2026:HHC:37620

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 354 of 2025
Reserved on: 31.08.2026
Date of Decision: 07.09.2026

Basant ...Petitioner

Versus

Virender Singh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes***

For the Petitioner : Mr Abhay Gupta, Advocate, vice Mr Sarthak Mehta, Advocate.

For the respondent/State : Mr N.S. Chandel, Senior Advocate, with Ms Kanika Verma, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 25.03.2025 passed by learned Sessions Judge (Forest), Shimla (learned Appellate Court), vide which the judgment of conviction dated 19.10.2022 and order of sentence dated 28.10.2022 passed by learned Judicial Magistrate First Class, Chopal, District Shimla, H.P. (learned Trial Court) were upheld. *(The parties shall hereinafter*

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

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

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 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 accused purchased 300 cartons of apples from the complainant for ₹5,25,000/- @ ₹ 1,750/- per box. The accused paid ₹1,25,000/- in cash, and he issued a cheque of ₹4,00,000/- for the payment of the remaining amount. The complainant presented the cheque at his bank, but it was dishonoured with an endorsement "funds insufficient". The complainant served a notice upon the accused, which was not received undelivered by the complainant or his counsel and is deemed to have been served. The accused failed to pay the money to the complainant despite the deemed receipt of the notice. Hence, the complaint was filed before the learned Trial Court for taking action against the accused.

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

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW1) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the complainant's case in its entirety. He claimed that a false case was made against him. He did not produce any evidence in his defence.

6. The learned Trial Court held that the complainant's version that the accused had issued a cheque in favour of the complainant to pay the price of the apple carton purchased by him was probable. The cheque carries with it a presumption of consideration and that it was issued in discharge of the debt/liability. The accused failed to rebut the presumption. The cheque was dishonoured with endorsement “insufficient funds”. A notice was issued to the accused, which was not received back and is deemed to be served. The accused failed to repay the money despite the deemed receipt of the notice. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for 1 year, a compensation of

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

₹4,70,000/- and, in default of payment of compensation, to undergo simple imprisonment for 6 months.

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 Sessions Judge (Forest), Shimla, District Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that issuance of the cheque by the accused was duly proved. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. The accused failed to rebut this presumption. The cheque was dishonoured with endorsement "insufficient funds". The complainant issued a notice to the accused, which was not received back and is deemed to be served. Therefore, all the ingredients of commission of an offence punishable under Section 138 of the NI Act were duly satisfied. The learned Trial Court had imposed an adequate sentence and no interference was required with it; hence, the appeal was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below erred in

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

appreciating the evidence on record. The accused had already paid ₹70,000/- to the complainant during the trial. The cheque was issued for the construction of a road from Khidki to Dopti to Pabhas. The complainant failed to prove that he has an orchard with him. As per the complaint, his orchard was located at a height of 5,000 feet, and the apple crop at 5,000 feet would not have matured in July. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by learned Courts below be set aside.

9. I have heard Mr Abhay Gupta, learned vice counsel representing the petitioner and Mr N.S. Chandel, learned Senior Advocate, assisted by Ms Kanika Verma, learned counsel for the respondent/accused.

10. Mr Abhay Gupta, learned vice counsel representing the petitioner, submitted that the learned Courts below proceeded on the basis that the notice was deemed to be served. However, the notice is deemed to be served after 30 days from the date of its issuance, and the complaint was premature. The accused had paid ₹70,000/- to the complainant, and this amount was not deducted by the complainant. Learned Courts below failed to appreciate these aspects. Hence, he prayed that the present revision be

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr N.S. Chandel, learned Senior Advocate for the respondent/accused, submitted that the plea of the complaint being premature was not taken before the learned Courts below and it is impermissible to take this plea before the Court. The complainant is entitled to present a fresh complaint within 30 days. Therefore, he prayed that the present revision be dismissed.

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

13. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
>
> > "**438. Calling for records to exercise powers of revision.—**(1) The High Court or any Sessions Judge may

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation. —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on

High Court of HP

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... 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 a 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 reappreciate the evidence and come to its own conclusion on the same when the evidence has already

High Court of HP

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

"27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

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

15. It was specifically asserted in para 10 of the complaint that a notice was issued on 19.10.2016 at the correct address of the accused, which was not received undelivered. Similar averment was made in the proof affidavit (Ext.CW1/A) Learned Trial Court also held in paragraphs 16 and 17 of its judgment that the notice was issued on 19.10.2016 at the correct address and is deemed to be served. Therefore, it is apparent that the learned Trial Court had presumed the service of the notice.

