IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 547 of 2012-B
Reserved on: 12.08.2026
Date of Decision: 20.08.2026

Bhupesh Kumar ...Appellant.

Versus

Jamal Nasir ...Respondent.

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Appellant : Mr Rupinder Singh, Advocate.
For the Respondent : Mr Abhishek Verma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 07.09.2012, passed by learned Chief Judicial Magistrate, Sirmour District at Nahan, H.P. (learned trial Court) vide which the respondent (accused before learned trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal 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 NI Act. It was asserted that the complainant is running a petrol pump in the name and style of Sirmaur Filling Station at Kala Amb. The accused had purchased diesel from the complainant's petrol pump on a credit basis. He issued a cheque of ₹1,00,000/- to repay part of the amount to the complainant. The complainant presented the cheque at the bank, but it was dishonoured with the endorsement insufficient funds. Hence, the complainant filed a complaint against the accused before the learned Chief Judicial Magistrate, Nahan. The accused issued another cheque of ₹1,50,000/- towards the remaining payment of the diesel purchased by him. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant sent a legal notice to the accused, asking him to repay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, the complaint was

filed before the learned trial Court for taking action as per the law.

3. The 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 trial.

4. The complainant examined Dinesh Bahadur (CW-1), Raghubir Chand (CW-2) and Bhupesh Kumar (CW-3) to prove the complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the complainant's case in its entirety. He claimed that he had received a blank envelope and a false complaint was filed against him. He was innocent, and the witnesses deposed falsely against him. He did not produce any evidence in his defence.

6. Learned trial Court held that the accused was an employee in Nahan Foundry. He was not shown to be any transporter requiring a huge quantity of diesel. Hence, the complainant's version that the accused had purchased diesel worth ₹2,50,000/- from him was inherently suspect. The

complainant had failed to produce any documents to establish his plea of purchase made by the accused. The necessary ingredient of the commission of an offence punishable under Section 138 of the N.I.Act that the cheque was issued in discharge of the legal liability/debt was missing. 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 appreciating the material on record. The complainant had maintained the receipt/account register, in which the quantity of diesel purchased per day by the accused was entered. An original bill was issued to the accused, but this fact was not considered by the learned trial Court. The accused had issued another cheque of ₹1,00,000/-, and he was convicted by the learned trial Court. There was no question of proving the liability of the accused. Hence, it was prayed that the present appeal be allowed and the judgment passed by the learned trial Court be set aside.

8. I have heard Mr Rupinder Singh, learned counsel for the appellant/complainant and Mr Abhishek Verma, learned counsel for the respondent/accused.

9. Mr Rupinder Singh, learned counsel for the appellant, submitted that the accused was convicted by learned Chief Judicial Magistrate, Nahan, H.P. in another complaint and the learned trial Court could not have given a contradictory finding in the present proceeding that the cheque was issued without any liability. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability, and the burden was upon the accused to rebut the presumption. He failed to lead any evidence to rebut the presumption and the learned trial Court erred in acquitting him. Hence, he prayed that the present appeal be allowed and the judgment passed by the learned trial Court be set aside.

10. Mr Abhishek Verma, learned counsel for the respondent, submitted that the accused is not a transporter, who would require such a huge amount of diesel. The complainant was required to produce the documents to establish his version, but he had failed to do so. The learned trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned trial Court. Hence, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373,*** that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

> **Scope of interference with an acquittal:**
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> **26.** At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.
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> **27.** In ***Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808: 1973 SCC (Cri) 1048***, this Court explained the golden thread running through criminal jurisprudence in the following words:
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> > *"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis*

of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab *v.* Jagir Singh, *a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."*

28. The decision in ***Kali Ram*** (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not a technical rule; it is a substantive safeguard flowing from the presumption of innocence.

29. In ***Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60***, this Court reiterated the limited scope of interference with acquittals. This Court observed:

> "75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable."

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In ***Chandrappa v. State of Karnataka (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325***, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in ***Mrinal Das v. State of Tripura (2011) 9 SCC 479***, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

13. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with same rigour cannot be applied to the cases under Negotiable Instruments Act because there is a presumption that the holder had received the cheque for consideration to discharge the debt/liability. The Appellate Court is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed: -

> "**12.**... The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with

> the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.
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> **13.** For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?"

14. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

> **5.3.** At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755.***

"10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

(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 for the discharge of any debt or other liability;

(ii) 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;

(iii) that cheque is returned by the bank unpaid, either because 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;

(iv) 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;

(v) 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.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because 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.

v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

16. The cheque (Ext. CW-1/B) was issued in the name of Sirmaur Filling Station, Kala Amb. The complainant, Bhupesh Kumar, claimed himself to be a partner of Sirmour Filling Station, Kala Amb, H.P.; however, he has not produced any record regarding his being a partner of Sirmour Filling Station. The statement of account (Ext. C-1), produced by Dinesh Bahadur

(CW-1), does not mention that Sirmour Filling Station is a partnership firm and the complainant is a partner of the same. It was laid down by the Hon'ble Supreme Court in ***Milind Shripad Chandurkar v. Kalim M. Khan*, *(2011) 4 SCC 275***, that where no evidence was led to prove that the complainant was the owner of a proprietorship concern, he cannot be called to be a payee or holder in due Course. The Hon'ble Supreme Court noticed the affidavit of the complainant in para-14 as under: -

> "**14.** The relevant part of the affidavit filed by the appellant-complainant before the trial court reads as under:
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> > "I, Shri Milind Shripad Chandurkar, aged about 37 years, Indian inhabitant, occupation: business, proprietor of M/s Vijay Automobiles, having an address at Sector 29, Dronagiri Node, Uran, District Raigad, take oath and state on solemn affirmation as under….
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> > > I state that in due discharge of legal liability of the accused as mentioned in the foregoing paragraphs, the accused issued one cheque dated 28-4-2005 in my name, i.e. in the name M/s Vijaya Automobiles, which was drawn on Development Credit Bank, Kurla Branch, Mumbai 70 bearing Cheque No. 490592, for ₹ 7,00,000 (Rupees seven lakhs only)."
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> The relevant part of his cross-examination reads as under:
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> > "It is true that till today I have not produced any documentary evidence to show that I am the owner of Vijaya Automobiles…. Till today, I have not produced any documentary evidence to support."

17. It was further found that no documentary evidence was produced to show that the complainant was the proprietor of the firm. It was observed-

> "**16.** Thus, from the above, it is evident that the appellant-complainant could not produce any document to show that he was the proprietor of Vijaya Automobiles in spite of the fact that the issue had been agitated by the accused-Respondent 1 at every stage. It is also evident from the documents on record that in the list of witnesses, the complainant had mentioned the name of his banker as a witness; however, the said banker was not examined.
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> **17.** It may also be pertinent to mention here that the appellant did not make any attempt to adduce additional evidence at the appellate stage. No document has ever been filed to substantiate his averment in this regard."

18. It was held that the complaint can be filed by a payee or holder in due course, and when there was no evidence that the complainant was the proprietor, he was not entitled to file the complaint. It was observed: -

> "**26.** In the instant case, it is evident that the firm, namely, Vijaya Automobiles, has been the payee and that the appellant cannot claim to be the payee of the cheque, nor can he be the holder in due course, unless he establishes that the cheques had been issued to him or in his favour or that he is the sole proprietor of the concern and being so, he could also be the payee himself and thus, entitled to make the complaint. The appellant miserably failed to prove any nexus or connection by adducing any evidence, whatsoever, worth the name with the said firm, namely, Vijaya Automobiles. A mere statement in the affidavit in this regard is not sufficient to meet the requirement of law. The appellant failed to produce any documentary evidence to connect himself with the said firm.

> **27.** It is evident that the Firm had a substantial amount of business, as in one month it sold the diesel to Respondent 1, a single party, for a sum of ₹ 7 lakhs. The appellant would, in addition, have also been carrying out business with other persons. Thus, a person with such a big business must have had transactions with the bank and must have been a payee of income tax, sales tax, etc. Thus, in such a factual situation, there would be no dearth of material that could have been produced by the appellant to show that he was the sole proprietor of the said firm. The appellant failed to adduce any evidence in this regard, nor made any attempt to adduce any additional evidence at the appellate stage, in spite of the fact that the respondent had been raising this issue from the initiation of the proceedings."

19. This judgment was followed by this Court in ***S.P. Saklani v. Ravinder Singh Thakur, 2012 SCC OnLine HP 771***, wherein it was observed: -

> "11. Admittedly, a cheque example.CW-3/A is in the name of Thakur Devi Ram & Sons. Cheque returning memo Ex.CW-2/C is also addressed to M/s Thakur Devi Ram & Sons.
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> 12. True it is that it was averred by the complainant in the complaint that he was running the aforesaid business in the name and style of M/s Thakur Devi Ram and Sons. Though, while appearing as CW-3 in the chief examination, the complainant has reiterated the assertion that he is the sole proprietor of M/s Devi Ram and Sons, yet in cross-examination he has admitted that on the day he was making a statement in the court, he did not have any proof that he was the sole proprietor of M/s Devi Ram and Sons. It is further stated that he did not remember when the cement was purchased by the convict. He had also not brought a copy of the bill book to the court. In further cross-examination, he denied that he had any concern with M/s Devi Ram and Sons and volunteered that Devi Ram is his father.

