IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 558 of 2026
Reserved on: 17.09.2026
Date of Decision: 24.09.2026.

Rajender Singh ...Petitioner

Versus

Shriram Transport Finance Company Ltd. ...Respondent

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

For the Petitioner : Mr R.S.Chandel, Advocate.

For the Respondent : *Nemo*

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 18.08.2026, passed by learned Sessions Judge, Shimla, District Shimla, H.P. (learned appellate Court), vide which the judgment of conviction and order of sentence dated 07.10.2025, passed by learned Chief Judicial Magistrate-Shimla, District Shimla, H.P. (learned trial Court) were upheld. *(The parties shall*

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

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hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint against the accused before the learned Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is engaged in the business of financing heavy commercial vehicles on hire-purchase agreement and on a lease basis. The accused approached the complainant for financing of the vehicle bearing registration No. HP-63B-1173, Mahindra Bolero (Maxi truck). The complainant sanctioned a loan of ₹ 2,60,000/- in favour of the accused. The accused was to pay ₹2,60,000/- as the principal amount and ₹1,38,632/- as finance charges and interest on the loan amount. This amount was repayable in 47 monthly instalments. The accused defaulted in the payment of the instalments. When the complainant demanded the money from the accused, the accused issued a cheque of ₹2,60,000/- to the complainant to discharge his liability. The complainant presented the cheque, but it was dishonoured with an endorsement 'insufficient funds'. The complainant sent a legal

notice to the accused asking him to repay the money. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, the complaint was filed 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 on him, to which he pleaded not guilty and claimed to be tried.

4. The complaint examined Vikas Chandel (CW-1) to prove the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that his bank security cheque was misused. He has no liability towards the complainant. He examined himself (DW-1) and Suresh Sharma (DW2).

6. Learned trial Court held that the issuance of the cheque was not disputed. The accused admitted that he had taken the loan from the complainant. He claimed that an amount of ₹70,000/- was due, which was realised by the sale of his vehicle; however, this claim was not proved. The cheque carried with it a presumption that it was issued for consideration to

discharge the debt/liability. The accused failed to produce any receipts of the repayment of the loan amount. His statement that the vehicle was seized was also not proved. 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 one year and pay a compensation of ₹4,10,000/- to the complainant.

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, Shimla District, Shimla, 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 would arise that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption. The plea taken by him that he had repaid the loan or that the vehicle was seized was not proved on record. The evidence produced by the accused was not sufficient to rebut the presumption. The complaint was not barred by limitation as the loan was repayable within 47 months. The statement of account showed that the accused was a persistent

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defaulter. The cheque was dishonoured with an ednorsment insufficient funds. The notice was served upon the accused, but the accused failed to repay the money. Hence, the learned trial Court had rightly convicted the accused. The sentence imposed by the learned Court was adequate, and no interference was required with it. Therefore, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the material on record. It was wrongly held that the amount would become payable on the last scheduled instalment. A period of 3 years has been provided for recovery of the amount commencing from the date of default. The creditor cannot present the cheque after the expiry of the period of limitation. The plea taken by the accused regarding the repayment of the loan and repossession of the vehicle was highly probable, and learned Courts below erred in rejecting this plea. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned courts below be set aside.

9. Mr R.S. Chandel, learned counsel for the petitioner, submitted that the loan was taken in the year 2012, as per the complaint, and the cheque was issued in the year 2019. Therefore, the cheque was issued towards the payment of time-barred debt, and no action lies based on a cheque to pay time-barred debt. The signature of the accused is in Hindi in black pen, and the cheque was filled in English with blue pen, which makes it highly probable that the cheque was issued as a security cheque and was misused by the complainant. The complainant asserted in para 11 that the cause of action had arisen on 18.07.2019, when the complainant received information regarding the dishonour of the cheque, and the complaint was filed on 28.09.2019, which is barred by limitation. The complainant had repossessed the vehicle and sold it. The amount was not adjusted. The learned Courts below had not appreciated these aspects. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied on the judgment of the Hon'ble Supreme Court in ***Vijay vs. Laxman & Anr. 2013(3) SCC 86,*** in support of his submission.

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

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

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

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.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High

> Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

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

12. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda (supra)*** 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***.

> "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:

> (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;

(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;

(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 because it exceeds the amount arranged to be paid from that account.

v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

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

14. The accused Rajender Singh (DW-1) admitted his signatures inside the red circle 'A' on the cheque (Ext.C-2/CW1). He stated in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC) that he had issued a signed blank cheque at the time of taking the loan. Therefore, the accused has not disputed the issuance of the cheque and his signatures on the cheque. It was laid down by the Hon'ble

Supreme Court in ***Rajesh Jain v. Ajay Singh*, 2023 *SCC OnLine SC 1275: (2023) 10 SCC 148,*** that admission of the signatures on the blank cheque is sufficient to trigger the presumption under the NI Act. It was observed at page 162:

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

15. It was held in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** that the admission of signatures on the cheque will attract the presumption. 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***].

