

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4217 of 2013

Reserved on: 24.9.2026

Date of Decision: 05.10.2026.

Sanjay Pant

...Appellant

Versus

Rama Nand Vishwakarma

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant : Mr Vaibhav Tanwar, Advocate.

For the Respondent : Mr J.S. Bagga, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 17.8.2013, passed by learned Judicial Magistrate First Class, Court No. 3, Shimla, H.P. (learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (the NI Act). (*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 Local Papers may be allowed to see the judgment? Yes.

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 was running a business under the name and style of M/s Sanjay Traders at Dhami, Tehsil and District Shimla. The accused purchased hardware articles worth ₹39,140/- from the complainant vide bill No. 1268 dated 14.3.2011. The accused issued a post-dated cheque drawn on Punjab National Bank, Panesh, for ₹39,140/- towards the cost of the articles purchased by him. The complainant presented the cheque before the bank, but it was dishonoured with an endorsement "insufficient funds". The complainant issued a notice to the accused on 3.6.2011 asking the accused to pay the money. 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 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 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 Ajay Pant (CW-1), his special power of attorney, to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he had purchased the articles worth ₹39,140/- from the complainant. He admitted that a notice was issued to him by the complainant. He stated that his blank signed cheque was obtained by the complainant as security. He did not produce any evidence in his defence.

6. The learned Trial Court found that the complainant had not appeared before the Court. He examined Ajay Pant (CW-1). However, the complainant had not filed an application for substitution of the complainant. The power of attorney was also not proved as per law. Therefore, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment passed by the learned Trial Court, the appellant has filed the present appeal, asserting that the learned Trial Court erred in acquitting the

accused on the ground that the complainant had not stepped into the witness box to depose against the accused. The complainant had examined his special power of attorney and had duly proved the power of attorney executed by him. The accused admitted the issuance of the cheque, and the presumption applied that the cheque was issued for consideration to discharge the debt/liability. The accused did not lead any evidence to rebut the presumption, and the learned Trial Court erred in acquitting the accused. Therefore, 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 Vaibhav Tanwar, learned counsel for the appellant, and Mr J.S. Bagga, learned counsel for the respondent/accused.

9. Mr Vaibhav Tanwar, learned counsel for the appellant, submitted that the learned Trial Court erred in dismissing the complaint on the ground that no permission for substitution of the complainant was made and the special power of attorney was not proved. The accused had admitted in his statement recorded under Section 313 of the Cr.P.C. that Ajay

Pant is the complainant's special power of attorney. Thus, the validity of the power of attorney was not in question. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr J.S. Bagga, learned counsel for the respondent/accused, submitted that the learned Trial Court had correctly held that the complainant had not appeared in the witness box and had examined his special power of attorney, which was not proved as per the law. The learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial Court even if another view is possible. Hence, 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:

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.

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.

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

14. The learned Trial Court dismissed the complaint solely on the ground that the complainant had not appeared before the Court and had examined his special power of attorney, which was not permissible. This finding cannot be sustained. It was laid down by the Hon'ble Supreme Court in *A.C. Narayanan v. State of Maharashtra*, (2014) 11 SCC 790: 2013 SCC OnLine SC 839, that the power of attorney holder can depose and verify the contents of the complaint if he had witnessed the transaction. It was observed at page 808:

“33.2. The power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.”

15. Thus, the complaint could not have been dismissed on the ground that the special power of attorney had appeared before the Court without seeking permission from the Court.

