



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Revision No.226 of 2024**

**Date of Decision: 23.03.2026**

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<b>Gyaru Ram</b>	<b>Versus</b>	..... <b>Petitioner</b>
<b>Prem Singh</b>		..... <b>Respondent</b>

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*Coram*

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

*Whether approved for reporting?*

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**For the Petitioner:** Mr. Ajay Kumar Dhiman, Advocate.

**For the Respondent:** Mr. Aman Hansretta, Advocate, for respondent.

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**Sandeep Sharma, J.** *(Oral)*

Instant criminal revision petition filed under Section 397 of the Cr.P.C., lays challenge to judgment dated 29.02.2024, passed by the learned Additional Sessions Judge, Rohru, Himachal Pradesh, in Criminal Appeal No.112-R/10 of 2023, titled *Gyaru Ram Vs. Prem Singh*, affirming judgment of conviction and order of sentence dated 26.07.2023, passed by the learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, Himachal Pradesh, in criminal case No.2-3 of 2020, whereby the learned trial Court while holding the petitioner-accused **(hereinafter, "accused")** guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act **(in short the "Act")**, convicted and sentenced him to undergo simple imprisonment for a period of ten months and pay compensation to the tune of Rs.4,70,000/- to the respondent-complainant.



2. Precisely, the facts of the case, as emerge from the record are that respondent-complainant (**hereinafter, 'complainant'**) instituted a complaint under Section 138 of the Act, in the competent Court of law, alleging therein that he is running his business in the name and style of Chauhan Fruit Center, Shop No.31-A, New Subji Mandi, Rohru, Shimla, H.P. and he deals in sale and purchase of apples. He alleged that on 10.09.2019, accused purchased apple boxes from the complainant vide bill No.678, dated 10.09.2019 and with a view to discharge his lawful liability, accused issued Cheque No.284651, dated 15.09.2019, in the sum of ₹3,80,393/-, drawn at H.P. State Cooperative Bank, Branch Batargalu. However, on presentation of aforesaid Cheque to the Bank concerned, the same was dishonoured with the remarks "Funds Insufficient". After receipt of aforesaid return memo, complainant served accused with a legal notice calling upon him to make the payment good well within stipulated time. However, since petitioner-accused failed to make the payment good within the time stipulated in the legal notice, respondent/complainant was compelled to initiate proceedings under Section 138 of the Act in the Court of learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, Himachal Pradesh.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 26.07.2023, held the petitioner-accused guilty of having committed offence under Section 138 of



the Act and accordingly, convicted and sentenced him, as per the description given hereinabove.

4. Though, at the first instance, accused preferred an appeal in the Court of learned Additional Sessions Judge, Rohru, Himachal Pradesh, however, same was dismissed vide judgment dated 29.02.2024. In the aforesaid background, petitioner-accused has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction recorded by the Courts below.

5. Vide order dated 20.04.2024, Co-ordinate Bench of this Court stayed the substantive sentence imposed by the learned Court below, subject to petitioner/accused depositing 30% of the compensation amount and furnishing personal bond in the sum of Rs.25,000/-, however, fact remains that despite repeated opportunities, aforesaid order was never complied with.

6. Today during proceedings of the case, learned counsel representing the petitioner fairly stated that since petitioner/accused is not coming forward to impart instructions and he has not complied with the order dated 20.04.2024, this Court may proceed to decide the petition on its own merits.

7. Having heard learned counsel for the parties and perused material adduced on record, vis-a-vis reasoning assigned in the impugned judgments, this Court sees no reason to agree with Mr. Ajay Kumar



Dhiman, learned counsel representing the petitioner that Courts below have fallen in grave error while appreciating the evidence, rather this Court finds that both the Courts below have meticulously dealt with each and every aspect of the matter and there is no scope left for interference.

8. Though, Mr. Dhiman, learned counsel representing the petitioner, while making this Court peruse evidence adduced on record, attempted to argue that both the Courts below failed to appreciate the evidence in its right perspective, but such submission of his deserves outright rejection, being contrary to the record. Since in the case at hand, there is no dispute with regard to issuance of Cheque as well as his signatures thereupon, no illegality can be said to have been committed by both the Courts below while invoking Sections 118 and 139 of the Act, which speak about presumption in favour of the holder of the Cheque that Cheque was issued towards discharge of a lawful liability. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption, accused either can refer to the documents and evidence led on record by the complainant or presumption can be rebutted by leading positive evidence, if any. However, in the case at hand, accused was unable to point out from the documents as well as evidence adduced on record by the complainant that Cheque issued by him was not issued towards discharge of lawful liability.



