

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.59 of 2024

Date of Decision: 29.04.2026

Pyar Chand

.....Petitioner

Versus

Shriram Finance Company

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Naveen K. Bhardwaj, Advocate.

For the Respondent: Mr. Ashwani Kaundal, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 397 read with Section 401 of Cr.P.C. lays challenge to judgment dated 02.04.2022, passed by the learned Additional Sessions Judge, Kullu, District Kullu, Himachal Pradesh, in Criminal Appeal No.09 of 2021, titled as *Pyar Chand Vs. Shriram Finance Co.*, affirming judgment of conviction and order of sentence dated 03.03.2020/06.03.2020, passed by the learned Chief Judicial Magistrate, Kullu, Lahaul and Spiti at Kullu, Himachal Pradesh, in Criminal Complaint No.56-I/2012, whereby the learned trial Court while holding the petitioner-accused (**hereinafter, "accused"**) guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (**in short the "Act"**), convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs.5,00,000/- to the respondent-company.

2. Precisely, the facts of the case, as emerge from the record are that respondent-company (**hereinafter, 'complainant'**) instituted a complaint under Section 138 of the Act, in the competent Court of law, alleging therein accused approached the complainant to finance a vehicle, Tata Motors bearing registration No.HP-34-B-4079, which was accepted by the complainant and sum of ₹3,75,000/- was advanced to accused with finance charges of ₹1,55,813/- i.e. total agreement value of ₹5,30,813/-, vide agreement dated 31.03.2009. Accused while accepting all terms and conditions and liability to repay the loan amount advanced to him, also agreed interest rate including all other overdue or other charges etc. according to loan/hire purchase/loan-cum-hypothecation agreement executed on 31.03.2009. Since accused remained regular defaulter in payment and had not paid the regular installment to the complainant, who subsequently with a view to regularise his account and discharge his liability, issued Cheque No.355308 dated 31.01.2012, amounting to ₹4,80,000/-, drawn at UCO Bank, Branch Kullu, however, aforesaid Cheque on its presentation to the Bank concerned, was dishonoured with the remarks "Funds Insufficient". After receipt of aforesaid return memo, complainant served accused with a legal notice calling upon him to make the payment good well within stipulated time. However, since petitioner-accused failed to make the payment good within the time stipulated in the legal notice, respondent/complainant was compelled to initiate proceedings

under Section 138 of the Act in the Court of learned Chief Judicial Magistrate, Kullu, Lahaul and Spiti at Kullu, Himachal Pradesh.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 03.03.2020/06.03.2020, held the petitioner-accused guilty of having committed offence under Section 138 of the Act and accordingly, convicted and sentenced him, as per the description given hereinabove.

4. Though, at the first instance, accused preferred an appeal in the Court of learned Additional Sessions Judge, Kullu, District Kullu, Himachal Pradesh, however, same was dismissed vide judgment dated 02.04.2022. In the aforesaid background, petitioner-accused has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction recorded by the Courts below.

5. Vide order dated 12.01.2024, Co-ordinate Bench of this Court stayed the substantive sentence imposed by the learned Court below, subject to petitioner/accused depositing 20% of the compensation amount and furnishing personal and surety bonds in the sum of Rs.20,000/-. Though aforesaid order was complied with, but thereafter, matter was repeatedly adjourned at the request of learned counsel representing the petitioner, enabling him to deposit the remaining amount, but fact remains that despite repeated opportunities, needful could not be done and as such,

learned counsel representing the petitioner fairly stated that matter may be heard and decided on its own merits.

6. Having heard learned counsel for the parties and perused material adduced on record, vis-a-vis reasoning assigned in the impugned judgments, this Court sees no reason to agree with Mr. Naveen K. Bhardwaj, learned counsel representing the petitioner, that Courts below have fallen in grave error while appreciating the evidence, rather this Court finds that both the Courts below have meticulously dealt with each and every aspect of the matter and there is no scope left for interference.

7. Interestingly, in the case at hand, no specific denial ever came to be put forth at the behest of accused with regard to his having availed the loan from the complainant as well as issuance of Cheque and signatures thereupon towards the discharge of lawful liability. If it is so, no illegality otherwise can be said to have been committed by the Courts below while invoking 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 a 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. However, in the case at hand, accused was unable to point out from the documents as well as

evidence adduced on record by the complainant that Cheque issued by him was not issued towards discharge of lawful liability.

