IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal (A-SB) No. 42 of 2026
Reserved on: 17.9.2026
Date of Decision: 29.9.2026.

Ms Meenakshi .... Appellant

Versus

Ms Nitu Gill .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***Yes.***

For the Appellant : Mr Tek Chand, Advocate.
For the Respondent : Nemo.

Rakesh Kainthla, Judge

Cr.MP(M) No. 1018 of 2026

The present application has been filed for seeking leave to appeal against the judgment dated 27.3.2026, passed by the learned Additional Sessions Judge-II, Shimla, District Shimla (learned Appellate Court), vide which the judgment of conviction dated 10.7.2024 and order of sentence dated 12.7.2024, passed by the learned Chief Judicial Magistrate, Shimla, District Shimla (learned Trial Court), were set aside. *(The parties shall hereinafter be*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the complainant and the accused were known to each other. The accused approached the complainant seeking financial help for the construction of her house. The complainant advanced ₹3,90,000/- to the accused. The accused issued a cheque for ₹3,90,000/- in favour of the complainant drawn on Dena Bank, Sanjauli. The complainant presented the cheque before the bank, but it was dishonoured with an endorsement of "insufficient funds". The complainant issued a notice to the accused asking her to repay the amount. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, a complaint was filed before the learned Trial Court against the accused for taking action as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of

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accusation was put to her for the commission of an offence punishable under Section 138 of the NI Act, to which she pleaded not guilty and claimed to be tried.

4. The complainant examined herself (CW-1), Kumar Gaurav (CW-2), and Himanshu Panwar (CW-3) to prove the complaint.

5. The accused, in her statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), stated that she knew the complainant. She had borrowed ₹40,000/- from her and returned ₹50,000/-. The complainant had taken two cheques, which were misused by her. She was not liable to pay any amount. She did not produce any evidence in her defence.

6. The learned Trial Court held that the execution of the cheque and the signatures on it were not disputed. Therefore, a presumption would arise that the cheque was issued for consideration to discharge the debt/liability. The plea taken by the accused that she had borrowed only ₹40,000/- and she had returned ₹50,000/- to the complainant was not probable. No such suggestion was given to the complainant, and she was not cross-examined regarding this aspect of the case. The cheque was

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dishonoured with an endorsement "insufficient funds". The notice was duly served upon the accused, and she had not paid the money after the receipt of the notice. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act) and sentenced her to undergo simple imprisonment for two months and pay a fine of ₹4,10,000/-. The amount of fine, if realised, was ordered to be paid as compensation to the complainant.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Shimla, District Shimla (the learned Appellate Court). The learned Appellate Court held that there was a difference in the words and the figures of the cheque amount. The words mentioned "Rupees Three Lakh Ninety only", whereas the figures mentioned "₹3,90,000/-". Section 18 of the NI Act provides that when there is a difference in the words and the figures of a negotiable instrument, the amount stated in the words shall be the amount. The complainant had issued a notice to the accused asking her to pay ₹3,90,000/-, which was not the cheque amount. The notice was not valid, and no proceedings could have been conducted against the accused. The

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learned Trial Court failed to appreciate this aspect. Therefore, the appeal was allowed, and the judgment and order passed by the learned Trial Court were set aside.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the complainant has filed an appeal and an application seeking leave to appeal. It has been asserted that the learned Appellate Court erred in holding that no valid legal notice was issued to the accused. The discrepancy between the figures and the words was not significant. It was wrongly held that the amount written in words was to be preferred over the amount written in the figures. The accused had not taken a plea that she had made arrangements for the payment of ₹3,00,090/-, and any discrepancy in the amount was not material. Hence, it was prayed that the present application be allowed and the leave to appeal be granted.

9. I have heard Mr Tek Chand Sharma, learned counsel for the appellant, who submitted that the learned Appellate Court erred in holding that the notice was defective. The mere discrepancy in the words and the figures of the cheque is not material. The accused had not taken any plea that she had arranged the payment of ₹3,00,090/-, and the discrepancy was not material. The learned

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Appellate Court had taken a view that could not have been taken by any reasonable person. Hence, he prayed that the present application be allowed and the leave to appeal be granted. He relied upon ***Nitesh Yadav vs. State, 2025 DHC 1580*** and ***Shyam Sunder Soni v. State of Rajasthan, 2022 Cri LJ 1769***, in support of his submissions.

