IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 554 of 2024
Reserved on: 16.07.2026
Date of Decision: 27.07.2026

Khushinder Singh ... Petitioner

Versus

Ambal Khan .... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the petitioner Ms. K.S.Chandel, Advocate.

For the Respondent Mr Dinesh Bhanot, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 01.04.2024, passed by the learned Additional Sessions Judge, Nalagarh, District Solan, H.P. (learned Appellate Court) vide which the judgment of conviction dated 02.05.2022 and order of sentence dated 07.05.2022, passed by the learned Additional Chief Judicial Magistrate, Nalagarh,

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[1]. *Whether reporters of the local papers may be allowed to see the judgment? Yes*

District Solan, H.P. (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused had a friendly relationship with the complainant. The accused borrowed ₹ 1,40,000/- for his personal requirement from the complainant on 15.07.2016. He promised to repay the amount within two months. The complainant demanded the money, and the accused issued a cheque of ₹ 1,40,000/- in favour of the complainant to repay the money. The complainant presented the cheque at his bank, but it was dishonoured with an endorsement 'account closed'. The complainant sent a legal notice to the accused by registered post. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, the complaint was filed against the accused for taking action as per the law.

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

4. The complainant examined himself (CW-1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he had a cordial relationship with the complainant and that he had borrowed ₹ 1,40,000/- from the complainant on 15.07.2016. He claimed that he had issued a blank signed cheque at the time of taking the loan as security. He admitted that the cheque was presented to the bank, and it was dishonoured with an endorsement 'account closed'. He admitted that the complainant had issued a notice to him, which was duly served upon him. He stated that he had repaid the money to the complainant in the year 2016, but the complainant presented the cheque for payment and misused it. He examined Naresh Kumar (DW-1) in his defence.

6. Learned trial Court held that the accused had not disputed the issuance of the cheque and taking of the loan. A presumption under Section 118(a) and 139 of the NI Act would be attracted to the present case that the cheque was issued for consideration to discharge the debt/liability. The plea taken by the accused that he had repaid the money was not established on record. The accused admitted that the cheque was dishonoured with the endorsement 'account closed' and the legal notice was served upon him. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, the learned trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo Simple imprisonment for 3 months and pay a compensation of ₹ 1,70,000/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the Learned Additional Sessions Judge, Nalagarh, District Solan, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had admitted the issuance

of the cheque, and a presumption would be attracted to the present case that the cheque was issued for consideration in discharge of debt/liability. The accused had also admitted the taking of the loan, and the plea taken by him that he had repaid the money was not proved on record. The agreement produced by the accused pertained to some other transaction of ₹3,00,000/- and not to the transaction of ₹ 1,40,000/-. Even if the cheque was issued as a security, the complainant had sufficient authority to fill the amount and present it. The cheque was dishonoured with an endorsement 'account closed'. The notice was duly served upon the accused, and the accused had failed to repay the money. The sentence imposed by the learned Trial Court was adequate. No interference was required with the judgment and order passed by the learned trial Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below failed to appreciate the material on record. It was duly proved that the Cheque was issued as a security. The accused had mortgaged his land with a building for ₹3,20,000/- in favour of the

complainant. He had issued two security cheques in favour of the complainant, and the complainant had misused those cheques. The complainant admitted the execution of the agreement and that the cheques were handed over as per the agreement, which made the defence version probable. There was a discrepancy between the notice and the complaint. The learned courts below erred in convicting and sentencing the accused. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside

9. I have heard Mr. K.S.Chandel, learned counsel for the petitioner and Mr Dinesh Bhanot, learned counsel for the respondent.

