IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 642 of 2025
Reserved on: 11.3.2026
Date of Decision: 23.3.2026.

Vijay Kumar ...Petitioner

Versus

M/s New Shilpi Jewellers through its Partner Pankaj Chauhan ...Respondent

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

For the Petitioner : Mr Jeevan Kumar, Advocate.
For the Respondent : None.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 16.9.2025 passed by learned Additional Sessions Judge-1, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 26.5.2025, passed by learned Chief Judicial Magistrate, Kangra at Dharamshala, District Kangra, HP (learned Trial Court) were upheld *(Parties shall hereinafter be*

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

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

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is a partner of M/s Shilpi Jewellers. The accused purchased gold worth ₹1,84,000/- from the complainant on 8.11.2019 vide Invoice No. 1227. He issued a cheque of ₹1,84,000/- (Ex.C2), drawn on State Bank of India, to discharge his liability. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement 'insufficient funds' vide memo (Ex.C4). The complainant issued a legal notice (Ex.C5) asking the accused to repay the amount within 15 days of the receipt of the notice. The notice was served upon the accused, and an acknowledgment (Ex.C7) was received by him. The accused failed to repay the amount; hence, the complaint was filed before the learned Trial Court for taking action as per law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to 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 his complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the complainant's case. He asserted that the cheque was issued as security, and it was misused by the complainant. He did not produce any evidence in defence.

6. Learned Trial Court held that the issuance of the cheque was not disputed. The complainant admitted in the cross-examination that the accused had paid ₹1,76,000/- during the pendency of the complaint. The complainant produced the details (Ex.C8), which showed that the liability of ₹5,05,141/- was due. Therefore, the payment of the amount during the pendency of the complaint would not help the accused. 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 one year, pay a fine of ₹2,60,000/- and in default of payment of the fine to undergo further 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 Additional Sessions Judge (I), Kangra at Dharamshala, District Kangra, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed. A presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut the presumption. The amount of ₹1,76,000/- deposited by the accused during the pendency of the complaint was adjusted by the complainant towards the overall liability, and a sum of ₹5,05,141/- was due as per the details (Ex.C8). The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was duly served upon the accused, and he failed to repay the amount. The sentence imposed by the learned Trial Court was adequate, and

no interference was required with it. 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 properly appreciate the material placed before them. The memo of dishonour of the cheque was received by the complainant on 15.11.2019, and the legal notice was issued on 3.12.2019. The notice was served upon the accused on 4.12.2019. The complaint was filed on 18.1.2020, which was beyond the period of limitation. The cheque bearing Serial No.651308 was the subject matter of another case bearing No.21-3/2020 filed before the learned Chief Judicial Magistrate, Kangra and is the subject matter in another revision. The same cheque cannot be issued on two different occasions and for different amounts. An amount of ₹1,76,000/- was paid during the pendency of the proceedings. This payment was ignored by the learned Courts below. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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9. Mr Jeevan Kumar, learned Legal Aid Counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material placed before them. The complaint was filed on behalf of M/s New Shilpi Jewellers, which is stated to be a partner firm; however, no registration certificate of the victim was produced on record, and a complaint by an unregistered firm was not maintainable. The complaint was barred by limitation. An amount of ₹1,76,000/- was paid during the pendency of the complaint. This amount was wrongly excluded by the learned Courts below. Therefore, he prayed that the present revision be allowed and judgments and order passed by learned Courts below be set aside.

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

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

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

12. 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.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has

been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*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."

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

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

> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (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."

15. 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.

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

17. It was submitted that no proof of the registration of the firm was filed, and the complainant has to be treated as an unregistered firm. A complaint filed by an unregistered firm is not maintainable. This submission cannot be accepted. The law regarding the filing of the complaint by the unregistered firm was discussed by this Court elaborately in ***Uttam Traders Ranghri v. Tule Ram, 2018 SCC OnLine HP 3407,*** where the divergent views of various High Courts were noticed by the Court and it was held that Section 69(2) of the Indian Partnership Act only bars the civil proceedings for the recovery of money by an unregistered firm, and not the proceedings under Section 138 of NI Act. It was observed: -

> "**33.** From the aforesaid discussion, it would be noticed that, save and except an isolated authority of the Division Bench of Andhra Pradesh High Court in ***Amit Desai's case*** (supra), all other High Courts in the country have categorically held that the proceedings under Section 138 of the N.I. Act, are not recovery proceedings.
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> **34.** Therefore, even an unregistered Partnership firm can maintain a complaint under Section 138 of the Act.

