IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 230 of 2014
Reserved on: 22.4.2026
Date of Decision: 27.5.2026.

Ashok Kumar ...Appellant

Versus

Dinesh Kumar ...Respondent

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

For the Appellant : Mr Rajesh Verma, Advocate.
For the respondent : Mr Karan Singh Kanwar, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 2.4.2014, passed by the learned Additional Sessions Judge, Sirmour, District at Nahan, H.P. (learned Appellate Court) vide which the judgment of conviction dated 28.3.2011 and order of sentence dated 29.3.2011, passed by learned Judicial Magistrate First Class, Court No.1, Paonta Sahib, District Sirmour, H.P. (learned Trial Court) were set aside. *(The parties shall hereinafter*

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

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 Negotiable Instruments Act (NI Act). It was asserted that the accused entered into two agreements to sell 02 biswas and 03 biswas of the land to the complainant for a consideration of ₹6,00,000/- and ₹9,00,000/-. The complainant paid ₹1,00,000/- and ₹3,00,000/- to the accused as an advance. The complainant subsequently found that the land agreed to be sold by the accused belonged to some other person. The complainant confronted the accused, and the accused issued a cheque of ₹3,80,000/- drawn on Punjab National Bank, Paonta Sahib, to return the amount. He promised to return ₹20,000/- with interest within two days. The complainant presented the cheque before the Bank, but it was returned with an endorsement 'insufficient funds'. The complainant sent a notice to the accused, but it was returned with the endorsement 'unclaimed'. The accused failed to pay the money despite the issuance of the

notice. Hence, a complaint was filed before the Court for taking action as per the law.

3. 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 himself (CW1), Deep Chander Pandey (CW2) and Subhash Chand (CW3).

5. The accused in his statement recorded under Section 313 of Cr.PC denied the complainant's case in its entirety. He stated that he had delivered two blank post-dated cheques to the complainant at the instance of the police. He admitted that the cheque was dishonoured with an endorsement 'insufficient funds'. He claimed that the witnesses had deposed falsely against him. He stated that he had taken a loan of ₹60,000/- from the complainant. He did not produce any evidence in his defence.

6. Learned Trial Court held that the issuance of the cheque was not disputed, and a presumption arose that the

cheque was drawn for consideration to discharge the liability. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was sent to the accused and was returned unclaimed, which is a deemed service. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. 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 one year and pay a compensation of ₹3,80,000/- 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, Sirmour, District at Nahan, H.P. (learned Appellate Court). The learned Appellate Court held that the complainant had failed to produce the agreement on record. He stated in his cross-examination that the agreements were not in existence, and a new agreement was executed between him and the accused. He has not produced any satisfactory proof of the payment of ₹4,00,000/- to the accused. Hence, the learned Appellate Court accepted the appeal,

set aside the judgment and order passed by the learned Trial Court and acquitted the accused.

8. Being aggrieved by the judgment passed by the learned Appellate Court, the complainant has filed the present appeal, asserting that the learned Appellate Court erred in appreciating the material on record. The accused had promised to sell the land belonging to M/s Tial Trading Company and others, which showed his fraudulent intention. The Appellate Court did not appreciate the statement of the complainant and his witnesses, and recorded the acquittal on the ground that the agreement was not placed on record. The cheque carried with it a presumption of consideration, and there was no requirement to prove the agreement. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Rajesh Verma, learned counsel for the appellant/complainant and Mr Karan Singh Kanwar, learned counsel for the respondent/accused.

10. Mr Rajesh Verma, learned counsel for the appellant/complainant, submitted that the learned Appellate

Court erred in acquitting the accused on the ground that the agreements were not produced before the Court. The cheque carried with it a presumption that it was issued for consideration to discharge the debt/liability. Learned Appellate Court failed to consider this presumption. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside. He relied upon the judgment of the Hon'ble Supreme Court in ***Uttam Ram Vs. Devinder Singh Hudan Crl. Appeal No. 1545 of 2019, decided on 17.10.2019*** in support of his submission.