10. Mr. K.S.Chandel, learned counsel for the petitioner/accused, submitted that the notice issued by the complainant mentioned that the amount was to be repaid within one year, whereas the complaint mentioned that the amount was to be repaid within two months. This made the complainant's version highly doubtful. The accused had mortgaged his land and the building in favour of the

complainant and had issued two cheques as security. The complainant misused those cheques and filled in the amount. The execution of the agreement was duly proved by the statement of Naresh Kumar (DW1). The cheque return memo did not have the seal of the bank, no official of the bank was examined, and there was nothing to show that the dishonour of the cheque was because of 'account closed'. Learned Trial Court had imposed an excessive sentence. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon the judgment of this Court in ***Govind Ram vs. State of H.P. & another 2025:HHC:33346*** and the judgment of Delhi High Court in ***Sri Sai Sapthagiri Sponge Pvt. Ltd. vs. The State (GNCT of Delhi) & another 2025:DHC:9362*** in support of his submission.

11. Mr Dinesh Bhanot, learned counsel for the respondent/complainant, submitted that the accused had not disputed the taking of the loan and the issuance of the cheque. The Learned Courts below had rightly applied the presumption under Section 118(a)and Section 139 of the N I Act. The accused failed to rebut the presumption. All the ingredients of the

commission of an offence punishable under Section 138 were duly satisfied. There is no infirmity in the judgments and order passed by learned Courts below. Hence, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***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 that 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.

14. 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 397 CrPC, 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.

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

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

15. 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 re-appreciate 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 amount 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."

16. 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.

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

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

> "**27.** It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: ***Bir Singh*** (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> **28.** Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

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

19 The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, 2025 SCC OnLine SC 2019*** as under: -

> "**5.1.1.** In ***K.R. Indira v. Dr. G. Adinarayana (2003) 8 SCC 300***, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid, demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque, within 15 days of the receipt of the notice."

20. The complainant reiterated the contents of his complaint in his proof affidavit (Ext.CW-1/A). He stated in his cross-examination that he had advanced ₹3,20,000/- to the accused on 10.05.2016 and ₹1,20,000/- on 15.07.2016. The accused had handed over two signed cheques to him. The accused had filled in the date 05.07.2018 himself. He admitted that an agreement was executed with the accused. He also admitted that the accused had mortgaged his school with him. He admitted that the cheques were handed over to him on

10.05.2016, and he had presented the cheques on 04.09.2018. He had paid the money to the accused in cash. Some money was lying with him, and some was taken by him as a loan. He admitted that the accused was to repay the money within a period of one year.

21. The statement of the complainant is duly corroborated by the statement of the accused recorded under Section 313 CrPC, in which the accused admitted taking the loan, issuance of the cheque, dishonour of the cheque and the receipt of the notice. It was laid down by the Hon'ble Supreme Court in ***State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700: 1992 SCC (Cri) 705: 1992 SCC OnLine SC 421*** that the Courts can rely upon the statement of the accused recorded under section 313 of the Cr.P.C. It was observed at page 742:

> "**51.** That brings us to the question of whether such a statement recorded under Section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4), which reads:
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> > "313. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other

> inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

Thus, the answers given by the accused in response to his examination under Section 313 can be taken into consideration in such an inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See ***State of Maharashtra v. R.B. Chowdhari (1967) 3 SCR 708: AIR 1968 SC 110: 1968 Cri LJ 95***. This Court, in the case of ***Hate Singh Bhagat Singh v. State of M.B. 1951 SCC 1060: 1953 Cri LJ 1933: AIR 1953 SC 468,*** held that an answer given by an accused under Section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In ***Narain Singh v. State of Punjab (1963) 3 SCR 678: (1964) 1 Cri LJ 730***, this Court held that if the accused confesses to the commission of the offence with which he is charged, the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge bench answered the question, it would be advantageous to reproduce the relevant observations at pages 684-685:

> "Under Section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation, if any, of the incident which forms the subject-matter of the

> charge and his defence. By sub-section (3), the answers given by the accused may 'be taken into consideration' at the enquiry or the trial. *If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him*, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety." (emphasis supplied)

> Sub-section (1) of Section 313 corresponds to sub-section (1) of Section 342 of the old Code, except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with, his examination under clause (*b*) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old sub-section (4), asd the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force."

