

IN THE COURT OF DR. PARVINDER SINGH ARORA,
ADDITIONAL SESSIONS JUDGE (C.B.I. COURT), SHIMLA, H.P.

Criminal Appeal No.	:	30-S/10 of 2025
C.N.R. No.	:	HPSH100051112025
Filing No.	:	Cr.Appeal/3622/2025
Registration No.	:	Cr. Appeal/143/2025
Date of institution.	:	01.07.2025
Date of decision.	:	27.07.2026

In the matter of:

Krishan, son of Shri Om Prakash, resident of Village Mashran, Post Office Tharoch, Tehsil Nerwa, District Shimla, H.P.

.....Appellant/accused.

Versus

Sita Ram, son of Shri Mohan Lal, resident of Village Chandpur (Khaddar), Post Office Nakorapul, Tehsil Chopal, District Shimla, H.P.

....Respondent/Complainant.

APPEAL UNDER SECTION 415 OF BHARTIYA NAGRIK SURAKSHA SANHITA, 2023, AGAINST THE JUDGMENT AND SENTENCING ORDER DATED 30.05.2025, PASSED BY THE COURT OF LD. JUDICIAL MAGISTRATE FIRST CLASS, CHOPAL, DISTRICT SHIMLA, H.P. IN CRIMINAL COMPLAINT BEARING NO. 99-3 OF 2019, IN CASE TITLED AS 'SITA RAM VERSUS KRISHAN'.

Present Counsels:

For the Appellant.	:	Shri Atul Thakur, Ld. Counsel.
For the Respondent.	:	Shri Sanjay Kumar, Ld. Counsel.

J U D G M E N T :

The appellant/accused is in appeal before this Court against the judgment of conviction and order of sentence dated 30.05.2025, passed by the Ld. Judicial Magistrate, First Class, Chopal, District Shimla, (here-in-after to be referred as the 'Ld. Trial Court for short') in a criminal complaint bearing No. 99-3 of 2019, titled as 'Sita Ram Versus Krishan', under Section 138 of the Negotiable Instruments Act (here-in-after 'the Act' for short), whereby the Appellant has been convicted and sentenced in the following manner:-

Sl. No.	Offence	Sentence imposed
1.	138 of N.I. Act.	Simple imprisonment for four months and to pay fine/compensation to the tune of Rs. 3,20,000/-.

Facts Of The Case

2. Brief facts of the case giving rise to the present appeal are that on 21.05.2019, the respondent/complainant had filed a complaint before the Ld. Trial Court. It was submitted by the complainant that he is an horticulturist and serving in the Education Department. The accused is a skilled mason and carpenter. On 04.09.2018, at his house in Chandpur, the complainant had advanced Rs.2,70,000/- to the accused for construction of kitchen and installation of iron/steel roof on his building. This money was advanced in the presence of one Shri Surinder Bhandari son of late Shri Lachhi Ram. The accused assured the complainant that work will be completed on or before 31.01.2019, failing which to discharge the liability, the accused on the same day had issued a

post dated cheque No. 078061, dated 11.02.2019 in the sum of Rs.2,70,000/-. The complainant had managed Rs.1 lakh from Shri Surinder Bhandari to advance Rs.2,70,000/- to the accused. Till date neither the accused completed the work, nor returned back the money of the complainant. In order to execute the work, the complainant had to deploy other carpenter. On 08.04.2019, the complainant presented the cheque with his bankers H.P. State Co.op. Bank Chopal, for encashment, but it was dishonoured on account of insufficient funds in the bank account of the accused. The cheque was returned unpaid alongwith Memo dated 11.04.2019. On 24.04.2019, the complainant issued the legal notice to the accused which was sent at his proper address and was duly served. However, despite service of the legal notice, the accused did not pay the cheque amount. Hence, cause of action arose to the complainant to file the complaint.

