THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.320 of 2024

Date of Decision: 26.02.2026

Jagjiwan Singh .....Petitioner

Versus

M/s Saini Traders & another … Respondents

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

For the Petitioner	**:**	Mr. Kulwant Chauhan, Advocate.
For the Respondents	:	Mr. Munish Dhatwalia, Advocate, for respondent No.1. Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for respondent No.2/State.

Sandeep Sharma, Judge(oral):

Instant Criminal Revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, lays challenge to judgment dated 02.05.2024 passed by learned Sessions Judge, Mandi, District Mandi, Himachal Pradesh in Criminal Appeal No.108 of 2023, affirming the judgment of conviction and order of sentence dated 29.11.2023/02.12.2023 passed by learned Judicial Magistrate, First Class, Court No.2, Mandi, District Mandi, Himachal

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

Pradesh, in Criminal case No. 07 of 2016, whereby learned trial Court, while holding petitioner-accused **(for short 'accused')** guilty of 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 one year and pay compensation to the tune of Rs.3,25,000/- to the respondent-complainant.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other documents adduced on record by the respective parties, are that respondent No.1-complainant ***(for short 'complainant')*** filed a complaint under Section 138 of the Act in the competent Court of law, alleging therein that accused, with a view to discharge legally enforceable debt, issued cheque No.312557, dated 01.05.2013, amounting to Rs. 2,00,000/- from his account No.0580000105028825 drawn from Punjab National Bank, Chail-Chowk Branch, District Mandi, Himachal Pradesh in his favour. However, aforesaid cheque on its presentation in the bank concerned was returned unpaid vide memo dated 26.07.2013 with the remarks 'funds insufficient'. The bank concerned informed the factum with regard to dishonor of cheque to the complainant vide memo dated 07.08.2013 and thereafter, the complainant issued legal notice dated 20.08.2013 vide registered post against acknowledgement for making

the payment within 15 days from the receipt of legal notice. Though, accused received the legal notice on 22.08.2013, but since he failed to make the payment good within stipulated time, 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 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 the aforesaid judgment of conviction and order of sentence recorded by learned trial Court, present petitioner-accused preferred an appeal in the Court of learned Sessions Judge, Mandi, District Mandi, Himachal Pradesh, but same also came to be dismissed vide judgment dated 02.05.2024. 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 30.05.2024, 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. 40,000/- 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 was not complied with. Court file reveals that as many as nine opportunities were granted to the petitioner to comply with the aforesaid order, but in vain. Learned counsel representing the petitioner fairly states that since petitioner is not coming forward to comply with the order passed by this Court, this Court may proceed to decide the case at hand on its own merit.

5. Precisely, the case of the petitioner as has been highlighted in the petition and further canvassed by Mr. Kulwant Chauhan, learned counsel representing the petitioner, is that learned Court below has not properly appreciated the pleadings as well as evidence adduced on record and has wrongly convicted and sentenced the accused under Section 138 of the Act. While making this Court peruse evidence led on record by the accused, learned counsel representing the petitioner-accused vehemently argued that complainant was unable to prove, beyond reasonable doubt, that cheque in question was ever issued by petitioner-accused towards discharge of his lawful liability. While referring to cross-examination of the accused, learned counsel for the petitioner submitted that he himself admitted that he did not fill up the cheque in question and at no point of time description, if any, with regard to transaction qua

which the cheque was issued, has been given in the complaint. While referring to the statement of the accused recorded under Section 313 Cr.P.C, learned counsel for the petitioner argued that there is no specific admission with regard to the issuance of cheque as well as signatures thereupon and as such, Court below has wrongly drawn presumption under Section 139 of the Act.

6. To the contrary, learned counsel representing the respondent-Complainant supported the impugned judgment passed by Courts below. He submitted that petitioner has not only admitted factum with regard to issuance of cheque, but has also admitted signature upon the same. While referring to para-2 of the grounds of appeal preferred by the accused before the learned Sessions Judge, Mandi, learned counsel representing the respondent-complainant argued that complainant himself, in his cross-examination, admitted that the cheque in question has been issued by the accused as a security. He submitted that since a specific suggestion was put on behalf of the accused to the complainant that cheque in question was issued as a security, he has virtually admitted factum of issuance of the cheque. He further submitted that no evidence, worth credence, ever came to be led on record with regard to cheque, if any, issued as a security.

