheque book was proved by the defence evidence, and the learned Courts below erred in rejecting it. The complainant had failed to prove his financial capacity to advance the money. The learned Trial Court had imposed an excessive 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. He relied upon ***Mansi Finance (Chennai) Ltd. v. M. Lalitha, 2026 SCC OnLine SC 2293*** in support of his submissions.

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 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

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propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

> **"438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision,

considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings

for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction

under Section 138 of the NI Act, while setting aside the impugned order, observed as under:

> "27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record 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 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.

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:

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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***.

> "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.

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.

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

14. The complainant stated that the accused approached him in May 2014 and demanded ₹ 15 lakh to return the bank loan. He (the complainant) handed over ₹ 90 thousand to the accused in cash and paid ₹ 14,10,000/- by cheques. The accused executed an agreement (Ex. CW1/A). This part of the complainant's testimony is corroborated by Vipin Kumar (CW2), who proved the statements of accounts (Ex. CW2/A and Ex. CW2/B) which mention the payment of ₹ 14,10,000/- to the accused. The complainant's testimony is also corroborated by the agreement (Ex.CW1/A) which mentions the advancing of a loan of ₹ 15 lakh to the accused. Thus, the learned Courts below had rightly relied upon the complainant's testimony that he had advanced ₹ 15 lakh to the accused.

15. The complainant stated that the accused issued a cheque (Ex. CW1/B) to repay the money. The accused claimed that he had lost the cheque book and that the complainant misused the cheque. The complainant denied in his cross-examination that he had stolen three cheques from the complainant's car. A

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denied suggestion does not amount to any proof and will not help the accused. The accused examined Nitin Chaudhary (DW1), who stated that the accused had filed an application (Ex. DW1/A) on 22.01.2015 for stopping the payment of the cheque. Gagan Sharma (DW2) proved the affidavit (Ex. DW2/A) executed by the accused regarding the loss of the cheque. The complainant also proved an entry (Ex. DW3/A) regarding the loss of the cheques. However, this evidence will not help the accused. The learned Courts below had rightly held that the defence evidence was not reliable as there was no explanation as to why the accused had kept the signed cheques with him. The accused never stepped into the witness box to explain this fact, and the learned Courts below were justified in doubting the version of the accused in these circumstances.

16. The accused denied the taking of a loan, which was duly proved by the statement of account. Thus, the credibility of the accused is suspect, and his version cannot be accepted merely because he had made a complaint regarding the loss of cheques.

17. Learned Courts below had found that the complainant's testimony was reliable. There is no infirmity in

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this finding recorded by the learned Courts below, especially when his statement regarding the advancing of the loan was duly corroborated by the statements of account. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the proof of the execution of the cheque would trigger the presumption contained in sections 118 (a) and 139 of the NI Act that the cheque was issued for consideration to discharge debt/liability and the burden is upon the accused to rebut this presumption. It was observed:

> **36.** Recently, this Court has gone to the extent of holding that the presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.
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> **37.** As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

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

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
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> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).
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> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
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> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

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

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

20. Therefore, the learned Courts below had rightly held that the cheque carried a presumption that it was issued for consideration to discharge the debt/liability, and the burden was upon the accused to rebut the presumption.

21. The accused did not step into the witness box to prove his version. He relied upon his statement recorded under Section

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313 CrPC to prove his defence, which is not sufficient. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 is not sufficient. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration.*" (Emphasis supplied)

22. Therefore, the statement of the accused recorded under Section 313 of CrPC was not sufficient to rebut the presumption, and the accused cannot derive any advantage from it.

