IN THE COURT OF DR SUKHWINDER SINGH, CHIEF JUDICIAL MAGISTRATE, RUPNAGAR. (UID NO.PB0332)

CNR No.PBRO-03-001313-2022

Case No.NACT/202/2022

Presented on : 13-05-2022
Registered on : 13-05-2022
Decided on : 02-07-2026

AMRITPAL SINGH SON OF GURDEV SINGH, RESIDENT OF VILLAGE RATTANGARH, TEHSIL MORINDA, DISTRICT RUPNAGAR.

……..COMPLAINANT

VERSUS

AMANDEEP PUREWAL SON OF HARJANTAR SINGH, RESIDENT OF HOUSE NO.99, WARD NO.7, MORINDA, POLICE STATION CITY MORINDA, TEHSIL MORINDA, DISTRICT RUPNAGAR.

……..ACCUSED

COMPLAINT UNDER SECTION 138 OF NEGOTIABLE INSTRUMENT ACT.

Present:- Complainant with counsel Sh. Abhishek Joshi, Advocate.
Accused Amandeep Purewal on bail represented by counsel Sh. Kulwinder Singh, Advocate.

J U D G M E N T

The complainant has preferred the present complaint under **Section 138 of the Negotiable Instrument Act** against the accused **Amandeep Purewal.**

2. **Compendiously** the facts of the complaint, as set out in the complaint are that both complainant and accused are having friendly relations and known to each other. Accused Amandeep Purewal is running the business of Tyres under the name and style of "Guru Nanak Tyres" at Morinda. On 25.12.2021, accused approached the complainant and requested for lending him Rs.1,50,000/- for business purpose. Even, earlier the number of times, accused borrowed the amount and the same was returned by the accused. Accused assured the complainant that he will return the amount within two months. As per the assurance of accused, complainant gave Rs.1,50,000/- to the accused. After passing of two months, complainant demanded his money back from the accused and in discharge of his legal liability, accused issued cheque bearing No.207294 dated 21.02.2022 amounting to Rs.1,50,000/- of Canara Bank, Branch Morinda to the complainant.

On presentation of the above said cheque for encashment, the said cheque was returned back on 23.02.2022 with remarks "Funds Insufficient." Complainant informed the accused about the dishonoring of cheque and accused again requested the complainant to present the cheque in question in the last week of March 2022. Thereafter, complainant again presented the cheque in question for encashment, however, the said cheque was returned back on 31.03.2022 with remarks "Funds Insufficient." Thereafter, complainant served a **legal notice dated 19.04.2022** upon the accused to make the payment of the said cheque within 15 days but despite the said notice, accused failed to return the cheque amount. Hence, it necessitated the filing of present complaint.

3. The **complainant Amritpal Singh** brought on file his preliminary evidence and in which he examined himself as **CW-1** and tendered into evidence his duly sworn **affidavit Ex.CW1/A** along with documents i.e. **original cheque bearing No.207294 dated 21.02.2022 amounting to Rs.1.50 lakhs Ex.C1, return memos dated 23.02.2022 and 31.03.2022 Ex.C2 and Ex.C3 respectively, legal notice dated 19.04.2022 Ex.C4, acknowledgment Ex.C5 and postal receipt Ex.C6** and after hearing the version of the complainant and perusal of the material on record minutely, the court summoned the accused to face trial for having committed an offence punishable under **Section 138 of Negotiable Instrument Act.**

4. **On appearance**, the accused was admitted to bail and after hearing arguments on notice by the learned counsel for the complainant and accused, a notice of accusation under Section 138 of the Negotiable Instrument Act was served upon the accused. The contents of the notice were read over and explained to accused in simple Punjabi language but she pleaded not guilty and claimed trial.

5. In order to prove his case, the complainant **Amritpal Singh himself stepped into the witness box as CW-1 and tendered into evidence his duly sworn affidavit as Ex.CW1/A** along with documents i.e. **original cheque bearing No.207294 dated 21.02.2022 amounting to Rs.1.50 lakhs Ex.C1, return memos dated 23.02.2022 and 31.03.2022 Ex.C2 and Ex.C3 respectively, legal notice dated 19.04.2022 Ex.C4, acknowledgment**

Ex.C5 and postal receipt Ex.C6 (already exhibited in preliminary evidence). Complainant further examined **Sarabjeet Singh as CW-2**. Thereafter, learned counsel for the complainant closed the post notice evidence vide separate statement.

