

fine amount to the cheque amount. Accordingly, to this extent, the impugned judgment of conviction and order of sentence requires modification. Accordingly, I pass the following:

ORDER

a) The appeals are allowed.

b) The impugned judgement and order dated 25.01.2017 passed by the IV Additional District and Session Judge Dharwad in CrI.P.Nos. 128/2016 and 129/2016 and the judgement and order dated 26.10.2016 passed by the III Additional Civil Judge (Jr.Dn) and JMFC, Dharwad in C.C. 284/2014 and 287/2014 are hereby modified as follows.

c) The appellant/accused is convicted for the offence punishable under section 138 of the N.I. Act and sentenced to pay a fine of Rs.2,00,000/- and Rs.50,00,000/- respectively and in default to undergo simple imprisonment for a period of 2 years.

d) The complainant has withdrawn the cheque amount deposited by the accused before this Court.

e) The appellant/accused having deposited the entire cheques amount, the order of sentence passed against the accused to undergo imprisonment for a period of two years is set aside in case of default is set aside (sic)."

5. Respondent had issued two cheques to the appellant, one for Rs.2,00,000/- and the other for Rs.50,00,000/-. Both the cheques were dishonoured. The trial magistrate recorded findings that dishonour of the cheques and the appellant having followed the procedure statutorily laid down while issuing notices to the respondent which he did not comply were proved; also that, the appellant proved a legally enforceable claim. Consequently, upon recording conviction, the magistrate sentenced the respondent to imprisonment for 2 (two) years with fine of Rs.4,00,000/- and Rs.1,00,00,000/-, i.e., double the cheque amount. In appeal by the respondent, the conviction and sentence were upheld.

6. Appellant, being the complainant is aggrieved, because despite concurrent conviction under Section 138 of the Act by the trial court and the appellate court, as well as by the High Court in revision, the respondent has been simply let off by the High Court without any punishment and is required, in terms of the High Court's impugned order, to only pay the cheque amount *sans* even any interest. According to the appellant, the cheque amount is being returned after 10 (ten) years of dishonour of the cheques. This, he claims is unfair and unjust.

7. The High Court, mistakenly assuming that it was exercising appellate power and not revisional power, proceeded to interfere by observing that the Trial Court has not given any reason for imposing a fine that is twice the cheque amount; however, while so interfering with that part of the sentence and modifying the same, the High Court did neither impose any prison term nor award interest with the result that the respondent does not stand to suffer any penalty for committing the proved offence.

8. Interfering with the exercise of discretion as to what would constitute appropriate sentence and ultimately letting off the respondent by merely asking him to pay the cheque amount without any prison term and without awarding any interest, *prima facie*, appeared to us perverse and erroneous, hence, indefensible. Opportunity was given to learned counsel for the respondent to advance submissions for sustaining it. He fairly expressed his inability to defend the indefensible, so to say.

9. In course of hearing on several subsequent occasions, we had impressed upon learned counsel for the respondent to propose terms for an 'out of the court' settlement. Since no such settlement was forthcoming, we indicated that appropriate sentence ought to be imposed on the respondent and, by our last order, required his presence today for appearance before us to hear him on the question of sentence. Respondent has participated in the proceedings, through the virtual mode.

10. Through his learned counsel, the respondent has proposed to pay a sum of Rs. 45,00,000/- (Rupees forty-five lakh) towards full and final settlement of the dues to the appellant by 31st August, 2026. With a bit of reluctance, but on instructions, learned counsel for the appellant agrees to receive Rs. 45,00,000/- (Rupees forty-five lakh) towards full and final settlement of the dues.

11. Having recorded the specific undertaking given by the respondent through his learned counsel, we do not propose to enter into the merits of the matter further and discuss how grossly wrong the High Court was in granting relief to the respondent. Suffice to record, we grant time till 31st August, 2026 to the respondent to make payment of Rs. 45,00,000/- (Rupees forty-five lakh) to the appellant. We hope and trust that the respondent will endeavour to honour the proposal and will not give any further occasion for the appellant to approach this Court once again.

12. The impugned judgment and order of the High Court, being wholly perverse and manifestly erroneous, stands set aside. The appeals are, thus, allowed.

13. Should the respondent fail to make the payment to the appellant, as proposed and recorded supra, the appellant shall be at liberty to apply for revival of these appeals whereupon they may be revived for considering the desirability to send the respondent to prison straight away.

14. Pending applications, if any, stand disposed of.

.....J.

[DIPANKAR DATTA]

.....J.

[SATISH CHANDRA SHARMA]

**New Delhi;
April 13, 2026.**