23. The complainant admitted in his cross-examination that he had advanced loans to 4-5 persons. It was submitted that the complainant is a moneylender and he could not have filed the

complaint without a license. This submission will not help the accused. Section 2 (9) of the Himachal Pradesh Registration of Moneylenders Act, 1976 (Moneylenders Act) defines the moneylender as the person or a firm carrying on the business of advancing loans. Section 2 (8) defines the term loan as an advance at interest and excludes a negotiable instrument as defined in the NI Act. In the present case, there is no evidence that the complainant is advancing the money at interest; hence, the advance of money by him will not fall within the definition of a loan. It was laid down by this Court in ***Rajbir Singh Versus Geeta Devi (2019) 2 B.C. 603*** that the provisions of the Registration of Money Lenders Act do not apply when the complainant had not charged any interest from the persons to whom the money was lent. It was observed:

> "10. The learned trial Magistrate had recorded a conclusion that the complainant was engaged in the business of money lending; hence, in the face of the provisions borne in Section 3 of the H. P. Registration of Money Lenders Act, 1976, provisions whereof stand extracted hereinafter: -
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> > "3. Suits and applications by money-lenders barred, unless money- Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of loan or an application by money-lender for the execution of a decree relating to a loan, shall, after the

commencement of this Act, be dismissed, unless the moneylender, at the time of institution of the suit or presentation of the application for execution, or at the time of decreeing the suit or deciding the application for execution,-

(a) is registered; and

(i) holds a valid licence, in such form and in such manner as may be prescribed; or

(ii) holds a certificate from a Commissioner granted under section 10, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or

(iii) if he is not already a registered and licensed money-lender, satisfies the court that he has applied to the Collector to be registered and licensed and that such application is pending; Provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of the licence pending before the Collector is finally disposed of. "

(i) Whereunder an unregistered money lender is barred to enforce his claim against his borrower by instituting a civil suit or upon rendition of an affirmative decree, he is forbidden to realise the decretal amount through his casting an execution petition before the executing court concerned, (ii) hence concluded that the amount, borne in Ex. CW1/A, being not a legally recoverable debt or a legally enforceable debt, thereupon pronounced an order of acquittal upon the respondent/accused. The factual, besides evidentiary, matrix, for the learned trial Court, hence, erecting the aforesaid inference, (iii) is comprised of the inability of the complainant to explain the nature of his relationship with the

accused, (iv) AND also stems from his also acquiescing qua his instituting complaint(s) under Section 138 of the Negotiable Instruments Act against one Ranjna Devi and one Basant Singh, wherewith whom he has also not explained his relationship. However, the aforesaid conclusions, are mis-founded, and, are apparently surmisally drawn, (v) given the aforesaid Ranjna Devi, and, Basant Singh, not, being cited, as witnesses, by the respondent/accused, for, theirs hence rendering testifications, qua their borrowing(s), of, money from the complainant, and, his lending vis-a-vis them, also being accompanied by his charging or levying interest, upon, the principal sum(s). (vi) Also, hence, for their rendering testifications, of, in their making borrowing(s) from the complainant, their holding, no acquaintance with him, and, that in their relevant borrowing(s), from the complainant, theirs being solitarily guided by the factum of his being an unlicensed professional money lender. However, evidence, in regard aforesaid, is grossly amiss hereat; (vii) thereupon, it was in sagacious, for the learned trial court, to conclude qua the accused, being an unlicensed professional moneylender, and his charging interest vis-a-vis the money lent by him vis-a-vis the accused, despite his being wholly unacquainted with her or other borrowers. (viii) More so, when PW-2, espouses, hers, being well known, to the respondent/accused, also, when the relevant transaction, occurred, in the presence of the wife of the complainant, besides with the respondent/accused, not making, any testification, qua the relevant borrowings, made by her, from the complainant, being, a sequel of hers, knowing, the complainant to be engaged in the profession, of, money lending. Furthermore, also when the borrowings, rather made, from, professional money lenders, by the latter's customers, enjoin also an eruption of clinching

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> proof, qua, charging of interest thereon, by the moneylender, (ix) whereas with no evidence surging forth hereat, in the display of the amount, carried in the dishonoured negotiable instrument, also carrying therein the apt interest levied or charged thereon. Contrarily, with the existence of evidence qua the initial borrowings, made by the respondent/accused from the complainant, rather bearing consonance with the amount carried in the dishonoured negotiable instrument, (x) whereupon it is apt to conclude of no interest being charged or levied by the complainant from the respondent/accused in the latter making, hence, borrowings from him. Corollary thereof is, it being unbefitting to conclude, of the complainant, charging or levying any interest on the money lent by him to the apposite borrowers AND hence his being not construable to be a money lender.

