IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 368 of 2015
Reserved on: 05.10.2026
Date of Decision: 16.10.2026.

Krishna Verma ...Appellant

Versus

Tara Katoch ...Respondent

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

For the Appellant	:	Mr Ram Gopal Thakur, Advocate.
For the Respondent	:	Ms Kamlesh, Advocate, vice Mr H.S. Rana, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.04.2015 passed by learned Additional Sessions Judge-II, Solan, District Solan, H. P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 17.03.2011 passed by learned Judicial Magistrate First Class, Court No. 1, Kasauli, District Solan, H.P. (learned Trial Court) were set aside. *(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 Negotiable Instruments Act (NI Act). It was asserted that the complainant and accused had a friendly relationship. The accused requested the complainant to advance ₹85,000/- for her personal needs. The accused promised to return the amount within one month. The complainant advanced ₹85,000/- to the accused as a friendly loan in March, 2010. The accused issued a cheque of ₹85,000/- on 21.04.2010 to repay the money taken by her. The complainant deposited the cheque with her bank, but it was dishonoured with an endorsement 'insufficient funds'. The complainant issued a notice to the accused to pay the money within 15 days from the date of receipt of the notice. The notice was duly served upon the accused, but she failed to repay the money. Hence, the complaint was filed before the learned Trial Court for taking action against the accused 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 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 she had issued a cheque in favour of the complainant but claimed that the cheque was blank and the accused had misused it. She denied the rest of the complainant's case. She did not produce any evidence to prove her defence.

6. Learned Trial Court held that the accused had not disputed the issuance of the cheque, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The burden shifted upon the accused to rebut the presumption. However, the accused had not produced any evidence and only provided an explanation that she had issued a blank cheque. This explanation was not proved. The cheque was

dishonoured with an endorsement 'insufficient funds'. The complainant served a notice upon the accused, and the accused had failed to repay the amount despite the receipt of the notice. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced her to undergo simple imprisonment for 3 months and pay compensation of ₹95,000/- to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused preferred an appeal which was decided by the learned Additional Sessions Judge-II, Solan District, Solan (the learned Appellate Court). The learned Appellate Court held that the complainant had stated in her cross-examination that she had withdrawn the money on 21.04.2010 and handed it over to the accused. This was contrary to her initial version that the money was paid in March, 2010. This made the complainant's version regarding advancing the loan to the accused highly doubtful. The learned Trial Court had not considered this aspect. Hence, the judgment passed by the learned Trial Court was not sustainable. The learned Appellate Court allowed the appeal and set aside the judgment and order passed by the learned Trial Court.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the accused has preferred the present appeal asserting that the learned First Appellate Court appreciated the evidence in a slipshod and perfunctory manner. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. This presumption was ignored by the learned Appellate Court. The learned Appellate Court erred in setting aside the well-reasoned judgment passed by the learned Trial Court. Hence, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Ram Gopal Thakur, learned counsel for the appellant/complainant and Ms Kamlesh, learned vice counsel representing the respondent/accused.

10. Mr Ram Gopal Thakur, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused. The plea taken by the accused that she had issued a blank cheque in favour of the complainant was not proved by any evidence on record. Learned Appellate Court erred in relying upon a minor contradiction in the

statement of the complainant to acquit the accused. Therefore, he prayed that the present appeal be allowed and the judgment passed by learned Appellate Court be set aside.

11. Ms Kamlesh, learned vice counsel representing the respondent/accused, submitted that the complainant had not given the details regarding the loan advanced by her. Her statement in the cross-examination made her testimony doubtful. The learned Appellate Court had taken a reasonable view while acquitting the accused, and no interference is required with the reasonable view of the learned Appellate Court. Hence, she prayed that the present appeal be dismissed.

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

13. 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:

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.

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:

> *"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.
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> **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.
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> **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.

14. 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.
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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?"

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***.
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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;

(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.

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

17. The accused stated in her statement recorded under Section 313 of the CrPC that she had handed over the blank signed cheque to the accused. It was laid down by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the contention of the accused that a blank cheque leaf was voluntarily signed and handed over by him to the complainant is sufficient to trigger the presumption contained under Section 118(a) and 139 of the NI Act. It was observed:

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019)***

4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.

37. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

18. A similar view was taken in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).

> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
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> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

19. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that a statutory presumption arises on the admission or proof of the execution of the negotiable instrument, and the burden is upon the accused to rebut this presumption. It was observed:

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of

> the accused and, therefore, to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

20. Therefore, the Court has to presume that the cheque was issued for consideration to discharge the debt/liability and the burden is upon the accused to rebut this presumption.

21. It was specifically stated in para 1 of the complaint that the complainant had advanced ₹85,000/- to the accused as financial help in March, 2010 and the accused had issued a cheque on 21.04.2010. However, the complainant changed her version in the Court. She stated in her cross-examination that she had advanced the money to the accused after withdrawing it from State Bank of Patiala, Dharampur on 21.04.2010. She further stated that she had filled up the cheque on the date of advancing the loan, i.e., 21.04.2010. Thus, the learned Appellate Court had rightly held that there was a discrepancy in the complainant's statement regarding the advancing of the loan, and she had changed her version from that the loan was advanced in March, 2010 to the one that the loan was advanced on 21.04.2010. 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 complainant made contradictory statements, the presumption attached to the cheque will not help him. It was observed:

> 30. Admittedly, the appellant was able to establish that the signature on the cheque in question was of the respondent and, in regard to the decision of this Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40***, a presumption is to ideally arise. However, in the above-referred context of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.
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> 31. The trial court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt, as the very issuance of a cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on white paper and not on stamp paper, as presented by the appellant, creates another set of doubts in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

22. 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 stands 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'."

23. In view of the contradictory version regarding advancing the loan, the presumption stood rebutted in the present case.

24. Even otherwise, the complainant's statement that the cheque was issued on the date of advancing the loan makes her version doubtful. The accused would not have issued a cheque of

₹85,000 /- on the date of advancing the loan had she got the money to repay the loan. Taking of the loan presupposes that the accused did not have the money to repay it, and any reasonable person would have issued a post-dated cheque to repay the loan. However, in the present case, the loan was advanced on 21.04.2010 as per the cross-examination of the complainant, and the cheque was also issued on the same day, which makes the complainant's case highly improbable.

25. Therefore, the learned Appellate Court had taken a reasonable view while acquitting the accused, and no interference is required with the reasonable view of the learned Appellate Court while deciding an appeal against acquittal.

26. No other point was urged.

27. In view of the above, the present appeal fails, and it is dismissed.

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/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.

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

(Rakesh Kainthla)
Judge

16th October, 2026
(Nikita)