IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.56 of 2026

Date of Decision: 27.04.2026

Suresh Chand .....Petitioner

Versus

Sharwan Kumar … Respondent

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

For the Petitioner	**:**	Mr. Sative Chauhan, Advocate.
For the Respondent	:	Ms. Preetika Thakur, Advocate vice Mr. Varun Chauhan, 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 02.07.2025, passed by learned Additional Sessions Judge-II, Shimla, District Shimla, Himachal Pradesh, in Criminal Appeal No.213 of 2024, affirming judgment of conviction and order of sentence dated 25.05.2024, passed by learned Additional Chief Judicial Magistrate, Court No.1, Shimla, District Shimla, Himachal Pradesh, in criminal case Reg. No.1647/2022 titled **Sh. Sharwan Kumar vs. Sh. Suresh Chand,** whereby learned trial Court, while holding petitioner-accused

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

(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 six months and pay compensation to the tune of Rs.2,50,000/- to the respondent-complainant **(hereinafter referred to as the 'complainant').**

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material made available to this Court, reveal that the complainant instituted a complaint under Section 138 of the Act in the competent court of law, alleging therein that accused, who was well known to him for the last 15-20 years, approached him in the year 2022 for financial help to the tune of Rs. 2, 00,000/- for business purposes. Complainant submitted that after having received sum of Rs. 2, 00,000/-, accused undertook to repay the entire amount in the month of September, 2022. However, since he was unable to repay the afore amount, accused, in order to discharge his lawful liability, issued post-dated cheque bearing No.785736, dated 10.10.2022, amounting to Rs. 2, 00,000/- of his saving bank account maintained at Punjab National Bank Branch Rampur Bushahr. However, fact remains that aforesaid cheque, on its presentation to the bank concerned, was dishonoured vide memo dated 13.10.2022, with the remarks "funds insufficient". Immediately, after receipt of

return memo, respondent-complainant served accused with legal notice dated 19.10.2022, calling upon him to make the payment good within stipulated time, but since he failed to make the payment good within stipulated time, respondent-complainant 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 him 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-II, Shimla, District Shimla, Himachal Pradesh, but same also came to be dismissed vide judgment dated 02.07.2025. In the aforesaid background, petitioner-accused has 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 08.01.2026, 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 four weeks. However, fact remains that aforesaid order never came to be complied with, but yet this Court, on the request made by learned counsel for the petitioner, vide order dated 24.03.2026, granted further time of two weeks to do the needful. Neither amount has been deposited nor petitioner has come present and as such, 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 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. Interestingly, in the case at hand, at no point of time factum with regard to issuance of cheque as well as signatures thereupon by the accused came to be refuted 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.

7. Complainant with a view to prove his case examined himself as CW-1. He successfully proved on record agreement Ex. C1/CW1, cheque Ex. C2/CW/1, bank memo Ex. C3/CW1, legal notice Ex.C4/CW/1 and postal receipt Ex. C5/CW/1. 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.

8. Accused, in his statement recorded under Section 313 Cr.P.C., denied having received the legal notice. However, he failed to produce any contrary evidence to demonstrate that notice issued by the complainant was not received by him. Since accused did not dispute his address, there is a presumption that legal notice sent through postal service was duly received by him, but he failed to reply the same or make payment. While denying that he took Rs. 2,00,000/-from the complainant, he, in his statement recorded

under Section 313 Cr.P.C., stated that he borrowed sum of Rs. 20,000/- only. While denying execution of the agreement, he stated that he issued blank cheque, but no evidence ever came to be led on record to probablize aforesaid defence.

9. Since factum with regard to issuance of cheque as well as signature thereupon never came to be refuted, coupled with the fact that complainant successfully proved on record all the ingredients of 138 of the Act, learned courts below rightly held accused guilty of his having committed an offence punishable under Section 138 of the Act.

10. 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.

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.***

11. 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.

12. 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."***

13. 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.

14. 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.

15. 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.

16. 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 four weeks 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 27, 2026
(shankar)