11. Mr Karan Singh Kanwar, learned counsel for the respondent/accused, submitted that as per the complaint, the complainant had entered into two agreements with the accused, and the accused had issued the cheque to return the money taken by him under the agreements. He changed this version in the Court. The Learned Appellate Court was justified in doubting the complainant's case in these circumstances. Learned Appellate Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Appellate Court while exercising jurisdiction to decide the appeal against the acquittal. He relied upon the judgment of the

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Supreme Court in ***Dattatraya v. Sharanappa, (2024) 8 SCC 573,*** in support of his submission.

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

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433: 2025 SCC OnLine SC 176*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed on page 438:

> "24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

14. This position was reiterated in ***State of M.P. v. Ramveer Singh, 2025 SCC OnLine SC 1743,*** wherein it was observed:

> 21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of ***Babu Sahebagouda Rudragoudar*v. *State of Karnataka (2024) 8 SCC 149*; *H.D. Sundara* v. *State of Karnataka (2023) 9 SCC 581*** and ***Rajesh Prasad* v. *State of Bihar (2022) 3 SCC 471***.

15. A similar view was taken in ***Tulasareddi v. State of Karnataka, 2026 SCC OnLine SC 89,*** wherein it was observed:

> **"29.** From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:
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> (a) whether the judgment of acquittal suffers from patent perversity;

> (b) whether the judgment is based on misreading/omission to consider the material evidence on record;
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> (c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.'
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> (d) The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
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> (e) If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
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> (f) The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

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

17. The complainant has asserted in para-2 of the complaint that he had agreed to purchase 02 biswa of land for a consideration of ₹6,00,000/- on 26.10.2006 and paid ₹1,00,000/-. He had entered into another agreement to purchase 03 biswas of the land from the accused for ₹9,00,000/- and paid ₹3,00,000/- to the complainant. In this

manner, he had paid ₹4,00,000/- to the accused. The accused issued a cheque of ₹3,80,000/- and promised to return ₹20,000/- subsequently. When the complainant Ashok Kumar (CW1) appeared in the Court on 25.3.2011, he stated that he had not produced the agreement. He volunteered to say that the accused had entered into a new agreement with him in the year 2007 and had torn up the earlier agreements. Section 62 of the Indian Contract Act deals with the effect of novation, recission and alteration of the contract. It reads that if the parties to a contract agreed to substitute a new contract for it, or rescind or alter it, the original contract need not be performed. The complainant filed the complaint on 28.4.2008 after the parties had substituted the old contracts with a new contract. Their intention not to proceed with the old contract was evident from the fact that the old contracts were torn. Therefore, the complainant could not have relied upon the old contract or the consideration mentioned in it. He was to rely upon the new contract and the consideration mentioned in that. It was laid down by the Hon'ble Supreme Court in ***Union of India v. Kishorilal Gupta and Bros., 1959 SCC OnLine SC 6: (1960) 1 SCR 493:***

AIR 1959 SC 1362 that the substitution of the old contract by a new one would discharge the old contract. It was observed:

> "**5.** The law on the first point is well-settled. One of the modes by which a contract can be discharged is by the same process which created it, i.e. by mutual agreement; the parties to the original contract may enter into a new contract in substitution of the old one. The legal position was clarified by the Privy Council in ***Payana Reena Saminathan v. Pana Lana Palaniappa [(1914) AC 618, 622]***. Lord Moulton defined the legal incidents of a substituted contract in the following terms at p. 622:
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> > "The 'receipt' given by the appellants, and accepted by the respondent, and acted on by both parties, proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the 'receipt'. It is a clear example of what used to be well known in common law pleading as 'accord and satisfaction by a substituted agreement'. No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place, the prior rights of the parties are extinguished. They have, in fact, been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it."
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> The House of Lords in ***Norris v. Baron and Company [(1918) AC 1, 26]*** in the context of a contract for the sale of goods brought out clearly the distinction between a contract which varies the terms of the earlier contract and a contract which rescinds the earlier one, in the following passage at p. 26:
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> > "In the first case there are no such executory clauses in the second arrangement as would enable you to sue upon that alone if the first did not exist; in the second

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> you could sue on the second arrangement alone, and the first contract is got rid of either by express words to that effect, or because, the second dealing with the same subject-matter as the first but in a different way, it is impossible that the two should be both performed."

