

THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.163 of 2019

Date of Decision: 29.04.2026

BalwantPetitioner

Versus

Ashok Kumar ... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner : Mr. Aman Hansretta, Advocate

For the Respondent : Mr. K. B. Khajuria, Advocate.

Sandeep Sharma, Judge(oral):

Instant Criminal Revision petition filed under Section 397 of Cr. P.C, lays challenge to judgment dated 23.03.2019 passed by learned Additional Sessions Judge-II, Shimla, District Shimla, Himachal Pradesh, in Criminal Appeal No.12-R/10 of 2018, affirming judgment of conviction dated 07.09.2018 and order of sentence dated 17.09.2018, passed by learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, Himachal Pradesh, in Criminal case No.142-3 of 2017, titled as **Ashok Kumar Vs. Balwant**, whereby learned trial Court, while holding petitioner-accused (**hereinafter referred to as the 'accused'**) guilty of his having committed an offence punishable under Section 138 of the Negotiable

¹*Whether the reporters of the local papers may be allowed to see the judgment?*

Instruments Act(**for short 'Act'**), convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs.2,00,000/- to the respondent-complainant.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other documents adduced on record by the respective parties, are that the respondent -complainant (**hereinafter referred to as the 'complainant'**) filed a complaint under Section 138 of the Act in the competent Court of law, alleging therein that on 12.09.2017, accused purchased 121 apple boxes from him for sum of Rs. 1, 61, 700/-. Though, accused, with a view to discharge his liability, issued cheque bearing No.447238, dated 18.09.2017, amounting to Rs. 1, 61, 700/- drawn on Punjab National Bank, Chirgaon in favour of the complainant, but fact remains that aforesaid cheque on its presentation to the bank concerned was dishonoured vide return memo dated 07.11.2017 with the remarks "insufficient funds". Though, immediately after receipt of return memo, complainant served accused with legal notice dated 13.11.2017 calling upon him to make payment good within stipulated time, but neither accused replied to the legal notice nor paid the amount, as a result of which, complainant had no option, but to initiate proceedings under Section 138 of the Act in the competent Court of law, which

subsequently, on the basis of evidence adduced on record by the respective parties, held accused guilty of his having committed offence punishable under S. 138 of the Act and accordingly, convicted and sentenced him as per description given herein above.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence recorded by learned trial Court, present petitioner-accused preferred an appeal in the Court of learned Additional Sessions Judge-II, Shimla District Shimla, Himachal Pradesh, but same was dismissed vide judgment dated 23.03.2019. In the aforesaid background, petitioner-accused has approached this Court in the instant proceedings, praying therein for his acquittal after quashing and setting aside the impugned judgment of conviction and order of sentence recorded by Courts below.

4. Vide order dated 07.05.2019, this Court suspended the substantive sentence imposed by Court below, subject to petitioner-accused depositing entire compensation amount within a period of six weeks. However, fact remains that aforesaid order never came to be complied with, but yet Court granted time to deposit the amount. During the proceedings of the case, accused deposited sum of Rs. 40,000/- in the Registry of this Court, but thereafter despite repeated opportunities, no amount has been deposited. Repeatedly,

time was taken to settle the matter, but in vain. Hence, this Court has no option, but to decide the petition on its own merits.

5. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the impugned judgment passed by learned Additional Sessions Judge-II, Shimla, upholding the judgment of conviction and order of sentence passed by learned trial Court, this Court sees no illegality or infirmity in the same and as such, no interference is called for.

6. In the instant case, factum with regard to issuance of cheque as well as signatures thereupon never came to be disputed and as such, learned Court below rightly invoked Sections 118 and 139 of the Act, which speak about presumption in favour of the holder of the cheque that cheque was issued towards discharge of lawful liability. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption, accused either can refer to the documents and evidence led on record by the complainant or presumption can be rebutted by leading positive evidence, if any.

7. Though, accused in his statement recorded under Section 313 Cr.P.C., denied the case of the complainant in toto and claimed himself to be innocent, but evidence led on record by the complainant clearly reveals that accused, with a view to discharge his lawful liability, had issued cheque under his signatures for sum of

Rs. 1, 61,700/-, but same was dishonoured with the remarks “funds insufficient”.

