2026:HHC:22889

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision Nos.435 and 436 of 2025
Decided on: 18.6.2026

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1. Cr.Revision No. 435 of 2025
Bhagirath

.........Petitioner

Versus

Yoginder Sharma

.......Respondent

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2. Cr.Revision No. 436 of 2025
Bhagirath

.........Petitioner

Versus

Yoginder Sharma

.......Respondent

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the Petitioner: Mr. Maan Singh, Advocate, for the pettioner(s) in both the petitions.

For the Respondent: Mr. Deepak Sharma, Advocate, for the respondent(s) in both the petitions.

Sandeep Sharma, J.

Since common questions of facts and law are involved in both the cases coupled with the fact that petitioner, in both the cases, is aggrieved of a common judgment dated 28.6.2025, passed by the learned Sessions Judge, Solan, Himachal Pradesh in Cr.A. No. 36-S/10 of 2024, this Court after having clubbed both the cases heard them together and are now being disposed of vide common judgment.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that respondent/complainant filed a complaint under Section 138 of the Act before the Chief Judicial Magistrate Solan, District Solan, Himachal Pradesh, alleging therein that complainant and his son had been running business of providing tippers as well as construction material jointly. He further submitted that two tippers owned by him were engaged by the accused for construction work of Shogi-Akhbarachowki-Paoghat-Kot Bodhan road for sum of Rs. 3400/- per day per truck/tipper. He also alleged that he as well as his son also supplied certain construction material i.e. sand, stones and grit etc., to the accused on his demand from 7.9.2013 to 25.9.2014, who with a view to discharge his legal liability issued cheques amounting to Rs. 2,00,000/- dated 5.6.2014, Rs, 206170 dated 2.6.2014 and Rs.2,00,000/- dated 10.8.2014 in the name of the complainant, but all the cheques were dishonoured on their presentation to the bank concerned on account of insufficient funds in the account of the accused. Subsequently, accounts were settled between complainant and accused on 20.9.2014 at Solan and Ikrarnama was reduced into writing, wherein accused agreed to pay Rs. 5,50,000/- and in order to discharge his afore liability issued two post dated cheques dated 10.12.2014 amounting to Rs. 3,00,000/- and Rs.2,50,000/- drawn on

Syndicate Bank, Solan in favour of son of the complainant. Cheque No. 038439 dated 10.12.2014 amounting to Rs. 3,00,000/- of Syndicate Bank Solan, on its presentation to the bank concerned was dishonoured by JCC Bank Kandaghat vide intimation dated 6.1.2015 along with cheque returning memo dated 24.12.2014 with remarks "insufficient funds".

3. Immediately after receipt of aforesaid memo, complainant served the accused with legal notice dated 2.2.2015, thereby calling upon him to make the payment good within stipulated time, but since he failed to make the payment despite issuance of notice, complainant had no option but to initiate proceedings under Section 138 of the Act in the competent court of law.

4. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 5.1.2024, held the petitioner-accused guilty of having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs. 3,40,000/- in favour of the complainant.

5. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the learned court below, petitioner-accused preferred Criminal Appeal No. 36-S/10 of 2024, praying therein for his acquittal in the court of learned Sessions Judge Solan, District Solan,

Himachal Pradesh. Complainant also filed Cr.R. No. 4-S/10 of 2025 on the ground that quantum of sentence is on lower side and is against the provisions contained in the Negotiable Instruments Act.

6. Both the aforesaid cases came to be heard by the learned Sessions Judge together and vide common judgment dated 28.6.2025, dismissed the afore criminal appeal, whereas criminal revision, as detailed herein above, filed by the complainant for enhancement of compensation amount, came to be allowed. While accepting the prayer made by the complainant, learned Sessions Judge though did not interfere with the sentence of six months imposed by the learned trial Court, but enhanced the compensation amount from Rs. 3,40,000/- to Rs. 5,43,000/-. In the aforesaid background, accused has approached this Court in the instant proceedings for his acquittal after setting aside judgment of conviction and order of sentence passed by the learned Courts below.

7. Vide order dated 1.8.2025 passed in Cr. Revision No. 436 of 2025, this court suspended the substantive sentence imposed by the learned court below, subject to petitioner's furnishing personal bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned trial Court as well as depositing 30% of the cheque amount before the learned trial Court within six weeks.

8. On the request of learned counsel for the parties, matter was referred to mediation on 9.12.2025. This Court came to be apprised that matter has been settled inter-se parties and as per settlement, last installment would be paid on or before 5.6.2026, however fact remains that accused failed to comply with terms and conditions of the compromise, as a result of which, this Court has no option but to decide these cases on merit.

9. Having heard learned counsel for the parties and perused the material available on record vis-à-vis reasoning assigned by the learned Sessions Judge, Solan, in impugned judgment, thereby upholding the judgment of conviction and enhancing sentence recorded by the learned trial Court, this Court is not persuaded to agree with Mr. Maan Singh, Advocate, that learned courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the learned courts below have dealt with each and every aspect of the matter very meticulously and there is no scope of interference.

