IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 591 of 2024
Reserved on: 16.6.2025
Date of Decision: 26.6.2025.

Vijay Kumar Verma ...Petitioner

Versus

Vidya Sagar Sharma ...Respondent

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

For the Petitioner : Mr. Kuldeep Singh Chandel, Advocate.

For the Respondent : None.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 6.6.2024, passed by learned Additional Sessions Judge, Nalagarh, District Solan, H.P. (learned Appellate Court), vide which the judgment of conviction dated 8.8.2022 and order of sentence dated 17.8.2022, passed by learned Additional Chief Judicial Magistrate Nalagarh, District Solan, H.P. (learned Trial

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

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Court) were upheld and the appeal filed by the petitioner (accused before the learned Trial Court) was dismissed. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is running a shop adjacent to the shop of the accused. The parties have cordial relations with each other. The accused requested the complainant to advance a loan in the last week of June 2014 for upgrading his jewellery shop. The complainant paid ₹10.00 lacs to the accused. The accused agreed to pay the amount within a year with interest @Rs.1.00 lac subject to the issuance of a post-dated cheque. It was agreed that the complainant would pay ₹3.00 lacs, and an amount of ₹6.00 lacs would be paid within three months. The accused issued a post-dated cheque in the month of June, 2015. The accused did not have a sound financial condition in June 2015, and he requested the complainant to provide some time to repay the loan. The

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complainant agreed, and the accused issued a post-dated cheque of ₹10.00 lacs dated 13.4.2016, drawn on Central Bank of India, Nalagarh, to discharge his liability. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant served a notice upon the accused asking him to pay the amount mentioned in the cheque. The notice was duly served upon the accused; however, the accused failed to pay the amount despite the receipt of the notice of demand. Hence, the complaint was filed before the learned Trial Court to take action against the accused as per law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW1) in support of his complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., stated that the cheque was retained by the

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complainant as security. The complainant was running a committee. He had received a blank signed cheque from the accused and misused it. The complainant owed more than ₹9.00 lacs towards jewellery items taken by him from the shop of the accused. He stated that he wanted to lead defence evidence; however, no evidence was produced despite the opportunities, and the evidence was closed by the order of the Court on 13.6.2022.

6. Learned Trial Court held that issuance of the cheque was not disputed. The plea taken by the accused that the complainant was running a committee business was not established by any satisfactory evidence. His plea that the complainant owed more than ₹9.00 lacs to the accused was also not proved. The complainant stated that he had paid ₹9.00 lac to the accused, who was to return the same with ₹1.00 lac interest. The cheque was issued for ₹10.00 lacs. It was dishonoured with an endorsement 'insufficient funds'. The complainant served a notice upon the accused, but the accused failed to pay the amount despite the receipt of a valid notice of demand. Therefore, the accused was convicted for the commission of an offence punishable under Section 138 of the NI Act and was

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sentenced to undergo simple imprisonment for six months and pay compensation of ₹11,50,000/- to the complainant.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused preferred an appeal which was decided by the learned Additional Sessions Judge, Nalagarh. Learned Additional Sessions Judge, Nalagarh, concurred with the findings recorded by the learned Trial Court that the cheque carried with it a presumption of consideration. Even if the cheque was issued as a security, the accused would not be absolved of his liability to pay the amount. The cheque was dishonoured with the endorsement 'insufficient funds'. The accused failed to pay money despite the receipt of a valid notice of demand. Hence, the appeal filed by the accused was dismissed.

8. Being aggrieved from the judgments and order passed by the learned Courts below, the accused has filed the present petition, asserting that the learned Courts below failed to appreciate the evidence on record. The complainant specifically asserted that initially he had paid ₹3.00 lacs and ₹6.00 lacs after three months. However, he stated in his cross-

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examination that the amount was paid five times through cheques and two times through the servant of the petitioner/accused. The complainant also admitted that he had not made transactions of more than ₹10,000/- to ₹15,000/- within 15 years. The accused had borrowed ₹9.00 lacs, whereas the complaint was filed for ₹10.00 lacs. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Mr. Kuldeep Singh Chandel, learned counsel for the petitioner/accused, who submitted that the learned Trial Court erred in convicting and sentencing the accused. There was a discrepancy regarding the loan paid to the accused. The complainant stated that he had advanced ₹9.00 lacs to the accused; however, the cheque of ₹10.00 lacs was issued, which could not have been issued in discharge of legal liability. Learned Courts below failed to appreciate this aspect. There was a discrepancy regarding the money that was advanced to the accused, which made the case of the complainant highly suspect. Thus, he prayed that the present revision be allowed and the judgment and order passed by learned Courts below be set aside.