8. Complainant, with a view to prove his case, examined himself as CW-1 and tendered his evidence by way of affidavit Ex. CW-1/A, wherein he specifically reiterated the averments contained in the complaint. He successfully proved on record that he had sold 121 apple boxes to the accused for sum of Rs. 1, 61,700/- and accused, with a view to discharge his liability, though issued cheque Ex.CW-1/B, but same was dishonoured vide memo Ex. CW-1/C on account of insufficient funds in the bank account of the accused. He also proved on record that registered notice was sent to the accused on 13.11.2017, but yet no payment was made. Cross-examination conducted upon afore witness, if read in its entirety, clearly reveals that accused was not able to extract anything contrary to what this witness stated in his examination-in-chief. In cross-examination, a suggestion was put to the complainant that he did not own any land in his name, which fact was not disputed, but afore witness categorically stated that land is in the name of his father. Interestingly, a suggestion came to be put to afore witness that cheque was taken by the father of the complainant in advance. He denied that he himself has not sold any crop to the accused. By putting afore suggestions, accused has virtually admitted factum with

regard to his having issued cheque as well as signatures thereupon. If it is so, learned court below rightly presumed that cheque in question was issued towards discharge of lawful liability.

9. Accused, with a view to prove his defence, though examined Sh. Hem Raj (DW-1), but his statement nowhere supports the case of the accused. Aforesaid witness deposed that there was a talk to supply apple crop and advance cheque was given to the complainant and after obtaining the cheque, no supply of apple crop was made. In his cross-examination, he admitted that he has close relation with the accused and accused has brought him for making statement. He feigned ignorance that accused had purchased 121 apple boxes for consideration of Rs. 1,61, 700/-. While examining aforesaid witness, accused further strengthened the case of the complainant with regard to supply of apple boxes as well as issuance of cheque, may be in advance. If the evidence led on record by the accused is perused, it can be safely concluded that he was unable to probablize the defence attempted to be set up by him, rather pattern of cross-examination of the complainant clearly establishes factum with regard to cheque issued by the accused towards discharge of his lawful liability as well as signature thereupon as such, no illegality can be said to have been committed by the learned courts below,

while returning a finding that complainant had successfully proved all the ingredients of Section 138 of the Act.

10. The Hon'ble Apex Court *in M/s Laxmi Dychem V. State of Gujarat*, 2013(1) RCR(Criminal), has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely on the materials submitted by the complainant. Needless to say, if the accused/drawer of the cheque in question neither raises a probable defence nor is able to contest existence of a legally enforceable debt or liability, statutory presumption under Section 139 of the Negotiable Instruments Act, regarding commission of the offence comes into play. It would be profitable to reproduce relevant paras No.23 to 25 of the judgment herein:-

“23. Further, a three judge Bench of this Court in the matter of Rangappa vs. Sri Mohan [3] held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. The Court however, further observed that it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose money is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the

defendant accused cannot be expected to discharge an unduly high standard of proof". The Court further observed that it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is all preponderance of probabilities.

24. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.

25. It is no doubt true that the dishonour of cheques in order to qualify for prosecution under Section 138 of the NI Act precedes a statutory notice where the drawer is called upon by allowing him to avail the opportunity to arrange the payment of the amount covered by the cheque and it is only when the drawer despite the receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount, that the said default would be considered a dishonour constituting an offence, hence punishable. But even in such cases, the question whether or not there was lawfully recoverable debt or liability for discharge whereof the cheque was issued, would be a matter that the trial court will have to examine having regard to the evidence adduced before it keeping in view the statutory presumption that unless rebutted, the cheque is presumed to have been issued for a valid consideration. In view of this the responsibility of the trial judge while issuing summons to conduct the trial in matters where there has been instruction to stop payment despite sufficiency of funds and whether the same would be a sufficient ground to proceed in the matter, would be extremely heavy.

11. Having scanned the entire evidence adduced on record by the respective parties, this Court finds that all the basic ingredients of Section 138 of the Act are met in the case at hand. Similarly,

factum with regard to signatures and issuance of cheque by the accused towards discharge of lawful liability stands duly established on record.

12. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.P.C, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case **“State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri”** (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

“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 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 Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

13. Since after having carefully examined the evidence in the present case, this Court is unable to find any error of law as well as fact, if any, committed by the courts below, while passing impugned judgments, there is no occasion, whatsoever, to exercise the revisional power.

14. True it is that the Hon'ble Apex Court in ***Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241***; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order, but learned counsel representing the accused has failed to point out any material irregularity committed by the courts below while appreciating the evidence and as such, this Court sees no reason to interfere with the well reasoned judgments passed by the courts below.

15. Consequently, in view of the discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well reasoned judgments recorded by the courts below, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld.

16. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The petitioner is directed to surrender himself before the learned trial Court within a period of 15 days to serve the sentence as awarded by the learned trial Court, if

not already served. Bail bonds of the petitioner are cancelled. Interim direction, if any, stands vacated. Pending applications, if any, also stand disposed of.

17. The amount lying deposited with the Registry of this Court is ordered to be released in favour of the respondent/complainant, by remitting the same in his saving bank account, details whereof shall be furnished by learned counsel for the respondent-complainant within a period of one week.

**(Sandeep Sharma),
Judge**

April 29, 2026
(shankar)