IN THE COURT OF KANIKA GUPTA , ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THEOG, DISTRICT SHIMLA, H.P.

Registration No.	18/2016
Case No.	57-3/2016
CNR No.	HPSH060000182016
Date of Institution	07.01.2016
Date of Decision	28.07.2026/31.07.2026

Sh. Parkash Purta, S/o Sh. Kali Ram, R/o VPO Purag Tehsil Kotkhai, District Shimla, H.P.

...Complainant

-Versus-

Shri Madan Lal, S/o Shri Jaisi Ram Sharma, R/o VPO Kalind, Tehsil Theog, District Shimla, H.P.

...Accused

(Complaint under Section 138 read with Section 142 of Negotiable Instruments Act 1881)

Advocates for the parties:-

For the Complainant : Shri Mohinder Zharaick and Shri Rajeev Shyam, Advocate.
For the Accused : Shri M.S Chatra, Advocate.

JUDGMENT:-

1. The present complaint has been filed by the complainant against the accused under Section 138 of Negotiable Instruments Act.

2. Brief facts giving rise to the present complaint are that the complainant and accused were well acquainted to

each other for the last five years and in lieu of the said acquaintance, complainant had borrowed an amount of Rs. 3,38,000/- from the complainant as hand loan and in order to discharge his legal enforceable debt, the accused had issued cheque dated 30.08.2015 amounting to Rs. 1,38,000/- bearing cheque number 104889 and cheque number 104890 amounting to Rs. 2,00,000/- payable at UCO Bank, Branch Chailla in the favor of the complainant has been alleged that when the complainant presented he said cheques in his bank, UCO Bank Gumma, for encashment, the said cheques were dishonored for want of "Insufficient Funds" in the account of the accused vide dishonor memo dated 02.11.2015. Further, it has been alleged that after dishonor of the cheque, the complainant on 18.11.2015 got issued legal notice through his counsel to the accused on the correct address of the accused which was presumed to be received by the accused on 24.11.2015 as acknowledgment of the same was not received back but despite receipt of legal notice, the accused failed to make the payment of the cheque amount to the accused, thereby making himself liable for the commission of offense under Section 138 of the Negotiable Instruments Act.

3. On filing of the complaint, preliminary evidence of complainant was recorded and on basis of preliminary evidence, cognizance was taken against the accused by the Court vide order dated 30.03.2016 and on appearance

of the accused in the Court, Notice of Accusation for commission of offense under Section 138 of Negotiable Instruments Act was put to accused vide order dated 11.12.2019 to which he pleaded not guilty and claimed trial.

4. Thereafter, complainant was called upon to adduce evidence to prove his case and in order to prove his case, complainant Sh. Prakash Purta stepped into the witness box as CW-1 and thereafter the evidence of complainant was closed.

5. After closing evidence of complainant, statement of accused under Section 351 of BNSS was recorded, wherein, the accused has denied the fact that he had borrowed a sum of Rs. 3,38,000/- from the complainant and further issuance of cheque Ext.C2/CW-1 amounting to Rs. 1,38,000/- and cheque Ext.C3/CW-1 amounting to Rs. 2,00,000/- has been denied and further receipt of legal notice Ext.C5/CW-1 has also been denied by the accused in a statement under Section 351 of the BNSS. However, the accused in his statement under Section 351 of BNSS has admitted his signatures on cheques Ext.C2/CW-1 and Ext.C3/CW-1 and the defence raised by the accused in a statement under Section 351 of BNSS is that his liability is lesser than the cheque amount towards the complainant and the accused has opted to lead evidence in defence. However, despite affording several opportunities to the accused to lead evidence in defence, the accused has

failed to adduce evidence in his defence and the opportunity to lead defence evidence of the accused was closed by this Court vide order dated 13.06.2024.

6. I have heard the Learned Counsel for the complainant and the Learned Counsel for the accused and have gone through the records carefully.

7. During the course of trial, following points arise for determination:-

> **1. Whether the complainant has been able to prove beyond all reasonable doubts that the accused issued cheques bearing number 104889 dated 30.08.2015 amounting to Rs. 1,38,000/- and cheque number 104890 dated 15.09.2015 amounting to Rs. 2,00,000/- in favour of the complainant in order to discharge his legal enforceable liability/debt, which cheque on presentation by the complainant with his banker was dishonored due to "Funds Insufficient" in the account of accused and thereafter the accused failed to make the payment of the cheque amount despite issuance of legal notice to him, as alleged?**
>
> **2. Final Order.**

8. For the reasons to be recorded hereinafter while discussing the points for determination, my findings on the aforesaid points are as under:

Point No.1 : **Yes.**

Final order: The accused is **Convicted** for the commission of offense under Section 138 of Negotiable Instruments Act as per operative part of the Judgment.