8. The Hon'ble Apex Court in ***M/s Laxmi Dyechem 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 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.”

9. Complainant with a view to prove its case, examined Mr. Sandeep Kumar Verma, Branch Manager, as CW-1 and Mr. Naresh Sehgal as CW-2, who produced documentary evidence. Complainant while examining CW-1 successfully proved on record that accused had issued Cheque (Ex.C-B) in discharge of lawful liability. Afore witness also proved that Cheque (Ex.C-B) was dishonoured on account of ‘insufficient funds’ vide return memo dated 02.02.2012 (Ex.C-C). Though before initiating proceedings under Section 138 of the Act, complainant served accused with legal notice (Ex.C-D), which was duly served upon the accused (postal

receipt Ex.C-E and acknowledgment Ex.C-F), but yet he failed to make the payment.

10. In his statement recorded under Section 313 Cr.P.C., accused denied the case of the complainant in *toto*, but pattern of cross-examination conducted upon complainant witness clearly reveals that accused attempted to set up a case that Cheque in question was a security cheque, but such defence never came to be probalilise by leading cogent and convincing evidence. In his cross-examination, it also came to be put to CW-1 that Cheque in question was blank and same was filled by the bank officials. Aforesaid defence attempted to set up could not be proved by the accused by leading cogent and convincing evidence. Otherwise also, by now it is well-settled that a person is liable for the commission of offence punishable under Section 138 of the Act even if the Cheque is filled by some other person. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197**, wherein it was observed as under:

“37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the

cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant-complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.”

11. If the evidence led on record by the respective parties is read in conjunction, this Court sees no reason to differ with the findings returned by the Courts below that complainant successfully proved on record that accused had issued Cheque towards discharge of his lawful liability. Similarly, accused by way of taking defence of issuance of Cheque as security, virtually accepted factum of his having issued the Cheque as well as his signatures thereupon and as such, both the Courts below rightly held accused guilty of the offence punishable under Section 138 of the Act, especially when Cheque in question issued by him was dishonoured on account of insufficient funds.

12. Since factum of issuance of Cheque by the accused as well as his signatures thereupon was never disputed, presumption as available under Section 118 and 139 of the Act rightly came to be invoked in the case of the petitioner that Cheque in question was issued in discharge of lawful liability. Since no evidence worth credence ever came to be led on record to rebut the presumption, no illegality can be said to have been committed by the Courts below while holding petitioner/accused guilty for the commission of offence punishable under Section 138 of the Act. Though, defence came to be taken at the behest of the petitioner/accused that Cheque in question was issued as a security, but the same may not be of any help to the accused, for the reason that by now, it is well-settled that

Cheque, even if issued as a 'security' can also be presented for encashment, if amount taken or promised to be repaid is not paid.

13. Hon'ble Apex Court in case titled **Sripati Singh v. State of Jharkhand**, Criminal Appeal No. 1269-1270 of 2021, decided on 28.10.2021, has held as under:

“16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”

14. Needless to say, expression “Security cheque” is not a statutorily defined expression in the Negotiable Instruments Act, rather same is to be inferred from the pleadings as well as evidence, if any, led on record with regard to issuance of security cheque. The Negotiable

Instruments Act does not per se carve out an exception in respect of a “security cheque” to say that a complaint in respect of such a cheque would not be maintainable as there is a debt existing in respect whereof the cheque in question is issued, same would attract provision of Section 138 of the Act in case of its dishonour.

15. 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. Since Cheque issued by accused towards discharge of his lawful liability was returned on account of insufficient funds in the bank account of accused and he despite having received legal notice failed to make the payment good within the stipulated time, complainant had no option but to institute proceedings under Section 138 of the Act, which subsequently rightly came to be decided by both the Courts below on the basis of pleadings as well as evidence adduced on record by the respective parties.

16. 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 relied upon 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.”

17. 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.

18. 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.

19. Consequently, in view of the discussion made hereinabove 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.

20. 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 forthwith to serve the sentence as awarded by the learned trial Court, if not already served. Bail bonds of the petitioner, if any, are cancelled. Interim order dated 12.01.2024 stands vacated. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

April 29, 2026
(Rajeev Raturi)