

(2025) 12 UK CK 0027

Uttarakhand HC

Case No: Criminal Revision No. 256 Of 2025

Sanjay Saklani

APPELLANT

Vs

Suresh Chandra Badhwa

RESPONDENT

Date of Decision: Dec. 16, 2025

Acts Referred:

- Negotiable Instruments Act, 1881 - Section 118(a), 138, 139, 142
- Code Of Criminal Procedure, 1973 - Section 251, 313, 397, 401

Hon'ble Judges: Ashish Naithani, J

Bench: Single Bench

Advocate: B. S. Adhikari, Neeraj Garg

Final Decision: Partly Allowed

Judgement

Ashish Naithani, J

1. The present Criminal Revision arises out of proceedings under Section 138 of the Negotiable Instruments Act, 1881. The respondent filed Criminal Complaint Case No. 3394 of 2016 alleging dishonour of Cheque No. 024346 dated 15.05.2016 for an amount of ₹24,00,000 drawn on ICICI Bank, said to have been issued by the Revisionist towards repayment of money advanced in connection with an agreement to sell certain land.

2. The cheque was first presented on 16.05.2016 and returned unpaid due to insufficient funds. A statutory notice dated 01.06.2016 was issued to the Revisionist. The cheque was again presented on 08.08.2016 and dishonoured on 09.08.2016. A second statutory notice dated 10.08.2016 was issued, followed by the filing of the complaint on 30.08.2016.

3. During the pendency of the complaint, the Revisionist approached this Court by filing Writ Petition No. 233 of 2017 raising the issue of limitation. By judgment dated 22.02.2017, this Court directed the trial court to consider the complaint in light of

the principles laid down by the Honble Supreme Court.

4. The learned trial court, by judgment dated 05.04.2021, convicted the Revisionist under Section 138 of the Negotiable Instruments Act and sentenced him to two years simple imprisonment along with fine of ₹24,25,000.

5. Both parties preferred appeals. Criminal Appeal No. 59 of 2021 was filed by the Revisionist and Criminal Appeal No. 90 of 2021 by the complainant seeking enhancement. By common judgment dated 08.12.2023, the appellate court modified the sentence to one year simple imprisonment and enhanced the compensation to ₹35,00,000.

6. The Revisionist was taken into custody in connection with this case on 21.03.2025 and continues in judicial custody.

7. The present Criminal Revision challenges the judgment dated 08.12.2023, primarily on the grounds of limitation, coercion in obtaining the cheque, and incorrect appreciation of evidence, with a prayer for acquittal or suitable modification.

8. Learned counsel for the Revisionist submits that the complaint itself was barred by limitation, inasmuch as the first statutory notice was issued on 01.06.2016 following the dishonour on 16.05.2016. It is contended that the cause of action arose on the first dishonour, and the second presentation of the cheque could not revive limitation. It is urged that despite the High Courts directions dated 22.02.2017, the courts below did not adequately consider this aspect.

9. It is further contended that the cheque in question was not voluntarily issued but was forcibly taken from the Revisionist at the police station under pressure. Reference is made to the Revisionists statement under Section 313 CrPC as well as his statement under Section 251 CrPC, forming Annexure-7, to argue that the defence of coercion was consistently maintained throughout the trial.

10. Learned counsel argues that in cross-examination, the complainant allegedly admitted circumstances supporting the defence version. It is thus urged that the presumption under Sections 118(a) and 139 of the Act stands rebutted and the conviction is not sustainable.

11. It is lastly contended that the sentence imposed is harsh and disproportionate, particularly in view of the fact that the Revisionist has remained in custody since 21.03.2025 and has already deposited 20 percent of the cheque amount before the appellate court on 22.09.2021. Prayer is made to set aside the conviction; in the alternative, to modify the sentence to the period already undergone.

12. Learned counsel for the respondent supports the judgment of the appellate court. It is submitted that the cheque admittedly bears the signature of the Revisionist and was issued towards a legally enforceable liability arising out of

earlier financial transactions between the parties.

