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(2029) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Revision No. 855 Of 2024

Ankush Kango		APPELLANT
	Vs	
PNB & Others		RESPONDENT

Date of Decision: Dec. 15, 2029

Acts Referred:

- Negotiable Instruments Act, 1881-Section 20, 87, 118(a), 138, 139
- Code Of Criminal Procedure, 1973-Section 313, 397, 398, 399, 400, 401, 482
- Evidence Act, 1872-Section 146, 147

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Vidush Chauhan, Hemant Thakur, Arvind Sharma, Prashant Sen

Final Decision: Disposed Of

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 30.11.2025 passed by learned Sessions Judge, Hamirpur, H.P. (learned Appellate Court) vide which the judgment of conviction dated 26.04.2024 and order of sentence dated 27.04.2024 passed by learned Judicial Magistrate First Class, Court No.3, Hamirpur (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 Neg tiable Instruments Act (NI Act). It was asserted hat he complainant is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its head office at plot No.4, Dwarka, Sector 10, New Delhi-110075. It has various branches, and one such branch is located at Bhota. The complainant is engaged in banking activities. The accused raised a loan of ₹5,00,000/- and executed

the necessary documents in favour of the complainant. The accused failed to repay the loan as per the terms and conditions agreed between the parties. He issued a cheque of ₹5,13,387/- in favour of the complainant to discharge his liability. The complainant presented the cheque, but it was dishonoured with the endorsement funds insufficient. The complainant served a notice upon the accused on 13.10.2022, asking him to repay the amount within 15 days from the date of receipt of the notice.

However, the accused failed to repay the amount. Hence, the complaint was filed before the learned Trial Court for taking action against the accused as per the law.

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

4. The complainant examined Tanuj Rathore (CW-1) to prove its complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted his signature on the cheque. He claimed that he had an account with the bank and the cheques were lying with the bank. He was not liable to pay any amount. The cheque was misused, and the cheque is not in his handwriting. He did not produce any evidence in defence.

6. Learned Trial Court held that the accused admitted his signature on the cheque. There is a presumption that the cheque was issued for consideration to discharge the debt/liability. The burden would shift upon the accused to rebut the presumption. The accused denied that he had taken the loan, but it was proved by the documents that the loan was advanced to him. Even if the accused had handed over a blank cheque to the complainant, the complainant had sufficient authority to fill in the amount and present the cheque before the bank. The accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement funds insufficient. Notice was duly served upon the accused, and he failed to repay the amount despite the receipt of the valid notice of demand. Therefore, 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 four months, pay a fine of ₹5,75,000/- and in default of payment of fine to undergo an additional 15 days simple imprisonment. It was ordered that out of the f ne realised, ₹5,000/- be deposited to the State and ₹5,70,000/- be disbursed to the complainant as compensation.

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 (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that admission of signatures on the cheque would trigger a presumption under Section 118(a) and 139 of the NI Act, and the burden would shift

upon the accused to rebut the presumption. In the present case, there was no evidence of handing over the blank cheque to the complainant. The plea taken by the accused that the cheques were lying with the bank was not sufficient to rebut the presumption. The cross- examination of the complainant was also not sufficient to rebut the presumption. Learned Trial Court had imposed an adequate sentence, and no interference was required with it. Therefore, 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 t at t e learned Courts below erred in appreciating the mater al placed before them. The accused had successfully rebutted the presumption contained under Sections 118(a) and 139 of the NI Act. The complainant had failed to prove the existence of the legal liability for which the cheque was issued. Hence, 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 Vidush Chauhan, learned vice counsel representing the petitioner, Mr Arvind Sharma, learned counsel for respondent No.1 and Mr Prashant Sen, learned Deputy Advocate General for respondent No.2/State.

