IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 496 of 2025
Reserved on: 2.9.2025
Date of Decision: 16.9.2025.

Krishna Devi ...Petitioner

Versus

Himachal Pradesh Gramin Bank and another ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner	:	M/s Owais Khan Pathan and Akhil Rajta, Advocates.
For Respondent No.1	:	Mr. K.B. Khajuria, Advocate.
For Respondent No.2	:	Mr. Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 5.7.2025, passed by learned Sessions Judge, Sirmour District at Nahan, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 21.10.2024, passed by learned Judicial Magistrate First Class Nahan, District Sirmour, H.P. (learned Trial Court) were partly modified, and

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

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the accused was directed to undergo imprisonment till the rising of the Court on deposit of the compensation amount of ₹3.00 lacs within two months from the date of the judgment, and in case of default, to undergo simple imprisonment for two months by way of default sentence. *(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 alleged that the complainant is engaged in banking activities. The accused applied for a personal loan of ₹2,50,000/-, which was extended to her on interest @ @13% per annum with monthly rests. This amount was to be repaid in equated monthly instalments, but the accused defaulted on the repayment. An amount of ₹1,58,285/- became due on 20.8.2019. The accused issued a cheque of ₹1,50,000/- to discharge her liability. The complainant presented the cheque to the bank, but it was dishonoured with the endorsement 'funds insufficient'. The complainant served a notice upon the accused

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asking her to repay the amount within 15 days of the date of the receipt of the notice. The notice was served upon the accused, but the accused failed to repay the amount. Hence, the complaint was filed before the learned Trial Court for taking action as per law.

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

4. The complainant examined Dharam Singh Parmar (CW1) to prove its case.

5. The accused, in her statement recorded under Section 313 of Cr.P.C., admitted that she had borrowed the money and that ₹1,58,285/- was due. She admitted her signatures on the cheque. She stated that she had issued a security cheque and she needed time to repay the amount. She opted to lead evidence but failed to produce any evidence despite the opportunities granted by the learned Trial Court. Hence, the evidence was closed on 27.9.2024.

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6. Learned Trial Court held that the issuance of the cheque was not disputed. The accused also admitted that she had taken the loan from the bank. A presumption arose under Section 118(a) and 139 of the NI Act that the cheque was issued for consideration in discharge of debt/liability. The burden was upon the accused to rebut the presumption, but the accused failed to do so. The cheque was dishonoured with an endorsement 'funds insufficient'. The complainant issued a notice to the accused. The accused admitted the receipt of the notice. She failed to repay the amount; therefore, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced her to undergo simple imprisonment of one year, pay compensation of ₹3.00 lacs and undergo simple imprisonment for two months in default of payment of compensation.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused preferred an appeal which was decided by the learned Sessions Judge, Sirmour at Nahan (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque and the signatures on the cheque were

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not disputed. The presumption would arise under Section 118(a) and 139 of the NI Act that the cheque was issued for consideration in discharge of the liability/debt. The burden is upon the accused to rebut the presumption; however, she failed to produce any evidence. The cheque was dishonoured with an endorsement 'funds insufficient'. The accused failed to repay the amount despite the receipt of the valid notice of demand. Hence, there was no infirmity in the judgment and order passed by the learned Courts below, and 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 petition, asserting that the learned Courts below erred in appreciating the material placed before them. The complainant failed to prove the existence of consideration or any enforceable legal liability to the extent of ₹1,58,285/-. No statement of account or account book was produced to establish the liability. The compensation awarded by the learned Courts below is harsh and excessive. The period of two months granted by the learned Trial Court is quite short. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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9. I have heard M/s Owais Khan Pathan and Akhil Rajta, learned counsel for the petitioner/accused, Mr. Kulbhushan Khajuria, learned counsel for respondent No.1/complainant and Mr. Jitender Sharma, learned Additional Advocate General, for respondent No.2-State.

