IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.627 of 2024
Reserved on: 01.09.2026
Date of Decision: 10.09.2026

Chet Ram .... **Petitioner**

Versus

Ranjeet .... **Respondent**

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the petitioner	:	M/s Parul Negi and Amit Kumar Dhumal, Advocates.
For the Respondents/	:	Mr Sudhir Bhatnagar, Advocate, for respondent No.1. Mr Jitender K. Sharma, Additional Advocate General, for respondent No.2.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 12.12.2023, passed by learned Sessions Judge, Kullu, District, Kullu, H.P. (learned appellate Court), vide

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

which the judgment of conviction and order of sentence dated 30.05.2023, passed by learned Judicial Magistrate, First Class, Manali, District Kullu, H.P. (learned trial Court) were upheld. *(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 was the tenant of the complainant. He issued a cheque of ₹1,40,000/- towards the payment of the room rent of ₹1,34,600/- plus electricity bill and maintenance/repair. The complainant presented the cheque at his bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant issued a notice to the accused asking him to pay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but the accused failed to pay the money. Hence, the complaint was filed before the learned trial Court for taking action against the accused as per the law.

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

4. The complainant examined himself (CW1) to prove the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he was a tenant of the complainant, that he had issued a cheque of ₹1,40,000/- towards the room rent, electricity bills and repair charges, and that he had executed an affidavit. He asserted that the contents of the affidavit were incorrect. He claimed that he is innocent, but did not produce any evidence in his defence

6. The learned trial Court held that the issuance of the cheque and the status of the parties were not disputed. Therefore, a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption. The notice was dishonoured with an endorsement 'insufficient funds'. The notice was duly

served upon the accused, but he failed to repay the money. All the ingredients of 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 6 months and pay a compensation of ₹1,84,000/- and in default of payment of compensation, to undergo simple imprisonment for one month.

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 Sessions Judge, Kullu District, Kullu, H.P. (learned appellate Court). The learned appellate Court concurred with the learned Trial Court that the issuance of the cheque was not disputed, and that a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The accused had failed to rebut the presumption. The cheque was dishonoured with an endorsement 'funds insufficient'. The notice was duly served upon the accused, and the accused failed to pay the money to the complainant. The learned trial Court had imposed an adequate sentence, which

did not require any interference. Hence, the learned appellate Court dismissed the appeal.

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 that the cheque was issued as a security. The complainant admitted the receipt of ₹1,20,000/- on 20.11.2018 for the rent of the year 01.07.2018 and ₹50,000/- on 29.11.2018. He also admitted that ₹1,40,000/- was transferred from the account of the petitioner's wife on 27.06.2017. Therefore, the accused had discharged the liability due to the complainant, and the security cheque could not have been presented before the Court. The notice was not served upon the accused, and the necessary ingredients for attracting the provisions of Section 138 of the NI Act were not satisfied. 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 M/s Parul Negi and Amit Kumar, learned counsel for the petitioner, Mr Sudhir Bhatnagar, learned counsel for respondent No. 1 and Mr Jitender K.

Sharma, learned Additional Advocate General, for the respondent No. 2/State.

10. Ms Parul Negi, learned counsel for the petitioner/accused, submitted that the complainant admitted the receipt of money from the accused and his wife, which shows that the accused had discharged his liability. The complainant had no reason to present the cheque before the bank. Learned Courts below failed to appreciate this aspect. Therefore, she prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

11. Mr Sudhir Bhatnagar, learned counsel for respondent no. 1/ complainant submitted that the accused had executed an affidavit acknowledging his liability to pay rent to the complainant. This Court should not re-appreciate the evidence while deciding the revision. Therefore, he prayed that the present revision be dismissed.

12. Mr Jitender Sharma, learned Additional Advocate for the respondent no. 2/State submitted that the dispute is between the private parties and the State has no submissions to make.

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 ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed: -

> "**7.** Before parting, we would like to accentuate upon the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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>> "**438. Calling for records to exercise powers of revision.—**(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be

released on his own bond or bail bond pending the examination of the record.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

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

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as

the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

"27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere,

> even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."
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> **7.5.** In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

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

16. The accused admitted in his statement recorded under Section 313 of the CrPC that he was a tenant of the complainant, he was liable to pay ₹1,34,600/- plus electricity charges and maintenance/repair of room charges, and he had issued a cheque of ₹1,40,000/- in favour of the complainant. Therefore, the issuance of the cheque and signatures on the

cheque are not disputed. 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."

17. 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."

