

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No. 34 of 2024.

Reserved on: 24.02.2026.

Decided on: 05 March, 2026.

Nikka Ram

.... **Petitioner.**

Versus

Padam Nath (since deceased) through his Lrs. & Anr.

...Respondents.

Coram:

The Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner: Mr Pritam Singh Chandel,
Advocate.

For the Respondents: None for the LR-Kehar Chand

Mr Ajit Sharma, Dy. A.G., for
respondent No.2.

Rakesh Kainthla, Judge.

The present revision petition is directed against
the judgment passed by learned Additional Sessions Judge-I,
Mandi (learned Appellate Court) in Criminal Appeal No.

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

111/2023/20-22 on 15.12.2023 vide which the judgment of conviction dated 02.07.2022 and the order of sentence dated 21.07.2022 passed by learned Judicial Magistrate 1st Class, Karsog (learned trial Court) in Criminal Case No. 50 of 2017 were upheld. *(The parties hereafter shall be referred to by the same status as they held before the learned trial Court for the sake of convenience).*

2. Briefly stated, the facts giving rise to the present revision petition 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 (for short "N I Act"). It was asserted that the accused was working as an insurance agent of Oriental Insurance Company. He insured the complainant's vehicle bearing registration No. HP-65-2607; however, he reduced the insurance value of the vehicle from ₹ 9,00,000/- to ₹ 80,000/-. The complainant had paid the full amount to the accused, and the accused failed to insure the

vehicle for its full value. The vehicle met with an accident. The accused promised to pay ₹ 1,00,000/- to compensate the complainant and issued a cheque to discharge his liability. The complainant presented the cheque at Punjab National Bank, but it was dishonoured with an endorsement "insufficient funds". The complainant issued a notice to the accused asking him to repay the money within 15 days from the date of receipt of the notice. The notice was duly served upon the accused, but the accused failed to repay the amount. Hence, a complaint was filed to take action against the accused.

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

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

5. Accused in his statement recorded under Section 313 of the Cr.P.C. admitted that he was working as an insurance agent and he had insured the complainant's bus bearing registration No. HP-65-2607. He stated that the amount might have been reduced from ₹ 9,00,000/- to ₹ 80,000/- due to a typing mistake. He admitted that he had entered into a compromise with the complainant to compensate him, but claimed that the complainant had not agreed to the compromise. He claimed that the complainant had snatched the cheque from him, and he had reported the matter to the police and the bank. He did not remember whether the cheque was signed by him. He admitted that he had received the notice. He stated that he was not liable to pay ₹ 1,00,000/-. He examined HHC Ravinder Kumar (DW-1), Smt. Rekha Sharma (DW-2), Mahender Lal Sharma (DW-3), himself (DW-4) and Kaul Ram (DW-5) to prove his defence.

6. Learned Trial Court held that the accused admitted his signature on the cheque, and a presumption

arose that the cheque was issued in discharge of the debt/liability. The burden shifted upon the accused to rebut the presumption. The accused failed to rebut the presumption. Mere registration of the report with the police is not sufficient to rebut the presumption. Accused admitted his liability to pay ₹ 1,00,000/- in his statement recorded under Section 313 of the Cr.P.C. This admission corroborated the complainant's stand. The cheque was dishonoured with an endorsement "insufficient funds". The accused admitted the receipt of notice. All the ingredients of the commission of an offence punishable under Section 138 of the N I Act were duly satisfied; hence, the learned Trial Court convicted the accused for the commission of an offence punishable under Section 138 of the N I Act and sentenced him to undergo simple imprisonment for six months and pay compensation of ₹ 1,50,000/-.

7. Being aggrieved by the judgment of conviction and the order of sentence passed by the learned Trial Court,

the accused filed an appeal, which was decided by the learned Additional Sessions Judge-1, Mandi. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed. The cheque was given to the complainant by the accused as per the compromise to compensate him (the complainant) for the loss caused by the error of the accused. The defence taken by the accused that he had no subsisting liability to pay the amount to the complainant was not probable. The cheque was dishonoured with an endorsement "insufficient funds". Notice was duly served upon the accused, and he had not repaid the money. All the ingredients of Section 138 of the NI Act were duly satisfied. Learned Trial Court had rightly convicted the accused. There was no error in the judgment and order; 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 petition asserting that the learned Courts below failed to properly appreciate the material on record. There was no proper service of notice upon the accused. The vehicle was insured with the Oriental Insurance Company, and the accused, being an agent, was not liable to pay any money to the complainant. The cheque was issued without any consideration. The complainant did not raise any objection after the receipt of the policy, which falsifies the plea taken by him that the amount was reduced by 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 Pritam Singh Chandel, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

10. None had appeared on behalf of the legal representative of the complainant on the date of the hearing, and none could be heard on his behalf.

11. Mr Pritam Singh Chandel, learned counsel for the petitioner, submitted that the learned Courts below erred in appreciating the material on record. The complainant had failed to prove the existence of any debt/liability. The vehicle was insured by the Oriental Insurance Company, and the accused, being an agent, had no liability to pay compensation to the complainant. The version of the accused that the complainant had snatched the cheque was duly proved by defence evidence. Therefore, he prayed that the present revision petition be allowed and the impugned judgments and order be set aside.

