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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 432 of 2026
Reserved on: 06.11.2026
Date of Decision: 23.11.2026.

Inder Lal ...Petitioner

Versus

Shiv Sharma ....Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] *No.*

For the Petitioner : Mr Ram Krishan Sharma, Advocate

For the Respondent : Nemo

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 17.04.2026 passed by the learned Addl. Sessions Judge, Nalagarh, District Solan, HP. (learned Appellate Court) vide which the judgment of conviction dated 21.02.2025 and order of sentence dated 27.02.2025 passed by the learned Judicial Magistrate, First Class (2), Nalagarh, District Solan (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in*

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

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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 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 complainant and the accused were partners. The complainant used to financially help the accused. The complainant paid ₹ 5,00,000/- to the accused between November 2020 and May 2021 to assist him in running his business. The accused paid ₹ 2,20,000/- to the complainant till May 2023. He issued the cheque for ₹2,80,000/- to the complainant to repay the remaining amount. The complainant presented the cheque to his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused, which was served upon him. The accused failed to repay the money. Hence, a complaint was filed before the learned Trial Court for taking action against the accused as per the law.

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3. The 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 himself (CW1) to prove the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that he had issued the cheque as security. He admitted his signatures on the cheque, that it was dishonoured because of insufficiency of funds, and that he had received the notice. He did not produce any evidence in his defence despite repeated opportunities, and his evidence was closed by the learned Trial Court.

6. The learned Trial Court held that the issuance of the cheque was not disputed. A cheque carries with it the presumption that it was issued for consideration to discharge the debt/liability. The plea taken by the accused that he had handed over a security cheque to the complainant was not proved. Even a cheque issued as a security will attract the liability for the

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commission of an offence punishable under section 138 of the NI Act. The cheque was dishonoured with the endorsement "insufficient funds". The notice was duly served upon the accused, and the accused failed to repay 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 6 months, pay compensation of ₹3,30,000/-and in default of payment of compensation, to undergo simple imprisonment for one month for the commission of the aforesaid offence.

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 Addl. Sessions Judge, Nalagarh, District Solan, HP. (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the issuance of the cheque was not disputed and a presumption would be triggered that the cheque was issued for consideration to discharge the debt/liability. The accused had failed to rebut the presumption attached to the cheque. The

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cheque was dishonoured with an endorsement "insufficient funds", and the notice was duly served upon the accused. The learned Trial Court had imposed an adequate sentence and no interference was required with the judgment and order passed by the learned Trial Court. 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 complainant had failed to prove its case beyond reasonable doubt. The allegations made by the complainant that the accused was a partner with him are false, and no proof of partnership was produced on record. The complainant failed to prove his financial capacity to advance the loan. The learned counsel had not sought instructions from the accused and had put a wrong suggestion to the complainant without any authority. The accused had borrowed ₹ 10,000 from the complainant and handed over a blank security cheque to the complainant, which was misused by him. The defence taken by the accused was highly probable, and the learned Courts below erred in rejecting it. 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. Mr Ram Krishan Sharma, learned counsel for the petitioner/accused, submitted that the complainant had failed to produce any evidence on record to show that he is a partner with the accused. He had not proved his financial capacity to lend the money to the accused. The accused was not present on the date of examination of the complainant, and the learned Trial Court erred in recording the evidence in the absence of the accused. The learned counsel had no authority to cross-examine the complainant and put the suggestions. A proper opportunity to lead defence evidence was not provided. The learned Trial Court had imposed an excessive sentence, and the learned Appellate Court erred in upholding it. Therefore, he prayed that the present revision 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 Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only

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determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
>
> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying 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, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
> >
> > *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.
> >
> > (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
> >
> > (3) If an application under this section has been made by any person either to the High Court or to the

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Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided,

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especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. 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:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

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i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of the NI Act, while setting aside the impugned order, observed as under:

> "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. This Court is of the view that it is not for the Revisional Court to reanalyse 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."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below.

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> Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in the exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

12. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

> **5.3.** At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755.***
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> > "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
> >
> > (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person out of that account for the discharge of any debt or other liability;
> >
> > (ii) that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> >
> > (iii) that the cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or because it exceeds the amount

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arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or because it exceeds the amount arranged to be paid from that account.

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v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below the First Class.

