

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MMO No. 766 of 2025**

**Reserved on: 6.5.2026**

**Date of Decision: 24.6.2026.**

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Narender Thakur .....Petitioner

Versus

Hans Raj Sood .....Respondent

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*Coram*

*Hon'ble Mr Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?<sup>1</sup> No.*

For the Petitioner : Mr Anirudh K. Sharma,  
Advocate.

For the Respondent-State : M/s Adhiraj Thakur and  
Sandeep Pandey, Advocates.

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***Rakesh Kainthla, Judge***

The present petition is directed against the order dated 3.7.2025, passed by the learned Chief Judicial Magistrate, Solan District, Solan, H.P. (learned trial Court) vide which an application filed for seeking the amendment of the name of the complainant Hem Raj Sood instead of Hans Raj Sood was allowed. *(The parties shall hereinafter be referred to in the same*

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

*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 Hem Raj Sood 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). An affidavit of Hem Raj Sood was also annexed to the complaint. Learned Trial Court ordered the issuance of the summons vide order dated 3.12.2019. Subsequently, the complainant filed an application seeking the correction of the name of Hem Raj Sood to Hans Raj Sood. It was asserted that the applicant came to know that the name of the complainant had been mentioned as Hem Raj Sood, whereas the name of the complainant is Hans Raj Sood. This is a typographical error which is required to be corrected. Hence, it was prayed that the necessary correction be permitted to be carried out in the complainant's name.

3. The accused filed a reply to the application taking preliminary objection regarding the lack of maintainability, the applicant having not come to the Court with clean hands, the

applicant being estopped to file the present application and the application being an abuse of the process of the Court. It was asserted that the complaint was filed in the name of Hem Raj Sood, who had died on 4.3.2010. His signature was forged on the complaint and the register of the Oath Commissioner. The affidavits of Hem Raj Sood were also annexed to the affidavit. The legal notice was issued to the accused on behalf of Hem Raj Sood. When this fact was pointed out in the Court, the present application was filed. Hence, it was prayed that the present application be dismissed.

4. A rejoinder denying the contents of the reply and affirming those of the application was filed. It was reiterated that the applicant was the holder of the cheque. The complaint was filed on 28.4.2019, whereas Hem Raj Sood had died in the year 2010. The affidavit was signed by the applicant, but inadvertently, the name of Hem Raj Sood was mentioned in it. Hence, it was prayed that the present application be allowed and the correction be carried out.

5. The learned Trial Court held that the application was filed for the correction of the complainant's name, which was

inadvertently mentioned as Hem Raj. It was established by the reply that Hem Raj Sood had died on 4.3.2010, much before the filing of the present complaint. The plea taken by the applicant that it was merely a clerical error was acceptable. Therefore, the application was allowed, and the name was ordered to be corrected.

6. Being aggrieved by the order passed by the learned Trial Court, the accused/petitioner has filed the present petition asserting that the applicant had played fraud with the Court by filing the complaint in the name of a dead person. An affidavit of a dead person was also annexed to the complaint, and the Court had acted upon it. The intimation regarding the dishonour of the cheque was mentioned as 6.8.2019 in the original complaint, which was changed to 13.9.2019 without the leave of the Court. There was no clerical error, and the learned Trial Court erred in allowing the application. Therefore, it was prayed that the present petition be allowed and the complaint be quashed.

7. I have heard Mr Anirudh K. Sharma, learned counsel of the petitioner/accused, and M/s Adhiraj Thakur and Sandeep Pandey, learned counsel for the respondent/complainant.

8. Mr. Anirudh K. Sharma, learned counsel of the petitioner/accused, submitted that the complainant had played a fraud upon the Court by filing a complaint in the name of a dead person. He had annexed the affidavit of a dead person, and it is a case of impersonation. When this fact was pointed out, the applicant filed an application for correction of the name. The complaint was filed in the name of a dead person and was not maintainable. Therefore, he prayed that the present petition be allowed and the complaint pending before the learned Trial Court be quashed.

9. Mr Adhiraj Thaur, learned Counsel for the respondent/complainant submitted that the cheque was issued in the name of Hans Raj Sood. The name of Hem Raj Sood was written inadvertently. The learned Trial Court had rightly ordered the correction of a typographical error. He relied upon the judgment of the Kerala High Court in *Moideen Shah Vs. Dr Joseph Mathew and others*, 2017 Supreme (Ker) 276 in support of his submission.

10. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

11. The record of the learned Trial Court shows that the original complaint was filed in the name of Hem Raj Sood, son of the late Sh. Devi Saran Sood. An affidavit duly attested by the Oath Commissioner was annexed to the complaint. This affidavit was signed by Hem Raj Sood, who was identified by Mr Aditya Thakur before the Oath Commissioner.

12. It is an admitted version that Hem Raj Soood had died in the year 2010. Therefore, he could not have filed the complaint or appeared before the Oath Commissioner. It was laid down by the Hon'ble Supreme Court in *M. Veerabhadra Rao v. Tek Chand*, 1984 Supp SCC 571: 1984 SCC OnLine SC 331 that the oath commissioner is under an obligation to administer the oath of the person appearing before him and affix his signature in token of having administered the oath to the deponent. It was observed at page 581:

