IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 630 of 2024
Reserved on: 22.06.2026
Date of Decision: 06.07.2026

Subhash Chander **... Petitioner**

Versus

Veena Devi **.... Respondent**

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the petitioner	:	Mr Mukul Sood, Advocate.
For the Respondent	:	Mr Goldy Kumar, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 01.07.2024 passed by the learned Sessions Judge, Kangra, at Dharamshala, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 29.12.2022, passed by the learned Chief Judicial

[1]. *Whether reporters of the local papers may be allowed to see the judgment? Yes*

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Magistrate, Kangra, at Dharamshala, H.P. (learned Trial Court) were 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 of the Negotiable Instruments Act (NI Act). It was asserted that the accused is running a business of insurance/finance in the name and style of "SM Krishi Housing and Agricultural Ltd". He opened a new branch at Slate Godam, Yol Cantt, Tehsil Dharamshala, District Kangra, H.P. He appointed one Pinky Devi as Advisor. PinkiDevi convinced the poor people of the locality to take the insurance plans of the accused and issued 60-70 policies in the locality. The accused closed the branch from Slate Godam, Yol Cant, Tehsil Dharamshala, District Kangra, H.P. The complainant, other policy holders and Pinky Devi visited the registered office of the accused, and the accused assured to return the amount. A compromise was effected between the parties. The accused issued a cheque of ₹19,650/- in favour of the complainant to

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repay the amount. The complainant presented the cheque at the bank, but it was dishonoured. The accused failed to repay the money despite the receipt of a valid notice of demand. Hence, the complaint was filed 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 acquisition 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 herself (CW-1) to prove her complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he was running a business of insurance /finance and had opened a branch office at Slate Godam, Yol Cantt, Tehsil Dharamshala, District Kangra, H.P. He admitted that a notice was issued to him and he had not repaid the money. He claimed that he was innocent. He did not produce any evidence in his defence.

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6. Learned Trial Court held that the complainant had succeeded in proving her case that the cheque was issued in discharge of a legally enforceable debt and the accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with the endorsement, 'insufficient funds'. The notice was served upon the accused, but he failed to pay the money. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. 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 3 months, and pay a compensation of ₹29,650/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Kangra at Dharamshala, District Kangra, H.P. (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that there is a presumption that a cheque was issued for consideration to discharge the debt/liability. The complainant failed to produce any evidence

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to rebut the presumption. The complainant was the Managing Director of the company and was liable for the acts of the company. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. There was no infirmity in the judgment and order passed by the learned Trial Court. Consequently, 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 placed before them. The complainant was required to prove that the accused was responsible for the day-to-day affairs of the company at the time of issuing the cheque; mere designation as a Managing Director does not make a person liable. The complainant was required to prove the existence of the consideration/liability, which she had failed to do. The complainant's statement was not corroborated by any other evidence. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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9. I have heard Mr Mukul Sood, learned counsel for the petitioner and Mr Goldy Kumar, learned counsel for the respondent.

10. Mr Mukul Sood, learned counsel for the petitioner/accused, submitted that there was no averment in the complaint that the petitioner/accused was in charge and responsible for the company for its day-to-day affairs. A person cannot be held liable because he holds the position of a Managing Director. The complainant had not arrayed the company as an accused, and the prosecution against the Director without impleading the company was not maintainable. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be satisfied.

11. Mr Goldy Kumar, learned Counsel for the respondent, submitted that the petitioner was liable by virtue of his position as a Managing Director of the company, and there is no infirmity in the judgments and order passed by the learned courts below. He relied upon a judgment of the Hon'ble Supreme Court in ***Shankar Padam Thapa vs. Vijay Kumar***

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Dineshchandra Agarwal 2025 INSC 1210 in support of his submission.

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)
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> > "*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,

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> 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.
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> *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) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to re-appreciate 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 conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14.* ... Unless the 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."

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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. It was submitted that the complainant had not mentioned in the complaint that the accused was in charge and responsible to the company for its affairs, and the complaint was not maintainable. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, *(2005) 8 SCC 89,*** that a Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible for the

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company for the conduct of its business. Therefore, he becomes liable by virtue of the position held by him. It was observed:

> (*c*) The answer to Question (*c*) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. *By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of the business of the company. Therefore, they get covered under Section 141.* So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 of N.I. Act." (Emphasis supplied)

20. In the present case, the accused is the Managing Director of the company, and he would be liable by virtue of his position. Therefore, the submission that the accused cannot be held liable in the absence of the necessary averments cannot be accepted.

21. The cheque (CW-1/D) has been issued by SM Krishi Housing and Agricultural Ltd. It was asserted in para. 1 of the complaint that the accused is running the business of insurance/finance in the name of SM Krishi Housing and Agricultural Ltd. The accused has been described as the

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Managing Director of SM Krishi Housing and Agricultural Ltd. However, the company was not arrayed as an accused, and only the accused Subhash Chander was arrayed as a party. It was laid down by the Hon'ble Supreme Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661,*** that it is not permissible to prosecute the Directors in the absence of the Company. It was observed:

> "58. Applying the doctrine of strict construction, we are of the considered opinion that the commission of the offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence, subject to the averments in the petition and proof thereof. One cannot be oblivious to the fact that the company is a juristic person and it has its respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.
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> 59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative."

