IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 534 of 2024
Reserved on: 30.06.2026
Date of Decision: 10.07.2026

Sunil Kumar ...Petitioner

Versus

State Bank of India ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Petitioner : Mr Rakesh Kumar, Advocate.
For the Respondent : Ms Kiran Sharma, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 30.04.2024 passed by learned Additional Sessions Judge Chamba, Division Chamba, H.P. (learned Appellate Court) vide which the judgment of conviction dated 13.07.2023 and order of sentence dated 25.08.2023 passed by learned Judicial Magistrate First Class Dalhousie, District Chamba (learned Trial Court) were

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant is a body corporate constituted under the State Bank of India Act and is engaged in banking activities. The complainant advanced a home loan of ₹6,00,000/- to the accused on 28.09.2015. The accused undertook to repay the amount along with the interest and other charges. The accused failed to honour the agreement, and the loan account became a Non-Performing Asset (NPA). The complainant demanded the money, and the accused issued a cheque of ₹5,95,000/- to repay the money. The complainant presented the cheque for encashment, but it was dishonoured with an endorsement "insufficient funds". The complainant served a notice upon the accused, asking him to repay the money within 15 days from the date of the receipt of the notice. The notice was duly served upon the accused, but the accused

failed to repay the money. Hence, a complaint was filed before the Court for taking action 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 NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Sunil Sharma (CW1) to prove its complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), admitted that the complainant had advanced a house loan of ₹6,00,000/- to him. He denied the rest of the complainant's case. He stated that he was paying regular instalments to the bank. He had not issued any cheque in favour of the bank. He failed to produce any evidence, and the learned Trial Court closed the evidence by the order of the Court on 27.04.2023.

6. Learned Trial Court held that there is a presumption attached to the cheque that it was issued for consideration to discharge the debt/liability. The accused admitted in his statement

recorded under Section 313 of the Cr.P.C. that he had taken the loan of ₹6,00,000 from the complainant. He claimed that he was repaying the money as per the instalments. However, he did not produce any evidence to establish this defence. Even if the cheque was issued as a security, it would attract the provisions of Section 138 of the NI Act. The cheque was dishonoured with an endorsement "insufficient funds", and the accused failed to repay the money despite the receipt of a valid notice of demand. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for 6 months and pay a compensation of ₹6,50,000/- to the complainant.

7. Being aggrieved by the judgment passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge, Chamba, Division Chamba (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by Learned Trial Court that a cheque carries with it a presumption that it was issued for consideration to discharge the debt/liability. The accused failed to rebut this presumption by leading any satisfactory evidence. The cheque was dishonoured with the endorsement "insufficient funds". The

notice was duly served upon the accused, and he failed to repay the amount. The sentence imposed by the learned Trial Court is not excessive. 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 erred in appreciating the material on record. The complainant's witness did not say that he had personal knowledge of the transaction. The complaint was not filed by an authorised officer. The learned courts below failed to appreciate this aspect. Hence, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Rakesh Thakur, learned counsel for the petitioner/accused, and Ms Kiran Sharma, learned counsel for the respondent/complainant.

10. Mr Rakesh Thakur, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The complainant had failed to prove the existence of a debt/liability. Sunil Sharma (CW1) was not authorised to make the statement on behalf of the

complainant, and the learned Courts below erred in relying upon his testimony. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Ms Kiran Sharma, learned counsel for the respondent/complainant, submitted that both the learned Courts below have concurrently held that the accused had issued a cheque in favour of the complainant and that the accused had failed to rebut the presumption attached to the cheque. This is a pure finding of fact, and this Court should not interfere with the pure finding of facts recorded by the learned courts below. The accused admitted the taking of the loan and learned Court's below had rightly held that the cheque was issued for consideration to discharge the debt/liability. Hence, she prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble 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 scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. 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.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4***

SCC (Civ) 687: (2013) 1 SCC (Cri) 986, where the scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

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

15. It was held in ***Kishan Rao v. Shankargouda*, *(2018) 8 SCC 165: 2018 SCC OnLine SC 651*** that it is impermissible for the High

Court to re-appreciate the evidence and draw 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)
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> > *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 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. ..."
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> **13.** Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction,

shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of 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."

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 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.
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> **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. 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.
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> **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."

18. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. Sunil Sharma (CW1) reiterated the contents of the complaint in his affidavit. He stated in his cross-examination that the loan was taken by the accused in the year 2015. He admitted that the payments were being made regularly till 2017, and the loan account became NPA in the year 2018. He denied that security

cheques were taken at the time of disbursal of the loan. The cheque was issued on 01.05.2018. He admitted that he had not filed the complaint, and the complaint was filed by Mr Nagesh Sood, who was still posted as a Manager.