22. It was laid down by the Hon'ble Supreme Court in ***Mohan Singh v. Prem Singh, (2002) 10 SCC 236: 2003 SCC (Cri) 1514: 2002 SCC OnLine SC 933***, that the statement made by the accused under Section 313 Cr.P.C. can be used to lend credence to the evidence led by the prosecution, but such statement cannot form the sole basis for conviction. It was observed at

page 244:

27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that the statement under Section 313 CrPC of the accused can either be relied on in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See ***Nishi Kant Jha v. State of Bihar (1969) 1 SCC 347: AIR 1969 SC 422***: (SCC pp. 357-58, para 23)

> "23. In this case, the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury that the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961, negatives of both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood, as also his books, his exercise book, his belt and his shoes. More than that, the knife which was

> discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report, this knife could have been the cause of the injuries on the victim. *In circumstances like these, there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6, the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.*" (emphasis supplied)

23. It was laid down in ***Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382: 2012 SCC OnLine SC 213***, that the statement of the accused under Section 313 Cr.P.C., in so far as it supports the prosecution's case, can be used against him for recording a conviction. It was observed at page 275: -

> "**52.** It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording a statement under this provision of the CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering a conviction. Even under the latter, he faces the consequences in law."

24. This position was reiterated in ***Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747: (2014) 2 SCC (Cri) 417: 2014 SCC OnLine SC 199***, and it was held that the statement of the accused recorded under Section 313 of the Cr.P.C. can be used to lend corroboration to the statements of prosecution witnesses. It was held at page 761: -

> **24.** We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in ***State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700: 1992 SCC (Cri) 705*** held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in ***Hate Singh Bhagat Singh v. State of Madhya Bharat, 1951 SCC 1060: AIR 1953 SC 468: 1953 Cri LJ 1933*** held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In ***Narain Singh v. State of Punjab (1964) 1 Cri LJ 730: (1963) 3 SCR 678,*** this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

> **25.** This Court in ***Mohan Singh v. Prem Singh (2002) 10 SCC 236: 2003 SCC (Cri) 1514*** held that: (SCC p. 244, para 27)
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> > "27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."
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> In this connection, reference may also be made to the judgments of this Court in ***Devender Kumar Singla v. Baldev Krishan Singla (2005) 9 SCC 15: 2005 SCC (Cri) 1185*** and ***Bishnu Prasad Sinha v. State of Assam (2007) 11 SCC 467: (2008) 1 SCC (Cri) 766***. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.
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> **26.** We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW 10 and PW 13 and hence the offences levelled against the appellant stand proved, and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC."

25. Therefore, learned courts below had rightly relied upon the statement of the accused recorded under Section 313 of the CrPC to lend corroboration to the complainant's version.

26. The accused admitted the issuance of the cheque. The Learned Courts below had rightly held that a presumption would be attracted to the present case that the cheque was issued for consideration to discharge the debt/liability. 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 signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

> "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 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 a 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."

27. This position was reiterated in ***N. Vijay Kumar v. Vishwanath Rao N., 2025 SCC OnLine SC 873,*** wherein it was held as under:

> "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."

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

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
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> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-

> Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).
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> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
>
> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

29. Thus, the Court has to start with the presumption that the cheque was issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption.

30. The complainant admitted in his cross-examination that the accused had handed over two cheques to him. He also admitted that he had entered into an agreement with the accused. The agreement mentions that the

complainant would have the right to present the cheques bearing Sl. Nos. 69985 and 69987 in case of failure of repayment.

31. It was submitted that the admission of the complainant and the recital of the agreement show that the cheqeus were issued as security. The Learned Court below erred in holding that the cheques were issued for consideration to discharge the debt/liability. This submission will not help the accused. The accused admitted to taking a loan of ₹1,40,000/- in his statement recorded under Section 313 of the CrPC. Thus, the accused had a subsisting liability to pay the money. There is no evidence that the accused had repaid the money.