16. However, the judgment of acquittal can be sustained on another ground.

17. The cheque (Ex. CW-1/B) was issued in the name of Sanjay Traders. The complainant asserted in para-1 of the complaint that he is running a hardware business under the

name and style of M/s Sanjay Traders. However, Ajay Pant (CW-1) has nowhere stated that the complainant is the owner/proprietor of Sanjay Traders. He had only stated that the accused approached the complainant for the purchase of hardware articles and had bought articles worth ₹39,140/-. The accused issued the cheque, which was dishonoured. He has also not produced any record to show that the complainant is the owner of Sanjay Traders. It was laid down by the Hon'ble Supreme Court in *Milind Shripad Chandurkar v. Kalim M. Khan*, (2011) 4 SCC 275, that where no evidence was led to prove that the complainant was the owner of a proprietorship concern, he cannot be called to be a payee or holder in due Course. The Hon'ble Supreme Court noticed the affidavit of the complainant in para-14 as under: -

“14. The relevant part of the affidavit filed by the appellant-complainant before the trial court reads as under:

“I, Shri Milind Shripad Chandurkar, aged about 37 years, Indian inhabitant, occupation: business, proprietor of M/s Vijay Automobiles, having an address at Sector 29, Dronagiri Node, Uran, District Raigad, take oath and state on solemn affirmation as under....

I state that in due discharge of legal liability of the accused as mentioned in the foregoing

paragraphs, the accused issued one cheque dated 28-4-2005 in my name, i.e. in the name M/s Vijaya Automobiles, which was drawn on Development Credit Bank, Kurla Branch, Mumbai 70 bearing Cheque No. 490592, for ₹ 7,00,000 (Rupees seven lakhs only).”

The relevant part of his cross-examination reads as under:

“It is true that till today I have not produced any documentary evidence to show that I am the owner of Vijaya Automobiles.... Till today, I have not produced any documentary evidence to support.”

18. It was further found that no documentary evidence was produced to show that the complainant was the proprietor of the firm. It was observed-

“16. Thus, from the above, it is evident that the appellant-complainant could not produce any document to show that he was the proprietor of Vijaya Automobiles in spite of the fact that the issue had been agitated by the accused-Respondent 1 at every stage. It is also evident from the documents on record that in the list of witnesses, the complainant had mentioned the name of his banker as a witness; however, the said banker was not examined.

17. It may also be pertinent to mention here that the appellant did not make any attempt to adduce additional evidence at the appellate stage. No document has ever been filed to substantiate his averment in this regard.”

19. It was held that the complaint can be filed by a payee or holder in due course, and when there was no evidence that the

complainant was the proprietor, he was not entitled to file the complaint. It was observed: -

“26. In the instant case, it is evident that the firm, namely, Vijaya Automobiles, has been the payee and that the appellant cannot claim to be the payee of the cheque, nor can he be the holder in due course, unless he establishes that the cheques had been issued to him or in his favour or that he is the sole proprietor of the concern and being so, he could also be the payee himself and thus, entitled to make the complaint. The appellant miserably failed to prove any nexus or connection by adducing any evidence, whatsoever, worth the name with the said firm, namely, Vijaya Automobiles. A mere statement in the affidavit in this regard is not sufficient to meet the requirement of law. The appellant failed to produce any documentary evidence to connect himself with the said firm.

27. It is evident that the Firm had a substantial amount of business, as in one month it sold the diesel to Respondent 1, a single party, for a sum of ₹ 7 lakhs. The appellant would, in addition, have also been carrying out business with other persons. Thus, a person with such a big business must have had transactions with the bank and must have been a payee of income tax, sales tax, etc. Thus, in such a factual situation, there would be no dearth of material that could have been produced by the appellant to show that he was the sole proprietor of the said firm. The appellant failed to adduce any evidence in this regard, nor made any attempt to adduce any additional evidence at the appellate stage, in spite of the fact that the respondent had been raising this issue from the initiation of the proceedings.”

20. This judgment was followed by this Court in *S.P. Saklani v. Ravinder Singh Thakur*, 2012 SCC OnLine HP 771, wherein it was observed: -

“11. Admittedly, a cheque example. CW-3/A is in the name of Thakur Devi Ram & Sons. Cheque returning memo Ex. CW-2/C is also addressed to M/s Thakur Devi Ram & Sons.