Proceedings Before The Learned Trial Court

3. Taking the cognizance on the complaint, the accused was summoned vide order dated 24.05.2019, and after ensuring the presence of the accused and supplying the copies of complaint etc., substance of accusation was framed and put to accused on 21.07.2022, to which, he pleaded not guilty and claimed trial. To sustain the conviction of the accused, complainant stepped into the witness box as CW1 and tendered in evidence, Cheque (Ext. C2/CW1), cheque return Memo (Ext. C3/CW1), cheque deposit slip (Ext. C4/CW1), legal notice (Ext. C5/CW1), postal receipt (Ext. C6/CW1). The complainant also examined Shri Surinder Bhandari as CW2, and closed his evidence on 10.08.2023.

4. The incriminating circumstances on record were put to the accused by recording his statement under Section 313 of Cr.P.C. on 04.11.2023. The accused was granted sufficient opportunities to lead defence evidence, but despite availing sufficient opportunities, the accused failed to lead defence evidence. As such, the defence evidence on behalf of accused was closed vide order dated 01.10.2024 by the Ld. Trial Court.

Decision Of The Learned Trial Court

5. The Ld. Trial Court after hearing the Ld. Counsel for the parties, vide impugned judgment found the accused guilty, convicted and sentenced the accused under Section 138 of the Act. The accused was sentenced to simple imprisonment for four months and also directed to pay fine Rs.3,20,000/- which was awarded as compensation to the accused.

Grounds Of Appeal

6. Feeling aggrieved and dissatisfied with the impugned judgment and sentence order, the accused has preferred this appeal, *inter alia*, on the following grounds:

- i) That the impugned judgment is against the law and facts of the case.
- ii) That the impugned judgment has been passed on conjectures and surmises.
- iii) That Ld. Trial Court could not have arrived at the conclusion on the basis of material on record.
- iv) That the Ld. Trial Court had misread and misinterpreted the evidence, thus drawn far-fetched conclusions.

- v) That the impugned judgment and order is illegal, harsh and oppressive.
- vi) That the Ld. Trial Court failed to appreciate that at the time of presentation of the cheque, it was not a legally recoverable debt.
- vii) That the Ld. Trial Court failed to appreciate the fact that the appellant had shown on record that consideration in the cheque was improbable/doubtful.

Arguments

7. During the course of arguments, Shri Atul Thakur, Ld. Counsel for the appellant submitted that admittedly there is a difference in the ink used in filling the amount, date and signature on the cheque. This important circumstance belies the assertion made in the complaint that the cheque was issued on the same day when Rs.2,70,000/- was allegedly given by the complainant to the accused. There are too many contradictions in the testimonies of the complainant witnesses. In fact, the complainant had misused the security cheque given by the accused. The appellant has been able to show his probable defence. The Ld. Trial Court failed to appreciate the pleadings and evidence in the correct perspective. The Ld. Trial Court failed to apply the correct principles of law to decide the matter in dispute. In support of his arguments, Ld. Counsel for the appellant has relied upon case law of **Hon'ble Supreme Court of India, in the matter of Basalingappa versus Mudibasappa, (2019) 5 Supreme Court Cases 418.**

8. To the contrary, Shri Sanjay Kumar, Ld. Counsel for the complainant/respondent submitted that the Ld. Trial Court has passed a well reasoned judgment and therefore no interference is required from this Court.

Points For Determination

9. Following points arise for determination in this appeal:-

Point No.1. Whether the impugned judgment of conviction and sentence order dated 30.05.2025 passed by the Ld. Trial Court are not sustainable in the eyes of law?

Point No.2. Final Order.

Determination On Points

10. For the reasons to be recorded here-in-after, while discussing the above points, my findings on the same are as under:

Point No.1. No.

Final Order. The appeal is dismissed, as per operative part of the judgment.

REASONS FOR FINDINGS:

Point No. 1.