6. The accused was confronted with incriminating evidence during his statement under Section 313 Cr.P.C., but he denied all the allegations of the complaint and has contended that he is innocent. He has committed no offence. He has been falsely implicated in the present complaint. Complainant misused the cheque and filed the present complaint. He gave the alleged cheque as guarantor of Ravinder Singh as Ravinder Singh had purchased a car make Etios Liva from Amritpal Singh.

7. He opted to lead evidence in defence, but did not examine witness in defence. Thereafter, he closed evidence in defence, vide separate statement.

8. I have heard the learned counsel for both the parties and have gone through the evidence on record very minutely.

9. The learned counsel for the complainant has fervently argued that both complainant and accused are having friendly relations and known to each other. Accused Amandeep Purewal is running the business of Tyres under the name and style of "Guru Nanak Tyres" at Morinda. On 25.12.2021, accused approached the complainant and requested for lending him Rs.1,50,000/- for business purpose. Accused assured the complainant that he will return the amount within two months. As per the

assurance of accused, complainant gave Rs.1,50,000/- to the accused. After passing of two months, complainant demanded his money back from the accused and in discharge of his legal liability, accused issued cheque bearing No.207294 dated 21.02.2022 amounting to Rs.1,50,000/- of Canara Bank, Branch Morinda to the complainant.

On presentation of the above said cheque for encashment, the said cheque was returned back on 23.02.2022 with remarks "Funds Insufficient." Complainant informed the accused about the dishonoring of cheque and accused again requested the complainant to present the cheque in question in the last week of March 2022. Thereafter, complainant again presented the cheque in question for encashment, however, the said cheque was returned back on 31.03.2022 with remarks "Funds Insufficient." Thereafter, complainant served a **legal notice dated 19.04.2022** upon the accused to make the payment of the said cheque within 15 days but despite the said notice, accused failed to return the cheque amount. **Complainant Amritpal Singh** while appearing as **CW-1** has reiterated the averments as mentioned in the complaint under Section 138 of NI Act. Further, CW-2 Sarabjeet Singh also supported the case of the complainant. The presumption under Sections 118 and 139 of Negotiable Instrument Act is in favour of complainant. As such, accused is liable to be convicted for an offence punishable under Section 138 of Negotiable Instrument Act.

10. **Per contra**, learned counsel for accused refuted the assertions made by the complainant and has assiduously contended that **a false**

complaint has been filed against the accused. Complainant misused the cheque and filed the present complaint. He gave the alleged cheque as guarantor of Ravinder Singh as Ravinder Singh had purchased a car make Etios Liva from Amritpal Singh. **Accused is an innocent person and should be acquitted**. The presumption under Section 139 of Negotiable Instrument Act is regarding the existence of the debt and not for the legally enforceable debt. The accused has successfully rebutted the presumption under **Section 139 of Negotiable Instruments Act**. Hence, the accused be acquitted of the notice of accusation.

11. From the arguments raised by both the sides as well as from the scrutiny of the material on record, the following point of determination emerges for the decision of the present case:-

(A) WHETHER ACCUSED ISSUED CHEQUE BEARING NO. 207294 DATED 21.02.2022 AMOUNTING TO RS.1,50,000/- FROM HIS ACCOUNT MAINTAINED WITH CANARA BANK, BRANCH MORINDA, IN FAVOUR OF COMPLAINANT IN DISCHARGE OF THE LEGAL LIABILITY AND THE ABOVE SAID CHEQUE WAS RETURNED BACK WITH THE REMARKS "FUNDS INSUFFICIENT"?

12. After hearing the rival contentions of both the parties and from the perusal of the material available on record, my findings on the point of determination are as under:-

13. To prove the allegations of the complaint, the **complainant**

Amritpal Singh himself stepped into the witness box as CW-1. He has deposed in his affidavit Ex.CW1/A as per his case set out in the complaint which need not be reproduced for the sake of brevity (to avoid unnecessary repetition). In addition to oral evidence, the complainant also brought on record documentary evidence i.e. **original cheque bearing No.207294 dated 21.02.2022 amounting to Rs.1.50 lakhs Ex.C1, return memos dated 23.02.2022 and 31.03.2022 Ex.C2 and Ex.C3 respectively, legal notice dated 19.04.2022 Ex.C4, acknowledgment Ex.C5 and postal receipt Ex.C6.** Further, CW-2 Sarabjeet Singh also supported the case of complainant. Thereafter, the complainant closed his evidence. The complainant has deposed in verbatim as per the case set out by the complainant in his complaint.

