

In the Court of Getika Yadav, Judicial Magistrate, First Class, Court No.2, Mandi, District Mandi, H. P.

Registration No.	620 of 221
CNR No.	HPMA02005427-2021
Case type	Complaint U/S 138 of N.I. Act
Date of registration	12-11-2021
Date of framing of NoA	20-07-2023
Date of commencement of evidence	26-03-2024
Date of reserving for judgment	02-06-2026
Date of judgment	02-07-2026

In the matter of:

Rajender Goel S/o late Sh. Nand Lal, resident of Village & Post Office Mairamaseet, Tehsil Balh, Distt. Mandi, H.P, holder of account No. 0911000102018090, Punjab National Bank Branch Office Ner Chowk, District Mandi, Himachal Pradesh.

... Complainant.

VERSUS

Devi Singh S/o Sh. Mast Ram, resident of Village Batedi, P.O. Mairamaseet, Tehsil Balh, Distt. Mandi, HP.

... Accused.

Complaint under Section 138 of Negotiable Instruments Act, 1881.

Represented by:
For the complainant: Sh. Hukam Chand Verma, Ld. Adv.

For the Accused: Sh. Narender Kumar, Ld. Adv.

Offence Charged with: Under Section 138 of N I Act,1881.

Accused: ***Acquitted under Section 138 of Negotiable Instruments Act, 1881.***

JUDGMENT:

1. The present complaint has been filed by complainant against accused Devi Singh, who is facing trial

before this Court for the alleged commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the "N I Act") on account of dishonour of cheque bearing No. 700254 dated 09-08-2021 amounting to Rs. 1,88,500/- from his account No. 87601700003116 allegedly having been drawn by him in discharge of his legal enforceable liability from the account being maintained with Himachal Gramin Bank branch Ratti, District Mandi, H.P, in favour of the complainant.

2. The factual matrix of the case giving rise to the present complaint are that the accused and the complainant are having friendly relations with each other and the accused had borrowed an amount of Rs. 75,000/- from the complainant in June, 2020, again Rs. 60,000/- in the month of December, 2020 and again an amount of Rs. 53,500/- in April, 2021, total amount of Rs. 1,88,500/- from the complainant for his domestic problem/needs. It has also been averred that when the complainant demanded the aforesaid amount from the accused, then the accused in discharge of the said legal liability issued a cheque bearing No. 700253 dated 09-08-2021 for Rs. 1,88,500/- from his bank account No. 87601700003116 of Himachal Pradesh Gramin Bank, Branch Office Ratti, Tehsil Balh, Distt. Mandi, H.P. It has also been averred that as per the assurance of the accused, the complainant had presented the cheque for encashment through his bank i.e. Punjab National Bank branch office Nerchowk, Distt. Mandi, H.P, but on 12-08-2021 the bank of the accused i.e. Himachal Pradesh Gramin Bank branch office Ratti, Distt. Mandi, HP, had dishonoured the said cheque with remarks **"Funds Insufficient"** in the account of the accused. After the receiving the information from the bank regarding dishonour of the cheque, the complainant issued a legal notice to the accused on 24-08-2021 to make the payment within a period

of fifteen days from the receipt of the said legal notice. Original Cheque, Copy of the legal notice issued to the accused, its postal receipt, dishonor memo are placed on the file. In order to cheat the complainant, the accused had issued the vague cheque to the complainant with his malafide intention. It has also been averred that the parties to the lis cheque issued and dishonoured within the jurisdiction of this Court, as such this court has got the jurisdiction to entertain, try and decide the present complaint. The averments in the complaint are duly supported with an affidavit of the complainant. With these submissions, it has been prayed that the complaint of the complainant be allowed and the accused be charged, tried and convicted in accordance with law.

3. After institution of the present complaint preliminary evidence was recorded and cognizance of the aforesaid offence was taken by the Court, on the basis of which, the accused was summoned calling upon him to face trial for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. After service, the accused appeared in the Court, taking into account the facts and circumstances of the case, the matter was not tried summarily, but in the manner of summons case and therefore, notice of accusation was put to the accused to which accused did not plead guilty and claimed trial.

4. In order to support the allegations as set out in the complaint, the complainant has examined himself as CW-1, and has closed his evidence vide his separate statement dated 26-03-2024.

5. After closure of the complainant's evidence, incriminating circumstances were put to the accused in the form of statement under Section 351 of Bharatiya Nagrik Sureksha Sanhita, 2023 on 05-10-2024. The accused intends to lead evidence in his defence, however, neither any steps for Defence

witnesses have been taken nor any DWs produced for examination and ultimately vide order dated 04-04-2025, opportunity to lead evidence in defence has been closed by the order of this Court.

6. Thereafter, this Court has paid anxious consideration to the final arguments as advanced by the respective counsel for the parties and has perused the record of the case with minute care.

