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Himachal Pradesh HC

Case No: Criminal Revision No. 306 Of 2015

Dalip Singh Thaur		APPELLANT
	Vs	
Brij Bhushan		RESPONDENT

Date of Decision: Dec. 15, 2030

Acts Referred:

- Negotiable Instruments Act, 1881-Section 20, 87, 118(a), 138, 138(b), 138(c), 139, 142
- Code Of Criminal Procedure, 1973-Section 313, 357(3), 379, 397, 398, 399, 400, 401, 482
- General Clauses Act, 1897-Section 27
- Evidence Act, 1872-Section 114
- Arbitration And Conciliation Act, 1996-Section 23(4)
- Commercial Courts Act, 2015-Section 12A
- Indian Penal Code, 1860-Section 64, 421

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Nishant Khidta

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 14.10.2014, passed by learned Additional Sessions Judge (1), Sh mla, H.P. Camp at Rohru, (learned Appellate Court) vide which the judgment of conviction dated 25.6.2012 and order of sentence dated 27.7.2012, passed by learned Judicial Magistrate First Class-II, Rohru, District Shimla, HP (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 petition are that the complainant filed a complaint against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short, NI Act). It was asserted that the complainant is a proprietor of Ronak Orchards, Kotkhai, District Shimla, H.P. He had supplied 70 boxes of apples to the accused on 8.8.2010. The accused sold those b xes for ₹25,390/- after deducting the expenses for f eight and storage. The complainant asked the accused to settle the account and pay the money to him. The accused issued a cheque of ₹25,390/- to the complainant. The complainant presented the cheque to State Bank of India, Rohru, for its realisation, but it was dishonoured with an endorsement insufficient funds. The complainant served a notice upon the accused on 3.11.2011, asking him to repay the amount within 15 days from the receipt of the notice. 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 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 read with Section 142 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW1), Swaran Singh (CW2) and Arjun Nahar (CW3) to prove his complaint

5. The accused, in his statement recorded under Section 313 of the CrPC, admitted that he had sold the complainants apples and that he had a running acc unt with the complainant. He stated that he had made the payment to the complainant. The cheque was issued in advance. He had cordial relations with the complainant, but his l ck was not favouring him. He denied that he had received any n tice. He did not produce any defence evidence.

6. T e learned Trial Court held that the accused admitted issuance of the cheque and his signature, which would trigger the presumption under Section 118 (a) and Section 139 of the NI Act. The accused failed to rebut the presumption. The cheque was dishonoured with an endorsement insufficient funds. The notice was duly served upon the accused, and the accused failed to repay the amount. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Hence, he was convicted of the commission of an offence punishable under Section 138 of the NI Act and was sentenced to undergo simple imprisonment for one month, pay a compensation of ₹30,000/- to the complainant and, in default of payment of compensation, to undergo further simple imprisonment for 15 days.

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 Session

Judge-I, Shimla, Camp at Rohru (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the admissi n f the signatures and issuance of the cheque would trigger a presumption under the Negotiable Instruments Act. The burden would shift upon the accused to rebut the presumption, but he failed to do so by leading any evidence. Learned Trial Court had taken a lenient view while sentencing the accused. 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 on record. The accused had issued a blank, signed security cheque, which was misused by the complainant by filling in the amount. The statements of the complainants witnesses were contradictory, and the learned Courts below erred in relying upon the complainants evidence. Therefore, it was prayed that the present revision be allowed and judgments and order passed by learned Courts below be set aside.

9. I have heard Mr Nishant Khidtta, learned counsel for the petitioner/accused. None appeared on behalf of the respondent/complainant, and herefore, none could be heard.

10. Mr Nishant Khidta, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material placed before them. The plea taken by the accused that he had repaid the amount was proved on record, and t e learned Courts below erred in discarding it. Learned Trial Court had imposed an excessive sentence, and learned Appellate Court erred in affirming it. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

12. It was laid down by the Honble 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 sc pe f interference in revision is extremely narrow. Secti n 397 f the Criminal Procedure Code (in short CrPC) ves s jurisdiction to satisfy itself or himself as to the co ec ness, legality or propriety of any finding, sentence or o de , 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.

13. T is 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-f unded error, and it may not be appropriate for the c urt 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 inv ked where the decisions under challenge are gr ssly err neous, 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 aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.