13. It is argued that the defence of coercion is an afterthought, not supported by any contemporaneous complaint, medical evidence, or legal action against the police or the complainant. It is submitted that bare assertions in a statement under Section 313 CrPC cannot, by themselves, rebut the statutory presumptions.

14. With respect to limitation, learned counsel for the respondent contends that the second presentation of the cheque was legally permissible and resulted in a fresh cause of action under the scheme of Sections 138 and 142 of the Act. The trial and appellate courts have concurrently held the complaint to be within limitation, and no perversity is shown warranting revisional interference.

15. It is submitted that the conviction is well-supported by evidence and legal presumptions. However, on the question of sentence, it is left to the discretion of the Court to consider the period already undergone, if deemed appropriate.

16. Heard learned counsel for the parties and perused the records.

17. The scope of revisional jurisdiction under Sections 397 and 401 of the Code is narrow. This Court does not interfere merely because another view is possible, but only where the findings suffer from patent illegality, manifest perversity or incorrect application of law.

18. The first limb of challenge relates to limitation. The record reflects that the cheque was initially dishonoured on 16.05.2016 and statutory notice dated 01.06.2016 was issued. The cheque was again presented on 08.08.2016 and dishonoured on 09.08.2016, followed by a second notice dated 10.08.2016 and filing of the complaint on 30.08.2016.

19. It is now well settled that re-presentation of a cheque within its validity period is legally permissible and each dishonour gives rise to a fresh cause of action, provided statutory requirements are met. The trial court and appellate court have concurrently held that the complaint based on the second dishonour was within limitation. No perversity or misapplication of law is demonstrated in these concurrent findings.

20. The earlier directions of this Court dated 22.02.2017 required the trial court to keep in mind the principles laid down by the Honble Supreme Court. The record indicates that the trial court proceeded accordingly. There is no material to suggest that the complaint was barred by limitation so as to vitiate the conviction.

21. The Revisionist contends that the cheque was forcibly obtained at a police station. However, the Revisionist did not lodge any FIR, complaint, or representation before any authority alleging coercion at or around the relevant time. There is no medical evidence, nor any defence witness, nor any contemporaneous document supporting this plea.

22. A mere assertion in a 313 statement, without supporting evidence, is insufficient to rebut the statutory presumptions under Sections 118(a) and 139 of the Act. The complainant was cross-examined at length and nothing substantial was elicited to show that the cheque was not issued towards a legally enforceable liability.

23. The concurrent findings of the trial court and appellate court that the cheque was duly issued and liability existed are based on evidence and cannot be termed perverse.

24. Once execution of the cheque is admitted, Section 139 mandates a presumption that it was issued towards a debt or liability. The burden to rebut this presumption lies on the accused, who must raise a probable defence on a preponderance of probabilities.

25. As regards sentence, the appellate court has already modified the substantive imprisonment to one-year simple imprisonment and enhanced the compensation. The Revisionist has remained in custody since 21.03.2025 and has already deposited 20 per cent of the amount at the appellate stage. The offence arises out of a commercial transaction and not one involving moral turpitude.

26. Considering the nature of the dispute, the period already undergone, and the principles that compensation is the prime remedy under the NI Act, this Court finds it appropriate to modify the sentence to the period already undergone while maintaining the conviction and compensation as directed by the appellate court.

ORDER

For the reasons aforesaid, this Criminal Revision succeeds in part. The conviction of the Revisionist under Section 138 of the Negotiable Instruments Act, 1881, as affirmed by the appellate judgment dated 08.12.2023 in Criminal Appeal No. 59 of 2021 and Criminal Appeal No. 90 of 2021, is upheld.

Insofar as the sentence is concerned, this Court finds it appropriate, in the facts of the case, to modify the substantive sentence awarded to the Revisionist. The sentence of simple imprisonment for one year, imposed by the appellate court, is substituted with the period of imprisonment already undergone. The direction relating to payment of compensation, as affirmed and modified by the appellate court, shall remain intact and shall be complied with in accordance with law.

The revision stands partly allowed to the above extent. There shall be no interference with the conviction or with the order relating to compensation.