Judgment reserved on:17.04.2026
Judgment delivered on:18.05.2026

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.275 of 2016

Dheeraj Sharma .....Appellant

Vs.

State of Uttarkhand & Anr …..Respondents

Presence:

Mr. Mahavir Singh Tyagi, learned senior counsel assisted by Mr. Akshay Pradhan, learned counsel for the Appellant.

Mr. Vipul Painuly, learned AGA, for the State of Uttarakhand.

None present for the private Respondent.

Hon'ble Ashish Naithani, J.

1. The present Criminal Appeal has been preferred under Section 378(4) of the Code of Criminal Procedure challenging the judgment and order dated 18.07.2016 passed by the learned Judicial Magistrate IInd, Haridwar in Criminal Complaint Case No.358 of 2014 and Criminal Complaint Case No.359 of 2014, titled as *Dheeraj Sharma vs. Prashant Sharma*, whereby Respondent No.2 has been acquitted of the charge under Section 138 of the Negotiable Instruments Act.
2. As per the case of the Appellant, there existed financial dealings between the Appellant and Respondent No.2, pursuant to which Respondent No.2 had issued cheques in favour of the Appellant towards discharge of a legally enforceable liability and debt. It has been asserted that the cheques in question were duly signed

and issued by Respondent No.2 and were presented by the Appellant before the concerned bank within the statutory period of validity.

3. It is the case of the Appellant that upon presentation, the cheques were dishonoured and returned unpaid with the endorsement "Stop Payment". According to the Appellant, the reason assigned by the bank itself clearly constituted dishonour within the meaning of Section 138 of the Negotiable Instruments Act and the learned Trial Court failed to appreciate that even dishonour on account of "stop payment instructions" attracts penal consequences under Section 138 of the Act once the foundational ingredients regarding issuance of cheque and subsisting liability stand established.
4. The Appellant further asserts that after dishonour of the cheques, statutory legal notices were issued to Respondent No.2 within the prescribed period demanding payment of the cheque amount. It has been specifically pleaded that the notices were sent on the correct address of Respondent No.2 and service thereof stood duly established by virtue of presumptions available under Section 27 of the General Clauses Act as well as Section 114 of the Indian Evidence Act. Despite service of notice, Respondent No.2 neither replied to the notices nor liquidated the outstanding liability within the statutory period.
5. The Appellant thereafter instituted the complaint cases within limitation before the competent court at Haridwar. According to the Appellant, all mandatory ingredients constituting the offence under Section 138 of the Negotiable Instruments Act stood fully satisfied, namely, issuance of cheque, presentation within time, dishonour, issuance of legal notice within limitation and failure of payment despite demand. It is thus contended that once execution of the cheques was not denied, statutory presumptions under

Sections 118 and 139 of the Negotiable Instruments Act automatically operated in favour of the complainant and the burden had shifted upon Respondent No.2 to rebut the same by leading cogent and probable defence evidence.

6. Learned senior counsel for the Appellant would submit that the learned Trial Court has acquitted Respondent No.2 in a wholly mechanical and perverse manner without properly appreciating the mandatory statutory presumptions embodied under the Negotiable Instruments Act. It is contended that the findings recorded by the learned Trial Court are contrary to the settled principles governing cheque dishonour cases and suffer from serious infirmities inasmuch as the court below proceeded as if the initial burden entirely rested upon the complainant even after admission of issuance and signature upon the cheques.
7. Learned senior counsel for the Appellant would further submit that the learned Trial Court failed to appreciate that once the cheques admittedly emanated from the account of Respondent No.2 and bore his signatures, the presumption regarding legally enforceable debt could not have been lightly discarded unless rebutted through credible evidence. It is argued that mere denial or vague explanation could never constitute rebuttal in the eyes of law and the defence raised by Respondent No.2 was neither probable nor supported by any independent material.
8. Learned senior counsel appearing for the Appellant would further argue that the learned Trial Court committed manifest illegality in ignoring the settled proposition that dishonour on account of “stop payment” instructions also falls squarely within the ambit of Section 138 of the Negotiable Instruments Act. It is contended that issuance of stop payment instructions by itself cannot absolve the drawer once liability and issuance of cheque stand proved.