Scrutton, L.J., in ***British Russian Gazette and Trade Outlook Limited v. Associated Newspaper, Limited [(1933) 2 KB 616, 643, 644]***, after referring to the authoritative textbooks on the subject, describes the concept of "accord and satisfaction" thus at p. 643:

> "Accord and satisfaction is the purchase of a release from an obligation, whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. Satisfaction is the consideration that makes the agreement operative. Formerly, it was necessary that the consideration should be executed.... Later, it was conceded that the consideration might be executory.... The consideration on each side might be an executory promise, the two mutual promises making an agreement enforceable in law, a contract.... 'An accord, with mutual promises to perform, is good, though the thing be not performed at the time of action; for the party has a remedy to compel the performance,' that is to say, a cross action on the contract of accord.... If, however, it can be shown that what a creditor accepts in satisfaction is merely his debtor's promise and not the performance of that promise, the original cause of action is discharged from the date when the promise is made."

The said observations indicate that an original cause of action can be discharged by an executory agreement if the intention to that effect is clear. The modern rule is stated by Cheshire and Fifoot in their ***Law of Contract, 3rd Edn.***, at p. 453:

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> "The modern rule is, then, that if what the creditor has accepted in satisfaction is merely his debtor's promise to give consideration, and not the performance of that promise, the original cause of action is discharged from the date when the agreement is made.
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> This, therefore, raises a question of construction in each case, for it has to be decided as a fact whether it was the making of the promise itself or the performance of the promise that the creditor consented to take by way of satisfaction."

So too, Chitty in his book on ***Contracts, 31st Edn.***, states at p. 286:

> "The plaintiff may agree to accept the performance of a substituted consideration in satisfaction, or he may agree to accept the promise of such performance. In the former, there is no satisfaction until performance, and the debtor remains liable upon the original claim until the satisfaction is executed. In the latter, if the promise be not performed, the plaintiff's remedy is by action for the breach of the substituted agreement, and he has no right of resort to the original claim."

From the aforesaid authorities, it is manifest that a contract may be discharged by the parties thereto by a substituted agreement, and thereafter the original cause of action arising under the earlier contract is discharged, and the parties are governed only by the terms of the substituted contract. The ascertainment of the intention of the parties is essentially a question of fact to be decided on the facts and circumstances of each case.

18. Therefore, the complainant could not have relied upon the old contract, and a cheque issued to return the money taken under the old contract would not constitute a legally enforceable debt.

19. Learned Appellate Court had rightly pointed out that the complainant had substituted the consideration in his statement on oath. It was laid down by the Hon'ble Supreme Court in ***Dattatraya v. Sharanappa*, *(2024) 8 SCC 573: (2024) 3 SCC (Cri) 776: 2024 SCC OnLine SC 1899*** that when the complainant was unable to put forth the details of the loan and made contradictory statements, the presumption attached to the cheque will not help him. It was observed:

> 30. Admittedly, the appellant was able to establish that the signature on the cheque in question was of the respondent and in regard to the decision of this Court in ***Bir Singh v.Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40***, a presumption is to ideally arise. However, in the above-referred context of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.
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> 31. The trial court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt, as the very issuance of a cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on white paper and not on stamp paper, as presented by the appellant, creates another set of doubts in the case. Since the accused has been able to cast

> a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

20. Therefore, the learned Appellate Court was justified in doubting the complainant's case. The learned Appellate Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible.

21. The judgment in ***Uttam Ram*** (supra) does not apply to the present case because of the conduct of the parties in substituting the old contracts with the new contract.

22. No other point was urged.

23. Consequently, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

24. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation

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that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

25. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

27th May, 2026
(Chander)