221 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRR-448-2017 (O&M)
Reserved on: 05.05.2026
Pronounced on: 06.05.2026.

Subhash Chand …Petitioner

vs.

State of Haryana and another …Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Tanmoy Gupta, Advocate
for the petitioner.

Mr. Rajiv Sidhu, Sr. DAG, Haryana.

Mr. Abhimanyu Kalsy, Advocate for
Mr. Rakesh Dhiman, Advocate
for respondent No.2.

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N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present revision petition against the impugned judgment dated 13.01.2017 passed by the Court of Additional Sessions Judge, Gurgaon as well as the judgment of conviction dated 29.10.2013 and order of sentence dated 30.10.2013 passed by the Court of Judicial Magistrate 1st Class, Gurgaon, whereby the petitioner was ordered to be convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "N.I. Act") and was sentenced to undergo rigorous imprisonment for six months and to pay compensation under Section 357(3) Cr.P.C. of Rs.4,50,000/- to the complainant within a period of one month from the date of this judgment and in case of non-

payment of compensation, the petitioner shall further undergo simple imprisonment for three months.

2. In brief, the facts of the case are that one complaint under Section 138 of Negotiable Instruments Act was filed by the respondent-complainant against the present accused by alleging that complainant and accused had friendly relationship. Accused approached complainant to give him friendly loan of Rs.3 lac for his domestic needs and business purpose. On request, complainant gave him Rs.3 lacs as loan. In discharge of his liability to repay the amount, accused issued cheque bearing No. 368491, dated 20.09.2012, amounting to Rs.3 lacs in favour of complainant. On presentation of cheque for encashment, the same was returned dishonoured with remarks "Stop payment by drawer" vide return memo dated 23.11.2012. On receiving the same, complainant dispatched a legal notice dated 01.12.2012 through registered post to accused intimating about the dishonour of cheque in question and demanding the payment of the cheque amount within a period of 15 days from the date of receipt of said notice but despite notice, the accused did not pay the amount. On these allegations, the complainant had filed the present complaint against the accused.

3. After the preliminary evidence was led, the petitioner was summoned to face trial under Section 138 of the N.I. Act and a notice of accusation under Section 138 of N.I. Act was served upon him, to which he pleaded not guilty and claimed to be tried.

4. To prove his case, the complainant examined himself as CW1 through affidavit (Ex.CW1/A) in his evidence and proved documents i.e. original cheque (Ex.CW1/B), return memo (Ex.CW1/C), copy of legal notice

(Ex.CW1/D) and postal receipt (Ex.CW1/E). Thereafter, evidence of complainant was closed on 10.05.2013.

5. Statement of petitioner under Section 313 Cr.P.C. was recorded wherein, he denied all the allegations levelled against him. The petitioiner opted to lead his evidence. However, no evidence was led in defence evidence and defence evidence was closed by Court order, vide order dated 26.10.2013.

6. Learned counsel for the petitioner has vehemently argued that in the present case, the trial Court as well as the Appellate Court had completely overlooked the evidence led by the prosecution. In fact, the cheque in question was handed over to Ajay Sharma, who had misused it by giving the same to respondent No.2, who ultimately presented the said cheque. He further referred to the testimony of CW1, Mahavir, complainant and submitted that the cheque in question was not supported by any consideration. He further submits that as per CW1 Mahavir, a loan of Rs.1 lac was extended to the petitioner by respondent No.2/complainant. However, the cheque was allegedly issued for a sum of Rs.3 lacs, which was unbelievable. He further submits that as per the provisions of Section 138 of the N.I. Act, the cheque must be drawn for discharge, in whole or in part, of any other debt or any other liability. However, in the present case, the admitted amount of debt was Rs.1 lac, whereas, the amount filled in the cheque was Rs.3 lacs and the ingredients of the offence under Section 138 of the N.I. Act were completely missing and the petitioner was liable to be acquitted by this Court.

7. On the other hand, learned counsel appearing on behalf of respondent No.2 submits that the testimony of CW1 Mahavir has to be read as a whole and one line from the cross-examination cannot be read in isolation. He

further submits that CW-1 Mahavir had clarified that the total amount of Rs.3 lacs was given to the present petitioner. Even he had explained the source, from where he had received the money and thereafter, the loan was extended to the petitioner by him. He further submits that the matter was argued before two Courts and the present argument was never raised by the petitioner before any of the Courts. Even the present argument is contrary to his stand taken by him under Section 313 Cr.P.C.. Even the petitioner had admitted the total loan liability of Rs.3 lacs and he had suggested to CW1, Mahavir that the entire loan amount was returned in cash to him and the cheque, which was kept as security, was misused by respondent No.2. Thus, he had tacitly admitted the existence of loan liability of Rs.3 lacs.