9. The Hon'ble Apex Court in ***M/s Laxmi Dyechem V. State of Gujarat***, 2013(1) RCR(Criminal), has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely on the materials submitted by the complainant. Needless to say, if the accused/drawer of the Cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, statutory presumption under Section 139 of the Negotiable Instruments Act, regarding commission of the offence comes into play. It would be profitable to reproduce relevant paras No.23 to 25 of the judgment herein:-

*“23. Further, a three judge Bench of this Court in the matter of Rangappa vs. Sri Mohan [3] held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. The Court however, further observed that it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose money is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the*



*construction and interpretation of reverse onus clauses and the defendant accused cannot be expected to discharge an unduly high standard of proof". The Court further observed that it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is all preponderance of probabilities.*

24. *Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.*

25. *It is no doubt true that the dishonour of cheques in order to qualify for prosecution under Section 138 of the NI Act precedes a statutory notice where the drawer is called upon by allowing him to avail the opportunity to arrange the payment of the amount covered by the cheque and it is only when the drawer despite the receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount, that the said default would be considered a*



*dishonour constituting an offence, hence punishable. But even in such cases, the question whether or not there was lawfully recoverable debt or liability for discharge whereof the cheque was issued, would be a matter that the trial court will have to examine having regard to the evidence adduced before it keeping in view the statutory presumption that unless rebutted, the cheque is presumed to have been issued for a valid consideration. In view of this the responsibility of the trial judge while issuing summons to conduct the trial in matters where there has been instruction to stop payment despite sufficiency of funds and whether the same would be a sufficient ground to proceed in the matter, would be extremely heavy.”*

10. In the case at hand, complainant in order to prove his case examined himself as CW-1. He filed affidavit Ex.C1/CW1, reiterating therein averments contained in the complaint. Apart from above, complainant also tendered documentary evidence such as Cheque Ex.C2/CW1, dishonour memo Ex.C3/CW1, intimation letter Ex.C4/CW1, legal notice Ex.C5/CW1, postal receipt Ex.C6/CW1, undelivered registered AD Ex.C7/CW1, bill Ex.C8/CW1, licence Ex.C9/CW1, renewal receipt Ex.C10/CW1.

11. By way of tendering aforesaid documents, complainant successfully proved on record that accused had purchased apple boxes from his shop for a sum of ₹3,80,393/- and with a view to discharge his liability, he had issued Cheque Ex.C2/CW1, however, same was



dishonoured on account of insufficient funds. Though, before initiating proceedings under Section 138 of the Act, complainant served accused with legal notice, calling upon him to make the payment good within the stipulated time, but same was not received by him, rather was received back undelivered. However, complainant by way of placing on record postal receipt Ex.C6/CW1 and undelivered registered AD Ex.C7/CW1 successfully proved on record that he had provided an opportunity to the accused to make the payment good before instituting proceedings under Section 138 of the Act. If cross-examination conducted upon this witness is perused in its entirety, it can be safely concluded that accused was unable to extract something contrary to what this witness stated in examination-in-chief.

12. In his cross-examination, he specifically stated that he maintains daily book and bill Ex.C8/CW1 was prepared on 10.09.2019 in accordance with daily book. While admitting that EX.C8/CW1 is not signed by the accused, he further stated that a person who has issued the bill has also not signed it. He admitted that ledger of person who had borrowed money from him is maintained by him. He admitted that copy of ledger has not been appended with the complaint. He further stated that apart from present Cheque, accused had purchased apples for a sum of ₹3-4 lacs, payment of which has been received by him. He specifically denied suggestion put to him that while accused had purchased apples, blank security cheque was obtained by him. He also denied that notice



Ex.C5/CW1 was not sent to the accused. He denied that blank security Cheque has been misused. If the pattern of cross-examination conducted upon complainant is perused, it clearly suggests that accused virtually admitted factum with regard to his having issued the Cheque, may be not towards the discharge of lawful liability, but as a security. Though accused attempted to set up a case that security Cheque given by him came to be misused by the complainant, but no cogent and convincing evidence ever came to led on record to prove aforesaid defence.