24. It was further held that the provisions of the Registration of Money Lenders Act apply to the suits and not to the complaint filed under Section 138 of the NI Act. It was observed:

> "11. Be that as it may, even if assumingly, the complainant, is construable to be an unregistered or an unlicensed professional money lender, and, even if assumingly, the bar constituted under Section 3 of the H. P. Registration of Money Lenders Act, 1976, is attracted vis-a-vis the purported business of money lending, carried by the complainant, (i) nonetheless, the bar, is, attracted only, against, institution of a civil suit, and, for realization, through, coercive processes, of, decrees rendered thereon, (ii) the bar obviously, is, not attracted vis-a-vis, the institution of a complaint, under Section 138 of the Negotiable Instruments Act, (iii) given nonexistence of any specific explicit mandate therein qua the bar

> encapsulated therein, vis-a-vis, institution of a civil suit, by any unlicensed money lender, for hence his seeking recovery, of, amounts lent by him, to, his borrowers, also being extendable qua the institution of a complaint under Section 138 of the Negotiable Instruments Act, by a money lender against his borrower. Consequently, omission of existence, of, an explicit apposite exclusionary mandate, in Section 3 of the H. P. Registration of Money Lenders Act, 1976, against institution, of, a statutory complaint, by a professional money lender against his borrower, also hence, constrains a conclusion, that, mandate thereof, is, unattractable vis-a-vis institution, of a statutory complaint, by a money lender, against his borrowers, (a) unless evidence surges forth, of the apposite lending being provenly, ingrained, with entrenched prohibitive vices, (b) whereupon, alone the lending, would be construable to be, not, a legally recoverable debt nor a legally enforceable debt, (c) whereas, with no evidence hereat, rather surging forth, qua the sums embodied, within, the cheque, hereat carrying, any, entrenched prohibitive vices, thereupon, even if assumingly, the complainant, is, a professional unlicensed money lender, yet the lending made by him vis-a-vis the accused, are, to be construable to be both, a legally recoverable debt besides a legally enforceable debt. (d) More so, when evidently no proof is forthcoming qua the respective borrowings, being made, subject to levying or charging, of interest thereon."

25. This question was again considered by this Court in ***Bal Krishan Rawat Versus Gian Lal 2020 ACD 984,*** and it was held that a loan advanced based on a cheque falls within the exception and is not barred by the H.P. Moneylenders Act. It was observed:

> 6(iii) The object of the H.P. Registration of Money Lenders Act, 1976, is to register money-lenders and to regulate their business in Himachal Pradesh. Section 3 of this Act provides that a suit inter alia for recovery of a loan, by a

moneylender, shall be dismissed unless the moneylender is registered and licensed as such under the Act. Section 3 runs as under:

> "3. Suits and applications by moneylenders are barred unless the moneylender is registered and licensed.-
>
> Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the moneylender, at the time of the institution of the suit or presentation of the application for execution, or at the time of decreeing the suit or deciding the application for execution, -
>
> (a) is registered; and
>
> (i) holds a valid licence, in such form and in such manner as may be prescribed; or
>
> (ii) holds a certificate from a Commissioner granted under section 10, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or
>
> (b) If he is not already a registered and licensed moneylender, he satisfies the court that he has applied to the Collector to be registered and licensed and that such application is pending:
>
> Provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of the licence pending before the Collector is finally disposed of."

Thus, a money lender at the time of institution of the suit for recovery of the loan amount should be duly registered as such under the Act and should hold a valid licence of money lending as prescribed in the Act. In case a money

lender is not registered and licensed under the Act, then he should satisfy the Court that his such application in that regard is pending before the concerned authority, which should be disposed of before the disposal of the recovery suit. Who is a 'money lender' has been defined in Section 2(9) of the Act as under:

> "2(9) "money-lender" means a person, or a firm, carrying on the business of advancing loans and includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, of such person or firm, provided that nothing in this definition shall apply to.
>
> (a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender, together with all his rights and liabilities if such person -
>
> (i) winds up the estate of such money-lender:
>
> (ii) realises outstanding loans;
>
> (iii) does not renew any existing loan, or advance any fresh loan;
>
> (b) a bona fide assignment by a money-lender of a single loan to anyone other than the wife or husband of such assignor, as the case may be, or any person who is descended from a common grandfather of the assignor."

