IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 383 of 2025
Reserved on: 18.07.2025
Date of Decision: 31.7.2025.

Mohan Kaundal ...Petitioner

Versus

Kusum Sharma ...Respondent

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

For the Petitioner : Mr. Ajay Sipahiya, Advocate.
For the Respondent : Mr. Abhimanyu Rathore & Ms. Poonam Gehlot, Advocates.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 13.02.2025, passed by learned Additional Sessions Judge (I), Solan, District Solan, H.P. (learned Appellate Court), vide which the judgment dated 08.03.2022 of conviction and order of sentence dated 16.03.2022, passed by learned Judicial Magistrate First Class, Court No.1, Solan, H.P. (learned Trial Court) were

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

2025:HHC:25487

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

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint 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 alleged that the accused is known to the complainant. The complainant was having family relations with the accused and his wife. The accused requested the complainant for the friendly loan for investment of money in property. The complainant paid ₹31,00,000/- to the accused, out of which an amount of ₹29,27,500/- was paid through different cheques, and the remaining amount was paid through cash. The accused assured to return the money to the complainant after some months. He issued the following post-dated cheques, all drawn at State Bank of India, Solan, Branch, in favour of the complainant.

i.	Cheque No. 826759 dated 01.06.2018 amounting to ₹1,00,000/-
ii.	Cheque No. 826783 dated 30.06.2018 amounting to ₹1,00,000/-

2025:HHC:25487

iii.	Cheque No. 826784 dated 31.08.2018 amounting to ₹5,10,000/-
iv	Cheque No. 826765 dated 11.09.2018 amounting to ₹7,00,000/-
v.	Cheque No. 826771 dated 18.09.2018 amounting to ₹3,00,000/-
vi.	Cheque No. 826775 dated 03.10.2018 amounting to ₹1,90,000/-
vii.	Cheque No. 826776 dated 18.10.2018 amounting to ₹1,00,000/-
viii.	Cheque No. 826785 dated 31.10.2018 amounting to ₹4,00,000/-
ix.	Cheque No. 826787 dated 31.12.2018 amounting to ₹1,50,000/-
x.	Cheque No. 826786 dated 31.12.2018 amounting to ₹2,50,000/-
xi.	Cheque No. 826781 dated 15.01.2019 amounting to ₹1,00,000/-
xii.	Cheque No. 826782 dated 23.01.2019 amounting to ₹2,00,000/-

3. The complainant presented the cheque bearing 826785 dated 31.10.2018 drawn on State Bank of India, Solan Branch amounting to ₹4,00,000/-, however, the same was dishonoured with an endorsement “insufficient balance”. The complainant issued a legal notice to the accused asking him to pay the amount. This notice was issued on 18.11.2018, posted on 22.11.2018, and served upon the accused on 24.11.2018. The

2025:HHC:25487

accused failed to pay the money despite the receipt of the notice of demand. Hence, the complaint was filed before the learned Trial Court to take action as per law.

4. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, 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.

5. The complainant examined herself (CW1) to prove her complaint

6. The accused, in his statement recorded under Section 313 of Cr.P.C., stated that money was paid by the complainant to him for being invested in the share market. The cheques were issued as security for the repayment of the money so invested. He had not taken any friendly loan from the complainant. The accused examined Roshan Lal (DW-1) in his defence.

7. Learned Trial Court held that the version of the complainant that she had advanced money to the accused was duly corroborated by the statement of account of the accused in which the entries of credit were made. The accused failed to

2025:HHC:25487

provide any explanation for the deposit of the money in his account. He admitted his signature on the cheque, and a presumption arose that the cheque was issued for consideration in discharge of the legal liability. The accused did not produce any evidence to establish his version that the complainant had handed over the money to him for investing in the share market. This version was inherently improbable because the investment in the share market is subject to market risk, and no person can guarantee any profit in it. The issuance of the security cheque can only mean that it was only to discharge the liability; therefore, the version of the accused was not believable that money was deposited with him as an investment. The cheque was dishonoured with an endorsement 'insufficient balance' and the accused failed to pay the amount despite the receipt of valid notice of demand; therefore, the accused was convicted for the commission of an offence punishable under Section 138 of the NI Act. No sentence of imprisonment was passed, however, the accused was ordered to pay a compensation of ₹4,10,000/- and in default of payment of compensation to undergo simple imprisonment of six months.

