IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 359 of 2024
Reserved on: 14.05.2025
Date of Decision: 02.06.2025

Vinod Kumar ...Petitioner

Versus

UCO Bank ...Respondent

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

For the Petitioner : Mr. Kamal Sharma, Advocate, vice Mr. Naresh K. Verma, Advocate.

For the Respondent : Mr. C.D. Negi, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 10.04.2024, passed by learned Additional Sessions Judge Ghumarwin, District Bilaspur, vide which the judgment of conviction and orders of sentence passed by learned Additional Chief Judicial Magistrate, Court No.1, Ghumarwin, District Bilaspur (learned Trial Court) were upheld. *(Parties shall hereinafter be*

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

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

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short 'NI Act'). It was asserted that the complainant had advanced a loan of ₹7,00,000/- to the accused on 24th April 2013 as a working capital/CC limit. The accused issued a cheque on 30th July 2016 for ₹7,47,068 to return the loan. The complainant presented the cheque for collection on 30th July 2016, but the cheque was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused on 13.08.2026. The accused failed to pay the amount despite the receipt of the notice; hence, the complaint was filed to take action against the accused as per the 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 the accused pleaded not guilty and claimed to be tried.

4. The complainant examined T D Sharma (CW1) to prove its case.

5. The accused, in his statement recorded under Section 313 of CrPC, admitted that he had taken a loan of ₹ 7,00,000/- from the complainant. He denied that he had issued a cheque of ₹7,47,068/-. He asserted that the witnesses of the complainant have deposed falsely against him. He is innocent. He stated that he wanted to lead the defence evidence but he did not produce any evidence despite having been granted sufficient opportunities; hence, his evidence was closed by the order of the Court on 04.07.2022

6. Learned Trial Court held that the accused did not dispute his signatures on the cheque. There is a presumption that the cheque was issued in discharge of the legal liability for valid consideration. The accused failed to rebut the presumption on the balance of probability. The cheque was dishonoured with an endorsement 'funds insufficient'. Notice was sent to the accused, and he failed to pay the amount despite the deemed receipt of the

notice. Hence, the accused was convicted of the commission of an offence punishable under Section 138 of the NI Act and sentenced to undergo simple imprisonment for three months and pay a compensation of ₹ 8,00,000/-

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, Ghumarwin (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the cheque was presumed to be issued in discharge of the legal liability, and the accused had failed to rebut this presumption contained in Section 139 of the NI Act. The cheque was dishonoured with an endorsement 'funds insufficient'. The accused failed to pay the amount despite the receipt of the notice, and he was rightly convicted and sentenced by the learned Trial Court. Consequently, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the petitioner/accused has filed the present revision, asserting that the learned Courts below did not properly appreciate the material placed before them. There was no

evidence to connect the petitioner with the commission of a crime. Learned Courts below erred in relying upon the testimony of the complainant and drawing unwarranted inferences. The complainant had failed to produce any document to establish the existence of any enforceable liability. The complainant had taken signed blank cheques from the accused as security. The accused continued to repay the amount to the complainant, but he could not deposit some instalments due to his poor financial condition. This fact was brought to the complainant's notice. However, the complainant misused the cheque. The complainant failed to produce the statement of the account to establish the amount due. The accused had no liability to pay such a huge amount. The complainant has also filed a civil suit for the recovery of the loan amount, which suit was decreed. The complainant has to establish the existence of a legally unenforceable liability and that the cheque was drawn in discharge of the legal liability. The complainant failed to establish the existence of any such debt. Hence, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. The petitioner/accused also filed an application bearing Cr.MP No. 5157 of 2024 before this Court for placing on record a

letter dated 28th October 2024, along with the customer account ledger report from 1st March 2016 to 31st December 2017. It was asserted that the complainant filed a false complaint against the accused. The complainant did not produce the bank account statement during the trial. The accused could not file the document due to COVID-19 pandemic. The accused obtained a copy of the customer account ledger report from 1st March 2016 to 31st December 2017 under the Right to Information Act. The balance amount was shown as ₹6,92,182.20 on 12.05.2016 and ₹07,07,142.20 on 03.01.2017. The amount of ₹7,47,068 was wrongly filled. Therefore, it was prayed that the present application be allowed and the petitioner be permitted to place the document on record.

10. I have heard Mr. Kamal Sharma, learned counsel, vice Mr. Naresh Sharma, learned counsel for the petitioner/accused, and Mr. C D Negi, learned counsel for the respondent/complainant.