14. The ingredients of Section 138 of Negotiable Instrument Act are as under :-

- **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 pre-supposes a legally enforceable debt;and**
- **iii) That the cheque so issued had been returned due to insufficiency of funds.**

15. It is germane to mention here the Section 139 of the Negotiable Instrument Act. The Section 139 of Negotiable Instrument Act raises the presumption in favour of holder of the cheque which reads as under :-

> **"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, or any debt or other liability.

16. The accused has taken a plea that a false complaint has been filed against him. The stand of accused in response to his examination under Section 313 of Cr.P.C was that of general denial and no explanation is given for his false implication. Furthermore, accused had not taken the plea of not issuing the cheque in question to the complainant and of misusing the cheque in question by the complainant. Rather he admitted that he issued cheque in question to the complainant being Guarantor of Ravinder Singh. Moreover, the accused was given opportunity to lead evidence in defence, but he failed to lead any cogent and convincing evidence in his defence. Hence, there is no merit in the argument advanced by learned defence counsel for false implication of the accused. Moreover, the accused nowhere denied his signature on the said cheque in question. In case title ***M/S KALAMANI TEX AND ANOTHER VERSUS P. BALASUBRAMANIAN,*** wherein, the Hon'ble Supreme Court of India held that **the statute mandates that once the signatures of an accused on the negotiable instrument are established, the statutory presumption is drawn under Section 118 and 139 of the N.I Act and then the reverse onus clauses become operative. In such situation the obligation shifts upon the accused to discharge the presumption imposed upon him**.

17. It is pertinent to mention here that the case in hand is against

the accused Amandeep Purewal and the onus to rebut the presumption under Section 118 and 139 of Negotiable Instruments Act was on the accused and nothing has come out in the cross examination of the complainant to rebut the presumption of Section 139 of Negotiable Instrument Act. Onus to rebut the presumption under section 118 and 139 has not been discharged by the accused as he has not able to prove that the cheque in question has not been given to the complainant. In view of the above facts and circumstances available on record it cannot be concluded that complainant's story is untrustworthy. CW-1 Amritpal Singh was cross-examined at a considerable length but nothing fruitful could be extracted out to dilute the case of the complainant. Further, **CW-2 Sarabjeet Singh** also supported the case of the complainant by deposing that he had purchased one horse from the complainant in the month of December 2021 and paid Rs.4,50,000/- to the complainant in cash. This version of CW-2 proves the financial capacity of complainant. The entire evidence led by the complainant remains unrebutted and unchallenged as accused failed to lead any cogent and convincing evidence in defence to rebut the evidence led by the complainant.

18. Although, the accused has clearly denied his liability to the extent of amount mentioned in the cheque in question but there is no probable defence raised by the accused which could rebut the presumption under Section 139 of Negotiable Instrument Act. Since the accused has not denied his signature on the cheque, a statutory presumption under Section 139 of Negotiable Instrument Act comes into play and the same

has not been rebutted even with regard to the material submitted by the complainant. **No probable and cogent evidence brought on record by the accused to prove the fact that complainant has filed complaint on the basis of concocted facts.**

19. The **Hon'ble Supreme Court in "BIR SINGH VS MUKESH KUMAR {CRIMINAL APPEAL NOS.230-231 OF 2019 IN SLP (CRIMINAL) NOS 9334-35 OF 2018" observed as follows:-**

> ***37. A meaningful reading of the provisions of the Negotiable Instruments Act including in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.***

20. Learned defence counsel has further taken the plea that Amandeep Purewal had issued cheque in question as Guarantor of Ravinder Singh as Ravinder Singh had purchased the car make Etios Liva from complainant Amritpal Singh. **In the opinion of the Court**, this plea of learned defence counsel is without any considerable force for the reason that Section 138 Negotiable Instrument Act uses the words **"where any cheque"** and therefore, the cheque could be drawn for whatever reason and the drawer would be liable if it is drawn on an account maintained by him with a banker in favour of another person for the discharge of any

debt or other liability.

> **“The cheque could be issued for the discharge of the debt or liability of the drawer or of any other person including a guarantor-”**
> **Section 128 of the Indian Contract Act provides that the liability of the surety is co-existence with that of the principal debtor, unless the contract provides otherwise.**

Hence, **as per the Indian Contract Act**, the liability of the Guarantor is co-extensive with that of the borrower, which means that the lender can enforce his right against either the principle borrower or the guarantor of the principle borrower. Therefore, on a joint reading of Section 138 of Negotiable Instruments Act and Section 128 of Indian Contract Act, it is now crystal clear that the liability of the guarantor of a loan fall within the provisions of Section 138 of Negotiable Instrument Act.