The 'money lender' advances loans. Section 2(8) defines 'loan' in the following manner:-

> "(8) "loan" means an advance, whether secured or unsecured, of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but shall not include -
>
> (a) An advance in kind made by a landlord to his tenant for the purposes of husbandry:

> Provided that the market value of the return does not exceed the market value of the advance as estimated at the time of advance;
>
> (b) a deposit of money or other property in a Post Office Savings Bank, or any other Bank, or with a company, or with a co-operative society, or with any employer, as security from his employees;
>
> (c) a loan to or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860 (21 of 1860) or under any other enactment;
>
> (d) a loan advanced by or to the Central Government or any State Government or by or to any local body or panchayat under the authority of the Central Government or any State Government;
>
> (e) a loan advanced by a bank, a co-operative society or a company, whose accounts are subject to audit by a certified auditor under the Companies Act, 1956, (1 of 1956) or under any other law for the time being in force;
>
> (f) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;
>
> (g) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, (26 of 1881) other than a promissory note."

6(iv) Definition of 'loan' assumes significance in determining the applicability of the H.P. Registration of Money Lenders Act to the facts of the case. Not all kinds of loans are covered under Section 2(8) of the Act. Reference in this regard can be made to the following para from the case titled ***Gajanan and Others vs. Seth Brindaban, (1970)*** 2

SCC 360, where provisions of the Central Provinces and Berar Moneylenders Act were being considered: -

> "5.....''Moneylender" as defined in cl. (v) of S. 2 means a person who, in the regular course of business, advances a loan as defined in this Act, and it includes his legal representatives and successors in interest. "Loan" as defined in cl. (vii) means an actual advance, whether of money or in kind, at interest, and it includes any transaction which the court finds to be in substance a loan. It does not include, inter alia, an advance made on the basis of a negotiable instrument other than a promissory note....."

Advances/loans falling within the exceptions (a) to (g) of Section 2(8) fall outside the ambit of the Act. Advancing such kinds of loans, which fall within the exceptions carried out in Section 2(8) of the Act, would not make a person a moneylender in terms of the H.P. Registration of Money Lenders Act. Such a person who has advanced loans that are covered within the exceptions of Section 2(8) of the Act is not required to be registered or licensed under the Act as a money-lender. Suit for recovery of the loan amount, falling under the exceptions (a) to (g) of Section 2(8) of the Act, therefore, cannot be held as not maintainable for want of registration and license as a moneylender under the Act. In the facts of the case, the concurrent factual findings of both the learned Courts below are that various recovery suits had been instituted by the plaintiff in different Courts. This fact had even been acknowledged by the plaintiff in his statement. However, there was no evidence either led by the defendant in support of issue No. 6 or available in any other form before the learned Courts below to conclude that various cases instituted by the plaintiff in different Courts were for recovery of that kind of loan, which was included in the definition of 'loan' under Section 2(8) of the Act. For want of specific evidence in that regard, there could be a possibility that all the recovery suits statedly preferred by

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> the plaintiff were for recovery of those loans, which fell within the exceptions (a) to (g) of Section 2(8) of the Act and, therefore, were excluded from the applicability of the Act. It is also to be borne in mind that the instant case for recovery of the amount was based on a loan advanced in lieu of a cheque. 'Cheque', as per Section 16 of the Negotiable Instruments Act, is a bill of exchange and falls within the definition of 'Negotiable Instrument' as spelt out in Section 13 of the Negotiable Instruments Act. An advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act falls in category (g) of the exceptions to the definition of 'loan' under Section 2(8) of the H.P. Registration of Money Lenders Act. In such a scenario, an instant suit for recovery of the amount cannot be held to be not maintainable for want of the plaintiff's registration and license as a money-lender. Findings of learned Courts below to the contrary, therefore, are not sustainable. Point is answered accordingly."

