THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.483 of 2025

Date of Decision: 28.04.2026

M/s Goldy Footwears Ghumarwin .…….Petitioner

Versus

Himachal Pradesh Gramin Bank, Ghumarwin … Respondent

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

For the Petitioner	**:**	Mr. Amar Deep Singh, Advocate.
For the Respondent	:	Mr. K. B. Khajuria, Advocate.

Sandeep Sharma, Judge(oral):

Instant Criminal Revision petition filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, lays challenge to judgment dated 15.03.2025, passed by learned Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh, in Criminal Appeal No.57-10 of 2023, affirming judgment of conviction dated 25.08.2023 and order of sentence dated 04.09.2023 passed by learned Additional Chief Judicial Magistrate, Court No.1, Ghumarwin, District Bilaspur, Himachal Pradesh in Criminal case No.203/03 of 2019, titled **Himachal Pradesh Gramin Bank, Ghumarwin vs. M/s Goldy Footwears, Ghumarwin**, whereby

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

learned trial Court, while holding petitioner-accused**(hereinafter referred to as the 'accused')** guilty of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act(***for short 'Act'),*** convicted and sentenced him to undergo simple imprisonment for a period of three months and pay compensation to the tune of Rs.4,20,000/- to the respondent-bank.

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, in order to discharge legal liability to repay the loan, issued cheque bearing No.262701, dated 14.11.2017(Ex. C-2) drawn on Himachal Pradesh Gramin Bank, Ghumarwin, but said cheque on its presentation to the bank concerned was dishonoured vide memo dated 20.11.2017 (Ex. C-1) with remarks " funds insufficient". Immediately, after receipt of return memo, respondent-bank served accused with legal notices dated 29.11.2017 (Ex. C-3 and Ex. C-5), calling upon him to make the payment good within stipulated time, but since he 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 his 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 Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh, but same also came to be dismissed vide judgment dated 15.03.2023. In the aforesaid background, petitioner-accused approached this Court in the instant proceedings, praying therein for his acquittal after quashing and setting aside the impugned judgment of conviction and order of sentence recorded by Courts below.

4. Vide order dated 22.08.2025, 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 four weeks. However, fact remains that aforesaid order never came to be complied with. Repeatedly, matter was adjourned, but on one pretext

or other, petitioner failed to comply with the aforesaid order. Lastly, matter was listed on 19.03.2026, on which date, learned counsel representing the petitioner, on instructions of the petitioner, submitted before this Court that petitioner is ready and willing to pay the entire amount of compensation as awarded by learned Court below, and as such, this Court adjourned the matter for today's date. Though, petitioner has come present, but neither he has deposited the amount in the bank nor has brought the same to be handed over to learned counsel for the respondent-bank. In the afore background, this Court has no option, but to decide the petition on its own merit.

5. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the impugned judgment passed by learned Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh, affirming the judgment of conviction and order of sentence recorded by learned trial Court, this Court is not persuaded to agree with learned counsel for the petitioner-accused that learned Courts below have failed to appreciate the evidence in its right prospective, 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. In the instant case, though accused, while making statement under Section 313 Cr.P.C denied the factum with regard to

issuance of cheque and pleaded his innocence, but despite sufficient opportunities, he failed to lead evidence in defence.

7. To the contrary, respondent-bank, while examining Rakesh Kumar, Branch Manager as CW-1, has successfully proved on record that accused had taken loan from the bank and there was cash credit limit. He also successfully proved on record that accused, with a view to discharge his liability, issued cheque Ex. C-2, but same was dishonoured vide memo Ex. C-1. Though, before instituting complaint under Section 138 of the Act, respondent-bank served accused with legal notices Ex. C-3 and Ex. C-5, but yet accused failed to make the payment. 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 cross-examination, afore witness stated that he was not posted in the bank in the year 2017 as Manager. He admitted that notices Ex. C-3 and Ex.C-5 were not sent during his tenure. He admitted that the complaint was not prepared during his tenure. No suggestion, worth the name, ever came to be put to aforesaid witness with regard to liability, if any, of accused as well as issuance of cheque and signature thereupon. Pattern of cross-examination conducted upon the complainant, clearly proves factum of issuance of cheque as well as signatures thereupon and as such,

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, he otherwise failed to probablize the defence, sought to be raised by him, while deposing under Section 313 Cr.P.C.

8. Interestingly, in the case at hand, cheque was duly signed by the accused and he nowhere specifically disputed his signatures. Though, it came to be argued that cheque was not filled by the accused, but when cross-examination of CW-1 is perused, it clearly reveals that nothing has been suggested to him that cheque was not signed or filled by the accused. Moreover, even if, cheque was blank and if it was issued voluntarily, duly signed, it cannot be a ground to evade the criminal liability under Section 138 of the Act. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case tilted **Bir Singh vs. Mukesh Kumar, 2019(4) SCC 197,** wherein it has been held that a person is liable for

commission of offence punishable under Section 138 of the Act, even if, cheque was not filed by the accused. Relevant paras of the judgment are as under:-

> **"38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.**
> **39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.**
> **39. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt".**

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. 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.

11. 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."***

12. 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.

13. 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.

14. 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.

15. 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 28, 2026
(shankar)