10. Mr. Owais Khan Pathan, learned counsel for the petitioner/accused, submitted that the bank had failed to produce any evidence of the existence of the liability. The burden to prove the existence of liability is upon the complainant and is not a matter of presumption. Learned Courts below erred in holding that the accused was liable to repay the cheque amount without the production of the account books or the statement of account. The learned Appellate Court had only granted two months to deposit the compensation, which is a short time. Therefore, he prayed that the present revision be allowed and the judgment and order passed by the learned Courts below be set aside. He prayed, in the alternative, that the period granted by the learned Appellate Court to deposit the amount be extended.

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11. Mr. Kulbhushan Khajuria, learned counsel for the respondent No.1/complainant, submitted that the accused admitted the taking of a loan and the subsisting liability, which need not be proved; therefore, there was no need to produce the account book or the statement of account. The accused had not disputed her liability but had only sought time to make the payment. The cheque was dishonoured with an endorsement 'insufficient funds'. The accused admitted the receipt of the notice, and the ingredients of the commission of the offence punishable under Section 138 of the NI Act were duly satisfied. Learned Appellate Court erred in setting aside the sentence on payment of the compensation of ₹3.00 lacs within two months. No provision of Cr.PC empowered the learned Appellate Court to exercise such jurisdiction. Therefore, he prayed that the present revision be dismissed and the order passed by the learned Trial Court be restored.

12. Mr. Jitender Sharma, learned Additional Advocate General, for respondent No.2-State, supported the judgments and order passed by the learned Courts below and submitted that no interference is required with them.

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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 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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15. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, 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 regularities 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 in such proceedings.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
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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 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

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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 the framing of the charge is a much-advanced stage in the proceedings under 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 at page 169:

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

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy 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 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 concluding 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, (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."

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 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."

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

19. The accused admitted in her statement recorded under Section 313 of Cr.P.C. that the complainant bank had

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advanced the loan in her favour and that an amount of ₹1,58,285/- was due in the loan account. Therefore, the accused never disputed her liability to pay ₹1,58,285/-, which is also apparent from the fact that the accused sought some time to repay the cheque amount. Hence, the submission made on behalf of the accused that the existence of liability was not established is not acceptable. It was rightly submitted on behalf of the complainant that the admitted facts need not be proved, and once the accused admitted the taking of a loan and the extent of her liability in the statement recorded under Section 313 of Cr.P.C., there was no requirement to produce any document to prove these facts.

20. The accused also admitted that the cheque bears her signature. Learned Courts below had rightly held that a presumption would arise that the cheque was issued in discharge of liability/debt for consideration. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC*** *724,* that when the issuance of a cheque and signatures on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

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"**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 a 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 a presumption is rebuttable. However, to rebut the presumption, the accused was

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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."

21. The presumption under Section 139 of the NI Act was explained by the Hon'ble Supreme Court in ***N. Vijay Kumar v. Vishwanath Rao N., 2025 SCC OnLine SC 873*** as under:

"**5.** The NI Act raises two presumptions, one under Section 118 and the other in Section 139 thereof. The Sections read as under:

"**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;

x x x

139. Presumption in favour of 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."

6. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence. This Court, through various pronouncements, has consistently clarified the nature and extent of these presumptions and the standard of proof required by the accused to rebut them. We may consider a few such pronouncements.

6.1. In ***Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm (2008) 7 SCC 655***, this Court observed as under:

"**17.** Under Section 118(*a*) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. In this connection, reference may be made to a decision of this Court in ***Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [(1999) 3 SCC 35].*** In para 12 of the said decision, this Court observed as under: (SCC pp. 50-51)

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"*12.* Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(*a*) would arise that it is supported by a consideration. Such a presumption is rebuttable. *The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies.* In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case, including that of the plaintiff as well. In cases where the defendant fails to discharge the initial onus of proof by showing the nonexistence of the consideration, the plaintiff would invariably be held entitled to the benefit of the presumption arising under Section 118(*a*) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence, as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not

> exist or its nonexistence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."
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> From the above decision of this Court, it is pellucid that if the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who would be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. It is also discernible from the above decision that if the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of the presumption arising under Section 118(*a*) in his favour." (Emphasis Supplied)

6.2. In ***Kumar Exports v. Sharma Carpets (2009) 2 SCC 513***, this Court examined the presumptions raised by the N.I. Act, and held as follows:

> "**18.** Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. *As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability.* A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

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19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that, under the particular circumstances of the case, the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. *To rebut the statutory presumptions, an accused is not expected to prove his defence beyond a reasonable doubt, as is expected of the complainant in a criminal trial.* The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently, would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. *To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so prob-*

able that a prudent man would, under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence, and if the circumstances so relied upon are compelling, the burden may likewise shift again onto the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act, to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused also has an option to prove the nonexistence of consideration and debt or liability either by letting in evidence or, in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue." (Emphasis Supplied)

6.3. A three-Judge Bench of this Court in ***Rangappa*** (supra) had the occasion to consider Section 139 elaborately. The Court reiterated that where the signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability; however, this presumption is of a rebuttable nature and the onus is then on the accused to raise a probable defence. It was further stated that:

"**27.** Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act

specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses, and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence, and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

6.4. T.S. Thakur J., (as his lordship then was) in his supplementing opinion in ***Vijay v. Laxman (2013) 3 SCC 86***, observed as under:

"**20.** The High Court has rightly accepted the version given by the respondent-accused herein. We say so for more than one reason. In the first place, the story of the complainant that he advanced a loan to the respondent-accused is unsupported by any material, let alone any documentary evidence that any such loan transaction had ever taken place. So much so, the

complaint does not even indicate the date on which the loan was demanded and advanced. It is blissfully silent about these aspects, thereby making the entire story suspect. We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 118 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court."

6.5. This Court, in the case of ***Baslingappa v. Mudibasappa (2019) 5 SCC 418***, summarised the principles on Sections 118(a) and 139 of the N.I. Act. The same is reproduced with profit as under:

"**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 a 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."

6.6. Recently, a coordinate Bench of this Court in ***Rajaram v. Maruthachalam (2023) 16 SCC 125***, through Gavai J., observed as under:

"**27.** It can thus be seen that this Court has held that once the execution of a cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has, however, been held that 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. It has further been held that 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. It has been held that 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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> **7.** The position of law, as is evident from the above, is clear."

22. Thus, the learned Courts below had rightly held that a presumption would arise in the present case that the cheque was issued for consideration in discharge of the liability.

23. The plea taken by the accused that she had issued a blank cheque as security will not help her. Once she admitted the liability of ₹1,58,285/-, a cheque issued for ₹1,50,000/- was for subsisting liability. 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, the criminal revision petition be accepted is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque Ext. C-1, that 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."

24. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458*** that issuing a cheque towards security will also attract the liability for the commission of an offence punishable under Section 138 of the NI Act. It was observed: -

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise*.
>
> 11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall

under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

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

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

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered 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 a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI 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 a cheque, which is issued as 'security, cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed

> period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the 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."

26. The accused did not step into the witness box to prove the plea taken by her that the cheque was issued as a security. She relied upon the statement made by her under Section 313 of Cr.P.C. to prove this fact. It was laid down 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

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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 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)"

27. Therefore, the plea taken by the accused in her statement is not sufficient to discard the complainant's case.

28. No other evidence was led by the accused to rebut the presumption, and the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

29. Dharam Singh Parmar (CW1) stated that the cheque was dishonoured with an endorsement 'funds insufficient'. Memo (Ex.CW1/C3) also mentions reasons of dishonour as '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.

30. 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'.

31. The complainant stated that a notice (Ex.CW1/C-4) was issued to the accused. The accused admitted in her statement recorded under Section 313 of Cr.P.C. that notice was received by her; therefore, the learned Courts below had rightly held that the notice was served upon the accused.

32. The accused did not claim that she had paid the cheque amount before receipt of the notice. Thus, it was duly proved on record that the cheque was issued in discharge of the

legal liability, which was dishonoured with an endorsement 'funds insufficient', and the accused failed to repay the amount despite the receipt of a valid notice of demand. Hence, all the ingredients of the commission of an offence under Section 138 of the NI Act were duly satisfied.

33. Learned Trial Court had sentenced the accused to undergo simple imprisonment of one year, pay compensation of ₹3.00 lacs, and in default of payment of compensation to undergo simple imprisonment for two months. Learned Appellate Court modified this sentence and held that if the accused deposits the amount within a period of two months, she would undergo imprisonment till the rising of the Court, and in case of default, she would undergo simple imprisonment for two months.