20. It was submitted that the complaint was filed through Mr Nagesh Sood, but he did not appear before the Court, and an adverse inference should have been drawn against the complainant for withholding him. This submission cannot be accepted. The accused admitted in his statement recorded under Section 313 of the Cr.P.C. that he had taken the house loan from the complainant. Thus, the loan transaction was not in dispute. There is nothing in the cross-examination of Sunil Sharma (CW1) that he was not aware of the facts of the case. An adverse inference can be drawn when the evidence on record is insufficient[2]. Therefore, the submission that an adverse inference has to be drawn against the complainant for withholding the best evidence cannot be accepted.

21. It was submitted that the complaint was filed without any authority and was not maintainable. This submission cannot be accepted. The cheque (Ext.C3) was issued in the name of State Bank of India, Banikhet. The complaint was filed by State Bank of

[2] Pandurang Jivaji Apte v. Ramchandra Gangadhar Ashtekar, (1981) 4 SCC 569, and Rattan Dev v. Pasam Devi, (2002) 7 SCC 441

India, Banikhet, represented by Branch Manager Nagesh Sood. State Bank of India is a juristic person that is incapable of personally filing the complaint and has to be represented by a natural person. No question was asked in the cross-examination of Sunil Sharma that the manager had no authority to institute the complaint. It was laid down by the Hon'ble Supreme Court in ***M/s MMTC Limited versus M/s. Medchl Chemicals & Pharma (P) Ltd., 2001 STPL 14773 SC,*** that the complaint cannot be quashed simply because the authorisation was not proper. It was observed:

> "11. This Court has, as far back as, in the case of ***Vishwa Mitter v. O.P. Poddar, 1984(1) RCR (Crl.) 196: 1983(4) SCC 701***, held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognisance. It has been held that no court can decline to take cognisance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognisance of such offences under the statute, then the complainant requesting the Magistrate to take cognisance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criterion is satisfied as the complaint is in the name and on behalf of the appellant company.
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> 12. In the case of ***Associated Cement Co. Ltd. v. Keshvanand, 1998(1) RCR (Crl.) 309: 1998(1) SCC 687***, it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of an

> incorporeal person (like a company or corporation), it is necessary that a natural person represent such a juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate, it is the de jure complainant, and it must necessarily associate a human being as a de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been suggested that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court to send any other person to represent the company in court. Thus, even presuming that initially there was no authority, the Company can, at any stage, rectify that defect. At a subsequent stage, the Company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

22. It was laid down by the Punjab and Haryana High Court in ***SBI v. Kashmir Art Printing Press*, *1981 SCC OnLine P&H 37: AIR 1981 P&H 188*** that the branch manager of the State Bank of India has the authority to file a plaint, written statement, petition and all other documents in connection with the legal proceedings and sign the vakalatnama on behalf of the bank. It was observed:

> "In order to appreciate the point whether the branch manager of a local branch of the State Bank of India has the power to sign and verify the pleadings and to institute and defend the legal proceedings in a court, it will be useful to refer to the various provisions of the State Bank of India Act, 1955 (hereinafter called "the Act"), so that the scheme of the

Act can be noticed. Under s. 3(1) of the Act, the State Bank of India was to be constituted to carry on the business of banking and other business in accordance with the provisions of the Act and for taking over the undertaking of the Imperial Bank. It is admitted that the State Bank of India was constituted, and the State Bank of India so constituted was to be a body corporate with perpetual succession and was to sue and could be sued in that name as provided by s. 3(2) of the Act. According to s. 16(1) of the Act, the central office of the State Bank was to be at Bombay, and according to sub-s. (2), the local head offices in Bombay, Calcutta and Madras and at such other places in India as the Central Govt. may provide in consultation with the Central Board. It deserves to be mentioned here that a local head office was constituted at Chandigarh in accordance with s. 16(2). vide notification dated 20th August, 1979, published on 1st September, 1979, in Pt. II of the Gazette of the Government of India, p 99. The management of the affairs of the State Bank has been entrusted to the Central Board by virtue of s. 17. The Central Board was to be guided by the directions of the Central Government as required by s. 18. According to s. 21 of the Act, local boards are to be constituted at places where the State Bank has a local head office which are to consist of the members mentioned in the section. The "local board" has been defined in s. 2(dd) to mean a local board constituted under s. 21. Section 21B defines the powers of the local board in respect of the area served for which a local head office is constituted and according to this section, the local board is to exercise all powers and perform all functions and duties of the State Bank in relation to the business of the banking and shall also exercise such other powers and perform such other functions and duties as may be conferred on or assigned to it by the Central Board as otherwise prescribed and subject to any other general or special instructtions which the Central Board may give from time to time. The net result of the reading of the provision is that for the area under the local head office, the Local Board has full powers to do what the Central Board has. Under s. 30 of the Act, the Central Board has been authorised to constitute an executive committee or other committees and delegate to the executive committee or other committees such powers as the Central Board may consider necessary. This section deals with the delegation of powers of the Central Board to the executive committee or other committees. Under s. 43(2), the Central Board has been authorised to delegate such powers and duties as it deems proper to the officers, advisers and employees of the State Bank. Regulations are to be framed under s. 50 of the Act. Section 50(2)(m) and (n) provides for the framing of Regulations regarding the conduct and defence of legal proceedings and the manner of signing proceedings, besides providing the duties and conduct of the officers, other employees, advisers and agents of the State Bank. Sub-s. (3) provides that the first regulations are to be made by the Reserve Bank with the previous sanction of the Central Govt, which shall be the regulations of the Central Board under this provision and shall have force accordingly until they are amended or repealed.

