



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

115

CRR-3384-2025 (O&M)
Date of decision: 21.01.2026

JASKARAN SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Kapil Khanna, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant revision petition has been filed against the judgment dated 07.03.2024 passed by the Judicial Magistrate First Class, Sri Muktsar Sahib wherein the the petitioner has been convicted for a period of two years with a fine of Rs. 1,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 07 days as well as the judgment dated 13.11.2025 passed by the Sessions Judge, Sri Muktsar Sahib whereby his appeal had been partly allowed and while maintaining the judgment of conviction, the sentence had been reduced to one year.

2. Briefly stated, the facts giving rise to the present proceedings are that Complaint bearing CIS No. NIA/73/2021 was instituted by the respondent-complainant, a non-banking finance company, against the

petitioner herein. The respondent–complainant averred that it is engaged in the business of financing, leasing and hire purchase of machines and equipment. It was averred that the petitioner approached the respondent–complainant for financial assistance for purchase of a vehicle, namely TATA LPT 2515 bearing registration No. RJ-04GA-0601, for his personal requirements. Pursuant thereto, a loan agreement was executed between the parties on 13.07.2018, whereunder a sum of Rs. 3,80,000/- was advanced to the petitioner. The loan amount was agreed to be repaid in 36 equated monthly instalments. According to the respondent–complainant, the petitioner committed default in adhering to the terms and conditions of repayment and failed to liquidate the outstanding dues despite repeated demands. Eventually, towards discharge of his liability, the petitioner issued cheque No. 667443 dated 14.12.2020 for an amount of Rs. 3,80,000/- (representing the principal amount) and a post-dated cheque No. 667444 dated 21.12.2020 for a sum of Rs. 1,76,111/- towards overdue loan dues was issued.

3. Upon presentation, both the cheques were dishonoured and returned unpaid vide bank memos dated 15.12.2020 and 24.12.2020, respectively, with the endorsement “Funds Insufficient”. The petitioner was informed about the dishonour of the cheques and was called upon to clear the outstanding liability; however, no payment was forthcoming. Consequently, a legal notice dated 13.01.2021 was issued to the petitioner. Despite service of the said notice, the petitioner failed to make payment within the stipulated period, compelling the respondent–complainant to institute a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Court of the learned Illaqa Magistrate.

4. Upon consideration of the preliminary evidence, the petitioner was summoned vide order dated 23.02.2021.

5. Notice of accusation was thereafter served upon him, to which he pleaded not guilty, resulting in commencement of trial. The parties led their respective evidence in support of their claims.

6. Upon appreciation of the evidence and hearing the rival submissions, the Judicial Magistrate First Class, Sri Muktsar Sahib, vide judgment dated 07.03.2024, convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo rigorous imprisonment for a period of two years.

7. Aggrieved by the said judgment, the petitioner preferred an appeal before the Court of the learned Sessions Judge, Sri Muktsar Sahib, being Criminal Appeal No. 38 dated 06.04.2024. The said appeal was partly allowed vide judgment dated 13.11.2025. While the finding of conviction was affirmed, the sentence was modified and reduced from rigorous imprisonment for a period of two years to rigorous imprisonment for a period of one year, along with a fine of Rs. 1,000/-. Hence, the present petition.

8. When the matter came up for hearing on 08.01.2026, Counsel for the petitioner sought time to complete instructions as to whether the petitioner would be inclined to clear the outstanding dues or not. Time was thus granted.

9. On resumed hearing, Counsel for the petitioner contends that the petitioner has expressed his inability to clear the dues.

10. Learned counsel appearing on behalf of the petitioner contends that the cheques in question were issued as security cheques and have been misused by the respondent No.2-complainant. He further contends that a

matter of fact, the respondent has failed to lead any evidence as would show that there was a default on the part of the petitioner in clearing the loan account. In the absence of proof establishing the liability, the respondent could not have present the cheques for encashment for the amount as filled up. It thus submitted that both the Courts have fell in error in drawing adverse inferences against the petitioner and in holding him guilty, despite the absence of material evidence to substantiate the alleged default or liability.

11. I have heard learned Counsel appearing on behalf of the petitioner and have gone through the impugned judgments.

12. So far as the contention of the petitioner that no evidence has been led by the respondents to establish that there was a default of the loan and hence the amount filled up in the cheque was incorrect is concerned, as per the provisions contained in the Negotiable Instruments Act, 1881, there is a presumption in favour of the holder of cheque that he is holder in due course and that the petitioner had signed the aforesaid cheque amount after acknowledging the liability towards.

