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

**Cr. Revision No.458 of 2025**

**Date of Decision: 27.07.2026**

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Rahul Huddon …….Petitioner

Versus

Smt. Aruna Sirkek … Respondent

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Coram:
**Hon'ble Mr. Justice Sandeep Sharma, Judge.**
*Whether approved for reporting?* [1]

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| **For the Petitioner** | **:** | Mr. B.N. Sharma, Advocate. |
| **For the Respondent** | : | Mr. Ajay Kumar, Advocate. |

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**Sandeep Sharma, Judge**(oral):

Instant Criminal Revision petition filed under Section 438 of Bharatiya Nagarik Suraksha Sanhita, lays challenge to judgment dated 08.08.2025, passed by learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, District Shimla, Himachal Pradesh in Criminal Appeal No.64 of 2024, affirming judgment of conviction and order of sentence dated 17.06.2024, passed by learned Additional Chief Judicial Magistrate, Rampur Bushahr, District Shimla, Himachal Pradesh, in Criminal case No.09 of 2016, titled **Aruna Sirkek vs. Rahul Huddon,** whereby learned trial Court, while holding petitioner-accused **(hereinafter referred to as the 'accused')** guilty of his having committed an offence punishable

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

under Section 138 of the Negotiable Instruments Act (***for short 'Act'),*** convicted and sentenced him to undergo simple imprisonment for a period of one year and pay compensation to the tune of Rs. 14,82,000/- to the respondent-complainant ***(hereinafter referred to as the 'complainant').***

2. Precisely, the facts of the case, as emerge from the pleadings as well as other documents adduced on record, reveals that the respondent-complainant instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that accused, who was running a wholesale business of sale and purchase of apple crop in the name and style of M/s Sana Orchards, purchased his apple crop in the apple season 2014. With a view to discharge his liability, accused issued three cheques bearing No. 000632, dated 31.07.2015, amounting to ₹5,00,000/-, cheque No. 000633, dated 10.08.2015 ,amounting to ₹4,50,000/- and cheque No. 000631, dated 31.07.2015, amounting to ₹2,50,00,000/- in favour of complainant. However, fact remains that aforesaid cheques on their presentation to the bank concerned i.e HP State Co-operative Bank Dalan, Tehsil Kumarsain, were dishonoured on 28.10.2015 with remarks "insufficient funds" in the account of accused. Immediately after receipt of aforesaid return memos, complainant served accused with legal notice dated 23.11.2015 (Ex. C7/CW1), calling upon him to

make the payment good within stipulated time, but since accused failed to make the payment good within stipulated time, complainant had no option, but to institute proceedings under Section 138 of the Act in the competent Court of law, which subsequently, on the basis of evidence adduced on record by the respective parties, held accused guilty of his having committed offence punishable under S. 138 of the Act and accordingly, convicted and sentenced him as per description given herein above.

3. Being aggrieved and dissatisfied with aforesaid judgment of conviction and order of sentence recorded by learned trial Court, present petitioner-accused preferred an appeal in the Court of learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, which came to be dismissed vide judgment dated 08.08.2025. In the aforesaid background, petitioner-accused has approached this Court in the instant proceedings, praying therein for his acquittal after quashing and setting aside the impugned judgment of conviction and order of sentence recorded by Courts below.

4. Vide order dated 14.08.2025, this Court stayed the substantive sentence imposed by Court below, subject to petitioner-accused furnishing bail bonds and depositing 20% of the amount of compensation within four weeks. Though aforesaid order was complied with, but fact remains that thereafter, repeatedly matter was

adjourned, enabling petitioner to either settle the matter with the complainant or deposit the remaining amount, but on one pretext or other, neither amount has been deposited nor matter has been settled with the complainant and as such, this Court has no option, but to decide the case on its own merits.

5. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the impugned judgment passed by learned Sessions Judge, Kinnaur at Rampur Bushahr, District Shimla, Himachal Pradesh, affirming judgment of conviction and order of sentence recorded by learned trial Court, this Court is not persuaded to agree with learned counsel for the petitioner that both the Courts below have failed to appreciate the evidence in its right perspective, rather this Court is convinced and satisfied that both the Courts below have meticulously dealt with each and every aspect of the matter and there is no scope left for interference.

6. Interestingly, in the case at hand, factum with regard to issuance of cheques as well as signatures thereupon never came to be disputed. In his statement recorded under Section 313 Cr.P.C. accused though denied the case of the complainant, but attempted to set up a defence that cheques in questions were issued as a security,

but such defence never came to be probablized by leading cogent and convincing evidence.

7. Since factum with regard to issuance of cheques as well as signatures thereupon never came to be disputed, rather stands admitted, no illegality can be said to have been committed by the Courts below while, invoking Sections 118 and 139 of the Act, which speak about presumption in favour of the holder of the cheque that cheque was issued towards discharge of 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.

8. Complainant with a view to prove his case examined himself as CW-1 and tendered his evidence by way of affidavit Ex. C1/CW1, reiterating therein the contents of the complaint. Besides above, he also produced on record cheques Ex. CW2/CW1, Ex.C4/CW1, return memos Ex. C3/CW1 and Ex.C5/, legal notice Ex. C7/CW1 and postal receipt Ex.C8/CW1. While placing on record aforesaid documents, complainant successfully proved on record that cheques issued by the accused towards discharge of his lawful liability were dishonoured on account of insufficient funds and immediately after receipt of return memo, he had served accused with

legal notice, calling upon him to make payment good, but he, despite service, failed to pay the amount. Cross-examination conducted upon the complainant, if perused in its entirety, nowhere suggests that accused was able to extract something contrary to what this witness stated in his examination-in-chief. Accused himself put a suggestion to the complainant that cheques in question were issued as security, but he was unable to probablize aforesaid defence by leading cogent and convincing evidence.

9. Though accused examined Mr. Pankaj Kumar, Branch Manager, Central Bank of India Rampur, as DW1, who though produced account statement of accused Ex. D1/DW1, but bare perusal of the statement nowhere suggests that the defence otherwise sought to be raised by the accused with regard to issuance of cheques as well as signature thereupon ever came to be probablized.

10. The Hon'ble Apex Cour***t 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.***
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> ***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.***

11. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197**, wherein it was observed as under:

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
> 38. answered in the negative.
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> 40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.
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> 41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant- complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.
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> 42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not

> voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

12. 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.**

13. 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.

14. Having scanned the entire evidence adduced on record by the respective parties, this Court finds that all the basic ingredients of Section 138 of the Act are met in the case at hand. Similarly, factum with regard to signatures and issuance of cheque by the accused towards discharge of lawful liability stands duly established on record.

15. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.P.C, 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."***

16. Since after having carefully examined the evidence in the present case, this Court is unable to find any error of law as well as fact, if any, committed by the courts below, while passing impugned judgments, there is no occasion, whatsoever, to exercise the revisional power.

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.

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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 a period of two months to serve the sentence as awarded by the learned trial Court, if not already served. Bail bonds of the petitioner are cancelled. Interim direction, if any, stands vacated. Pending applications, if any, also stand disposed of.

20. The amount lying deposited with the learned trial Court is ordered to be released in favour of the respondent-complainant, by remitting the same in her saving bank account, details whereof, shall be furnished by learned counsel for the respondent-complainant within a period of two weeks.

**(Sandeep Sharma),**
**Judge**

July 27,2026
(shankar)