7. Having heard learned counsel representing the parties and perused material available on record, this Court finds that complainant with a view to prove contents of his complaint, examined himself as CW-1 and tendered his evidence by way of affidavit Ex. CW1/A, specifically reiterating therein the averments contained in the complaint. He also successfully proved on record certificate Ex. CW1/B issued by Excise and Taxation Officer, certifying that complainant is a registered dealer under HP VAT Act, 2005, as per certificate Ex. CW1/C issued by Punjab National Bank, certifying that M/s. Saini Traders is availing a cash credit limit from the said bank, certificate Ex. CW1/D with regard to registration of complainant firm under Department of Excise and Taxation, certificate Ex. CW1/E is relating to Sales Tax, cheque No.312557 dated 01.05.2013, amounting Rs. 2, 00,000/- drawn from Punjab National Bank, Chail-Chowk, Mandi, Himachal Pradesh, Ex. CW1/F, receipt Ex. CW1/G of depositing of the cheque in the bank, memo dated 07.08.2013 Ex. CW1/H and memo dated Ex. CW1/J, whereby factum with regard to dishonour of the cheque was conveyed to the complainant. He also successfully proved on record factum with regard to his having served legal notice dated 20.08.2013 Ex. CW1/K and its service upon the accused vide postal receipt dated 20.08.2013, Ex. CW1/L and acknowledgement Ex. CW1/M.

8. If the cross-examination conducted upon this witness is perused minutely, it nowhere suggests that accused was able to extract anything contrary to what this witness stated in his examination-in-chief. Though, complainant admitted that he had not annexed the bill book and copy of ledger alongwith complaint, but he categorically stated factum with regard to issuance of cheque by the accused towards discharge of his lawful liability. Though, he admitted that the date on cheque Ex. CW1/F was written with different ink, but he nowhere denied factum with regard to his having received cheque towards discharge of legal liability. He admitted that there is overwriting of figure “zero” written in date column of cheque Ex.CW1/F, but at no point of time, suggestion ever came to be put to the complainant with regard to loan, if any, not advanced by him to the accused. No suggestion, worth the name, ever came to be put with regard to issuance of cheque, rather accused by putting a suggestion with regard to interpolation and difference in writing and overwriting “zero” on the cheque concerned, virtually admitted factum with regard to issuance of cheque.

9. Accused, in his statement recorded under Section 313 Cr.P.C, though stated that he had no liability towards the complainant and he does not know that Dinesh is the proprietor of M/s Saini

Traders, but nowhere denied factum with regard to his having issued the cheque. He simply stated that cheque does not bear his signature, but ultimately he failed to prove such fact by leading cogent and convincing evidence despite his having been afforded adequate opportunities to lead the evidence in defence.

10. Factum with regard to issuance of cheque as well as its presentation in the bank concerned stands duly proved on record. Similarly, return memo dated 07.08.2013, Ex. CW1/H, clearly reveals that cheque in question was dishonoured on account of insufficient fund and same was returned to the complainant. Legal notice (Ex.CW1/K) dated 20.08.2013 sent to the accused, reveals that at first instance, accused was called upon to make the payment good, but once he failed to do the same within thirty days of the receipt of information by complainant, complainant had no option, but to institute proceedings under Section 138 of the Act. To initiate proceedings under Section 138 of the Act, the first condition is with regard to presentation of the cheque within the period of its validity, and second condition is with regard to issuance of legal notice, thereby calling upon the person concerned to make the payment good within stipulated time. Since payment qua cheque Ex. CW1/F was not made, the third condition that drawer of each cheque failed to make the payment of the said amount to the payee within stipulated time also

came to be complied with. Next issue is with regard to 'debt or other liability' i.e. legally enforceable debt or other liability. The rebuttable presumption is in favour of holder of the cheque that cheque is issued to him for debt or liability.

11. In the instant case, at no point of time, factum with regard to issuance of cheque as well as signatures thereupon came to be refuted by the petitioner. Accused in his statement recorded under Section 313 Cr.P.C, though denied the case of the complainant in toto and claimed that cheque was issued as a security, but to probablize aforesaid defence, no evidence, worth credence, ever came to be led on record despite sufficient opportunities. Once factum with regard to issuance of cheque as well as signatures thereupon never came to be disputed, no illegality can be said to have been committed by 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. However, in the instant case, despite sufficient opportunities, petitioner-accused failed to lead any evidence

and as such, he otherwise failed to probablize the defence, sought to be raised by him, while deposing under Section 313 Cr.P.C.

12. 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.

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.

13. 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 titl**ed 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.**

14. 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.

15. 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.

16. 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."***

17. 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.

18. 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.

19. 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.

20. 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 forthwith to serve the sentence as awarded by the learned trial Court, if not already served. Bail bonds of the petitioner are cancelled and discharged accordingly. Interim direction, if any, stands vacated. Pending applications, if any, also stand disposed of.

(Sandeep Sharma),
Judge

February 26,2026
(shankar)