10. I have given a considerable thought to the submissions made at the Bar and have gone through the records carefully.

11. A perusal of the cheque (Ex.CW-1/A) shows that the amount has been mentioned differently in words and figures. The amount in words has been mentioned as "Rupees Three Lakh Ninety only", whereas the amount in figures has been mentioned as "₹3,90,000/-". Thus, there is a discrepancy between the words and figures. Section 18 of the Negotiable Instruments Act provides that if the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Therefore, as per the plain language of Section 18 of the NI Act, the amount in words has to be considered in preference to the amount in figures in case of a discrepancy between the two. Therefore, in the present

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case, the cheque amount has to be taken as ₹3,00,090/- [Rupees Three Lakh Ninety only].

12. The complainant issued a legal notice (Ex.CW-1/D) to the accused in which the cheque amount was mentioned as ₹3,90,000/-. A demand was made on the accused to pay the amount of the cheque within 15 days, failing which action would be taken against her. Therefore, the complainant had made a demand of ₹3,90,000/-, which was not the cheque amount.

13. It was laid down by the Hon'ble Supreme Court in ***Suman Sethi v. Ajay K. Churiwal*, *(2000) 2 SCC 380: 2000 SCC OnLine SC 313*** that the complainant has to issue a notice to the accused specifying the amount due and payable. If there is a discrepancy in the amount mentioned in the notice and the amount mentioned in the cheque, the notice would be invalid. It was observed at page 383:

> **6.** We have to ascertain the meaning of the words "said amount of money" occurring in clauses (*b*) and (*c*) of the proviso to Section 138. Reading the section as a whole, we have no hesitation in holding that the above expression refers to the words "payment of any amount of money" occurring in the main Section 138, i.e. the cheque amount. So in a notice, under clause (*b*) to the proviso, demand has to be made for the cheque amount. Dr Dhavan, learned Senior Counsel, has urged that Section 138, being a penal provision, has to be construed strictly. We may refer to the decision of this Court in ***M. Narayanan Nambiar v. State of Kerala [AIR***

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1963 SC 1116: 1963 Supp (2) SCR 724]. This Court considered the rule of construction of a penal provision and quoted with approval the following passage of the decision of the Judicial Committee in ***Dyke v. Elliott [(1872) 4 PC 184: 26 LT 45]***. The passage runs as follows:

> "No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

7. There is no ambiguity or doubt in the language of Section 138. Reading the entire section as a whole and applying common sense, from the words, as stated above, it is clear that the legislature intended that in a notice under clause (*b*) to the proviso, the demand has to be made for the cheque amount. According to Dr Dhavan, the notice of demand should not contain anything more or less than what is due under the cheque.

8. It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount", i.e. the cheque amount. If no such demand is made, the notice no doubt would fall short of its legal requirement....."

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14. Therefore, the learned Appellate Court had rightly held that the notice was not issued for the amount mentioned in the cheque, and it was not valid.

15. The Delhi High Court held in ***Nitesh Yadav*** (supra) that divergence of two figures—one appearing on the cheque and the other in the demand notice—is not fatal. However, it is difficult to agree with the judgment of the Delhi High Court in view of the binding precedent of the Hon'ble Supreme Court that notice has to be issued for the amount of the cheque and not any other amount. The Court is dealing with a criminal statute, which is to be construed strictly, and it is impermissible to deviate from the same on the ground of any equity or sympathy.

16. In ***Shyam Sunder Soni*** (supra), it was held that the acceptance of the submission would encourage unscrupulous drawers of cheques to indulge in the practice of creating discrepancies. It is difficult to see how an unscrupulous drawer can create any discrepancy when the law is clear that the amount in figures is to be ignored and the amount in words has to be accepted. Therefore, the complainant is required to issue a notice of the amount mentioned in words, and there can be no question of taking

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advantage by any person. Hence, the judgments of ***Nitesh Yadav*** (supra) and ***Shyam Sunder Soni*** (supra), with respect, cannot be accepted.

17. Therefore, the learned Appellate Court had taken a reasonable view while acquitting the accused, and no case is made out for the grant of leave.

18. No other point was urged.

19. In view of the above, the present application fails and is dismissed.

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20. In view of the dismissal of the application for leave to appeal, the present appeal stands disposed of.

(Rakesh Kainthla)
Judge

29th September, 2026
(Chander)

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