2026:HHC:41036

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 22 of 2025
Reserved on: 16.9.2026
Date of Decision: 24.9.2026.

Kishori Lal ...Petitioner

Versus

Ramesh Kumar and another ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? [1] ***No.***

For the Petitioners	:	Mr Rohit, Advocate, vice Mr. G.R. Palsra, Advocate.
For Respondent No. 1	:	Mr Vijay Chaudhary, Advocate.
For Respondent No.2/State	:	Mr Tarun Pathak, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 12.12.2024, passed by learned Sessions Judge, Mandi, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 10.07.2024, passed by learned Additional Chief Judicial Magistrate, Court No. 1, Mandi (learned Trial Court) were upheld. *(The parties shall hereinafter be*

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

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 asserted that the accused had purchased a Tata Zest Model 2015/3 bearing registration No. HP-34-B-8385 on 15.06.2018 from the complainant for ₹4,00,000/-. The accused paid ₹1,92,000/- to the complainant and issued a cheque of ₹2,08,000/- in favour of the complainant. The complainant presented the cheque before his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a demand notice to the accused, asking him to pay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but he 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.

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 (CW-1) 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 not issued any cheque and had not received any notice from the complainant. He had issued a cheque to Tata Finance, which was misused by the complainant. He examined Navneet Sharma (DW-1) and Labh Singh (DW-2) to prove his defence.

6. The learned Trial Court held that the issuance of the cheque was not disputed. The complainant is the holder of the cheque, and there is a presumption that the cheque was issued for consideration to discharge the debt/liability. The plea taken by the accused that a cheque was issued in favour of Tata Finance, which was misused by the complainant, was not proved

on record. The accused failed to explain how a cheque issued in favour of Tata Finance would come into possession of the complainant. The accused had not sent any reply to the notice issued to him taking any such plea. The cheque was dishonoured with an endorsement "insufficient funds", and the notice was duly served upon the accused. The accused had failed to repay the money. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for five months, pay compensation of ₹4,16,000/- for the loss sustained by the complainant, and in default of payment of compensation, to undergo simple imprisonment of three months.

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 Sessions Judge, Mandi, H.P. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed and a presumption arose that the cheque was issued for consideration to discharge

the debt/liability. The plea taken by the accused that the cheque was issued in the name of Tata Finance and was misused by the complainant was not probable. The statements of defence witnesses were not believable, and the accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with endorsement "insufficient funds". The notice was duly served upon the accused. Hence, he was rightly convicted by the learned Trial Court. The sentence imposed upon the accused was adequate, which did not require any interference from the Appellate Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below erred in appreciating the material placed before them. The legal notice was served on 29.08.2019, whereas the complaint was filed on 23.10.2019, which was barred by limitation. Manager, Shriram Finance Kullu (DW-1), stated that an amount of ₹2,91,988/- was transferred to the complainant's account. This statement was ignored by the learned Courts below. Therefore, it was prayed

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that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Rohit, learned vice-counsel representing the petitioner/accused, Mr Vijay Chaudhary, learned counsel for respondent No.1/complainant, and Mr Tarun Pathak, learned Deputy Advocate General for respondent No. 2/State.

10. Mr Rohit, learned vice-counsel representing the petitioner/accused, submitted that the plea taken by the accused that the vehicle was refinanced by Shriram Transport Finance and the money was credited to the complainant's account was ignored by the learned Courts below. The accused has to rebut the presumption on the balance of probabilities and not beyond a reasonable doubt. The accused had discharged the burden placed upon him. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Vijay Chaudhary, learned counsel for respondent No. 1/complainant, submitted that the statement of account produced by Navneet Sharma (DW-1) was not supported by a

certificate under Section 65B of the Indian Evidence Act, and such a statement was inadmissible. The issuance of the cheque was not disputed, and learned Courts below had rightly relied upon the presumption contained in Sections 118 and 139 of the Negotiable Instruments Act. All the ingredients of Section 138 of the NI Act were duly satisfied. This Court should not re-appreciate the evidence while deciding a revision. Therefore, he prayed that the present revision be dismissed.

12. Mr. Tarun Pathak, learned Deputy Advocate General, for the respondent No.2-State submitted that the dispute is between the private parties and the State is not required to make any submission.

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 ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

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

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

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

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the ***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 reappreciate 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 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 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.

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

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

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

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

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from 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 that 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.
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> 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.
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> vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

17. The accused claimed that he had issued a cheque in the name of Tata Finance. Thus, the issuance of the cheque was not disputed. Learned Courts below had rightly held that admission of the issuance of the cheque would trigger a presumption under Section 118(a) and Section 139 of the NI Act that the cheque was issued for consideration to discharge the debt/liability. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148,*** that where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant, it is sufficient to trigger the presumption contained under Section 118(a) and 139 of the NI Act. It was observed: -

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where

the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. ***[Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]]***. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.

37. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

18. It was laid down in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, that where the execution of the cheque is proved or admitted, the presumption would be attracted. It was observed:

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

15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said

> cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa***(supra).
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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 the cheque carries a presumption that it was issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption. It was observed:

> **5.7.**A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections118and139of theNI Acthelp 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 a presumption would be attracted in the present case that the cheque was issued for consideration to discharge the debt/liability, and the burden would shift upon the accused to rebut the presumption.