7. In the light of the evidence on record and arguments advanced, following points arise for determination:-

1. Whether the accused had issued the cheque bearing No.700253 amounting to Rs.1,88,500/- dated 09-08-2021 drawn at Himachal Pradesh Gramin Bank branch Ratti, Tehsil Balh, Distt.Mandi,HP. of his account No. 87601700003116 in favour of the complainant, to discharge his legally enforceable debt and liability towards him, which, on presentation, was returned back unpaid by the banker of the accused for the reason **"Insufficient funds"** and despite issuance of the demand notice, the accused has failed to make the payment of the cheque in question within the stipulated time, as alleged? OPC.

2. final order.

8. For the reasons to be recorded hereinafter, while discussing the aforementioned points for determination, the point wise finding of this Court are as under:-

Point No.1 : In Negative.

Final Order: The complaint is dismissed as premature.

EVIDENCE ON RECORD AND REASONS FOR FINDINGS.

Point No.1.

9. The present cheque in question Ext.CW1/B has been presented within its validity period and the same was dishonoured

for reasons “**Insufficient funds**” vide memo dated 13-08-2021 Ext. CW1/C. The legal notice dated 24-08-2021, Ext.CW-1/D issued vide postal receipt dated 24-08-2021, Ext.CW-1/E and the the same had been issued on the correct address of accused within thirty days after receipt of the information regarding the cheque being dishonoured.

10. Before embarking upon appraisal of the facts against the evidence placed on record, it is imperative to discuss the legal standard that needs to be satisfied in order to successfully prove the commission of an offence under section 138 NI Act. This legal standard consists of the following ingredients:

A) The cheque was drawn by the accused on an account maintained by him with a bank for payment of a certain amount of money to another person from out of that account;

B) That the cheque was issued in discharge of any debt or liability;

C) That the cheque has been presented to the bank within a period of 3 months from the date on which it was drawn or within the period of its validity, whichever is earlier;

D) That the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

E) The payee or the holder in due course of the cheque 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

F) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the

receipt of the said notice.

11. The language of section 138 NI Act leaves no room for doubt that only when all the above ingredients are satisfied can the drawer of the dishonoured cheque be said to have committed an offence under section 138 NI Act. It is also pertinent to note that Section 138 of the NI Act cannot be read in isolation and has to be read along with sections 139 and 118 of the NI Act, which entitle the payee or holder in due course to certain presumptions of law.

12. Section 139 of the NI Act reads as follows: "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." Section 139 of the NI act, being a reverse onus clause, is an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. This provision stipulates a presumption in favour of the complainant with regard to the existence of a legal debt or liability.

13. Section 118(a) of the NI Act further provides that until the contrary is proved, it shall be presumed 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.

14. The nature and scope of the above mentioned presumptions have been discussed in the cases of **Hiten P. Dalal v Bratindranath Banerjee, (2002) 6 SCC 16** and **Rangappa v Sri Mohan, (2010) 11 SCC 441** wherein it was observed by the Hon'ble Supreme Court of India that section 139, being a presumption of law, makes it mandatory for the court to draw a

presumption in every case where the foundational facts required raising such presumption have been successfully established by the complainant. The court further held that the accused, against whom the presumption is raised, is not prevented from rebutting this presumption. This rebuttal, or rather the defence taken by the accused, the court clarified, need not be conclusively established and the accused is required to only lead such evidence that causes the court to either believe the defence to exist or consider its existence to be reasonably probable. Hence, the standard of proof for the accused is that of “preponderance of probability” and not “beyond reasonable doubt”. The accused can successfully rebut the presumption raised against him by raising a probable defence or by discrediting or creating doubts in the case of the complainant. In order to do this, the accused may either lead evidence of his own or he can simply rely on the materials submitted by the complainant.

15. With the position of law being as discussed above, let us now advert to the facts of the present complaint.

16. The Ld. Counsel for the accused has raised a defense that the complaint is premature since the demand notice was issued on 24-08-2021. The said notice could be treated as deemed served only after expiry of 30 days from the said date, i.e., on 24-09-2021. Where after, the accused would have 15 days to make the payment of the cheque amount to the complainant and on expiry of the said 15 days, i.e., on 09-10-2021 the cause of action would arise. In the present case, the complaint has been filed prematurely on 06-10-2021. The Ld. Defence Counsel has placed reliance on the decision of the **Hon’ble Apex Court in Subodh S. Salaskar vs. Jayprakash M. Shah and Ors. (01.08.2008 - SC) : MANU/SC/3298/2008** wherein it has been observed:

21. In terms of the provisions of the General Clauses Act, a notice must be deemed to have been served in the ordinary course subject to the fulfillment of the conditions laid down therein. Section 27 of the General Clauses Act reads as under:

27. Meaning of service by post.--Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Thirty days' time 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 V, Rule 9(5) of the Code of Civil Procedure, 1908, 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.