Reasons for Findings

POINT NO.1

9. The Ld. counsel for the complainant has argued that complainant has been able to prove all necessary ingredients to prove the offense punishable under section 138 of Negotiable Instrument Act against the accused and thus he be convicted. On the other hand, Ld. Defense counsel, had argued that the accused has been falsely implicated in the present case and thereafter, Ld. Counsel for the defense has argued that since the accused had not received any legal notice from the complainant regarding dishonour of cheque and for payment of cheque amount thus cause of action do not arise in favour of complainant to file the present complaint against accused. With these contentions, Ld. Defense Counsel has prayed that accused be acquitted.

10. The present complaint has been filed by the complainant against the accused under Section 138 of Negotiable Instruments Act on the grounds that the complainant and accused were acquainted to each other

since last five years and due to the acquaintance of the accused with the complainant, the accused had borrowed a sum of Rs. 3,38,000/- from the complainant and in order to make the payment of the borrowed amount to the complainant, accused had issued cheques bearing number 104889 dated 30.08.2015 amounting to Rs. 1,38,000/- and cheque number 104890 dated 15.09.2015 amounting to Rs. 2,00,000/- in the favor of the complainant with an assurance that when the complainant will present the said cheques for encashment, these cheques will be honored. However, when the complainant presented the said cheques for enchantment with his bank, i.e. UCO Bank, Gumma, the said cheques were dishonored for want of Insufficient Funds in the account of the accused and after dishonor of the cheque, the accused despite receipt of legal notice had failed to make the payment of the cheque amount to the complainant thereby, making himself lie before the commission of offense punishable under Section 138 of the Negotiable Instrument Act.

11. In order to prove the contents of the complaint, the complainant stepped into the witness box as CW-1 and has tendered his examination-in-chief by way of affidavit Ext.C1/CW-1, wherein he has reiterated the entire contents of the complaint. In his examination-in-chief, CW-1 has tendered cheque Ext.C2/CW-1 and Ext.C3/CW-1 and, return memo Ext.C4/CW-1, Legal notice Ext.C5/CW-1 and postal receipt Ext.C6/CW-1 and has prayed that the said

documents be read as part and parcel of his evidence.

12. When cross-examined by the Learned Counsel for the accused, he stated that accused used to visit his native village as some relatives of the accused resided in his village. He stated that his shop is situated in the village and accused used to visit his shop occasionally. He stated that accused came to his house in June 2015 and demanded money from him on the pretext that he will return the money within a period of two months and on the request of the accused, he had lended a sum of Rs. 3,38,000/- to the accused. He stated that accused had issued two cheques in his name which were issued after two months and the accused had filled up both the cheques and had handed over the same to him. He stated that he has a grocery shop. He stated that before 2015 and after 2015 he has done the business of grocery in his shop and apart from the said business he had not done any other business. He denied that he had started business with the accused and denied that accused was working with him. He denied that he had invested money in the business and accused used to sell the products of their business and he further denied that he had taken cheques from the accused on the pretext that if their business will suffer from loss, the accused shall bear the losses. He denied that he had taken money from the suppliers to whom accused used to supply the items and he further denied that accused had given him money which the

accused collected from the people. He denied that he had borrowed money from other people and denied that he had filed false case against the accused.

13. This is the entire evidence led on behalf of the complainant to prove his case against accused.

14. No evidence in defence has been led on behalf of the accused.

15. Section 138 of the Negotiable Instruments Act provides for dishonour of cheque which reads as under:

> "*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 extend 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; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation. - For the purposes of this section, `debt or other liability' means a legally enforceable debt or other liability."