In exercise of the powers conferred by sub-s. (3) of Section 50 of the Act, the Reserve Bank of India, with the previous sanction of the Central Govt, made certain regulations. Regulation 77, which is relevant, deserves to be noticed for the decision of the point involved in these cases and is as follows:

> "77. Plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, sealed and delivered, and generally all other documents connected with legal proceedings whether contentious or non-contentious may be made and completed on behalf of the State Bank by the Chairman or by any officer or employee empowered by or under regulation 76 to sign documents for and on behalf of the State Bank.

A reading of the aforesaid regulation shows that the plaints, written statements, petitions and applications can be signed and verified, and similar other documents, including documents connected with legal proceedings, could be made and completed on behalf of the State Bank by the chairman or by an officer or an employee empowered by and under the regulation. 76. A reading of regln. 76 shows that the power of signing the documents has been given to the vice-chairman, the managing directors, the deputy managing directors, the chief general managers and such other officers or employees of the State Bank as the Central Board or the executive committee may authorise in this behalf by notification in the Gazette of India. In pursuance of the powers conferred under the regulations. 76, a notification dated 17th September, 1959, was published in the Govt of India Gazette, Part III, section 4, dated 26th September, 1959, by virtue of which it authorised "agents" besides other persons, to sign the documents mentioned in the regulation. 76 and, therefore, by virtue of regln. 77, an agent would be entitled to sign the pleadings, verify the documents, etc., and also to sign generally all other documents connected with the legal proceedings on behalf of the State Bank. Later on, the designation of agents was redesignated as branch managers by virtue of a notification dated 21st June, 1972, published in the Govt. of India Gazette, Part III, section 4, dated 26th August, 1972, which came into force with effect from 1st September, 1972. The resultant effect was that on and after 1st September, 1972, a branch manager was entitled to sign and verify pleadings and was authorised generally to complete all other documents connected with legal proceedings besides other matters. It is not disputed that the present suits were instituted at the instance of the respective branch managers in respect of the matters arising in their branches, and the plaints and vakalatnamas were signed by them.

After hearing the parties at considerable length, I am of the view that a branch manager had the authority not only to sign the pleadings and verify them, but had the authority to sign a vakalatnama to authorise an advocate to file a suit or to file the same himself. This is amply borne out by looking at the entire scheme of the Act and particularly s. 50(2)(m) and (n), coupled with reglns. 76 and 77. According to the counsel for the respondents, regulations could be framed on three matters as enumerated in the clause. (m), that is, to make a provision for the conduct of legal proceedings, for the defence of legal proceedings and the manner of signing pleadings. But, in the present case, regulation has been made only for the third purpose, i.e., for signing the pleadings and not for the other two purposes. On the other hand, the stand of the counsel for the State Bank of India is that the first authority to act on behalf of the State Bank of India vests in the Central Board and, in the case of local head offices, in the local boards. In order to carry out the purposes of the Act, s. 50(1) provides for the making of regulations under the Act and under clauses. (m) and (n) specific powers have been given for making regulations in regard to the conduct of the legal proceedings and about other details and conduct of the officers of the State Bank. In furtherance of the aforesaid power, regulations. 76 and 77 were framed, and according to the learned counsel, these regulations have to be liberally construed so as to convey that whatever was provided in the clauses. (m) and (n) were to be regulated by regulations 76 and 77, and regulations. 77 could not be construed in a limited manner as was sought to be done by the counsel for the defendants-respondents. I find merit in the contention of the learned counsel for the State Bank of India. Regulation 77 is quite comprehensive. If the words "generally all other documents connected with legal proceedings, whether contentious or non-contentions may be made and completed on behalf of the State Bank" had not been mentioned in the regulations. 77, something might have been said for the defendants, but the use of the aforesaid words clearly goes to show that the authorised officer has been given power to sign all documents connected with the legal proceedings, and one of the documents would be a vakalatnama, which the concerned officer could sign in favour of an advocate. It cannot be disputed that a vakalatnama is a document connected with the legal proceedings, and when, admittedly, in the present cases, the concerned branch managers had executed vakalatnamas in favour of the counsel, who presented the plaints, it cannot be said that the presentation of the plaints in court by the advocates was not a proper presentation.

