

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 69 of 2014

Reserved on: 8.7.2026

Date of Decision: 20.7.2026.

Dev Raj

...Appellant

Versus

Puran Chand

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

*Whether approved for reporting?*¹ No.

For the Appellant : Mr Sanjeev Kumar Suri, Advocate.

For the Respondent : Mr Ashwani Sharma, Senior Advocate, with Mr Ishan Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 12.09.2013, passed by the learned Additional Chief Judicial Magistrate, Dehra, District, Kangra, H.P. (learned Trial Court) vide which, the respondent (accused before learned Trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). (*The*

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

parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the accused had purchased a bus bearing registration No. HP-19-8670 from the complainant for ₹2,80,000/-. The accused agreed to pay all the taxes due to the Government and the instalments due to the Financier. An agreement was executed to this effect between the parties on 05.12.2006. The accused failed to deposit the token tax with the Department or the instalment with the Finance Company. The Finance Company seized the bus, and the Tax Department also started an action for the recovery of the tax amount. The complainant filed a civil suit for mandatory injunction directing the accused to deposit the tax amount. The accused issued a cheque of ₹2,65,000/- on 20.12.2009 during the pendency of the suit. The complainant presented the cheque at his bank for collection. However, the cheque was dishonoured with an endorsement 'refer to drawer'. The complainant sent a legal

notice to the accused asking him to repay the money within 15 days of receipt. The accused failed to repay the money despite the receipt of the notice. Hence, a complaint was filed against the accused for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined four witnesses to prove his complaint. Surjeet Singh (CW1) proved the agreement. Amit Bhardwaj (CW2) proved that the complainant had deposited the cheque. Inder Pal Sharma (CW3) proved the dishonour of the cheque. The complainant (CW4) reiterated the contents of the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that an agreement was executed between the parties. He admitted that the bus was seized by the Finance Company, and an action was commenced by the State Government and the Tax Department to recover the taxes. He admitted the pendency of the civil suit. He

stated that a blank signed cheque was issued by him in favour of the Finance Company. He admitted that the cheque was dishonoured. He claimed that he had closed the account in the year 2007. The complainant filed a false complaint, and the witnesses also made false statements against him. He did not produce any evidence in his defence.

6. The learned Trial Court held that the complainant had failed to prove the agreement as per the law. He had not explained how an amount of ₹2,65,000/- was due from the accused. The complainant stated that the cheque was issued for ₹65,000/-, which falsified his version that the cheque was issued for ₹2,65,000/-. The complainant's version was doubtful that he was the owner of the bus and that he had sold the bus to the accused. A civil suit was pending between the parties, and it was highly unlikely that the accused would have issued a cheque during the pendency of the civil suit. The accused had rebutted the presumption attached to the cheque. Hence, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal, asserting that the learned Trial Court erred in

appreciating the material on record. The accused had not made any complaint against the complainant or the Finance Company before the police or any other authority, which falsified the plea taken by him that he had issued a blank signed cheque in favour of the Finance Company, which was misused by the complainant. The learned Trial Court failed to consider the presumption attached to a cheque. The accused failed to produce any evidence to rebut the presumption. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Sanjeev Kumar Suri, learned counsel for the appellant/complainant and Mr Ashwani Sharma, learned Senior Advocate, assisted by Mr Ishan Sharma, learned counsel for the respondent/accused.

9. Mr Sanjeev Kumar Suri, learned counsel for the appellant/complainant, submitted that the accused had not disputed the issuance of the cheque, and a presumption would be triggered that the cheque was issued for consideration to discharge the debt/liability. The accused failed to rebut this presumption. Therefore, he prayed that the present appeal be

allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Ashwani Sharma, learned Senior Advocate for the respondent/accused, submitted that the complainant has asserted that the accused had issued a cheque of ₹65,000/- in his favour, which falsified his version that the cheque was issued for ₹2,65,000/-. The complainant had failed to prove the ownership of the bus, and the story propounded by the complainant was highly improbable. Learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial Court. Therefore, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, (2025) 5 SCC 433: 2025 SCC OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, based on misreading of

evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

13. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

14. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the

accused was proved beyond a reasonable doubt and no other conclusion was possible.”

15. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

16. The complainant Dev Raj (CW4) stated in his examination-in-chief that the accused had issued a cheque (Ex.CW2/E) for ₹65,000/-. The cheque mentions ₹2,65,000/- and not ₹65,000/-. Therefore, the complainant’s statement that the cheque was issued for ₹65,000/- made it doubtful that the cheque was issued towards the amount mentioned in the cheque.

17. The complainant asserted that he had sold a bus bearing registration number HP-19-8670 to the accused, and the cheque was issued regarding the payment of the consideration of the bus. However, the complainant admitted in his cross-examination that the bus was transferred in his name because the route permit of the vehicle was in his name. He volunteered to say that the bus was financed in his name. This part of the complainant’s testimony makes it doubtful that the complainant had sold the bus to the accused, because had it been so, the bus would have been registered in the name of the accused and not in the name of the complainant.

18. The complainant asserted in the complaint that the accused had failed to deposit the instalment or the taxes due to the Government. He stated on oath that the accused was not liable to pay any money to him. It is not the case of the complainant that he had paid the money to the financier or the taxes to the Government, and the accused was liable to reimburse this amount. He had specifically stated in the complaint that the Financier had seized the bus in default of the repayment, and the government had initiated the proceedings for the recovery of taxes. Thus, in view of the admission made by the complainant, the accused was not liable to pay anything to him, and the cheque cannot be said to have been issued to discharge the debt/liability.

19. It was submitted that the cheque carried with it a presumption of consideration, and the accused had failed to lead any evidence to rebut this presumption. This submission will not help the complainant.

20. It was laid down by the Hon'ble Supreme Court in *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418: 2019 SCC OnLine SC 491 that the accused can rely upon the material submitted by

the complainant to rebut the presumption. It was observed at page 433:

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him, or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

21. It was laid down by the Hon'ble Supreme Court in *Rajesh Jain v. Ajay Singh*, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275 that the presumption applies in the absence of evidence and disappears after the evidence is produced. It was observed:

“38. *John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]* on Evidence states as follows:

“The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption ‘disappears as a rule of law and the case is in the Jury's hands free from any rule’.”

22. In the present case, the complainant's statement made it doubtful that the cheque was issued for consideration to

discharge the debt/liability, and the learned Trial Court had taken a reasonable view while acquitting the accused. No interference is required with the reasonable view of the learned Trial Court, even if another view is possible while deciding an appeal against acquittal.

23. No other point was urged.

24. In view of the above, the present appeal fails, and it is dismissed. The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

25. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

26. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

20th July, 2026
(Chander)