2025:HHC:25487

8. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused preferred an appeal which was decided by the learned Appellate Court. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the version of the complainant regarding the advancement of loan was duly corroborated by the statement of account of the accused. The issuance of a cheque was admitted by the accused, and the learned Trial Court had applied the presumption to the cheque. The post-dated cheque is valid and would attract the provisions of Section 138 of the NI Act. The cheque was dishonoured with an endorsement of 'insufficiency of funds. ' The notice was served upon the accused, and the accused failed to repay the amount despite the receipt of the valid notice of demand. Therefore, the learned Trial Court had rightly convicted the accused. The sentence was adequate, and no interference was required with it. Hence, the appeal was dismissed. A revision for enhancement of sentence passed by the learned Trial Court was also dismissed.

2025:HHC:25487

9. Being aggrieved by the judgments and order passed by the learned Courts below, the petitioner/accused has filed the present petition, asserting that the learned Courts below erred in appreciating and drawing proper inferences from the material placed before them. The complainant had failed to prove that notice was served upon the accused. No official from the postal department was examined by the complainant to prove this fact. The accused had made a part payment of ₹3,61,720/-, which amount was not endorsed, and the presentation of the whole amount is bad. The plea taken by the accused that the money was deposited with the accused as investment is highly probable, and learned Courts below erred in rejecting this plea. There were various contradictions in the statement of the complainant, and she had concealed material facts from the Court. The documents marked D-2 to D-6 clearly showing the investment in the stock market under the name of Karvey Stock Broking Ltd. The complainant asked the accused to deposit her money in the stock market to make a profit. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

2025:HHC:25487

10. I have heard Mr. Ajay Sipahiya, learned counsel for the petitioner and Mr. Abhimanyu Rathore & Ms. Poonam Gehlot, learned counsel for the respondent.

11. Mr. Ajay Sipahiya, learned counsel for the petitioner, submitted that the petitioner/accused is innocent. He had not taken any loan from the complainant; rather complainant had asked him to invest her money in the stock market. However, the market crashed, and the accused could not return the money invested by the complainant. He had handed over the security cheques to the complainant to ensure that the profit obtained by the accused is duly shared with her. These cheques were misused by the complainant. There were various contradictions in the statement of the complainant. Money paid by the accused to the complainant was not credited. Therefore, he prayed that the present petition be allowed and the judgments and order passed by learned Courts below be set aside.

12. Mr. Abhimanyu Rathore, learned counsel for the respondent, submitted that issuance of cheque is not disputed and the learned Courts below had rightly held that a presumption would arise in the present case regarding the

2025:HHC:25487

consideration. The accused did not lead any evidence, and the plea taken by him that money was invested by the accused in the stock market through the complainant appears to be highly improbable, as pointed out by the learned Trial Court. The cheque was dishonoured with an endorsement 'insufficient balance', and the accused failed to repay the cheque amount despite receipt of the valid notice. He prayed that the present revision be dismissed.

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

14. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court does not exercise an appellate jurisdiction and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal

2025:HHC:25487

> Procedure Code (in short "CrPC") vests jurisdiction to satisfy 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. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

15. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
>
> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
>
> > "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not

2025:HHC:25487

be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under CrPC."

16. This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code, and the fine line of jurisdictional

2025:HHC:25487

distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be.

27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection, and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

***

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine

2025:HHC:25487

> whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
>
> ***
>
> *27.13.* Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

16. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
>
> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit***

2025:HHC:25487

Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*12*. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
>
> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under CrPC."

2025:HHC:25487

16. This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

> "27. Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be.
>
> 27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
>
> 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a

2025:HHC:25487

> criminal offence are not satisfied, then the Court may interfere.
>
> *27.3.* The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
>
> ***
>
> *27.9.* Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
>
> ***
>
> *27.13.* Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."
>
> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

17. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to

2025:HHC:25487

reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed on page 169:

> **"12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [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: (SCC pp. 454-55, para 5)
>
> > "*5.* ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy 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 reappreciate the evidence and come to its 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 concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."
>
> **13.** Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court

2025:HHC:25487

held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material; the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

14. In the above case, also conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

2025:HHC:25487

18. This position was reiterated in ***Bir Singh v. Mukesh Kumar*, *(2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> **"16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
>
> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [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. The answer to the first question is, therefore, in the negative."