11. It is no longer res integra that it is the mandatory duty of the first appellate court to make proper analysis of evidence and to consider whether trial court's assessment of evidence and its opinion regarding conviction deserved to be confirmed because the personal liberty of an accused is curtailed on account of conviction. The Hon'ble Apex Court has held in **Bakshish Ram Vs. State of Punjab, AIR 2013 SC 14** that:

"Appellate Court has to apply its independent mind and record its own findings by making independent

assessment of evidence. In absence of independent assessment by the appellate court (High Court), its ultimate decision cannot be sustained.”

12. In **Kaanubhai Bhagvanbhai Nayak Vs. State of Gujarat, AIR 2019 SC 544, Hon’ble Apex Court** held that:

“U/s Section 386 CrPC, appellate court has to examine evidence of each prosecution witness on issues relating to the case and then record its findings on it. Deciding appeal without appreciating evidence and without recording its own findings by the appellate court on any of the issues arising in the case is erroneous and liable to be set aside.”

13. In view of aforesaid principles, following discussion is put forth.

14. It is the case of the complainant that he is an horticulturist and serving in Education Department, whereas, the accused is a skilled mason and carpenter. It is his case that on 04.09.2018, a sum of Rs.2,70,000/- was paid to the accused by the complainant in the presence of Surinder Bhadari. This amount was paid for construction of kitchen and installation of iron/steel roof on the complainant’s building. The accused had assured for completion of the work before 31.01.2019, failing which he had issued a post dated cheque in the same amount.

15. The complainant Shri Sita Ram stepped into the witness box as CW1 and supported all the averments of the complaint. He stated that he had given Rs.2,70,000/- to the accused on 04.09.2018 to execute the roof and kitchen work. He had taken Rs.1

lakh from Shri Surinder Bhandari. The accused did not execute the work, therefore, he presented the cheque for encashment. He denied that he had advanced Rs.30,000/- to the accused which he returned back. He further denied that the cheque in question was given by the accused as security, but has been misused by him. He also denied that the accused did not receive the legal notice. He admitted that there is a difference in the ink with which the signature appear on the cheque (Ext. C2/CW1), and the ink with which date is mentioned on the same. He produced on record the cheque (Ext. C2/CW1), returning Memo (Ext. C3/CW1), cheque deposit slip (Ext. C4/CW1), legal notice (Ext. C5/CW1), and postal receipt (Ext. C6/CW1).

16. The complainant also examined Shri Surinder Bhandari as CW2, who stated that on 04.09.2018, the complainant borrowed Rs.1 lakh from him and had given Rs.2,70,000/- to the accused in his presence. He stated that he and the complainant are from the same village. He denied that no money was given by the complainant to the accused in his presence. He further denied that accused had not given the cheque to the complainant in his presence. Significantly, he was suggested that a usually security cheque is obtained from the mason when he executes the job, which suggestion was admitted by the witness. He volunteered to state that cheque is presented if the work is not executed.

17. The accused during his examination under Section 313 Cr.P.C. denied that he had taken Rs.2,70,000/- from the complainant on 04.09.2018. Rather, he stated that Rs.40,000/- was given by the complainant to him. He stated that he had given blank

security cheque to the complainant. He denied to have received the legal notice. He stated that he had returned the amount of complainant by paying him Rs.19,000/- on one occasion and Rs.20,000/- on second occasion. Though, the accused had taken opportunity to lead evidence, however, despite repeated opportunities he failed to lead evidence in his defence and vide order dated 01.10.2024, the opportunity of the accused to lead evidence in defence was closed by the order of the Court.

18. The dishonour of the cheque (Ext. C2/CW1) on account of insufficient funds in the bank account of the accused stands proved in view of the cheque return Memo (Ext. C3/CW1). The complainant has also produced on record the receipt (Ext. C4/CW1) through which the cheque was deposited in the bank. The complainant has also placed on record the legal notice (Ext. C5/CW1) alongwith postal receipt (Ext. C6/CW1) to prove that he had complied with the mandatory provision of issuing legal notice to the accused for payment of the cheque amount.