10. Mr Vidush Chauhan, learned vice counsel representing the petitioner, submitted that the learned Courts below erred in appreciating the evidence placed on rec rd. The plea taken by the accused that the cheques we e lying with the bank and were misused by the complainant was highly probable. The learned Courts below erred in holding otherwise. The complainant failed to prove the advancement of the loan to the accused by producing the documents stated to have been executed by the accused. The learned Courts below erred in relying upon the presumption to record the conviction. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Arvind Sharma, learned counsel for respondent No.1/complainant, submitted that the accused admitted his signature on the cheque and a presumption would arise under Sections 118(a) and 139 of the NI Act that the cheque was issued for consideration to discharge the debt/liability. The accused did not lead any evidence to rebut the presumption. The cheque was dishonoured with an endorsement funds insufficient, and notice was duly served upon the accused. This Court should not interfere with the concurrent findings recorded by learned Courts below. Hence, he prayed that the present revision be dismissed.

12. Mr Prashant Sen, learned Deputy Advocate General for respondent No.2/State, submitted hat he dispute is between the parties and the State has nothing to do with the present case. Hence, he prayed that appr priate orders be passed.

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 Honble Supreme Court in Malkeet Sin h 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 up n the facts and evidence of the case to reverse those findings.

15. This position was ei e a ed in State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was bserved at page 695:

14. The power and jurisdiction of the Higher Court under Section 397 rPC, 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 n its own merits.

13. Another well-accep ed 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 interlocut ry rder. The Court has to keep in mind that the exercise f revisi nal jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.

16. It was held in Kishan Rao v. Shankargouda, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

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

5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for c rrecting a miscarriage of justice. But the said revisi nal p wer cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, the efo e, it would not be appropriate for the High Co rt to reappreciate the evidence and come to its concl sion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessi ns 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 he court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is g ossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ign red r where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.

17. T is 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. 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 jurisdic-tion, 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 or 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-es-tablished principle of law hat he Revisional Court will not interfere, even if a w ong o der is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Co rt is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisi nal jurisdiction, to upset the concurrent find-ings of the Trial Court and the Sessions Court.

19. The present revision has to be decided as per the parameters laid down by the Honble Supreme Court.

20. The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Honble 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.

21. The accused admitted in eply to question No.6 in his statement recorded under Section 313 of Cr. P.C. that the cheque bears his signature. Thus, learned Courts below had rightly held that the issuance of the cheque and signatures on the cheque were not in dispute. 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 bel w have materially erred in not properly appreciating and c nsidering the presumption in favour of the complainant hat there exists a legally enforceable debt or liabili y as per Section 139 of the NI Act. It appears that both the lea ned 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 ab ve, 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. A similar view was taken 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. This position was reiterated in Sanjay 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 Secti n 118 f the NI Act that the cheque in question was drawn f r c nsideration and the presumption under Sec ion 139 of the NI Act that the holder of the cheque received he 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-J dge 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 ourt 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].

24. Thus, the learned Courts below were justified in raising the presumption that the cheque was issued in discharge of the liability for consideration.

25. Tanuj Rathore (CW1) stated in his proof affidavit that the accused had raised a loan of ₹5,00,000/- and executed necessary documents in favour of the bank. He admitted in his cross-examination that he had not produced any document on the file He volunteered to say that he had brought the documents with him.

26. It was submitted that this witness had not brought the documents with him, and the learned Courts below erred in holding the existence of enforceable debt/liability. This submission will not help the accused. Learned Appellate C urt had rightly held that the existence of debt is not to be p oved as in a civil case because of the presumption contained in Section 139 of the NI Act. It was laid down by the Honble Supreme Court in Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: (2020) 1 SCC (Cri) 154: (2020) 1 SCC (Civ) 126: 2019 SCC OnLine SC 1361, that a presumption under Section 139 of NI Act would obviate the requirement to prove the existence of cons deration. It was observed:

20. Th e trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. An dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.