11. Mr. Kamal Sharma, learned vice counsel for the petitioner/accused, submitted that the learned Trial Court erred in convicting and sentencing the accused. The essential ingredients of Section 138 of the NI Act were not satisfied. The complainant has

not filed the statement of the account to show the liability of the accused. This aspect was ignored by the learned Trial Court and the learned Appellate Court. The accused obtained the information under the Right to Information Act regarding the amount due to the complainant-bank. The accused had no liability to pay the amount mentioned in the cheque. Therefore, he prayed that the present revision be allowed and the judgments passed by learned Courts below be set aside.

12. Mr. C.D Negi, learned counsel for the respondent/complainant, submitted that the learned Trial Court had granted sufficient opportunities to the petitioner/accused to lead the evidence, but the accused had failed to produce the evidence. He cannot produce the additional evidence during the revision petition before this Court. Learned Courts below had rightly held that the accused was to rebut the presumption contained in Section 139 of the NI Act. He had failed to do so and was rightly convicted by the learned Trial Court. There is no infirmity in the judgments and order passed by learned Courts below; therefore, he prayed that the present petition be dismissed.

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

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

15. 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:

> "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.

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."

16. 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)
>
> > "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.

17. 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 exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

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

19. It was submitted that the learned Trial Court had not granted sufficient opportunity to the accused to lead the evidence. This is not correct. A perusal of the record of the learned Trial Court

shows that the statement of the accused under Section 313 of Cr.P.C. was recorded on 02.09.2019. The matter was listed for defence evidence on 28.02.2020. No evidence was produced on that day. The matter was again listed for the defence evidence on 10.12.2021. No evidence was produced, and the matter was adjourned for 11.05.2022. The accused did not appear on that day, and he was ordered to be summoned by way of non-bailable warrants of arrest. The matter was listed on 04.07.2022, and it was made clear that if no evidence was produced on that day, the evidence shall be deemed to be closed. No evidence was produced on that day as well; hence, the evidence was closed by the order of the Court. The record shows that sufficient opportunities were granted by the learned Trial Court and the accused had failed to produce the evidence, assign any reasonable cause for not producing the evidence or to take any steps for summoning the witnesses; hence, learned Trial Court cannot be faulted for closing the evidence of the accused by the order of the Court.

20. The accused filed an application under Section 432 of the Bhartiya Nagrik Suraksha Sanhita (BNSS) (corresponding to Section 391 of CrPC) for leading additional evidence. It was laid down by the Hon'ble Supreme Court in ***State of Rajasthan v.***

Asharam, 2023 SCC OnLine SC 423, that Sections 311 and 391 of Cr. P.C. deal with the power of the Court to take additional evidence. Section 311 deals with the trial, while Section 391 deals with the appeal. The Appellate Court can examine the evidence, but it does not possess the wide powers conferred upon the Trial Court. It was observed:

> "6. Both Sections 311 and 391 of the Cr. P.C. relate to the power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations, as there is a difference in the stages. Section 311 of the Cr. P.C. consists of two parts; the first gives power to the court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion under Section 391 of the Cr. P.C. should be read as somewhat more restricted in comparison to Section 311 of the Cr. P.C., as the appellate court is dealing with an appeal, after the trial court has come to a conclusion with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and detail, yet it does not possess all the powers of the trial court, as it deals with cases wherein the decision has already been pronounced."

21. It was laid down in ***Sukhjeet Singh v. State of U.P., (2019) 16 SCC 712: (2020) 2 SCC (Cri) 434: 2019 SCC OnLine SC 72***, that the

additional evidence can be taken by the Appellate Court if the evidence is necessary for just determination of the case, however, Section 391 cannot be used for retrial. The order should not be made if the party had sufficient opportunities and had not availed them. It was observed at page 721:

> "**22.** Chapter XXIX of the Code of Criminal Procedure, 1973 deals with "Appeals". Section 391 CrPC empowers the appellate court to take further evidence or direct it to be taken. Section 391 is as follows:
>
> > "**391.** ***Appellate court may take further evidence or direct it to be taken.***—(1) In dealing with any appeal under this Chapter, the appellate court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the appellate court is a High Court, by a Court of Session or a Magistrate.
> >
> > (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate court, and such court shall thereupon proceed to dispose of the appeal.
> >
> > (3) The accused or his pleader shall have the right to be present when the additional evidence is taken.
> >
> > (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."
>
> **23.** The key words in Section 391(1) are "if it thinks additional evidence to be necessary". The word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal. The appeal has been filed by the accused, who have been convicted. The powers of the appellate court are contained in Section 386. In an appeal from a conviction, an appellate

court can exercise power under Section 386(*b*), which is to the following effect:

> "**386. (*b*)** In an appeal from a conviction—
>
> (*i*) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or
>
> (*ii*) alter the finding, maintaining the sentence, or
>
> (*iii*) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"

24. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the appellate court to secure ends of justice. The scope and ambit of Section 391 CrPC has come up for consideration before this Court in ***Rajeswar Prasad Misra v. State of W.B. [Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887: (1965) 2 Cri LJ 817]*** Hidayatullah, J., speaking for the Bench held that a wide discretion is conferred on the appellate courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because *there would be a failure of justice without it.* The following was laid down in paras 8 and 9: (AIR p. 1892)

> "*8.* ... Since a wide discretion is conferred on appellate courts, the limits of that court's jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There, the resemblance ends, and it is hardly proper to construe one section with the aid

of observations made by this Court in the interpretation of the other section.

9. Additional evidence may be necessary for a variety of reasons, which it is hardly necessary (even if it was possible) to list here. We do not propose to do what the legislature has refrained from doing, namely, to control the discretion of the appellate court under certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be a failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused, as, for example, it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise."

25. This Court again in ***Rambhau v. State of Maharashtra [Rambhau v. State of Maharashtra, (2001) 4 SCC 759: 2001 SCC (Cri) 812]*** had noted the power under Section 391 CrPC of the appellate court. Following was stated in paras 1 and 2 : (SCC p. 761)

"1. There is available a very wide discretion available in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same...

2. A word of caution, however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a

> disguise for a retrial or to change the nature of the case against the accused. This Court in ***Rajeswar Prasad Misra v. State of W.B. [Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887: (1965) 2 Cri LJ 817]*** in no uncertain terms observed that *the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it.* This Court was candid enough to record, however, that it is the concept of justice which ought to prevail, and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard."
>
> **26.** From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 CrPC of the appellate court. All powers are conferred on the court to secure the ends of justice. The ultimate object of judicial administration is to secure the ends of justice. The court exists for rendering justice to the people." (Emphasis supplied)

22. This position was reiterated in ***State (NCT of Delhi) v. Pankaj Chaudhary*, *(2019) 11 SCC 575: (2019) 4 SCC (Cri) 264: 2018 SCC OnLine SC 2256*,** and it was held that this power should not be exercised to fill up the gaps by the other side and especially to reverse the judgment of learned Trial Court. It was observed at page 586:

> "25. The High Court observed that the trial court erred in saying that the accused failed to prove the making of previous complaints against the prosecutrix. While saying so, the High Court referred to certain complaints made against the prosecutrix, including the one allegedly given on 21-7-1997, which were produced by the Bar at the time of arguments. The power conferred under Section 391 CrPC is to

> be exercised with great care and caution. In dealing with any appeal, the appellate court can refer to the additional evidence only if the same has been recorded as provided under Section 391 CrPC. Any material produced before the appellate court to fill in the gaps by either side cannot be considered by the appellate court; more so, to reverse the judgment of the trial court."

23. Similarly, it was held in ***H.N. Jagadeesh v. R. Rajeshwari*, *(2019) 16 SCC 730: (2020) 2 SCC (Cri) 450: (2020) 2 SCC (Civ) 758: 2017 SCC OnLine SC 1813***, that where the complainant had failed to produce the notice before the learned Trial Court, he could not be permitted to lead the evidence before the learned Appellate Court to prove it. It was observed at page 731:

> "6. We are unable to agree with this approach of the High Court, in the facts of this case, which is inappropriate in law. The service of the statutory notice calling upon the drawer of the cheque (after it has been disowned) to pay the amount of the cheque is a necessary precondition for filing the complaint under Section 138 of the Act. Therefore, it was incumbent upon the respondent to produce the said statutory notice on record to prove the same as well. In this case, this document was not even filed by the respondent along with the complaint, and the question of proving the same was, therefore, a far cry. In a case like this, we fail to understand how the aforesaid omission on the part of the respondent in not prosecuting the complaint properly could be ignored, and another chance could have been given to the respondent to prove the case by producing further evidence. It clearly amounts to giving an opportunity to the respondent to fill up the lacuna."

