

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO No. 783 of 2025
Decided on 23rd September, 2026

Dildar Ali Butt

...Petitioner

Versus

Raju & Anr.

.....Respondents

Coram

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

¹Whether approved for reporting?

For the petitioner : Mr. Aman Parth Sharma,
Advocate.

For respondent No.1 : Mr. Bhim Raj Sharma,
Advocate.

Chirag Bhanu Singh, Judge (Oral)

The petitioner by virtue of the present petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short BNSS) seeks the quashing of the summoning order dated 04.01.2020 and the subsequent proceedings initiated by the learned trial Court in complaint No.01/3 of 2020 titled as Raju Vs. Dev Raj and another.

2. The genesis giving rise to the present petition may be succinctly summarized thus. The respondent had preferred a complaint under Section 138 of the Negotiable Instruments Act (in

short 'Act') against one Dev Raj and the present petitioner Dildar Ali Butt. They had hired a JCB machine from the complainant. An agreement purportedly was entered between the respondent No.2 Dev Raj and the complainant Raju on 25.09.2019 and the respondents/accuseds had purportedly agreed to hire the JCB machine on monthly charges of Rs.90,000/- per month excluding fuel. The aforesaid machine was stated to have been used with effect from 03.06.2019 to 02.10.2019.

3. As per complainant one monthly installment of Rs.90,000/- only had been paid by the petitioner through the other accused Dev Raj. The outstanding amount of Rs.2,70,000/- was due to be paid. In lieu thereof, the accused Dev Raj is stated to have been issued a cheque to the complainant for the said amount of Rs.2,70,000/-, which is duly stated to have been signed by accused-Dev Raj only.

4. Other allegations in the complaint were that the respondent No.2 (i.e. the petitioner) had also cheated the complainant by deliberately instigating and abetting the respondent-accused No.1 Dev Raj and hence the complaint.

5. It seems that both the persons, i.e. Dev Raj and Dildar Ali Butt, the present petitioner had come to be impleaded as

accused in the complaint.

6. The learned trial Court on 04.01.2020 had issued process against the present petitioner alongwith the said Dev Raj and hence the revision.

7. I have heard learned counsel for the parties and gone through the records.

8. Admittedly the cheque has not been signed by the petitioner. He is neither the signatory nor had issued the cheque. Even, per the complainant the present petitioner had merely cheated him and has rather instigated and abetted Dev Raj, the issuer of the cheque. Even in the complaint there are no other allegations against the petitioner except having being an instigator and an abettor. The learned counsel for the petitioner would thus rightly contended that there was no occasion for the learned trial Court to have issue process against the present petitioner.

9. The learned counsel for the respondent though has supported the summoning order. However, in all fairness, he contends that there are no allegations against the petitioner except mentioned hereinabove, qua the present petitioner. Admittedly, there is nothing on record to remotely show that the two were even working as partners or had entered into any sort of partnership,

while hiring the JCB machine.

10. Viewed thus, it can safely be said that there is nothing in the complaint suggestive of the fact that the petitioner had either issued the cheque or was in any sort of partnership with the other co-accused Dev Raj. Even otherwise, both the legal notice and the complaint itself show that the primary allegations made by the complainant himself is only qua instigation and abetting, which unfortunately does not fall to be addressed under the provisions of Section 138 of the Act. Even if, that was so, the complainant could have filed appropriate proceedings against the petitioner before the appropriate Court. The bare reading of Section 138 of the Act is suggestive of the fact that recourse can be held only against the person, who had drawn the cheque i.e. the drawer. An instigator or an abettor does not in any way fall within the domain of Chapter XVII of the Negotiable Instruments Act, 1881. The learned trial Court thus indeed exceeded jurisdiction while issuing process, at least, qua the present petitioner. The proceedings could have been initiated only against Dev Raj, who had, in fact, issued the cheque in question.

11. As a sequel, the present petition is allowed. Consequently, the order dated 04.01.2020 passed by the learned Judicial Magistrate First Class, Arki, District Solan vide complaint

(2026:HHC:41112)

No.01/3 of 2020 titled as Raju vs. Dev Raj and another is quashed and set aside qua the petitioner-Dildar Ali Butt. The petitioner-Dildar Ali Butt accordingly, stands discharged. Interim direction, if any, also stands vacated. The petition is disposed off in the aforesaid terms.

(Chirag Bhanu Singh)
Judge

23.09.2026
(Ritu)