IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.95 of 2026
Date of Decision: 03.07.2026

Karam Singh

.........Petitioner

Versus

Lal Singh

.......Respondent

Coram

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

For the Petitioner: Mr. Naveen Kumar Dass, Advocate.

For the Respondents: Mr. Suneet Verma, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 442 of Bharatiya Nagrik Suraksha Sanhita, lays challenge to judgment dated 10.11.2025 passed by the learned Additional Sessions Judge-II, Mandi, District Mandi, Himachal Pradesh, in Criminal Appeal No.63 of 2025, affirming the judgment of conviction dated 14.05.2025 and order of sentence dated 16.05.2025, passed by the learned Judicial Magistrate First Class, Chachiot at Gohar (Camp at Thunag), H.P. in Criminal complaint No.14 of 2023, whereby the learned Court below, while holding the petitioner-accused (in short the "**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 three months and pay compensation to the tune of Rs.3,20,000/- to respondent No.1-complainant (in short the "**complainant**").

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 complainant instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that accused purchased apple crop from him. He alleged that though with a view to discharge his lawful liability, accused issued cheque bearing No.904171 dated 25.08.2022 amounting to Rs.2,30,000/-, in favour of the complainant, but aforesaid cheque on its presentation was returned back vide memo dated 21.11.2022 with the remarks “Funds Insufficient”. Since accused failed to make the payment good within the stipulated period despite his having received legal notice dated 06.12.2022, complainant had no option, but to initiate proceedings under Section 138 of the Act in the competent Court of law.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 14.05.2025/ 16.05.2025, held the accused guilty of his having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per the description given herein above.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the learned Court below, accused preferred an appeal before the learned Additional Sessions Judge-II, Mandi, District Mandi, Himachal Pradesh, but same was dismissed vide judgment dated 10.11.2025. In the aforesaid background, accused has approached this Court in the instant proceedings, praying therein for his acquittal after setting-aside the judgment of conviction and order of sentence recorded by the learned Court below.

5. Vide order dated 10.02.2026, this Court stayed the substantive sentence imposed by the learned Court below subject to the accused depositing 30% of the compensation amount and furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount within a period of four weeks. However, fact remains that aforesaid order never came to be complied with. Repeatedly matter came to be adjourned on the request of learned counsel for the accused, enabling the accused either to settle the matter with the complainant or to deposit the amount, but in vain.

6. Today, during the proceedings of the case, learned counsel for the accused submitted that since accused is not coming forward to impart instructions, this Court may proceed to decide the case on its own merits.

7. Having heard learned counsel for the parties and perused material available on record vis-a-vis reasoning assigned in the impugned judgment passed by the learned Additional Sessions Judge-II, Mandi, District Mandi, Himachal Pradesh, whereby judgment of conviction and order of sentence recorded by the learned trial Court came to be upheld, this Court is not persuaded to agree with Mr. Naveen Kumar Dass, learned counsel for the accused, that learned Courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the Courts below have dealt with each and every aspect of the matter meticulously and there is no scope left for this Court to interfere. In his statement recorded under Section 313 Cr.P.C, accused denied the case of the complainant in toto. However, despite sufficient opportunities, accused failed to lead evidence in defence. Cross-examination conducted upon the complainant clearly establishes factum with regard to issuance of cheque as well as signatures of accused thereupon.

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 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.

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. In the case at hand, complainant, with a view to prove his case, examined himself as CW-1 and tendered his evidence by way of affidavit Ext.CW-1/A, reiterating therein contents of the complaint. He also tendered in evidence the original cheque Ext.CW-1/B, dishonour memo Ext.CW-1/C, copy of legal notice Ext. CW-1/D, postal receipt Ext.CW-1/E, and acknowledgment Ext.CW-1/F. If the cross-examination conducted upon this witness is perused in its entirety, it can be safely concluded that opposite party was unable to extract anything contrary to what this witness stated in his examination-in-chief. In his cross-examination, while stating that in the month of August, 2022, he had given apple to the accused, he stated that the cheque in question was issued by the accused towards the payment for the apples supplied by him. He denied the suggestion put to him that he misused the cheque by filling the same at his own.

10. While leading cogent and convincing evidence, complainant successfully proved on record that accused had purchased apple crop from him and in order to discharge aforesaid liability, accused issued a cheque bearing No.904171 dated 25.08.2022 amounting to Rs.2,30,000/- in favour of the complainant, however, same was dishonoured on account of insufficient funds in the bank account vide memo Ext.CW-1/C. He successfully proved that before initiating proceedings under Section 138 of the Act, he served the accused with legal notice calling upon him to make the payment good within stipulated time, but since needful was not done, complainant had no option but to institute proceedings under Section 138 of the Act**.**

11. Though accused attempted to carve out a case that cheque issued as security came to be mis-utilized by the complainant, but such defence of him never came to be probablized. Despite sufficient opportunities, accused failed to lead evidence in defence. Since factum of issuance of cheque as well as signatures thereupon never came to be refuted at the behest of accused, both the learned Courts below rightly invoked Sections 118 and 139 of the Act.

12. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption person seeking to rebut such presumption is expected to raise probable defence. However, in the instant case, no probable defence ever came to be raised.

13. 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.

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 pleadings as well as evidence adduced on record by the complainant, this court finds that complainant successfully proved all the ingredients of Section 138 of the Act, and as such, no illegality can be said to have been committed by the Courts below.

16. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC, 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."*

17. 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.

18. 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.

19. 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 six weeks to serve the sentence as awarded by the learned trial Court, if not already served. Interim direction, if any, stands vacated. Bail bonds, if any, are discharged. Pending applications, if any, also stand disposed of.

(Sandeep Sharma),
Judge

July 03, 2026
(sunil)