Vineet Gupta vs. Amarjeet Singh

Cr.MP(M) No. 1170 of 2025
Reserved on 13.10.2026

02.11.2026 Present: Mr Athrav Sharma, Advocate for the appellant/applicant.

The present application has been filed for grant of leave to appeal against the judgment dated 06.03.2025 passed by learned Additional Chief Judicial Magistrate, Court No. 1, Hamirpur, Circuit Court at Bhoranj, District Hamirpur, H.P. (learned Trial Court) vide which the complaint filed by the appellant/applicant (complainant before learned Trial Court) was dismissed. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience)*.

2. Briefly stated, the facts giving rise to the present application 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 Negotiable Instruments Act (NI Act). It was asserted that the parties were known to each other. The accused borrowed ₹5,00,000/- from the complainant for the construction of the house and issued a cheque of ₹5,00,000/- to repay the amount. The complainant presented the cheque before his bank, but it was

dishonoured with an endorsement "funds insufficient". The complainant sent a notice to the accused, but it was returned undelivered and is deemed to be served. The accused failed to repay the money despite the deemed service of notice. Hence, the complaint was filed before the learned Trial Court against the accused for taking action 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 himself (CW1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that he had taken a loan of ₹1.5 lac, out of which he had repaid ₹90,000/-. He had handed over the cheques as security at the time of taking the loan. He claimed that he was not liable to pay the money mentioned in the complaint. He did not produce any evidence in his defence.

6. Learned Trial Court held that the complainant had admitted in his cross-examination the receipt of

₹30,000/- from the accused by Google Pay before service of the legal notice upon him. The complainant had failed to mention this amount in the complaint. He did not deduct the amount from the amount mentioned in the cheque, which he was bound to do under Section 56 of the NI Act. The cheque could not be said to have been issued in discharge of the legally enforceable debt. Hence, the complaint was dismissed.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal and the application seeking leave to appeal. It has been asserted that the issuance of the cheque was not disputed. The defence taken by the accused that he had borrowed ₹1.5 lac and had returned ₹90,000/- was not established. The receipt of ₹30,000/- by the complainant from the accused was not sufficient to dismiss the complaint. Therefore, it was prayed that the present application be allowed and the leave to appeal be granted.

8. Mr Athrav Sharma, learned counsel for the complainant/applicant, submitted that the learned Trial Court erred in dismissing the complaint on the ground that a part payment was made to the complainant after the issuance of the cheque. The complainant had clarified in his cross-examination that the amount was towards

another debt. However, this statement was not taken into consideration. Therefore, the complainant has an arguable case in his favour. He prayed that the present application be allowed and the leave to appeal be granted.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The complainant admitted that the accused had paid ₹30,000/- by means of Google Pay. He admitted that the accused had deposited ₹30,000/- in his account before the institution of the case. He volunteered to say that this money was paid earlier to the accused. He admitted that the earlier transactions were not mentioned in the complaint.

11. The statement made by the complainant in his cross-examination that the money paid by the accused pertained to some other transaction is not believable. It was specifically stated by the complainant in para 2 of the complaint that the accused had borrowed ₹5,00,000/- from the complainant for the construction of the house and agreed to return it after some time. The complainant also stated in his proof affidavit (Ext.CW1/A) that the accused had borrowed ₹5,00,000/- from the complainant for the construction of his house and agreed to return the

amount. The complaint and the affidavit are silent regarding the previous monetary transaction between the parties. Complainant stated in his cross-examination that the accused had taken money from him for his personal need and he had made the payment to the accused in cash in the presence of Khem Chand on 15.01.2022. He has not clarified that he had advanced any other money to the accused before this transaction. Thus, the statement that the payment was towards some other transaction cannot be accepted.

12. Learned Trial Court had rightly held that the payment of the money after the issuance of the cheque would reduce the extent of legally enforceable debt/liability. It was laid down by the Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel*, *(2023) 1 SCC 578: 2022 SCC OnLine SC 1376*** that the cheque can be presented for the amount due and if some payment had been made before the presentation of the cheque, the complainant is bound to endorse it and present the cheque for the remaining amount. It was observed: -

> **20.** The judgments of this Court on post-dated cheques, when read with the purpose of Section 138, indicate that an offence under the provision arises if the cheque represents a legally enforceable debt *on the date of maturity*. The offence under Section 138 is triggered by the dishonour of the cheque when it is sought to be encashed.

Though a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstances such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under Section 138 is not made out.

24. It was the contention of the first respondent that the cheque was not dated. On the other hand, it was the contention of the appellant that the cheque was dated 17-3-2014. The courts below did not record a finding on whether the cheque was undated or was dated 17-3-2014. However, it was conclusively held that the cheque was issued by the first respondent for security on the date when the loan was borrowed. It was also categorically recorded by the courts below that a sum of Rs 4,09,315 that was paid by the first respondent was paid to partly fulfil the debt of rupees twenty lakhs. The appellant, in his cross-examination, has stated that a "cheque against a cheque" was given when he loaned the sum of rupees twenty lakhs. Thus, it can be concluded that the cheque was given as security to discharge the loan, either undated or dated as 17-3-2014. Merely because the sum of Rs 4,09,315 was paid between 8-4-2012 and 30-12-2013, which was after 17-3-2014, it cannot be concluded that the sum was not paid in discharge of the loan of rupees twenty lakhs. The sum of Rs 4,09,315 was paid *after* the loan was lent to the first respondent. The appellant, in his cross-examination, has not denied the receipt of the payments. He has also stated it was not received as a "gift or reward". In view of the above discussion, at the time of the encashment of the cheque, the first respondent did not owe a sum of rupees twenty lakhs as represented in the cheque at the time of encashment of the cheque that was issued for security.

34. In view of the discussion above, we summarise our findings below:

> **34.1.** For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.
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> **34.2.** If the drawer of the cheque pays a part or the whole of the sum between the period when the

> cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.
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> **34.3.** When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted.
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> **34.4.** The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the "legally enforceable debt" on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.
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> **34.5.** The notice demanding the payment of the "said amount of money" has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

13. Therefore, the liability was reduced by the amount paid by the accused and the cheque could not have been presented for the whole amount.

14. No other point was urged.

15. Therefore, the learned Trial Court had taken a reasonable view while dismissing the complaint, and no case is made out for the grant of leave to appeal.

16. In view of the above, the present application fails and is dismissed.

Cr. Appeal (ST) No. 3680 of 2025

17. Since the application for seeking leave to appeal has been dismissed, the proposed appeal is hereby disposed of as infructuous along with pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

2nd November, 2026
(Nikita)