IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No739 of 2025
Date of Decision: 24.4.2026

Raja Jai Sayal

.....Petitioner

Versus

Rakesh Kathuria

.....Respondent

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

For the Petitioner: Mr. Jai Ram Sharma, Advocate.

For the Respondent: Mr. Vinod Kumar Soni, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition, lays challenge to judgment dated 26.11.2025, passed by the learned Additional Sessions Judge (II) Kangra at Dharamshala, District Kangra, Himachal Pradesh, in Criminal Appeal No.21-K/X/2023, affirming the judgment of conviction and order of sentence dated 29.11.2023/4.12.2023, passed by the learned Additional Chief Judicial Magistrate Kangra, District Kangra, Himachal Pradesh in Complaint No. 85-III/2016, 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. 12.00 lakh 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 with a view to discharge his liability issued cheque bearing No.001879 dated 23.2.2015 amounting to Rs. 9,00,000/- in favour of the complainant, however aforesaid cheque on its presentation to the bank concerned was dishonoured with remarks "funds insufficient". Immediately, after receipt of aforesaid return memo, complainant served legal notice upon the accused, thereby calling upon him to make the payment good within stipulated time. Though aforesaid notice was received by the accused, but neither he replied to the same nor deposited the amount and as such, 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 29.11.2023/4.12.2023, 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 26.112025. 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 1.1.2026, this Court suspended the substantive sentence imposed by the court below, subject to petitioner's depositing 30% of the compensation amount and furnishing personal bonds in the sum of Rs.50,000/- with the trial Court, within four weeks. Though afore order was complied with, but thereafter despite repeated opportunity, petitioner failed to pay the remaining amount and as such, this Court is compelled to decide the petition on merit.

6. 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.

7. In the case at hand, at no point of time, petitioner-accused denied factum with regard to issuance of cheque as well as signature

thereupon, rather he attempted to carve out a case that cheque in question was issued as security and same was misused by the complainant, however, such defence never came to be probablised by leading cogent and convincing evidence. Once factum with regard to issuance of cheque as well as signature thereupon never came to be disputed, 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.

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 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.
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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.

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 in order to prove his case examined himself as CW4 and Sh. Dalip Singh, Manager, Corporation bank Kangra as CW1, Sh. Arun Kumar, Chaudhary Advocate, as CW2 and Sh. Vikas Thakur as CW3. Besides above, he also tendered in evidence the documents i.e. cheque Ext.CW1/A, return memo Ext.CW1/B, legal notice Ext.CW2/A, postal receipt Ext.CW2/B, account statement Ext.CW3/A, sworn affidavit Ext.CW4/A, return memo Ext.CW4/B and copies of ledger Ext.CW4/C. Complainant while deposing as CW4 categorically stated that accused had a liability of Rs. 9.00 lakh and with a view to discharge the same, he issued cheque in question for a sum of Rs. 9.00 lakh, which was dishonoured vide return memo Ext.CW4/B on account of insufficient funds. He also successfully proved on record that before initiating proceedings under the Act, he served the accused with legal notice Ext.CW2/A, but neither legal notice was replied nor amount was paid.

10. Though accused in his statement recorded under Section 313 CrPC denied the case of the complainant *in toto,* but despite opportunity, he failed to lead any evidence. Cross-examination conducted upon this witness nowhere suggests that petitioner-accused was able to extract something contrary to what this witness stated in examination-in-chief, rather by putting certain suggestions to the complainant, petitioner accused virtually admitted factum of his having issued cheque as well as signature

thereupon. Accused proposed to set up a defence that he had issued a blank security cheque to brother of the complainant and on the date of presentation of the cheque, there was no legal liability towards him. Though accused attempted to set up a case that cheque in question was issued to the brother of the complainant as security, but such defence of him never came to be probablised by leading cogent and convincing evidence and as such, both the courts below rightly invoked Sections 118 and 139 of the Act. Besides above, accused raised further defence that complainant used to operate a committee and committee members used to issue cheques as security, however aforesaid defence was also not proved by examining any of the committee members, who had allegedly issued security cheque.

11. If the pattern of cross-examination conducted upon afore witness is seen, there is no denial with regard to issuance of cheque but an attempt has been made by the accused to carve out a case that cheque retained as security by the respondent/complainant has been mis-used. Though aforesaid defence attempted to be established never came to be probablised by leading cogent and convincing evidence, but even otherwise, cheque issued as security can always be presented for realization of the amount for which such security was issued, especially when principal amount, for which, security cheque was issued, was not paid.

12. By now it is well settled that dishonour of cheque issued as security can also attract offence under Section 138 of the Negotiable Instruments Act. Hon'ble Apex Court in case titled **Sripati Singh v. State of Jharkhand**, Criminal Appeal No. 1269-1270 of 2021, decided on 28.10.2021, has held as under:

> "16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

13. Needless to say, expression "Security Cheque" is not a statutorily defined expression in the Negotiable Instruments Act, rather same is to be inferred from the pleadings as well as evidence, if any, led on record with regard to issuance of security cheque. The Negotiable Instruments Act does not per se carve out an exception in respect of a

"security cheque" to say that a complaint in respect of such a cheque would not be maintainable as there is a debt existing in respect whereof the cheque in question is issued, same would attract provision of Section 138 of the Act in case of its dishonour.

14. Though learned counsel for the petitioner vehemently argued that bare perusal of legal notice Ext.CW2/A suggests that same was not signed by the complainant, but such plea of him, deserves outright rejection being wholly untenable for the reason that once factum with regard to issuance of cheque, may be as security, stands admitted by the petitioner-accused, plea of non-signing of legal notice by the complainant may not be of much relevance. In his statement recorded under Section 313 CrPC, he has admitted the acknowledgment and further accepted that he had not replied to the notice. He also did not deny the correctness of the notice.

15. 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."

16. 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.

17. 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.

18. 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.

19. 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**