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

14. The accused admitted in his statement recorded under section 313 of the CrPC the issuance of the cheque and his signatures on it. He also asserted in para (viii) of the grounds of revision that his driver had borrowed ₹ 10,000/- from the complainant and issued a blank signed cheque to the complainant. Therefore, the learned Courts below had rightly held that issuance of the cheque and signatures on the cheque were not disputed. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the admission of the complainant's signature without admitting the execution of the cheque is sufficient to trigger the presumption

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contained under Section 118(a) and 139 of the NI Act. It was observed:

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.
>
> **37.** As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

15. A similar view was taken 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

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> cheque in discharge of a legally enforceable debt or liability arise 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***].

16. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that a statutory presumption arises on the admission or proof of the execution of the negotiable instrument, and the burden is upon the accused to rebut this presumption. It was observed:

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct

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> or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and, therefore, to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

17. Therefore, the learned Courts below had rightly held that the cheque carried a presumption that it was issued for consideration to discharge the debt/liability, and the burden was upon the accused to rebut the presumption.

18. The accused did not step into the witness box to prove his version. He relied upon his statement recorded under Section 313 CrPC to prove his defence, which is not sufficient. 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 is not sufficient. It was observed at page 700:

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> "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)

19. Therefore, the statement of the accused recorded under Section 313 of CrPC was not sufficient to rebut the presumption, and the accused cannot derive any advantage from it.

20. It was submitted that the complainant had not produced any evidence to show that he and the accused were partners or that he had advanced any money to the accused. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: 2019 SCC OnLine SC 1361***, that a presumption under Section 139 of the NI Act would obviate the requirement to prove the existence of consideration. It was observed:

> "**20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court,

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wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due, and the dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

21. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

"**22.** The High Court, while allowing the criminal revision, has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving the cheque, which has not been done in the present case. Pausing here, such a presumption against the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then would the complainant have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of a loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad

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(Typed Copy of his deposition in the paper book wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved, whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

> '*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point, which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound.* ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing a statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto would not negate such claim for the reason that the cheques having been issued and signed by the petitioners have not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.*** *In this regard, we may*

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make profitable reference to the decision in ***Tedhi Singh v. Narayan Dass Mahant****, (2022) 6 SCC 735:*

> *'10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act are not a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts, in our view, were right in holding to those lines. However, the* ***accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, further achieve this result through the cross-examination of the witnesses of the complainant.*** *Ultimately,* ***it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.****'(emphasis supplied)' (underlining in original; emphasis supplied by us in bold).*

22. A similar view was taken in ***Sanjay Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, wherein it was observed:

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> "21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceeding and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged."

23. Therefore, the complainant's version cannot be doubted because he had not produced any evidence to prove the advancing of the loan to the accused.

24. It was submitted that the complainant has failed to prove his financial capacity to advance money to the accused. This submission will also not help the accused. The accused admitted in his statement recorded under section 313 of the CrPC that he had received the legal notice. He had not sent any reply to the notice issued to him challenging the complainant's financial capacity to lend the money. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh v. Narayan Dass Mahant*, *(2022) 6 SCC 735: 2022 SCC OnLine SC 302,*** that the complainant is not required to show his financial capacity unless it is challenged by sending a reply to the notice. It was observed at page 740:

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> "**10.** The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceeding under Section 138 of the NI Act is not a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts, in our view, were right in holding on those lines...."

25. This position was reiterated in ***Kuntegowda***(supra) wherein it was observed:

> **6.7.** Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contrary material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan; therefore, the argument and defence of the accused on this aspect fall flat.

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26. Therefore, the submission regarding the lack of the complainant's financial capacity to lend money cannot be accepted in the absence of the reply to the notice.

27. It was submitted that the learned trial Court had recorded the complainant's statement in the absence of the accused, which is violative of section 273 of the CrPC. This submission is only stated to be rejected. The record shows that an application seeking exemption from personal appearance of the accused was filed, which was allowed on 20th January 2025. Section 273 of the CrPC specifically provides that the statement of a witness shall be recorded in the presence of the accused unless his presence has been dispensed with. In the present case, the presence of the accused was dispensed with, and there was no violation of Section 273 of the CrPC.