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

16. It was laid down by the Hon'ble Supreme Court in ***Subodh S. Salaskar v. Jayprakash M. Shah, (2008) 13 SCC 689: (2009) 3 SCC (Cri) 834: 2008 SCC OnLine SC 1174*** that where a notice was sent by registered post acknowledge due, the presumption of service of notice can be raised within a reasonable time and 30 days must be held to be sufficient for service of notice. It was observed at page 699:

> "**23.** Thirty days ordinarily must be held to be sufficient for service of notice. In fact, when the service of notice is sought to be effected by speed post, ordinarily, the service takes place within a few days. Even under Order 5 Rule 9(5) of the Code of Civil Procedure, 1908, a summons is presumed to be served if it does not come back within thirty days. In a situation of this nature, there was no occasion for the Court to hold that service of notice could not be effected within a period of thirty days."

17. The Jharkhand High Court held in ***Manoj Kumar Nag v. State of Jharkhand, 2021 SCC OnLine Jhar 458*** that when there is no evidence regarding the service, the presumption regarding the delivery of the notice can be made after thirty days of the issuance of the notice. It was observed:

> "**22.** This Court finds that there is no material on record regarding the service of legal notice dated 03.03.2008 dispatched by registry on 04.03.2008 upon the petitioner, and it is not the case of the complainant that the legal notice was returned unserved or returned for any other reason. This Court is also of the considered view that a presumption regarding service of notice sent through registered cover can be drawn only upon expiry of 30 days from the date of

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

dispatch of notice, as has been held by the Hon'ble Supreme Court in the judgment reported in ***(2008) 13 SCC 689 (Subodh S. Salaskar v. Jayprakash M. Sah)***. In the said judgment, the notice was sent through speed post, and although the actual date of service of notice was not known, the Complainant proceeded on the basis that the same was served within a reasonable period. It was held that if the presumption of notice within the reasonable period is raised, the deemed service at best can be taken to be 30 days from the date of its issuance and the accused was required to make payment in terms of the said notice within 15 days thereafter and the complaint petition therefore could have been filed after expiry of 15 days given to the accused for payment of money after receipt of notice."

18. A similar view was taken in ***Anil Kumar Goel v. State of U.P., 2021 SCC OnLine All 410,*** wherein it was observed:

> "**18.** Coming to the facts of the present case, the notice having been sent on 19.09.2012, if the presumption of service of notice within a reasonable time is raised, shall be deemed to have been served, at best, within a period of 30 days from the date of issuance thereof, i.e. 19.09.2012. The applicant was required to make payment in terms of the said notice within 15 days thereafter, i.e. on or about 3.11.2012. The complaint, therefore, should have been filed by 03.12.12. Admittedly, the complaint was filed on 19.11.2012, and therefore, at this stage, it cannot be said that no proceedings under Section 138 of the Act could be drawn against the applicant."

19. This position was reiterated in ***Damodar Mallick vs. State of Jharkhand and Ors. (08.01.2024 - JHRHC): MANU/JH/0024/2024*** wherein it was observed:

> "9. It is crystal clear from plain reading of Section 138 of the N.I. Act that the drawer of a cheque, if it fails to make the payment of the amount of the cheque to the payee within 15 days of the receipt of the demand notice, then the

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

cognisance of the offence can be taken by a learned Judicial Magistrate for the offence punishable under Section 138 of the N.I. Act. The question arises what if, there is no document to suggest that the demand notice in writing given by the complainant-opposite party No. 2 has been served upon the drawer of the cheque, as has been held by the Hon'ble Supreme Court of India in the case of the ***Subodh S. Salaskar vs. Jayprakash M. Shah & Another reported in MANU/SC/3298/2008 : (2008) 13 SCC 689*** and which principle of law has been reiterated by this Court in the case of ***Md. Siraj vs. State of Jharkhand & Another passed in Cr.M.P. No. 1677 of 2022 dated 21st of November,*** 2023; that the law is well settled that in case there is no material to suggest that such demand notice was ever served upon drawer of the cheque or any material that such demand notice has returned unserved within the period of 30 days from the date of the issue of such notice, such demand notice is deemed to have been served on expiry of the period of 30 days from the date of issue of such notice and the cognizance of the offence punishable under Section 138 of the N.I. Act can be taken if the drawer of the cheque fails to pay the amount as per the cheque within 15 days of such deemed service of notice. So considering the claim of the complainant that the notice was sent on 15.05.2019 and the complaint was filed on 14.06.2019 without any material to suggest that during that period the petitioner had received notice of demand and 15 days have elapsed after receipt of such notice of demand on or before 14.06.2019, this Court has no hesitation in holding that the complaint is pre-mature, hence, the cognizance is bad in law."