9. It is further submitted on behalf of the Appellant that the learned Trial Court adopted a one sided approach while appreciating the evidence on record and scrutinized the complainant's case with hyper technical standards while extending unwarranted benefit to Respondent No.2. Learned senior counsel would argue that the findings recorded by the court below are not only against the weight of evidence but also contrary to the statutory object of the Negotiable Instruments Act, which was enacted to enhance credibility and sanctity of commercial transactions.

10. Learned senior counsel for the Appellant would also submit that the learned Trial Court travelled beyond the permissible limits of inquiry under Section 138 proceedings and completely overlooked the legal presumptions operating in favour of the holder of the cheque. According to him, the acquittal recorded by the learned Trial Court is based upon misreading of evidence, erroneous application of law and improper appreciation of statutory presumptions and therefore warrants interference by this Court in exercise of appellate jurisdiction against acquittal.

11. Per contra, learned A.G.A. appearing for the State, while supporting the impugned judgment, would submit that an order of acquittal ordinarily strengthens the presumption of innocence in favour of the accused and unless the findings recorded by the learned Trial Court are shown to be wholly perverse or impossible on the basis of the evidence available on record, interference in an appeal against acquittal ought to be exercised with circumspection.

12. Learned counsel appearing for Respondent No.2 would submit that the learned Trial Court has appreciated the evidence in its correct perspective and has rightly arrived at the conclusion that the complainant failed to establish the existence of a legally enforceable debt beyond reasonable doubt. It is submitted that the

defence raised by Respondent No.2 was sufficient to probabilize his case and rebut the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act.

13. Learned counsel for Respondent No.2 would further submit that the impugned judgment does not suffer from perversity warranting appellate interference and the conclusions drawn by the learned Trial Court constitute plausible findings based upon appreciation of oral and documentary evidence. It is thus contended that merely because another view may be possible, the same would not furnish a ground to overturn a judgment of acquittal.

14. This Court has heard learned counsel for the Parties and perused the records.

15. Before proceeding further, it would be apposite to note that the present appeal arises from a judgment of acquittal passed in proceedings under Section 138 of the Negotiable Instruments Act. Though an appellate court exercising jurisdiction against acquittal is expected to exercise restraint and caution, however, where the findings recorded by the learned Trial Court suffer from manifest illegality, misapplication of settled legal principles, non consideration of statutory presumptions or a wholly unreasonable appreciation of evidence, the appellate court would not only be justified but rather duty bound to interfere.

16. From the record available before this Court, it is not disputed that the cheques in question emanated from the account of Respondent No.2. The cheques were admittedly presented by the Appellant within their validity period and were dishonoured by the bank with the endorsement “Stop Payment”. Thereafter, legal notices were issued by the Appellant within the statutory period demanding payment of the cheque amount and despite service of notice, payment was not made within the stipulated

time. Consequently, complaint proceedings came to be instituted before the competent court. Thus, the foundational ingredients required for institution of proceedings under Section 138 of the Negotiable Instruments Act stood prima facie established.

17. This Court finds that the learned Trial Court while acquitting Respondent No.2 has failed to properly appreciate the statutory presumptions embodied under Sections 118 and 139 of the Negotiable Instruments Act. The legislative scheme under the Act clearly incorporates a reverse onus clause and once issuance of cheque and signatures thereupon stand admitted or proved, a mandatory presumption arises that the cheque had been issued towards discharge of a legally enforceable debt or liability. The burden thereafter shifts upon the accused to rebut the said presumption by raising a probable defence.