28. It was submitted that the learned counsel had no authority to put the suggestions to the witnesses. This submission will also not help the accused. If the accused is aggrieved by the act of the learned counsel acting beyond the authority, his remedy lies elsewhere and not before this Court. He had also not taken any such plea before the learned appellate

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Court, and the plea before this Court is a plea of desperation that cannot be accepted.

29. It was submitted that sufficient opportunity was not granted to the accused to lead defence evidence. This submission is also not acceptable; the record shows that the statement of the accused was recorded on 7th February 2025 and the matter was listed for recording the statement of the defence witnesses on 21st February 2025. No witness was present, and no steps had been taken. No reason was given for the non-production of the witnesses or for not taking the steps, and the learned trial Court closed the evidence by order of the Court. It was held in ***Asha Ranjan v. State of Bihar, (2017) 4 SCC 397: (2017) 2 SCC (Cri) 376: 2017 SCC OnLine SC 140*** that the accused cannot go on seeking adjournments in the name of a fair trial. It was observed at page 435:

> "**63.** While appreciating the concept of public interest in such a situation, the Court is required to engage itself in construing the process of fair trial, which ultimately subserves the cause of justice and remains closer to constitutional sensibility. An accused, in the name of a fair trial, cannot go on seeking adjournments, defeating the basic purpose behind the conducting of a trial as enshrined under Section 309 CrPC. He cannot go on filing applications under various provisions of the Criminal Procedure Code, whether tenable or not, and put forth a

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> plea on each and every occasion on the bedrock that the principle of fair trial sanctions it. In such a situation, as has been held by this Court, the prosecution, which represents the cause of the collective and the victim, who fights for a remedy of his individual grievance, is allowed to have a say, and the court is not expected to be a silent spectator. Thus, the discord that arises when there is intra-conflict in the same fundamental right, especially in the context of a fair trial, has to be resolved with regard being had to the obtaining fact situation. An accused who has been able, by his sheer presence, to erode the idea of the safety of a witness in court, or, for that matter, impair and rust the faith of a victim in the ultimate justice, and such erosion is due to fear psychosis prevalent in the atmosphere of trial, is not to be countenanced, as it is an unconscionable situation. Such a hazard is not to be silently suffered because the "Majesty of Justice" does not allow such kinds of complaints to survive."

30. It was submitted that the adjournment should have been granted in the interest of justice. This submission cannot be accepted. Delhi High Court held in ***Jasbir Sobti v. Surender Singh,*** ***2008 SCC OnLine Del 845,*** that adjournments cannot be granted in the interest of justice. It was observed:

> **6.** The question that arises for consideration is whether another opportunity is to be given to the plaintiffs under the cloak of 'in the interest of justice'. The answer to this question would lie in replying to the related question, namely, whether the interest of justice demands that the case be decided on merits even when there are lapses galore on the part of the plaintiffs in not prosecuting the case diligently, thereby delaying the process endlessly. We are afraid, in the name of justice, that no such licence can be given to the plaintiffs. No doubt, if there is a minor

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procedural lapse, that can be condoned, and the main purpose of the Court is to see that such cases are decided on the merits. However, that would not mean that the plaintiffs or the defendants are allowed to drag on the proceedings unnecessarily by taking adjournments continuously. Again, that does not mean that the parties do not take steps in the further progress of/the case, namely, fail to file the documents, conduct admission/denial and even fail to appear repeatedly. We have to keep in mind the interests of the opposing party as well. If the matter is dragged out like this and the opposing party is made to appear on each date and asked to come on the next date only because nobody is appearing on behalf of the plaintiffs, it causes unnecessary harassment to the opposite party as well. Therefore, in all such matters, the Court is under a duty to weigh the interests of both parties and maintain balance insofar as these conflicting interests are concerned.

7. The problem of arrears in the Indian courts is well known. We have 30 million cases pending in the various District Courts and the High Courts. Many attempts are being made to clear these arrears and to ensure that the cases are decided speedily, and there is no unnecessary delay in the disposal of these cases. If the proceedings in a particular case linger until the judgment is delivered and the case is decided after a number of years, the adverse effects of this are well known. No doubt, if we have the dictum 'Justice hurried is justice buried' on the one hand, we cannot gloss over another equally forceful maxim 'Justice delayed is justice denied'. In a situation like this, callousness, indifference and laxity on the part of the plaintiffs in pursuing the suit cannot be tolerated. It cannot be the privilege of the plaintiffs to file a suit and not prosecute it, enter an appearance or keep the matter pending indefinitely."

