IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO Nos.553 & 579 of 2022
Reserved on: 08.10.2026
Decided on 30.10.2026
Uploaded on: 30.10.2026

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1. Cr.MMO No.553 of 2022

Udham Singh …Petitioner

Versus

Department of Excise and Taxation & Anr. …Respondents

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2. Cr.MMO No.579 of 2022

Udham Singh …Petitioner

Versus

Department of Excise and Taxation & Anr. …Respondents

Coram
Hon'ble Mr. Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting?[1]

For the Petitioner(s): Mr. Rakesh Manta, Advocate, in both the petitions.

For the Respondents: Mr. Lokender Kutlehria, Additional Advocate General, in both the petitions.

Chirag Bhanu Singh, Judge

The petitioner(s) seeks to invoke the inherent powers of this Court, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C), for quashing the complaint registered under Section 138 of the Negotiable Instruments Act, (hereinafter referred to as the NI Act), along with consequent proceedings relating thereto, pending before the learned Judicial Magistrate First Class, Court No.VI, Shimla, District

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Shimla, H.P.

2. The case set up by the petitioner in brief is that he was the sole proprietor of M/s Sandeep Jewellers, Raj Kunj Building, Shop No.81, Lower Bazaar Shimla, H.P. The petitioner was facing a trial under Section 138 of the NI Act, and the same had been filed by respondent No.2, i.e. Excise and Taxation Officer, Shimla, H.P., in utter disregard to his official position and in colorable exercise of his powers and the proceedings thereto were purely an abuse of the process, the same being neither competent nor maintainable. In this behalf, it is the contention of the petitioner that on 17.08.2015, respondent No.2 was conducting checking near Kathlighat. During the course of said checking his vehicle bearing No.HP-63A-2229 was signalled to stop. He was found to be carrying jewellery. He had produced a bill, bearing No.037, dated 16.08.2015 consigned to M/s Shree Tridev Jewellers, Churag (Karsog), amounting to Rs.19,85,000/-.

3. The bill produced by said Udham Singh is stated to have not matched with the items recovered and consequently, respondent No.2 had passed a detection order dated 17.08.2015. In pursuance thereto, respondent No.2 had imposed tax and penalty amounting to Rs.5,67,842/-under different Sections of the

Value Added Tax Act, 2005. The said detection order was received by the petitioner on 20.08.2015.

4. The petitioner had challenged the said detection order before the Additional Excise Commissioner-cum-Appellate Authority (SZ) Himachal Pradesh, Shimla, vide Appeal No.52/2017, which however, came to be dismissed on 17.11.2017.

5. Feeling aggrieved and dissatisfied, the petitioner had further assailed it before the Himachal Pradesh Tax Tribunal, Dharamshala, Camp at Shimla (learned Tribunal). The learned Tribunal had set-aside the detection order dated 17.08.2015 passed by respondent No.2.

6. While setting aside the detection order, the learned Tribunal had remanded back the matter to the Assessing Authority to adjudicate it afresh vide order dated 31.03.2022 (Annexure P-2).

7. It is thus the case of the petitioner that respondent No.2 had under the garb of detection order dated 17.08.2015, compelled the petitioner to issue the cheques vis-a-vis tax and penalty imposed thereunder. The petitioner thus had been constrained to issue two cheques bearing No.700090, dated 18.08.2015, for an amount of Rs.2,00,000/- and cheque bearing No.700091, dated

28.08.2015 for an amount of Rs.3,67,710/- payable in Punjab National Bank, Shimla.

8. In pursuance to the dishonour of above mentioned cheques, respondent No.2 had filed a complaint under Section 138 of the NI Act against the petitioner, which is pending adjudication before the learned trial Court at Shimla.

9. It is thus further averred by the petitioner that respondent No.2 had no authority and jurisdiction to pass the detection order dated 17.08.2015 and the same thus also came to be dismissed by the learned Tribunal. Respondent No.2 having himself acting, as a judge in his own cause, hence, the pending proceedings initiated under Section 138 of the N.I. Act was merely an abuse of the process and hence, liable to be quashed and set-aside.

10. Even otherwise, the detection order was illegal and arbitrary, as the respondent No.2 had failed to follow the procedures and the Rules envisaged under Sections 34(6) & (7) besides the other provisions of the VAT Act. No proper opportunity has been afforded to the petitioner for getting the cheques from him. The cheques had been obtained by respondent No.2 under duress and even the detection order had been served upon the petitioner on

20.08.2015. No law, Rules/provisions empowers respondent No.2 to accept the cheques in the name of ETO, as per Section 34 (6) of the VAT Act, 2005. Thus, the cheques in question do not amount to be a "legally enforceable debt" or "liability". It is also averred that as per the requirement of Section 52 of the VAT Act, 2005, the Court was even otherwise precluded from taking cognizance without the previous sanction of the State Government.

