IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 347 of 2014

Reserved on: 15.09.2026

Date of Decision: 24.09.2026.

Rita Sharma ...Petitioner

Versus

Ramesh Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

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

For the Petitioner	:	Mr Virender Thakur, Advocate.
For the Respondent	:	Ms Gitika Dhiman, Advocate, vice Mr Mohit Thakur, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 10.09.2014, passed by learned Additional Sessions Judge-I, Solan, District Solan, H.P. Camp at Nalagarh, District Solan, H.P. (learned appellate Court) vide which judgment of conviction dated 22.11.2010 and order of sentence dated 24.11.2010, passed

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

by learned Judicial Magistrate, First Class, Court No. 2, Nalagarh, District Solan, H.P. (learned trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present 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 (N I Act). It was asserted that the complainant has a cordial relationship with the accused. The accused borrowed a sum of ₹5,00,000/- from the complainant to meet her requirements on 30.09.2008. She promised to return the amount before 04.11.2008. The complainant demanded the money from the accused, and the accused issued a cheque of ₹5,00,000/- drawn on Jogindra Central Co-operative Bank, Nalagarh, to repay the loan. The complainant presented the cheque before the bank, but it was dishonoured with the remarks, 'insufficient funds'. The complainant served a notice upon the accused asking her to pay the money within 15 days of the receipt of the notice. The notice was duly received by the accused on 06.12.2008, but she 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 to her for the commission of an offence punishable under Section 138 of the NI Act, to which she pleaded not guilty and claimed to be tried.

4. The complainant examined 3 witnesses to prove his case. Madan Lal (CW-1) and A.K. Poswan (CW-2) proved that the cheque was dishonoured with the endorsement 'insufficient funds'. Ramesh Kumar (CW-3) is the complainant

5. The accused, in her statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that she had issued a blank cheque to the complainant. She admitted that the cheque was signed by her and that it was dishonoured with an endorsement 'insufficient funds'. She admitted that she had received the notice and did not make the payment despite the receipt of the notice of demand. She claimed that her husband had borrowed ₹2,50,000/- from the complainant, which he had returned. A document in writing was executed at the time of the return of the loan. She had not borrowed any

money from the complainant. She had issued a blank signed cheque in favour of the complainant. She did not produce any evidence in her defence.

6. The learned trial Court held that the issuance of the cheque was not disputed. A cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. The accused did not examine any witness to prove her defence. The plea taken by the accused that the complainant is a moneylender was not proved. The suggestions put to the witnesses were denied by them in their cross-examination, and a denied suggestion does not amount to any proof. The accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused, and she failed to repay the money. Hence, the learned trial Court convicted the accused for the commission of an offence punishable under Section 138 of the NI Act and sentenced her to undergo simple imprisonment for 6 months, and pay compensation of ₹5,00,000 /-.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was

decided by the learned Additional Sessions Judge-I, Solan, District Solan Camp at Nalagarh, H.P. (learned appellate Court). 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 accused failed to produce any evidence to rebut the presumption. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused. The learned trial Court had imposed an adequate sentence, and no interference was required with it. 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 failed to appreciate the material on record. The accused had taken a loan of ₹2.5 lakhs and had returned an amount of ₹2.8 lakhs to the complainant. The cheque was issued as security. It was agreed that the cheque would be returned to the accused after the repayment. However, the complainant failed to return the cheque, and he misused it. 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. I have heard Mr Virender Thakur, learned counsel for the petitioner and Ms Gitika Dhiman, learned vice counsel representing the respondent.

10. Mr Virender Thakur, learned counsel for the petitioner, accused, submitted that there is a difference in the handwriting in the body of the cheque and the signatures. These have been filled in different ink. Thus, the plea taken by the accused that the cheque was issued as a security was highly probable. The complainant is a money lender, and he has not produced any license to advance loans to people. These aspects were ignored by learned courts below. Therefore, he prayed that the present revision be allowed and the judgments and order passed by learned Courts be set aside. He submitted in the alternative that the sentence is harsh, and the same be reduced.

