IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.754 of 2024
Date of Decision: 24.4.2026

Robin Sharma

.....Petitioner

Versus

Kangra Cooperative Bank Limited

.....Respondent

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

For the Petitioner: Mr. Surya Chauhan, Advocate.

For the Respondent: Mr. Sohan Singh Rathore, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition, lays challenge to judgment dated 22.8.2024, passed by the learned Additional Sessions Judge, Kullu, District Kullu, Himachal Pradesh, in Criminal Appeal No.34 of 2023, affirming the judgment of conviction and order of sentence dated 9.5.2023, passed by the learned Judicial Magistrate First Class, Manali, District Kullu, Himachal Pradesh in case registration No. 61 of 2020, whereby the learned trial Court while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (in short the "Act"), convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs. 3,55,000/- to the complainant.

2. Precisely, the facts of the case, as emerge from the record are that respondent/complainant lodged complaint under Section 138 of the Act before the competent court of law, stating therein that accused had raised loan to the tune of Rs. 3,50,000/- from the respondent/complainant, but since he failed to pay the monthly installments, he with a view to discharge his liability and regularize his account, issued cheque bearing No.075338 dated 25.12.2019 amounting to Rs. 3,00,000/- in favour of the complainant. However aforesaid cheque on its presentation to the bank concerned was dishonored vide memo dated 10.1.2020 with remarks "funds insufficient". Immediately, after receipt of aforesaid return memo, complainant served legal notice upon the accused on 29.1.2020, thereby calling upon him to make the payment good within stipulated time, but since accused failed to do the needful, complainant had no option but to initiate proceedings under Section 138 of the Act in the competent court of law.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 9.5.2023, held the petitioner-accused guilty of having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per the description given herein above.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the court below, petitioner-accused preferred an appeal before the learned first appellate Court, but the same was dismissed vide judgment dated 22.8.2024. In the aforesaid background, accused has approached this Court in the instant proceedings, praying therein to set-aside the judgment of conviction and order of sentence recorded by the court below.

5. Vide order dated 20.11.2024, this Court suspended the substantive sentence imposed by the court below, subject to petitioner's depositing 50% of the compensation amount and furnishing personal bonds along with one surety of the like amount with the trial Court. Though aforesaid order was complied with, but thereafter matter was repeatedly, adjourned on the request of petitioner enabling him to pay the remaining amount. Case file reveals that more than ten opportunities were granted to the petitioner-accused to deposit the remaining amount, but in vain.

6. Today, during proceedings of the case, learned counsel for the petitioner, states that neither remaining amount has been deposited nor petitioner is coming forward to impart instructions and as such, this Court has no option but to decide the petition on merit.

7. Having heard learned counsel for the parties and perused material available on record vis-à-vis reasoning assigned in the judgment impugned in the instant proceedings, this Court is not persuaded to agree with learned counsel appearing for the petitioner that courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the courts below have dealt with each and every aspect of the matter very meticulously and there is no scope of interference.

8. In the case at hand, there is no specific denial at the behest of the accused with regard to his having availed loan, issuance of cheque as well as signature upon the same. If it is so, no illegality can be said to have been committed by the courts below while invoking Sections 118 and 139 of the Negotiable Instruments Act, which clearly provide that there shall be presumption available in favour of the holder of the cheque that same was issued in discharge of the lawful liability. No doubt, aforesaid presumption is rebuttable, but for that purpose, accused is/was under obligation to raise probable defence. Probable defence could be raised by the accused by referring to the documents as well as evidence adduced on record by the complainant or by leading some cogent and convincing evidence. However, in the case at hand, accused, despite ample opportunities, failed to raise the probable defence.

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 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.

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.

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. With a view to prove its claim, complainant examined Mr. Rajender Singh as CW1, who stated that notice Ext.C6/CW1 was issued to the accused through registered post, postal receipt and acknowledgement whereof are Ext.C7/CW1 and Ext.C8/CW1. If the cross-examination conducted upon afore witness is perused in its entirety, it cannot be said that accused was able to extract something contrary to what this witness stated in examination-in-chief. In his statement recorded under Section 313 CrPC, while admitting that he had obtained loan to the tune of Rs. 3.5 lakh from the complainant/ban, accused also admitted that has defaulted in making installments. He also admitted that issuance of cheque as well as receipt of legal notice. Since after receipt of return memo, complainant served the accused with legal notice thereby affording opportunity to make the payment and accused despite his having receive legal notice failed to make the payment, coupled with the fact that proceedings under Section 138 of the Act, at the behest of the complainant, came to be filed within stipulated time, no illegality can be said to have been committed by the

courts below while holding the petitioner guilty of having committed offence punishable under the Act.

11. Furthermore, this Court has a very limited jurisdiction under Section 397 of the Cr.PC (now Section 438 of BNSS), 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 fifteen days to serve the sentence as awarded by the learned trial Court, if not already served. Interim direction, if any, stands vacated. Learned court below is also directed to release the amount, if any, deposited before it by the accused, on filing appropriate application by the complainant within one week. Pending applications, if any, also stand disposed of.

April 24, 2026 **(Sandeep Sharma),**
(manjit) **Judge**