34. It was submitted on behalf of the complainant that the learned Appellate Court erred in passing a conditional order. Code of Criminal Procedure or Bharatiya Nagrik Suraksha Sanhita does not authorise the passing of the conditional order. It is true that the sentence awarded by the learned Appellate Court is not happily worded and appears to be conditional;

however, if the same is read carefully, it is not a conditional order. Learned Appellate Court had reduced the sentence of imprisonment to till the rising of the Court but maintained the order passed by the learned Trial Court awarding the compensation and in default to undergo simple imprisonment for two months. Therefore, the grievance of the complainant that the order was a conditional order is not correct.

35. It was submitted that there is no provision for the awarding of a default sentence in case of failure to deposit the compensation. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: (2010) 3 SCC (Civ) 744: (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612*** that the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

> "**20.** Moving over to the question, whether a default sentence can be imposed on default of payment of compensation, this Court in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127] and in Balraj v. State of U.P. [(1994) 4 SCC 29: 1994 SCC (Cri) 823: AIR 1995 SC 1935]***, has held that it was open to all the courts in India to impose a sentence on default of payment of compensation under sub-section (3) of Section 357. In ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]***, this Court has

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noticed certain factors which are required to be taken into consideration while passing an order under the section: (SCC p. 558, para 11)

> "*11.* The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there is more than one accused, they may be asked to pay on equal terms unless their capacity to pay varies considerably. The payment may also vary depending on the acts of each accused. A reasonable period for payment of compensation, if necessary, by instalments, may also be given. The court may enforce the order by imposing a sentence in default."

21. This position also finds support in ***R. v. Oliver John Huish [(1985) 7 Cri App R (S) 272]***. The Lord Justice Croom Johnson, speaking for the Bench, has observed:

> "When compensation orders may be made, the most careful examination is required. Documents should be obtained, and evidence, either on affidavit or orally, should be given. The proceedings should, if necessary, be adjourned to arrive at the true state of the defendant's affairs.
>
> Very often, a compensation order is made and a very light sentence of imprisonment is imposed, because the court recognises that if the defendant is to have an opportunity of paying the compensation, he must be enabled to earn the money with which to do so. The result is therefore an extremely light sentence of imprisonment. If the compensation order turns out to be virtually worthless, the defendant has got off with a very light sentence of imprisonment, as well as no order of compensation.

In other words, generally speaking, he has got off with everything."

22. The law laid down in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** was reiterated by this Court in ***Suganthi Suresh Kumar v. Jagdeeshan [(2002) 2 SCC 420: 2002 SCC (Cri) 344]***. The Court observed: (SCC pp. 424-25, paras 5 & 10)

"*5.* In the said decision, this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]***. In the said decision, this Court held as follows: (SCC p. 558, para 11)

'*11.* ... The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there is more than one accused, they may be asked to pay on equal terms unless their capacity to pay varies considerably. The payment may also vary depending on the acts of each accused. A reasonable period for payment of compensation, if necessary, by instalments, may also be given. *The court may enforce the order by imposing a sentence in default*.'

(emphasis in original)

***

10. That apart, Section 431 of the Code has only prescribed that any money (other than a fine) payable by an order made under the Code shall be recoverable 'as if it were a fine'. Two modes of recovery of the fine have been indicated in Section 421(1) of the Code. The proviso to the sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the

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whole of such imprisonment in default, no court shall issue such warrant for the levy of the amount."

The Court further held: (***Jagdeeshan case [(2002) 2 SCC 420: 2002 SCC (Cri) 344]***, SCC p. 425, para 11)

> "*11.* When this Court pronounced in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** that a court may enforce an order to pay compensation 'by imposing a sentence in default', it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of this Court. Hence, the learned Single Judge of the High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed by the subordinate courts in Kerala. We express our disapproval of the course adopted by the said Judge in ***Rajendran v. Jose [(2001) 3 KLT 431]***. It is unfortunate that when the Sessions Judge has correctly done a course in accordance with the discipline, the Single Judge of the High Court has incorrectly reversed it."