21. It was the specific case of the complainant in paragraph-1 of the complaint that the accused had purchased a Tata Zest Model 2015/3 bearing registration No. HP-34-B-8385 from the complainant for ₹4,00,000/-, out of which ₹1,92,000/- were paid and ₹2,08,000/- were payable. Navneet Sharma (DW-1) stated that he was posted as a Branch Manager in Shriram Finance. The accused, Kishori Lal, had got the vehicle

bearing registration No. HP-34-B-8385 refinanced for ₹3,00,000/-, and an amount of ₹2,91,988/- was transferred to the account of Ramesh Kumar, complainant. He admitted in his cross-examination that the data sheet (Ex. D-1/Ex. DW-1) was a computer-generated copy and no certificate under Section 65B of the Indian Evidence Act was issued by him.

22. It was submitted that the statement of this witness is inadmissible because it does not contain the certificate required under Section 65B of the Indian Evidence Act. This submission will not help the complainant. He has stated as a fact that he is a Branch Manager, that a vehicle bearing registration No. HP-34-B-8385 was refinanced, and an amount of ₹2,91,988/- was transferred to the account of the complainant. Therefore, even if the document brought by him is taken out of consideration, the fact that the vehicle of the accused was refinanced and the amount was transferred to the account of the complainant cannot be rejected. Significantly, his statement that the vehicle was refinanced and the amount was transferred to the account of the complainant was not challenged in the cross-examination, which means that this part was accepted to be correct. It was laid down by the Hon'ble Supreme Court in ***State***

of Uttar Pradesh Versus Nahar Singh, 1998 (3) SCC 561, that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in ***Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1; (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4,*** and it was held at page 34:

> "**58.** A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 at 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17: 10 hrs, mentioned in Column 2 appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour T-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the

arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as ***Browne v. Dunn (1893) 6 R 67 (HL)***, considered the principles of appreciation of evidence. Lord Chancellor Herschell held that it is essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to

> suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."

60. Lord Halsbury, in a separate but concurring opinion, held as under:

> "My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

61. This Court, in a judgment reported as ***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***, quoted from ***Browne v. Dunn, (1893) 6 R 67 (HL)*** to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (***State of U.P. v. Nahar Singh, (1998) 3 SCC 561: 1998 SCC (Cri) 850***], SCC pp. 566-67, para 13)

> "*13*. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right

> of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:
>
> > (*1*) to test his veracity,
> >
> > (2) to discover who he is and what his position in life is, or
> >
> > (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture."

62. This Court, in a judgment reported in ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268,*** laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

> "*15.* Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandal v.Debnath Bhagat, AIR 1963 SC 1906***. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness's account has been accepted, as held in ***Chuni Lal Dwarka***

> ***Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440.***
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> *16.* In ***Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60***, it has been laid down that the matters sworn to by one party in the pleadings, not challenged either in pleadings or cross-examination by another party, must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359*** has laid down that the party is obliged to put his case in the cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, ***Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83,*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in ***Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683*** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of the opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."

23. Hence, his testimony cannot be rejected.

24. He stated in his cross-examination that it was a case of buying and selling, and the money was transferred to the account of the registered owner. It was submitted that this statement falsifies the version of the accused that the money was transferred to the complainant's account. This submission cannot be accepted. The complainant has not produced any document showing that the ownership was transferred in the name of the accused. The complainant was admittedly the owner of the vehicle, and in the absence of any evidence that the ownership was transferred in the name of the accused, the statement of this witness can only mean that the amount was transferred to the complainant's account.

25. The statement of this witness makes it probable that the accused had discharged the debt of ₹2,08,000/- for which the cheque was issued. The accused had no other liability towards the complainant, and the evidence of the accused was sufficient to rebut the presumption.

26. Learned Courts below were swayed by the presumption. The learned Trial Court held that no reply to the notice was sent; however, that was not a material consideration.

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The learned Trial Court was required to consider whether the statement of Navneet Sharma (DW-1) was sufficient to discharge the burden or not, and this aspect was missed by the learned Trial Court. The learned Appellate Court held that it was not proved that the account mentioned by Navneet Sharma (DW-1) was that of the complainant. When the testimony of Navneet Sharma (DW-1) was not challenged in the cross-examination that the amount was transferred to the complainant's account, it is difficult to see how a finding could have been recorded by the learned Appellate Court that the account was not established to be in the name of the complainant. Thus, the learned Courts below failed to consider an important aspect of the case, and the judgments and order passed by them cannot be sustained.

27. It was submitted that this Court should not re-appreciate the evidence while deciding the revision. This submission will not help the complainant. The Court is not re-appreciating the evidence, but pointing out the effect of non-consideration of the vital evidence. When the Court fails to consider material evidence which has an important bearing on

the outcome of the case, such a judgment can be interfered with while exercising revisional jurisdiction.

28. Therefore, the judgments and order passed by the learned Courts below are not sustainable. Hence, the present revision is allowed. The judgment and order passed by the learned Additional Chief Judicial Magistrate, Court No.1, Mandi, District Mandi, H.P. in Complaint No. 906 of 2019, titled Ramesh Kumar Vs. Kishori Lal, as affirmed by the learned Appellate Court in Criminal Appeal No. 105 of 2024, titled Kishori Lal Vs. Ramesh Kumar and another, are ordered to be set aside. The accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The compensation amount, if any, paid/deposited, be refunded to him after the expiry of limitation for filing an appeal, if no appeal is filed, and in case of appeal, the same be dealt with as per the judgment of the Hon'ble Supreme Court.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like

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

30. The present revision stands disposed of, so also the pending miscellaneous application(s), if any.

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

(Rakesh Kainthla)
Judge

24th September, 2026
(Chander)