IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No.346 of 2026
Date of Decision: 17.08.2026

Om Prakash

.....Petitioner

Versus

Branch Manager, Kangra Central Co-op. Bank Anni.

.....Respondent

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

For the Petitioner: Mr. Aashish Kumar, Advocate.

For the Respondent: Mr. Sohan Singh Rathore, Advocate.

Sandeep Sharma, J. *(Oral)*

By way of instant Criminal Revision Petition filed under Sections 438/442 of Bharatiya Nagarik Suraksha Sanhita, 2023, challenge has been laid to judgment dated 12.5.2026 passed by learned Additional Sessions Judge, Rampur Bushehar, District Shimla, H.P., in Criminal Appeal No. 80/2025, affirming the judgment of conviction and order of sentence dated 14.5.2025 passed by learned Judicial Magistrate First Class, Anni, District Kullu, Himachal Pradesh, in Complaint No. 99/2020, titled as "KCC Bank Anni v. Om Prakash", whereby learned Court below, while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of Negotiable Instruments Act, (In short "Act") convicted and sentenced him to undergo simple imprisonment for a period of one year and pay compensation to the tune of Rs. 5,48,967/- to

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the respondent-complainant-bank, (hereinafter referred to as the 'complainant-bank')

2. Precisely the facts of the case, as emerge from the pleadings as well as material adduced on record by respective parties, are that complainant instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that in the year 2018, accused approached the complainant bank for grant of commercial vehicle loan for the purchase of Bolero Camper, which was considered and sanctioned by the bank and vehicle loan of Rs. 7,00,000/- was advanced to him as a loan after doing all formal formalities vide loan agreement dated 04.01.2018. Since accused made default in making the installments, his loan account became irregular, as a result thereof, accused issued cheque bearing No. 194925, dated 10.12.2019, amounting to Rs.6,58,967/- drawn on Punjab National Bank, Branch Anni, in favour of the complainant towards discharge of his lawful liability. However, fact remains that aforesaid cheque on its presentation to bank concerned was dishonoured with remarks "Funds Insufficient" vide memo dated 10.01.2020. Immediately after receipt of aforesaid return memo, complainant served the accused with legal notice dated 14.01.2020, thereby demanding the cheque amount within the stipulated time, but since needful was not done within stipulated time, complainant had no option but to institute proceedings under Section

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138 of the Act in the competent Court of law, which, on the basis of pleadings and evidence adduced on record, vide judgment of conviction and order of sentence14.5.2025 held the accused guilty of having committed offence punishable under Section 138 of the Act and accordingly convicted and sentenced him as per description given hereinabove.

3. Being aggrieved and dissatisfied with aforesaid judgment of conviction and order of sentence recorded by the learned Court below, petitioner preferred an appeal in the Court of learned Additional Sessions Judge, Rampur Bushahr, District Shimla, H.P., which also came to be dismissed vide judgment dated 12.05.2026. In the aforesaid background, petitioner-accused approached this Court in the instant proceedings, praying therein for acquittal after setting aside judgment of conviction and order of sentence recorded by the learned Court below.

4. Vide order dated 19.06.2026, this Court suspended the substantive sentence imposed by the learned Court below, subject to petitioner's furnishing bail bonds and depositing 50% of the compensation amount, however, fact remains that aforesaid order never came to be complied with, despite sufficient opportunity. Hence, this Court has no option but to decide the case on its own merits.

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5. Having carefully perused grounds taken in the appeal vis-à-vis reasoning assigned by the learned Sessions Judge, thereby upholding the judgment of conviction and order of sentence passed by the learned trial Court, 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.