32. Naresh Kumar (DW-1) stated about the taking of money and the issuance of the cheque by the accused. He has nowhere stated that the money was repaid by the accused to the complainant. The accused claimed in his statement recorded under Section 313 CrPC that he had repaid the money, but he failed to present any evidence in support of this plea. He did not even appear before the Court to say that he had

returned the money, and the cheque was presented without any consideration. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under section 313 is not sufficient 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)"

33. Therefore, learned Courts below had rightly rejected the plea taken by the accused that he had repaid the money to the complainant.

34. Once it is found that the accused had failed to prove the repayment of money, the accused was liable to pay ₹1,40,000/- to the complainant as per his admitted liability.

Hence, the cheque would be valid even if it were issued blank and with signatures. 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 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 provisions of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

35. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458*** that issuing a cheque toward security will also attract the liability for the

commission of an offence punishable under Section 138 of the NI Act. It was observed: -

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*
>
> 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 a deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.
>
> 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)

36 This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper

and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

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

37. It was submitted that the amount in the cheque was filled by the complainant, and the cheque was bad. This submission cannot be accepted. It has already been found out above that the accused was liable to pay ₹ 1,40,000/- to the complainant. Therefore, the complainant had sufficient authority to fill the amount of ₹1,40,000/- in the cheque. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138***, that a person is liable for

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

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

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> cogent evidence to show that the cheque was not issued in discharge of a debt."

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

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

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

40. It was submitted that the amount was paid in cash, which is a violation of Section 269SS of the Income Tax Act; the complaint is not maintainable because of the violation. This submission will not help the accused. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that contravention of Section 269 SS of the Income Tax Act

will give rise to a penalty, but will not invalidate the transaction. It was observed: -

> 5. The relevant portion of Section 269 SS of the IT Act reads thus: -
>
>> "(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit' or
>>
>> (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
>>
>> (c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is (twenty) thousand rupees or more. Provided......"
>
> 6. Section 271D provides for a penalty for failure to comply with the aforesaid provisions, which reads thus:
>
>> "271D. Penalty for failure to comply with the provisions of Section 269-SS - (1) If a person takes or accepts any loan or deposit in contravention of the provisions of Section 269-SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.
>>
>> (2) Any penalty impossible under sub-section (1) shall be imposed by the Joint Commissioner."
>
> 7. A collective reading of both the aforesaid Sections would go to show that even though contravention of Section 269-SS of the IT Act would be visited with a strict penalty on the person taking the loan or deposit. However, Section 271D does not in any manner suggest or even provide that such a transaction would be null and void. The payer of money in cash, in violation of

Section 269 SS of the IT Act, can always have the money recovered.

8. The object of introducing Section 269 of the IT Act has been succinctly set out by the Hon'ble Supreme Court in ***Asstt. Director of Inspection Investigation vs. A.B. Shanthi (2002) 6 SCC 259***, wherein it was observed as under: -

> "8. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give a false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false entries in his accounts, or by giving a false explanation for the same. During search and seizures, unaccounted money is unearthed, and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends, and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main objection of Section 269-SS was to curb this menace."

9. In light of the aforesaid observations, it cannot but be said that Section 269-SS only provides for the mode of accepting payment or repayment in certain cases so as to counteract evasion of tax. However, Section 269-SS does not declare all transactions of loans by cash in excess of ₹20,000/- as invalid, illegal or null and void, as the main object of introducing the provision was to curb and unearth black money.

41. A similar view was taken by the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> "**19.** Recently, the Kerala High Court in ***P.C. Hari v. Shine Varghese, 2025 SCC OnLine Ker 5535*** has taken the view that a debt created by a cash transaction above

₹20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above ₹ 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961, is subject to a penalty only under Section 271D of the IT Act, 1961. Further, neither Section 269SS nor 271D of the IT Act, 1961 states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs. 20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in ***P.C. Hari*** (supra) is set aside."