18. The impugned judgment, however, reveals that the learned Trial Court approached the matter as though the entire burden continued to rest upon the complainant throughout the proceedings even after the statutory presumptions had become operational. Such an approach is contrary to the settled principles governing proceedings under Section 138 of the Negotiable Instruments Act.

19. This Court further finds that the learned Trial Court also failed to appreciate the legal effect of dishonour on account of “stop payment instructions”. The Hon’ble Supreme Court in catena of judgments, for instance, in M/S Laxmi Dyechem V. State of Gujarat & Ors. 2013 AIR SCW 3468, has consistently held that dishonour of cheque on account of “stop payment” would also attract the penal consequences contemplated under Section 138 of the Negotiable Instruments Act, provided the other foundational requirements stand satisfied. Mere issuance of stop payment instructions cannot by itself extinguish criminal liability

arising from issuance of cheque towards discharge of debt or liability.

20. In the present matter, there appears to be no finding recorded by the learned Trial Court demonstrating that the statutory presumptions stood effectively rebutted by Respondent No.2 through cogent and convincing evidence. Mere denial, vague explanation or bald assertion cannot by themselves constitute rebuttal sufficient in law. The defence raised by an accused in proceedings under Section 138 of the Negotiable Instruments Act must attain the threshold of probability capable of dislodging the statutory presumption operating in favour of the holder of the cheque.

21. The impugned judgment further demonstrates that the learned Trial Court scrutinized the complainant's version with an unduly hyper technical approach while simultaneously extending disproportionate benefit to Respondent No.2 despite absence of substantive rebuttal evidence. The object underlying incorporation of Sections 138 and 139 of the Negotiable Instruments Act is to ensure commercial certainty and to preserve the credibility of negotiable instruments in financial transactions. Such legislative intent cannot be frustrated by adopting an approach which virtually renders the statutory presumptions otiose.

22. This Court is also of the view that the learned Trial Court while passing the impugned judgment travelled beyond the permissible scope of adjudication and failed to appreciate the evidence in the backdrop of settled legal standards applicable to cheque dishonour proceedings. The conclusions recorded by the learned Trial Court do not appear to be founded upon a legally sustainable appreciation of the presumptions and burden of proof contemplated under the Negotiable Instruments Act.

23. At the same time, this Court is conscious of the principle that an order of acquittal strengthens the presumption of innocence in favour of an accused and interference in appeal against acquittal should not be made in a casual or mechanical manner. However, where the acquittal itself suffers from manifest perversity, non-consideration of material evidence or misapplication of settled legal principle, appellate interference becomes warranted in order to prevent miscarriage of justice.

24. In the considered opinion of this Court, the impugned judgment and order dated 18.07.2016 passed by the learned Judicial Magistrate IInd, Haridwar in Criminal Complaint Case No.358 of 2014 and Criminal Complaint Case No.359 of 2014 cannot be sustained in the eyes of law and deserves to be set aside.

ORDER

The Criminal Appeal is **allowed**.

The judgment and order dated 18.07.2016 passed by the learned Judicial Magistrate IInd, Haridwar in Criminal Complaint Case No.358 of 2014 and Criminal Complaint Case No.359 of 2014, titled as *Dheeraj Sharma vs. Prashant Sharma*, under Section 138 of the Negotiable Instruments Act, is hereby set aside.

The matter is remanded back to the learned Trial Court for fresh consideration and adjudication in accordance with law after appreciating the evidence on record in the light of the statutory presumptions embodied under Sections 118 and 139 of the Negotiable Instruments Act and the settled legal principles governing dishonour of cheques on account of “stop payment” instructions.

Since the complaint cases are of the year 2014 and the present appeal has remained pending since the year 2016, the learned Trial Court shall endeavour to conclude the proceedings expeditiously, preferably within a period of six months from the date of production of certified copy of this judgment.

Let the lower court records be transmitted forthwith.

Pending applications, if any, shall stand disposed of.

(Ashish Naithani J.)

Dated:18.05.2026

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