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31. Similarly, it was held in ***Ishwarlal Mali Rathod v. Gopal, (2021) 12 SCC 612: (2023) 2 SCC (Civ) 625: 2021 SCC OnLine SC 921*** that the grant of repeated adjournments without any justification is not proper. It was observed at page 616:

> **8.** Grant of repeated adjournments in a routine manner and how it ultimately affects the justice delivery system, as such came to be considered by this Court in a catena of decisions, and asking/granting of repeated adjournments have been repeatedly condemned by this Court.
>
> **8.1.** In ***Shiv Cotex v. Tirgun Auto Plast (P) Ltd. [Shiv Cotex v. Tirgun Auto Plast (P) Ltd., (2011) 9 SCC 678 : (2011) 4 SCC (Civ) 817]***, it is observed and held in paras 14 to 17 as under : (SCC pp. 682-83)
>
> > "*14.* ... Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?
> >
> > *15.* It is sad, but true, that the litigants seek—and the courts grant—adjournments at the drop of a hat. In the cases where the Judges are a little proactive and refuse to accede to the requests for unnecessary adjournments, the litigants deploy all sorts of methods to protract the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in the justice delivery system and realise that adjournments do dent the efficacy of the judicial process, and if this menace is not controlled adequately, the litigant public may

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lose faith in the system sooner or later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer, corroding the entire body of the justice delivery system....

17. ... A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of the hearing for which the matter has been fixed. If they do not, they do so at their own peril."

8.2. Commenting on the delay in the justice delivery system, although in respect of the criminal trial, Krishna Iyer, J. in ***Babu Singh v. State of U.P. [Babu Singh v. State of U.P., (1978) 1 SCC 579: 1978 SCC (Cri) 133]*** has observed in para 4 as under: (SCC p. 581)

"4. ... Our justice system, even in grave cases, suffers from slow motion syndrome, which is lethal to "fair trial", whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

8.3. In ***Noor Mohammed v. Jethanand [Noor Mohammed v. Jethanand, (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754]***, using very harsh words and condemning the repeated adjournments sought by the lawyers and granted by the courts, this Court has observed in paras 1, 12, 13, 27 and 28 as under : (SCC pp. 206-07, 209-10 & 215-16)

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"1. In a democratic body politic which is governed by a written Constitution and where the Rule of Law is paramount, the judiciary is regarded as a sentinel on the *qui vive* not only to protect the fundamental rights of the citizens but also to see that the democratic values as enshrined in the Constitution are respected and the faith and hope of the people in the constitutional system are not atrophied. The sacrosanctity of the Rule of Law neither recognises a master and a slave nor does it conceive of a ruler and a subject, but, in quintessentiality, encapsulates and sings in the glory of the values of liberty, equality and justice in accordance with the law, requiring the present generation to have the responsibility to sustain them with all fairness for the posterity, ostracising all affectations. To maintain the sacredness of democracy, sacrifice in the continuum by every member of the collective is a categorical imperative. The fundamental conception of democracy can only be preserved as a colossal and priceless treasure where virtue and values of justice rule supreme and intellectual anaemia is kept at bay by constant patience, consistent perseverance, and Argus-eyed vigilance. The foundation of justice, apart from other things, rests on the speedy delineation of the lis pending in courts. It would not be an exaggeration to state that it is the primary morality of justice and the ethical fulcrum of the judiciary. Its profundity lies in not allowing anything to cripple it or to do any act which would freeze it or make it suffer from impotence. Delayed delineation of a controversy in a court of law creates a dent in the normative dispensation of justice, and in the ultimate event, the Bench and the Bar gradually lose their reverence, for the sense of divinity and nobility really flows from the institutional serviceability. Therefore, historically, emphasis has been laid on individual institutionalism and collective institutionalism of an adjudicator while administering

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justice. It can be stated without any fear of contradiction that collective collegiality can never be regarded as an alien concept to the speedy dispensation of justice. That is the hallmark of duty, and that is the real measure.