19. The complainant (CW1) has made testimony in support of his averments in the complaint. The testimony of the complainant is duly supported from the testimony of CW2 Shri Surinder Bhandari. The statement of the complainant witness suggest that on 04.09.2018, the complainant had advanced Rs.2,70,000/- to the accused for executing construction of the kitchen and installation of iron/steel roof on his building. Their testimony also proves that CW2 had given Rs.1 lakh to the complainant and the amount of Rs.2,70,000/- included this amount. CW2 further stated that the accused had issued the cheque (Ext. C2/CW1) to the complainant

in his presence. Nothing supporting the defence of the accused could be elicited from the cross-examination of these witnesses. It was suggested to the complainant by the defence that he had only advanced Rs.30,000/- to the accused. The complainant denied this suggestion. Such line of the cross-examination of the complainant suggests a defence that the accused had only taken Rs.30,000/- from the complainant. However, the defence taken by the accused during his examination under Section 313 Cr.P.C. is that he had taken Rs.40,000/- from the complainant and returned the same by paying Rs.19,000/- at one occasion and Rs.20,000/- on second occasion. Thus, there is a contradiction between the defence taken by the accused during his examination under Section 313 Cr.P.C. vis-a-vis the defence on the line of cross-examination of the complainant.

20. The accused also took opportunities to lead evidence in defence. From 04.11.2023 till 01.10.2024, the accused availed around five opportunities for defence, but did not lead any evidence. Neither the accused could extract anything from the cross-examination of the complainant witness so as to prove/probablize his defence; whereas, the statement of the complainant witnesses proved the foundational facts on the basis of which statutory presumption can safely be raised in favour of the accused.

21. In case of negotiable instrument, there are presumptions under Section 118 (a) and under Section 139 of the Act to the effect that every negotiable instrument is made or drawn for consideration and that holder of cheque has received the cheque for the discharge in whole/part of any debt/other liability.

22. The accused has admitted his signature on the cheque (Ext. C2/CW1) and there is no dispute by the accused with regard to his signature on the cheque. It has been held by the **Hon'ble Madras High Court**, in case titled **A.B.M. Raja Sah Vs. B.M.S. Srinivasa Sah**, reported in **2008 (3) Criminal Court Cases 402 (Madras)** that once signatures on disputed cheque are admitted by the accused, the presumption under Section 138 & 139 of the Act will follow. Also, the **Hon'ble Apex Court** in **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and another**, reported in **1999 (3) Civil Court cases 385 (S.C.)** held that:-

"As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears, section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debit or liability. The burden was on the accused to rebut the aforesaid presumption."

23. Once the signatures of the accused on the cheque are not disputed, rather admitted, the presumption under Sections 138 & 139 of the Act will follow.

24. The **Hon'ble Apex Court** in the context of cases in which statutory presumption arises regarding guilt of the accused, in **Kali Ram Vs. State of Himachal Pradesh**, reported in **(1973) 2 SCC 808**, held that:-

"One of the cardinal principles which has always to be kept in view in our system of administration of

justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the Courts can not record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of the facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would in such a event, be for the accused to rebut the presumption."

25. In view of the decision of **Hon'ble Supreme Court of India in Sripati Singh Versus State of Jharkhand, reported in 2021 SCC Online SC 1002**, it is concluded that even the dishonour of the security cheque would fall under the mischief of Section 138 of N.I. Act, if underlying debt remained unpaid.

26. Applying the aforesaid principles to the facts and circumstances of the present case, the complainant has been able to prove the existence of the facts on the basis of which statutory presumption can be drawn in his favour. On the other hand, the

accused has failed to rebut such presumption by availing any probable defence. The accused/appellant has failed to extract anything from the cross-examination of complainant witness so as to rebut the statutory presumption or probablize his defence.