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

20. The accused admitted his signatures on the cheque in his statement recorded under Section 313 of Cr.P.C. It was laid down by this Court in ***Naresh Verma vs. Narinder Chauhan 2020(1) Shim. L.C. 398*** that where the accused had not disputed his signatures on the cheque, the Court has to presume that it was issued in discharge of legal liability, and the burden would shift upon the accused to rebut the presumption. It was observed: -

2025:HHC:25487

> "8. Once signatures on the cheque are not disputed, the plea with regard to the cheque having not been issued towards discharge of lawful liability, rightly came to be rejected by learned Courts below. Reliance is placed upon ***Hiten P. Dalal v. Bartender Nath Bannerji, 2001 (6) SCC 16***, wherein it has been held as under:
>
> > "The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when, upon the material before it, the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted....."
> >
> > 9. S.139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

21. Similar is the judgment in ***Basalingappa vs. Mudibasappa 2019 (5) SCC 418,*** wherein it was held:

> "26. Applying the proposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability."

22. This position was reiterated in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2***

2025:HHC:25487

SCC (Cri) 555: 2021 SCC OnLine SC 75, wherein it was held at page 289.

> "14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial court fell in error when it called upon the respondent complainant to explain the circumstances under which the appellants were liable to pay. Such an approach of the trial court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law."

23. Similar is the judgment in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724,*** wherein it was observed: -

> "**7.2.** What is emerging from the material on record is that the issuance of a cheque by the accused and the signature of the accused on the said cheque are not disputed by the accused. The accused has also not disputed that there were transactions between the parties. Even as per the statement of the accused, which was recorded at the time of the framing of the charge, he has admitted that some amount was due and payable. However, it was the case on behalf of the accused that the cheque was given by way of security, and the same has been misused by the complainant. However, nothing is on record that in the reply to the statutory notice, it was the case on behalf of the accused that the cheque was given by way of security. Be that as it may, however, it is required to be noted that earlier the accused issued cheques which came to be dishonoured on the ground of "insufficient funds" and thereafter a fresh consolidated cheque of ₹9,55,574 was given which has been returned unpaid on the ground of "STOP PAYMENT". Therefore, the cheque in

2025:HHC:25487

question was issued for the second time. Therefore, once the accused has admitted the issuance of a cheque which bears his signature, there is a presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act. However, such a presumption is rebuttable in nature, and the accused is required to lead evidence to rebut such presumption. The accused was required to lead evidence that the entire amount due and payable to the complainant was paid.

9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such presumption is rebuttable in nature. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the

2025:HHC:25487

> issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

24. The presumption under Section 139 of the NI Act was explained by the Hon'ble Supreme Court in ***Triyambak S. Hegde v. Sripad, (2022) 1 SCC 742: (2022) 1 SCC (Civ) 512: 2021 SCC OnLine SC 788*** as under at page 747:

> "**12.** From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exts. P-6 and P-2 are not disputed. Ext. P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below, a presumption would arise under Section 139 in favour of the appellant who was the holder of the cheque. Section 139 of the NI Act reads as hereunder:
>
> > "**139.** ***Presumption in favour of the holder***. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."
>
> **13.** Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the consideration would arise as provided under Section 118(*a*) of the NI Act, which reads as hereunder:
>
> > "**118.** ***Presumptions as to negotiable instruments***. — Until the contrary is proved, the following presumptions shall be made:

2025:HHC:25487

> (*a*) *of consideration*: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

14. The above-noted provisions are explicit to the effect that such presumption would remain until the contrary is proved. The learned counsel for the appellant in that regard has relied on the decision of this Court in ***K. Bhaskaran v. Sankaran Vaidhyan Balan [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284]*** wherein it is held as hereunder: (SCC pp. 516-17, para 9)

> "*9*. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to rely on the interested testimony of DW 1 to rebut the presumption. The said finding was upheld [***Sankaran Vaidhyan Balan v. K. Bhaskaran, Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker)***] by the High Court. It is not now open to the accused to contend differently on that aspect."