11. Ms Gitika Dhiman, learned vice-Counsel representing the respondent/complainant, submitted that issuance of the cheque was not disputed and learned Courts below had rightly held that this admission would trigger the presumption that the cheque was issued for consideration to

discharge the debt/liability. The accused did not produce any evidence to rebut the presumption attached to the cheque. This Court should not re-appreciate the evidence while deciding the revision. Therefore, she prayed that the present revision be dismissed. She has also filed the written arguments, which have been perused by the Court. She has relied upon the following judgments in support of her submissions:

- ***Kuntegowda vs. Thurubaiah 2026 SCC OnLine SC 1485; and***
- ***Sanjabij Tari vs. Kishore S. Borcar & Anr. 2025 INSC 1158***

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

13. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda (supra)*** 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.
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> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

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

7.1. This Court, in 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.

14. The present revision has to be decided as per the judgment.

15. The accused admitted in her statement recorded under Section 313 of the CrPC that the cheque bears her signatures. She claimed that she had issued a blank signed cheque as security. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the contention of the accused that a blank cheque leaf was voluntarily signed and handed over by him to the complainant 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.
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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.

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

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

17. 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.

18. Therefore, learned Courts below were right in holding that the admission of the signatures would trigger the presumption contained in Section 118(a) and 139 of the NI Act.

19. The cheque (Ext.C-1) is filled in blue pen and in English. It is signed in black pen and in Hindi. It was contended that the signatures in black ink and the writing in blue ink, that too in English, make the defence taken by the accused probable that the cheque was issued as a security for the repayment of the loan. This submission will not help the accused. The accused claimed in her statement recorded under Section 313 of the CrPC that she had not taken any loan and the loan was taken by her husband. She further claimed that a document was executed at the time of repayment of the loan. However, she has not produced any such document on record. The complainant denied in his cross-examination that an agreement for ₹2.5 lakhs was executed with the husband of the accused. Learned courts below had rightly held that a denied suggestion does not amount to any proof. Further, she stated before this Court in her revision petition that she had taken the loan of ₹2.2 lakhs from the complainant and had returned ₹2.8 lakhs to him, which is contrary to the defence taken by her in her statement recorded

under Section 313 of the CrPC. Therefore, learned Courts below had rightly held that the defence of the accused was not probable.

20. In any case, even if the cheque is issued as a security, the accused is liable for the dishonour of said cheque. 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."

21. 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)

22. 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."

23. Therefore, the accused cannot escape from the liability by taking a plea that she had issued the cheque as security.

24. The plea that the body of the cheque is filled in different ink in English, whereas the signatures are in Hindi and in black ink, will also not help the accused. 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.
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> **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.
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> **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.
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> **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."

25. 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.
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> xxxxxx
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> 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.

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

27. The complainant admitted in his cross-examination that he had filed another complaint for the commission of an offence punishable under Section 138 of the NI Act. It was submitted that the complainant is a moneylender and the complaint filed by him is not maintainable without registration. This submission cannot be accepted. Section 2(9) of the Registration of Money Lenders Act reads that a moneylender means a person or firm carrying on the business of advancing loans. The term 'loan' has been defined as an advance of money or kind with interest. Therefore, it is essential to prove that the person is engaged in a business of advancing money on interest. The learned Appellate Court had rightly held that a single transaction will not attract the provisions of the Money Lenders Act. The accused did not lead any evidence to show that the

complainant had advanced money on interest to various persons so as to attract the provisions of the Money Lenders Act. It was laid down by this Court in ***Rajbir Singh Versus Geeta Devi (2019) 2 B.C. 603*** that the provisions of the Registration of Money Lenders Act do apply when the complainant had not charged any interest from the persons to whom the money was lent. It was observed:

> "10. The learned trial Magistrate had recorded a conclusion that the complainant was engaged in the business of money lending, hence, in the face of the provisions borne in Section 3 of the H. P. Registration of Money Lenders Act, 1976, provisions whereof stand extracted hereinafter:-
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> > "3. Suits and applications by money-lenders barred, unless money- Notwithstanding anything contained in any other enactment for the time being in force a suit by a money-lender for the recovery of loan or an application by money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the moneylender, at the time of institution of the suit or presentation of the application for execution, or at the time of decreeing the suit or deciding the application for execution,-
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> > (a) is registered; and
> >
> > > (i) holds a valid licence, in such form and in such manner as may be prescribed; or
> > >
> > > (ii) holds a certificate from a Commissioner granted under section 10, specifying the loan in respect of which the suit is instituted, or