14. 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 C urt. In State of Kerala v. Puttumana Illath Jathavedan Namb diri, (1999) 2 SCC 452: 1999 SCC (Cri) 275], while considering the scope of the revisional jurisdiction of he 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 pr priety f 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 rder passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or here is non-consideration of any relevant ma erial or there is palpable misreading of ecords, the Revisional Court is not justified in setting aside the order, merely because an ther 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.

15. 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.

16. 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 Co rt does not, in the absence of perversity, upset c ncurrent factual findings [See: Bir Singh(supra)]. This C urt is f the view that it is not for the Revisional ourt to re-analyse and re-interpret the evidence on record. As held by this Court in Southern Sales & Services v. Sauer-milch 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.

28. Consequently, this Court is of the view that in the ab-sence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concur-rent findings of the Trial Court and the Sessions Court.

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

18. 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 f r want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum cove ed by he 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 cheq e as unpaid demanding payment of the cheque am unt, 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.

19. T e accused admitted in his statement recorded under Section 313 of the Cr.PC 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. owever, 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 f rward by the accused that the cheques were given by way f security is not believable in the absence of further evidence to rebut the presumption, and more particula ly, he 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 fav ur f the complainant that there exists a legally enforceable debt r liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High ourt 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.

20. 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.

21. A similar view was taken 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, he 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 considerati n 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 a rebuttable presumption. 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 Singhv. Mukesh Kumar,(2019) 4 SCC 197].

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

23. The complainant produced the bill (Ex CW1/F), which mentions that the apples were sold for ₹29,600/- and an amount of ₹4210/- was deducted towards the various expenses. Thus, an amount of ₹25,390/- was due towards the complainant. This corroborates the version of the complainant that the accused was liable to pay ₹25,390/- to the complainant. The accused admitted in his statement recorded nder

Section 313 Cr.P.C. that he had sold the complainants apples. Therefore, it was duly proved on record that the accused was liable to pay ₹25,390/- to the complainant.

24. The accused claimed that he had paid the money to the complainant; however, the complainant denied in his cross-examination that the payment was received by him, and the accused had no liability towards the complainant. A denied suggestion does not amount to any proof and cannot be used to discard the complainants version.

25. The accused did not examine himself to prove the plea taken by him. He relied upon his statement 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 suppo 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)

26. 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.

27. The accused asserted that he had issued a security cheque, which was misused by the complainant. This statement will not help the accused. It has been found above that the accused had a subsisting liability to pay ₹25,390/- to the complainant. The accused claimed that he had repaid the amount to the complainant, but there is no evidence of this fact. Hence, even if a security cheque was issued by the accused to the complainant, the complainant had a right to present it before the Bank. It was laid down by this Court in Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456, that even if the cheque is issued towards the security, the accused is liable. It was observed:

9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security, and n this ground, the criminal revision petition is rejected as being devoid of any force for the reasons hereinafter men ioned. As per Section 138 of the Negotiable Instrumen s Act 1881, if any cheque is issued on account of other liability, then

the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has per sed the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions of Section 138 of the Negotiable Instruments Act 1881. See 2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails.

28. It was laid down by the Hon'ble Supreme Court in Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458 that issuing a cheque towards security will also attract the liability for the commission of an offence punishable under Section 138 of the NI Act. It was observed: -

10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53 with reference to the explanation to Section 138 of the Act and the expression for the discharge of any debt or other liability occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for discharge of debt or liability depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.

11. Reference to the facts f the present case clearly shows that though the word security is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the ag eement, the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was d ly disbursed on 28th February 2002, which was pri r to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in Indus Airways (supra) is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for the discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of Indus Airways (supra), where the purchase order had been cancelled, and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued

for the discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature, where the cheque was for repayment of a loan instalment which had fallen due, though such a deposit of cheques towards repayment of instalments was also described as security in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court. (Emphasis supplied)

29. This position was reiterated in Sripati Singh v. State of Jhark and, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

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

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security, cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have he option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged

within the agreed period, the cheque issued as security cann t thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the c eque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note', and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

30. Therefore, the learned Courts below had rightly held that the accused cannot escape from the liability on the ground that he had issued the cheque as security to the complainant.

31. It was submitted that the signatures on the cheque and the body of the cheque are in different inks, and the name of the payee is in a different handwriting fr m the rest of the cheque, which shows that the cheque was filled in by the complainant. 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 punis able 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 respondent accused him of either signing the cheque or parting with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence r coercion. The second question is also answered in he negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the acc sed, which is towards some payment, would attract pres mption nder 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.