15. The learned counsel for the respondent has, however, referred to the decision of this Court in ***Basalingappa v. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571***] wherein it is held as hereunder: (SCC pp. 432-33, paras 25-26)

> "*25*. We having noticed the ratio laid down by this Court in the above cases on Sections 118(*a*) and 139,

2025:HHC:25487

we now summarise the principles enumerated by this Court in the following manner:

25.1. Once the execution of the cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption, and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come into the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come into the witness box to support his defence.

26. Applying the preposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In the cross-examination of PW 1, when the specific question was put that a cheque was issued in relation to a loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember.

2025:HHC:25487

> PW 1 in his evidence admitted that he retired in 1997, on which date he received a monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, a copy of which complaint was also filed as Ext. D-2, there was a burden on the complainant to prove his financial capacity. In the years 2010-2011, as per own case of the complainant, he made a payment of Rs 18 lakhs. During his cross-examination, when the financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts."

16. In that light, it is contended that the very materials produced by the appellant and the answers relating to lack of knowledge of property details by PW 1 in his cross-examination would indicate that the transaction is doubtful, and no evidence is tendered to indicate that the amount was paid. In such an event, it was not necessary for the respondent to tender rebuttal evidence, but the case put forth would be sufficient to indicate that the respondent has successfully rebutted the presumption.

17. On the position of law, the provisions referred to in Sections 118 and 139 of the NI Act, as also the enunciation of law as made by this Court, need no reiteration as there is no ambiguity whatsoever. In ***Basalingappav. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571***] relied on by the learned

2025:HHC:25487

> counsel for the respondent, though on facts the ultimate conclusion therein was against raising presumption, the facts and circumstances are entirely different as the transaction between the parties as claimed in the said case is peculiar to the facts of that case where the consideration claimed to have been paid did not find favour with the Court keeping in view the various transactions and extent of amount involved. However, the legal position relating to the presumption arising under Sections 118 and 139 of the NI Act on signature being admitted has been reiterated. Hence, whether there is a rebuttal or not would depend on the facts and circumstances of each case."

25. This position was reiterated in ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735: (2022) 2 SCC (Cri) 726: (2022) 3 SCC (Civ) 442: 2022 SCC OnLine SC 302,*** wherein it was held at page 739.

> "8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that the court shall presume that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption, however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration received. It is in the context of this provision that the theory of "probable defence" has grown. In an earlier judgment, in fact, which has also been adverted to in ***Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571]***, this Court notes that Section 139 of the NI Act is an example of reverse onus (see ***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184]***). It is also true that this Court has found that the accused is not expected to

2025:HHC:25487

> discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist..."

26. Similar is the judgment in ***P. Rasiya v. Abdul Nazer,*** ***2022 SCC OnLine SC 1131,*** wherein it was observed:

> "As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque are not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary."

27. This position was reiterated in ***Rajesh Jain v. Ajay*** ***Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275,*** wherein it was observed at page 161:

> **33.** The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed until the contrary is proved that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that

2025:HHC:25487

"unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque for the discharge of, whole or part of any debt or liability". It will be seen that the "*presumed fact*" directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. [The rules discussed hereinbelow are common to both the presumptions under Section 139 and Section 118 and are hence not repeated—reference to one can be taken as reference to another.]

34. Section 139 of the NI Act, which takes the form of a "*shall presume*" clause, is illustrative of a presumption of law. Because Section 139 requires that the Court "*shall presume*" the fact stated therein, it is obligatory for the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary, as is clear from the use of the phrase "*unless the contrary is proved"*.

35. The Court will necessarily presume that the cheque had been issued towards the discharge of a legally enforceable debt/liability in two circumstances. *Firstly*, when the drawer of the cheque admits issuance/execution of the cheque and *secondly*, in the event where the complainant proves that the cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [***Bharat Barrel & Drum Mfg. Co.* v. *Amin Chand Payrelal*** [***Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35***]]

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, the mere admission of the drawer's signature, without admitting

2025:HHC:25487

the execution of the entire contents in 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 shifting 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.

38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:

> "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule'."

39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond a reasonable doubt. The accused must meet the standard of "*preponderance of probabilities*", similar to a defendant in a civil proceeding. [***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184: AIR 2010 SC 1898]***]28.