13. In his statement under Section 313 Cr. P.C., the convict denied that the complainant used to deal in the business of steel and cement known as M/s Devi Ram and Sons. He has also denied that cheque Ex.CW-3/A was issued by him in favour of the complainant.

14. Thus, it is manifest that except the bald assertion made by the complainant in the complaint and reiterated on oath in his deposition as CW-3 that he is the sole proprietor of M/s Devi Ram and Sons, which aspect is vehemently disputed by the convict, there is no other cogent, reliable and trustworthy documentary evidence to prove nexus or connection of the complainant with the firm M/s Thakur Devi Ram and Sons. The evidence led by the complainant is wholly deficient in content to prove his nexus or connection with the said firm as its sole proprietor and the mere averments in the complaint to this effect as reiterated on oath in his deposition as CW-3, which is vehemently contested on behalf of the convict is not sufficient to establish such nexus or connection, as has been held by the Hon'ble Supreme Court in ***Milind Shripad Chandurkar***, supra."

20. Similar is the judgment in ***Ram Chand v. Rafee Mohammad, 2018 SCC OnLine HP 3334***, wherein it was observed:-

"**19.** Now, adverting to the facts of the case, if cheque, Ext. C-1 is perused, it would be noticed that the same has been issued by a partner of the Indian Education Centre and not by the respondent in his name. Moreover, the cheque is in the name of Ramchand and not in the name of Ankit Hire Purchase Pvt. Ltd. The appellant has failed to show that he is the sole proprietor of the firm and has not even pleaded that he is the payee or the holder in due course of the cheque.

20. It is more than settled that it is only the holder in due course of a negotiable instrument who is entitled to file the complaint under Section 138 of the Act. (Refer: ***Milind Shripad Chandurkar v. Kalim Khan, (2011) 4 SCC 275, National Small Industries Corporation Ltd. v. State, (2009) 1***

> ***SCC 407*** and ***Punjab & Sindh Bank v. Vinkar Sahkari Bank Ltd., (2001) 7 SCC 721***)
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> **21.** As observed above, the cheque in question, Ext.C-1, has been issued by a partner of Indian Education Centre and not by the respondent in his name, and the appellant has failed to mention in the complaint or prove in evidence that Indian Education Centre had any connection with him or his establishment or, for that matter, even with the respondent. This assumes significance and importance when the specific case of the appellant is that the entire exercise of lending money was done for and on behalf of Ankit Hire Purchase Pvt. Ltd., which allegedly was a company, yet no records of the same were produced.
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> **22.** As a matter of fact, the appellant has filed the complaint as Managing Director of the company, but there is no proof of the same. Even otherwise, having failed to establish the connection between the company of which he claims himself to be the Managing Director with that of Indian Education Centre, whose partner has issued cheque, Ext.C1 and further having failed to establish the connection of the respondent with Indian Education Centre, the learned trial court had no other option, but to have dismissed the complaint and acquitted the respondent."

21. In the present case, no evidence was produced to show Bhupesh Kumar is the payee/holder of the cheque, and the complaint filed by him was not maintainable.

22. The accused denied the issuance of the cheque in favour of the complainant. He also denied, in the cross-examination of the complainant, that he had purchased the diesel from the complainant. The learned trial Court had rightly

pointed out that the accused was not shown to be a transporter who would buy the diesel worth ₹2,50,000/- from the complainant. Therefore, it was necessary for the complainant to produce the documents to corroborate his version that the accused had purchased the diesel from his Filling Station worth ₹2,50,000/-. The complainant admitted in his cross-examination as well as in the memorandum of appeal filed before this Court that he had maintained the record regarding the sale of the diesel to the accused. However, he had failed to produce such a record before the learned trial Court and the learned trial Court was justified in holding that the essential ingredient of the complaint that the cheque was issued for consideration to discharge the debt/liability was missing.

23. A heavy reliance was placed upon the judgment passed by the learned Chief Judicial Magistrate in another complaint filed by the complainant; however, this Court has already held vide order dated 24.06.2026 that the judgment delivered by the learned Chief Judicial Magistrate in the complaint filed by the complainant is not admissible in the present proceedings. Therefore, no advantage can be derived

from the judgment passed by learned Chief Judicial Magistrate in the connected complaint filed by the complainant.

24. No other point was urged.

25. Therefore, learned trial Court had taken a reasonable view of the matter, and no interference is required with the reasonable view of learned trial Court even if another view is possible.

26. In view of the above, the present appeal fails, and it is dismissed, so also the pending applications, if any.

27. A copy of this judgment, along with the record of the learned trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

20th August, 2026
(Ravinder)