IN THE COURT OF AKANKSHA DOGRA, ADDITIONAL CHIEF JUDICIAL MAGISTRATE, COURT NO.2, SHIMLA, H.P.

C.N.R. No.	:	HPSH110178562018
C.I.S. Case type.	:	Comp. Us 138 NI Act.
C.I.S. Registration No.	:	443/2018
Case No.	:	73-3 of 2018
Date of Institution.	:	22.05.2018
Date of Decision.	:	16.07.2026.

In the matter of:

Mahindra&Mahindra Financial Services Ltd. Regional Office Dyerton Estate Khalini, Shimla-2, through Shri Avinash Guleriya, Assistant Manager Legal/Power of Attorney Holder of M/S Mahindra & Mahindra Financial Services Ltd.

......Complainant.

VERSUS

Sunil Kumar S/o Sh. Babu Lal R/o Village Banchuna & PO Karsa Dhar, Tehsil Rohru, District Shimla, HP, 171207.

......Accused.

<u>COMPLAINT UNDER SECTION 138 OF THE NEGOTIABLE</u>

INSTRUMENTS ACT.

For the Complainant. **:** Sh. Deepak Gupta, Ld. Advocate.

For the accused Sh. Ravi Tegta, Advocate

JUDGMENT:-

The complainant company has filed the present complaint under Section 138 of Negotiable Instrument Act 1881 (hereinafter to be referred as the Act) against the accused.

2. Briefly stated the facts of the complaint are that the Complainant is a limited company incorporated and registered under the Companies Act, 1956, having its registered office at Gateway Building Apollo Bunder, Mumbai and deals in business Finance, loans, Hire purchase at various places throughout the territory of country, having one of its branch/regional office in Shimla and is a distinct and separate entity and competent to sue and maintain present complaint through Sh. Vimal Kishore

3. The accused approached the complainant company for loan to purchase a vehicle and entered into loan agreement vide loan agreement no. 3605450. The accused failed to maintain financial discipline and in order to pay the outstanding amount, issued a Cheque bearing No.365542 dated 26.12.2017 for an amount of Rs.3,03,059/- drawn at UCO Bank payable at par in all the branches of the bank with

an assurance that same would be duly honoured on presentation. The alleged cheque when presented for encashment by the complainant through its banker was dishonoured by the banker of the accused with the remarks “Drawer signature differs” vide dishonor memo dated 21-03-2018 which was received by the complainant Company. The said Cheque was issued to the complainant by the accused with the assurance that the same will be honored upon its presentation despite knowing that the signatures are different. Thereafter, the complainant immediately sent a legal notice on dated 10.04.2018 to the accused demanding therein the payment of Rs.3,03,059/- within a period of 15 days from the date of the receipt of the notice. The notice of demand was sent through registered post by the complainant on the address of the accused which was duly received by the accused person. In spite of receiving the legal notice, the accused failed to make payment of Rs.3,03,059/- within the period of 15 days from the date of receiving of said notice. With these averments it has been prayed that the accused be prosecuted and punished for the offence under Section 138 of N.I.Act.

4. After filing of the complaint the Court vide its order dated 25.05.2018, took cognizance of the offence under Section 138 of the Act and issued summons to the accused. After securing the presence of the accused, NOA was put to him under Section 138 of the Act, to which he pleaded not guilty and claimed trial.

5. From the averments of the complaint, the following points arise for determination:-

1. **Whether the complainant has proved that the accused issued Cheque bearing No.365542 dated 26.12.2017 drawn on UCO Bank,Jangla District Shimla of Rs. 3,03,059/- in favour of the complainant which on being presented by the complainant with his bank for encashment was dishonoured by the bank of accused on account of "drawers signature differs" vide memo dated 21.03.2018, as alleged?**
2. **Final Order.**

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

Point No. 1.	No.
Final order.	The accused is **acquitted** for the commission of offence under section 138 of the Negotiable Instruments Act as per the operative part of the judgment.