16. Section 138 of the Act has three ingredients viz:

(i) that there is a legally enforceable debt

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and

*(iii) that the cheque so issued had been returned due to insufficiency of funds as observed in Krishna Janardhan Bhat v. Dattatraya G. Hegde, **(2008) 4 SCC 54.***

17. Further Section 118(a) and Section 139 of the

Negotiable Instruments Act lays down these presumptions which reads as follows:

> *118. Presumptions as to negotiable instruments. -*
>
> *Until the contrary is proved, the following presumptions shall be made:*
>
> *(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.*
>
> *139. Presumption in favour of holder.-*
>
> *It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt, or other liability.*

18. In ***Hiten P. Dalal v. Bratindranath Banerjee*, (2001) 6 SCC 16 and *K. Janardhan Bhutt versus Duttatray G. Hegde 2008 (2) S.L.J. 1096*** it was held that the \`existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act' and that \`it merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other.

19. The Hon'ble Apex court in ***Rangappa v. Mohan AIR 2010 SC 1898*** while overruling the judgment titled ***Krishna Janardhan Bhatt v Dattatraya G Hegde AIR***

2008 SC 1325 observed in para 14 that:

> *"the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observation in Krishna Janardhan Bhatt (supra) cannot be correct............This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested".*

20. Therefore, in view of the statutory provisions and Hon'ble Apex Court's judgments, there is a presumption in favour of holder of the cheque that he has received the same for discharge in whole or in part of any legally enforceable debt or other liability. It is a well settled principle of law that the presumption available under section 139 of the Act can be rebutted by the accused by adducing evidence. Therefore, the burden of proof is on the accused to rebut this statutory presumption. The accused can prove the non existence of consideration by raising a probable defense and if he proves the same, then only the onus would shift upon complainant, who has to prove it as a matter of fact and his failure to prove would dis-entitle him to grant the relief.

21. The Hon'ble Apex Court in ***Krishna Janardhan Bhatt v. Dattatraya G Hegde AIR 2008 Supreme Court 1325*** has held as follows :

"23. ....Standard of proof on the part of an accused and that of the prosecution in a criminal case is different".

22. The present case has been filed by the complainant has been filed by the complainant against the accused on the pretext that he had advanced a sum of Rs. 3,38,000/- to the accused due to acquaintance and in lieu of making the payment of the said amount, the accused had issued cheque Ext.C2/CW-1 amounting to Rs. 1,38,000/- and cheque Ext.C3/CW-1 amounting to Rs. 2,00,000/- in his favor and when the said cheques were presented by the complainant for attachment with his banker i.e. UCO Bank, Gumma, the same or dishonored for want of Insufficient Funds in the account of the accused.

23. The accused in a statement under Section 351 of BNSS, has denied the fact that he had borrowed a sum of Rs. 3,38,000/- from the complainant and further, the accused has denied issuance of cheque Ext.C2/CW-1 and Ext.C3/CW-1 in the favor of the complainant. However, the accused in a statement under Section 351 of BNSS has admitted his signatures on cheque Ext.C2/CW-1 and Ext.C3/CW-1 and since the accused has admitted his signatures on cheque Ext.C2/CW-1 and Ext.C3/CW-1 in his statement under Section 351 of BNSS therefore, presumption under Section 118 (b) and 139 of the Negotiable Instrument Act arises in the favor of the holder of the cheque i.e. complainant and it is for the accused to

rebut the said presumption by leading, cogent and reliable evidence.

24. In his statement under Section 351 of BNSS, the accused has raised the defence that his liability is lesser than the cheque amount but the accused has not stepped into the witness box to prove as to how his liability is lesser than the cheque amount towards the complainant and merely self-serving statement of the accused in his statement under Section 351 of BNSS cannot be taken into consideration to prove the defence of the accused.

25. Further, the learned counsel for the accused has tried to raise the defence of business relationship of accused with the complainant in the cross-examination of complainant at CW-1 but the complainant in his cross-examination at CW-1 has denied any business relationship between him and the accused and the complainant has also denied the fact that the cheques in questions were issued in the favor of the complainant by the accused on the pretext that the accused shall bear the losses, if any, in business between the complainant and the accused. Since, the complainant in his cross-examination CW-1 has denied business relationship between him and the accused and further, since the complainant has denied issuance of cheques Ext.C2/CW-1 and Ext.C3/CW-1 by the accused in lieu of suffering losses in the business therefore, it was for the accused to step into the witness box to prove his

business relationship with the complainant but since the accused has failed to step into the witness box and to prove his defence business relationship between him and the complainant, therefore, this Court is bound to draw a adverse inference against the accused and thus the accused has failed to lead cogent and reliable evidence to rebut the presumption which has arisen in the favor of the holder of the cheque i.e. complainant.