12. Mr Ajit Sharma, learned Deputy Advocate General, has submitted that the dispute is between the private parties and the State has nothing to say in the matter.

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

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

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

15. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 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 [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.

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 aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

16. It was held in ***Kishan Rao v. Shankargouda, (2018)***

8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018

SCC OnLine SC 651 that it is impermissible for the High Court

to reappraise 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 reappraise 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.”

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

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

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.”

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

19. The ingredients of an 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. Accused admitted while appearing as DW-4 that the cheque (Ex.CW1/A) contained his signature inside the circle "A", and it was issued for ₹ 1,00,000/-. 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."

21. 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."

22. 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).

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**].

23. Thus, learned Courts below had rightly held that a presumption would apply that the cheque was issued for consideration to discharge the debt/liability.

24. The accused admitted in his cross-examination that he used to get the complainant's vehicle insured for many years. He stated in his statement recorded under Section 313 of the Cr.P.C. that he had insured the complainant's vehicle bearing registration No. HP-65-2607. He stated that the amount might have been reduced from ₹ 9,00,000/- to ₹ 80,000/- due to a typing mistake. He admitted that he had agreed to compensate the complainant by paying him ₹ 1,00,000/-. 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:

“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), and 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 aforesaid observations apply with equal force."

25. 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)

26. 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., insofar 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."

27. 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)

“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.”

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.

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.”

28. The answers given by the accused in his statement recorded under Section 313 of the Cr.P.C. corroborate the complainant's version.

29. Smt. Rekha Sharma (DW-2) admitted in her cross-examination that the complainant's vehicle was insured with Oriental Insurance Company and the complainant had agreed not to file any case regarding the compensation. She admitted that the cheque was handedover by the accused to the complainant in her presence to compensate the complainant for the loss of the insurance. Sh. Mahender Lal Sharma (DW-3) stated in his examination-in-chief that the complainant had agreed not to file any claim against the company. He admitted in his cross-examination that an agreement was executed regarding the claim of the vehicle. The accused made a report (Ex.DW1/A) to the police, stating that he had issued a cheque in favour of the complainant, but the complainant refused to acknowledge the compromise, and he (the complainant) should be directed to return the

cheque. Thus, the evidence on record proved that the accused had agreed to compensate the complainant for his loss, and the complainant had agreed not to sue the insurance company.

30. It was submitted that the accused was an agent of the insurance company, and he was not liable to pay any money to the complainant. This submission will not help the accused. The insured value of the vehicle was reduced by the accused, which caused loss to the complainant. The accused agreed to compensate the complainant for the loss caused by his act. Therefore, the agreement between the complainant and the accused was independent of the insurance agreement between the complainant and the insurance company. Hence, the plea that the accused was not liable to pay anything to the complainant is not acceptable.

31. The accused claimed that the complainant had snatched the cheque from him. This claim cannot be accepted. The report (Ex. DW-1/A) nowhere mentions that the

complainant had snatched the cheque from the accused; rather, it mentions that the cheque was given to the accused pursuant to the compromise. Hence, the plea that the complainant had snatched the cheque from the accused was rightly rejected by the learned Courts below.

32. Therefore, the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque that it was issued for consideration in discharge of the liability, and there is no infirmity in the findings recorded by the learned Courts below.

33. Kaul Ram (DW-5) admitted in his cross-examination that the cheque was dishonoured with an endorsement "insufficient funds" vide memo (Ex. CW1/B). Therefore, it was duly proved that the cheque was dishonoured because of insufficient funds.

34. Accused Nikka Ram (DW-4) admitted in his cross-examination that the complainant had served notice (Ex.CW2/B) upon him. He voluntarily stated that he had issued

a reply. Thus, the service of the notice was not disputed, and the plea that the notice was not served upon the accused is not acceptable.

35. The accused did not claim that any money was paid to the complainant after receipt of notice.

36. Hence, it was duly proved that the accused had issued the cheque for the discharge of his liability, which was dishonoured, and the accused has failed to discharge his liability despite the service of the notice. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the N I Act were duly satisfied, and there is no infirmity in the judgment convicting the accused for the commission of an offence punishable under Section 138 of the N I Act.

37. The learned Trial Court sentenced the accused to undergo simple imprisonment for six months and to pay compensation of ₹1,50,000/-. 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 NI

Act 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.”

38. Keeping in view the deterrent nature of the punishment, the sentence of six months cannot be said to be excessive.

39. Learned trial Court awarded compensation of ₹1,50,000/- on 21.07.2022. The cheque was issued on 10.12.2016. Thus, the compensation was awarded after a lapse of 5 ½ years. 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*]”

40. The cheque was issued for ₹ 1,00,000/- and compensation of ₹1,50,000/-. It means that only ₹50,000/- was awarded towards interest and litigation expenses, which cannot be said to be excessive, requiring any interference from this Court.

41. No other point was urged.

42. In view of the above, the present revision petition fails, and the same is dismissed, so are the pending applications, if any.

43. Records be sent back forthwith.

(Rakesh Kainthla)
Judge

05 March, 2026.
(jai)