13. Learned counsel for the petitioner has failed to point to any material, from the evidence led by the petitioner, or even from the cross-examination of the complainant's witnesses, that no default had been committed by him or that the statement of the loan account did not support the amount mentioned in the cheque, or that the cheque was not in lieu of a legally enforceable debt. It is well settled that the initial burden to rebut the statutory presumptions under the Negotiable Instruments Act lies upon the accused. Only if such initial burden is discharged, by leading evidence or eliciting material admissions in cross-examination, does the onus shift back

upon the complainant to establish that there was a legally enforceable debt for which the cheque was issued. In the present case, no such initial onus was discharged by the petitioner. Neither during cross-examination nor by leading defence evidence did the petitioner demonstrate that there was no liability. In the absence of any such foundational material having been brought on record, the argument sought to be raised on behalf of the petitioner cannot be examined for the first time, at the stage of revisional jurisdiction.

14. Furthermore, it has also emerged from the proceedings before the trial Court that a default notice had, in fact, been issued to the petitioner and the relevant documents evidencing such communication were duly served upon him. This clearly establishes that the petitioner was aware of the defaulted amount. The communication regarding default thus stood proved on record. Additionally, when the statutory legal notice demanding payment was served upon the petitioner, he did not, at any point in time, send a reply disputing either the existence of liability or the quantum of the amount mentioned therein.

15. It is, therefore, evident that the plea now sought to be raised, that the liability was not commensurate with the amount filled in the cheque, is an afterthought and constitutes a new case altogether. Such a plea, having neither been raised nor substantiated during the course of trial, would not be permitted to be urged at the revisional stage, in the absence of any supporting evidence or even a suggestion put to the complainant's witnesses. Consequently, the said contention does not merit acceptance.

16. Adverting to the argument that the loan amount was never disbursed to him, the same does not merit acceptance. A perusal of the record

reveals that no such plea was ever raised by the petitioner at any stage of the trial, nor was any suggestion to that effect put to the witnesses during the course of cross-examination. The said contention is, therefore, clearly an afterthought and is being argued for the first time at this stage without any tangible or supporting material. Such an argument, which finds no reflection either in the defence set up before the trial Court or in the evidence led, would not be permitted to be raised belatedly in revisional proceedings. The relevant extract of the order passed by the Court of Sessions Judge reads thus:-

“11. Learned counsel for the appellant submitted that the learned trial Court has wrongly passed the impugned judgment of conviction and order of sentence dated 07.03.2024, without appreciating the facts, whereas, the case of the complainant is not proved. He further submitted that complaint was not maintainable for want of document of incorporation of respondent finance company. He further submitted that power of attorney namely Kamal Parkash Sachdeva was not competent witness as he was substituted later on. He further submitted that prior to filing of complaint, no recovery notice was issued to the appellant. It is further submitted that there is no document regarding recovery proceedings with regard to vehicle. He further submitted that no amount was due against the appellant at the time of presentation of cheque and no cheque was issued by the complainant and same are forged and fabricated. He prayed that present appeal be accepted and accused/appellant be acquitted of the notice of accusation.

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18. The contention of the learned counsel for the appellant that no recovery notice was issued to the appellant prior to the filing of the complaint and no document of recovery proceedings regarding vehicle has been produced on record and

that of learned counsel for the respondent that present case is criminal complaint and as such, recovery notice and document of recovery proceedings were not necessary is considered. The contention of the learned counsel for the appellant is without any merit in it. It is settled proposition of law that civil as well criminal proceedings can go simultaneously. The recovery notice or recovery proceedings regarding the vehicle are relevant in a case of civil nature for recovery if filed by respondent's company, whereas in the criminal proceedings such as 138 NI Act, only following ingredients were required:

- 1. Issuance of cheque in order to discharge legal enforceable debt;*
- 2. On presentation of same, the cheque was dishonored for want of sufficient funds or for any other reason;*
- 3. Legal notice was given to the accused calling upon him to make the payment;*
- 4. Accused failed to make the payment despite issuance of legal notice.*

In the present case, all the four aforementioned ingredients are fulfilled. As such, there was no necessity to issue recovery notice or start recovery proceedings prior to the filing of the complaint. As such, this point is decided against the appellant and in favour of the respondent.