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12. The proceedings in the second appeal before the High Court, if we allow ourselves to say so, epitomise the corrosive effect that adjournments can have on litigation and how a lis can get entangled in the tentacles of an octopus. The philosophy of justice, the role of a lawyer and the court, the obligation of a litigant and all legislative commands, the nobility of the Bench and the Bar, the ability and efficiency of all concerned and ultimately the divinity of law are likely to make way for apathy and indifference when delay of the present nature takes place, for procrastination on the part of anyone destroys the values of life and creates a catastrophic turbulence in the sanctity of law. The virtues of adjudication cannot be allowed to be paralysed by adjournments and non-demonstration of due diligence to deal with the matter. One cannot be oblivious to the necessities of the time. No one can afford to sit in an ivory tower. Neither a Judge nor a lawyer can ignore "the total push and pressure of the cosmos". It is devastating to expect infinite patience. A change of attitude is the warrant and command of the day. We may recall with profit what Justice Cardozo had said:

> "It is true, I think, today in every department of the law that the social value of a rule has become a test of growing power and importance." [Benjamin N. Cardozo, ***The Nature of Judicial Process*** (Cosimo Inc., 2009) 73]

13. It has to be kept in mind that the time of leisure has to be given a decent burial. The sooner it takes place,

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the better it is. It is the obligation of the present generation to march with the times and remind oneself every moment that the rule of law is the centripodal concern, and delay in the delineation and disposal of cases injects an artificial virus and becomes a vitiating element. The unfortunate characteristics of endemic delays have to be avoided at any cost. One has to bear in mind that this is the day, this is the hour, and this is the moment when all soldiers of law fight on the path. One has to remind oneself of the great saying, "Awake, Arise, 'O' Partha".

***

27. The anguish expressed in the past, and the role ascribed to the Judges, the lawyers and the litigants, is a matter of perpetual concern, and the same has to be reflected upon every moment. An attitude of indifference can neither be appreciated nor tolerated. Therefore, the serviceability of the institution gains significance. That is the command of the Majesty of Law, and none should make any maladroit effort to create a concavity in the same. Procrastination, whether at the individual or institutional level, is a systemic disorder. Its corrosive effect and impact are like a disorderly state of the physical frame of a man suffering from an incurable and fast progressive malignancy. Delay either by the functionaries of the court or the members of the Bar significantly exhibits indolence, and one can aphoristically say, borrowing a line from Southwell, "creeping snails have the weakest force [***Robert Southwell, "Loss in Delay", in William B. Turnbull (Ed.), The Poetical Works of the Rev. Robert Southwell*** (John Russell Smith, London 1856), p. 60] ". Slightly more than five decades back, talking about the responsibility of the lawyers, Nizer Louis had put it thus:

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> 'I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure [Nizer Louis, ***My Life in Court*** (Doubleday & Co. Inc., New York 1961), p. 213].'

A few lines from the illustrious Justice Frankfurter are fruitful to recapitulate:

> 'I think a person who throughout his life is nothing but a practising lawyer fulfils a very great and essential function in the life of society. Think of the responsibilities on the one hand, and the satisfaction on the other, to be a lawyer in the true sense [Felix Frankfurter, "Proceedings in Honour of Mr Justice Frankfurter and Distinguished Alumni, Occasional Pamphlet No. 3" (Harvard Law School, Cambridge, 1960), pp. 45] .'

28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry's faith in the system. It is faith and faith alone that keep the system alive. It provides oxygen constantly. Fragmentation of faith has the potential to bring about a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to, and, rightly so, to guillotine much of the time at the altar of reason. Timely delivery of justice keeps the faith ingrained and establishes sustained stability. Access to speedy justice is regarded as a human right that is deeply rooted in the foundational concept of democracy, and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because

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such a thought is likely to make the right a mirage, losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach."

8.4. In the aforesaid decision *[Noor Mohammed v. Jethanand, (2013) 5 SCC 202: (2013) 2 SCC (Civ) 754]*, this Court also considered the role of the advocate in the justice delivery system and considered the earlier decisions in paras 17 to 22 which read as under: (***Noor Mohammed case [Noor Mohammedv. Jethanand, (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754], SCC pp. 212-14***)

"*17.* In ***Ramon Services (P) Ltd. v. Subhash Kapoor [Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118: 2001 SCC (Cri) 3: 2001 SCC (L&S) 152]***, after referring to a passage from ***Mahabir Prasad Singh v. Jacks Aviation (P) Ltd. [Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37]***, the Court cautioned thus : (***Ramon Services case [Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118: 2001 SCC (Cri) 3: 2001 SCC (L&S) 152], SCC p. 126***, para 15)

'*15.* ... Nonetheless, we put the profession on notice that in future the advocate would also be answerable for the consequences suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of its advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court has also the remedy to sue the advocate for damages, but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has the power to permit the party to realise the

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> costs from the advocate concerned. However, such a direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability.'

