



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.699 of 2025

Date of Decision: 08.04.2026

Sh. Tej Singh	VersusPetitioner
Sanjay Kumar	Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Bodh Raj Thakur, Advocate.

For the Respondent: Mr. H.S. Rangra, Advocate.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 438 of the Bharatiya Nagrik Suraksha Sanhita, 2023, lays challenge to judgment dated 29.10.2025, passed by the learned Sessions Judge, Mandi, District Mandi, Himachal Pradesh, in Criminal Appeal No.20/2025, titled *Tej Singh Vs. Sanjay Kumar*, affirming judgment of conviction and order of sentence dated 21.05.2025, passed by the learned Judicial Magistrate First Class, Chachiot at Gohar, District Mandi, Himachal Pradesh, in case No.204-I/2021, 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 two months and pay compensation to the tune of Rs.1,50,000/- 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 accused person is contractor and owner of JCB machine and he had deployed him as its operator on monthly wages of ₹20,000/- w.e.f. 13.11.2019 to 17.12.2020. He alleged that during afore period, he was deployed by accused on different places in Tehsil Chachiot and Tehsil Thunag in different projects like making plots, road cuttings, drainage etc., but he did not pay salary/cost of work, which had become more than ₹2,60,000/- till December, 2020. He alleged that with a view to discharge his liability, accused issued Cheque No.063589 dated 27.10.2020, amounting to ₹1,00,000/- drawn on his account, maintained with PNB, Branch Chail Chowk, District Mandi, Himachal Pradesh. However, fact remains that afore Cheque on its presentation to the Bank concerned, 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 accused failed to make the payment good within the time stipulated in the legal notice, complainant was compelled to initiate proceedings under Section 138 of the Act in the Court of learned Judicial Magistrate First Class, Chachiot at Gohar, District Mandi, Himachal Pradesh.



3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 21.05.2025, held the 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 Sessions Judge, Mandi, District Mandi, Himachal Pradesh, however, same was dismissed vide judgment dated 29.10.2025. In the aforesaid background, 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 15.12.2025, 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.50,000/-, 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 15.12.2025, 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. Bodh Raj Thakur, 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. Interestingly, in the case at hand, accused while deposing under Section 351 of the BNSS, claimed himself to be innocent and attempted to set up a defence that Cheque in question has been tampered by the complainant, as he manipulated the amount mentioned in the Cheque from ₹10,000/- to ₹1,00,000/-. Though in defence he examined himself as DW1, but he was unable to probabalise afore defence by leading cogent and convincing evidence. Since factum with regard to issuance of Cheque as well as his signatures thereupon never came to be disputed at the behest of accused, 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. Complainant in the case at hand examined himself as CW1. In his examination-in-chief, he tendered evidence by way of affidavit Ex.CA, reiterating therein averments contained in the complaint. Apart from above, he also tendered documentary evidence such as Cheque Ex.CW1/A, dishonour memo Ex.CW1/B, legal notice Ex.CW1/C, postal receipt Ex.CW1/D and acknowledgment Ex.CW1/E. If the cross-examination conducted upon this witness is perused in its entirety, it can be safely concluded that accused was unable to extract anything contrary to what



this witness stated in his examination-in-chief. In his cross-examination, he stated that he is a JCB operator and he was engaged by the accused from November 2019 to September 2020. He further stated that he did not receive any amount during aforesaid period. He stated that contractor/accused had issued the Cheque in his favour for the part payment of his wages. While admitting that no written agreement was made for his engagement, he feigned ignorance that the bank officials have taken away the tipper and JCB of Tej Singh. While denying that he did not do the work of Tej Singh honestly, as a result of which he suffered losses, he also denied that he used to take diesel out of the JCB and sell it to others and he was caught many times by the accused. He denied that due to his dishonest conduct, accused suffered losses to the tune of ₹3,00,000/-. He also denied that in Cheque Ex.CW1/A, name of Sanjay Kumar has been written with different handwriting and ₹1,00,000/- has been written with other handwriting. He denied that he had not sent any legal notice. He also denied that he received entire salary from the accused during the period he was engaged as a driver. He denied that Cheque Ex.CW1/A was originally for ₹10,000/- and it was tampered with. He stated that if his monthly payment was ₹20,000/-, then he is entitled to ₹2,60,000/- for the period of engagement. He self-stated that said amount is due to him. Pattern of cross-examination conducted upon the complainant clearly reveals that attempt was made by the accused to prove the case that Cheque has been



issued for a sum of ₹10,000/-, but the same has been tampered by the complainant and he presented the same for ₹1,00,000/-. It also emerges from the cross-examination of complainant that factum with respect to employment of the complainant as JCB operator is not in dispute. It is also not in dispute that he worked w.e.f. November 2019 to September 2020. Though accused attempted to put a suggestion that salary was received in cash, but to probalilise afore defence, no receipt, if any, taken from the complainant ever came to be adduced on record.

11. Accused while examining himself as DW1 deposed that his dealing with Sanjay Kumar was only for ₹10,000/- and he also issued a Cheque of the said amount. He deposed that he issued the Cheque after filling the amount and signing the same. He further deposed that complainant had filed a false case of ₹1,00,000/- against him. He stated that the complainant is working as Driver with him and only an amount of ₹10,000/- was due to the complainant. In his cross-examination, he admitted that the complainant had worked with him as JCB operator from 13.11.2019 to 17.11.2020. He also admitted that he was engaged as a Driver for the monthly salary of ₹20,000/- and as such, complainant was entitled to an amount of ₹2,60,000/-. While denying that aforesaid amount is liable to be paid, he admitted factum of his having issued the Cheque in discharge of part liability. He deposed that he had issued the Cheque for an amount of ₹10,000/-, but he was unable to produce any receipt qua any



payment made to the complainant. He admitted that Ex.CW1/A is the same Cheque, which has been issued by him. While denying that notice Ex.CW1/C was served upon him, he stated that the acknowledgment does not bear his signature.

12. Even statement made by the accused in his defence clearly establishes factum with regard to issuance of Cheque as well as his signatures thereupon and as such, 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. Though accused attempted to rebut the presumption by setting up a defence that Cheque issued by him for a sum of ₹10,000/- has been tampered, but no cogent and convincing evidence ever came to be led on record to prove aforesaid defence. To the contrary, complainant successfully proved on record that Cheque in question was issued by the accused towards the discharge of lawful liability, but the same was dishonoured on account of 'insufficient funds' in the bank account of the accused.

13. 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.

14. 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.”

15. 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.

16. 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.

17. 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.

18. 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 15.12.2025 stands vacated. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

April 08, 2026
(Rajeev Raturi)