THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.76 of 2026

Date of Decision: 24.04.2026

Ashish .…….Petitioner

Versus

State Bank of India … Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Petitioner	**:**	Ms. Shine Sehgal, Advocate vice Mr. Mohar Singh, Advocate.
For the Respondent	:	Mr. Arvind Sharma, Advocate.

Sandeep Sharma, Judge (oral):

Instant Criminal Revision petition filed under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, lays challenge to judgment dated 17.11.2025 passed by learned Sessions Judge, Solan, District Solan, Himachal Pradesh, in Criminal Appeal No.92-S/10 of 2024, affirming judgment of conviction and order of sentence dated 16.11.2024, passed by learned Judicial Magistrate, First Class, Kandaghat, District Solan, Himachal Pradesh, in Complaint No.73/3 of 2020, titled **State Bank of India** versus **Ashish**, whereby learned trial Court, while holding petitioner-accused (**hereinafter referred to as the 'accused')** guilty of her having committed an offence punishable

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

under Section 138 of the Negotiable Instruments Act(***for short 'Act'),*** convicted and sentenced her to undergo simple imprisonment for a period of six months and pay fine to the tune of Rs.10,00,000/- to the respondent-complainant.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other documents adduced on record by the respective parties, are that the respondent-complainant-bank ***(hereinafter referred to as the 'complainant')*** filed a complaint under Section 138 of the Act in the competent Court of law, alleging therein that accused issued cheque bearing No.661568, dated 05.02.2020, amounting to Rs.9,79,610/- drawn on State Bank of India, Sayri Branch from his account No.20455065700 towards discharge of her lawful liability in favour of the complainant-bank, but fact remains that aforesaid cheque on its presentation to the bank concerned was dishonoured vide memo dated 05.02.2020 on the ground of 'funds insufficient'. Immediately, after receipt of return memo, respondent-bank served accused with legal notice dated 19.02.2020, thereby calling upon her to make payment good within stipulated time, but since she failed to make the payment good within stipulated time, complainant-bank had no option, but to initiate proceedings under Section 138 of the Act in the competent Court of law, which subsequently, on the basis of evidence adduced on record by the

respective parties, held the accused guilty of her having committed offence punishable under S. 138 of the Act and accordingly, convicted and sentenced her as per description given herein above.

3. Being aggrieved and dissatisfied with aforesaid judgment of conviction and order of sentence recorded by learned trial Court, present petitioner-accused preferred an appeal in the Court of learned Sessions Judge, Solan, District Solan, Himachal Pradesh, but same also came to be dismissed vide judgment dated 17.11.2025. In the aforesaid background, petitioner-accused has approached this Court in the instant proceedings, praying therein for her acquittal after quashing and setting aside the impugned judgment of conviction and order of sentence recorded by Courts below.

4. Vide order dated 02.02.2026, this Court suspended the substantive sentence imposed by Court below, subject to petitioner-accused depositing 30% of the compensation amount and furnishing personal bonds in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of learned trial Court within a period of six weeks. However, fact remains that aforesaid order never came to be complied with. Vide order dated 25.03.2026, this Court had granted last opportunity of two weeks to the petitioner to comply with the order dated 02.02.2026, but in vain. Today, learned counsel representing the petitioner fairly stated that since petitioner is not coming forward to

impart instructions and he has not complied with order passed by this Court, this Court may proceed to decide the petition on its own merits.

5. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the impugned judgments of conviction and order of sentence recorded by Courts below, this Court is not persuaded to agree with learned counsel for the petitioner-accused that both the Courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the courts below have meticulously dealt with each and every aspect of the matter and there is no scope left for interference.

6. Though, in his statement recorded under Section 313 Cr.P.C., accused denied the case of the prosecution in toto, but pattern of cross-examination conducted upon the complainant-bank clearly established factum with regard to her having issued the cheque as well as signature thereupon. In cross-examination, specific suggestion came to be put to the complainant-bank that cheque in question was issued as a security cheque, which was denied by CW-1, Hans Raj, i.e. bank official.

7. Since factum with regard to issuance of cheque as well as signature thereupon was duly established on account of aforesaid suggestion put to the complainant-bank, no illegality can be said to

have been committed by the courts below, while invoking Sections 118 and 139 of the Act, which speak about presumption in favour of the holder of the cheque that cheque was issued towards discharge of lawful liability. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption, accused either can refer to the documents and evidence led on record by the complainant or presumption can be rebutted by leading positive evidence, if any. However, in the instant case, despite sufficient opportunities, petitioner-accused failed to lead any evidence and as such, she otherwise failed to probablize the defence, sought to be raised by him, while deposing under Section 313 Cr.P.C.

8. In the case at hand, complainant-bank with a view to prove its case examined CW-1, Sh. Hans Raj, Branch Manager of the bank concerned, who tendered his evidence by way of affidavit Ex. CW-1/A, wherein he specifically reiterated the averments contained in the complaint. He successfully proved on record original cheque Ex.CW-1/B, bank deposit form Ex.CW-1/C, cheque returning memo dated 05.02.2020 Ex.CW1/D, legal notice Ex. CW-1/E, postal receipt Ex. CW-1/F, closure statements Ex. CW-1/G and Ex.CW-1/H. Cross-examination conducted upon afore witness, if perused in its entirety, nowhere suggests that accused was able to extract anything contrary to what this witness stated in his examination-in-chief. In his

cross-examination, he stated that, while cheque was given, he was not working in the bank, but he was working in SBI Bank, Sayri as Manager in the year 2022. He stated that cheque was given in repayment of the loan that was given on CC Limit. He also admitted that suit for recovery is separately filed against the accused. However, he specifically denied factum with regard to issuance of cheque as security. He also denied that bank official has itself filled the cheque. While reiterating that cheque was issued in discharge of loan liability, he specifically denied that false case has been made against the accused. It is quite apparent from the cross-examination of CW-1 that accused attempted to set up a defence that cheque in question was issued as a security, but such defence never came to be probablized by leading cogent and convincing evidence. Despite sufficient opportunities, he failed to lead evidence.

9. 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 is 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 138can 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.***
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> ***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.***
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> ***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.***

10. By now it is well settled that dishonour of cheque issued as "security" can also attract offence under Section 138 of the Negotiable Instruments Act. Hon'ble Apex Court in case titl**ed Sripati Singh v. State of Jharkhand**, Criminal Appeal No. 1269-1270 of 2021, decided on 28.10.2021, has held as under:

> **"16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount,**
> **the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.**

11. Needless to say, expression "security cheque" is not a statutorily defined expression in the Negotiable Instruments Act,

rather same is to be inferred from the pleadings as well as evidence, if any, led on record with regard to issuance of security cheque. The Negotiable Instruments Act does not *per se* carve out an exception in respect of a "security cheque" to say that a complaint in respect of such a cheque would not be maintainable as there is a debt existing in respect whereof the cheque in question is issued, same would attract provision of Section 138 of the Act in case of its dishonour.

12. Having scanned the entire evidence adduced on record by the respective parties, this Court finds that all the basic ingredients of Section 138 of the Act are met in the case at hand. Similarly, factum with regard to signatures and issuance of cheque by the accused towards discharge of lawful liability stands duly established on record.

13. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.P.C, 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."***

14. 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.

15. 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.

16. 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.

17. 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 a period of 15 days to serve the sentence as awarded by the learned trial Court, if not already served. Bail bonds of the petitioner are cancelled. Interim direction, if any, stands vacated. Pending applications, if any, also stand disposed of.

(Sandeep Sharma),
Judge

April 24, 2026
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