EVIDENCE ON RECORD:

7. To prove its case the complainant Avinash Guleria, stepped into witness box as CW-1 and submitted that Complainant Company has issued a POA in his favour i.e. Ex C-1/CW1. Complaint was filed by Vimal Kishore who now

transferred in other branch and now he is authorized to depose in the present complaint. He is well versed with the facts of the complaint. Accused has approached the complainant company for vehicle loan and total agreement value is Rs 3,03,059.as per the terms of agreement accused has to return the amount by way of 60 installments but accused made default in the repayment .the accounts statement of the accused is Ext C-2/CW1.Accused to discharge his legal liability has issued a cheque Ext C-3/CW1 and same was dishonored on presentation, cheque return memo is Ext C-4/CW1. Company has issued a legal notice Ext C-5/CW1 to accused on his correct address vide postal receipt Ext C-6/CW1. Accused despite receiving legal notice failed to make the payment. During Cross examination by Ld. Counsel for accused he has stated that he is posted in complainant company in September 2023 and loan was issued in 2015. he has admitted that no transaction took place in his presence. He has denied that when accused made default in repayment of loan amount then company officials went to the house of accused to impound the vehicle where they came to know that accused had already sold the vehicle to some other person. He has denied that alleged cheque was present by that third person. He has denied that signature on cheque are not of accused . He has admitted that there is no certificate annexed with statement of accounts. He has denied that he is deposing falsely. He has denied that the accused has no legal liability to pay the Cheque amount to the

Company

8. Vide separate statement dated 17.12.2024 the learned counsel for the complainant closed her evidence.

9. Thereafter, statement of the accused was recorded under Section 313, Cr.P.C., wherein he has denied his liability towards complainant corporation.

10. To rebut the averments of the complainant accused himself stepped into witness box as DW1 and tender his affidavit in which he has submitted that he has no liability to pay and he had issued a security cheque. He has submitted that he had availed loan in the year 2015 and sold vehicle in the year 2016 and he indemnify that he will pay the remaining installments to company. It is submitted that complainant misrepresented the cheque and fabricated the signatures. During cross examination by Ld. Counsel for complainant he has admitted that his address in complaint and legal notice is his correct address. He has admitted that Cheque Ext C-3/CW1 bears his signature, self stated that he has given blank cheque to complainant Company. He has denied that he had received Legal notice. Vide separate statement dated 25.04.2026 the Accused closed his evidence.

11. Arguments of the learned counsel for the parties and the entire case file has been perused with due care. Ld. Counsel for Complainant has submitted that accused had not made payment to them despite their repeated requests and then they have filed the present complaint. Ld. Counsel for accused denied any legally enforceable debt and claimed that

they had never done any transaction with complainant.

REASONS FOR FINDINGS

Point No.1:

12. I have given my best consideration to arguments being advanced on behalf of parties. I have also carefully gone through entire record of the case.

13. The complainant in order to prove culpability of the accused is required to prove:-

a) that the accused issued cheque Ext. C-3/CW1 to complainant in the discharge of legal debt/liability.;

b) that he presented the said cheque to his bank within the period of six months from the day on which it was issued or within the period of its validity, whichever is earlier;

c) that the cheque Ext. C-3/CW1 was dishonoured by the banker of accused with remarks "Drawers signature differs". ;

d) that the complainant made a demand for payment of the cheque amount by giving a notice in writing Ext.C-5/CW1 within 30 days from the receipt of information regarding dishonourment of the cheque;

e) that the accused failed to make the payment of cheque amount within 15 days of the receipt of notice of demand Ext.C-5/CW1 and lastly;

f) that he (complainant) made a complaint against the accused within one month from the date on which cause of action under clause 'C' of the proviso to the Section 138 of the Act accrued to him.

