IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.723 of 2025
Date of Decision: 28.04.2026

Vidhyadhar .....**Petitioner**

Versus

Khem Singh .....**Respondent**

Coram

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

For the Petitioner: Mr. Guna Nand Verma, Advocate.

For the Respondent: Mr. Surila Sangam, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 438 read with Section 442 of Bharatiya Nagrik Suraksha Sanhita, 2023, lays challenge to judgment dated 30.06.2025 passed by the learned Additional Sessions Judge-I, Mandi, Himachal Pradesh, in Criminal Appeal No.2438/2023, affirming the judgment of conviction and order of sentence dated 04.11.2023, passed by the learned Judicial Magistrate First Class, Karsog, District Mandi, Himachal Pradesh, in Criminal Complaint No.119 of 2019, whereby the learned Court below, while holding the petitioner-accused *(hereinafter "**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 two months and pay compensation to the tune of Rs.3,30,000/- to the respondent-complainant *(hereinafter "**complainant**")*.

2. Precisely, the facts of the case, as emerge from the record are that complainant instituted a complaint under Section 138 of the Act before the competent Court of law, alleging therein that accused approached him seeking financial help for his personal requirement and borrowed a sum of Rs.3,20,000/- from the complainant in the presence of witnesses. He alleged that though with a view to discharge his lawful liability, accused issued cheque bearing No.513529 dated 10.04.2019 amounting to Rs.3,20,000/-, drawn on SBI, Branch Karsog, but aforesaid cheque on its presentation was returned back vide memo dated 01.07.2019 with the remarks "Funds Insufficient". Since accused failed to make the payment good within the stipulated period despite his having received legal notice dated 11.07.2019, 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 04.11.2023, held the accused guilty of his 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 learned Judicial Magistrate First Class, Karsog, District Sirmaur, H.P., accused preferred an appeal before the learned Additional Sessions Judge-I, Mandi, H.P., but same was dismissed vide judgment dated 30.06.2025. In the aforesaid background, accused has approached this Court in the instant proceedings, praying therein for his acquittal after setting-aside the judgment of conviction and order of sentence recorded by the learned Court below.

5. Vide order dated 22.12.2025, this Court suspended the substantive sentence imposed by the learned Court below subject to accused depositing 30% of the compensation amount and furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount within a period of four weeks, however, fact remains that aforesaid order was never complied with. Repeatedly time was granted to the accused to comply with the aforesaid order, but in vain.

6. Today, during the proceedings of the case, learned counsel for the accused submitted that since accused is not coming forward to impart instructions, this Court may proceed to decide the case on its own merits.

7. Having heard learned counsel for the parties and perused material available on record vis-a-vis reasoning assigned in the impugned judgment passed by learned Additional Sessions Judge-I, Mandi, H.P., whereby judgment of conviction and order of sentence recorded by the learned trial Court came to be upheld, this Court is not persuaded to agree with Mr. Guna Nand Verma, learned counsel for the petitioner, that learned 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 meticulously and there is no scope left for this Court to interfere. Interestingly, in the instant case, factum with regard to issuance of cheque as well as signatures thereupon never came to be disputed at the behest of the accused. In his statement recorded under Section 313 Cr.P.C, accused, while admitting that he had approached the complainant for some financial help, denied that he had borrowed sum of Rs.3,20,000/-, but stated that he had only borrowed sum of Rs.1,29,000/- from the complainant. Since factum with regard to issuance of cheque as

well as signatures thereupon never came to be disputed, no illegality otherwise can be said to have been committed by learned Courts below, while invoking Section 118 and 139 of the Act.

8. 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, besides leading evidence in defence, can rely on the materials produced 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 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."

9. In the case at hand, complainant, with a view to prove his case, examined himself as CW-1, who by way of tendering affidavit Ext.CW-1/A, reiterated the facts as averred in the complaint. He also tendered in evidence the cheque Ext.CW-1/B, dishonour memo Ext.CW-1/C, legal notice Ext. CW-1/D, postal receipt Ext.CW-1/E, undelivered notice Ext.CW-1/G. If the cross-examination conducted upon this witness is perused in its entirety, it can be safely concluded that opposite party was unable to extract anything contrary to what this witness stated in his examination-in-chief. No suggestion worth credence ever came to be put to

the accused that he had not borrowed sum of Rs.3,20,000/- and had only borrowed sum of Rs.1,29,000/-. Accused did not put a suggestion to the complainant that in the month of March, 2015, sum of Rs.1,00,000/- was given by him to the complainant and remaining amount was given in the year 2017. As has been observed hereinabove, pattern of cross-examination conducted upon complainant clearly establishes factum with regard to issuance of cheque as well as signatures thereupon. Though accused, with a view to rebut aforesaid presumption, attempted to carve out a case that he had only liability of Rs.1,29,000/-, but he was not able to prove such fact by leading cogent and convincing evidence. Similarly, he was unable to explain that in case he had returned the entire money, how and for what reasons cheque in question came in the hands of the complainant.

10. Accused examined one Pushp Raj as DW-1, who in his cross-examination, admitted that accused was having transaction with the complainant. He also admitted that in his presence, complainant had given money to the accused and that amount was perhaps between Rs.70,000/- and Rs.80,000/-. While feigning ignorance that complainant had given some amount in cash and had issued a cheque of Rs.50,000/-, he denied

that transaction had taken place 2–3 times in his presence, but voluntarily stated that before him, only once such amount was borrowed.

11. To the contrary, it was the pleaded case of the complainant that he had given amount to the accused in presence of witnesses. Though statement of DW-1 suggests that accused had taken money may be Rs.70,000/- to Rs.80,000/- in the presence of DW-1 Pushp Raj, but afore witness nowhere stated aforesaid fact, rather he stated that accused had returned money to the complainant.

12. Having scanned pleadings as well as evidence adduced on record by the complainant, this Court finds that complainant successfully proved all the ingredients of Section 138 of the Act. Similarly, factum with regard to signatures and issuance of cheque by the accused towards discharge of lawful liability stands duly established on record.

13. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC, 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."*

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 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 accused is directed to surrender before the learned trial Court within 15 days to serve the sentence as awarded by the learned trial Court, if not already served. Interim direction, if any, stands vacated. Pending applications, if any, also stand disposed of. Bail bonds, if any, furnished by the accused are cancelled.

April 28, 2026 **(Sandeep Sharma),**
(sunil) **Judge**