Be it noted, though the said passage was stated in the context of a strike by the lawyers, yet it has its accent on non-appearance by counsel in the court.

18. In this context, we may refer to the pronouncement in ***P.D. Khandekar v. Bar Council of Maharashtra [P.D. Khandekar v. Bar Council of Maharashtra, (1984) 2 SCC 556: 1984 SCC (Cri) 335***], wherein the Court observed that : (SCC p. 563, para 9)

> '*9*. ... An advocate stands in a loco parentis towards the litigants, and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment, especially where the client approaches the advocate for succour in times of need.'

19. In ***S.J. Chaudhary v. State (Delhi Admn.) [S.J. Chaudhary v. State (Delhi Admn.), (1984) 1 SCC 722: 1984 SCC (Cri) 163]***, a three-Judge Bench, while dealing with the role of an advocate in a criminal trial, has observed as follows: (SCC pp. 723-24, para 3)

> "*3*. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his advocate is finding it difficult to attend court from day to day. It is the duty of every advocate who accepts the brief in a criminal case to attend the trial from day to day. We cannot over-stress the duty of the advocate to attend the trial from day to day. Having accepted the brief, he will be committing a breach of his professional duty if he so fails to attend."

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20. In ***Mahabir Prasad Singh [Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37]***, the Bench, emphasising the obligation of a lawyer in his duty towards the Court and the duty of the Court to the Bar, has ruled as under : (SCC p. 44, paras 17-18)

> '*17.* ... "A lawyer is under obligation to do nothing that shall detract from the dignity of the court of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom." (*Warevelle's Legal Ethics*, p. 182)

18. Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum, and therefore, the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.'

21. While recapitulating the duties of a lawyer towards the court and society, being a member of the legal profession, this Court in ***O.P. Sharma v. High Court of P&H [O.P. Sharma v. High Court of P&H, (2011) 6 SCC 86 : (2011) 3 SCC (Civ) 218 : (2011) 2 SCC (Cri) 821 : (2011) 2 SCC (L&S) 11***] has observed that : (SCC p. 92, para 17)

> '*17.* The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's

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> administration was to be governed by the rule of law.'

The Bench emphasised the role of eminent lawyers in the framing of the Constitution. The emphasis was also laid on the concept that lawyers are the officers of the court in the administration of justice.

22. In ***R.K. Garg v. State of H.P. [R.K. Garg v. State of H.P., (1981) 3 SCC 166: 1981 SCC (Cri) 663***], Chandrachud, C.J., speaking for the Court pertaining to the relationship between the Bench and the Bar, opined thus: (SCC p. 170, para 9)

> '9. ... the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar, and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy, and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive.' "

9. Today, the judiciary and the justice delivery system are facing the acute problem of delay, which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics, and asking for repeated adjournments by which advocates and mechanically and in a routine manner granted by the courts. It cannot be disputed that due to the delay in access to justice and not getting timely justice, it may shake the trust and confidence of the litigants in the justice delivery system. Many a time, the

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> task of adjournments is used to kill justice. Repeated adjournments break the back of the litigants. The courts are enjoined to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort that weakens the system and shakes the faith of the common man in the justice dispensation has to be discouraged. Therefore, the courts shall not grant adjournments in a routine manner and mechanically, and shall not be a party to the cause of delay in dispensing justice. The courts have to be diligent and take timely action in order to usher in an efficient justice dispensation system and maintain faith in the rule of law.
>
> **10.** We are also aware that whenever the trial courts refuse to grant unnecessary adjournments, many times they are accused of being strict, and they may face the displeasure of the Bar. However, the judicial officers shall not worry about that if their conscience is clear, and they, as judicial officers, have to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom the courts are meant, and all efforts shall be made by the courts to provide timely justice to the litigants.

