(2030) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Revision No. 91 Of 2024

Surekha Devi		APPELLANT
	Vs	
Shakti		RESPONDENT

Date of Decision: Dec. 16, 2030

Acts Referred:

- Constitution Of India, 1950-Article 136
- Negotiable Instruments Act, 1881-Section 118(a), 138, 139
- Code Of Criminal Procedure, 1973-Section 313, 397, 398, 399, 400, 401, 437A, 482
- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 481

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Ashok Kumar Tyagi, Subhash Sharma, Prantap Sharma

Final Decision: Disposed Of

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 11.01.2024, passed by learned Sessions Judge, Una, District Una, H.P. (learned Appellate Court) vide which the judgment of conviction dated 28.07.2023 and order of sentence dated 31.07.2023 passed by learned Additional Chief Judicial Magistrate, Court No.1, Una, District Una, 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 relationship between the par ies was cordial. The accused demanded ₹8,00,000/- f om the complainant;

however, the complainant was unable to lend ₹8,00,000/-, and she advanced ₹5,00,000/- to the accused after repeated requests. The accused again borrowed ₹5,00,000/- after one month from the complainant. Accused issued cheque of ₹ 5,00,000 on 31.12.2020 to disc arge her liability. The complainant presented the cheque to her bank, but it was dishonoured with the endorsement insufficient funds. The complainant informed the accused about the dishonour of the cheque, and she promised to arrange the money. She asked the complainant to present the cheque again. The complainant presented the cheque of ₹5,00,000/- on 2. 03.2021, but it was dishonoured with endorsement insufficient funds. The complainant served a legal notice upon the accused asking her to repay the amount within 15 days of 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 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 her for the c mmission of an offence punishable under Section 138 of he NI Act, to which she pleaded not guilty and claimed to be t ied.

4. The complainant examined Vinod Kumar (CW1) to prove her complaint.

5. The accused, in her statement recorded under Section 313 of CrPC, denied the complainants case. She stated that she did not know the complainant. She admitted that the cheque was ssued by her and bears her signature. She stated that she had paid ₹5,00,000 to the complainant in another complaint along with expenses. She had replied to the legal notice. She tendered documents in her defence.

6. Learned Trial Court held that the accused admitted the issuance of the cheque and her signature on it; therefore, a presumption would be attached to the cheque that it was issued for consideration to discharge the liability. The accused did not explain the circumstances under which the cheque drawn on her account and signed by her came into possession of the complainant. She had not stopped the payment of the cheque or reported the matter to the police. She admitted that parties had different financial transactions, which alsifies the plea taken by her that she did not know the complainant. The accused claimed that she had sent a reply to the no ice, but did not place the reply on record. All the ingredients of the commission of an offence under Section 138 f the NI Act were duly satisfied. Hence, the accused was convicted for the commission of an offence punishable under Section 138 of the NI Act and was sentenced to undergo simple imprisonment for one year and pay a compensation of ₹5,80,000/- to the complainant.

7. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Una, District Una, H.P. (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the

admission of the signatures on the cheque would trigger a presumption under the NI Act, and the burden would shift upon the accused to rebut the presumption. The accused claimed that she had repaid the amount to the complainant, but Vinod Kumar (CW-1) stated in his cross-examination that the accused had borrowed ₹20,00,000/- from the complainant and her family. The recovery suits and complaints under Section 138 of the NI Act were pending against the accused. The accused failed to explain the circumstances under which the cheque was possessed by the complainant. The sen ence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

8. Being aggrieved with the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below erred in appreciating the material placed before them. The complainants statement was contradictory. She failed to prove the existence of the legal liability. Learned Courts below erred in accepting the complainants evidence. 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 Ashok Kumar Tyagi, Advocate, learned Legal Aid Counsel, for the petitioner and Mr Subhash Sharma, learned Senior Counsel, assisted by Prantap Sharma, learned counsel for the respondent.

10. Mr Ashok Kumar Tyagi, Advocate, learned Legal Aid Counsel for the petitioner, submitted that the complainant did not step into the witness box to prove her c mplaint and examined her husband. He admitted in his cross- examination that the amount of ₹5,00,000/- was paid ea lier and claimed the existence of a liability of ₹20,00,000/-, which is not the subject matter of the complaint. He admitted that various cases were pending between the parties, and it is highly unlikely that the complainant would have advanced the loan to the accused when she had defaulted on t e repayment of the earlier loan. Learned Courts below did not appreciate this aspect; therefore, he prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

11. Mr Subhash Sharma, learned Senior counsel for the respondent/complainant, admitted that the accused admitted the issuance of the cheque; therefore, a presumption would arise that the cheque was issued for consideration to discharge her liability. The accused claimed that she had repaid the amount, but did not produce any evidence to prove this fact. Learned Courts below had rightly held that the accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with the endorsement insufficient funds. The notice was duly served upon the accused, and she failed to repay the amount. All the ingredients of the commission of an ffence punishable under Section 138 of the NI Act we e duly sa isfied. Learned Courts below had rightly appreciated the evidence, and this Court should not interfere with the c ncurrent findings of fact recorded by the learned Courts below. Therefore, he prayed that the present revision be

dismissed.

