IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 222 of 2015
Reserved on: 07.10.2026
Date of Decision: 16.10.2026.

Lovleena Kanwar ...Appellant

Versus

Pushpa Thapa ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Appellant : Mr Rohit Kaundal, Advocate.

For the Respondent : Mr Hoshiar Singh Kaushal, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 30.03.2015 passed by learned Additional Chief Judicial Magistrate, Court No. 2, Shimla, 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 (in short "NI Act"). *(The parties shall hereinafter be referred to in the same*

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

manner as they were arrayed before the learned Trial Court for convenience).

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 and accused were known to each other. The complainant paid ₹5,50,000/- to the accused on 12.02.2013. The accused issued a cheque dated 12.03.2013 drawn on State Bank of India, Shimla, in favour of the complainant in discharge of the debt/legal liability. The complainant presented the cheque before the bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused on 12.04.2013. However, the notice was not received back and is presumed to have been served. The accused failed to pay the money. Hence, the complaint was filed before the Court for taking action against the accused as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of

accusation was put to her for the commission of an offence punishable under Section 138 of the NI Act, to which she pleaded not guilty and claimed to be tried.

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

5. The accused, in her statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that the complainant was known to her for many years. She admitted that a legal notice was served upon her. She stated that she had borrowed ₹50,000/- from the complainant in June, 2011, and issued a blank cheque as security. She had repaid the money, but her blank cheque was misused by the complainant. She did not produce any evidence in her defence.

6. Learned Trial Court held that the complainant admitted in her cross-examination that she was not doing any job and had no independent income of her own. She claimed that her father was doing the business of Judo Karate in the United States of America and he used to send the money to her account. However, she had not produced any material to establish this fact. The complainant also admitted that her

yearly savings were ₹10,000/-; therefore, it was not possible for her to advance ₹5,50,000/- to the accused. The explanation provided by the accused that the cheque of ₹50,000/- was converted into ₹5,50,000/- was highly probable. The complainant claimed that the accused had filled the cheque in her presence, but this was falsified by the report of the forensic expert. Therefore, 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 complainant had specifically stated on oath that her father had a business of Judo Karate for 14 years and he used to send money to her from the USA. This statement was brushed aside by the learned Trial Court. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied, and the learned Trial Court erred in acquitting 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 Rohit Kaundal, learned counsel for the appellant/complainant and Mr Hoshiar Singh Kaushal, learned counsel for the respondent/accused.

9. Mr Rohit Kaundal, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused after holding that the complainant did not have financial capacity to advance the loan. The complainant had specifically asserted that her father was working in the USA and he used to remit money to her. This part of the statement was ignored by the learned Trial Court. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Hoshiar Singh Kaushal, learned counsel for the respondent/accused, submitted that the complainant had not produced any proof of the fact that her father was remitting money to her, and the learned Trial Court had taken a reasonable view by rejecting this defence. There is no infirmity in the judgment and order passed by the learned Trial Court. Therefore, 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 technical; 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.
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> **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 the same rigour cannot be applied to the cases under the 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 the preponderance of probabilities is 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.

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 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***.
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> "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:
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> (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;
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> (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;
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> (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;
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> (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 because 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.

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

16. The complainant stated in her cross-examination that she was residing at home and she was not doing any job or business. She has no independent source of income. She had paid the money to the accused in cash. She denied that she had no financial capacity to advance ₹5,50,000/- to the accused. She volunteered to say that her father had transferred the money to her through Western Union. She admitted that she had not produced any proof of this fact.

17. The complainant's cross-examination made her testimony in the examination-in-chief doubtful that she had advanced ₹5,50,000/- to the accused. She was not doing any job. She had no source of income, and she was not filing any income tax return. Therefore, the learned Trial Court was justified in holding that the complainant had failed to prove her financial capacity to lend money to the accused.

18. The complainant volunteered to say that her father was working in the USA and he had remitted the money to her through Western Union. However, she had not produced any evidence in support of this fact. She had also not stated this fact in her complaint made before the Court or in the notice issued to the accused. When the complainant was specifically cross-examined regarding the source of her income, and she was claiming that she had got the money from her father, she was expected to bring on record some material in support of this assertion, and in the absence of any evidence, the learned Trial Court was justified in holding that the complainant had failed to prove that she had financial capacity to advance the money to the accused.

19. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh Versus Narayan Dass Mahant (2022) 6 SCC 735*** that the accused has a right to demonstrate that the complainant did not have the financial capacity to advance the loan stated to have been advanced by him. It was observed: -

> "9....However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable, which he can do by producing independent

> materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

20. It was held by the Hon'ble Supreme Court in ***Basalingappa Versus Mudibasappa (2019) 5 SCC 418,*** that where the financial capacity to pay ₹6,00,000/- was questioned and there was no satisfactory reply, the accused had raised a probable defence. It was observed: -

> " 30. We are of the view that when evidence was led before the Court to indicate that apart from a loan of Rs. 6 lakhs given to the accused, within 02 years, an amount of Rs. 18 lakhs has been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. The court cannot insist on a person to lead negative evidence. The observation of the High Court that the trial court's finding that the complainant failed to prove his financial capacity for lending money is perverse cannot be supported. We fail to see how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence."

21. It was laid down by the Hon'ble Supreme Court in ***Dattatraya v. Sharanappa, (2024) 8 SCC 573: (2024) 3 SCC (Cri) 776: 2024 SCC OnLine SC 1899*** that when the financial capacity of the accused is not established, the accused is entitled to acquittal. It was observed:

> **"29.**...Furthermore, there was no financial capacity or acknowledgement in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further, the appellant has not been able to show as to when the said loan was advanced in favour of the respondent, nor has he been able to explain as to how a cheque issued by the respondent, allegedly in favour of Mr Mallikarjun, landed in the hands of the instant holder, that is, the appellant."

22. A similar view was taken in ***John K. Abraham Versus Simon C. Abraham & Another (2014) 2 SCC 236,*** wherein it was held: -

> "9. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavy upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."

23. It was submitted that there is a presumption that the cheque was issued for consideration to discharge the

debt/liability. However, this presumption is not absolute but is rebuttable, and the moment evidence is led, the presumption would stand rebutted. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275,*** that the presumption applies in the absence of evidence and disappears after the evidence is produced. It was observed:

> "38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:
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> > "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule'."

24. In the present case, the cross-examination of the complainant made her financial capacity doubtful, and the presumption would be displaced.

25. Therefore, learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial

Court, even if another view is possible while deciding an appeal against acquittal.

26. No other point was urged.

27. In view of the above, the present appeal fails and is dismissed; so also the pending application(s), if any, stand disposed of.

28. 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 is directed to furnish personal bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned trial Court, which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court

29. A copy of the judgment, along with the record of the learned Court below, be sent back forthwith.

(Rakesh Kainthla)
Judge

16th October, 2026
(Nikita)