26. Hence, the judgment in ***Mansi Finance*** (supra) does not apply to the present case.

27. It was submitted that the complainant has failed to prove his financial capacity to advance money to the accused. This submission will also not help the accused. The accused had not sent any reply to the notice issued to him challenging the complainant's financial capacity to lend the money. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735: 2022 SCC OnLine SC 302,*** that the complainant is not required to show his financial capacity unless

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it is challenged by sending a reply to the notice. It was observed at page 740:

> **"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 proceeding under Section 138 of the NI Act is 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 on those lines...."

28. This position was reiterated in ***Kuntegowda***(supra) wherein it was observed:

> **6.7.** Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contrary material has been placed on record before us to further the case of the

> accused that the complainant did not have any means to extend the hand loan; therefore, the argument and defence of the accused on this aspect fall flat.

29. Therefore, the submission regarding the lack of the complainant's financial capacity to lend money cannot be accepted in the absence of the reply to the notice.

30. 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. The evidence of the accused was not sufficient to rebut the presumption attached to the cheque, and the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

31. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This is corroborated by the memos of dishonour (Ext. CW1/C and Ex. CW1/D). 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:

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

32. 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.

33. The complainant asserted that he had issued a notice to the accused which was returned unclaimed. This is duly corroborated by the acknowledgement (Ext. CW1/G) containing the endorsement addressee absent ND. Learned Courts below had rightly pointed out that the notice was sent to the correct address. It was laid down by the Hon'ble Supreme Court in ***D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456,*** that when a notice has been returned with the report that the addressee was not available or the premises were locked, a presumption arises that notice was duly served and the burden would be upon the accused to show that the report is incorrect. It was observed at 462:

> "**14.** If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly, if the notice is

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refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him, and consequently, he can never be prosecuted. There is good authority to support the proposition that once the complainant, the payee of the cheque, issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice, which may be returned with an endorsement that the addressee is not available at the given address.

xxxxx

18. This Court noted the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case, the notice was returned as "unclaimed" and not as refused. The Court posed the question, "Will there be any significant difference between the two so far as the

> presumption of service is concerned?" Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. This Court dismissed the appeal preferred by the drawer, holding that where the notice is returned by the addressee as unclaimed, such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (*c*) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. The aforesaid decision is significant for two reasons. Firstly, it was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

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

> "8. Since in ***Bhaskaran's case (supra)***, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that

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> though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service."

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

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

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time at which the letter would have been delivered in the ordinary course of business."

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

> **"13.** Section 27 of the General Clauses Act, 1887, deals with service by post:
>
> > "27. **Meaning of Service by post.**-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".
>
> **14.** The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:
>
> 14.1 In ***Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264,*** which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the

correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*"

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

14.3 The findings in ***C.C. Alavi*** (supra) were followed in Vishwabandhu ***v. Srikrishna (2021) 19 SCC 549***. In this case, the summons issued by the Registered AD post was received back with the endorsement "refusal". In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506***; and ***V.N. Bharat v. DDA (2008) 17 SCC 321***.

37. In the present case, the accused has not proved that he was not responsible for non-service; therefore, the learned

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Courts below had rightly held that the notice was deemed to be served upon the accused.

38. 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

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> consequences of Section 138 of the Act." (Emphasis supplied)

39. 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.

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

41. The learned Trial Court had sentenced the accused to undergo simple imprisonment for three months and pay a fine of ₹18,00,000/-. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138,*** that the penal

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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."

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

43. In the present case, the cheque was issued for ₹15,00,000/- and the learned Trial Court had awarded the compensation of ₹18,00,000/-. 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

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> 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***]"

44. 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 the loss sustained by him. Hence, the compensation of ₹3,00,000/- on the cheque amount of ₹15,00,000/- is not excessive, requiring any interference from this Court.

45. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

23rd November, 2026
(ravinder)