27. This position was reiterated in Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706, wherein it was observed:

22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said

amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial whe ewithal to make the payment in discharge of which the cheque is alleged to have been issued in his fav ur. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the ourt cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as Firozabad). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059, we opined:

8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitione₹ Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound. Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Mo eove , even if it is presumed that the complainant had not p oved the source of the money given to the petitioners by way of loan by producing statement of acco nts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reas n that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. In this regard, we may make profitable reference to the decision in Tedhi Singh v. Narayan Dass Mahant,

(2022) 6 SCC 735:

10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, further achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whe her, in the given case, the accused has shown that he case of the complainant is in peril for the eason that the accused has established a probable defence.(emphasissupplied) (underlining in original; emphasis supplied by us in bold).

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

21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged.

29. Tanuj Rathore (CW1) denied in his cross-examination that the cheque book was lying with the bank because the accused had a saving account with the bank. Thus, the statement of this witness falsifies the plea taken by the accused that his cheques were lying with the bank and the bank had misused the same.

30. The accused claimed in reply to question No. 12 that his cheque was misused. However, he did n t pr duce any evidence to prove this fact. He relied upon he s atement recorded under Section 313 of Cr.P.C. to prove his defence. 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. 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)

31. Therefore, the statement of the accused recorded under Section 313 of Cr.P.C. was not a legally admissible evidence, and the accused cannot derive any advantage from it.

32. Tanuj Rathor (CW1) stated in his cross-examination that he could not say that the handwriting and the signatures on the cheque were different, and these were written by different persons.

It was submitted that a bare perusal f the cheque shows that the words Manager PNB Bhota a e in different handwriting from the rest of the document. This proves the version of the accused that the complainant had filled ut the amount, and the cheque was misused by the bank. This submission will not help the accused. It was laid down by the Honble Supreme Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138, that a person is liable for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act even if the cheque is filled by some other person. It was observed:

33. A meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to

prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case that the resp ndent accused him of either signing the cheque or parting with it under any threat or coe cion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer w uld not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

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

12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.

xxxxxx

32. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.

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

35. The accused did not lead any other evidence to rebut the presumption attached to the cheq e, and the learned Courts below had rightly held to do so.

36. Tanuj Rathor (CW1) stated in his affidavit (Ext.CW1/A) that the c eque was dishonoured with an endorsement funds insufficient. Memo (Ext.CW1/C) also shows that the cheque was d shonoured with an endorsement funds insufficient. It was laid down by the Honble 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.

37. 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 end rsement insufficient funds.

38. Tanuj Rathor (CW1) stated that a notice (Ext.CW1/D) was issued to the accused, which was duly served upon him. This is duly corroborated by the acknowledgement (Ext.CW1/F), which bears the signatures of the accused, and the Track Consignment report (Ext. CW-1/G), which mentions item delivery confirmed. Therefore, it was duly proved that the notice was served upon the accused.

39. The accused did not claim that he had repaid the amount to the complainant; therefore, it was duly proved on record that the accused had failed to repay the amount despite the receipt of the notice.

40. Therefore, it was duly proved before the learned Trial Court that the cheque was issued in discharge of the legal liability, which was dishonoured with an endorsement insufficient funds, and the accused failed to repay the money despite the receipt of a notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court had rightly convicted the accused for the commission of the offence punishable under Section 138 of the NI Act.

41. Learned Trial Cou t sen enced the accused to undergo simple imprisonment for fo r months. It was laid down by the Honble Supreme C urt 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 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.

42. Therefore, the sentence of four months is not excessive.

43. The learned Trial Court ordered the accused to pay ₹5,75,000/- as fine and disbursed ₹5,70,000/- as compensation to the complainant. The cheque was issued on 29.09.2022. The compensation was awarded on 27.04.2024 after the lapse of 1½ years. The complainant lost the interest that it would have gained by advancing the money to other people. The complainant incurred legal expenses by prosecuting the

c mplaint before the learned Trial Court and defending the appeal filed before the learned Appellate Court. Therefore, it was entitled to be compensated for the same. It was laid down by the Honble Supreme Court in Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 S (ri) 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]

44. Hence, the compensation cannot be said to be excessive

45. No other point was urged.

46. In view of the above, the present revision fails and it is dismissed.

47. The present revision petiti n stands disposed of, and so are the pending miscellaneous applica ion(s), if any.