

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 321 of 2025

Reserved on: 03.08.2026

Date of Decision: 07.08.2026.

Ravinder Kumar

...Petitioner

Versus

Anil Kumar

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner : Mr Aditya Kaushal, Advocate.

For the Respondent : Nemo

Rakesh Kainthla, Judge

The applicant/appellant has filed the present application seeking leave to appeal against the judgment dated 07.11.2024 passed by the learned Additional Chief Judicial Magistrate, Court No. 1, Kangra, District Kangra (learned Trial Court) vide which the complaint filed by the applicant (complainant before the learned Trial Court) was dismissed. (*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 application 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 Negotiable Instruments Act (NI Act). It was asserted that the complainant advanced a loan of ₹1,50,000/- to the accused in September, 2017. He promised to return the money within 2 months. However, he failed to honour his promise. The complainant demanded the money from the accused repeatedly, and the accused issued a cheque of ₹1,50,000/- to return the money on 20.07.2018. The complainant presented the cheque at his bank for realisation, but it was dishonoured with the endorsement “insufficient funds”. The complainant served a notice upon the accused asking him to repay the money within 15 days from the date of the receipt of the notice. The notice was duly served upon the accused, but he failed to repay the money. 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 Pankaj Sharma (CW1) and himself (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted his signature on the cheque. He claimed that the cheque was issued by him in favour of his friend, and a false case was made against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the notice of dishonour was received by the complainant on 06.08.2018. The complainant was required to issue a legal notice of demand within 30 days from the receipt of the return memo. The complainant sent the legal notice on 06.09.2018, which was beyond the period of 30 days. The mandatory condition for invoking the provision of Section 138 of the NI Act was not satisfied. 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 acquitting the accused. The complainant had proved his case beyond reasonable doubt, and the complaint was dismissed on a technical ground. There was a delay of only one day, which was *bona fide*. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. An application seeking leave to appeal was also filed with the appeal.

9. Mr Aditya Kaushal, learned counsel for the complainant, submitted that the learned Trial Court had taken a hypertechnical view of the matter. There was a delay of only one day in issuing the notice, which was due to the error on the part of the complainant's advocate. The complainant should not be penalised for the fault of the advocate. Therefore, he prayed that the present application be allowed and the leave to appeal be granted to the applicant.

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

11. Pankaj Sharma (CW1) stated that the complainant had presented the cheque in his bank and it was returned with a memo of dishonour (Ext.CW1/A) on the ground of “insufficient funds” on 06.08.2018. The complainant stated in his cross-examination that he had received the memo of dishonour on 06.08.2018 and had issued the notice on 06.09.2018. Therefore, it is undisputed that the memo of dishonour was received on 06.08.2018, whereas the notice was issued on 06.09.2018.

12. It was laid down by Hon’ble Supreme Court in *Sivakumar v. Natarajan*, (2009) 13 SCC 623 that clauses (a) and (b) of the proviso appended to Section 138 of the NI Act uses the term “within a period” and the Parliament has not used the word from the date of the receipt of information; therefore, Section 9 of the General Clauses Act, 1897 will not apply. It was observed: –

“10. We may, however, at the outset notice that both clauses (a) and (b) of the proviso appended to Section 138 of the Act employed the term “within a period”. Whereas clause (a) refers to presentation of the cheque to the bank within a period of six months from the date on which it is drawn, clause (b) provides for issuance of notice “to the drawer of the cheque, within thirty days of the receipt of information”. The words “within thirty days of the receipt of information” are significant. Indisputably, intimation was received by the respondent from the bank on 3-12-2003.

11. Parliament advisedly did not use the words “from the date of receipt of information” in Section 138 of the Act. It is also of some significance to notice that in terms of Section 9 of the General Clauses Act, 1897, whereupon reliance has been placed by the High Court, the statute is required to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”. The departure made from the provisions of Section 9 of the General Clauses Act by Parliament, therefore, deserves serious consideration.

12. Indisputably, the notice was issued on the 31st day and not within a period of thirty days from the date of receipt of intimation from the bank. If Section 9 of the General Clauses Act is not applicable, clause (b) of the proviso appended to Section 138 of the Act was required to be complied with by the respondent for the purpose of maintaining a complaint petition against the appellant.