8. I have heard learned counsel for the parties and perused the record carefully.

9. In the present case, it is essential to set out the ingredients required to be proved by a complainant for establishing an offence under Section 138 of the N.I. Act, which are as follows:"

> (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;
> (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

10. In the present case, the cheque in question for a sum of Rs.3 lacs was issued by the petitioner on 20.09.2012 from his saving bank account of Indian Overseas Bank, Gurgaon. The said cheque was presented by respondent No.2, to his banker and the same was dishonoured with the reasons "Payment stopped by the drawer", vide cheque return memo dated 23.11.2012. Thereafter, on 01.12.2012, respondent No.2-Mahavir issued the statutory notice to the petitioner to make the payment of the said cheque and the notice was dispatched on 04.12.2012 i.e. within a period of 15 days from the receipt of return of the bank memo. However, the payment was not made and the complaint was filed before the Court within the period of limitation. Consequently, from the above referred sequence of events, it was apparent that respondent No.2 had complied with all the statutory requirements, as laid down by Section 138 of the N.I. Act. Even both the Courts have recorded detailed reasons for holding that the ingredients of Section 138 of N.I. Act were fulfilled in the present case and no illegality has been pointed out in the impugned judgements in this regard.

11. The only additional argument raised before this Court is that while appearing as CW1, Mahavir, respondent No.2 had admitted that he had

extended a loan of Rs.1 lac on 10.06.2012 to the petitioner and this loan amount was given from the saving account. However, the cheque was admittedly drawn for a sum of Rs.3 lacs and consequently, respondent No.2 had failed to prove that the cheque was issued in discharge of a legally enforcible debt. On the other hand, learned counsel for respondent No.2 vehemently argued that a new case has been set up by the petitioner, by misinterpreting the statement of CW1 Mahavir. He further contends that even no such stand was taken by the petitioner in his statement under Section 313 Cr.P.C nor any such plea was raised before both the Courts below.

12. After hearing learned counsel for the parties, I find no substance in the argument raised by learned counsel for the petitioner in this regard. In fact, from a perusal of the statement of CW1 Mahavir, it is apparent that he had categorically stated that he had given a friendly loan of Rs.3 lacs to the petitioner for his domestic needs and business purpose and in discharge of his liability, to repay the amount, the petitioner had issued the cheque bearing No. 368491, dated 20.09.2012, amounting to Rs.3 lacs in favour of the complainant. Even in his cross-examination, he has admitted that the said loan amount was shown by him in his ITR also. He also admitted that he had friendship with Ajay Sharma and on the asking of Ajay Sharma, he had given the money to Subhash. Even the cheque in question was given by Subhash to him. He also admitted in his statement that the amount was filled by Subhash himself and even the date on the cheque was written by the petitioner only. In his cross-examination, at one point of time, he stated that he had given the loan on 10.06.2012 and "lac rupees" were given by him. It appears that it was just a slip of tongue on the part of respondent No.2, who is admittedly a matriculate

and was semiliterate. Otherwise, in his statement, he clarified the same breath that he was in the business of selling old machines and he had received a sum of Rs.2.5 lacs in cash by selling an old machine and the said amount was mentioned in the ITR also. Still further, even the petitioner had given a suggestion to the complainant that the entire loan amount was returned in cash to Ajay Sharma by the petitioner, however, the said suggestion was denied by respondent No.2. This clearly shows that the loan amount was never disputed by the present petitioner in the present case.

13. Even otherwise, I have carefully gone through the findings recorded by both the Courts and find that the trial Court as well as the Appellate Court had correctly appreciated the evidence led by both the parties, in the light of settled canons of law and I find no reasons to set aside the impugned judgments.

14. As a consequence, the present revision petition stands dismissed, and the impugned judgment dated 13.01.2017 passed by the Court of the Additional Sessions Judge, Gurgaon as well as the judgment of conviction dated 29.10.2013 and the order of sentence dated 30.10.2013 passed by the Court of the Judicial Magistrate 1st Class, Gurgaon are hereby upheld.

15. Pending applications, if any, stand also disposed of, accordingly.

(N.S.SHEKHAWAT)
JUDGE

06.05.2026
hemlata

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No