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

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove

> that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and, therefore, to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

17. The accused admitted that he had taken a loan of ₹3,00,000/-from the complainant. Thus, the transaction between the parties is not disputed. The accused claimed that he had returned a substantial amount and he was to pay ₹70,000/- to the complainant. He stated in his cross-examination that he could not produce any receipt regarding the repayment of the loan. He volunteered to say that the company officials used to collect the cash amount from him and no receipts were issued to

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him. He stated that he had not made any complaint regarding the non-issuance of the receipt.

18. The cross-examination of the accused makes his version highly doubtful that he had deposited a substantial amount of the loan. His plea that no receipts were issued by him is not believable. He had taken a loan and was paying the loan instalments to the company. He was aware of the fact that not taking the receipt would not result in the reduction of the loan amount. He had not protested regarding the non-issuance of the receipt, which is cannot be accepted.

19. Suresh Sharma (DW2) stated that the complainant used to come to the village of the accused for taking payment of the instalment. The company had taken the pickup vehicle of the accused and sold it for ₹2,85,000/-. He stated in his cross-examination that 3 or 4 instalments were paid in his presence, but he was not aware of the amount or the name of the person to whom the payment was made. He claimed that the officials had taken the vehicle in the year 2020 or 2021.

20. Therefore, Suresh Sharma has also stated about the payment of 3 or 4 instalments by the accused. It was suggested to the accused in his cross-examination that the accused had

paid only 5 instalments, showing that even the company is not disputing the receipt of the 5 instalments. Therefore, learned Courts below had rightly discarded the defence taken by the accused that he had deposited a substantial part of the loan.

21. The accused claimed that his vehicle bearing registration no. HP 63B-1173 was seized and sold by the company for ₹2,85,000/-. He stated in his cross-examination that he had not participated in the auction of the vehicle, which shows that the auction was not conducted in his presence. He has not explained how he found out that the vehicle was sold for ₹ 2,85,000/-. Suresh Sharma (DW2) has not stated anything about the sale of the vehicle. Hence, the plea taken by the accused that the complainant had repossessed the accused vehicle and sold it for ₹ 2,85,000/- is not proved.

22. It was submitted that the cheque was issued in the year 2019, whereas the loan was taken in the year 2014; therefore, the cheque was towards a time-barred loan. The learned Appellate Court had rightly pointed out that the loan was to be repaid in 47 monthly instalments. The first instalment was due on 20.01.2015, and the last instalment was due on 20.11.2018. The cheque was issued on 12.07.2019, within 8 months of the

date of the last payment. Therefore, the cheque cannot be said to be barred by the limitation.

23. It was submitted that the cheque was issued as a security, which is apparent from the fact that the handwriting in the body of the cheque is different from the signatures. This submission will not help the petitioner/accused. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456*** that the accused is liable for the dishonour of the cheque even if the cheque is issued towards security. 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, the criminal revision petition is rejected as 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 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 the cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions 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."

24. 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 the NI 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.*
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> 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 cheques being 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 had 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.
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> 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 the 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 the 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 a 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.
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> 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)

25. 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 NI Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered 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 a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.
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> 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 a 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 NI 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 circumstances 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."

26. Therefore, the accused cannot escape from the liability by taking a plea that he had issued the cheque as security. It is undisputed that the accused had taken a loan of ₹ 3,00,000/- from the complainant. His plea that he had paid a substantial amount is not proved. Hence, the accused had a liability of more than ₹ 2,60,000/- and the accused would be liable for the dishonour of the cheque of ₹ 2,60,000/-

27. It was submitted that the accused had not filled the body of the cheque and the cheque is bad. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138***, that

a person is liable for the commission of an offence punishable under section 138 of the Negotiable Instruments Act even if some other person fills the cheque. It was observed:

> "**33.** A meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
>
> **34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill in the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
>
> **35.** It is not the case that the respondent accused him of either signing the cheque or parting with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
>
> **36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

28. This position was reiterated in ***Oriental Bank of Commerce v. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089***, wherein it was observed:

> "12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.
>
> xxxxxx
>
> 32. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.

29. Therefore, the cheque is not bad even if it is not filled in by the drawer.

31. There is no other evidence to show that the cheque was not issued for consideration to discharge the debt/liability. Hence, the learned Courts below had rightly held that the evidence of the accused was insufficient to rebut the presumption attached to the cheque.

32. Vikas Chandel (CW-1) stated that the cheque was dishonoured with an endorsement 'insufficient funds'; the memo (Ext. C2/CW-1) mentions the reason for dishonour as 'insufficient funds' in the account. It was laid down by the

Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, *(2010) 3 SCC 83; (2010) 1 SCC (Civ) 625; (2010) 2 SCC (Cri) 1; 2010 SCC OnLine SC 155,*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

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

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

34. Mr Vikash Chandel (CW-1) stated that he had issued the legal notice (Ext. C-4/CW1), which was served upon the accused, and acknowledgement (Ext.C-6/CW1) was received by him. The accused admitted in his cross-examination that the acknowledgement (Ext.C6/CW-1) bears his signature, which shows that the notice was served upon the accused.