12. True it is that it was averred by the complainant in the complaint that he was running the aforesaid business in the name and style of M/s Thakur Devi Ram and Sons. Though, while appearing as CW-3 in the chief examination, the complainant has reiterated the assertion that he is the sole proprietor of M/s Devi Ram and Sons, yet in cross-examination he has admitted that on the day he was making a statement in the court, he did not have any proof that he was the sole proprietor of M/s Devi Ram and Sons. It is further stated that he did not remember when the cement was purchased by the convict. He had also not brought a copy of the bill book to the court. In further cross-examination, he denied that he had any connection with M/s Devi Ram and Sons and volunteered that Devi Ram is his father.

13. In his statement under Section 313 Cr. P.C., the convict denied that the complainant used to deal in the business of steel and cement known as M/s Devi Ram and Sons. He has also denied that cheque Ex. CW-3/A was issued by him in favour of the complainant.

14. Thus, it is manifest that except the bald assertion made by the complainant in the complaint and reiterated on oath in his deposition as CW-3 that he is the sole proprietor of M/s Devi Ram and Sons, which aspect is vehemently disputed by the convict, there is no other cogent, reliable and trustworthy documentary evidence to prove nexus or connection of the complainant with the firm M/s Thakur Devi Ram and Sons. The evidence led by the complainant is wholly deficient in content to prove

his nexus or connection with the said firm as its sole proprietor and the mere averments in the complaint to this effect as reiterated on oath in his deposition as CW-3, which is vehemently contested on behalf of the convict, is not sufficient to establish such nexus or connection, as has been held by the Hon'ble Supreme Court in *Milind Shripad Chandurkar*, supra.”

21. Similar is the judgment in *Ram Chand v. Rafee Mohammad*, 2018 SCC OnLine HP 3334, wherein it was observed:-

“19. Now, advertng to the facts of the case, if the cheque, Ext. C-1 is perused, it would be noticed that the same has been issued by a partner of the Indian Education Centre and not by the respondent in his name. Moreover, the cheque is in the name of Ramchand and not in the name of Ankit Hire Purchase Pvt. Ltd. The appellant has failed to show that he is the sole proprietor of the firm and has not even pleaded that he is the payee or the holder in due course of the cheque.

20. It is more than settled that it is only the holder in due course of a negotiable instrument who is entitled to file the complaint under Section 138 of the Act. (Refer: *Milind Shripad Chandurkar v. Kalim Khan*, (2011) 4 SCC 275, *National Small Industries Corporation Ltd. v. State*, (2009) 1 SCC 407 and *Punjab & Sindh Bank v. Vinkar Sahkari Bank Ltd.*, (2001) 7 SCC 721)

21. As observed above, the cheque in question Ext.C-1 has been issued by a partner of Indian Education Centre and not by the respondent in his name and the appellant has failed to mention in the complaint or prove in evidence that Indian Education Centre had any connection with him or his establishment or, for that matter, even with the respondent. This assumes significance and importance when the specific case of the appellant is that the entire exercise of lending money was done for and on behalf of Ankit Hire Purchase Pvt. Ltd., which allegedly

was a company, yet no records of the same were produced.

22. As a matter of fact, the appellant has filed the complaint as Managing Director of the company, but there is no proof of the same. Even otherwise, having failed to establish the connection between the company of which he claims himself to be the Managing Director and that of Indian Education Centre, whose partner has issued cheque, Ext.C1, and further having failed to establish the connection of the respondent with Indian Education Centre, the learned trial court had no other option but to have dismissed the complaint and acquitted the respondent.”

22. Therefore, in the absence of any evidence that the complainant is the owner of Sanjay Traders, the complaint filed by complainant Sanjay Pant was not maintainable, and the judgment of acquittal passed by the learned Trial Court cannot be interfered with.

23. No other point was urged.

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

25. 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.

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

(Rakesh Kainthla)
Judge

5th October, 2026
(Chander)