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

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

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

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12. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

> "**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularity of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:
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> > "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.

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

13. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651* that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed on page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > "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. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal

> jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

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

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

> **"16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

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

16. The complainant asserted in his complaint that he had agreed to pay a loan of ₹10.00 lacs to the accused, and the accused agreed to return the same within one year with interest of ₹1.00 lac. He advanced ₹3.00 lacs on one occasion and ₹6.00 lacs on the other occasion. ₹9.00 lacs were advanced to the accused. The accused issued a post-dated cheque of ₹10.00 lacs to discharge his liability. It is apparent from the complaint that the parties had agreed to the interest of ₹1.00 lac on an amount of ₹10.00 lacs if paid within one year; however, the accused failed to pay the amount within one year. Therefore, time was extended and a cheque dated 13.4.2016 for ₹10.00 lacs was issued after the expiry of almost two years. Hence, the plea of the complainant that the accused had agreed to pay the interest of ₹1.00 lakh has to be accepted as correct. The extension of time would have deprived the complainant of the interest which he would have gained by keeping the money in his bank account. Hence, the complainant's case is not suspicious because the accused had paid the interest of ₹1.00 on the amount of ₹9.00 lacs for almost two years.

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17. The complainant stated in his cross-examination that he had known the accused for 15 years. Both of them used to loan money to each other. He never transacted with the accused for more than ₹5-10 thousand. It was submitted that the cross-examination of the complainant shows that the transaction between the parties was restricted to a small amount of ₹5-10 thousand. Hence, the advancing ₹9.00 lacs was highly improbable. This submission cannot be accepted. The fact that the parties had money transactions for 15 years and the amount was being repaid shows that the parties had confidence in each other, and in these circumstances, the advancement of the loan of ₹9.00 lac cannot be said to be suspicious.

18. The complainant denied in his cross-examination that he was running the committee, and Ganesh Diwedi, Pulan Sahota, Mohammad Sadiq, etc., were the members of the committee. A denied suggestion does not amount to any proof, and this suggestion does not prove the defence of the accused that the complainant was running a committee and he had taken money regarding the committee. The accused did not produce any evidence to prove this defence and relied upon the statement made by him under Section 313 of Cr.P.C. 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 of Cr.P.C. is not sufficient to rebut the presumption. 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 has 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)"

19. Therefore, learned Courts below had rightly held that the plea taken by the accused that the complainant was running a committee was not proved.

20. The complainant stated in his cross-examination that his daughter Anita Sharma was married on 15th December, 2017. He had provided ornaments and jewellery to his daughter. He denied that he had purchased the ornaments from the accused on 28.2.2016, 3.2.2016, 7.12.2016 and 6.10.2017. The

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accused did not prove the bills put to the complainant. Hence, the plea taken by the accused that the complainant had taken jewellery and was liable to pay the amount to him was not established.

21. The complainant stated in his cross-examination that he had not made the payment in a lump sum, and the payment was made five times. The payment was made twice to the servant; however, he had not prepared any document regarding the payment made to the servant. It was submitted that the cross-examination of the complainant makes the case of the complainant suspect because he had stated in the complaint that the payment was made on two occasions, whereas it was stated in his cross-examination that payment was made on five occasions, which makes the case of the complainant highly suspect. This submission is not acceptable. Firstly, the issuance of the cheque is not disputed; therefore, the presumption arises that the cheque was issued in discharge of the legal liability. It was laid down by this Court in ***Naresh Verma vs. Narinder Chauhan 2020(1) Shim. L.C. 398*** that where the accused had not disputed his signatures on the cheque, the Court has to presume that it was issued in discharge of legal liability

and the burden would shift upon the accused to rebut the presumption. It was observed: -

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

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

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

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23. This position was reiterated 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*** wherein it was held at page 289:

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

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

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

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funds" and thereafter a fresh consolidated cheque of ₹9,55,574 was given which has been returned unpaid on the ground of "STOP PAYMENT". Therefore, the cheque in question was issued for the second time. Therefore, once the accused has admitted the issuance of a cheque which bears his signature, there is a presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act. However, such a presumption is rebuttable in nature, and the accused is required to lead evidence to rebut such presumption. The accused was required to lead evidence that the entire amount due and payable to the complainant was paid.