The aforesaid view of mine finds full support from a Privy Council decision in ***Delhi and London Bank Ltd. v. A. Oldham [1893] ILR 21 Cal 60 (PC), Chandra Sekhar Zamindari Co. Ltd. v. Ram Kumar Haidar, AIR 1914 Cal 782, M.C.S. Rajan and Company v. National Nail Industries [1975] ILR 2 Mad 486, United Bank of India v. Prabhas Ch. Deb, AIR 1977 Cal 55*** and a decision of the Delhi High Court in ***Suit No. 653 of 1974, State Bank of India v. Sawhney Finance Company, decided on 25th October, 1978 (reported in (1982) 52 Comp Cas 430***).

Even apart from the aforesaid reasoning, I am of the view that the larger authority granted to the branch manager to sign the plaints, written statements, petitions and applications and all other documents connected with the legal proceedings, should include the power to file suits, written statements and other documents in court. I cannot lose sight of the fact that the State Bank of India has branches all over the country and a special statute, namely, the Act, was framed for its working. The banking transactions are taken up in every branch office and if one were to accept the argument of the defendants, even if suits can be filed within limitation after getting the sanction from the Central Board or the local board, at least the first appeals, which will lie before the district judge, would always be time-barred because I do not think it would be possible to get instructions from the Central Board or the local board to institute an appeal within the period of thirty days.

For the reasons recorded above, I hold that the suits were not only properly filed and instituted by the branch managers, but they had the authority to engage counsel and sign the vakalatnamas, and the presentation of the plaints by the advocates is a proper institution of the suits. Accordingly, the findings to the contrary recorded by the courts below in all four cases are set aside.

23. It was held in ***SBI v. Indian Utility Products, 2000 SCC OnLine Del 363: ILR (2000) 2 Del 60*** that the words all other

documents connected with the legal proceedings are quite comprehensive and would include all the documents signed in connection with legal proceedings. It was observed at page 63:

> "**5...**Regulation No. 77 of the State Bank of India General Regulations, 1955 provides that the plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, scaled and delivered, and generally all other documents connected with legal proceedings whether contentious or non-contentious may be made and completed on behalf of the State Bank by the Chairman or by any officer or employee empowered by or under Regulation, 76 to sign documents for and on behalf of the State Bank. In pursuance of the powers conferred under Regulation 76, a notification dated 17th September, 1959 was published in the Government of India Gazette, Part-III, Section 4, dated 26th September, 1959 by virtue of which, besides other persons, Agents were authorised to sign the documents mentioned in Regulation 76. Later on, the designation of Agents was redesignated as Branch Managers by virtue of a notification dated 21st June, 1972, published in the Government of India Gazette, Part-III, Section 4, dated 26th August, 1972, which came into force w.e.f. 1st September, 1972. Thus, w.e.f. 1st September, 1972, a Branch Manager was entitled to sign and verify the pleadings and authorised generally to complete all other documents connected with legal proceedings, besides other matters. In the decision in ***State Bank of India v. Kashmir Art Printing Press, (1983) 54 Comp Cas 56*** it was held that the use in said Regulation of the words 'generally all other documents connected with legal proceedings whether contentious or non-contentious, may be made and completed on behalf of the State Bank', are quite comprehensive and the authorised officer has been given power to sign all documents connected with legal proceedings and one of such documents would be a vakalatnama and the presentation of plaints in Court by an

> advocate in whose favour vakalatnama has been executed, would be a proper presentation.....”

24. Therefore, the submission that the complaint was filed by an unauthorised person cannot be accepted. The complaint was filed on behalf of the payee, a juristic person, by a natural person, and cannot be said to be bad.