24. It was laid down in ***Rajvinder Singh v. State of Haryana*, *(2016) 14 SCC 671: (2016) 4 SCC (Cri) 421: 2015 SCC OnLine SC 971*** that where it was possible to examine the Forensic Expert at the trial stage, an application to examine him at the appellate stage cannot be allowed. It was observed at page 677

> "12. At the outset, we must deal with submissions as regards the application for leading additional evidence at the appellate stage. It has been the consistent defence of the appellant that the dead body found in agricultural fields in District Muzaffarnagar was that of Pushpa Verma, and he went to the extent of producing a photograph of the dead body in the present trial. He also examined Brahm Pal Singh, Sub-Inspector and other witnesses. It was certainly possible to examine a forensic expert at the trial court stage itself, and the High Court was right and justified in rejecting the prayer to lead additional evidence at the appellate stage. Nonetheless, we have gone through the report of the said forensic expert engaged by the appellant. The exercise undertaken by that expert is to start with the admitted photograph of Pushpa Verma on a computer, then remove the "bindi" by some process on the computer, then by same process remove her spectacles and by computer imaging change the image as it would have looked if the lady was lying down in an injured condition. The computer image so changed was then compared with the photograph of the dead body. We have seen both the images, and we are not convinced at all about any element of similarity. We do not, therefore, see any reason to differ from the view taken by the High Court."

25. It was held in ***Ajitsinh Chehuji Rathod v. State of Gujarat*, *(2024) 4 SCC 453: 2024 SCC OnLine SC 77***, that the power under Section 391 of Cr.P.C. can be exercised when the party was

prevented from presenting the evidence despite the exercise of due diligence or the facts giving rise to such prayer came to light during the pendency of the appeal. It was observed at page 455:

> "8. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice."

26. In the present case, the application does not mention that the applicant was prevented from leading the evidence before the learned Trial Court despite the exercise of due diligence or the evidence came to the notice of the accused during the pendency of the appeal; rather it was asserted that the accused could not lead the evidence due to COVID-19 pandemic, which is factually incorrect because the evidence of the accused was closed in July 2022 after the COVID-19 had subsided. The accused wants to prove the Customer Account Ledger Report from 01.03.2016 to 31.12.2017. This report was anterior to the closure of the evidence, and could have been produced before the learned Trial Court. No reason was assigned for not producing the document before the learned Trial Court or the learned Appellate Court; hence, the document cannot

be taken on record during the present proceedings. Consequently, the application for leading additional evidence is dismissed.

27. The accused has not disputed the issuance of the cheque in the revision petition. It was stated that the complainant had taken blank cheques as security from the accused at the time of advancing the loan. Learned Courts below had rightly held that once the execution of the cheque was admitted, a presumption under Section 118 and Section 139 of the NI Act would arise. 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:
>
> > "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.

28. 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."

29. 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."

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

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

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

> "**12.** From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exts. P-6 and P-2 are not disputed. Ext. P-2 is the dishonoured cheque based on which

the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below, a presumption would arise under Section 139 in favour of the appellant who was the holder of the cheque. Section 139 of the NI Act reads as hereunder:

> "**139.** ***Presumption in favour of the holder***. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

13. Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the consideration would arise as provided under Section 118(*a*) of the NI Act, which reads as hereunder:

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

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

> "9. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act

enjoins the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to rely on the interested testimony of DW 1 to rebut the presumption. The said finding was upheld [***Sankaran Vaidhyan Balan v. K. Bhaskaran, Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker)***] by the High Court. It is not now open to the accused to contend differently on that aspect."

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

"*25.* We having noticed the ratio laid down by this Court in the above cases on Sections 118(*a*) and 139, we now summarise the principles enumerated by this Court in the following manner:

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

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

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

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

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

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

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

"8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that the court shall presume that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt

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

33. 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."

34. 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]***]

35. It was submitted that the complainant had failed to produce the statement of account to show the liability of the accused towards the complainant, and the learned Courts below erred in convicting and sentencing the accused. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706*** that the complainant is not to prove the advancement of a loan to the accused because it is a matter of presumption. It is for the accused to rebut the presumption. It was observed:

> **22.** The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the

accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

> '*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound.* ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed***

by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. *In this regard, we may make profitable reference to the decision in* ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735:***

> *'10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts in our view were right in holding on those lines.* ***However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant.*** *Ultimately,* ***it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.'***
>
> *(emphasis supplied)'*

(underlining in original; emphasis supplied by us in bold)

36. The accused admitted in his statement recorded under Section 313 of CrPC that he had taken a loan of ₹7,00,000/- from the complainant. Thus, the advancement of the loan was never in dispute. The accused asserted that he had repaid the amount. Hence, the burden was upon him to establish this fact by providing satisfactory evidence. However, he did not produce any evidence and learned Trial court was justified in holding that the presumption was not rebutted.

