

**IN THE COURT OF SUSMITA SHARMA, JUDICIAL MAGISTRATE
FIRST CLASS, COURT NO. 5, SHIMLA, H.P.**

C.N.R. No.	HPSH11003662-2023
C.I.S. Case Type	Negotiable Instruments Act
CIS Registration No.	213/2023
C.I.S. Case year.	2023
Case No.	47-3 of 2023
Date of Institution:	23.01.2023
Date of Decision	17.07.2026

In the matter of:

Smt. Veena Kashyap W/o Sh. Ashwani Kashyap, R/o village
Chevra, P.O. & Tehsil Junga, District Shimla, H.P.

....Complainant.

Versus:

Smt. Jyoti Chauhan W/o Sh. Ashwani Chauhan R/o village
Mandap (Bhodhan), P.O. Anjji Brahamana, Tehsil Kandhaghat,
District Solan, H.P.

...Accused.

**COMPLAINT U/S 138 OF NEGOTIABLE INSTRUMENTS
ACT, 1881**

For the complainant : Ms. Akriti Sharma, Ld. Counsel.

For the accused : Sh. Pankaj Chauhan, Ld. Counsel.

J U D G M E N T :

The accused person is facing trial before this court for the commission of offence punishable under Section 138 of The Negotiable Instruments Act (for short 'the act') on account of dishonour of cheque bearing No. 372996, dated 25.09.2022, amounting to

₹ 80,000/- drawn on his account maintained by him in favour of complainant.

2. Briefly stated the case of the complainant is that the complainant is a respected lady and resides at village Chevda, post office and Tehsil Junga, District Shimla. It has been stated that complainant in the month of May 2020 gave her gold ornaments that is gold chain and earrings to the accused for repair and maintenance, but the accused did not return the same but agreed to pay an amount of ₹1,50,000 against the said ornaments. It has been further stated that to pay the amount of ₹1,50,000, the accused person issued two cheques of ₹70,000 and ₹80,000 in favour of the complainant and the amount of ₹70,000 was credited in the account of the complainant, whereas the cheque amounting to ₹80,000 bearing number 372996 dated 25 September 2022 drawn to discharge the legal liability was dis-honoured with the remarks 'Insufficient funds'. The information was obtained from the banker of the complainant by memo dated 24 November 2022, which was received by the complainant on the same date, and after receiving the said information, the complainant served a registered legal notice dated 05th December 2022, posted on 12th December 2022, through his counsel upon the accused in which it was specifically stated that the cheque which was issued by the accused has been dishonoured due to other reason that is 'Insufficient funds' and a request was made to return the amount of ₹80,000 within the period of 15 days and on failure of it proceedings under section 138 of the negotiable instrument act would be followed against the accused. It has also been stated that the cheque was issued by the accused for lawful consid-

eration to discharge the legal liability and the cheque presented by the complainant for its encashment was dishonoured by the banker of the accused for insufficient funds. Hence the complaint.

3. After careful examination of preliminary evidence as well as documents on record, cognizance against the accused for commission of offence punishable under Section 138 of the Act was taken vide order dated 27.01.2023. Thereafter, presence of accused person was procured and was admitted on bail on her appearance before the court. On finding a prima facie case, notice of accusation for commission of offence punishable under Section 138 of the Act was put to the accused person on 05.07.2025 to which she pleaded not guilty rather claimed trial.

4. In support of her case complainant has examined as many as one witness. After the complainant's evidence was over the statement of accused under Section 313 Cr.P.C was recorded wherein she stated that she is innocent. However, she opted to lead evidence in defence and on dated 02.02.2026, Ld. defence counsel stated that they did not intend to lead evidence in defence.

5. On basis of record this Court is of the view that following points arise for determination in the present case:

Point No.1.	:	Whether the complainant has succeeded in proving beyond reasonable doubt that accused issued a cheque bearing No. 372996, dated 25.09.2022, amounting ₹80,000/- drawn at PNB, Totu Bazar, Shimla, in discharge of her legally enforceable liability in favour of the complainant but the aforesaid cheque was dishon-
-------------	---	---

		oured when it was presented for encashment, due to reason "Funds Insufficient" and the accused despite legal demand notice failed to pay the cheque amount to the complaint within stipulated time limit?
Point No.2.	:	Final Order.

6. I have heard the Ld. Counsel for parties and have gone through the record of the case with minute care and caution. For reasons to be recorded hereinafter, my findings on the point under determination are as under:

Point No.1 : No

Final Order.: Accused is hereby **acquitted** as per operative part of judgment.

REASONS FOR FINDINGS

POINT NO.1:

7. It is the case of the complainant that accused issued cheque Ext. C2/CW1 in her favour in discharge of legal liability which was returned dishonored with the remarks "Funds Insufficient" on presentation by complainant through her banker to the bank of accused for collection.