42. This position was reiterated in ***Shine Varghese Koipurathu v State of Kerala, Crl. A. No. 5385 of 2025 decided on 8th December 2025***.

43. The complainant had issued a notice (Ext.C-3) in which it was mentioned that the amount was to be returned within one year. The complainant mentioned in the complaint that the amount was to be returned within two months. It was

submitted that there is a discrepancy in the period in which the amount was to be returned, which made the complainant's case highly doubtful. This submission cannot be accepted. The cheque in the present case was presented in the year 2018 after the lapse of one year from the date of advancing the loan. Further, the agreement produced by the accused also mentions that the property was mortgaged for 1 year, and the money would be repaid within one year. Thus, as per the accused, the period of repayment was one year and the recital in the complaint that the money was to be paid within two months will not make the complainant's case doubtful.

44. It was submitted that the accused had mortgaged his land in favour of the complainant vide agreement (Mark-D1). Mortgaging of the land would not assist the accused. There is no evidence that this mortgage was foreclosed or that any suit was filed based on the mortgage, and the complainant is benefiting doubly by presenting the cheque and enforcing his rights under the mortgage. Thus, the complainant's version cannot be discarded because the accused had mortgaged his land in the complainant's favour.

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

46. The complainant stated that the cheque was dishonoured with an endorsement 'account closed'. He filed the cheque returning memo (Ext.C2). It was admitted that this memo is not signed by any person and it does not bear the seal of the bank. Therefore, no presumption can be drawn under Section 146 of the NI Act. Reliance was placed upon ***Govind Ram*** (supra) in support of this submission. This submission will not help the accused because he admitted that the cheque was dishonoured with an endorsement, 'account closed'. Therefore, even if the presumption is not applied to the memo, the admission of the accused still proves that the cheque was dishonoured with an endorsement 'account closed', and the learned Court had rightly held that the cheque was dishonoured with an endorsement 'account closed'.

47. It was laid down by the Hon'ble Supreme Court in ***NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253: 1999***

SCC (Cri) 524: 1999 SCC OnLine SC 508, that when a cheque is dishonoured due to the account being closed, it will attract the provision of Section 138 of N.I. Act. It was observed at page 258:

> **7.** Further, the offence will be complete only when the conditions in provisos (*a*), (*b*) and (*c*) are complied with. Hence, the question is, in a case where a cheque is returned by the bank unpaid on the ground that the "account is closed", would it mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque"? In our view, the answer would obviously be in the affirmative because the cheque is dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time, apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is a species. After issuing the cheque drawn on an account maintained, a person, if he closes "that account", apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138, as there were insufficient or no funds to honour the cheque in "that account". Further, the cheque is to be drawn by a person for payment of any amount of money due to him "on an account maintained by him" with a banker and only on "that account" the cheque should be drawn. This would be clear by reading the section along with provisos (*a*), (*b*) and (*c*).

****

> **15.** In view of the aforesaid discussion, we are of the opinion that even though Section 138 is a penal statute, it is the duty of the court to interpret it consistently with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence, and the legislative purpose is to promote the efficacy of banking and ensure that in commercial or contractual transactions, cheques are not dishonoured, and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and shew the transactions in their true light" (Wilmot, C.J.) or (by Maxwell) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited". Hence, when the cheque is returned by a bank with an endorsement "account closed", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

48. This Court also took the same view in ***Bal Krishan Sharma v. Tek Ram, 2006 SCC OnLine HP 105: 2006 Cri LJ 1993*** and observed:

> "**9.** The provisions contained in this chapter are primarily designed to provide an additional criminal remedy, over and above the civil remedies available to the payee or holder in due course of a cheque. This chapter protects the interests of a payee or holder in due course of a dishonoured cheque. The object of the chapter is to enhance the acceptability of the cheque in

the settlement of financial liabilities by making the drawer liable for penalties. It is noticed that for establishing the requirements of Section 138, there is no burden on the part of the complainant to prove before a Court the entire details of the transactions resulting in the issuance of the cheque. As observed by the Apex Court in ***Kusum Ingots and Alloys Limited v. Pennar Peterson Securities Ltd., II (2000) SLT 375: I (2000) CCR 260 (SC): I (2000) BC 300: (2000) 2 SCC 745***, the object of bringing Section 138 on statute is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Looking at the object of incorporating Chapter VIII in the Act, the expression "on account maintained by him" used in Section 138 of the Act, as noticed above, cannot be interpreted to give it an artificial or unrealistic meaning. What the provision says is that the cheque must be drawn on the account that the accused *maintained* with the Bank. The status of the account, when the cheque was drawn, whether it was *live or dead*, is irrelevant. What the provision says is that the accused must have an account that is maintained or has been maintained with the Bank. The Legislature has not used the present continuous tense. The expression used is "on an account maintained by him" and not "maintained by him". The cheque, in my view, should have a reference to an account of the accused, irrespective of the fact whether such an account was *live* or *dead* on the date of issuance of the cheque. The interpretation of the expression "on an account maintained by him" as given by the learned Trial Magistrate and contended by the learned Counsel for the accused is artificial and beyond the legislative intent. While interpreting the provision, the legislative purpose and goal have to be kept in mind. We cannot lose sight of the fact that in this era, financial transactions are not dependent on cash and therefore financial transactions by other modes, including "cheques", have to be attached to credibility.

10. The following observations of the Supreme Court in ***NEPC Micon Ltd. v. Magma Leasing Ltd., II (2006) BC 316 (SC): IV (1999) SLT 254: III (1999) CCR 4 (SC) : (1999) 4 SCC 253***, are apposite:

> "10. This Court in the case of *Kanwar Singh v. Delhi Admn.* While construing Section 418(i) of the Delhi Municipal Corporation Act, 1959, observed—
>
> > 'It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the Legislature, which is to suppress mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.
>
> 11. Further, while interpreting the statutory provision rule dealing with penalty under the Drugs and Cosmetics Act, 1940 and the rules in the case of ***Swantraj v. State of Maharashtra***, this Court held that every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the one from the rule in *Heydon's case* of suppressing the evil and advancing the remedy. The Court held that what must tilt the balance is the purpose of the statute, its potential frustration and judicial avoidance of the mischief by a construction whereby the means of licensing meet the ends of ensuring pure and potent remedies for the people. The Court observed that this liberty with language is sanctified by great Judges and textbooks. *Maxwell* instructs us in these words—
>
> > "There is no doubt that the office of the Judge is to make such construction as will suppress the mischief, and advance the remedy, and suppress

> all evasions for the continuance of the mischief. To carry out effectively the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: '*quando aliquid prohibetur, prohibetur et omne pe quod devenitur ad illud.*'

11. This manner of construction has two aspects. One is that the Courts, mindful of the mischief rule, will not be averse to narrowing the language of a statute so as to allow persons within its purview to escape its net. The other is that the statute may be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby falling outside the Act. When the Courts find an attempt at concealment, they will, in the words of Wilmot, C.J., 'brush away the cobweb varnish, and show the transactions in their true light'."

12. Their Lordships proceeded to observe:

> "15. In view of the aforesaid discussion, we are of the opinion that even though Section 138 is a penal statute, it is the duty of the Court to interpret it consistently with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence, and the legislative purpose is to promote the efficacy of banking and ensure that in commercial or contractual transactions, cheques are not dishonoured, and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and show the transactions in their true light" (Wilmot C.J.) or (by *Maxwell*) "to carry out effectively the breach of the statute, it must be so

> construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited" Hence when the cheque is returned by a Bank with an endorsement "account closed". It would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

13. If the interpretation as contended by the learned Counsel for the accused and the Trial Court is to be accepted, then a person who receives the cheque will have to ensure that the account is alive. If he does not, he runs the risk of losing his money and the denial of benefits under Section 138 of the Act. This certainly cannot be the legislative intent. Any account holder with the intent to defeat the provisions of Section 138 of the Act may retain a cheque leaf after closing his account with the Bank to defraud any honest payee. Should such a dishonest account holder be permitted to escape the proceedings under Section 138 of the Act?