26. Further, at the time of arguments, learned counsel for the accused has argued that the present complaint is premature as no acknowledgment *qua* receipt legal notice dated 18.11.2015 to accused has been placed on record by the complainant along with the complaint and it has been mentioned in the complaint that notice dated 18.11.2015 was presumed to be received by the accused on 24.11.2015 but no evidence qua said presumption either oral or documentary has been led by the complainant to prove the fact that the present complaint is within limitation. However, as per the complaint, legal notice dated 18.11.2015 Ext.C5/CW-1 was issued to the accused on his correct address but it has been mentioned in the complaint that the said legal notice was presumed to be served on 24.11.2015 but no oral or documentary evidence has been led by the complainant to prove receipt of legal notice dated to the accused on 24.11.2015.

27. Therefore, in the light of the judgment of ***Hon'ble***

High Court of H.P. in HDFC Bank vs Reena, 2024 Latest Caselaw 13348 HP dated 9 September, 2024, 30 days period shall be taken to presume service of notice Ext.C5/CW-1 to the accused from the date of issuance of notice dated 18.11.2015. Since legal notice Ext.C5/CW-1 was dispatched to the accused on 18.11.2015 therefore, the same is presumed to be served on the accused on 18.12.2015 and the present complaint was to be filed by the complainant after expiry of 15 days from receipt of legal notice i.e. after 15 days from receipt of legal notice and the said period of 15 days expired on 02.01.2016. The perusal of the complaint shows that the same was filed by the complainant on 07.01.2016 i.e. after expiry of 15 days from the receipt of legal notice Ext.C5/CW-1 on the accused on 18.12.2015 and therefore, the said complaint cannot be said to be premature and the same is within limitation and therefore the accused cannot praise the defence of the complaint being premature.

28. Further, the accused in his statement under Section 351 of BNSS has raised the defense that legal notice Ext.C5/CW-1 was never received by him. However, the accused has not rebutted his address on the notice. In ***2007 Law Suit (SC) 705 titled as CC Alavi Haji versus Palapetti Mohammad and other,*** it was held that as per Section 114 read with illujstration F of the Evidence Act and Section 25 of General Clauses Act, once it is proved that the notice was send on the correct address, the notice is

presumed to be served.

29. At this stage, I would like to refer to a judgment passed by Hon'ble Supreme Court in the case of ***Laxmi Dyechen versus State of Gujarat and others*** *wherein the judgment of* ***Rangappa v. Sri Mohan cited as (2000) 11 SCC 441*** was approved and reiterated as follows :

> *"failure of the drawer of the cheque to put up a probable defence for rebutting the presumption that arises under Section 139 would justify conviction even when the appellant drawer may have alleged that the cheque in question had been lost and was being misused by the complainant"*

30. Statutory presumptions under the Act are intended to operate against the accused until such time as they are rebutted by the accused on a scale of preponderance of probability. Till then the onus remains upon the accused and only after he has successfully rebutted the presumptions then the onus shifts upon the complainant to prove his case.

31. Hon'ble Apex Court in ***Krishna Janardhan Bhatt's case*** *(supra)* has also held at para 25 that :

> *"25. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from*

the materials brought on record by the parties but also by reference to the circumstances upon which he relies".

32. Therefore, what has been upheld by Hon'ble Apex Court in the above noted case is that accused can prove his defence by "preponderance of probabilities" whereas prosecution has to prove the guilt of accused beyond all reasonable doubts. It was also held by Apex Court in the said case that :

> *"26. A statutory presumption has an evidentiary value. The question as to whether the presumption stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In the case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration".*

33. In view of the above discussion, it is clear that the defense of accused has not got proved even on the scale of preponderance of probabilities. Having considered the entire evidence, it is proved that accused had issued the cheque against liability and against legally enforceable debt and the said cheque were dishonored due to the reason "Insufficient Funds".

34. It is proved on record that accused despite service of statutory notice of demand failed to make the pay-

ment of the cheque in question within 15 days from receipt thereof. The complainant has fulfilled all the ingredients of Section 138 of the Act. Accordingly, point No.1 is decided in affirmative and against the accused.

FINAL ORDER.

35. In view of the above discussion, the complainant has succeeded in proving its case beyond reasonable doubt for the commission of offense punishable under section 138 of Negotiable Instrument Act. Hence, the accused is **Convicted** for the commission of offense punishable under section 138 of Negotiable Instrument Act.