2025:HHC:25487

28. Therefore, the Court has to start with the presumption that the cheque was issued for valuable consideration in discharge of the legal liability, and the burden is upon the accused to rebut this presumption.

29. The accused did not dispute in his statement recorded under Section 313 of Cr.P.C., as well as cross-examination of the complainant, that money was paid to him by the complainant. He stated that money was paid for investment in the share market. The statement of account of the accused w.e.f. 01.04.2016 to 31.03.2018 also shows the transfer of the money from the account of the complainant to the account of the accused. Thus, the fact that money was paid to the accused was duly proved.

30. The accused claimed that money was paid as investment in the stock market; however, he did not examine himself to establish this fact. The complainant denied in her cross-examination that money was paid to the accused for investment in the share market. A denied suggestion does not amount to any proof, and the cross-examination of the complainant does not establish the version of the accused.

2025:HHC:25487

31. Roshan Lal (DW-1) also admitted in his cross-examination that record brought by him does not contain any entry in favour of Karvy Consultant Ltd. This admission does not establish the version of the accused that the payment was made to the accused regarding the investment in the stock market.

32. The accused filed a loss and gain statement mark D-2 to D-6. The learned Courts below had rightly held that these documents were not legally proved. Further, these statements do not show that the investment was made on behalf of the complainant. No letter/document written by the complainant authorising the accused to invest money on her behalf was placed on record. Therefore, this version was also not proved by any documentary evidence.

33. The learned Trial Court had rightly pointed out that the accused would not have issued the security cheque for the investment made on behalf of the complainant because the investment in the share market is subject to market risk. No person can predict with certainty that such an investment would lead to a gain or a loss. When the gain was not certain, the

2025:HHC:25487

accused would not have issued any security cheque to ensure the payment to the complainant.

34. The whole defence of the accused is highly improbable. The capital gains are subject to the income tax. It is difficult to believe that the accused would have paid the income tax on the capital gains for the money invested on the complainant's behalf and shared profits with the complainant. The accused would have suffered a loss in such a transaction, and he had no reason to enter into such a transaction on behalf of the complainant. He has not even stated that any share of the profit was paid to him or that the complainant was to bear the income tax on capital gains. Hence, this version of the accused could not have been accepted.

35. It was submitted that there were various discrepancies in the statement of the complainant, which made her version highly suspect. These discrepancies are not material. Further, the accused has not disputed the taking of the money from the complainant and issuing of cheques to the complainant. The only dispute is whether the payment was made for investment in the share market on behalf of the

2025:HHC:25487

complainant or not. Any discrepancy in the statement of the complainant will not help the Court in determining this dispute, and the discrepancies in the complainant's statement are not sufficient to establish the version of the accused. Thus, no advantage can be derived from the discrepancy in the statement of the complainant.

36. The plea taken by the accused that the cheque was issued as a security cheque will not help him. The payment of money to the accused is admitted. The plea taken by the accused that money was paid for investment into the share market is not probable. There is no evidence that the accused had repaid the money. Therefore, even if the cheque was issued as a security cheque, the complainant was entitled to present it to the bank. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456,*** that even if the cheque was issued towards the security, the accused will be liable. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security, and on this ground, criminal revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the

2025:HHC:25487

> Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provision of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

37. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016 (10) SCC 458*** that issuing a cheque toward security will also attract the liability for the commission of an offence punishable under Section 138 of N.I. Act. It was observed: -

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*
>
> 11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the

2025:HHC:25487

cheques being used towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in ***Indus Airways (supra)*** is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of ***Indus Airways (supra)***, where the purchase order had been cancelled and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature where the cheque was for repayment of a loan instalment which had fallen due, though such deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced and its repayment is due on the date of the cheque.

2025:HHC:25487

> 13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court." (Emphasis supplied)

38. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the N.I. Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I.. Act would flow.

2025:HHC:25487

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note' and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

2025:HHC:25487

39. There is no evidence that the accused had paid the amount to the complainant, and the accused would be liable even if the cheque was issued as a security.

40. Thus, the learned Courts below were justified in drawing the presumption under Section 118(a) and Section 139 of the NI Act that the cheque was issued by the accused in discharge of the legal liability for consideration and holding that the accused had failed to rebut the presumption attached to the cheque.