23. In order to set at rest the divergent opinion expressed in ***Ahammedkutty case [(2009) 6 SCC 660 : (2009) 3 SCC (Cri) 302]***, this Court in ***Vijayan v. Sadanandan K. [(2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296]***, after noticing the provision of Sections 421 and 431 CrPC, which dealt with mode of recovery of fine and Section 64 IPC, which empowered the courts to provide for a sentence of imprisonment on default of payment of fine, the Court stated: (***Vijayan case [(2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296***], SCC p. 658, para 24)

> "24. We have carefully considered the submissions made on behalf of the respective parties. Since a decision on the question raised in this petition is still in a nebulous state, there appear to be two

views as to whether a default sentence of imprisonment can be imposed in cases where compensation is awarded to the complainant under Section 357(3) CrPC. As pointed out by Mr Basant in ***Dilip S. Dahanukar case [(2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209]***, the distinction between a fine and compensation as understood under Section 357(1)(*b*) and Section 357(3) CrPC had been explained, but the question as to whether a default sentence clause could be made in respect of compensation payable under Section 357(3) CrPC, which is central to the decision in this case, had not been considered."

The Court further held: (***Vijayan case [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, SCC p. 659, paras 31-32)

"*31.* The provisions of Sections 357(3) and 431 CrPC, when read with Section 64 IPC, empower the court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.

32. The observations made by this Court in ***Hari Singh case [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 CrPC for enforcing the same, the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory."

24. In ***Shantilal v. State of M.P. [(2007) 11 SCC 243: (2008) 1 SCC (Cri) 1]***, it is stated that the sentence of imprisonment for default in payment of a fine or compensation is different from a normal sentence of imprisonment. The Court also delved into the factors to be taken into consideration while passing an order under Section 357(3) CrPC. This Court stated: (SCC pp. 255-56, para 31)

"*31.* ... The term of imprisonment in default of payment of a fine is not a sentence. It is a penalty

> which a person incurs on account of non-payment of a fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole, either in appeal or in revision or other appropriate judicial proceedings, or 'otherwise'. A term of imprisonment ordered in default of payment of a fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuse to pay such amount. He, therefore, can always avoid undergoing imprisonment in default of payment of the fine by paying such amount. It is, therefore, not only the *power* but the *duty* of the court to keep in view the nature of the offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of a fine." (emphasis in original)

25. In ***Kuldip Kaur v. Surinder Singh [(1989) 1 SCC 405: 1989 SCC (Cri) 171: AIR 1989 SC 232],*** in the context of Section 125 CrPC, it was observed that sentencing a person to jail is sometimes a mode of enforcement. In this regard, the Court stated: (SCC p. 409, para 6)

> "*6*. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a '*mode of enforcement*'. It is not a '*mode of satisfaction*' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the

> liability which he has refused to discharge. It should also be realised that a person ordered to pay a monthly allowance can be sent to jail only if he fails to pay the monthly allowance without sufficient cause to comply with the order. It would indeed be strange to hold that a person who, without reasonable cause, refuses to comply with the order of the court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of the monthly allowance which has fallen in arrears."

26. From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated.

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36. This position was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013: 2012 SCC OnLine SC 486,*** wherein it was observed at page 729:

> **29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is

> that the order to pay compensation may be enforced by awarding a sentence in default.
>
> **30.** In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

37. Thus, there is no infirmity in imposing a sentence of imprisonment in case of default in the payment of compensation.

38. No other point was urged.

39. Learned Appellate Court had granted a period of two months to deposit the amount of compensation, which expired during the pendency of the present revision. Hence, in order to avoid any prejudice to the petitioner/accused, who was pursuing her remedy before this Court, the petitioner/accused is directed to deposit the compensation amount within a period of one month from today, failing which she will undergo imprisonment of two months as awarded by the learned Trial Court and affirmed by the learned Appellate Court for committing the default in the payment of compensation. Subject to the modification, the judgment and order passed by the learned Courts below are upheld.

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

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

(Rakesh Kainthla)
Judge

16th September, 2025
(Chander)