IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 516 of 2024

Date of Decision: 11.08.2026

Ritu ....**Petitioner**

Versus

Rohitash Sidhu and Another ....**Respondents**

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Ms. Meera Devi, Advocate.

For the Respondents: Mr. Shakti Bhardwaj, Advocate, for respondent No.1.

Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for State.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023, lays challenge to judgment dated 03.05.2024, passed by the learned Sessions Judge, Shimla, Himachal Pradesh, in Criminal Appeal No.11-S/10 of 2024, titled as *Ritu Vs. Rohitash Sidhu,* affirming judgment of conviction and order of sentence dated 14.12.2023, passed by the learned Chief Judicial Magistrate, Shimla, Himachal Pradesh, whereby the learned trial Court while holding the petitioner-accused **(for short, 'accused')** guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act **(for short '**

the Act'), convicted and sentenced her to undergo simple imprisonment for a period of six months and pay compensation to the tune of ₹2,00,000/- to the respondent-complainant.

2. Precisely, the facts of the case, as emerge from the record are that respondent-complainant **(for short 'complainant')** instituted a complaint under Section 138 of the Act in the competent Court of law alleging therein that accused, with whom he had friendly relations, asked for a friendly loan of ₹1,50,000/- in the first week of June 2017 due to some personal exigency. Complainant, taking note of his friendly relations with accused, advanced loan of ₹1,50,000/- in cash to accused with the understanding that same be returned within one month. However, fact remains that afore amount was not returned within one month, but accused with a view to discharge her liability, issued Cheque No.253909 dated 01.08.2017, for a sum of ₹1,50,000/-, drawn on Punjab National Bank, Sanjauli Branch, Shimla, District Shimla, Himachal Pradesh. However, same, on its presentation to the Bank concerned was dishonored with the remarks that accused has closed her bank account. Immediately after receipt of aforesaid return memo, complainant served accused with a legal notice dated 01.09.2017 through registered post, calling upon her to make good the payment within the stipulated time, but since needful was not done within the stipulated time, complainant had no option but to institute complaint 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 14.12.2023, held the petitioner-accused guilty of having committed offence under Section 138 of the Act and accordingly, convicted and sentenced her, as per the description given hereinabove.

4. Though, at first instance, accused preferred an appeal in the Court of learned Sessions Judge, Shimla, Himachal Pradesh, however, same was dismissed vide judgment dated 03.05.2024. In the aforesaid background, petitioner-accused has approached this Court by way of instant proceedings, seeking therein her acquittal after setting aside the judgments of conviction recorded by the Courts below.

5. Vide order dated 21.10.2024, this Court stayed the substantive sentence imposed by the Court below subject to her furnishing personal bonds and depositing 30% of the compensation amount, in addition to 20% of the compensation amount already deposited by her before the learned trial Court, within a period of four weeks. Though aforesaid order was complied with, but thereafter, matter was repeatedly adjourned enabling petitioner to either settle the dispute with the complainant or deposit the remaining amount, however, fact remains that despite various opportunities, neither dispute has been settled, nor petitioner has deposited the remaining amount. On 08.07.2026, this Court on the vehement request of learned counsel

representing the petitioner adjourned the matter for today's date with the understanding that matter shall be heard finally on the next date of hearing.

6. Having heard learned counsel for the parties and perused material adduced on record, vis-a-vis reasoning assigned in the impugned judgments, this Court sees no reason to agree with learned counsel representing the petitioner, that Courts below have fallen in grave error while appreciating the evidence, rather this Court finds that both the Courts below have meticulously dealt with each and every aspect of the matter and there is no scope left for interference.

7. 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 averments contained in the complaint. Besides above, he also tendered Cheque Ex.CW1/A, dishonour memo Ex.CW1/B, legal notice EX.CW1/C, postal receipts Ex.CW1/C1 to Ex.CW1/C3 and acknowledgement Ex.CW1/D1 and Ex.CW1/D2. Cross-examination conducted upon afore witness, if perused in its entirety, nowhere suggests that accused able to extract anything contrary to what this witness stated in his examination-in-chief.

8. Accused in her statement recorded under Section 313 Cr.P.C. denied factum of her having issued Cheque in question to the complainant, but stated that she used to take articles from one Karan, who had retained security Cheque from her and had not returned the same. She further stated

in her statement recorded under Section 313 Cr.P.C. that Karan told her that he had lost the Cheque, which was later on misused. Though opportunity was granted to accused to lead the evidence, but she failed to lead the evidence. Though accused attempted to raise a defence that she had not issued any Cheque to the complainant, rather same was issued to Karan as a security and same has been misused by the complainant, however, such defence never came to be probabilised by leading cogent and convincing evidence. Neither person namely Karan ever came to be examined, nor petitioner-accused was able to point out from the pleadings and evidence, if any, led on record by complainant that Cheque in question was issued as security and same has been misused. Since factum with regard to issuance of Cheque as well as signatures thereupon stand duly proved, no illegality can be said to have been committed by the learned 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 a 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.

9. 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 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.

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."

10. As has been noticed hereinabove, accused attempted to carve out a case that Cheque in question was issued as a security, but same was misused, however, aforesaid defence never came to be probabilised by leading cogent and convincing evidence. 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."

11. 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.

12. If the evidence led on record by the respective parties is read in conjunction, this Court sees no reason to differ with the findings returned by the Courts below that complainant successfully proved on record that accused had issued Cheque towards discharge of her lawful liability. Defence otherwise attempted to set up could not be proved by the accused by leading cogent and convincing evidence. Since factum of issuance of Cheque by the accused as well as her signatures thereupon stand duly proved, presumption as available under Section 118 and 139 of the Act rightly came to be invoked in the case of the petitioner that Cheque in question was issued in discharge of lawful liability. Since no evidence worth credence ever came to be led on

record to rebut the presumption, no illegality can be said to have been committed by the Courts below while holding petitioner/accused guilty for the commission of offence punishable under Section 138 of the Act.

13. 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. Since Cheque issued by accused towards discharge of her lawful liability was returned on account of 'Account Closed' in the bank account of accused and she despite having received legal notice failed to make the payment good within the stipulated time, complainant had no option but to institute proceedings under Section 138 of the Act, which subsequently rightly came to be decided by both the Courts below on the basis of pleadings as well as evidence adduced on record by the respective parties.

14. 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 relied upon 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."

15. 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.

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 hereinabove 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.

18. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The petitioner is directed to surrender herself before the learned trial Court within a period of six weeks to serve the sentence as awarded by the learned trial Court, if not already served. Bail bonds of the petitioner, if any, are cancelled. Interim order dated 21.10.2024 stands vacated. Amount, if any, deposited by the petitioner-accused with the learned trial Court as well as Registry of this Court is ordered to be released in favour of complainant by remitting the same in his bank account, detail whereof, shall be furnished by his counsel within a period of one week.

Pending applications, if any, also stand disposed of.

(Sandeep Sharma),
Judge

August 11, 2026
(Rajeev Raturi)