(2025) 12 SHI CK 0004

Himachal Pradesh HC

Case No: Criminal Revision No. 707 Of 2025

Naresh Kumar @ Titu	APPELLANT
Vs	
Shimla Fruit Agency	RESPONDENT

Date of Decision: Dec. 18, 2025

Acts Referred:

- Code Of Civil Procedure, 1908- Order 5 Rule 9(5)
- Negotiable Instruments Act, 1881-Section 118(a), 138, 139, 146, 147
- Code Of Criminal Procedure, 1973-Section 313, 397, 398, 399, 400, 401, 482
- General Clauses Act, 1897-Section 11, 27

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Atul Sharma

Final Decision: Dismissed

Judgement

Rakesh Kainthla J

1. The present revision is directed against the jud ment dated 10.03.2025 passed by learned Additional Sess ons Judge (CBI Court), Shimla (learned Appellate Court), vide which the judgment of conviction dated 22.07.2024 and order of sentence dated 30.07.2024 passed by learned Additional Chief Judicial Magistrate, Court No.1, Shimla, H.P. (learned trial Court) were upheld. (The parties shall hereinafter be referred 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 before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (for short NI Act) . It was asserted that the complainant is a partnership firm, which is duly registered with the Regist ar of Firms. The Firm deals in agricultural and hortic lt ral products.

The accused purchased vegetable seeds worth ₹ 2,95,000/-. He paid Rs. 80,000/- in cash and issued two post-dated cheques for the sum of ₹ 1,00,000/- and ₹ 1,15,0000/-respectively towards the repayment of the amount. The complainant presented the cheques to the bank, but these were dishonoured with an endorsement funds Insufficient. The complainant sent a legal notice to the accused, but the accused refused to receive it. He did not make any payment to the complainant; hence, a complaint was filed before the learned Trial Court to take 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 offence punishable under Section 138 of the N.I. Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Sh. Sandeep Dharma (CW-1) to prove its case.

5. The accused, in his statement recorded under Section 313 of CrPC, admitted hat he had purchased the seeds worth ₹ 2,95,000/- from the complainant. He stated that he had paid the m ney in cash. He claimed that he had issued the cheques as security. However, he did not produce any evidence in defence.

6. The learned Trial Court held that the accused adm tted his signature on the cheques, and a presumption under section 118 (a) and 139 of the NI Act would be triggered that the cheques were issued for consideration to discharge the debt/liability. The burden would shift upon the accused to rebut the presumption. The accused claimed that he had repaid the amount; however, he did not produce any evidence to prove the payment. The cheques were dishonoured with an endorsement funds insufficient. Notice was duly served upon the accused, and he failed to repay the amount; hence, the learned trial Court convicted the accused for the commission of an offence punishable under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for six months and pay compensation of ₹ 2,80,000/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Cour , the accused filed an appeal, which was decided by the learned Additional Session Judge (CBI C urt) (learned Appellate Court), Shimla. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused admitted his signature on the cheques, and a presumption would apply to the present case. The burden would shift upon the accused to rebut the presumption. He did not produce any evidence to rebut the presumption. The cheques were dishonoured with an endorsement insufficient funds, and the accused failed to repay the amount, despite the receipt of the notice of demand. The learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal filed by the accused 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 appreciate the defence that the cheques were issued as security and not in discharge of a legally enforceable debt. The complainant misused the cheques issued by the accused as secu i y. The complainant failed to prove the existence of a legally enforceable debt through independent evidence. The accused denied the receipt of the legal notice, and the burden shifted upon the accused to prove the service of notice upon the accused. A sentence of six months and compensation of ₹ 2,80,000/-s harsh considering that the payment has already been made to the complainant. 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. Mr Atul Sharma, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The complainant failed to prove the sale of the seeds to the accused. The plea taken by the accused that he had issued the cheques as security is highly probable, and learned courts below erred in rejecting it. The accused denied the service of notice upon him, and the burden shifted upon the complainant to prove that notice was duly served upon the accused. The complainant failed to examine the official, who had tendered the notice to the accused. Hence, he prayed that the present revisi n be allowed and the judgments and order passed by the learned Courts below be set aside.

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

11. It was laid down by the Honble Supreme Court n 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 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 pr visi n 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 me its 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.

12. This position was reiterated in State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

12. Section 397 of the Code vests the court with the power to call for and examine the records of an in erior court for the purposes of satisfying itself as to the legality and regularity f any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of ju isdiction or law. There has to be a well-fo nded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token f careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the pr ceedings under CrPC.

13. 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 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 conclusi n n the same when the evidence has already been appreciated by the Magistra e as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which wo ld 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 f the revisional jurisdiction is o preserve the power in the cou t to do justice in accordance with the principles of criminal jurispr dence. 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.

14. 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 andels 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 jurisdic ional error. The answer to the first question is, the efore, in the negative.

15. 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 jurisdiction, 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 for 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-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 absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

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

17. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained by the Honble Supreme Court in Kaveri Plastics v. Mahdoom Bawa Bah udeen 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.