22. Presumption of service, under the statute, would arise not only when it is sent by registered post in terms of Section 27 of the General Clauses Act but such a presumption may be raised also under Section 114 of the Evidence Act. Even when a notice is received back with an endorsement that the party has refused to accept, still then a presumption can be raised as regards the valid service of notice. Such a notice, as has been held by a Three-Judge Bench of this Court in *C.C. Alavi Haji v. Palapetty*

Muhammed and Anr. MANU/SC/2263/2007 : 2007CriLJ3214
should be construed liberally, stating:

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of criminal law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the GC Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran case if the "giving of notice" in the context of Clause (b) of the proviso was the same as the "receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.

23. The complaint petition admittedly was filed on 20.04.2001. The notice having been sent on 17.01.2001, if the presumption of service of notice within a reasonable time is raised, it should be deemed to have been served at best within a

period of thirty days from the date of issuance thereof, i.e., 16.02.2001. The accused was required to make payment in terms of the said notice within fifteen days thereafter, i.e., on or about 2.03.2001. The complaint petition, therefore, should have been filed by 2.04.2001.

24. The Hon'ble High Court of Himachal Pradesh has also taken the same view in cases titled Govind Ram vs. State of H.P. and Ors., MANU/HP/2007/2025 and Dyal Negi @ Hardayal versus Anil Kumar, Criminal Revision No. 119 of 2020 decided on 31.10.2025.

25. The aforesaid judgment of the Hon'ble Apex Court has also been followed by the Hon'ble High Court of Jharkhand in Sanjay Kumar Alias Sanjay Sao Kendu vs The State Of Jharkhand in Cr. Rev. No. 116 of 2019 decided on 6-03-2024 wherein it has been observed that presumption regarding the service of notice dispatched by registered post can at best be taken to be upon expiry of 30 days from the date of dispatch of notice and the timeline for filing the complaint case is to be calculated accordingly.

26. The complainant has not taken the pain to place on record any tracking information qua the delivery of the demand notice from which this court court ascertain the actual date of delivery thus it would only be just to presume that the notice got served on 24-09-2021 and thereafter 15 days time is to be given for payment i.e. the payment was to be made on or before 09.10.2021 and the complaint having been filed on 06-10-2021 is thus premature. In view of the above discussion, the complaint deserves to be dismissed being pre-mature.

FINAL ORDER

27. In sequel of my findings, the complaint being premature, is **dismissed**. The complainant is at liberty to file a fresh

complainant as per the mandate contained in Section 138(c) and Section 142(b) of the Act of 1881 and in accordance to the direction of the Hon'ble Supreme Court in the case of Yagendra Pratap Singh Vs. Savitri Pandey reported in (2015) AIR (SC) 157 in which the Apex Court has allowed filing of fresh complaint in case a premature complaint is made. The aforesaid view taken by the **Hon'ble Apex Court in the case of Yogendra Pratap Singh** (supra) has also been followed by the **Hon'ble Apex Court in the case of Gajanand Burange Vs. Laxmi Chand Goyal** in Criminal Appeal No.1229/2022 decided on 12.08.2022.

28. The personal bond of the accused stands canceled and the surety stands discharged. The case file, after due completion, be consigned to record room.

**Announced and signed in the open Court on
this 2nd day of July, 2026.**

**(Geetika Yadav),
Judicial Magistrate First Class,
Court No. 2, District Mandi, H.P.**

/RS/

List of witnesses

A Complainant/ Defence witnesses:

CW-1	Rajender Goel	Complainant himself
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B Court witness: Name

LIST OF COMPLAINANT/ DEFENCE/ COURT EXHIBITS

A Complainant’s Exhibit

Ext.CW-1/A	26-03-2024	Affidavit in evidence of Sh. Rajender Goel.
Ext.CW-1/B	26-03-2024	Original Cheque No.700253 dated 09-08-2021 of HPGB Branch Ratti Distt. Mandi, HP.
Ext.CW-1/C	26-03-2024	Dishonour memo.
Ext.CW-1/D	26-03-2024	Legal notice dated 22-08-2021
Ext.CW-1/E	26-03-2024	Postal receipt dated 24-08-2021
Ext.D1	26-03-2024	Affidavit of Rajender Goel.

B Defence Exhibits: None

C C. Court Exhibits: None

D LIST OF MATERIAL OBJECTS: None

Particulars of the accused as well as surety who have furnished the bail bonds in the sum of Rs.30,000/- under Section 486 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Accused: Devi Singh S/o Sh. Mast Ram, resident of Village Batedi, P.O. Mairamaseet, Tehsil Balh, Distt. Mandi, HP. Surety: Bhagti Devi W/o Sh. Mast Ram, resident of Village & P.O. Mairamaseet, Tehsil Balh, Distt. Mandi, HP.

(Geetika Yadav),
Judicial Magistrate First Class,
Court No.2, Mandi, HP.

/RS/