> **35.** That apart, it would further be noticed that the view taken by the Andhra Pradesh High Court, in fact, is contrary to the ratio of the judgment laid down by the Hon'ble Supreme Court in ***R. Vijayan's case*** (supra). Therefore, in the given facts and circumstances, I am of the considered view that the criminal prosecution initiated by the complainant against the respondent is not hit by Section 69 of the Partnership Act."

18. Hence, in view of the judgment of this Court, the submission that a complaint filed by an unregistered firm is not maintainable cannot be accepted.

19. It was submitted that the complainant had asserted in the complaint that he was authorised by the partner of the firm to file a complaint; however, no such authorisation was placed on record, and the complaint is not maintainable. This submission cannot be accepted. It was laid down by the Karnataka High Court in ***Padmavati Finance Registered vs Md. Yosuf Ali S/O Haji Abdul Hameed Criminal Appeal No.3608/2009 decided on 05-07-2013*** that any partner of the firm can file a complaint under Section 19(2)(a) to (h) of the Partnership Act. It was observed: -

> "21. Section 22 of the Indian Partnership Act deals with the mode of doing an act to bind the firm, which reads as follows:
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> > "22. Mode of doing act to bind the firm.- In order to bind a firm, an act or instrument done or executed

> by a partner or other person on behalf of the firm shall be done or executed in the firm's name, or in any other manner expressing or implying an intention to bind the firm".

Thus, as per the provisions which are barred under Section 19(2)(a) to (h) of the Partnership Act, any partner of the firm can file the complaint, as the definition under Section 2(a) of the Partnership Act gives rise to a right enforceable by or against the firm.

22. In the instant case, one of the partners of the firm complained about the accused when the cheque issued by him was dishonoured. The partner of the firm, therefore, has an enforceable right under the law on behalf of the firm or against the firm unless barred under Section 19(2) of the Partnership Act or against the bylaws of the partnership deed.

23. In the instant case, learned counsel for the complainant fairly submitted that there are no specific bylaws permitting any partner of the firm to file a complaint with the firm for the benefit of the firm, which is the payee defined under Section 142 of the Act.

24. Even during the trial, the accused had not produced any kind of evidence to prove that the firm is not intending to prosecute him for the offence under Section 138 of the Act and that the firm has no intention to prosecute him. In that view of the matter, the complainant representing the firm is competent to lodge the complaint on behalf of the firm for recovery of the amount due to the firm from the accused by invoking the provisions of Section 138 of the Act.

25. Having regard to the above facts and circumstances, the learned Magistrate was not justified in acquitting the accused on the sole ground that the complainant was not authorised to file a complaint on behalf of the firm.

20. It was laid down by the Bombay High Court in ***Reshmi Constructions v. Laxman Vithal Chunekar***, *2014 SCC OnLine Bom*

2894: (2014) 5 Mah LJ 537 that the partner of a firm can file a complaint on behalf of the firm without any authorisation. It was observed at page 541:

> "**17.** From the above provisions of the Act, it is clear that every partner is an agent of the Firm and his other partners for the purpose of business of the firm, and the acts of every partner bind the firm and his partners, unless, of course, the partner had, in fact, no authority to act for the firm and his other partners. The learned trial Magistrate relied upon the judgment of this Court in the case of ***Alka Toraskar v. State of Goa, 2007 (1) Goa L.T. 159,*** which pertains to a Co-operative Society. The trial Magistrate further relied upon ***Fragrant Leasing and Finance Co. Ltd. v. Jagdish Katuria, 2008 All MR (Cri.) Journal 3*** and the judgment in the case of ***Chico Ursula D'Souza v. Goa Plast Pvt. Ltd., 2008 (6) Mh. L.J. 353: 2008 (3) Mh. L.J. (Cri.) 323: 2009 (1) All MR 290***, both of which pertain to Company. Admittedly, a Company is a separate juristic person distinct from its directors or shareholders, and the Company acts through the resolution passed by the Board of Directors. Because of the above, a person who claims to represent another is bound to produce an authority or power which entitles him to appear. The above is not the case with the Partnership Firm. As has already been seen above, each partner is an agent of the Firm. In the present case, it is not that some person, on the strength of a power of attorney, had filed a complaint and had deposed on behalf of the complainant. In the present case, the complaint was not filed by PW 1, but it was filed by the Firm, through PW 1, as a partner of that Firm. The person who deposed on behalf of the complainant was one of the partners of the said Complainant-Firm. In fact, the agreement dated 5-4-2005 was signed by the same partner, Shri Pandharinath Chafadkar (PW 1), for himself and as attorney of the other two partners, Arun Chafadkar and Narayan Nigalye. In the

> circumstances above, the finding of the Trial Magistrate that there was no authority for PW 1 to file the complaint or to depose on behalf of the complainant is not correct.

