IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.729 of 2025
Date of Decision: 04.08.2026

Om Prakash ....**Petitioner**

Versus

Sant Ram ....**Respondent**

Coram

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

For the Petitioner: Mr. Jeevesh Sharma, Advocate.

For the Respondent: Mr. Jitender Pal Ranote, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 438 read with Section 442 of Bharatiya Nagrik Suraksha Sanhita, 2023, lays challenge to judgment dated 04.08.2025 passed by the learned Sessions Judge (Forests), District Shimla, Himachal Pradesh, in Criminal Appeal No.181/2023, affirming the judgment of conviction and order of sentence dated 01.09.2023, passed by the learned Chief Judicial Magistrate, Shimla, District Shimla, Himachal Pradesh, in Criminal Complaint No.259 of 2021, whereby the learned Court below, while holding the petitioner-accused *(hereinafter "**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 six months and pay compensation to the tune of Rs.8,20,000/- to the respondent-complainant *(hereinafter "**complainant**").*

2. Precisely, the facts of the case, as emerge from the record are that complainant instituted a complaint under Section 138 of the Act before the competent Court of law, alleging therein that in the month of June 2009, accused, who was personally known to him, approached him for advancement of some amount. He alleged that at the request of the accused, he arranged a sum of Rs.8,00,000/- and advanced the same to the accused. Out of the said amount, a sum of Rs.2,50,000/- was paid through Cheque No. 9000553 dated 27.06.2021 drawn on Co-operative Bank, The Mall, Shimla Branch, and another sum of ₹2,50,000/- was paid through Cheque No. 413197 drawn on State Bank of India, The Mall, Shimla Branch and the remaining amount was paid in cash to the accused, who assured that he will return the entire amount within one and a half years. Despite repeated requests, aforesaid amount was not returned, but subsequently, accused, with a view to discharge his lawful liability, issued a cheque bearing No. 295497 dated 12.01.2021, amounting to Rs.8,00,000/- drawn on Punjab National Bank, Branch, SDA Complex, Kasumpti, District Shimla, HP, however, fact remains that aforesaid cheque, on its presentation to the bank concerned was dishonored and returned unpaid with remarks "funds insufficient" vide memo dated 08.02.2021. Immediately after receipt of aforesaid memo, complainant served the accused with legal notice dated 02.03.2021, thereby calling upon him to make the payment good within stipulated time, but since needful was not done within stipulated time, complainant had no option but to institute proceedings under Section 138 of Act in competent Court of Law.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 01.09.2023, 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 and order of sentence recorded by the learned trial Court, accused preferred an appeal before the learned Sessions Judge (Forests), District Shimla, Himachal Pradesh, but same was dismissed vide judgment dated 04.08.2025. 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 22.12.2025, Co-ordinate Bench of this Court suspended the substantive sentence imposed by the Court below subject to 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 eight weeks. Though aforesaid order was complied with, but at a very belated stage and thereafter, matter was repeatedly adjourned on one pretext or another. However, fact remains that despite repeated opportunities, accused has neither settled the matter with the complainant nor deposited the entire amount, and as such, this Court has no option but to decide the case on its own merits.

6. 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 Sessions Judge (Forests), District Shimla, 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. Jeevesh Sharma, learned counsel for the petitioner, 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. Interestingly, in his statement recorded under Section 313 Cr.P.C, accused admitted that complainant had known to him for the last 30 years, but he denied factum of his having issued cheque for sum of Rs. 8,00,000/-. He deposed that he had issued cheque for sum of Rs. 5,00,000/- and there was no legal liability to be discharged by him towards the complainant. He deposed that false case has been filed against him. Since factum with regard to issuance of cheque as well as signatures thereupon never came to be refuted, no illegality can be said to have been committed by courts below, while invoking Sections 118 and 139 of the Act, which talk about presumption in favour of holder of cheque that cheque in question was issued towards discharge of lawful liability.

7. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption person seeking to rebut such presumption is expected to raise probable defence.