32. It was laid down by the Hon'ble Supreme Court in *Vinod Kumar v. State of Punjab, (2015) 3 SCC 220: (2015) 2 SCC (Cri) 226: (2015) 1 SCC (L&S) 712: 2015 SCC OnLine SC 53* that adjournments in criminal trials have become a malignancy. It was observed at page 226:

> "If one is asked a question, what afflicts the legally requisite criminal trial in its conceptual eventuality in this country the two reasons that may earn the status of phenomenal signification are, first, procrastination of trial

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due to non-availability of witnesses when the trial is in progress and second, unwarranted adjournments sought by the counsel conducting the trial and the unfathomable reasons for acceptation of such prayers for adjournments by the trial courts, despite a statutory command under Section 309 of the Code of Criminal Procedure, 1973 (CrPC) and series of pronouncements by this Court. What was a malady at one time, with the efflux of time, has metamorphosed into malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present."

33. It was held in ***Bablu Kumar v. State of Bihar, (2015) 8 SCC 787: (2015) 3 SCC (Cri) 862: 2015 SCC OnLine SC 632*** that the Court must see that neither the defence nor the prosecution takes unnecessary adjournments. It was observed at page 798:

> "**22** Keeping in view the concept of a fair trial, the obligation of the prosecution, the interest of the community and the duty of the court, it can irrefragably be stated that the court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused plays truant with the criminal trial nor corrodes the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. The law does not countenance a "mock trial". It is a serious concern for society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and takes the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it, or if summonses are issued, they are actually served on the

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> witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses, but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to call the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court is also not expected to accept the version of the prosecution as if it were sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potential to lead to the paralysis of the conception of a fair trial."

34. In the present case also, the accused had not assigned any reason for non-production of the evidence, and the learned trial Court cannot be faulted for closing the defence evidence.

35. 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 attached to the cheque.

36. The complainant (CW1) stated that the cheque was dishonoured with an endorsement 'insufficient funds'. This is corroborated by the memo of dishonour (Ext. C2/CW1). 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

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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."

37. The accused did not produce any evidence to show that he had sufficient money in his account and the cheque was wrongly dishonoured by the bank; rather, he admitted in his statement recorded under section 313 of the CrPC that the cheque was dishonoured with an endorsement of insufficient funds. Therefore, the learned Courts below had rightly held that the cheque was dishonoured with an endorsement of insufficient funds.

38. The complainant (CW1) asserted that he had issued a notice to the accused which was duly served upon him. The accused admitted in his statement recorded under section 313 of the CrPC that he had received the notice; therefore, the learned Courts below had rightly held that the notice was served upon the accused.

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39. There is no evidence that the accused had repaid the money to the complainant, and it was duly proved on record that the accused had failed to repay the amount despite the receipt of the notice.

40. Therefore, it was duly proved on record that the accused had issued a cheque to discharge his liability, which was dishonoured with an endorsement "insufficient funds", and the accused failed to repay the money despite the receipt of a notice of demand. 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.

41. The learned Trial Court had sentenced the accused to undergo simple imprisonment for 6 months and pay compensation of ₹3,30,000/-, and in default of payment of the compensation, to undergo simple imprisonment for one month. 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***

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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."

42. Keeping in view the deterrent nature of the punishment, the sentence of six months cannot be said to be excessive.

43. In the present case, the cheque was issued for ₹2,80,000/- and the learned Trial Court had awarded the compensation of ₹3,30,000/-. 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

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> 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*]"

44. The complainant lost interest that he would have gained by investing the money. He had to engage counsel to prosecute the complaint and was entitled to be compensated for the loss sustained by it. Hence, the compensation of ₹3,30,000/- is not excessive, requiring any interference from this Court.

45. The learned Trial Court had imposed a sentence of imprisonment in default of payment of compensation. It was submitted that this is impermissible. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230; (2010) 3 SCC (Civ) 744; (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612,*** that the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

> "**26.** From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to

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> accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to prison or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated."

46. This position was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013; 2012 SCC OnLine SC 486,*** wherein it was observed at page 729:

> "**29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the

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> complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that, in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the above-mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.
>
> **30.** In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

47. Therefore, there is no infirmity in the sentence of imprisonment in default of payment of compensation.

48. No other point was urged.

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49. In view of the above, the present revision fails, and it is dismissed. All the pending applications, if any, also stand disposed of.

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

(Rakesh Kainthla)
Judge

23rd November, 2026
(ravinder)