IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 24 of 2025
Reserved on: 24.09.2026
Date of Decision:06.10.2026

Kusha Devi **....Appellant**

Versus

Rajeev Kumar **.... Respondent**

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the appellant : Mr V.S. Rathore, Advocate.

For the Respondent : Nemo

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 13.08.2025, passed by learned Sessions Judge, Kangra at Dharamshala, H.P. (learned appellate Court), vide which judgment of conviction dated 30.09.2023, and order of sentence dated 04.10.2023, passed by learned Judicial Magistrate, First Class, Kangra, District Kangra, H.P. (learned trial Court) were set aside. *(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 the local papers may be allowed to see the judgment? Yes

2. Briefly stated, the facts giving rise to the present revision 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 (NI Act). It was asserted that the complainant had deposited ₹1,12,630/-on 24.08.2016 and ₹1,12,630 on 25.08.2016 with the office of the accused. The complainant deposited the relevant documents with the accused on the date of maturity. The accused issued a cheque of ₹2,22,270/- towards the part repayment of the amount. The complainant presented the cheque before his bank, but it was dishonoured with an endorsement 'funds insufficient'. The complainant sent a notice to the accused asking him to pay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but he failed to pay the money. Hence, a complaint was filed before the learned trial Court against the accused, 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 to be tried.

4. The complainant examined herself (CW1) to prove her complaint.

5. The accused denied the complainant's case in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC). He stated that a false case was filed against him. He did not produce any evidence in his defence.

5. The learned trial Court held that the accused had issued a cheque towards the repayment of the amount deposited with him. There is a presumption that the cheque was issued for consideration to discharge the debt/liability. The accused had failed to rebut the presumption. The cheque was dishonoured with an endorsement ‘insufficient funds’. The notice was duly served upon the accused, requiring him to pay the money within 15 days of the receipt of the notice. The accused failed to repay the money. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The learned trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him

to undergo simple imprisonment for 2 months, and pay compensation of ₹1,25,000/- to the complainant.

6. Being aggrieved by the judgment and order passed by the learned trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Kangra at Dharamshala, District Kangra, H.P. (learned appellate Court). The learned appellate Court held that the cheque was issued by B.M. Nidhi Ltd. The accused had put the signatures as an authorised signatory. B. M. Nidhi Ltd. was not arrayed as an accused, and the complaint was not maintainable in the absence of the company. The learned trial Court failed to consider this aspect. Hence, the learned appellate Court allowed the appeal, set aside the judgment and order passed by the learned trial Court and acquitted the accused.

7. Being aggrieved by the judgment passed by the learned appellate Court, the complainant has filed the present appeal asserting that the learned appellate Court erred in holding that the complaint was not maintainable in the absence of the company. The accused was prosecuted as Managing Director-cum-Proprietor of the Company. He had put his signature on the cheque, and he was liable for its

dishonour. The accused did not dispute his liability to pay the money. He had in fact paid ₹1,25,000/- during the pendency of the proceedings, as per the judgment of the learned trial Court, which showed that the accused owed a liability to the complainant. The learned appellate Court erred in ignoring this circumstance. Hence, it was prayed that the present appeal be allowed and the judgment passed by the learned appellate Court be set aside.

8. I have heard Mr V. S. Rathore, learned counsel for the appellant/complainant, who submitted that the learned appellate Court erred in acquitting the accused. The cheque was signed by the accused, and he never disputed his liability. He had paid ₹1,25,000/- to the complainant during the pendency of the complaint, clearly showing that he acknowledged his liability to pay the amount. The learned appellate Court dismissed the complaint on a technical ground without realising that the purpose of Section 138 of the NI Act is to ensure that people repose confidence in the transactions carried out by cheques. The learned trial Court had taken an unreasonable view that could not have been taken by any reasonable person. Therefore, he prayed that the

present appeal be allowed and the judgment passed by the learned appellate Court be set aside.

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

10. The complaint mentions that the complainant had deposited the amount in the agency/office of the accused. She stated in her cross-examination that she had deposited the money in the company of the accused on different dates. She did not remember the name of the company. The notice was also issued to the accused and not to the company.

11. Therefore, the complainant's admitted case was that the money was deposited in the company. The cheque (Ext.C1) also mentions the name of the drawer as B.M. Nidhi Ltd. The use of the word 'Limited' shows that B. M. Nidhi is a Company. Therefore, the learned Appellate Court had rightly held that the cheque was issued by the company. The complaint also mentioned the accused, Rajeev Kumar Sharma, as Managing Director-cum-Proprietor of B. M. Nidhi Ltd. Thus, the accused was arrayed in the capacity of the Managing Director of the Company. It was laid down by the

Hon'ble Supreme Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661,*** that it is not permissible to prosecute the Directors in the absence of the Company. It was observed:

> "58. Applying the doctrine of strict construction, we are of the considered opinion that the commission of the offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence, subject to the averments in the petition and proof thereof. One cannot be oblivious to the fact that the company is a juristic person and it has its respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.
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> 59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative."

12. This judgment was followed by the Hon'ble Supreme Court in ***Charanjit Pal Jindal v. L.N. Metalics, (2015) 15 SCC 768: 2015 SCC OnLine SC 1033,*** and it was held:

> "**11.** From the aforesaid finding, we find that after analysing all the provisions and having noticed the different decisions rendered by this Court, the three-judge Bench arrived at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning a company as an accused is

imperative. Hence, in this case, we find no reason to refer the matter to the larger Bench.

12. In the present case, only the appellant was impleaded as an accused. In that view of the matter, we are of the view that the complaint with respect to the offence under Section 138 read with Section 141 of the Act was not maintainable following the decision in ***Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661: (2012) 3 SCC (Civ) 350: (2012) 3 SCC (Cri) 241]***. We set aside the judgment dated 17-4-2010 passed by the trial court, the order dated 27-5-2011 passed by the appellate court and the impugned judgment dated 9-11-2012 passed by the High Court of Orissa, Cuttack in ***Charanjit Pal Jindal* v. *L.N. Metalics*** [***Charanjit Pal Jindal* v. *L.N. Metalics*, *Criminal Revision No. 467 of 2011, decided on 9-11-2012 (Ori)***]. The appellant stands acquitted."

13. This position was reiterated in ***Himanshu v. B. Shivamurthy*, *(2019) 3 SCC 797: 2019 SCC OnLine SC 83,*** and it was held:

"**13.** In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."

14. A similar view was taken in ***Pawan Kumar Goel v. State of U.P., 2022 SCC OnLine SC 1598,*** wherein it was held:

"**31.** This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of

> an offence under Section 138 of the NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming a fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-sections (1) and (2) would not be liable to be convicted based on the principles of vicarious liability."

15. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the prosecution of the company was essential before prosecuting its Managing Director/official. The learned appellate Court had rightly held that the complaint was not maintainable in the absence of the company. This was a reasonable view that could have been taken based on the material placed before the learned appellate Court, and no interference is required with the reasonable view of the learned appellate Court while deciding an appeal against acquittal.

16. No other point was urged.

17. In view of the above, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

18. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

19. Records be sent back to the learned Court below forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

06th October, 2026.
(Ravinder)