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

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
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> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in

> ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).
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> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
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> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

19. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that a statutory presumption arises on the admission or proof of the execution of the negotiable instrument, and the burden is upon the accused to rebut this presumption. It was observed:

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so

> probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and therefore to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

20. The complainant Ranjeet Singh (CW1) stated in his cross-examination that the accused was a tenant with him between 2014 and 2018. The rent was fixed at ₹1,40,000/-. The accused issued a cheque to pay ₹1,40,000/-. He did not remember that the accused had transferred ₹1,00,000/- to his account on 20.11.2018. He volunteered to say that it was old rent and the rent for the year 2018 was not received by him. He admitted that the accused had transferred ₹50,000/- from his account to his (complainant's) account on 29.11.2018. He admitted that ₹1,40,000/- was received from the account of the wife of the accused on 27.06.2017.

21. The admissions made by the complainant in his cross-examination show that he had received ₹1,00,000/-, ₹ 50,000/- and ₹ 1,40,000 /-from the accused and his wife. The

amount of ₹50,000 was received on 29.11.2018, and ₹1,40,000 was received on 27.06.2017. The complainant never acknowledged the receipt of this amount in the complaint, and the admission made by him regarding the receipt of various amounts made it doubtful that the accused had a subsisting liability of ₹1,40,000/-

22. The cheque was issued on 29.10.2018 and it was presented on 23.01.2019, as per the memo (Ext. CW1/D). The complainant admitted that an amount of ₹50,000/- was transferred by the accused to his account on 29.11.2018 after the issuance of the cheque and before its presentation. It was laid down by the Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel*, *(2023) 1 SCC 578: 2022 SCC OnLine SC 1376*** that the cheque can be presented for the amount due and if some payment had been made before the presentation of the cheque, the complainant is bound to endorse it and present the cheque for the remaining amount. It was observed: -

> **20.** The judgments of this Court on post-dated cheques, when read with the purpose of Section 138, indicate that an offence under the provision arises if the cheque represents a legally enforceable debt *on the date of maturity*. The offence under Section 138 is triggered by

the dishonour of the cheque when it is sought to be encashed. Though a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstances such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under Section 138 is not made out.

24. It was the contention of the first respondent that the cheque was not dated. On the other hand, it was the contention of the appellant that the cheque was dated 17-3-2014. The courts below did not record a finding on whether the cheque was undated or was dated 17-3-2014. However, it was conclusively held that the cheque was issued by the first respondent for security on the date when the loan was borrowed. It was also categorically recorded by the courts below that a sum of Rs 4,09,315 that was paid by the first respondent was paid to partly fulfil the debt of rupees twenty lakhs. The appellant, in his cross-examination, has stated that a "cheque against a cheque" was given when he loaned the sum of rupees twenty lakhs. Thus, it can be concluded that the cheque was given as security to discharge the loan, either undated or dated as 17-3-2014. Merely because the sum of Rs 4,09,315 was paid between 8-4-2012 and 30-12-2013, which was after 17-3-2014, it cannot be concluded that the sum was not paid in discharge of the loan of rupees twenty lakhs. The sum of Rs 4,09,315 was paid *after* the loan was lent to the first respondent. The appellant, in his cross-examination, has not denied the receipt of the payments. He has also stated it was not received as a "gift or reward". In view of the above discussion, at the time of the encashment of the cheque, the first respondent did not owe a sum of rupees twenty lakhs as represented in the cheque at the time of encashment of the cheque that was issued for security.

34. In view of the discussion above, we summarise our findings below:

34.1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

34.2. If the drawer of the cheque pays a part or the whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.

34.3. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted.

34.4. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the "legally enforceable debt" on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.

34.5. The notice demanding the payment of the "said amount of money" has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the

> validity of the form of the notice need not be decided."

23. Therefore, the liability was reduced by the amount paid by the accused and the cheque could not have been presented for the whole amount.

24. It was submitted that the accused acknowledged his liability to pay the amount in the statement recorded under Section 313 of CrPC. However, this submission will not help the respondent. The accused had paid ₹ 50,000 out of the liability of ₹ 1,40,000/- on the date of issuance of the cheque, and the admission regarding the liability will not help the complainant.

25. Learned Courts below failed to notice the effect of the payment received by the complainant after the issuance of the cheque and before its presentation and erred in holding that the cheque was valid and could have been presented for the whole of the amount. Therefore, the judgments and order passed by learned Courts below are not sustainable.

26. In view of the above, the present revision petition is allowed, and the judgments and order passed by the learned Courts below are set aside. The accused is acquitted of the commission of an offence punishable under Section 138 of the

NI Act. The fine amount be refunded to him after the expiry of limitation for filing an appeal, if no appeal is filed, and in case of appeal, the same be dealt with as per the judgment of the Hon'ble Supreme Court.

27. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the petitioner on receipt of notice thereof shall appear before the Hon'ble Supreme Court

28. The present revision stands disposed of, so also the pending miscellaneous application(s), if any

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

(Rakesh Kainthla)
Judge

10th September 2026.
(Ravinder)