20. It was submitted that the period of service has to be taken has 7 days and not 30 days. Reliance was placed upon the judgment of this Court in ***Rakesh Kumar versus Vishal Pathania in Cr. Revision No. 674 of 2023 decided on 18.07.2026***. This submission cannot be accepted. In ***Rakesh Kumar*** (supra), the registered letter containing the notice was received undelivered. Postman had made

High Court of HP

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

an endorsement on 29.11.2013, that addressee was not found at home. However, the date of return was not legible and this Court held that the accused must have received the notice through registered A.D post within 7 days. In the present case the copy of the registered letter has not been placed on record and this judgment does not apply to the facts of the present case. Even otherwise the Hon'ble Judge who had decided ***Rakesh Kumar*** (supra) had earlier held in ***Rajeshwar Sabarwal & Ors. verus M/s Royal Apple Merchants in Cr.MMO No. 10 of 2022 decided on 01.06.2016*** that the submission made on behalf of the learned Senior Counsel that in the absence of the proof of the delivery of the notice, the notice is presumed to have been served after the expiry of 30 days from the date of issuance of legal notice was correct but could not be decided in the absence of the record. Therefore, it cannot be said that the period of presumed service is to be taken as 7 days and not 30 days.

21. In the present case, the notice was sent on 19.10.2016 and is deemed to be served on 18.11.2016. The complaint was filed on 08.11.2016 before the expiry of 15 days available to the accused to pay the amount. Thus, the complaint was premature. It was laid down by the Hon'ble Supreme Court in ***Gajanand Burange v. Laxmi Chand Goyal, 2022 SCC OnLine SC 1711,*** that no action can be taken

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

on a premature complaint, and the same is liable to be dismissed. It was observed:

> **5.** The issue which is raised in this appeal is no longer res integra and is covered by a three-judge bench decision of this Court in ***Yogendra Pratap Singh*** **v.** ***Savitri Pandey (2014) 10 SCC 713***. Two issues were formulated for decision before the three-judge Bench, which were:
>
> > "1.1. (i) Can cognisance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,
> >
> > 1.2. (ii) If the answer to Question 1 is in the negative, can the complainant be permitted to present the complaint again, notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?"
>
> **6.** The first issue was resolved by paragraph 35 of the judgment, which is extracted below:
>
> > "35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines "complaint. According to this definition, a complaint means any allegation made orally or in writing to a Magistrate with a view to taking action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognisance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eyes of the law. It is not a question of prematurity of the complaint, where it is filed before the

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

> expiry of 15 days from the date on which notice has been served on him; it is no complaint at all under the law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognisance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eyes of the law, obviously, no cognisance of an offence can be taken on the basis of such a complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque."
>
> **7.** In the present case, while the notice was received by the appellant on 8 November 2005, the complaint was filed before the period of fifteen days was complete. The complaint could have been filed only after 23 November 2005, but was filed on 22 November 2005. In view of the legal bar which is created by Section 142 of the NI Act, as explained in the three-judge Bench decision of this Court, taking of cognisance by the Court was contrary to the law and the complaint was not maintainable before the expiry of the period of fifteen days from the date of its receipt by the appellant."

22. Therefore, the submission made on behalf of the accused has to be accepted as correct that the complaint was premature and no action could have been taken on it.

23. It was submitted that the plea regarding the complaint being premature was not taken before learned Courts below and it is impermissible to take this plea before this Court. This

::: Downloaded on - 08/09/2026 07:40:00 :::CIS

2026:HHC:37620

submission cannot be accepted. The complaint being premature or within limitation is a question of jurisdiction, and learned Courts below failed to address themselves to this important question. Since the question relates to jurisdiction, the same can be raised during the revision petition.

24. In view of the above, the present revision is allowed, and the judgment dated 19.10.2022 and order dated 28.10.2022 passed by learned Judicial Magistrate First Class, Chopal, District Shimla, H.P., as affirmed by learned Sessions Judge (Forests), Shimla vide judgment dated 25.03.2025, is ordered to be set aside, and the complaint is dismissed as premature.

25. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

7th September, 2026
(Nikita)

High Court of H.P.

::: Downloaded on - 08/09/2026 07:40:00 :::CIS