14. Our attention has furthermore been drawn to a decision of the Kerala High Court in *K.V. Muhammed Kunhi v. P. Janardhanan* [1998 Cri LJ 4330 (Ker)], wherein construing clause (a) of the proviso appended to Section 138 of the Act, a learned Single Judge held: (Cri LJ p. 4331, para 3)

“3. ... A comparative study of both the sections in the Act and the General Clauses Act significantly indicates that the period of limitation has to be reckoned from the date on which the cheque or instrument was drawn. The words ‘from’ and ‘to’ employed in Section 9 of the General Clauses Act are evidently clear that in cases where there is an ambiguity or suspicion with reference to the date of commencement of period of limitation in any Act or special enactment, the words ‘from’ and ‘to’ employed in Section 9 of the General Clauses Act can be pressed into service.” (See also *K.C. Nanu v. N. Vijayan* [(2007) 1 KLJ 326] .)

We are in agreement with the aforementioned view.

14. This judgment was followed in *Kamlesh Kumar v. State of Bihar*, (2014) 2 SCC 424, and it was held that when the complainant came to know about the dishonour of the cheque on 10.11.2008 and sent the notice on 17.12.2008, the notice was not sent within 30 days and the complaint was not maintainable. It was observed: -

13. The crucial question is as to which date the complainant received the information about the dishonour of the cheque? As per the appellant, the respondent complainant received the information about the dishonour of the cheque on 10-11-2008. However, the respondent complainant has disputed the same. However, we would like to add that at the time of the arguments, the aforesaid submission of the appellant was not refuted. After the judgment was reserved, the complainant filed an affidavit alleging therein that he received the bank memo of the bouncing of the cheque on 17-11-2008 and therefore, the legal notice sent on 17-12-2008 is within the period of 30 days from the date of information.

14. Normally, we would have called upon the parties to prove their respective versions before the trial court by leading their evidence. However, in the present case, as rightly pointed out by the learned Senior Counsel for the appellant, the complainant has accepted in the complaint itself that he had gone to the Bank for encashment of the cheque on 10-11-2008 and the cheque was not honoured due to insufficiency of funds, thereby admitting that he came to know about the dishonour of the cheque on 10-11-2008 itself. It is for this reason that the appellant has filed a reply-affidavit stating that this is an afterthought plea, as no material has been filed before the court below to show that the

Bank had issued a memo about the return of the cheque, which was received by the complainant on 17-11-2008. The specific averment made in the complaint on this behalf is as under:

“Subsequently, the complainant again went to encash the cheque given by the accused on 10-11-2008, which again bounced due to unavailability of balance in the accused's account.”

It is, thus, clear from the aforesaid averment made by the complainant himself that he had gone to the Bank for encashing the cheque on 10-11-2008 and found that, because of unavailability of sufficient balance in the account, the cheque was bounced. Therefore, it becomes obvious that he had come to know about the same on 10-11-2008 itself. In view of this admission in the complaint about the information having been received by the complainant about the bouncing of the cheque on 10-11-2008 itself, no further enquiry is needed on this aspect.

15. It is, thus, apparent that the complainant received the information about the dishonour of the cheque on 10-11-2008 itself. However, he did not send the legal notice within 30 days thereafter. We, thus, find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the NI Act as explained in para 12 of the judgment in *MSR Leathers [MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177: (2013) 1 SCC (Civ) 424: (2013) 2 SCC (Cri) 458]*, extracted above.

15. This judgment was followed by the Delhi High Court in *Deepak Nagar v. State, 2024 SCC OnLine Del 2053*, and it was held that when the intimation was received on 16.03.2022, and a legal notice was issued on 16.04.2022, the same was beyond the

period of limitation and no complaint is maintainable in such a case. It was observed: –

10. A Co-ordinate Bench of this Court in *Dheeraj Jain v. State* 2012 SCC OnLine Del 1687, held as under: —

“xxx

8. A perusal of Clause (b) to proviso to the Section clearly states that nothing contained in the section shall apply unless the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the amount of cheque by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of the information by him from the bank regarding return of the cheque as unpaid. It may be noted that in the present case, admittedly, as per the complaint, affidavit and legal notice, Respondent No. 2 came to know about the dishonour of the cheque on the 10th of July, 2010. The demand made by Respondent No. 2 was beyond the period of 30 days, and now Respondent No. 2 cannot agitate that he be permitted to lead evidence to show that he received the knowledge of dishonour of the cheque on 12th July 2012, which was not the case even before the learned Trial Court.

xxx”

11. Even this Court in *Amit Kumar Mishra v. The State (Govt. of NCT of Delhi)* 2012 SCC OnLine Del 1687 held that in case a legal notice is issued beyond the period of 30 days, the complaint is not maintainable.