41. The complainant stated that the cheque was dishonoured with an endorsement 'funds insufficient'. This is duly corroborated by the cheque return memo (Ext.CW-1/C) in which the reason for dishonour has been mentioned as 'funds insufficient. ' 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

2025:HHC:25487

> 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.

42. In the present case, no evidence was produced to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured with an endorsement 'insufficient funds'.

43. The complainant stated that she had sent a notice. (Ext.CW-1/D) to the accused. This notice was sent to the proper address and is deemed to be served. 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 the 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 of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of 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*

2025:HHC:25487

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

44. The accused has not paid any money to the complainant; hence, it was duly proved that the accused had failed to pay the money despite the receipt of the notice.

45. Therefore, it was duly proved before the learned Trial Court that the cheque was issued in discharge of legal liability. It was dishonoured with an endorsement 'funds balance', and the accused had failed to pay the amount despite the receipt of the notice of demand. Hence, the complainant had proved his case beyond a reasonable doubt, and the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

2025:HHC:25487

46. Learned Trial Court had ordered the accused to pay a compensation of ₹4,10,000/- The cheque of ₹4,00,000/- was issued on 31.10.2018. The compensation was ordered to be paid on 16.03.2022 after the expiry of about four years. The complainant lost interest on the amount, and she had to pay the litigation expenses for filing the complaint. She was entitled to be compensated for the same. 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*** 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***]"

2025:HHC:25487

47. Therefore, the compensation of ₹4,10,000/- on the principal amount of ₹4,00,000/- is not excessive.

48. Learned Trial Court ordered the sentence of imprisonment of six months in default of payment of compensation.

49. It was submitted that the learned Trial Court erred in imposing the sentence in default of the payment of compensation. This submission is not acceptable. 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 can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

> "**20.** Moving over to the question, whether a default sentence can be imposed on default of payment of compensation, this Court in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127] and in Balraj v. State of U.P. [(1994) 4 SCC 29: 1994 SCC (Cri) 823: AIR 1995 SC 1935]***, has held that it was open to all the courts in India to impose a sentence on default of payment of compensation under sub-section (3) of Section 357. In ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127],*** this Court has noticed certain factors which are required to be taken into consideration while passing an order under the section: (SCC p. 558, para 11)

2025:HHC:25487

> "*11*. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there is more than one accused, they may be asked to pay on equal terms unless their capacity to pay varies considerably. The payment may also vary depending on the acts of each accused. A reasonable period for payment of compensation, if necessary, by instalments, may also be given. The court may enforce the order by imposing a sentence in default."

21. This position also finds support in ***R. v. Oliver John Huish [(1985) 7 Cri App R (S) 272]***. The Lord Justice Croom Johnson, speaking for the Bench, has observed:

> "When compensation orders may be made, the most careful examination is required. Documents should be obtained, and evidence, either on affidavit or orally, should be given. The proceedings should, if necessary, be adjourned to arrive at the true state of the defendant's affairs.
>
> Very often, a compensation order is made and a very light sentence of imprisonment is imposed, because the court recognises that if the defendant is to have an opportunity of paying the compensation, he must be enabled to earn the money with which to do so. The result is therefore an extremely light sentence of imprisonment. If the compensation order turns out to be virtually worthless, the defendant has got off with a very light sentence of imprisonment as well as no order of compensation. In other words, generally speaking, he has got off with everything."

2025:HHC:25487

22. The law laid down in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** was reiterated by this Court in ***Suganthi Suresh Kumar v. Jagdeeshan [(2002) 2 SCC 420: 2002 SCC (Cri) 344]***. The Court observed: (SCC pp. 424-25, paras 5 & 10)

> "*5.* In the said decision, this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]***. In the said decision, this Court held as follows: (SCC p. 558, para 11)
>
> '*11.* ... The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there is more than one accused, they may be asked to pay on equal terms unless their capacity to pay varies considerably. The payment may also vary depending on the acts of each accused. A reasonable period for payment of compensation, if necessary, by instalments, may also be given. *The court may enforce the order by imposing a sentence in default.*'
>
> (emphasis in original)
>
> ***
>
> *10.* That apart, Section 431 of the Code has only prescribed that any money (other than fine) payable by an order made under the Code shall be recoverable 'as if it were fine'. Two modes of recovery of the fine have been indicated in Section 421(1) of the Code. The proviso to the sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court

2025:HHC:25487

> shall issue such warrant for the levy of the amount."

