2026:HHC:45698

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 289 of 2015
Reserved on: 07.10.2026
Date of Decision: 15.10.2026.

Thakur Dutt Sharma (since deceased) through LRs

...Appellants

Versus

Luder Mani ...Respondent

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

For the Appellants : Ms Anubhuti Sharma, Advocate.

For the respondent : Mr L.S. Mehta, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 03.06.2015 passed by learned Judicial Magistrate First Class, Karsog, District Mandi (learned Trial Court) vide which the respondent (accused before learned Trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short "NI

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

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Act"). *(The parties shall hereinafter be 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 appeal 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 NI Act. It was asserted that the accused approached the complainant in the first week of June, 2013 and demanded ₹45,000/-. He agreed to return the amount on or before 11.08.2013. The complainant paid ₹45,000/- to the accused, and the accused issued a cheque to the complainant to repay the amount. The complainant presented the cheque at H.P. State Cooperative Bank, but it was dishonoured with the endorsement "insufficient funds". The complainant issued a notice to the accused on 26.10.2013 asking him to pay the money. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, the complaint was filed before the learned Trial Court for taking action as per the law.

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3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Moti Ram (CW1) and himself (CW2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he had issued the cheque which was dishonoured with an endorsement "insufficient funds", the notice was served upon him, and he had not made payment of any money to the complainant. He claimed that the cheque was issued in the year 2003 and that he had sent a reply to the notice. He did not produce any evidence in his defence.

6. Learned Trial Court held that the cheque was issued on 11.03.2006, but the date was altered to 11.08.2013. The cheque was in the possession of the complainant, and he was required to explain the overwriting on the cheque. The complainant had not produced any evidence to show the

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overwriting, and the overwriting on the date would constitute a material alteration. Hence, the complaint was dismissed.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant filed the present appeal asserting that the learned Trial Court erred in acquitting the accused. The learned Trial Court had not discussed the statements of the witnesses and had acquitted the accused on the ground that there was material alteration. The finding recorded by the learned Trial Court is incorrect because the alteration is duly initialled by the signatures of the accused. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Ms Anubhuti Sharma, learned counsel for the appellant/complainant and Mr L.S. Mehta, learned counsel for the respondent/accused.

9. Ms Anubhuti Sharma, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused on the ground of material alteration. The alteration was duly initialled by the accused and could not be said to be made without the drawer's consent. The

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learned Trial Court failed to appreciate this aspect. Hence, she prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr L.S. Mehta, learned counsel for the respondent/accused, submitted that the notice issued by the complainant to the accused was defective because it did not mention the amount required to be paid by the accused. The accused could not have paid the money after receiving the notice, and this aspect was not considered by the learned Trial Court. Issuance of the notice is one of the essential ingredients of the commission of an offence punishable under Section 138 of the NI Act, and this ingredient was not satisfied. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373,*** that the Court can interfere with a judgment of

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acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

> **Scope of interference with an acquittal:**
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> **26.** At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.
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> **27.** In ***Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808: 1973 SCC (Cri) 1048***, this Court explained the golden thread running through criminal jurisprudence in the following words:
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> > *"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule*

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regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab *v.* Jagir Singh, *a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."*

28. The decision in ***Kali Ram*** (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not technical; it is a substantive safeguard flowing from the presumption of innocence.

29. In ***Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60***, this Court reiterated the limited scope of interference with acquittals. This Court observed:

"75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be

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interfered with unless it is totally perverse or wholly unsustainable."

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In ***Chandrappa v. State of Karnataka (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325***, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in ***Mrinal Das v. State of Tripura (2011) 9 SCC 479***, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

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13. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act, the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with the same rigour cannot be applied to the cases under the Negotiable Instruments Act because there is a presumption that the holder had received the cheque for consideration to discharge the debt/liability. The Appellate Court is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed: -

> "**12....** The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse, i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act,

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particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that the preponderance of probabilities is in favour of his defence, but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.

13. For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?"

14. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

5.3. At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745; 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755***.

> "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

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(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 15 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.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the

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payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or because it exceeds the amount arranged to be paid from that account.

v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

15. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. The learned Trial Court acquitted the accused on the ground that there was a material alteration. The cheque (Ext.CW1/B) contains an overwriting on the date. However, that overwriting was duly initialled by the accused. Hence, the

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learned Trial Court erred in holding that the alteration was made without the drawer's consent and the cheque was rendered void.

17. The complainant issued a notice (Ext.CW1/D) to the accused stating that the accused should pay his money within 15 days, otherwise the complainant would take action against the accused, and the accused would be responsible for the same. This notice does not mention the amount required to be paid by the accused to the complainant.

18. It was laid down by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul*, *(2025) 259 Comp Cas 658: 2025 SCC OnLine SC 2019*** that issuance of the notice is an essential ingredient of the commission of an offence punishable under Section 138 of the NI Act. If the notice does not mention the amount or mentions an amount different from the cheque amount, the necessary ingredient is not fulfilled, and the accused cannot be held liable. It was observed at page 673:

> **8.** From the aforestated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured

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cheque is one of the main ingredients of the offence under section 138 of the Negotiable Instruments Act. In the event of the main ingredient not being satisfied on account of a discrepancy in the amount of the cheque and the amount mentioned in the notice, all proceedings under section 138 of the Negotiable Instruments Act would fall flat as bad in law. The notice to be issued under proviso (b) to section 138 of the Act must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1. A failure in the above regard, namely when the cheque amount is not mentioned in the proviso (b) notice or the amount different from the actual cheque amount is mentioned in the notice, such notice would stand invalid in the eyes of law. The notice, in terms of proviso (b) being a provision in a penal statute and a condition for the offence, has to be precise while mentioning the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice, but the corresponding amount of the cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading the notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given a technical interpretation.

8.2. The condition of notice under proviso (b) is required to be complied with meticulously. Even a typographical error can be no defence. The error, even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in

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> the facts of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for the so-called mistake occurred and recurred in both the notices dated June 8, 2012 and September 14, 2012.
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> **9.** When the provision is penal, and the offence is technical, there is no escape from holding that the "said amount" in proviso (b) cannot be an amount other than the amount mentioned in the cheque in question for dishonour of which the notice is received, nor would mentioning an omnibus amount in the notice fulfil the requirement. It has to be held that in order to make a valid notice under the proviso (b) to section 138 of the Negotiable Instruments Act, it is mandatory that "said amount" to be mentioned therein is the very amount of the cheque, and none other.

19. In the present case, the notice does not mention the amount and the essential ingredient of the commission of an offence punishable under Section 138 of NI Act was not satisfied. Therefore, the acquittal of the accused cannot be interfered with.

20. No other point was urged.

21. In view of the above, the present appeal fails and is dismissed. Pending applications, if any, also stand disposed of.

22. In view of the provisions of Section 437 A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik

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Suraksha Sanhita, 2023) the respondent is directed to furnish bail bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

23. A copy of the judgment, along with the record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

15th October, 2026
(Nikita)

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