21. Furthermore, the presumption under Section 138 of Negotiable Instrument Act is raised in the favour of the complainant as the accused himself has admitted his signature on the cheque as a Guarantor and the fact that he gave the cheque in question as guarantor of one Ravinder Singh as said Ravinder Singh had purchased a car from complainant Amritpal Singh.

22. Furthermore, the language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words “Where any cheque”. The above noted three words are of extreme significance, in particular, by reason of the user of the

word "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debit or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well.

23. The co-extensive liability of the guarantor and the principal debtor, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act: **'Any cheque'** and **'other liability'** are the two key expressions which stands as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the Statute. Any contra interpretation would defeat the intent of the legislature. This opinion is fortified by the judgment passed by The **Hon'ble Supreme Court** in case titled **"<u>I.C.D.S. LIMITED VS. BEENA SHABEER AND ANOTHER IN CRIMINAL APPEAL NO.797 OF 2002</u>".**

24. In the instant case the onus was on the accused to prove that

the cheque was not for discharge of a debt or liability. The same has not been proved on record by the accused. Even there is no iota of evidence in defence to prove the same.

25. Hence, taking into account totality of facts and circumstances and material available on record with due care and circumspection, this court is of the considered opinion that the accused has failed to rebut the presumption mandated by Section 139 of Negotiable Instrument Act, hence this Court has no other option except to hold that accused issued the cheque in question in discharge of his legal liability. Thus, point (A) of determination is decided in favour of complainant and against accused.

26. In view of my findings on point of determination, the complainant has duly proved the allegations set up in the complaint. Hence, **the accused Amandeep Purewal is held guilty and convicted under Section 138 of the Negotiable Instrument Act. Let convict be heard on the quantum of sentence.**

Pronounced in open Court:
Dated:02.07.2026

(Dr. Sukhwinder Singh)
Chief Judicial Magistrate,
Rupnagar(UID No.PB-0332)

M. Uniyal, STG II
Directly typed on computer.

<u>QUANTUM OF SENTENCE.</u>

Present:- Convict Amandeep Purewal in custody represented by Sh. Kulwinder Singh, Advocate.
Complainant with counsel Sh. Abhishek Joshi, Advocate.

27. I have heard the learned counsel for the complainant and learned counsel for the convict on the quantum of sentence. **Convict**

Amandeep Purewal has submitted that he is poor person. He is to look after his family. He is the only bread earner of his family. He further prayed for taking lenient view against him. This plea has been opposed rigorously by the complainant that the accused does not deserve any lenient view as he has used the money of the complainant and did not return the same even after numerous requests made by the complainant. The counsel for the complainant also requested for adequate compensation for the loss suffered by the complainant.

28. After considering the rival submission made by the Ld. Counsel for both the parties, this Court is of the considered opinion that although the perusal of record provides that the convict is a first offender, but it is pertinent to note that the convict has issued a cheque for a substantial amount in favour of the complainant, which has been dishonoured. The penal provision for dishonour of the cheque has been incorporated in the Negotiable Instrument Act to inculcate the faith in the banking transactions and credibility in transacting business on Negotiable Instruments. In these circumstances, Court does not find any mitigating circumstances to release the convict on probation of good conduct. Chapter XVII containing Sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. These provisions were intended to discourage people from not honouring their commitments by way of payment through cheque. The Court should lean in favour of an interpretation

which serves the object of the statute.

29. It is germane here to mention that **Section 357 of Cr.P.C** is an enabling provision by which the court can give direction to the effect that when passing judgment, sentence imposed for payment of fine be recorded and applied either for defraying the expenses properly incurred in the prosecution or in payment to any person as compensation for any loss or injury caused by the offence, when compensation can be recoverable by such person in a civil suit.**(ARUN VS. STATE(2004)8 SCC 251).**

30. Hon'ble Supreme Court in **GOA PLAST(P) LTD. VS. CHICO URSULA D'S SOUZA 2004(1) R.C.R.(CRIMINAL) 179** has stressed the need for adequate punishment U/s 138 N.I.Act as under:

> *"The object and the ingredients under the provisions, in particular, Sections 138 & 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as device not only to stall by even to defraud the creditors. The sanctity and credibility of issuance of cheque in commercial transaction was eroded to a large extent".*
>
> *Undeniably, when a cheque is dishonoured by the bank then it causes incalculable loss, injury and inconvenience to the payee. Therefore, considering the loss of the payee resort can be made to Section 357 Cr.P.C as regards compensation. The Hon'ble Supreme Court in Catena of judgments has stressed the need to resort to Section 357 Cr.P.C for assuaging the miseries of the complainant.*

31. The Hon'ble Supreme Court in **K.Bhaskaran Vs. Sankaran Vaidhyan Balan and another 1999(3) Civil Court Cases 385 SC** has

reiterated its observation with approval in **Pankaj bhai Nagjibhai Patel V. State of Gujarat 2001(1) R.C.R.(Criminal) 343 as under:**

> *"However, Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code of Criminal Procedure, 1973. It is well to remember that this Court has emphasized the need for making liberal use of that provision* ***(Hari Singh Vs. Sukhbir Singh 1988 (4) SCC 551).*** *No limit is mentioned in the sub section and therefore a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a court of Magistrate of the first class in respect of a cheque which covers an amount exceeding ₹10,000/ the Court has power to award compensation to be paid to the complainant.*
>
> *Section 357(3) of the Code of Criminal Procedure conspicuously provides for ordering of payment of way of compensation to the victim by the accused. It is an important provision and it must also be noted that the power to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender.* ***The Supreme Court in Dilip S. Dhanukar V. Kotak Mahindra Co. Ltd. 2007 6 SCC 528*** *has observed.*
>
> *"Compensation is awarded towards cheque of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a Civil Suit".*

32. Accordingly, the **convict Amandeep Purewal is sentenced** for an offence under Section 138 of Negotiable Instrument Act as under:-

> ***To undergo Rigorous imprisonment for a period of 02 years and to pay compensation amount to the extent of***

cheque amount i.e. ₹1,50,000/-.

33. The complainant would be at liberty to recover the said amount from the accused after the disposal of appeal, if any from the properties (movable or immovable) of accused. The period of detention, if already undergone by the convict, be set off. Copy of judgment be provided to the convict as per law. Previous bail bonds and surety bonds stand disposed of. File be consigned to the Record Room, after due compliance.

Pronounced in open Court:
Dated:02.07.2026

(Dr. Sukhwinder Singh)
Chief Judicial Magistrate,
Rupnagar(UID No.PB-0332)

Directly typed on computer.
Typed by M. Uniyal, STG II

Present:- Complainant with counsel Sh. Abhishek Joshi, Advocate.
Accused Amandeep Purewal on bail represented by counsel Sh. Kulwinder Singh, Advocate.

No DW is present. Accused closed evidence in defence vide separate statement.

Arguments heard. Vide my separate, detailed judgment of even date, accused **has been convicted and sentenced for an offence punishable under Section 138 of Negotiable Instrument Act, as per details enumerated therein**. Copy of judgment be provided to the convict as per law. Previous bail bonds and surety bonds stands disposed of. File be consigned to the Record Room, after due compliance.

Pronounced in open Court:
Dated:02.07.2026

(Dr. Sukhwinder Singh)
Chief Judicial Magistrate,
Rupnagar(UID No.PB-0332)

M. Uniyal, STG II
Directly typed on computer.

Present: Applicant/convict Amandeep Purewal with counsel Sh. Kulwinder Singh, Advocate.

Applicant/convict Amandeep Purewal moved an application u/s 389(3) Cr.PC for suspension of sentence and to release him on bail in order to enable him to file appeal against the judgment and order of conviction.

Heard. **Since, the convict intends to file appeal, his sentence is suspended for a one month only on furnishing personal bond in the sum of ₹50,000/- with one surety in like amount by convict**, in order to enable him to prefer an appeal against the judgment passed by the Court. Requisite conviction bond has been furnished by the convict, which have been attested and accepted. **In case, appeal is not filed or bail is not granted in appeal, the convict is directed to appear in the Court after expiring the period of one month to receive the sentence.**

Ahlmad is directed to keep the papers separate and it be registered as Crl. Misc. and to put up before the Court as and when convict surrenders before the Court with the order of learned Appellate court, after the period of one month, failing which, she shall be liable to be summoned through warrants of arrest under section 418(2) Cr.P.C.

Order dated 02.07.2026

(Dr. Sukhwinder Singh)
Chief Judicial Magistrate,
Rupnagar/UID NO.PB0332.

M. Uniyal, Stenographer-II