IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO Nos. 139, 140, 141 and 142 of 2025
Date of decision: 13.8.2026

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1. CrMMO No. 139 of 2025
Deva Thapa
.........Petitioner
Versus
Diwan Chand and Anr.
.......Respondents

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2. CrMMO No. 140 of 2025
Deva Thapa
.........Petitioner
Versus
Diwan Chand and Anr.
.......Respondents

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3. CrMMO No. 141 of 2025
Deva Thapa
.........Petitioner
Versus
Diwan Chand and Anr.
.......Respondents

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4. CrMMO No. 142 of 2025
Deva Thapa
.........Petitioner
Versus
Diwan Chand and Anr.
.......Respondents

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

For the Petitioner: Mr. Vivek Thakur, Advocate.

For the Respondents: Mr. Dipankar Bagga, Legal Aid Counsel.

Sandeep Sharma, J. (oral)

By way of above captioned petitions filed under Section 482 Cr.P.C./Section 528 of BNSS, accused No.2/petitioner herein namely Deva Thapa (in short the "petitioner"), who is accused in these cases, has approached this court for quashing of complaints No. 43/2022, 44/2022, 45/022 and 46/2022, having been filed by complainant/respondent No.1 Diwan Chand, (herein after referred to as the "complainant") under Section 138 of the Negotiable Instruments Act (in short the "Act"), along with consequent proceedings pending adjudication before the learned Additional Chief Judicial Magistrate, Nadaun, District Hamirpur, Himachal Pradesh.

2. Quintessential facts, which are common in all the cases, as emerge from the pleadings and other material adduced on record, are that complainant instituted aforesaid complaints under Section 138 of the Act in the competent Court of law, alleging therein that on 25.04.2020, petitioner as well as respondent No.2/accused No.1, approached him at Village Jangli, Post Office Sera, Tehsil Nadaun, District Hamirpur, Himachal Pradesh, for investment in business. The complaint alleged that petitioner herein was in urgent need of said investment because he was a professional wrestler and wanted to make a YouTube channel for uploading short video films for his publicity. Complaint alleged that since he and petitioner had good business relations, petitioner purchased all instruments i.e. video cameras, laptop, lighting tripod, editing software and sound system etc., from him on 05.05.2020 for a total consideration of Rs. 3,03,000/-. It is alleged that despite repeated requests, petitioner failed to make payment of Rs. 3,03,000/-. However, such request was avoided and ignored on one pretext or another. Complainant further alleged that petitioner left the business in between. However, subsequently, on his repeated requests, he and petitioner entered into a registered agreement No. 75, dated 16.06.2021, whereafter he again invested Rs. 3,03,000/- in the YouTube channel of the petitioner. Complainant alleged that after having entered into agreement with the petitioner, respondent No. 2-Ram Bahadur Thapa, gave four post-dated cheques dated 07.02.2022 of Rs. 1,50,000/- each, of his account maintained in the Punjab National Bank. Complainant alleged that initially, relations inter-se him and accused were cordial, but after some time, petitioner left the YouTube Channel and complainant suffered a huge financial loss. He alleged that since despite repeated requests, amount invested by him was not returned, he deposited four cheques bearing No. 416645, 416644, 416643 and 416642 for a sum of Rs. 1,50,000/-each, (total Rs. 6,00,000/-) for encashment through his banker, Central Bank of India, Branch Nadaun, but the same were returned unpaid with reason "payment stopped by drawer". Though at the first instance, complainant served legal notice to respondent No.2 through his counsel, calling upon him to make the payment qua the cheques in question within the stipulated time, but since needful was not done, he was compelled to file four separate complaints under Section 138 qua four dishonoured cheques, as detailed herein above.

3. Learned Court below, taking cognizance of averments contained in the complaint as well as material adduced on record, issued summons to both the accused vide order dated 24.5.2022. However, before cases as detailed herein above could be taken to their logical end, petitioner has approached this Court in the instant proceedings, praying for quashing of the afore complaints as well as consequential proceedings, on the ground that neither he had issued cheque nor he has any kind of liability towards the complainant and as such, no fruitful purpose would be served by permitting the complaints sought to be quashed, to continue against him.