18. The accused admitted in his statement recorded under Section 313 of the CrPC that the cheques bear his signature. Thus, learned Courts below had rightly held that the issuance of the cheques and signatures on the cheques 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 below have materially erred in not properly appreciating and considering the presumption in favour f the complainant that there exists a legally enf rceable debt or liability as per Section 139 of he NI Act. It appears that both the learned t ial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, witho t appreciating the presumption under Secti n 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.

19. 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.

20. 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, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the c eque 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 Singh v. Mukesh Kumar, (2019) 4 SCC 197]

21. Thus, the learned Courts below were justified in raising the presumption that the cheques were issued in discharge of the liability for consideration.

22. Accused admitted in his statement recorded under Section 313 of Cr.PC that he had purchased seeds worth ₹ 2,95,000/- from the complainant. He claimed that he had paid the am unt in cash. However, he failed to produce any evidence to prove the plea taken by him. He relied upon the 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 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)

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

24. The accused asserted that he had issued the cheques as security. Even if this plea is accepted to be correct, it will not help the accused. He admitted the purchase of seeds worth ₹ 2,95,000/-. He failed to prove that the payment was made to the complainant. Thus, he had an existing liability of ₹ 2,95,000/- after deducting the cash amount of ₹ 80,000/- from the total amount of Rs. 2,95,000. The complainant was within its right to present the cheques for realisation of the amount, even if the cheques were issued as security.

25. 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 on this ground, the criminal revision petition is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of he Negotiable Instruments 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 perused 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.

26. 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 toward 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 cheq e is for discharge of debt or liability depends on the nature of the transacti n. If n the date of the cheque, liability or debt exists r the amount has become legally recoverable, the Section is attracted and not otherwise.

11. Reference to the facts of 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 agreement, the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior 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 l an agreement, as against the case of Indus Airways (supra), where the purchase o der had been cancelled, and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was fo nd that the cheque had not been issued f r 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)

27. This position was reiterated in Sripati Singh v. State of Jharkhand, 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 b rr wer would have the option of repaying he 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 cannot 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 cheque 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.

28. Therefore, the learned Courts below had rightly held that the accused cannot escape rom the liability on the ground that he had issued the cheques as security to the complainant.

29. There was no other evidence to rebut the presumption attached to the cheque, and the learned Courts below had rightly held that the accused had failed to rebut the presumption.

30. The complainant stated that the cheques were d shonoured with an endorsement insufficient funds. This is duly corroborated by the cheque returning memos (Ext.CW1/D and Ext.CW1/E) in which the reason for dishonour of the cheques was given as insufficient funds. 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.

31. In the present case, no evidence was produced to rebut the presumption, and the learned Courts below had rightly held that the cheques were dishonoured with an endorsement funds insufficient.

32. The complainant stated that he had issued notice (Ex.CW1/F), which was returned with the endorsement refused. He proved the envelope (ExCW1/H), which bears an endorsement of refusal. It was laid down by the Honble Supreme Court of India in C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555, that when a notice is returned with an endorsement refused, it is deemed to be served. It was observed:

8. Since in Bhaskaran's case (supra), the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched he notice by post with the correct add ess w i en on it, the principle incorporated in Section 27 of the

General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service.

33. A similar view was taken in Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458, wherein it was observed:

13. Section 27 of the General Clauses Act, 1887, deals with service by post:

27. Meaning of Service by post.- Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

14. The concept of deemed service has been discussed by this Court n vari us occasions. It shall be useful to refer to s me instances:

14.1 In Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264, which was a case concerned with the payment of arrears f rent under the J&K Houses and Sh ps Rent Control Act, 1966. The proviso to Section 11, which is titled Protection of a Tenant against Eviction, states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555]

14.3 The findings in C.C. Alavi (supra) were followed in Vishwabandhu v. Srikrishna (2021) 19 SCC 549. In this case, the summons issued by the Registered AD post was received back with endorsement refusal. In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery

of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in C.C. Alavi (supra) stands adopted by this Court in various judgments of this Court in Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506; and V.N. Bharat v. DDA (2008) 17 SCC 321.

34. Therefore, the learned Courts below had rightly held that the notice was deemed to have been served upon the accused. 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 of the commission of an offence punishable under Section 138 of the NI Act.

35. Learned Trial Court sentenced the accused to undergo simple imprisonment for six months. 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 N.I. Act is a 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.

36. Keeping in view the nature of the sentence to be awarded, the sentence of six months of simple imprisonment cannot be said to be excessive, and no interference is required with it.

37. Learned Trial Court ordered the payment of compensation of ₹2,80,000/- o he complainant. The cheque was issued on 30.06.2021, and the sentence was imposed on 30.07.2024 after a lapse of 3 years. The complainant lost m ney that it would have gained by depositing the cheques amount in the bank or by investing it somew ere else. It had to engage a counsel to prosecute the complaint filed by it. 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 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]

38. The interest of an amount of ₹.2,15,000/- for three years @ 9% per annum would be ₹ 58,050/-. Hence, the compensation of ₹ 2,80,000/- for the loss of interest and the expenses for litigation cannot be said to be excessive, requiring any interference from the Court.

39. No other point was urged.

40. In view of the above, the present revision fails, and the same is dismissed.