The Court further held: (***Jagdeeshan case [(2002) 2 SCC 420: 2002 SCC (Cri) 344]***, SCC p. 425, para 11)

> "*11.* When this Court pronounced in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** that a court may enforce an order to pay compensation 'by imposing a sentence in default', it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of this Court. Hence, learned Single Judge of the High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed by the subordinate courts in Kerala. We express our disapproval of the course adopted by the said Judge in ***Rajendran v. Jose [(2001) 3 KLT 431]***. It is unfortunate that when the Sessions Judge has correctly done a course in accordance with the discipline, the Single Judge of the High Court has incorrectly reversed it."

23. In order to set at rest the divergent opinion expressed in ***Ahammedkutty case [(2009) 6 SCC 660 : (2009) 3 SCC (Cri) 302]***, this Court in ***Vijayan v. Sadanandan K. [(2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296]***, after noticing the provision of Sections 421 and 431 CrPC, which dealt with mode of recovery of fine and Section 64 IPC, which empowered the courts to provide for a sentence of imprisonment on default of payment of fine, the Court stated: (***Vijayan case [(2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296***], SCC p. 658, para 24)

> "24. We have carefully considered the submissions made on behalf of the respective parties. Since a decision on the question raised in this petition is still in a nebulous state, there appear to be two views as to whether a default sentence of

2025:HHC:25487

> imprisonment can be imposed in cases where compensation is awarded to the complainant under Section 357(3) CrPC. As pointed out by Mr Basant in ***Dilip S. Dahanukar case [(2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209]***, the distinction between a fine and compensation as understood under Section 357(1)(*b*) and Section 357(3) CrPC had been explained, but the question as to whether a default sentence clause could be made in respect of compensation payable under Section 357(3) CrPC, which is central to the decision in this case, had not been considered."

The Court further held: (***Vijayan case [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, SCC p. 659, paras 31-32)

> "*31.* The provisions of Sections 357(3) and 431 CrPC, when read with Section 64 IPC, empower the court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.
>
> *32.* The observations made by this Court in ***Hari Singh case [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 CrPC for enforcing the same, the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory."

24. In ***Shantilal v. State of M.P. [(2007) 11 SCC 243: (2008) 1 SCC (Cri) 1]***, it is stated that the sentence of imprisonment for default in payment of a fine or compensation is different from a normal sentence of imprisonment. The Court also delved into the factors to be taken into consideration while passing an order under Section 357(3) CrPC. This Court stated: (SCC pp. 255-56, para 31)

> "*31.* ... The term of imprisonment in default of payment of a fine is not a sentence. It is a penalty

2025:HHC:25487

> which a person incurs on account of non-payment of a fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole, either in appeal or in revision or other appropriate judicial proceedings, or 'otherwise'. A term of imprisonment ordered in default of payment of a fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid undergoing imprisonment in default of payment of the fine by paying such amount. It is, therefore, not only the *power* but the *duty* of the court to keep in view the nature of the offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of a fine." (emphasis in original)

25. In ***Kuldip Kaur v. Surinder Singh [(1989) 1 SCC 405: 1989 SCC (Cri) 171: AIR 1989 SC 232],*** in the context of Section 125 CrPC observed that sentencing a person to jail is sometimes a mode of enforcement. In this regard, the Court stated: (SCC p. 409, para 6)

> "*6.* A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a '*mode of enforcement*'. It is not a '*mode of satisfaction*' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the

2025:HHC:25487

> liability which he has refused to discharge. It should also be realised that a person ordered to pay a monthly allowance can be sent to jail only if he fails to pay the monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who, without reasonable cause, refuses to comply with the order of the court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears."

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 behind bars 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.

2025:HHC:25487

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

> **29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code 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 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 abovementioned 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

2025:HHC:25487

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.

51. Thus, there is no infirmity in imposing a sentence of imprisonment in case of default in the payment of compensation.

52. No other point was urged.

53. In view of the above, the present revision fails, and the same is dismissed.

54. Records of the learned Courts below be sent back forthwith, along with a copy of this judgment.

(Rakesh Kainthla)
Judge

31st July, 2025
(ravinder)