the decree in respect of which the application for execution is presented; or

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

(i) Whereunder an unregistered money lender, is, barred, to enforce his claim, against, his borrower by instituting a civil suit or upon rendition of an affirmative decree, he is forbidden, to realize the decretal amount, through his casting an execution petition, before, the executing court concerned, (ii) hence concluded that the amount, borne, in Ex. CW1/A, being not a legally recoverable debt or a legally enforceable debt, thereupon pronounced an order of acquittal upon the respondent/accused. The factual besides evidentiary matrix, for, the learned trial Court, hence, erecting the aforesaid inference, (iii) is, comprised, of the inability, of, the complainant, to, explain the nature of his relationship, with, the accused, (iv) AND also stems, from, his also acquiescing qua his instituting complaint(s), under, Section 138 of the Negotiable Instruments Act, against, one Ranjna Devi, and, one Basant Singh, wherewith whom he has also not explained his relationship. However, the aforesaid conclusions, are mis-founded, and, are apparently surmisally drawn, (v) given the aforesaid Ranjna Devi, and, Basant Singh, not, being cited, as witnesses, by the respondent/accused, for, theirs hence rendering testifications, qua their borrowing(s), of, money from the complainant, and, his lending vis-a-vis them, also being accompanied by his charging or levying interest, upon, the principal sum(s). (vi) Also, hence, for their rendering testifications, of, in their making borrowing(s) from the complainant, their holding, no acquaintance with him, and, that in their relevant borrowing(s), from the complainant, theirs being solitarily guided by the factum of his being an unlicensed professional money lender. However, evidence, in regard aforesaid, is grossly amiss hereat; (vii) thereupon, it was in sagacious, for, the learned trial court, to conclude qua the accused, being an unlicensed professional moneylender, and, his charging interest vis-a-vis the money lent by him vis-a-vis the accused, despite, his being wholly unacquainted with her or other borrowers. (viii) More so, when PW-2, espouses, hers, being well known, to the respondent/accused, also, when the relevant transaction, occurred, in the presence of the wife of the complainant, besides with the respondent/accused, not making, any testification, qua the relevant borrowings, made by her, from the complainant, being, a sequel of hers, knowing, the complainant to be engaged in the profession, of, money lending. Furthermore, also when, the borrowings, rather made, from, professional money lenders, by the latter's customers, enjoin also an eruption of clinching proof, qua, charging of interest thereon, by the moneylender, (ix) whereas with no evidence surging forth hereat, in the display of the amount, carried in the dishonoured negotiable instrument, also carrying therein, the apt interest levied or charged thereon. Contrarily, with the existence, of, evidence qua the initial borrowings, made by the respondent/accused, from, the complainant, rather bearing consonance, with, the amount carried, in the dishonoured negotiable instrument, (x) whereupon, it is apt, to, conclude, of no, interest being charged or levied by the complainant, from the respondent/accused in

2026:HHC:41114

> the latter making, hence, borrowings from him. Corollary thereof is, it being unbefitting to conclude, of the complainant, charging or levying any interest on the money lent by him to the apposite borrowers AND hence his being not construable to be a money lender.

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

> "11. Be that as it may, even if assumingly, the complainant, is construable to be an unregistered or an unlicensed professional money lender, and, even if assumingly, the bar constituted under Section 3 of the H. P. Registration of Money Lenders Act, 1976, is attracted vis-a-vis the purported business of money lending, carried by the complainant, (i) nonetheless, the bar, is, attracted only, against, institution of a civil suit, and, for realization, through, coercive processes, of, decrees rendered thereon, (ii) the bar obviously, is, not attracted vis-a-vis, the institution of a complaint, under Section 138 of the Negotiable Instruments Act, (iii) given non existence of any specific explicit mandate therein qua the bar encapsulated therein, vis-a-vis, institution of a civil suit, by any unlicensed money lender, for hence his seeking recovery, of, amounts lent by him, to, his borrowers, also being extendable qua the institution of a complaint under Section 138 of the Negotiable Instruments Act, by a money lender against his borrower. Consequently, omission of existence, of, an explicit apposite exclusionary mandate, in Section 3 of the H. P. Registration of Money Lenders Act, 1976, against institution, of, a statutory complaint, by a professional money lender against his borrower, also hence, constrains a conclusion, that, mandate thereof, is, unattractable vis-a-vis institution, of a statutory