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

> appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

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

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

> "**118.** ***Presumptions as to negotiable instruments.*** — Until the contrary is proved, the following presumptions shall be made:
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> (*a*) *of consideration*: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

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

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

15. The learned counsel for the respondent has, however, referred to the decision of this Court in ***Basalingappa v. Mudibasappa [Basalingappa v. Mudibasa***

ppa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571] wherein it is held as hereunder: (SCC pp. 432-33, paras 25-26)

> "*25.* We having noticed the ratio laid down by this Court in the above cases on Sections 118(*a*) and 139, we now summarise the principles enumerated by this Court in the following manner:
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> *25.1.* Once the execution of the cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
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> *25.2.* The presumption under Section 139 is a rebuttable presumption, and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
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> *25.3.* To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
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> *25.4.* That it is not necessary for the accused to come into the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
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> *25.5.* It is not necessary for the accused to come into the witness box to support his defence.
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> *26.* Applying the preposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to

whether any probable defence was raised by the accused. In the cross-examination of PW 1, when the specific question was put that a cheque was issued in relation to a loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997, on which date he received a monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, a copy of which complaint was also filed as Ext. D-2, there was a burden on the complainant to prove his financial capacity. In the years 2010-2011, as per own case of the complainant, he made a payment of Rs 18 lakhs. During his cross-examination, when the financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts."

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

17. On the position of law, the provisions referred to in Sections 118 and 139 of the NI Act, as also the enunciation of law as made by this Court, need no reiteration as there is no ambiguity whatsoever. In ***Basalingappav. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571***] relied on by the learned counsel for the respondent, though on facts the ultimate conclusion therein was against raising presumption, the facts and circumstances are entirely different as the transaction between the parties as claimed in the said case is peculiar to the facts of that case where the consideration claimed to have been paid did not find favour with the Court keeping in view the various transactions and extent of amount involved. However, the legal position relating to the presumption arising under Sections 118 and 139 of the NI Act on signature being admitted has been reiterated. Hence, whether there is a rebuttal or not would depend on the facts and circumstances of each case."

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

"8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that the court shall presume that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption, however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration received. It is in the context of this provision that the theory of "probable defence" has grown. In an earlier judgment, in fact, which has also been adverted to in ***Basalingappa***

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> ***[Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571]***, this Court notes that Section 139 of the NI Act is an example of reverse onus (see ***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184]***). It is also true that this Court has found that the accused is not expected to discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist..."

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

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

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

33. The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed until the contrary is proved that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that "unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque for the discharge of, whole or part of any debt or liability". It will be seen that the "*presumed fact*" directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. [The rules discussed hereinbelow are common to both the presumptions under Section 139 and Section 118 and are hence not repeated—reference to one can be taken as reference to another]

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

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

36. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was

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

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

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

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

39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond a reasonable doubt. The accused must meet the standard of "*preponderance of probabilities*", similar to a defendant in a civil proceeding. [***Rangappa v. Sri***

> ***Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184: AIR 2010 SC 1898]***]

29. Secondly, the statement was made after more than four years of the transaction and the discrepancy is not sufficient to rebut the presumption attached to the cheque.

30. It was suggested to the complainant that the cost of the ornaments was to be adjusted towards the amount mentioned in the cheque. This suggestion shows that the accused has not disputed his liability to pay the amount. Rather, it was asserted that the amount was to be adjusted towards the cost of the ornaments. It was laid down by the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365: 2023 SCC OnLine SC 355*** that the suggestion put to the witness can be taken into consideration while determining the innocence or guilt of the accused. It was observed at page 382: -

> "**34.** According to the learned counsel, such suggestions could be a part of the defence strategy to impeach the credibility of the witness. The proof of guilt required of the prosecution does not depend on the satisfaction made to a witness.
>
> **35.** In ***Tarun Bora v. State of Assam [Tarun Bora v. State of Assam, (2002) 7 SCC 39: 2002 SCC (Cri) 1568]***, a three-judge Bench of this Court was dealing with an appeal against the order passed by the Designated Court, Guwahati, in TADA Sessions case wherein the appellant was convicted under Section 365IPC read with Sections

3(1) and 3(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

36. In ***Tarun Bora case [Tarun Bora v. State of Assam, (2002) 7 SCC 39: 2002 SCC (Cri) 1568]***, this Court, while considering the evidence on record, took note of a suggestion which was put to one of the witnesses and considering the reply given by the witness to the suggestion put by the accused, arrived at the conclusion that the presence of the accused was admitted. We quote with profit the following observations made by this Court in paras 15, 16 and 17, respectively, as under: (***Tarun Bora case [Tarun Bora v. State of Assam, (2002) 7 SCC 39: 2002 SCC (Cri) 1568***], SCC pp. 43-44)

> "*15*. The witness further stated that during the assault, the assailant accused him of giving information to the army about the United Liberation Front of Assam (ULFA). He further stated that on the third night, he was carried away blindfolded on a bicycle to a different place, and when his eyes were opened, he could see his younger brother Kumud Kakati (PW 2) and his wife Smt Prema Kakati (PW 3). The place was Duliapather, which is about 6-7 km away from his Village, Sakrahi. The witness identified the appellant, Tarun Bora, and stated that it was he who took him in an Ambassador car from the residence of Nandeswar Bora on the date of the incident.
>
> *16*. In cross-examination, the witness stated as under:
>
> 'Accused Tarun Bora did not blind my eyes, nor did he assault me.'
>
> *17*. This part of the cross-examination is suggestive of the presence of the accused Tarun Bora in the whole episode. This will clearly suggest the presence of the accused, Tarun Bora, as admitted. The only denial is that the accused did not participate in blind-folding the eyes of the witness, nor assaulted him."