Point no.4

19. The contention of learned counsel for appellant that cheques are without any consideration and that of learned counsel for the respondent that cheques have been issued to discharge legally enforceable debt is considered. The contention of the learned counsel for the appellant does not find merit in it. In view of evidence of CW-1 Kamal Parkash Sachdeva, it stands proved that appellant availed loan of Rs.3,80,000/- and in order to discharge the legal enforceable debt, he issued cheque

No.667443 dated 14.12.2020 of Rs.3,80,000/- and cheque No.667444 dated 21.12.2020 of Rs. 1,76,111/-, It also stands proved that on presentation of cheque, the same were dishonored vide memo Ex.C2 and Ex.C4. It also stands proved that appellant failed to repay the amount despite issuance of legal notice Ex.C5 issued vide receipt Ex.C6.

20. Except for the denial by the appellant during his statement under Section 313 Cr.P.C. that no amount was due, there is nothing on record to disprove the oral and documentary evidence lead by the respondent's company. There is no reply to the legal notice Ex.C5 nor it has been alleged that no notice was received by him. Failure on the part of the appellant-accused to give reply to the notice leads to the inference that there is merit in the case of the respondent. I further support my observations on the basis of law laid down by Sanjabij Tari v. Kishore S. Borcar, (SC): Law Finder Doc Id #2783882 2025(4) RCR(Criminal) 420 Criminal Appeal No. 1755 of 2010. D/d.25.09.2025, wherein it has been held in para No.29 and 30 as under:

*"29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in the Appellant-Complainant's version. This Court in **Tedhi Singh vs. Narayan Dass Mahant, (2022) 6 SCC 735** has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:-*

"10.... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent,

that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

(emphasis supplied)

30. This Court in MMTC Ltd. and Another vs. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1 SCC 234 has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability."

21. Further, the oral evidence of CW-1 finds corroboration in view of documentary evidence viz. cheque No.667443 Ex.C1, return memos Ex.C2, cheque No.667444 Ex.C3, return memo Ex.C4, legal notice Ex.C5, postal receipt Ex.C6. Both the cheques were dishonored on account of Insufficient Funds, so it

can be presumed that cheques were issued by the appellant and same bears his signature. Once, the signature on the cheque are proved, presumption lies that cheques were issued in order to discharge the legal enforceable debt.

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25. *The contention of the learned counsel for the appellant that cheques are forged and fabricated is also without any merit in it. The appellant has not appeared into witness box to prove the fact that both the cheques do not bear his signatures. No reply to the notice was given. No expert has been examined by the appellant to prove the fact that signatures on the cheques are forged and fabricated. I further support these observations on the basis of law laid down by Hon'ble Punjab & Haryana High Court in case titled as **Balvinder Singh Vs M/s Baisakhi Ram Saina Ram, 2008 (2) R.C.R. (Civil) 467**, wherein it was observed in Para 12, as under:*

"The defendant did take up the plea of forgery of the pronote and the receipt but failed to examine any Handwriting Expert. On account of non-examination of such an expert, an adverse inference can be safely drawn against the defendant that in case such an expert had been examined, he would have deposed against him."

Thus, this point is decided against the appellant and in favour of the respondent.

17. A perusal of the judgment rendered by the learned Sessions Court makes it abundantly clear that all the issues now sought to be reagitated by the petitioner were duly considered and adjudicated upon and findings have already been returned thereon. This Court, while exercising its revisional jurisdiction, does not sit as a court of appeal so as to re-appreciate the evidence or substitute its own opinion for that of the trial Court or the appellate Court.

Interference in revision is warranted only where there is a patent defect, manifest illegality, material irregularity or perversity apparent on the face of the record. In the absence of any such infirmity in the judgments under challenge, this Court would ordinarily refrain from interfering with concurrent findings of fact. It is also pertinent to note that the learned Additional Sessions Judge, Sri Muktsar Sahib, has already extended due concession to the petitioner by partly allowing the appeal and reducing the substantive sentence from rigorous imprisonment for a period of two years to rigorous imprisonment for a period of one year. In view of the aforesaid circumstances, no further interference is called for in the exercise of revisional jurisdiction.

18. Counsel for the petitioner has failed to refer to any illegality, perversity or impropriety in the conclusions drawn by both the Courts and the said conclusions cannot be faulted with.

19. Consequently, I find that the petition lacks merit and the same is accordingly dismissed.

20. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

JUDGE

JANUARY 21, 2026

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No