27. It is the argument of the appellant that the ink used in writing the date on the cheque (Ext. C2/CW1) is different from the ink used to put signatures on the cheque in question. The argument appears to be correct, however, in view of the fact that the accused admitted his signature on the cheque (Ext. C2/CW1) coupled with the proof of the fact that the liability of the accused to return Rs.2,70,000/- to the complainant for non execution of the agreed work, there does not remain any doubt with the regard to the amount mentioned in the cheque (Ext. C2/CW1). The complainant evidence especially the statement of CW2 proves that the complainant had advanced Rs.2,70,000/- to the accused for execution of the said work and the accused had issued the cheque in the event he was unable to execute the work. There is also evidence on record to suggest that said work was not executed by accused. Therefore, no benefit can be afforded to the appellant on account of different ink used to write the date and the one to use to put signature there upon.

28. It is also the argument of the appellant that the service of the legal notice stands not proved, as no acknowledgment has been placed on record. Admittedly, the complainant has not placed any acknowledgment of the receipt of legal notice on record, but at the same time, there is sufficient evidence in the shape of postal receipt (Ext. C6/CW1) with the envelope containing the legal notice, sent by

the complainant. There is no dispute with regard to the address of the accused mentioned in the legal notice (Ext. C5/CW1). The purpose of the legal notice is to raise a demand to the accused before initiating criminal process. It is not a case where the accused claimed that he was ready to discharge his liability had the legal notice been received by him. Rather, the accused has disputed the liability of cheque amount. Therefore, no benefit can be afforded to the accused with regard to this argument.

Conclusion

29. In view of aforesaid discussion, it is concluded that the Ld. Trial Court has rightly held that the complainant has proved his case as per established legal principles and the accused has not been able to rebut the statutory presumptions raised against him under Section 138 of the Act. The accused has failed to prove his defence even on the scale of preponderance of probabilities, whereas, the complainant has been able to prove the existence of foundational facts on the basis of which, statutory presumption can safely be drawn in his favour.

30. Having considered the entire evidence, it stands proved that the accused had issued the cheque against legally enforceable debt and the said cheque was dishonoured for reasons 'insufficient funds' in the account of the accused. Therefore, the Ld. Trial Court has rightly convicted the accused.

31. The appellant has failed to show that the impugned judgment is against the law and facts or is based on the conjectures and surmises and thus suffers from material irregularities and

illegalities. The Ld. Trial Court has rightly applied the judicial principles to decide the matter.

32. Further, the Ld. Trial Court has taken a balanced view while imposing the sentence of four months imprisonment upon the appellant, whereas, the Ld. Trial Court has also taken a lenient view imposing Rs.3,20,000/- as the amount of fine to be paid as compensation to the complainant for the financial transaction which took place between the parties in the year, 2018. Had the appellant honoured the cheque, the complainant could have invested the cheque amount and earned interest upon it. Further, the complainant had also incurred legal expenses for the prosecution of the accused. Hence, no interference is required in the sentencing order passed by the Ld. Trial Court. *Accordingly, point No. 1 is answered in negative and against the appellant/accused.*

Final Order.

33. In view of my findings on Point No. 1 above, the appeal filed by appellant is dismissed. The impugned judgment of conviction and order of sentence dated 30.05.2025, rendered by the Learned Trial Court are upheld.

34. Pending application (s), if any, have become infructuous. The same be tagged with main appeal, after its due registration as uncontested Cr.M.P.

35. Let copy of this judgment be sent to the Learned Trial Court along with the record of the Learned Trial Court, whereas the file of this court, after due completion, be consigned to the records.

36. The convict is directed to surrender before the Ld. Trial Court within a period of 30 days from today.

Announced and signed in the open Court, this the 27th day of July, 2026.

Sd/-

(Dr. Parvinder Singh Arora)
Additional Sessions Judge,
(C.B.I. Court), Shimla, H.P.

'R.V.'

ADDITIONAL SESSIONS JUDGE (C.B.I. COURT), SHIMLA