4. Precisely the case of petitioner is that though agreement to run a YouTube channel was executed *inter se* the petitioner and complainant, but cheques, which were allegedly issued by the accused to the complainant towards discharge of lawful liability, were never issued by petitioner. While making this Court peruse agreement adduced on record by the complainant, Mr. Vivek Thakur, learned counsel representing complainant, states that mere perusal of same reveals that agreement, if any, was executed *inter-se* petitioner-accused and complainant and respondent No.2-Ram Bahadur, was not party to same. If it is so, cheques issued by Ram Bahadur (respondent No. 2), in favour of the complainant cannot be said to have been issued for discharge of lawful liability, if any, of petitioner. While making this Court peruse legal notice issued by the complainant after dishonour of cheque, Mr. Vivek Thakur, learned counsel for petitioner-accused, states that even no legal notice was issued to petitioner, rather same was issued to respondent No. 2, who had actually issued the cheques. He further submits that bare perusal of the complaint itself suggests that agreement was executed *inter-se* petitioner and complainant and at no point of time respondent No. 2 ever signed the same. Rather, there is mention of cheques issued by him in the capacity of in-laws of the petitioner-accused, but definitely not towards discharge of lawful liability, if any, of the petitioner. He further submits that since petitioner is not a signatory to the cheques, nor cheques in question are of his account, complaints, if any, under Section 138 of Act are otherwise not maintainable against petitioner.

5. To the contrary, Sh. Dipanker Bagga, learned Legal Aid Counsel representing respondent No. 1-complainant, submits that bare perusal of agreement placed on record itself suggests that agreement was executed *inter-se* petitioner-accused, respondent No. 2 and complainant, and cheques detailed therein were actually issued towards the discharge of lawful liability of the petitioner and respondent No. 2. He submits that had complainant only entered into agreement with the petitioner-accused, there was otherwise no occasion, if any, to mention the details of cheques given by respondent No. 2, who, being one of the partners in the business of YouTube channel, had actually issued the same towards discharge of lawful liability of the firm, which at relevant time was being run by both the accused named in the complaints. He further submits that otherwise also, this is a disputed question of fact that respondent No. 2 was not party to the agreement, which cannot be decided in the instant proceedings, rather can be adjudicated by learned Court below in totality of evidence led on record by respective parties to the lis.

6. I have heard learned counsel for the parties and gone through the record carefully.

7. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC (now Section 528 of BNSS).

8. A three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka vs. L. Muniswamy and others 1977 (2) SCC 699**, held that High Court while exercising power under Section 482 Cr.PC (now Section 528 of BNSS) is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

9. Subsequently, in case titled **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335**, the Hon'ble Apex Court while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution.

10. The Hon'ble Apex Court in ***Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293***, relying upon its earlier judgment titled as ***Rajiv Thapar and Ors v. Madan Lal Kapoor, (2013) 3 SCC 330***, reiterated that High Court has inherent powers under Section 482 Cr.PC., to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC, Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations leveled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

11. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings.

12. Hon'ble Apex Court in case tilted ***Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi) Departmetn of Home and Anr, AIR 2019 SC 210***, has held that abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.PC (relevant paras 16 and 17). *Also see* ***Pramod Suryabhan Pawar v. The State of Maharashtra and Anr, (2019) 9 SCC 608,*** wherein Hon'ble Apex Court has elaborated the scope of exercise of power under Section 482 Cr.PC (now Section 528 of BNSS).

13. Reliance in this regard is also placed upon judgment passed by the Hon'ble Apex Court in **B.N. John Vs. State of U.P., 2025 SCC OnLine SC 7**, which reads as under:

> "7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335, wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:
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> > "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> > (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima

facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge." (emphasis added)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed."

14. Now in light of aforesaid law laid down by Hon'ble Apex Court, this Court would make an endeavour to examine and consider the prayer made in the instant petitions, vis-a-vis factual matrix of the cases.

15. Admittedly, bare perusal of agreement dated 16.7.2021, reveals that same was executed *inter-se* petitioner and complainant. Though learned Legal Aid Counsel representing the complainant attempted to argue that afore agreement was executed *inter-se* petitioner and respondent No.2 as first party and complainant as second party, but having read agreement in totality, this Court is not persuaded to agree with learned Legal Aid Counsel representing the complainant, for the reason that aforesaid agreement nowhere bears signature of respondent No. 2, rather same has been signed by petitioner and complainant. Though there is a mention of four cheques, which are otherwise subject matter of the cases at hand, but same have been issued by respondent No. 2. It is also not in dispute that cheques in question are not signed by the petitioner, rather same, belonging to the account of respondent No. 2, have been signed by respondent No. 2. Otherwise also, it is admitted case of the complainant that petitioner had left the business of YouTube channel in between and thereafter cheques, which were allegedly issued by the petitioner at the time of his having entered into agreement as detailed herein above, were deposited in the bank for encashment by the complainant. However, same were dishonoured with remarks "payment stopped".