complaint, by a money lender, against his borrowers, (a) unless evidence surges forth, of the apposite lending being provenly, ingrained, with entrenched prohibitive vices, (b) whereupon, alone the lending, would be construable to be, not, a legally recoverable debt nor a legally enforceable debt, (c) whereas, with no evidence hereat, rather surging forth, qua the sums embodied, within, the cheque, hereat carrying, any, entrenched prohibitive vices, thereupon, even if assumingly, the complainant, is, a professional unlicensed money lender, yet the lending made by him vis-a-vis the accused, are, to be construable to be both, a legally recoverable debt besides a legally enforceable debt. (d) More so, when evidently no proof is forthcoming qua the respective borrowings, being made, subject to levying or charging, of interest thereon."

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

6(iii) The object of the H.P. Registration of Money Lenders Act, 1976, is to register money-lenders and to regulate their business in Himachal Pradesh. Section 3 of this Act provides that a suit inter alia for recovery of a loan, by a moneylender, shall be dismissed unless the moneylender is registered and licensed as such under the Act. Section 3 runs as under:

"3. Suits and applications by moneylenders are barred unless the moneylender is registered and licensed.-

Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the moneylender, at the time of the institution of the suit or presentation of the application for execution, or at the time of decreeing the suit or deciding the application for execution,-

(a) is registered; and

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

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

(b) If he is not already a registered and licensed money-lender, he satisfies the court that he has applied to the Collector to be registered and licensed and that such application is pending:

Provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of the licence pending before the Collector is finally disposed of."

Thus, a money lender at the time of institution of the suit for recovery of the loan amount should be duly registered as such under the Act and should hold a valid licence of money lending as prescribed in the Act. In case a money lender is not registered and licensed under the Act, then he should satisfy the Court that his such application in that regard is pending before the concerned authority, which should be disposed of before the disposal of the recovery suit. Who is a 'money lender' has been defined in Section 2(9) of the Act as under:

"2(9) "money-lender" means a person, or a firm, carrying on the business of advancing loans and includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, of such person or firm, provided that nothing in this definition shall apply to.

(a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender, together with all his rights and liabilities if such person -

(i) winds up the estate of such money-lender:

(ii) realises outstanding loans;

(iii) does not renew any existing loan, or advance any fresh loan;

(b) a bona fide assignment by a money-lender of a single loan to anyone other than the wife or husband of such assignor, as the case may be, or any person who is descended from a common grandfather of the assignor."

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

"(8) "loan" means an advance, whether secured or unsecured, of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but shall not include -

(a) An advance in kind made by a landlord to his tenant for the purposes of husbandry:

Provided that the market value of the return does not exceed the market value of the advance as estimated at the time of advance;

(b) a deposit of money or other property in a Post Office Savings Bank, or any other Bank, or with a company, or with a co-operative society, or with any employer, as security from his employees;

(c) a loan to or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860 (21 of 1860) or under any other enactment;

(d) a loan advanced by or to the Central Government or any State Government or by or to any local body or panchayat under the authority of the Central Government or any State Government;

(e) a loan advanced by a bank, a co-operative society or a company, whose accounts are subject to audit by a certified auditor under the Companies Act, 1956, (1 of 1956) or under any other law for the time being in force;

(f) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;

(g) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, (26 of 1881) other than a promissory note."

6(iv) Definition of 'loan' assumes significance in determining the applicability of the H.P. Registration of Money Lenders Act to the facts of the case. Not all kinds of loans are covered under Section 2(8) of the Act. Reference in this regard can be made to the following para from the case titled ***Gajanan and Others vs. Seth Brindaban, (1970) 2 SCC 360,*** where provisions of the Central Provinces and Berar Moneylenders Act were being considered:-