14. Learned Counsel for the accused would contend that the observations in ***NEPC Micon Limited*** were that if a cheque is dishonoured on the ground that the account is closed then it would come within the sweep of Section 138 of the Act but if the cheque is issued on a closed account, then such an act of a dishonest person would not fall within the mischief of Section 138 of the Act. It is true that the ***NEPC case*** does not specifically deal with the cheques issued on accounts closed prior to the date of issuance of the cheque. Nevertheless, this case does not indicate that such cases are intended to be taken out of the sweep of Section 138 of the Act. In my opinion, the expression "on an account maintained by him" necessarily includes an account which was maintained by him, *i.e.*, the account which has been closed, as also the account which is still maintained by him.

> **15.** The Supreme Court in ***N.A. Issac v. Jeemon P. Abraham, III (2006) BC 422 (SC): VI (2004) SLT 154: IV (2004) CCR 124 (SC): 2005 (1) Civil Court Cases 690 (SC)***, interpreted Section 138 of the Act and observed that contention that this provision will not be applicable when the cheque is issued from an already closed account cannot be upheld as such an interpretation would defeat the object of insertion of the provision in the Act. Their Lordships observed: "Section 138 does not call for such a narrow construction". Their Lordships approved that the expression used in Section 138 of the Act includes the cheques issued on a closed account.
>
> **16.** For the reasons recorded above, the findings recorded by the Trial Magistrate holding that Section 138 of the Act is not applicable to a cheque drawn on a closed account, cannot be upheld."

49. The complainant asserted that he had issued a notice to the accused, asking him to repay the money within 15 days of the date of the receipt of the notice. He produced the copy of the notice (Ext.C-3), Postal receipt (Ext.C-4) and acknowledged (Ext.C-5), which shows that the notice was duly served upon the accused. The accused admitted in his statement recorded under Section 313 CrPC that he had received the notice from the complainant. Thus, the receipt of the notice was not in dispute.

50. The accused had not asserted that the money was repaid by him; therefore, all the ingredients of the commission

of an offence punishable under Section 138 of the NI Act are duly satisfied.

51. The Learned Trial Court sentenced the accused to undergo simple imprisonment for three months and pay a compensation of ₹ 1,70,000/- to the complainant. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138*** that the penal provision of section 138 is deterrent in nature. It was observed at page 203:

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

52. Therefore, the sentence of three months cannot be said to be excessive, considering that a deterrent sentence is to be imposed.

53. The learned trial Court had directed the accused to pay a compensation of ₹ 1,70,000/-. The cheque was issued for ₹ 1,40,000/-, which means that only an amount of ₹30,000/-

was awarded as compensation. 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***]"

54. The cheque was issued on 04.02.2018, and the compensation was awarded on 07.05.2022, nearly four years after the issuance of the cheque. The complainant lost money that he would have gained by investing it. He had to visit the Court and engage counsel to prosecute the complaint filed by him. Therefore, he was entitled to compensation for the loss of interest and the prosecution of the complaint. An amount of

₹30,000/- towards the loss of interest for about 4 years cannot be said to be excessive, requiring any interference from this Court.

55. In ***Sri Sai Sapthagiri Spone Pvt. Ltd. (supra)***, the Delhi High Court was dealing with a quashing petition and discussed the parameters of the complaint at the threshold, which is not relevant in the present case.

56. No other point was urged.

57. In view of the above, the present revision fails, and it is dismissed. Pending miscellaneous application(s), if any, are also sands disposed of.

58. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

27th July, 2026
(ravinder)