16. Record further reveals that after dishonouring of cheques, complainant chose to issue notice to respondent No. 2, thereby calling upon him to make the payment good and at no point of time, legal notice, if any, ever came to be issued to the petitioner-accused, who subsequently came to be arraigned as an accused No. 2 in the complaints filed by him under Section 138 of Negotiable Instruments Act. It is also not the case of the complainant that cheques, which are subject matter of the cases, issued by respondent No. 2, were of firm or of joint account, if any, held by petitioner and respondent No. 2, rather, bare perusal of cheques placed on record reveals that same were of the account of respondent No. 2 and those were signed by respondent No. 2. Complainant himself has mentioned in complaints sought to be quashed that when he and petitioner entered into agreement No. 75 dated 16.06.2021, respondent No.2 gave four post dated cheques dated 07.02.2022 of Rs. 1,50,000/- each, of his account for discharge of liability of the petitioner herein. Since respondent No.2 was not party to the agreement as detailed herein above, there was otherwise no occasion, if any, for him to issue cheques of his own account, that too towards discharge of lawful liability of petitioner herein. There is no averment in the complaints that petitioner herein is jointly liable for the act of respondent No. 2, in as much as he issued cheques to the complainant towards discharge of lawful liability of petitioner-accused.

17. Though while making this Court peruse agreement, Sh. Bagga, learned Legal Aid Counsel, vehemently argued that cheques in question were issued by respondent No. 2 on behalf of the petitioner-accused and as such, he has been rightly made accused in the complaints filed under Section 138 of Negotiable Instruments Act, but this Court is not impressed with his aforesaid submission for the reason that respondent No.2 was never party to the agreement, which admittedly was executed inter se petitioner-accused and complainant.

18. At this stage, it would be apt to take note of provision contained under Section 138 of Negotiable Instruments Act, which reads as under:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account.—
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> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
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> Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

19. Afore provision of law clearly suggests that to constitute an offence under Section 138 of Act, a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account. Admittedly, in the case at hand, cheques in question were never issued by petitioner-accused, that too of his own account, rather, same have been issued by respondent No. 2 herein. Since cheques have been issued by respondent No. 2, coupled with the fact that he was never a party to agreement dated 16.06.2021 executed *inter-se* complainant and petitioner-accused, cheques, which are subject matters of the case, otherwise cannot be said to have been issued towards discharge of lawful liability, if any, of petitioner-accused. Perusal of Section 138 of Act, clearly suggests that it is only when all the ingredients as contained in Section 138 are satisfied, then a person who had drawn the cheque can be deemed to have committed offence under Section 138 of Act. In support of aforesaid finding recorded by this Court, reliance is placed upon judgment passed by Hon'ble Apex Court in case titled **Jugesh Sehgal v. Shamsher Singh Gogi, 2009 (14) SCC 683**, relevant paras whereof read as under:

> "11. It is true that Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so, yet to fasten a criminal liability under the said provision, necessary ingredients of the Section are to be satisfied.
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> 12. Section 138 of the Act reads as follows:
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>> "138. Dishonour of cheque for insufficiency, etc., of funds in the account--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed

to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.--For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

13.It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

10. Being cumulative, it is only when all the afore-mentioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."

20. In aforesaid judgment, Hon'ble Apex Court, having taken note of para 3 of complaint, wherein it was specifically averred that cheque in question was issued from an account which was non-existent on the date it was issued or that account from where cheque was issued, pertained to someone else, proceeded to hold that continuance of further proceedings in complaint under Section 138 of Act against the appellant would be an abuse of process of Court. Para 22 of the aforesaid judgment reads herein below:

> "22.As already noted hereinbefore, in para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non-existent on the day it was issued or that the account from where the cheque was issued "pertained to someone else". As per complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant, would be an abuse of the process of the Court. In our judgment, therefore, the decision of the High Court cannot be sustained."