25. The complainant's witness Sunil Sharma (CW1) denied in his cross-examination that the cheque was taken as security, which means that his statement in the examination-in-chief contained in the affidavit (Ext.C1) that the cheque was issued by the accused is not in dispute. The accused claimed in his statement recorded under Section 313 of the Cr.P.C. that he had not issued any cheque. However, he never appeared in the witness box to establish this version and relied upon his statement recorded under Section 313 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)"

26. Therefore, the statement 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.

27. Therefore, the learned Courts below had rightly held that the issuance of the cheque and the signatures on the cheque were duly proved.

28. Learned Courts below had rightly held that once issuance of the cheque and signatures on the cheque are admitted, a presumption would arise that the cheque was issued for consideration to discharge the debt/liability. 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 because 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 of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of a 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."

29. 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.”

30. This position was reiterated in ***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 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 rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

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

32. The accused claimed in his statement recorded under Section 313 of the Cr.P.C that he was regularly paying the loan instalment to the bank. This is not established by the copy of the statement of Account (Ext.C2) in which the payments of ₹8,000/- each are shown to have been made on 23.10.2017, 08.12.2017, and 15.01.2018. Thus, only an amount of ₹24,000/- out of an amount of ₹6,00,000/- has been returned. The accused did not produce any evidence to establish that he had regularly paid the loan instalments to the bank. The statement of account shows that an amount of ₹5,95,919.39/- was due on 30.04.2018. The cheque was issued on 01.05.2018 for a consideration of ₹5,95,000/-. Therefore, it was duly proved on record that the cheque was issued to repay the debt taken by the accused.

33. It was submitted that the person in whose presence the loan was advanced to the accused was not examined, and Sunil Sharma (CW1) was not posted in the branch at the time of disbursal of the loan. This submission will not help the accused. As already stated, the accused has not disputed the taking of the loan. Therefore, the disbursal of the loan was not in question. The only question was whether the loan had been returned by the accused.

Thus, no adverse inference can be drawn for withholding the person in whose presence the loan amount was disbursed.

34. There is no other evidence to rebut the presumption attached to the cheque. Sunil Sharma (CW1) denied the suggestions given to him in the cross-examination that the accused is not liable to pay anything to the bank or that the cheque was issued as security. A denied suggestion does not amount to any proof, and the learned Courts below were justified in not relying upon the denied suggestions of the accused.

35. Sunil Sharma (CW1) stated that the cheque was dishonoured with an endorsement "insufficient funds". This is duly corroborated by the memo of dishonour (Ext.C2), in which the reason for return has been mentioned as "funds insufficient". Section 146 of the NI Act provides a presumption of correctness to the memo of dishonour. It was laid down by the Hon'ble 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."

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

37. Sunil Sharma (CW1) stated that the notice was duly served upon the accused. This part of his testimony was not disputed in the cross-examination, and the learned Courts below had rightly accepted the same. The accused claimed that he had not received the notice, but this plea will not help him. 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 amount 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 borne 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 the 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 ***Bhaskaran's 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. The accused did not claim that he had repaid the amount to the complainant; therefore, it was duly proved on record that the accused had failed to repay the amount despite the receipt of the notice.

39. Thus, it was duly proved before the learned Trial Court that the accused had issued a cheque to discharge his legal liability, the cheque was dishonoured with an endorsement 'insufficient funds', and the accused failed to pay the money despite the receipt of a notice of demand. Hence, all the ingredients of the offence punishable under Section 138 of the NI Act were duly satisfied, and

the learned Trial Court had rightly convicted the accused for the commission of the offence punishable under Section 138 of the NI Act.

40. Learned Trial Court had sentenced the accused to undergo simple imprisonment for a period of 6 months and pay a compensation of ₹6,50,000/-. It was laid down by the Hon'ble 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 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. Keeping in view the deterrent nature of the punishment, the sentence of six months cannot be said to be excessive.

42. The cheque was issued on 01.05.2018, and the learned Trial Court imposed the sentence on 25.08.2023 after the lapse of nearly 5 years from the date of issuance of the cheque. It was laid down by the Hon'ble 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. The complainant had to engage a counsel and file the complaint before the learned Trial Court. It lost the interest that it would have gained by advancing the loan to another person and was entitled to be compensated for the loss. Hence, a compensation of ₹55,000/- awarded on the cheque amount of ₹5,95,000/- cannot be said to be excessive, requiring an interference from the Court.

44. No other point was urged.

45. In view of the above, there is no infirmity in the judgment and order passed by the learned Trial Court. Hence, the present revision fails and is dismissed.

46. The present revision stands disposed of, and so are the pending miscellaneous application(s), if any.

47. The record of the learned Courts below be returned with a copy of the judgment.

(Rakesh Kainthla)
Judge

10th July, 2026
(Nikita)