

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.103 of 2026

Date of Decision: 28.7.2026

Vijay Kumar

.....Petitioner

Versus

Punjab National Bank Rajgarh

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Shyam Singh Chauhan, Advocate,.

For the Respondent: Mr. Raman Prashar, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition, lays challenge to judgment dated 02.01.2026 passed by learned Sessions Judge, Sirmaur, District at Nahan, Himachal Pradesh in Criminal Appeal No. 114-Cr.A/10 of 2025, affirming judgment of conviction and order of sentence dated 27.02.2025 passed by learned Judicial Magistrate First Class, Rajgarh, District Sirmaur, Himachal Pradesh in Criminal Complaint No. 71/3 of 2021, whereby the learned trial Court while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (in short the "Act"), convicted and sentenced him to undergo simple imprisonment for a period of one year and pay compensation to the tune of Rs.2,50,000/- to respondent/complainant bank

2. Precisely, the facts of the case as emerge from the pleadings as well as other material adduced on record by the respective parties are that complainant instituted a complaint in competent court of law, alleging therein that accused obtained KCC loan of Rs.4,00,000/-. Since accused committed default in making the payment, he with a view to discharge his liability, issued cheque on 30.3.2021 for a sum of Rs. 1,66,000/-in favour of the respondent/complainant. However, fact remains that cheque in question was dishonored on its presentation to bank concerned with remarks 'insufficient funds'. Immediately after receipt of return memo from bank concerned, complainant served the accused with legal notice calling upon him to make payment good within the stipulated time, but in vain and as such, complainant had no option but to institute proceedings under Section 138 of the Act in competent court of law.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 27.2.2025, held the petitioner-accused guilty of having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per the description given herein above.

4. Being aggrieved and dissatisfied with aforesaid judgment, petitioner filed an appeal in the court of learned Sessions Judge, Sirmaur District at Nahan, Himachal Pradesh, but same was also dismissed vide

judgment dated 2.1.2026. In the aforesaid background, accused has approached this Court in instant proceedings, praying therein for his acquittal after setting aside judgments of conviction passed by courts below.

5. Vide order dated 18.02.2026, this Court suspended the substantive sentence imposed by learned court below, subject to petitioner's furnishing bail bonds and depositing 30% of the compensation amount. Though aforesaid order was complied with, but thereafter matter was repeatedly adjourned, enabling him to either settle the matter with complainant or deposit the balance amount, but in vain. On 8.7.2026, learned counsel for the petitioner specifically stated before this Court on the instructions of the petitioner that remaining amount shall be deposited within a period of two weeks, but since needful has not been done, this Court has no option but to decide the petition on its own merits.

6. Having carefully perused grounds taken in the appeal vis-à-vis reasoning assigned by the learned Sessions Judge, thereby upholding the judgment of conviction and order of sentence passed by the learned trial Court, this Court is not persuaded to agree with learned counsel appearing for the petitioner that courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the courts below

have dealt with each and every aspect of the matter very meticulously and there is no scope of interference.

7. Interestingly, accused in his statement recorded under Section 313 Cr.P.C. accused admitted his liability towards bank, but failed to lead evidence in defence despite sufficient opportunity. Since factum with regard to issuance of cheque as well as signature thereupon never came to be disputed by the petitioner, no illegality can be said to have been committed by courts below while invoking presumption under Sections 118 and 139 of the Act, which clearly provide that there shall be a presumption available in favour of the holder of the cheque that same was issued in discharge of the lawful liability. No doubt, aforesaid presumption is rebuttable, but for that purpose, accused is/was under obligation to raise probable defence. Probable defence could be raised by the accused by referring to the documents as well as evidence adduced on record by the complainant or by leading some cogent and convincing evidence. However, in the case at hand, accused, despite sufficient opportunity, failed to raise probable defence.

8. The Hon'ble Apex Court in ***M/s Laxmi Dyechem V. State of Gujarat***, 2013(1) RCR(Criminal), has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail.

To raise probable defence, accused can rely on the materials submitted by the complainant. Needless to say, if the accused/drawer of the cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, statutory presumption under Section 139 of the Negotiable Instruments Act, regarding commission of the offence comes into play. It would be profitable to reproduce relevant paras No.23 to 25 of the judgment herein:

“23. Further, a three judge Bench of this Court in the matter of Rangappa vs. Sri Mohan [3] held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. The Court however, further observed that it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose money is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant accused cannot be expected to discharge an unduly high standard of proof”. The Court further observed that it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is all preponderance of probabilities.

24. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.

25. It is no doubt true that the dishonour of cheques in order to qualify for prosecution under Section 138 of the NI Act precedes a statutory notice where the drawer is called upon by allowing him to avail the opportunity to arrange the payment of the amount covered by the cheque and it is only when the drawer despite the receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount, that the said default would be considered a dishonour constituting an offence, hence punishable. But even in such cases, the question whether or not there was lawfully recoverable debt or liability for discharge whereof the cheque was issued, would be a matter that the trial court will have to examine having regard to the evidence adduced before it keeping in view the statutory presumption that unless rebutted, the cheque is presumed to have been issued for a valid consideration. In view of this the responsibility of the trial judge while issuing summons to conduct the trial in matters where there has been instruction to stop payment despite sufficiency of

funds and whether the same would be a sufficient ground to proceed in the matter, would be extremely heavy.”

9. Complainant, with a view to prove its case, examined Mr. Vijay Kumar, Branch Manager as CW1 and tendered evidence by way of affidavit Ex.CW1/A, reiterating therein contents of the complaint. Besides above, he also tendered in evidence legal notice Ex. CW-1/B, postal receipt Ex. CW-1/C, Cheque Ex.CW1/D, returning memo Ex.CW1/E and copy of GPA Ex.CW1/F. Cross-examination conducted upon afore witness nowhere suggests that accused was able to extract something contrary to what this witness stated in examination-in-chief, rather certain suggestions put to the complainant in his cross-examination, clearly establish factum with regard to his having obtained loan from the complainant bank as well as issuance of cheque and signatures thereupon. Complainant specifically denied suggestion put to him that accused had not given the cheque. He also denied that bank used to obtain signed cheques at the time of advancement of loan. He also feigned ignorance that the entries in the cheque are in different inks. While denying that besides these two cheques, other cheque is also available with the bank, he also feigned ignorance as to whether balance is there in the account of the accused or not. Though accused attempted to carve out a case that cheque was obtained as a security and same has been misused, but such defence never came to be

probablised by the accused by leading cogent and convincing evidence despite sufficient opportunity.

10. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case ***"State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri"*** (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

“In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

11. Since after having carefully examined the evidence in the present case, this Court is unable to find any error of law as well as fact, if

any, committed by the courts below while passing impugned judgments, there is no occasion, whatsoever, to exercise the revisional power.

12. True it is that the Hon'ble Apex Court in ***Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241***; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order, but learned counsel representing the accused has failed to point out any material irregularity committed by the courts below while appreciating the evidence and as such, this Court sees no reason to interfere with the well reasoned judgments passed by the courts below.

13. Consequently, in view of the discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well reasoned judgments recorded by the courts below, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld.

14. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The petitioner is directed to surrender himself

before the learned trial Court within six weeks to serve the sentence as awarded by the learned trial Court, if not already served. Interim direction, if any, stands vacated. Learned court below is also directed to release the amount, if any, deposited before it by the accused, on filing appropriate application by the complainant within one week. Pending applications, if any, also stand disposed of.

July 28, 2026
(manjit)

**(Sandeep Sharma),
Judge**