35. In ***Vijay (supra)***, a post-dated cheque was issued which was to be presented after 2 months; however, the complainant presented the cheque on the same day. Hence, the omission to mention the date of the loan was held to be material. In the present case, the accused never claimed that the cheque was a post-dated cheque and was to be presented after some time. Therefore, the cited judgment does not apply to the facts of the present case.

36. It was submitted that the complaint mentions that the cause of action accrued to the complainant on 18.07.2019 when the notice of dishonour was received and the complaint is time-barred. This submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in ***Vishnoo Mittal v. Shakti Trading Co., (2025) 9 SCC 417: 2025 SCC OnLine SC 558*** that the cause of action does not arise when the cheque is returned but only when the accused fails to pay the money within fifteen days of the receipt of the notice of demand. It was observed at page 420:

> "**10.** The return of the cheques dishonoured simpliciter does not create an offence under Section 138 NI Act, which reads as under:
>
> > "**138.** ***Dishonour of cheque for insufficiency, etc. of funds in the account.***—Where any cheque drawn by a person

on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of 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 by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(*a*) the cheque has been presented to the bank within a period of six months [**Ed.**: The period of "six months" mentioned in Section 138 proviso (*a*) remains unchanged as there has been no amendment in this regard. However, RBI vide Circular RBI/2011-12/251 DBOD AML BC No. 47/14.01.001/2011-12, dated 4-11-2011, in exercise of the power under Section 35-A of the Banking Regulation Act, 1949 has changed the default period within which a cheque may be presented for payment, from a period of six months from the date of the instrument, to a period of only three months from such date, w.e.f. 1-4-2012. The operative part of the said Circular reads: "Accordingly, in exercise of the powers conferred by Section 35-A of the Banking Regulation Act, 1949, Reserve Bank hereby directs that w.e.f. 1-4-2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from the date of such instrument." The result is that the impact of the above RBI Circular is covered by the latter part of proviso (*a*), namely,

> "or within the period of its validity, whichever is earlier;" from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (*b*) the payee or the holder in due course of the cheque, as the case may be, 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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
>
> (*c*) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.
>
> *Explanation.*—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

Clause (*c*) of the proviso to Section 138 NI Act makes it clear that cause of action arises only when demand notice is served and payment is not made pursuant to such demand notice within the stipulated fifteen-day period.

11. This Court in ***Jugesh Sehgal v. Shamsher Singh Gogi [Jugesh Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683: (2009) 5 SCC (Civ) 482: (2010) 2 SCC (Cri) 218]*** has explained the ingredients of Section 138 NI Act offence as follows: (SCC pp. 687-88, para 13)

> "*13.* It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:
>
> (*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 *from out of that account*;

> > (*ii*) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;
> >
> > (*iii*) 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;
> >
> > (*iv*) that the cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
> >
> > (*v*) 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;
> >
> > (*vi*) 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.
>
> Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act." (emphasis in original)

In other words, the cause of action arises only when the amount remains unpaid even after the expiry of fifteen days from the date of receipt of the demand notice."

37. Therefore, it was duly proved on record that the accused had issued a cheque in favour of the complainant to discharge the debt, which was dishonoured, with an endorsement 'funds insufficient'. The notice was duly served

upon the accused, and the accused failed to repay the money, despite the receipt of valid notice of demand. Thus, all the ingredients of commission of an offence punishable under Section 138 of the NI Act were duly satisfied and learned trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the N. I. Act.

38. The learned trial Court had sentenced the accused to undergo simple imprisonment for 1 year and pay compensation of ₹4,10,000 /-. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138,*** that the penal provision of Section 138 is deterrent in nature. It was observed at page 203:

> "6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same."

39. Keeping in view the deterrent nature of the punishment, a sentence of one year cannot be said to be excessive.

40. The accused issued the cheque of ₹2,60,000/- on 12.07.2019; the learned trial courts imposed a sentence on 07.10.2025, after the lapse of about 6 years from the date of issuance of the cheque. It was laid down by the Hon'ble Supreme Court in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75,*** that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

> 19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation, and unless there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [***R. Vijayan v. Baby, (2012) 1 SCC 260, para 20: (2012) 1 SCC (Civ) 79: (2012) 1 SCC (Cri) 520***]"

41. The complainant was deprived of the interest to which it would have been entitled, had it advanced the money to other persons. The complainant had to engage counsel and to prosecute the complaint before the learned Trial Court; hence, he was entitled to be compensated for it. Considering all these

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circumstances, the compensation of ₹1,50,000/- on an amount of ₹2,60,000/- cannot be said to be excessive and no interference is required with the amount of compensation awarded by the learned Trial Court.

42. No other point was urged.

43. In view of the above, the present revision fails, and it is dismissed; so also the pending application(s), if any, also stand disposed of.

44. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

24th September, 2026
(ravinder)