37. T.D Sharma (CW1) stated that the accused had issued the cheque in discharge of his legal liability. He denied in his cross-examination that the accused had not taken any loan, and he had no liability towards the bank. He also denied that the accused had issued blank cheques in favour of the bank.

38. The cross-examination of this witness is not sufficient to rebut the presumption contained in Section 139 of the NI Act. It was suggested to him that the accused had not taken any loan, which is contrary to his statement recorded under Section 313 of Cr.P.C., wherein he admitted the taking of the loan. T.D. Sharma specifically denied that the accused had issued blank, signed security cheques in favour of the bank. A denied suggestion does

not amount to any proof and cannot be relied upon to rebut the presumption.

39. The accused did not step into the witness box to establish this version. 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)"

40. In the present case also, the accused did not appear in the witness box to establish his plea, nor did he examine any witness to prove the plea taken by him, therefore, the learned Courts below had rightly held that the accused had failed to rebut the presumption.

41. T.D. Sharma (CW1) admitted that the body of the cheque and the signatures were written with different pens. This will not make any difference. It was laid down by the Hon'ble Supreme Court in ***Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197***, that a person is liable for the commission of an offence punishable under Section 138 of the N.I.Act even if the cheque is filled by some other person. It was observed:

> "37. 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 the 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.
>
> 38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up 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.
>
> 39. It is not the case that the respondent accused that he either signed the cheque or parted 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 the exercise of

undue influence or coercion. The second question is also answered in the negative.

40. 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.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of the law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft, or a receipt might not have been obtained, would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed a blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act."

42. This position was reiterated in ***Oriental Bank of Commerce vs. Prabodh Kumar Tewari 2022 0 Supreme (SC) 837*** wherein it was observed:

> "12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.
>
> xxxxxx
>
> 15. 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"

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

44. The accused claimed that the cheque was issued as a security. However, there is no satisfactory evidence to establish this fact. In any case, it was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456,*** that even if the cheque was issued towards the security, the accused will be liable. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security and on this ground, criminal revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008 placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque.

> It is well-settled law that a cheque issued as security would also come under the provision of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another.*** It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

45. 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 towards security will also attract the liability for the commission of an offence punishable under Section 138 of N.I. Act. It was observed: -

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

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

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)

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

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.
>
> 18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that

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

47. Therefore, even if the cheque was a security cheque, it would not absolve the accused of his criminal liability.

48. T.D.Verma (CW1) stated that the cheque was dishonoured with an endorsement 'funds insufficient'. He filed the memo (Ex. CW1/B) issued by the bank showing that the cheque was dishonoured with an endorsement of 'funds insufficient'. The memo issued by the bank carries a presumption of correctness under Section 146 of the Indian Evidence Act. No evidence was led

to rebut this presumption; hence, the learned Trial Court had rightly held that the second ingredient that the cheque was dishonoured due to 'insufficient funds' was also established.

49. The notice (Ex. CW1/C) was sent to the accused. The notice bears the same address, which was furnished by the accused in the notice of accusation and the statement recorded under Section 313 of the Cr. P.C.; hence, the notice was sent to the correct address. There is a presumption that the service of notice was sent to the correct address. The accused did not lead any evidence to rebut the presumption, and the learned Courts below had rightly held that the notice was served upon the accused.

50. 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)

51. 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 deemed receipt of the notice.

52. 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 deemed 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.

53. The learned Trial Court sentenced the accused to undergo simple imprisonment for three 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 provisions of Section 138 is a 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."

54. Keeping in view the deterrent nature of the sentence to be awarded, the sentence of three months' simple imprisonment cannot be said to be excessive, and no interference is required with it.

55. Learned Trial Court had ordered the accused to pay a compensation of ₹8,00,000/-. The cheque was issued on 30.07.2016, whereas the sentence was imposed on 24.09.2022 after a lapse of nearly six years. The complainant lost interest on the amount, and he had to pay the litigation expenses for filing the

complaint. 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***]"

56. Therefore, the amount of ₹52,932/- awarded as compensation on the cheque amount of ₹7,47,068/- is not excessive.

57. No other point was urged.

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

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

(Rakesh Kainthla)
Judge

02nd June, 2025
(ravinder)