11. While contesting the petition, respondents have inter-alia raised preliminary objections vis-a-vis maintainability. In this behalf, it is averred by the respondents that dismissal of the detection order dated 17.08.2015 the learned Tribunal had no bearing on the factum of liability of the petitioner, because even while allowing the appeal of the petitioner, the liability was still binding upon the petitioner and the order dated 31.08.2016 passed by the Additional Excise & Taxation Commissioner had merged in the order dated 17.11.2017 passed by the learned Tribunal and had not been challenged in any Court of law and the same had attained finality. It had no bearing on the maintainability of the complaint under Section 138 of the NI Act. The petitioner had also no cause of action to file the present petition, as the revision petition under Section 48(1) of the HPVAT Act, 2005 has been filed against the order dated 31.03.2022 passed by the learned Tribunal. The

petitioner had himself admitted the existence of liability and voluntarily issued the cheques. The offence under Section 138 of the NI Act was an independent and entirely different from the proceedings pending before the learned Tribunal. On merits, the same contentions had been reiterated by the respondents.

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

13. The core question which has come up for consideration and has been raised by the petitioner is that the cheques had not been issued in discharge of any enforceable debt or other liability and as such, the proceedings initiated against the petitioner was a nulity and hence an abuse of the process of the Court.

14. Admittedly, the genesis giving rise to the issuance of the cheques purportedly was a detection order dated 17.08.2015 passed by the ETO, District Shimla, H.P. (Annexure P-1). Even, as per the respondents, the cheques had been issued while imposing tax and penalty under Section 34 of the VAT Act.

15. The petitioner had been imposed a penalty under Section 34 of the VAT Act, for an amount of Rs.5,67,842/- in lieu whereof, he is alleged to have issued the cheques.

16. Admittedly, the said detection order passed by respondent No.2, i.e. ETO came to be quashed by the learned Tribunal, vide an order dated 31.03.2022 on the premise that since respondent No.2 (ETO Shimla), who was heading the detection team was not only himself the investigator but, evidently and indisputably become a reporting, investigating and searching officer in respect of vehicle No.HP63A-2229. He had also acted himself as a Judge in his own cause and as such could not have passed the impugned assessment and penalty order. The respondents however, were permitted to send the same to some other Assessing Authority for decision afresh.

17. Consequently, the impugned detection order dated 17.08.2015 was quashed and set-aside and as such, the very basis of issuing the cheque was rendered nugatory.

18. The provisions of Section 34 of the VAT Act also otherwise, itself, inter-alia stipulates that the ETO, Incharge of the barrier may allow the transportation of the goods by the owner but on furnishing a security in the form of cash or bank guarantee or bank draft, equal to twenty-five percentum of the value of the goods. In case the goods are detained, the owner is required to produce proper and genuine documents, as the case may be, before him in his office on a specified date and on which date the

officer shall submit the proceedings along with the connected records to such other officer, as may be authorized in that behalf by the State Government for conducting the necessary inquiry in this behalf. The said officer also before conducting the enquiry has to serve a notice on the owner of the goods and give him an opportunity of being heard. If the owner is found to have evaded the tax due, he may, by an order, impose a penalty equal to twenty-five percentum of the value of the goods.

19. The procedure envisaged under the Section, mentioned hereinabove thus, clearly states that the goods can be carried to be allowed by the ETO, after receiving a security either in the form of cash, bank guarantee or a bank draft. The detection order in question having been quashed has also rendered the imposition of penalty otherwise totally nugatory.

20. The provisions of Section 138 of the NI Act itself stipulates that the cheque in question should have been issued for the discharge, in whole or in part, of any debt or liability. As per the explanation in the Section “the debt or other liability”, means a legally enforceble debt or other liability.

21. For the purposes of Section 138 of the NI Act, the present cheque cannot be said to have been issued in discharge of

any legal enforceable debt or liability. The provisions of Section 34 of the Act itself clearly provides that the ETO could have only received cash, bank draft or a bank guarantee, while releasing the goods to the owner. Cheque as a mode is not recognized under the provisions of Section 34 of the H.P. VAT Act, 2005. Over and apart, the basis on which the alleged purported cheque had been received by the ETO itself stands quashed by the learned Tribunal and that too, on a simple premise that respondent No.2 could not have issued detection order, being the investigating and the reporting officer himself.

22. Even otherwise, the HP VAT Act, 2005, itself provides a statutory mechanism for offence and penalities under Section 50 of the Act for non-compliance under Section 34 of the Act. It further provides an inbuilt mechanism for the recovery of any tax and penalty imposed, which can be recovered as arrears of land revenue as per Section 25 of the HP VAT Act Sections 26 & 27 also lay down provisions of recovery of any amount due under the Act.

23. It is no doubt true that if the tax evasion is noticed, the respondents are otherwise obligated to not only check the same but also impose necessary penalty. The power of the respondents, however, is circumscribed by the Rules and regulations framed under the Act. The respondents can and should recover the

amount due and payable for the evasion of tax but as per the provisions of law. Section 138 of NI Act, otherwise also would not be the appropriate provisions to recover any penalty to be recovered under the provisions of this Act. The cheque thus cannot be said to have been issued in discharge of a "legally enforceable debt" or "other liability". It cannot otherwise also be held that given the situation it, can also be said that the cheque was issued in duress.

24. It is thus, clear that the cheque in question had admittedly not been issued in discharge of any "legally enforceable debt."

25. The complaint under Section 138 of the NI Act thus, will not lie in the facts and circumstances of the present case. As a sequel, the complaint is ordered to be quashed and set-aside. Ordered accordingly.

26. Accordingly, the petition is disposed off, so also the pending application(s),if any.

(Chirag Bhanu Singh)
Judge

October 30, 2026
(subhash sharma)