12. So far as aspect of computation of statutory period is concerned, reference may be made to the decisions of the Supreme Court in *Econ Antri Ltd. v. Rom Industries Ltd.* (2014) 11 SCC 769 and *Rameshchandra Ambalal Joshi v. State of Gujarat* (2014) 11 SCC 759 as well as this Court in *Texco v. Bats Apparels Ltd.* 2018 SCC OnLine Del 7724, *Rayapati Power Generation Pvt. Ltd. v. Indian Renewable*

Energy Agency Ltd. (IREDA) 2022 SCC OnLine Del 295 and Simranpal Singh Suri v. State (2021) 1 HCC (Del) 183 In all these cases while dealing with the various provisions of Section 138 and 142 NI Act, it has been held that the date on which the cause of action arises, would be excluded while computing the statutory period mentioned in the various clauses of Section 138 NI and for Section 142.

13. Concededly, as per the allegations in the complaint, respondent No. 2 had received information about the dishonour of the cheque on 16.03.2022, whereafter, he had telephonically informed the petitioner about the said dishonour. It is also not disputed that the legal notice was issued on 16.04.2022, and upon failure to repay, the present complaint came to be filed.

14. In *Texco* (Supra), this Court observed: —

“xxx

8. The questions that arise for consideration in this case are: whether Section 9 of the General Clauses Act, 1897, is applicable to the statutory notice under Section 138 of the Act. & whether the day on which the information is received by the complainant from the bank that the cheque has been dishonoured is to be included or excluded while computing the 30 days prescribed for issuing the statutory notice.

xxx

12. Seen from that perspective, the date on which the petitioner received the information of the dishonour of the cheque (i.e. 23.12.2006) is to be excluded for the purposes of computing the period of 30 days available under the Act for issuance of notice. On excluding the date 23.12.2006 from consideration, it is seen that the notice issued on 22.01.2007 has been issued on the 30th day, which would bring the said notice within the period prescribed.

xxx”

15. Further, this Court in *Rayapati Power Generation Pvt. Ltd.* (Supra) observed: —

“xxx

14. In the present case, the primary issue raised by learned counsel for the petitioners during the course of submissions is that the legal demand notices were not issued by the complainant Company within 30 days of the receipt of information regarding dishonour of the cheques, i.e., from the date of the return memos, and thus the complaints are not maintainable. On the other hand, the complainant Company maintains that it was informed of the dishonour of the cheques in question only when its Bank sent the aforesaid return statements, and the legal demand notices were issued within 30 days thereafter.

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21. The legal position, as culled out from the judicial dicta referred to hereinabove, is that while computing the limitation period of 30 days prescribed under Section 138(b) of the N.I. Act for issuance of a valid legal notice, the day on which intimation is received by the complainant from the bank that the cheque in question has been returned unpaid has to be excluded.

xxx”

16. Applying the abovementioned legal position to the present matter, it can be seen that admittedly, while the information was received on 16.03.2022, the legal notice came to be issued on 16.04.2022. Even if the first day, i.e. 16.03.2022, is excluded in computing the statutory period, the legal notice came to be issued on the 31st day, i.e. beyond the statutory period provided under Section 138(b) of the NI Act.”

16. In the present case, the memo of dishonour was received on 06.08.2018, whereas the notice was issued on

06.09.2018. Therefore, the notice was issued beyond 30 days provided under Section 138 (b) of the NI Act. The issuance of the notice within 30 days of the receipt of the memo of dishonour is an essential condition for filing the complaint, which was not fulfilled in the present complaint; therefore, the learned Trial Court was justified in dismissing the complaint. The learned Trial Court had taken a reasonable view, and no interference is required with the reasonable view of the learned Trial Court. Hence, the present application fails and is dismissed.

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17. Since the application for granting leave to appeal has been dismissed, the proposed appeal does not survive and is disposed of.

(Rakesh Kainthla)
Judge

7th August, 2026
(Nikita)