36. The accused has already furnished personal and surety bonds as per the mandate of Section 481 of BNSS, wherein he has undertaken that he will put in appearance before the appellate court within the prescribed period in case an appeal is filed and admitted for hearing. Let, the accused be heard on quantum of sentence on **31.07.2026**. Judgment to continue.

Announced and signed in the open Court on the 28th day of July, 2026.

(Kanika Gupta)
Addl. Chief Judicial Magistrate
Theog, Distt. Shimla, H.P.

PART-A (FORM-A)
List of Witnesses:-

A. Complainant Witnesses, if any:

Sr. No.	Name of Witnesses	Nature of the Witnesses
CW-1	Shri Prakash Purta	Complainant's Witness

B. Defendant Witnesses, if any: None

PART-B (FORM-B)
List of Exhibits:-

A. Complainant Exhibits, if any:

Sr. No.	No. of Exhibits	Description of Exhibits
1.	Ext.C1/CW-1	Affidavit of complainant by way of examination-in-chief
2.	Ext.C2/CW-1	Cheque No. 104889 dated 30.08.2015 for Rs.1,38,000/-
3.	Ext.C3/CW-1	Cheque No. 104890 dated 15.09.2015 for Rs.2,00,000/-
4.	Ext.C4/CW-1	Cheque Return Memo dated 02.11.2015 showing dishonour for "Funds Insufficient"
5.	Ext.C5/CW-1	Statutory Legal Demand Notice dated 18.11.2015
6.	Ext.C6/CW-1	Postal Receipt regarding dis-patch of legal notice

B. Defendant Exhibits, if any: None

(Kanika Gupta)
Addl. Chief Judicial Magistrate
Theog, Distt. Shimla, H.P.

'AB'

QUANTUM OF SENTENCE

31.07.2026 Present: Shri Rajeev Shyam, Advocate for the complainant.

Convict in person with Shri M.S Chatra, Advocate.

1. Heard on quantum of sentence. The Ld. Counsel for the complainant has submitted that keeping in view the nature of offence severe punishment is required to be awarded to the convict. On the other hand, the Ld. Counsel for the convict contended that convict is the only bread winner of his family, as such lenient view in the matter be taken.

2. Sentencing is a judicial discretion and to my mind court should not shy away from sentencing the convict adequately in befitting circumstances. The offence under Section 138 Negotiable Instruments Act has been introduced to encourage greater vigilance to prevent the usual callous attitude of drawer of cheque and to lend greater credibility to the transactions. Otherwise also, the court is not oblivious of the fact that the cases involving dishonor of cheque are on rise nowadays, whereby no lenient view can be taken in such like cases so as to create a deterrent effect. Therefore, I am not inclined to take any lenient view or to grant the benefit of probation of Offenders Act or benefit of section 360 Cr.P.C., since the

cases of dishonour of cheque are on high rising in society and shall not serve deterrent to others if the lenient view is taken. As far as, the contention of the convict is concerned, though no previous conviction of the convict has been alleged or proved, but the convict has put the complainant to un-necessary harassment by issuing a cheque which was dishonoured for insufficient funds. Convict is matured person who could foresee the consequences of his acts, hence also he is not entitled for leniency from the Court.

3. Keeping in view the facts and circumstances of the case, I hereby sentence the convict to undergo simple imprisonment for a period of **Six months**. Considering the cheques amount of the cheques to be **Rs. 1,38,000/- and Rs. 2,00,000/-** I also order that convict shall pay compensation of **Rs. 5,07,000/**- to the complainant for loss suffered by him. The compensation amount if not paid in time, shall be recoverable under the provisions of Section 421 Cr.P.C. (Section 84 of BNSS).

4. No application under Section 389 Cr.P.C (Section 430 of BNSS) has been moved on behalf of the convict for suspension of sentence. Committal warrants be prepared accordingly by Criminal Ahlmad of this Court.

5. Let a copy of this judgment/order be given to the

convict free of cost. Ld. Counsel for the complainant is at liberty to move appropriate application for recovery of the compensation amount as per relevant provision of law. The file after due completion be consigned to record room.

Announced and signed in the open Court on this 31st day of July, 2026.

(Kanika Gupta)
Addl. Chief Judicial Magistrate
Theog, Distt. Shimla, H.P.