32. 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.

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

34. There is no other evidence to rebut the presumption attached to the cheque. Hence, the learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque.

35. The complainant stated that the cheque was dishonoured with an endorsement insufficient funds. This was duly proved by the statement of Swaran Singh (CW2), who stated that the cheque was received in the Bank and was dishonoured with an endorsement insufficient funds. The Bank issued a cheque returning memo. He was not cross-examined at all, which means t at is statement regarding the dishonour of the cheque due to insufficient funds has been accepted by the accused.

36. The complainant asserted that he had issued the notice to the accused asking him to repay the amount. The accused denied the receipt of any notice; however, the complainant has proved the acknowledgements (Ex.CW1/D and Ex.CW1/E) in which the signatures of some person regarding the receipt have been put. The

notices were sent to the correct addresses and are deemed to be served as per Section 27 of the General Clauses Act. This presumption is strengthened by the acknowledgements placed on record. The accused did not lead any evidence to rebut the presumption, and the learned Courts below had rightly held that the notice was served upon the accused.

37. It was laid down in C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555, that the person who claims that he had not received the notice has to pay the am unt within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

It is also to be b rne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act. (Emphasis supplied)

38. It was submitted that the notice was sent on 16.04 2021 and the complaint was filed on 16.06.2021; hence, the complaint is barred by limitation. This submission is not acceptable. The Honble Supreme Court excluded the period of limitation w.e.f. 15.3.2020 till 28.2.2022, including that prescribed under Section 138 of the proviso (b) and (c) in C gnisance for Extension of Limitation, in re, (2022) 3 SCC 117: 2022 SCC OnLine SC 27, wherein it was observed at page 119: -

5. Taking into consideration the arguments advanced by the learned c unsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri)

615 : (2021) 2 SCC (L&S) 50], 27-4-2021 [Cognizance for Ex-tension of Limitation, In re, (2021) 17 SCC 231: 2021 SCC On-Line SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947], it is directed that the period from 15-3-2020 till 28-2-2022 shall stand ex-cluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remain-ing as on 3-10-2021, if any, shall become available with ef-fect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 and 28-2-2022, notwith-standing the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022, is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the peri-ods prescribed under Sections 23(4) and 29-A of the Arbi-tration and Conciliation Act, 1996, Section 12-A of the Com-mercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe peri d(s) f limitation for instituting proceedings, outer limi s (within which the court or tri-bunal can condone delay) and termination of proceedings.

39. Therefore, it was d ly proved before the learned Trial Court that the cheque was iss ed in discharge of the legal liability, which was dishon ured 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 sat sfied, and the learned Trial Court had rightly convicted the accused for the commission of offence punishable under Section 138 of the NI Act.

40. Learned Trial Court sentenced the accused to undergo simple imprisonment for one month. 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 the penal provision 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.

41. Therefore, the sentence of one month is not excessive.

42. Learned Trial Cou t o dered the accused to pay a compensation of ₹30,000/- to the complainant. The order was announced on 27.7.2012, and the cheque was issued on 12.8.2011. The complainant lost interest that he would have gained by investing the money. He had incurred the legal expenses for prosecuting the complaint before the learned Trial Court. It was la d down by the Honble 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]

43. Keeping in view these considerations, the compensation of ₹30,000/- cannot be said to be excessive.

44. Learned Trial Co rt ordered the imprisonment of 15 days in case of failure to pay the compensation. It was submitted that there is no provision for the awarding of a default sentence in case of failure to deposit the compensation. This submission is not acceptable. It was laid down by the Honble Supreme Court in K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: (2010) 3 SCC (Civ) 744: (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612 that the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed:

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 f the rder of compensation. While passing an order under Section 357(3), it is imperative for the cou s o 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.

45. This p siti n was reiterated in R. Mohan v. A.K. Vijaya Kumar, (2012) 8 S 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013: 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 observati ns made by this Court in Hari Singh (1988) 4 SCC 551: 1988 SCC (Cri) 984 are as important today as they were when hey were made. The conclusion, therefore, is that the o der to pay compensation may be enforced by awarding a sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions C urt 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.

46. T us, there is no infirmity in imposing a sentence of imprisonment in case of default in the payment of compensation.

47. No other point was urged.

48. In view of the above, the present revision fails, and it is dismissed and so are the pending miscellaneous application(s), if any.