10. Interestingly, in the case at hand, factum with regard to issuance of cheque as well as his signature thereupon never came to be refuted. In his statement recorded under Section 313 CrPC, though accused denied the case of the complainant, but admitted factum of his having received legal notice Ext.CW1/B sent through postal receipt

Ext.CW1/C. Subsequently, in cross-examination of the complainant, an attempt came to be made by the accused to set up a case that cheque in question was issued to one Mr. Gagan as security, but same has been misused by the complainant. Since factum with regard to issuance of cheque as well as his signature thereupon never came to be refuted, no illegality otherwise can be said to have been committed by the learned Courts below while invoking Sections 118 and 139 of the Act, which speak about presumption in favour of the holder of the cheque that same 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, despite sufficient opportunity, accused failed to lead any defence, otherwise attempted to set up by him in his statement recorded under Section 313 Cr.P.C. as well as cross-examination conducted upon complainant.

11. 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 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 138can 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.
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> 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."

12. Complainant with a view to prove his case, stepped into witness box as CW-1 and tendered in evidence affidavit Ex.CW1/A reiterating therein contents of the complaint. Besides above, he also tendered in evidence copy of legal notice Ex.CW1/B postal receipt Ex.CW1/C, Intimation Ex.CW1/D, memo Ex.CW1/E. cheque Ex.CW1/F, agreement Ex.CW1/G, reply to notice Ex.CW1/H, notice Ex.CW1/J and RAD Ex.CW1/K. If the cross-examination conducted upon afore witness is perused in its entirety, it cannot be said that accused was able to extract something contrary to what this witness stated in examination-in-chief, rather pattern of cross-examination conducted upon afore witness clearly establishes factum with regard to issuance of cheque as well as signature thereupon.

13. Though in cross-examination of the complainant, accused attempted to set up a defence that cheque in question was given to one Gagan, but same was misused by the complainant, but aforesaid defence proposed to be set up, never came to be probablised. Neither person namely Gagan ever came to be examined nor he was able to explain situation under which cheque in question was issued to Gagan and how ultimately same came in the hands of the complainant.

14. While examining himself as DW1, accused stated that he had issued the cheque to one Gagan as security cheque not the complainant,

but as has been observed herein above, aforesaid defence never came to be probablised by leading cogent and convincing evidence. If it is so, both the courts below rightly invoked Sections 118 and 139 of the Act.

15. Complainant successfully proved on record agreement Ext.CW1/G, which talks about cheque No. 038439 issued by the accused, who failed to dispute his signature upon the agreement. Neither he denied agreement nor could prove the same to be false. In his cross-examination, complainant deposed that cheque in question was given in the year 2014, but accused appears to have read as February 2014. Complainant further deposed that cheque is of 10.12.2014, which is correct. He also stated in cross-examination that he has not worked with the accused, but that does not imply that accused had not engaged tippers of complainant or complainant had not supplied construction material. Though complainant did not annex any bill, but agreement Ext.CW1/G clearly mentions about liability of accused to the tune of Rs. 5,50,000/- and he gave two cheques to the tune of Rs.3,00,000/- and Rs. 2,50,000/-. Though an attempt also came to be made by the accused to prove that complaint filed by the complainant was time barred, but complainant successfully deposed through affidavit that despite due service of notice, accused did not make the payment of cheque within 15 days and complaint was filed on 17.3.2015. Though his deposition has not been specifically challenged

while cross examining the complainant, hence both the courts below rightly returned a finding that it cannot be held that complaint was time barred. Moreover, the registered envelope Ext.CW1/ was refused, the complainant was required to wait for 15 days notice period and as such, even on this score the complaint filed on 17.3.2015 cannot be said to be time barred.

16. By now it is well settled that dishonour of cheque issued as security can also attract offence under Section 138 of the Negotiable Instruments Act. 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.

17. 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 provisions of Section 138 of the Act in case of its dishonour.

18. In view of the detailed discussion made herein above, this Court finds no illegality in the judgment of conviction and order of sentence dated 5.1.2024, which was further affirmed by learned Sessions Judge vide judgment dated 28.6.2025. Though learned counsel for the petitioner attempted to argue that learned Sessions Judge erred in enhancing the compensation from Rs.3,40,000/- to Rs. 5,43,000/-, but this Court is not persuaded to agree with him for the reason that cheque in question was issued on 10.12.2014, where as impugned judgment of conviction and order of sentence by the learned trial Court was passed on 5.1.2024 i.e. after nine years. Learned trial Court only awarded sum of Rs. 40,000/- over and above the value of the cheque of Rs. 3,00,000/. Hon'ble Apex Court in Criminal Appeal No. 123 of 2021 [Arising out of Special Leave

Petition (Crl.) No. 1876 of 2018], titled as **M/s Kalamani Tex & Anr. v. P. Balasubramanain,** has categorically held that courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. Though in terms of afore judgment, compensation awarded by the learned trial Court to the tune of Rs. 3,40,000/- was required to be doubled, but yet learned Sessions Judge proceeded to enhance compensation by Rs. 2,00,000/- only. Hence by no stretch of imagination, plea raised by the accused can be accepted that compensation awarded by the learned Sessions Judge is on higher side, rather same could have been enhanced upto Rs. 6,80,000/- in terms of law laid down by the Hon'ble Apex Court as detailed herein above.

19. Consequently, in view of the discussion made herein above as well as law taken into consideration, this Court sees no reason to interfere with the well reasoned judgments rendered by the learned courts below, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld. Accused is directed to surrender before the learned trial Court within thirty days from today to serve out the sentence. Amount, if any, lying deposited with the learned trial Court is ordered to be released in favour of the complainant by remitting the same in his saving bank account, detail whereof shall be furnished within one week.

20. Accordingly, the present criminal revision petitions are dismissed being devoid of any merit.

June 18, 2026 **(Sandeep Sharma),**
(manjit) **Judge**