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

13. 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 the 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 t set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be de ermined on the merits of individual cases. It is also well se led hat while considering the same, the Revisional Cou t does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in State of Gujarat v. Dilipsinh Kishorsinh Ra , 2023 SCC OnLine SC 1294, wherein it was observed:

13. The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., 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 regularity 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 into such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460, where the scope of Section 397 has been considered and succinctly explained as under:

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 the 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 exhaus ive 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 cann t be exercised in a routine manner. One of the inbuilt restricti ns 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 a charge is a much-advanced stage in the proceedings under the CrPC.

15. 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 ground 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 jurisdicti n, the High Court can call for and examine the rec rd f any proceedings for the purpose of satisfying i self as to the correctness, legality or propriety of any finding, sentence or order. In other words, the ju isdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. B t 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 ourt to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion 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 n t meant to act as an appellate court. The whole purp se f the revisional jurisdiction is to preserve the power in the court to do justice in accordance with he p inciples 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 gr ssly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.

14. In the above case, also a conviction of the accused was recorded, and the High Court set aside [Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753] the order of conviction by substituting its own view. This Court set aside the High Court's order, holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

16. 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 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.

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

18. The complainant asserted in her complaint that the accused approached the complainant in the year 2018 and demanded an am unt f ₹8,00,000/-. She was unable to arrange ₹8,00,000/ - and paid ₹5,00,000/- on the repeated requests of the

accused. T e accused again demanded a sum of ₹5,00,000/- after one month and she advanced the amount. The accused issued a cheque bearing 010281 amounting to ₹5,00,000/- on 31.12.2020 and promised to return the total amount of ₹10,00,000/- to the complainant within 2-3 months. The complainant did not step into the witness box to prove the averments in the complaint. She examined Vinod Kumar (CW-1), her Special Power of Attorney, to prove her version. He stated in his cross-examination that the complainant had advanced an amount of ₹5,00,000/- in May or June 2018 in cash. He volunteered to say that 2-3 financial transactions had taken place between the parties before the present transaction. The accused had borrowed ₹5,00,000/- from him in the year 2017. An amount of ₹20,00,000/- was advanced by him and his family to the accused, out of which ₹15,00,000/-were transferred through the bank and ₹5,00,000/- were paid in cash. One civil suit of recovery and ther cases are pending. He volunteered to say these we e filed by his brother. His brother Sunil had transferred a s m of ₹5,00,000/- to the account of the husband of the accused in the year 2018. The complainant had transferred ₹2,50,000/- and the ₹2,50,000/- to the account of the sons of the accused. He admitted that ₹5,00,000/- out of 20,00,000/ - was repaid to his family by the accused. He admitted that a complaint had been filed against the accused in the year 2020 regarding dishonour of the cheque of ₹5,00,000/-.

19. Learned Appellate Court relied upon the cross-examination of this witness to hold that ₹20,00,000/- was payable by the accused to the family of the complainant. These findings cannot be sustained. First of all, the complainant never asserted in her complaint that the accused was liable to pay ₹20,00,000/-. She had only claimed that the accused had borrowed ₹10,00,000/- (₹5,00,000/- + ₹5,00,000/-) from her, and the accused was liable to pay this amount. Secondly, the statement of Vinod Kumar does not prove the liabilities of ₹ 20 lakh. As per him, ₹10,00,000/- and ₹5,00,000/ - were advanced by him to the accused in the year 2020. The complaint mentions that the complainant advanced ₹10,00,000/- (₹5,00,000/- + ₹5,00,000/-) to the accused. Vinod Kumar (CW-1) also stated that his brother Sunil had transfe ed ₹5,00,000/- to the accused, and the complainant had transferred ₹2,50,000/- and ₹2,50,000/- to the account of the s ns f the accused. Thus, the amount would be ₹15,00,000/ - due to the husband of the complainant, ₹10,00,000/- due to the complainant as per the complaint, ₹5,00,000/ - to the brother of Vinod, ₹2,50,000/- and ₹2,50,000/-from the sons of the accused to the complainant. Thus, the details furnished by Vinod Kumar show the liability of ₹40 lakh and not ₹20,00,000/-.

20. Vinod Kumar (CW-1) stated that 2-3 financial transactions had taken place before the present transaction. The accused had borrowed ₹15,00,000/- from him in the year 2017. He has not stated that this amount was returned by the accused. Vinod Kumar (CW-1) admitted that civil suits and complaints were filed against the accused for the recovery of the amount It is difficult to believe that the complainant would have advanced ₹ 10 lakh to the accused when she had not returned ₹15,00,000/- to the complainants husband. It was laid down by the onble Supreme Court in John

K. John v. Tom Varghese, (2007) 12 SCC 714: (2008) 3 SCC (Cri) 374: 2007 SCC OnLine SC 1293 that where three civil suits were instituted against the accused, it is highly unlikely that the loan would be advanced to him. It was observed at page 716:

11. The relationship between the parties is not in dispute. The complainant is a partner of a firm that is in the business of running a chitty fund. The fact that the respondent subscribed to three chitties and that he could not pay the instalments of the prized amount is not in dispute. The pendency of three civil suits filed by the firm through the appellant against the respondent is also not in dispute. The High Court, upon analysing the materials brought on record by the parties, had arrived at a finding of fact that, in view of the conduct of the parties, it would not be prudent to hold that the respondent borrowed a huge sum despite the fact that the suits had already been filed against him by the appellant. The presumption raised in terms of Section 139 of the Act is rebuttable. If, upon analysis of the evidence brought on record by the parties, in a fact situation obtaining in the instant case, a finding of fact has been arrived at by the High Court that the cheques had not been issued by the respondent in discharge of any debt, in our opinion, the view of the High Court cannot be said to be perverse warranting interference by us in exercise of our discretionary jurisdiction under Article 136 of the Constitution. The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court, as of fact, that the complainant did not approach the Court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed, although a huge sum of money was allegedly paid to the respondent, was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only had no document been executed, even no interest had been charged. It would be absurd to form an opinion that, despite knowing that the respondent was not even in a position to discharge his burden to pay instalments in respect of the prized amount, an advance would be made to him and that too even after the instituti n of three civil suits. The amount advanced did not even carry any interest. If in a situation of this na u e, he High Court has arrived at a finding that the espondent has discharged his burden of proof cast on him nder Section 139 of the Act, no exception thereto can be taken. (emphasis supplied)

21. A similar view was taken in A.M. Perumal v. Star Tours and Travels (India) Ltd., 2010 SCC OnLine Ker 4874: 2010 Cri LJ 3732, wherein it was observed at page 3735:

8. The evidence of PW 1 and Dwl would show that there were various transactions between the revision petitioner and the first respondent, and there are various payments also. Ext. D12 would show that the revision petitioner had been facing another prosecution for dishonour of three other cheques, all issued in discharge of liability, that arose out of a business transaction. This circumstance persuades me to doubt the genuineness of the plea that the cheque was issued in discharge of the liability. In the normal course, if an earlier cheque is dishonoured, the first attempt would be to clear that liability. No debtor would deliver another cheque to make

room for another prosecution. The possibility of demanding and delivering blank cheques as security cannot be ruled out. No creditor would be content with another cheque for a subsequently arisen liability when the earlier cheque issued in discharge of another liability returned dishonoured, and the liability remains not discharged. Acceptance of another cheque in that circumstance would be either with the intent to go for prosecution or to get proof (emphasis supplied)

22. Vinod Kumar (CW-1) admitted in his cross-examination that the complainant had filed a complaint against the accused earlier, which was compromised between the parties. The copy of the complaint (Ext. DA) menti ns that the accused demanded ₹8,00,000/- f om he complainant in April 2018. She was unable to fulfil the demand of ₹8,00,000/-. The accused asked her to pay ₹5,00,000/-, and the complainant paid ₹5,00,000/- by transferring the am unt from her account into the account of the accused. The transaction of ₹5,00,000/- was made once by the complainant. The accused issued a cheque of ₹5,00,000/-bearing No. 010285 to discharge her liability. The cheque was dishonoured with an endorsement insufficient funds.

23. The complaint was filed on 09.06.2020 and does not mention that complainant had advanced of ₹5,00,000/- on one occasion and ₹5,00,000/- on another occasion.

24. The cheque number in the present case is 010281, whereas the cheque in the previous complaint was 010285. The previous complaint is silent regarding the issuance of cheque number 010281, even though it bears a serial number earlier than the serial number 010285 mentioned in the previous complaint The fact that the complainant did not mention the advance of ₹10,00,000/- in the previous complaint and had specifically mentioned that the transaction of ₹ 5 lakh was made once, would make the complainants case highly suspect that she had advanced ₹10 lakh to the accused. The complainant did not appear in the witness box to explain the non-mentioning of the loan of ₹10,00,000/- in the previo s complaint. She was the best witness to do so as she had filed the earlier complaint; therefore, an adverse inference has to be drawn against the complainant.

25. Learned Courts below held that issuance of the cheque and t e admission of the signatures on the cheque trigger a presumption under Section 118(a) and 139 of the NI Act; however, they failed to notice that the presumption is rebuttable and evidence of the complainant was sufficient to rebut the presumption. It was laid down by the Honble Supreme Court in Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275 that the presumption applies in the absence of evidence and disappears after the production of the evidence. It was observed:

38. John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law] on Evidence states as follows:

The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary

(sufficient to satisfy the Judge's requirement of some evidence), the presumption disappears as a rule of law and the case is in the Jury's hands ree rom any rule.

26. Therefore, the judgments and rder passed by the learned Courts below cannot be sus ained and are ordered to be set aside. The accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine/compensation amount, if dep sited by the petitioner/accused be refunded to her after the expiry of the statutory period of limitation in case of no further appeal, and in case of appeal, it shall be dealt with as per t e orders of the Honble Apex Court.

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

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

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