22. This judgment was followed by the Hon'ble Supreme Court in ***Charanjit Pal Jindal v. L.N. Metalics, (2015) 15 SCC 768: 2015 SCC OnLine SC 1033,*** and it was held:

> "**11.** From the aforesaid finding, we find that after analysing all the provisions and having noticed the different decisions rendered by this Court, the three-judge Bench arrived at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning a company as an accused is imperative. Hence, in this case, we find no reason to refer the matter to the larger Bench.
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> **12.** In the present case, only the appellant was impleaded as an accused. In that view of the matter, we are of the view that the complaint with respect to the offence under Section 138 read with Section 141 of the Act was not maintainable following the decision in ***Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661: (2012) 3 SCC (Civ) 350: (2012) 3 SCC (Cri) 241]***. We set aside the judgment dated 17-4-2010 passed by the trial court, the order dated 27-5-2011 passed by the appellate court and the impugned judgment dated 9-11-2012 passed by the High Court of Orissa, Cuttack, in ***Charanjit Pal Jindal* v. *L.N. Metalics*** **[*Charanjit Pal Jindal* v. *L.N. Metalics*, *Criminal Revision No. 467 of 2011, decided on 9-11-2012 (Ori)*]**. The appellant stands acquitted."

23. This position was reiterated in ***Himanshu v. B. Shivamurthy*, *(2019) 3 SCC 797: 2019 SCC OnLine SC 83,*** and it was held:

> "**13.** In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."

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24. This position was reiterated in ***Pawan Kumar Goel v. State of U.P., 2022 SCC OnLine SC 1598,*** and it was held:

> **"31.** This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under Section 138 of the NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming a fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-sections (1) and (2) would not be liable to be convicted based on the principles of vicarious liability."

25. It was laid down by the Hon'ble Supreme Court in ***Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 579,*** that where the offence has been committed by a company, the company is primarily liable and its office bearers are vicariously liable. Therefore, it is not permissible to prosecute the office bearers vicariously without prosecuting the company:

> **15.** The judgment in ***Dayle De'souza v. Government of India through Deputy Chief Labour Commissioner (C)*** answered the question of whether a director or a partner can be prosecuted without the company being prosecuted. Reference in this regard was made to the views expressed by this Court in ***State of Madras v. C.V. Parekh*** on the one hand, and the divergent view expressed in ***Sheoratan Agarwal*** **v.** ***State of Madhya Pradesh*** and ***Anil Hada v. Indian Acrylic Ltd.*** This controversy was settled by a three-judge Bench of this Court in ***Aneeta Hada (supra)***,

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in which, interpreting and expounding the difference between the primary/substantial liability and vicarious liability under Section 141 of the NI Act, it held:

"51. We have already opined that the decision in ***Sheoratan Agarwal*** runs counter to the ratio laid down in ***C.V. Parekh,*** which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada* has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.

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59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.V. Parekh*, which is a three-judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* has to be treated to be restricted to its own facts as has been explained by us hereinabove."

16. The provisions of Section 141 impose vicarious liability by deeming a fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in subsection (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of

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> the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, and that person(s) is then, by deeming fiction, made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in ***Sharad Kumar Sanghi v. Sangita Rane, Himanshu v. B. Shivamurthy***, and ***Hindustan Unilever Limited v. State of Madhya Pradesh***. The exception carved out in ***Aneeta Hada*** (supra), which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent."

26. Therefore, the complaint against the Managing Director, without impleading the Company, was not maintainable as per the binding precedents of the Hon'ble Supreme Court of India.

27. A heavy reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Sankar Padam Thapa (supra)***, the Hon'ble Supreme Court specifically held that the Trust is not a Company within the meaning of Section 141 of the NI Act, and the complaint is maintainable against the trustee, who had signed the cheque without impleading the Trust as an accused. In the present case, the accused no. 1 is a Company and not the trust; hence, the cited judgment does not apply to the present case.

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28. Learned Courts below failed to appreciate the significance of the fact that the cheque was issued by a Company, and the accused, being the Managing Director, could not have been held liable without impleading the Company. Thus, they committed a jurisdictional error while convicting and sentencing the accused.

29. In view of the above, the present revision is allowed, and the judgment of conviction and order of sentence dated 29.12.2022, passed by the lea rned Chief Judicial Magistrate, Kangra at Dharamshala in Complaint No.54-III/2019 as affirmed by the learned Appellate Court vide judgment dated 01.07.2024 in criminal Appeal No.7-D/X/2023 are ordered to be set aside, and the accused is acquitted of the commission of an offence punishable under Section 138 of the NI Act. The fine/compensation amount, if deposited by the petitioner/accused be refunded to him after the expiry of the statutory period of limitation in case of no further appeal, and in case of appeal, it shall be dealt with as per the orders of the Hon'ble Apex Court.

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

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

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

(Rakesh Kainthla)
Judge

06th July, 2026
(ravinder)