6. Interestingly, in the case at hand, factum with regard to issuance of cheque and signature thereupon never came to be disputed. Though in his statement recorded under Section 313 Cr.P.C., petitioner-accused denied the case of complainant in *toto* but during cross-examination of the complainant, attempted to set up a defence that cheque in question was issued as a security, however fact remains that aforesaid defence never came to be probabilized by leading cogent and convincing evidence. Though opportunity of leading evidence was granted to petitioner, but he failed to avail the same. Since factum with regard to issuance of cheque and signature thereupon never came to be disputed, no illegality otherwise can be said to have been committed by learned Courts below while invoking Sections 118 and 139 of the Act, which speak about presumption in favour of holder of cheque that same was issued in

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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 sufficient opportunity, failed to raise probable defence.

7. 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

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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

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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."

8. Hon'ble Apex Court has reiterated aforesaid law in **Sanjabij Tari v. Kishore S. Borcar & Anr.**, Criminal Appeal No.1755 of 2010, **Triyambak S. Hegde v. Sripad**., (2022) 1 SCC 742, **Basalingappa Vs. Mudibasappa** (2019) 5 SCC 418, **APS Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers & Ors**., (2020) 12 SCC 724, **Rohitbhai J Patel v. The State Of Gujarat & Anr.**, (2019) 18 SCC 106 and **Rajesh Jain Vs. Ajay Singh**, SLP (Crl.) No.12802 of 2022.

9. Complainant with a view to prove its case examined Branch Manager, namely Mr. Ramesh Chand Verma as CW-1, who tendered his evidence by way of affidavit Ext.C-1/CW-1 reiterating therein contents of

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complaint. Besides above, he also tendered in evidence cheque Ext.C-2/CW-1, cheque memo Ext.C-3/CW-1, legal notice Ext.C-4/CW-1, postal receipt Ext.C-5/CW-1 and registered AD Ext.C-6/CW-1. Cross-examination conducted upon afore witness nowhere suggests that accused was able to extract something contrary to what this witness stated in examination-in-chief. In his cross-examination, he while deposing that he has not annexed loan document with the present complaint, denied that accused used to pay regular EMIs, rather stated that accused only made payment of Rs.1,76,000/- till date. He denied that at the time of sanction of loan, cheque in question was given as a security. By putting aforesaid suggestion with regard to issuance of cheque as security coupled with the fact that factum with regard to his having availed loan never came to be disputed, petitioner-accused virtually admitted the case of complainant, as such, no illegality can be said to have been committed by the learned Courts below while holding him guilty under Section 138 of the Negotiable Instruments Act.

10. If the evidence led on record by the respective parties is read in conjunction, this Court sees no reason to differ with the findings returned by the Courts below that complainant successfully proved on record that accused had issued Cheque towards discharge of his lawful liability. Defence otherwise attempted to set up could not be proved by the accused

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by leading cogent and convincing evidence. Otherwise also, by now it is well-settled that a person is liable for the commission of offence punishable under Section 138 of the Act even if the Cheque is filled by some other person. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197**, wherein it was observed as under:

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
> 38. answered in the negative.
>
> 40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.
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> 41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant-complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

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> 42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act."

11. Since factum of issuance of cheque by the accused as well as his signature thereupon was never disputed, presumption as available under Section 118 and 139 of the Act rightly came to be invoked in the case of the petitioner that cheque in question was issued in discharge of lawful liability. Since no evidence worth credence ever came to be led on record to rebut the presumption, no illegality can be said to have been committed by the courts below while holding the petitioner/accused guilty for the commission of offence punishable under Section 138 of the Act.

12. 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. Since cheque issued by accused towards discharge of his lawful liability was returned on account of insufficient funds in the bank account of accused and he despite having received legal notice failed to make the payment good within the stipulated

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time, complainant had no option but to institute proceedings under Section 138 of the Act, which subsequently rightly came to be decided by both the Courts below on the basis of pleadings as well as evidence adduced on record by the respective parties.

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 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.

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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. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC/438 of BNSS, 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

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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.

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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 six weeks 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.

August 17, 2026 **(Sandeep Sharma),**
(manjit) **Judge**

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