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, besides leading evidence in defence, can rely on the materials produced 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 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, tendered evidence by way of affidavit Ext. CW1/A, reiterating therein the contents of the complaint. He categorically deposed that in month of June 2009, accused personally approached him and told him that he was in urgent need of money due to some financial crisis in his business. He also deposed that on the request of the accused, he advanced sum of Rs. 8,00,000/-. He deposed that sum of Rs. 5,00,000/- was advanced to the accused through two separate cheques, amounting to Rs. 2,50,000/- each and rest of the amount was paid in cash. He deposed that though several requests were made to the accused to return the same, but ultimately he issued cheque bearing No.295497 Ext. CW1/A, amounting to Rs.8,00,000/- drawn on Punjab National Bank, Branch SDA Complex, Kasumpti, District

Shimla, Himachal Pradesh, in favour of the complainant with a view to discharge his lawful liability. However, aforesaid cheque was dishonored due to insufficient funds in the account of the accused vide memo Ext. CW1/B. This witness categorically deposed that after receipt of return memo from the bank, he issued legal notice Ext. CW1/C, on correct address of the accused through registered post as per postal receipt Ext.CW1/D, thereby calling upon him to make the payment good, but despite his having received notice, he failed to make the payment. 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.

10. Accused examined himself as DW-1 and deposed that false case has been filed against him by the complainant, as he had no legal liability to discharge in favour of the complainant. However, such statement of him is totally contrary to the defence taken by him in his statement under Section 313 CrPC, wherein he categorically admitted factum of his having availed loan to the tune of Rs.5,00.000/-. He further deposed that no dealings had taken place *inter se* him and complainant, rather dealings had taken place through Om General Store. While stating that he is not owner of the said store, this witness, in his cross-examination, admitted that he had issued cheque Ext. CW1/A to the complainant. He also admitted signatures upon the same. He also admitted that said cheque was dishonored. He also admitted that he had received Rs.5,00,000/- from the complainant. He denied that he received any legal notice. Once accused categorically accepted the factum of his having issued cheque as well as signatures thereupon, coupled with fact that complainant by way of leading cogent and convincing evidence successfully proved on record that he had advanced sum of Rs.8,00,000/- to the accused, no illegality can be said to have been committed by Courts below while holding accused guilty of his having committed offence under Section 138 of Act.

11. True it is that complainant, in his cross-examination, admitted that no writing was prepared with regard to advancement of money to the accused as he had lent sum of Rs.3,00,000/- in cash to the accused, but he successfully proved on record that by way of two separate cheques amounting to Rs.2,50,000/- each, he advanced Rs.5,00,000/- in addition to Rs.3,00,000/- paid in cash. To prove aforesaid fact, complainant examined one Laiq Ram as CW-2, who deposed on oath that complainant is having account in HP State Co-operative Bank, The Mall, Shimla. He also deposed that on 27.6.2021, cheque bearing No. 9000553, amounting to Rs.2,50,000 was issued by the complainant, which was deposited in account of the accused Om Prakash, bearing account No. 4170101512 of HP State Co-operative Bank, Kasumpti Branch. He further deposed that statement of bank account is Ext. CW-2/A, which was signed and issued by him and he has identified his signature in Circle A.

12. CW-3 Sunil Kumar, Branch Manager, SBI, The Mall Shimla, deposed on oath that vide cheque No.413197 dated 27.6.2021, an amount of Rs.2,50,000 was deposited in the account of the accused Om Prakash and same was issued by the complainant Sant Ram, who maintained his account No.65001522570 in their branch.

13. Leaving everything aside, claim of the complainant Sant Ram that he had given Rs.3,00,000/- in cash never came to be shattered by the accused in his cross-examination, wherein he denied that he had not given Rs. 3,00,000/- to the accused in cash. He denied the suggestion that he had not given any money to the accused and false case has been filed.

14. 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.

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.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."*

16. 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.

17. 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 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.

18. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The accused is directed to surrender before the learned trial Court within two months 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 cancelled. Pending applications, if any, also stand disposed of.

19. Amount, if any, deposited by the accused with the learned trial Court is ordered to be released in favour of complainant by remitting the same in his saving bank account, detail whereof, shall be furnished within a period of one week.

August 04, 2026 **(Sandeep Sharma),**
(**sunil**) **Judge**