37. In ***Rakesh Kumar v. State of Haryana [Rakesh Kumar v. State of Haryana, (1987) 2 SCC 34: 1987 SCC (Cri)***

256], this Court was dealing with an appeal against the judgment of the High Court affirming the order of the Sessions Judge whereby the appellant and three other persons were convicted under Section 302 read with Section 34IPC. While reappreciating the evidence on record, this Court noticed that in the cross-examination of PW 4 Sube Singh, a suggestion was made with regard to the colour of the shirt worn by one of the accused persons at the time of the incident. This Court, taking into consideration the nature of the suggestion put by the defence and the reply, arrived at the conclusion that the presence of the accused, namely, Dharam Vir, was established on the spot at the time of the occurrence. We quote the following observations made by this Court in paras 8 and 9, respectively, as under (SCC p. 36)

> "*8*. PW 3, Bhagat Singh, stated in his examination-in-chief that he had identified the accused at the time of the occurrence. But curiously enough, he was not cross-examined as to how and in what manner he could identify the accused, as pointed out by the learned Sessions Judge. No suggestion was also given to him that the place was dark and that it was not possible to identify the assailants of the deceased.
>
> *9*. In his cross-examination, PW 4 Sube Singh stated that the accused, Dharam Vir, was wearing a shirt of white shirt. It was suggested to him on behalf of the accused that Dharam Vir was wearing a cream-coloured shirt of cream colour. In answer to that suggestion, PW 4 said it is not correct that Dharam Vir, the accused, was wearing a shirt of a cream colour and not a white colour at that time.' The learned Sessions Judge has rightly observed that the above suggestion at least proves the presence of accused Dharam Vir on the spot at the time of occurrence."

38. Thus, from the above, it is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the

> accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.
>
> **39.** Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except the concession on a point of law. As a legal proposition, we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner."

31. Therefore, learned Courts below had rightly held that the presumption contained in Sections 118 (a) and 139 of the NI Act was not rebutted by the material on record.

32. The complainant asserted that the cheque was dishonoured with an endorsement 'funds insufficient'. The memo of dishonour (Ex.C2) shows that the cheque was dishonoured with an endorsement 'funds insufficient'. It was laid down by the Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, *(2010) 3 SCC 83: (2010) 1 SCC (Civ) 625: (2010) 2 SCC (Cri) 1: 2010 SCC OnLine SC 155*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> **24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's

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

34. The complainant stated that he had issued a notice to the accused asking him to pay the money within 15 days. An acknowledgement (Ex.C5) was received, which bears the signatures of the accused. Notice was sent to the correct address and is deemed to be served. No evidence was led to rebut this presumption contained in Section 27 of the General Clauses Act. Therefore, learned Courts below had rightly held that the notice was duly served upon the accused.

35. It was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act*. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act." (Emphasis supplied)

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

37. Therefore, it was duly proved before the learned Trial Court that the cheque was issued in discharge of legal liability. It was dishonoured with an endorsement 'funds insufficient' and the accused had failed to pay the amount despite the receipt of

the notice of demand. Hence, the complainant had proved his case beyond a reasonable doubt, and the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

38. Learned Trial Court sentenced the accused to undergo simple imprisonment for a period of 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."

39. Keeping in view the deterrent nature of the sentence, the period of six months cannot be said to be excessive.

40. Learned Trial Court ordered the payment of compensation of ₹11,50,000/-. The cheque bears the date 13.4.2016. The sentence was imposed on 17.8.2022 after the lapse

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of more than six years. The complainant lost interest on the amount which he would have gained by depositing the same in his bank. He also paid the fees to the Advocate and bore the litigation expenses; therefore, he was entitled to be compensated for the same. It was laid down by the Hon'ble Supreme Court in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75*** 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 amount of ₹1,50,000/- of ₹10.00 lacs for the loss of interest of six years cannot be said to be excessive, and no interference is required with the sentence imposed by the learned Trial Court as affirmed by the learned Appellate Court.

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42. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

26th June, 2025
(Chander)