“18. It is not in dispute that Ex. A-1 is an affidavit purporting to have been made by the respondent in the presence of the appellant and attested by him. The appellant admits in no uncertain terms that Ex. A-1 bears his attestation. If the matter were to rest here, it would mean that the respondent appeared before the appellant with his affidavit. Thereupon, the appellant administered oath to him and on the respondent taking the oath and affirming the truth of the statement made in the affidavit, put his signature on the affidavit in the presence of the

appellant and then the appellant subscribed his signature to the affidavit in token of his having administered the oath and the respondent having affixed his signature in his presence. The content of the affidavit clearly spells out the purpose for which the affidavit was made, namely, for obtaining an income tax clearance certificate, which the respondent, as vendor, had to produce before the Registrar of Conveyances acting under the Indian Registration Act for the purpose of registering the sale deed which the respondent was alleged to have executed in favour of Smt Premlata. To narrow down the area of controversy, it may be mentioned that the appellant admits that the affidavit Ex. A-1 is attested by him. He further concedes that the respondent did not affix his signature in his presence on the affidavit Ex. A-1 but admitted the same in his presence, whereupon he attested the same. This statement of the appellant clearly shows dereliction of duty in two aspects: (i) that he did not administer any oath or did not call up the respondent to make an affirmation, though Ex. A-1 purports to be an affidavit, and secondly, the respondent did not subscribe his signature in the presence of the appellant, and the appellant merely acted on an alleged statement of the respondent that the affidavit bears his signature....”

13. The signatures of the oath commissioner on the affidavit signify that he had administered an oath to the person who had appeared before the Oath Commissioner and affirmed the contents of the affidavit on oath. Thus, the applicant/complainant had identified himself as Hem Raj Sood. The applicant could not have been mistaken because he was supposed to affirm his name on oath; and the plea that the name of Hem Raj Sood was mentioned mistakenly cannot be accepted.

14. It was submitted that the cheque was issued in the name of Hans Raj Sood. Documents were prepared in the name of Hans Raj Sood, and he would have gained nothing by representing himself as Hem Raj Sood. This submission cannot be accepted. The record of the learned Trial Court shows that the notice was issued in the name of Hem Raj Sood and not in the name of Hans Raj Sood. It was laid down by the Hon'ble Supreme Court in *C.C. Alavi Haji v. Palapetty Muhammed*, (2007) 6 SCC 555: 2007 SCC OnLine SC 772 that issuance of notice by payee is an essential requirement of the proceedings under Section 138 of the NI Act. It was observed at page 560:

“6. As noted hereinbefore, Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though they purport to discharge their liability by issuing a cheque, have no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques. However, with a view to avert unnecessary prosecution of an honest drawer of the cheque and with a view to give an opportunity to him to make amends, the prosecution under Section 138 of the Act has been made subject to certain conditions. These conditions are stipulated in the proviso to Section 138 of the Act, extracted above. Under Clause (b) of the proviso, the payee or the holder of the cheque in due course is required to give a written notice to the drawer of the cheque within a period of thirty days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. Under Clause (c), the drawer is given

fifteen days' time from the date of receipt of the notice to make the payment, and only if he fails to make the payment, a complaint may be filed against him. As noted above, the object of the proviso is to avoid unnecessary hardship to an honest drawer. Therefore, the observance of stipulations in quoted Clause (b) and its aftermath in Clause (c) being a precondition for invoking Section 138 of the Act, giving a notice to the drawer before filing a complaint under Section 138 of the Act is a mandatory requirement.”

15. This position was reiterated in *N. Harihara Krishnan v. J. Thomas*, (2018) 13 SCC 663: 2017 SCC OnLine SC 1017, wherein it was observed at page 673:

26. The scheme of the prosecution in punishing under Section 138 of the Act is different from the scheme of the CrPC. Section 138 creates an offence and prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously, such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients

flows from a document that evidences the existence of such an ingredient. The only other ingredient that is required to be proved to establish the commission of an offence under Section 138 is that, in spite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had, in fact, made the payment pursuant to the demand.

16. In the present case, the notice was issued in the name of Hem Raj Sood, and the complaint could not have been filed in the name of Hans Raj Sood because the requirement that the accused had failed to repay the money despite the valid notice of demand from the payee was missing.

17. The complaint was filed in the name of a dead person, and it was a nullity. It could not have been rectified by correcting the complainant's name. The judgment of Kerala High Court in *Moideen Shah* (supra) shows that the complaint was filed as if the Power of Attorney itself was the complainant, which was ordered to be corrected. Therefore, it was a case of a clerical error, and the cited judgment does not apply to the present case.

18. Therefore, the order passed by the learned Trial Court cannot be sustained and is liable to be interfered with.

19. In the present case, the complaint was filed in the name of a dead person, which is a nullity. Further, the notice was also not issued in the name of the payee and the essential requirement that the payee or the holder of the cheque issues a notice requiring the accused to repay the money within 15 days of receipt of the notice is missing. Therefore, the continuation of the proceedings before the learned Trial Court will not result in any fruitful result, and the complaint is liable to be quashed.

20. In view of the above, the present petition is allowed and the complaint titled as Hem Raj Sood Vs. Narender Thakur, Case No. 113/3, pending before the learned Chief Judicial Magistrate, Solan, H.P., is ordered to be quashed.

21. In the present case, the complaint was filed in the name of Hem Raj Sood, who was dead. Therefore, Hem Raj Sood was impersonated, and this misled the Court to issue the notice. *Prima facie*, it is an offence punishable under Section 205 of the IPC; therefore, the Registrar General is directed to file a complaint against Hans Raj Sood and the identifier Aditya Thakur, Advocate, for the commission of an offence punishable

under Section 205 read with Section 34 of the IPC before the competent Court having jurisdiction.

22. The present petition stands disposed of, and so are the pending miscellaneous applications, if any.

**(Rakesh Kainthla)**  
**Judge**

24<sup>th</sup> June, 2026  
(Chander)