13. In his statement recorded under Section 313 Cr.P.C., accused though admitted factum with regard to his having purchased apple as well as issuance of Cheque, but he submitted that he had made the payment, however, Cheque obtained as a security was subsequently misused. Though he denied factum with regard to his having received legal notice, but he was unable to prove it by leading cogent and convincing evidence. While examining himself as DW-1, he stated that he had purchased apple for a sum of ₹5,17,000/-, for which payment has been made. He stated that Cheque was issued as a security, which has been misused by the complainant. In his cross-examination, he admitted that on 10.09.2019, apple boxes for a sum of ₹3,80,393/- was purchased by him and Cheque Ex.C2/CW1 was issued on 15.09.2019. He deposed that Cheque amount has been received by the complainant in 2020, however, he failed to disclose the date and name of person from whom payment of receipt was



received by the complainant. He denied that no payment has been received by the complainant. Interestingly, this witness in his cross-examination admitted that complainant has issued legal notice Ex.C5/CW1. If the evidence led on record by the respective parties is read in conjunction, this Court sees no reason to differ with the findings returned by the Courts below that complainant successfully proved on record that accused had issued Cheque towards discharge of his lawful liability. Similarly, accused by way of taking defence of issuance of security Cheque, virtually accepted factum of his having issued the Cheque as well as his signatures thereupon and as such, both the Courts below rightly held accused guilty of his having committed the offence punishable under Section 138 of the Act, especially when Cheque in question issued by him was dishonoured on account of insufficient funds.

14. Since factum of issuance of Cheque as well as his signatures thereupon was never disputed, presumption as available under Section 118 and 139 of the Act rightly came to be invoked in the case of the petitioner that Cheque in question was issued in discharge of lawful liability. Since no evidence worth credence ever came to be led on record to rebut the presumption, no illegality can be said to have been committed by the Courts below while holding petitioner/accused of his having committed offence punishable under Section 138 of the Act. Though, defence came to be taken at the behest of the petitioner/accused that Cheque in question



was issued as a security, but the same may not be of any help to the accused, for the reason that by now, it is well-settled that Cheque, if any, issued as a 'security' can also be presented for encashment, if amount taken or promised to be repaid is not paid.

15. Hon'ble Apex Court in case titled **Sripati Singh v. State of Jharkhand**, Criminal Appeal No. 1269-1270 of 2021, decided on 28.10.2021, has held as under:

*“16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”*

16. Needless to say, expression “Security cheque” is not a statutorily defined expression in the Negotiable Instruments Act, rather



same is to be inferred from the pleadings as well as evidence, if any, led on record with regard to issuance of security cheque. The Negotiable Instruments Act does not per se carve out an exception in respect of a “security cheque” to say that a complaint in respect of such a cheque would not be maintainable as there is a debt existing in respect whereof the cheque in question is issued, same would attract provision of Section 138 of the Act in case of its dishonour.

17. Having scanned the entire evidence adduced on record by the respective parties, this Court finds that all the basic ingredients of Section 138 of the Act are met in the case at hand. Since Cheque issued by accused towards discharge of his lawful liability was returned on account of insufficient funds in the bank account of accused and he despite having received legal notice failed to make the payment good within the stipulated time, complainant had no option but to institute proceedings under Section 138 of the Act, which subsequently rightly came to be decided by both the Courts below on the basis of pleadings as well as evidence adduced on record by the respective parties.

18. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.P.C to re-appreciate the evidence, especially in view of the concurrent findings of fact and law relied upon by the Courts below. In this regard, reliance is placed upon the judgment passed by Hon’ble Apex Court in case **“State of Kerala Vs. Puttumana Illath Jathavedan**



**Namboodiri**” (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

*“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 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 re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”*

19. Since after having carefully examined the evidence in the present case, this Court is unable to find any error of law as well as fact, if any, committed by the Courts below, while passing impugned judgments, there is no occasion, whatsoever, to exercise the revisional power.

20. True it is that the Hon’ble Apex Court in **Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241**; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of



the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order, but learned counsel representing the accused has failed to point out any material irregularity committed by the Courts below while appreciating the evidence and as such, this Court sees no reason to interfere with the well reasoned judgments passed by the Courts below.

21. Consequently, in view of the discussion made hereinabove as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well reasoned judgments recorded by the Courts below, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld.

22. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The petitioner is directed to surrender himself before the learned trial Court forthwith to serve the sentence as awarded by the learned trial Court, if not already served. Bail bonds of the petitioner, if any, are cancelled. Interim order dated 20.04.2024 stands vacated. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),  
Judge**

**March 23, 2026**  
*(Rajeev Raturi)*