

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Cr.MMO No. 1030 of 2024
& Cr.MMO No.134 of 2026
Decided on 11th September, 2026**

Cr.MMO No. 1030 of 2024

Pawan Kumar Banyal **...Petitioner**

Versus

Vivek Sharma **.....Respondent**

For the petitioner : Mr. Amit Kumar Dhumal & Ms. Parul Negi, Advocates.

For the respondent : Mr. Paras Sharma, Advocate.

Cr.MMO No.134 of 2026

Vivek Sharma **...Petitioner**

Versus

Pawan Kumar Banyal **.....Respondent**

For the petitioner : Mr. Paras Sharma, Advocate.

For the respondent : Mr. Amit Kumar Dhumal & Ms. Parul Negi, Advocates.

Coram

Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.

¹Whether approved for reporting?

Chirag Bhanu Singh, Judge (Oral)

Both the Cr.MMOs are being taken up together for disposal as they arise from same impugned orders.

2. Though one of the petitioners, Vivek Sharma, has impugned the order dated 02.09.2024 passed by the learned

Judicial Magistrate First Class, Court No.II, Sarkaghat, District Mandi but the other of the petitioner, Pawan Kumar Banyal, has also impugned the earlier order dated 22.7.2024 passed by learned trial Court alongwith the order dated 02.09.2024.

3. Pawan Kumar Banyal is the complainant and Vivek Sharma the accused.

4. The parties were embroiled in a litigation pertaining to Section 138 of the Negotiable Instruments Act and during the course of proceedings before the learned trial Court the complainant (Pawan Kumar Banyal) had initially preferred an application to place on record some agreement entered inter se the parties and had also sought the examination and re-examination of two witnesses earlier examined by the complainant. On 22.7.2024, the learned trial Court dismissed the application seeking permission to place that agreement on record.

4. The other application relating to the examination and re-examination of the other witnesses came to be posted for 22.07.2024.

5. Eventually on 02.09.2024, the application for examining and re-examining the two witnesses was also disposed

off by partly allowing it. The learned trial Court however, allowed the re-examination of the complainant alone.

6. The accused namely Vivek Sharma has assailed the order dated 02.09.2024 only, while the complainant Pawan Kumar Banyal has impugned both the orders dated 22.07.2024 & 02.09.2024.

7. Feeling aggrieved from the orders passed by the learned trial Court, both the parties have preferred the Cr.MMOs.

8. The records of the learned trial Court had been summoned by this Court. The perusal of the complaint does show that the complainant, Pawan Kumar Banyal had referred to some agreement having been executed by the accused and the complainant on 25.09.2010.

9. The record further shows that while recording his statement under Section 313 dated 29.01.2024, the accused in uncertain and unequivocal terms has admitted that an agreement was executed between the parties regarding the payment of the consideration amount relating to some bus, which he had bought in the capacity of a Director of the Crescent Public School for the smooth functioning of the school.

10. The accused having admitted the factum of the execution of the agreement, per se, there was no necessity of having exhibited the document, for, by now it is trite that admitted facts need not be proved. It is a rudimentary and a cardinal principle in law.

11. Nonetheless, the perusal of the record further shows that even the agreement already stands exhibited as Exhibit C1/CW1.

12. As far as the complainant is concerned, it is thus apparent that the very purpose of filing the Cr. MMO has been rendered otiose. The grouse of the complainant not only stand answered but having been categorically admitted by the accused himself under Section 313, was not required to be proved any further by leading additional evidence. The application thus was indeed misconceived.

13. The accused on the other hand has also assailed the order dated 02.09.2024 on the premise that the complainant had undertaken the misadventure of filing back-to-back three miscellaneous applications making frivolous claims and was apparently aggrieved by the re-examination of the complainant ordered by the learned trial Court. The perusal of the record

further shows that the complainant has in fact, been already re-examined. Since the accused had himself admitted the execution of the purported agreement no prejudice is likely to be caused even to the accused by the re-examination of the complainant, as he has also merely tendered the same agreement vide Exhibit C1/CW1, which already stands admitted by the accused in his statement recorded under Section 313 Cr.P.C. Both the applications, thus, were indeed misconceived.

14. It would thus be in the interest of justice that now the parties are relegated to the learned trial Court and the matter is finally decided by the learned trial Court on merits, since the matter has been pending for the past 9 years and the applications having been rendered totally redundant.

15. Viewed in the aforesaid perspective, it cannot thus be said that the learned trial Court had committed any illegality or impropriety while passing the impugned order although the applications were otherwise misdirected, the documents having already been admitted during the course of trial itself. Both the Cr.MMOs are thus disposed off in the aforesaid terms. Let the record of the learned trial Court be sent back forthwith. The Cr.MMOs are disposed off in the aforesaid terms.

16. The parties, through their counsels, are directed to appear before the learned trial Court on **12.10.2026**.

(Chirag Bhanu Singh)
Judge

11.09.2026
(*Ritu*)