21. The accused claimed in his statement recorded under Section 313 of Cr.P.C. that the cheque was issued as security, which was misused by the complainant. Thus, the issuance of the cheque and the signatures on the cheque were 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 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."

22. It was laid down 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."

23. 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

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.
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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***].

24. Thus, the learned Courts below had rightly held that the cheque was issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption.

25. It was submitted that the accused had paid ₹1,76,000/- during the pendency of the proceedings, which fact was admitted by the complainant, and the complaint was not maintainable. This submission will not help the accused. The cause of action for filing the complaint was complete on the

expiry of 15 days from the date of the receipt of the notice, and any payment made thereafter will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Rajneesh Aggarwal v. Amit J. Bhalla*, *(2001) 1 SCC 631***, that any payment made after the cause of action had arisen would not wipe out the offence. It was observed:-

> **7.** So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fides, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of the deposit of money in the court or that an order of quashing of a criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence.

26. Further, the learned Courts below had rightly pointed out that the accused had a liability of ₹5,05,141/- as per the

detail (Ex.C8). Section 59 of the Indian Contract Act enables a debtor owing distinct debts to make the payment with express intimation that the payment is to be applied to discharge the particular debt. Section 60 of the Contract Act empowers the creditor to appropriate the amount towards any of the debts in the absence of any such stipulation. It was laid down by ***Delhi High Court in Amazing Research Laboratories Ltd. v. Krishna Pharma, 2023 SCC OnLine Del 1498,*** that the creditor is entitled to appropriate the amount towards any debt in the absence of a specific stipulation from the debtor. It was observed:

> "**48.** The underlying principles of apportionment as contained in above sections according to Pollock & Mulla, *Indian Contract Act*, 12th Edition, is that when several debts are due and owing to one person, any payment made by the debtor either with an express intimation or under circumstances from which an intimation may be implied, must be applied to the discharge of the debt in the manner intimated or which can be implied from the circumstances. **Mulla** proceeds to observe that "*where several distinct debts are owed by a debtor to his creditor, the debtor has the right when he makes a payment to appropriate the money to any of the debts that he pleases, and the creditor is bound, if he takes the money, to apply it in the manner directed by the debtor. If the debtor does not make any appropriation at the time when he makes the payment, the right of appropriation devolves on the creditor".*
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> **49.** The Rule of Appropriation of money was summed up by Mr Justice T.L. Venkatarama Aiyar (as he then was) in the Full Bench decision of the Madras High Court

in **Marimella Suryanarayana v. Venkataraman Rao (AIR 1953 Mad 458)**. His Lordship stated:

> "*The principles governing appropriation of payments made by a debtor are under the general law, well settled. When a debtor makes a payment, he has a right to have it appropriated in such manner as he decides, and if the creditor accepts the payment, he is bound to make the appropriation in accordance with the directions of the debtor. This is what is known in England as the rule in* '***Clayton's case" (1861) 1 Mar. 572: 35 E.R. 781,*** *and it is embodied in Section 59, Contract Act. But when the debtor has not himself made any appropriation, the right devolves on the creditor who can exercise it at any time, vide* '***Cory Bros. & Co. v. Owners of the Turkish Steamship 'Mecca', [1897] A.C. 286***; *and even at the time of the trial: Vide* '**Symore *v.* Picket'**, ***[1905] 1 K.B. 715****. That is Section 60, Contract Act. It is only when there is no appropriation either by the debtor or the creditor that the Court appropriates the payments as provided in Section 61, Contract Act."*

50. In the case of ***Anmol Steel Processors Private Limited v. Colour Roof (India) Limited (2022 SCC OnLine Bom 116),*** the Bombay High Court analysed Sections 60 and 61 of the Indian Contracts Act and observed:

> *"55. Under section 60 of the Indian Contract Act, where the debtor has omitted to intimate and there are no settled circumstances undertaking the debt to be applied, the creditor may apply at his discretion to any lawful debt actually due and payable to him from the creditor, whether is regular or is not barred by law in force for the time being as to the limits of the suit"*
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> *"56. At this stage, it would be apposite to refer to section 61 of the Indian Contract Act, which provides that where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the*

> *debts are of equal standing, the payment shall be applied in discharge of each proportionally."*
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> **51.** Thus, to summarize where a debtor, owing several distinct debts to one person, makes a payment indicating that the payment is to be applied to the discharge of some particular debt, the payment must be applied accordingly in terms of S. 59 of the Contract Act. However, where the debtor omits to so intimate, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its *recovery is or is not barred by the law in force for the time being as to the limitation of suits*, according to S. 60. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by limitation in terms of Section 61 of the Contract Act."

