

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr.MMO No.640 of 2024****Date of Decision: 13.05.2026**

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Mehar Singh Thakur .....Petitioner

Versus

Ajay Kumar Sharma ... Respondent

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Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup>

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**For the Petitioner** : Mr. Hitesh Kumar, Advocate vice Mr. Amrick Singh, Advocate.

**For the Respondent:** Mr. Abhishek Sharma, Advocate.

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**Sandeep Sharma, Judge**(oral):

Instant petition filed under Section 482 of the Code of Criminal Procedure, lays challenge to order dated 18.01.2024, passed by learned Additional Sessions Judge-I, Solan, District Solan, Himachal Pradesh, in Criminal Revision Petition No. 48-S/10 of 2023/22, affirming order dated 06.03.2020, passed by learned Judicial Magistrate, First Class, Arki, District Solan, Himachal Pradesh, in Criminal case No.60 of 2020, titled as **Ajay Kumar Sharma versus Mehar Singh Thakur**, whereby process came to be issued against the petitioner-accused(**hereinafter referred to as the 'accused'**).

2. In nutshell, facts of the case, as emerge from the pleadings as well as other material adduced on record by the

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<sup>1</sup>Whether the reporters of the local papers may be allowed to see the judgment?



respective parties, are that the respondent(**hereinafter referred to as the 'complainant'**) instituted complaint under Section 138 of the Negotiable Instruments Act (**for short the 'Act'**) in the Court of learned Judicial Magistrate, First Class, Arki, District Solan, Himachal Pradesh against the accused, averring therein that accused, with a view to discharge his lawful liability, issued cheque bearing No.080463, dated 02.11.2019, amounting to Rs. 10,00,000/-, drawn on Punjab National Bank, Rohru, District Shimla, Himachal in favour of the complainant. However, fact remains that aforesaid cheque on its presentation to the bank concerned was dishonoured vide return memo dated 11.12.2019 with the remarks "funds sufficient". Immediately, after receipt of return memo, complainant served accused with legal notice dated 27.12.2019, thereby calling upon him to make the payment good within a period of fifteen days, but since neither reply to the legal notice was filed nor payment was made, complainant was compelled to institute proceedings under Section 138 of the Act in the competent court of law, as detailed hereinabove.

3. Factum with regard to issuance of legal notice came to the notice of the accused through acknowledgment/AD, which was received on 15.01.2020. Within the prescribed period from the aforesaid date, complainant instituted proceedings under Section 138 of the Act in the competent Court of law.



4. Learned trial Court, taking cognizance of the averments contained in the complaint as well as other material adduced on record, issued process against the accused vide order dated 06.03.2020.

5. Being aggrieved with the issuance of process vide order dated 06.03.2020, accused filed criminal revision petition in the Court of learned Additional Sessions Judge-1, Solan, District Solan, Himachal Pradesh, however same came to be dismissed vide order dated 18.01.2024. In the aforesaid background, accused approached this Court in the instant proceedings, praying therein to quash and set-aside aforesaid order dated 18.01.2024, passed by learned Additional Sessions Judge-1, Solan, District Solan, Himachal Pradesh.

6. Precisely, the case of the petitioner, as has been highlighted in the grounds of petition and further canvassed by learned counsel for the petitioner, is that both the Courts below wrongly took into consideration the date of service of notice as 15.01.2020, on which date registered AD was received back by the complainant. Learned counsel representing the petitioner submitted that once it is admitted case of the parties that registered acknowledgment was received on 15.01.2020, it can be easily inferred that registered notice issued by the complainant was served upon the accused much prior to afore date i.e. 15.01.2020. If it is so



there was no occasion, if any, for the trial below to issue process against the petitioner, for the reason that complaint, in that eventuality, can be said to have been filed beyond prescribed period of limitation.

7. Needless to say, as per settled law, complaint under Section 138 of the Act is required to be filed within a period of 45 days from the date of receipt of legal notice. In case registered AD is not received back, coupled with the fact that registered notice was sent at the correct address of the accused, there shall be presumption of service of legal notice. However, in case while accepting legal notice sent through registered post, accused or his representative mentions the date of receipt and same stands reflected on the acknowledgment, limitation would commence from the date of receipt of notice as mentioned in the acknowledgment by the accused or his representative. However, in case no date is mentioned with regard to receipt of registered letter by the accused, date reflected on acknowledgement would be deemed to be the date of receipt of legal notice.

8. Though, in the case at hand, it came to be vehemently argued at the behest of the petitioner that since registered AD was received on 15.01.2020, it can be easily inferred that legal notice sent through registered post must have been received much prior to the date reflected on the acknowledgment receipt as such, limitation to



file complaint under Section 138 of the Act could not have commenced from the date mentioned on the acknowledgment receipt, but this Court is not persuaded to agree with aforesaid submissions made on behalf of the petitioner.

9. As has been observed hereinabove, in case registered AD is not received back, accused to whom legal notice was sent through registered post shall be deemed to have been served, provided complainant is able to establish that legal notice sent through registered post was addressed correctly to the accused. However, in case acknowledgment receipt is received and no date is mentioned with regard to receipt of registered letter by the accused, date reflected upon acknowledgment receipt with regard to its receipt at the sender's address shall be deemed to be date of service of notice upon the accused. Even if the assumption regarding the service is to be made, the period has to be taken 30 days as per the judgment of the Hon'ble Supreme Court in **Subodh S. Salaskar vs. Jay Prakash M. Shah 2008(13)SCC 689**.

10. Since in the instant case, acknowledgement placed on record nowhere indicates the date of receipt of registered letter by accused and there is specific date i.e. 15.01.2020 reflected on the postal stamp affixed upon the acknowledgment receipt, no illegality can be said to have been committed by the Court below, while holding that limitation to file complaint under Section 138 of the Act would



commence from the date of receipt of acknowledgment receipt i.e. 15.01.2020.

11. Consequently, in view of the above, this Court finds no illegality or infirmity in the impugned order dated 18.01.2024 passed by learned Additional Sessions Judge-1, Solan, District Solan, Himachal Pradesh, which is based upon the proper appreciation of facts as well as law and as such, same is upheld.

12. Present petition fails and is accordingly, dismissed alongwith pending applications, if any. Interim order, if any, is vacated. Record of learned Court below be sent back forthwith.

13. The parties through their respective counsel are directed to appear before the learned Judicial Magistrate, First Class, Arki, District Solan, Himachal Pradesh, on 28.05.2026, enabling it to proceed with the matter.

**(Sandeep Sharma),  
Judge**

May 13, 2026  
(shankar)