8. In support of her version, complainant has examined herself as CW1 and has tendered her affidavit Ext. C1/CW1 in lieu of her examination-in-chief, wherein she reiterated the version made in the complaint which need not to be reproduced for sake of brevity and in order to avoid repetition. She also tendered the docu-

ments i.e. cheque Ext. C2/CW1, return memo Ext. C3/CW1, legal notice Ext. C4/CW1, receipt Ext. C5/CW1 in support of the complaint. In her cross-examination, the complainant has stated that she does not know the accused person, but she had gone for repair of ornaments to her shop. She admitted that the shop is in the name of Ashwini Chauhan Jewellers, who is the husband of the accused person. She stated that when she had given her ornaments for repair, receipt was given to her, which she has not annexed along with the present complaint. She admitted that cheque exhibit C2/CW1 was not given to her by the accused person, but by her husband. She stated that she does not know that whether exhibit C4/CW1 was received by the accused person or not, so she cannot tell the date when it was received and cannot tell that whether it was received or not. She admitted that she had no transactions with the accused person then herself stated that it was with her husband only.

9. At the time of arguments, Ld. defence counsel pointed out that present complaint is a premature complaint. Now coming to plea of present complaint being a premature complaint, Section 138, to the extent, its material is extracted below:

138. Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that

bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

The pre-conditions for filing a valid complaint which can be entertained are as follows

1) Receipt by the payee about dishonour of the instrument from the drawer's banker;

2) Issuance of legal notice within 30 days of receipt of such information;

3) Filing of a complaint within 15 days of receipt of the notice, by the drawer.

10. The **Hon'ble High Court of H.P. in case "Sant Kumar vs R.K. Puri & Others, in Cr. Revision No. 129 of 2015, decided on 01.01.2026** in para No. 19 to 25 held as follows:-

"19. The complainant stated in the complaint that the cause of action arose to him on 12.06.2003, when the cheque was dishonoured and again when the accused

failed to repay the amount within the requisite period despite the notice dated 16.06.2003. The complainant, R.K. Puri (PW1), stated that he sent a notice to the accused on 16.06.2003 through his Advocate. The accused failed to pay the amount despite the receipt of a valid notice of demand. Thus, the complainant has not specified the date of service of notice upon the accused, and he is relying upon the presumption of the service.

11. 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 acknowledgment 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.”

12. The Jharkhand High Court considered this question in ***Manoj Kumar Nag v. State of Jharkhand, 2021 SCC OnLine Jhar 458*** and held 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. 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 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.”

13. 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.”

14. Madhya Pradesh High Court has also taken a similar view in ***Vishal Gupta vs. Kishan Batham (04.08.2023 - MPHC):***

MANU/MP/2098/2023, wherein it was observed:

“11. Thus, the learned Trial Court committed no mistake in holding that in the absence of any proof of service of notice on a particular day to the accused, it would be deemed to be served on the 30th day of the dispatch of notice.”

15. This position was reiterated in ***Damodar Mallick vs. The 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 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 cognisance 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.”

16. It was laid down by the Hon’ble Supreme Court in Gajananand Burange v. Laxmi Chand Goyal, 2022 SCC OnLine SC 1711, that no action can be taken 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 resintegra 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 the question of prematurity of the complaint, where it is filed before the 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 eye 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.”

17. There is no evidence regarding service of demand notice upon the accused. Moreover, there is no averment in the complaint regarding the date of service of such notice. This being the situation, as per Section 27 of General Clauses Act, service of notice is presumed within a period of 30 days from the date of its issuance (12.12.2022). Therefore, the service of the notice can be presumed by 11.01.2023 and accused was required to make payment of the cheque amount by 26.01.2023, the cause of action to file the complaint starts on 27.01.2023. Complaint has been filed by the complainant on dated 23.01.2023. Therefore, the complaint filed by the complainant is pre-mature/without any cause of action. In view of the discussion of facts, evidence and law as above, this Court is of the considered view that the present complaint is a premature one. Accordingly, point No.1 is decided in favour of the accused.

FINAL ORDER

18. In view of my finding on point No.1 above, accused is hereby acquitted for the commission of offence punishable under section 138 of the Negotiable Instruments Act, 1881. Her personal and surety bonds stand cancelled and discharged. File, after its due completion be consigned to the record room.

**Announced and signed in the Open Court today on
this 17th Day of July, 2026.**

**(Susmita Sharma)
Judicial Magistrate First Class,
Court No. 5, Shimla, H.P.**

List of Witnesses

Form-A.

Sr. No.	Name of the witness	Whether the witness of Complainant /Accused
CW-1	Sh. Veena Kashyap	Witness of complainant

List of Exhibits

Form-B

Exhibit No./Mark	Date	Description of Exhibit
Ext.C1/CW1	26.09.2025	Affidavit
Ext.C2/CW1	-do-	Cheque
Ext.C3/CW1	-do-	Memo
Ext.C4/CW1	-do-	Notice
Ext.C5/CW1	-do-	Postal receipt

(Susmita Sharma)
Judicial Magistrate First Class,
Court No. 5, Shimla, District- Shimla H.P.