27. In the present case, there is no evidence that the accused had specified that the amount was being paid towards the cheque amount, and in the absence of any such stipulation, the complainant was justified in adjusting the amount towards the other payment.

28. It was submitted in the memo of the revision that some other complaint was filed regarding the cheque bearing No.651308; however, there is no foundation for this submission. No copy of such a complaint or the judgment was brought on record. The accused did not step into the witness box to assert any such fact. Thus, the plea is without any foundation and cannot be accepted. It was held in ***Sumeti Vij v. Paramount Tech***

Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201 that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 of Cr.P.C. is not sufficient to rebut the presumption. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant 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)"

29. There was no other evidence 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.

30. The cheque was dishonoured with an endorsement 'funds insufficient' vide memo (Ex.C4). It was laid down by the Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore, (2010) 3 SCC 83: (2010) 1 SCC (Civ) 625: (2010)***

2 SCC (Cri) 1: 2010 SCC OnLine SC 155 that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> **24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable.

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

32. The complainant sent a notice to the accused, which was served upon him, and an acknowledgement (Ex.C7) was received by him on 4.12.2019. It was submitted that the complaint is barred by limitation. This cannot be accepted. As per the acknowledgement, a legal notice was served upon the accused on 4.12.2019. It was laid down by the Hon'ble Supreme Court in ***Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1,*** that the date on which the notice was served has to be excluded while calculating the period of limitation. It was observed:-

> **7.** The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
>
> **8.** Hence, there is no reason for not adopting the rule enunciated in the aforesaid case, which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily, in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. So cause of action for filing a complaint would arise from 15-10-1995. That day (15th October) is to be excluded from counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time.

33. This judgment was followed in ***Econ Antri Ltd. v. Rom Industries Ltd., (2014) 11 SCC 769,*** wherein it was observed: -

> **42.** Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that ***Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1: 1999 SCC (Cri) 329]*** lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that ***SIL Import, USA [SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567: 1999 SCC (Cri) 600]*** does not lay down the correct law. Needless to say, any decision of this Court which takes a view contrary to the view taken in ***Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1: 1999 SCC (Cri) 329]*** by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly."

34. Therefore, the date of service of notice, i.e., 4.12.2019, has to be excluded, and the complaint filed on 18.1.2020, within 45 days from the date of the service of notice, cannot be said to be barred by limitation.

35. The accused had not paid the amount despite the receipt of the notice. Hence, the learned Trial Court had rightly held that all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

36. Learned Trial Court had sentenced the accused to undergo simple imprisonment for one year. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019)***

4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138 that the penal provisions of Section 138 of the NI Act is a deterrent in nature. It was observed at page 203:

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

37. Keeping in view the deterrent sentence to be awarded, the sentence of one year cannot be said to be excessive, and no interference is required with it.

38. Learned Trial Court had awarded a compensation of ₹2,60,000/-. The cheque was issued on 8.11.2019. The compensation was awarded on 26.5.2025 after the lapse of six years. The complainant lost money that he would have gained by depositing the cheque amount in the bank or by investing it somewhere else. He had to engage a counsel to prosecute the complaint filed by him. Therefore, he was entitled to be compensated for his loss. 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***]"

39. Therefore, the compensation of ₹2,60,000/- cannot be said to be excessive.

40. It was submitted that the learned Trial Court could not have awarded the sentence of imprisonment in default of payment of compensation. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: 2010 SCC OnLine SC 612*** that the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

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

40. This position was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721: 2012 SCC OnLine SC 486,*** wherein it was observed at page 729:

> "**29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It

> could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.
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> **30.** In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

41. Hence, the sentence of imprisonment in default of payment of compensation is not bad.

42. No other point was urged.

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43. In view of the above, the present revision fails, and it is dismissed, and so are the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

23rd March, 2026
(Chander)