21. Reliance is also placed upon judgment passed by Hon'ble Apex Court in case titled **Alka Khandu Avhad v. Amar Syamprasad Mishra & Anr., 2021 (4) SCC 675**, wherein Hon'ble Apex Court, having taken note of the fact that cheque was issued against the joint account held by husband and wife, but since it was signed only by the husband, wife was not held liable to be prosecuted under Section 138 of Act. Relevant paras of the aforesaid judgment read as under:

> "6. We have heard learned counsel appearing on behalf of the respective parties at length, considered material on record and also

considered the averments and allegations in the complaint. It emerges from the record that the dishonoured cheque was issued by original accused No. 1 – husband of the appellant. It was drawn from the bank account of original accused No. 1. The dishonoured cheque was signed by original accused No. 1. Therefore, the dishonoured cheque was signed by original accused No. 1 and it was drawn on the bank account of original accused No. 1. The appellant herein-original accused No. 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein – original accused No. 2 can be prosecuted for the offence punishable under Section 138 r/w Section 141 of the NI Act?

9. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

9.1 That the cheque is drawn by a person and on an account maintained by him with a banker;

9.2 For the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; and

9.3 The said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about

the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."

22. Reliance is also placed upon judgment passed by the High Court of Judicature at Bombay titled **Aarti Shailesh Shah v. Satish Vasant Dharukkar** and Anr. in **Criminal Application No. 747 of 2023**. Careful perusal of aforesaid judgment, if read in totality, clearly suggests that joint account holder cannot be prosecuted unless cheque has been signed by each person, who is joint account holder. It is only the drawer of the cheque who can be made as an accused in any proceedings under Section 138 of the Act. The words 'such person' employed in Section 138 of the Act depict the legislative intent to restrict the liability upon the person who has issued the cheque.

23. Reliance is also placed upon judgment passed by Hon'ble Apex Court in case titled **Aparna A. Shah v. Sheth Developers Private Limited and Anr., 2013 (8) SCC 71**, wherein it came to be reiterated that it is only the drawer of cheque who can be prosecuted under Section 138 of Negotiable Instruments Act. In aforesaid case, Hon'ble Apex Court categorically held that proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover amount allegedly due from the person who has not issued the cheque. The culpability attached to the dishonour of a cheque can, in no case, except in case of Section 141 NI Act, be extended to those on whose behalf the cheque is issued. No doubt, under Section 141 of Act, a firm or company can be prosecuted under Section 138 of Act, and director or partners of firm/company can also be prosecuted for the act of the company, provided the complainant is able to establish that accused named in complaint, being partner or director of company, was responsible for day-to-day affairs of company or firm.

24. Though learned Legal Aid Counsel, attempted to argue that company means any body corporate and includes a firm or other association of individuals and therefore, in case of joint liability of two or more persons, it will fall within "other association of individuals", and therefore with the aid of Section 141 of NI Act, petitioner-accused, who is jointly liable to pay the debt, can be prosecuted, but this Court is not persuaded to accept aforesaid submission of Mr. Bagga, for the reason that two private individuals cannot be said to be "other association of individuals". In the case at hand, agreement placed on record nowhere suggests that same was executed *inter-se* three persons, petitioner-accused and respondent No.2 as first party and complainant as second party and thereafter, cheques, which are subject matter of case, were issued by respondent No. 2 herein towards discharge of the liability, if any, of firm, i.e., YouTube channel, allegedly started by petitioner-accused and complainant.

25. Having scanned the entire material adduced on record, this Court has no hesitation to conclude that, no case much less under the aforesaid provisions of law can be said to have been made against the petitioner. Since for the discussion made herein above, case of the prosecution is likely to fail in all eventualities, this Court finds the case at hand to be a fit case for exercising power under Section 482 CrPC to quash FIR as well as consequent proceedings. If prayer made in the instant petition is not accepted, petitioner would be unnecessarily subjected to ordeal of the protracted trial, which is otherwise bound to culminate in acquittal of the accused.

26. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), present petition is allowed and complaints No. 43/2022, 44/2022, 45/022 and 46/2022, having been filed by complainant/respondent No.1 Diwan Chand, under Section 138 of the Act along with consequent proceedings pending adjudication before the learned Additional Chief Judicial Magistrate, Nadaun, District Hamirpur, Himachal Pradesh, are quashed and set aside qua the petitioner. Petitioner is acquitted of the charges framed against him. The petitions stand disposed of in the aforesaid terms, alongwith all pending applications.

August 13, 2026 **(Sandeep Sharma),**
(manjit) **Judge**