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

Advances/loans falling within the exceptions (a) to (g) of Section 2(8) fall outside the ambit of the Act. Advancing such kinds of loans, which fall within the exceptions carried out in Section 2(8) of the Act, would not make a person a moneylender in terms of the H.P. Registration of Money Lenders Act. Such a person, who has advanced loans, which are covered within the exceptions of Section 2(8) of the Act, is not required to be registered or licensed under the Act as a money-lender. Suit for recovery of the loan amount, falling in the exceptions (a) to (g) of Section 2(8) of the Act, therefore, cannot be held as not maintainable for want of registration and license as a moneylender under the Act. In the facts of the case, the concurrent factual findings of both the learned Courts below are that various recovery suits had been instituted by the plaintiff in different Courts. This fact had even been acknowledged by the plaintiff in his statement. However, there was no evidence either led by the defendant in support of issue No. 6 or available in any other form before the learned Courts below to conclude that various cases instituted by the plaintiff in different Courts were for recovery of that kind of loan, which was included in the definition of 'loan' under Section 2(8) of the Act. For want of specific evidence in that regard, there could be a possibility that all the recovery suits statedly preferred by the plaintiff were for recovery of those loans, which fell within the exceptions (a) to (g) of Section 2(8) of the Act and, therefore, were excluded from the applicability of the Act. It is also to be borne in mind that the instant case for recovery of the amount was based on a loan advanced in lieu of a cheque. 'Cheque', as per Section 16 of the Negotiable Instruments Act, is a bill of exchange and falls within the definition of 'Negotiable Instrument' as spelt out in Section 13 of the Negotiable Instruments Act. An advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act falls in category (g) of the exceptions to the definition of 'loan' under Section 2(8) of the H.P. Registration of Money Lenders Act. In such a scenario, an instant suit for recovery of the amount cannot be held to be not maintainable for want of the plaintiff's registration and license as a money-lender. Findings of learned Courts below to the contrary, therefore, are not sustainable. Point is answered accordingly.”

30. Therefore, the complaint cannot be dismissed on the ground that the complainant is a moneylender, and he does not have any license for money lending.

31. The learned Courts below had rightly held that the accused had not produced any evidence and had relied upon her statement recorded under Section 313 of Cr.P.C. to prove her defence. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 is not sufficient. It was observed at page 700:

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

32. Therefore, the statement of the accused recorded under Section 313 of Cr.P.C. was not a legally admissible statement, and the accused cannot derive any advantage from it.

33. There is no other evidence to rebut the presumption, and the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

34. The accused admitted in her statement recorded under Section 313 of Cr.P.C. that the cheque was dishonoured. The Memos (Ext.C-2 and C-3) show that the cheque was returned with the reason for dishonour as 'insufficient funds' in the account. Mandan Lal (CW-1) stated that the cheque (Ext.C-1) was received in the bank for collection, but it was dishonoured with an endorsement 'funds insufficient'. He stated in his cross-examination that the accused had an amount of ₹630/- in her account on the date of the presentation of the cheque. His statement proves that funds in the account of the accused were 'insufficient' to honour the cheque.

35. The accused admitted in her statement recorded under Section 313 Cr.P.C. that she had received the notice. The acknowledgement (Ext. C-6) bears her signatures; therefore, it was duly proved that notice was duly served upon the accused. The accused also admitted that she had not paid the money despite the receipt of valid notice of demand.

36. Therefore, it was duly proved that the accused had issued the cheque to discharge her debt, which was dishonoured with the endorsement 'insufficient funds', and she failed to pay the money despite the receipt of the notice. Thus, all the ingredients of the offence punishable under Section 138 of N. I Act were duly satisfied, and the learned trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of N.I.Act.

37. The learned Trial Court had sentenced the accused to undergo simple imprisonment for six months. 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."

38. Therefore, the sentence of six months is not excessive.

2026:HHC:41114

39. The learned trial Court ordered the accused to pay a compensation of ₹5,00,000/-, which is a cheque amount. The cheque was issued on 4.11.2008, and the sentence was imposed on 24.11.2010 after the lapse of two years. The complainant lost the interest that he would have gained by investing the money. He had incurred the legal expenses for prosecuting the complaint before the learned Trial Court and the learned Appellate Court. 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***]"

40. The learned trial Court had not awarded any amount as compensation and had only awarded the cheque amount, which is grossly inadequate; however, no appeal was preferred against the inadequate sentence, and no interference is required with the sentence imposed by the learned trial Court.

41. No other point was urged.

42. 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.

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

(Rakesh Kainthla)
Judge

24th September, 2026
(ravinder)