14. Firstly coming to points (b) and (c) qua complainant's having presented the Cheque Ext.C-3/CW1 for encashment within 6 months or within period of its validity and its having been dishonoured due to drawers signature differs, complainant alike his case has deposed that Cheque Ext.C-3/CW1 dated 16.12.2017 was presented with his banker UCO

Bank on 21.03.2018. He has also stated that Cheque Ext.C-3/CW1 was dishonoured for Drawers signature differ vide memo dated 21.03.2018 Ext.C-4/CW1. Perusal of memo reveals that Cheque Ext.C-3/CW1 was dishonoured for Drawers signature differ. It has been established on record that Cheque Ext.C-3/CW1 was presented in the bank of accused well within the period of validity and was dishonoured due to Drawers signature differ.

15. Coming to point (d) qua complainant's having sent legal/demand notice Ext.C-5/CW1 within 30 days of dishonourment of Cheque Ext.C-5/CW1. The complainant has stated that he on the receipt of intimation qua dishonourment of Cheque, on dated 21.03.2018 sent legal/demand notice Ext.C-5/CW1 to the accused through registered post. Perusal of postal receipt Ext.C-6/CW1 also reveals that demand notice Ext.C-5/CW1 was sent on 11.04.2018. The Cheque Ext.C-3/CW1 was dishonoured vide memo dated 21.03.2018 Ext.C-4/CW1 and demand notice Ext.C-5/CW1, as per postal receipt Ext.C-6/CW1 was sent on 11.04.2018 and therefore it has been established on record that the complainant issued registered demand notice Ext.C-5/CW1 well within the period of 30 days from the receipt of information regarding dishonour of Cheque Ext.C-3/CW1

16. Coming to the point (e) qua accused having failed to pay the cheque amount within 15 days of receipt of valid demand notice Ext.C-5/CW1. The complainant has stated that demand notice sent to the accused through registered post.

Till now the compliance of law has been duly carried out. It is upon the receipt of legal notice by the accused person that the period of limitation of 15 days to enable him to make payment of cheque amount is given. However it is noteworthy that there is nothing on record from which this court could find out the date of receipt of demand notice by accused. It is laid down in section27 of the General Clauses Act as well as in section 114 of Indian Evidence Act that the deemed service shall be assumed on the part of the accused if the notice has been sent upon his correct address and sent through registered post in such circumstances, the court is deriving the admission made by the accused in his statement under section313 Cr.P.C wherein he admitted to have received the legal notice but the date on which legal notice was received is not mentioned in the complaint. In **Subodh S. Salasker versus Jayprakash M. Sah (2008)13SCC689 Hon'ble Apex Court** has held that "if presumption of notice within the reasonable time is raised, the deemed service at best can be taken to be 30days from the date of its issuance and the accused was required to make payment in terms of the said notice within 15 days thereafter…"

17. Coming to the case in hand demand notice was issued on 11.04.2018. the date of service of notice is not on record so presumption of 30 days as deemed service is raised ,so service will be effected on 10.05.2018 and period of 15 days run after that. The period of 15 days accrue from 10.05.2018 and will end on 24.05.2018. However the cause of

action will arise for launch of prosecution against accused for taking cognizance as per section 142(c) of NI Act arises in the period of one month beginning from the date on which it has arisen which implies from 24-05-2018 the period of one month would start running and complaint could have been filed from 24-05-2018 till 23-06-2018. but the present complaint is filed on 22-05-2018 which has been filed even prior to the expiry of 15 days mandatory period granted to the accused for making payment of the cheque amount. Proviso (C) to section138 of NI Act denotes that it would not be an offense if the drawer makes the payment within 15 days as specified.

18 In the light of above discussion and the case law cited supra it is clear that compliance of proviso (C) to section 138 of NI act has not been made by the complainant .Accordingly, there can be no commission of offence or accrual of cause of action for filing of complaint under section 138 of NI Act. This court is not going into the merits of the case in deciding the culpability of the accused when at the very outset it is apparent that mandatory requirements of the law are not complied with and the complaint is premature stands dismissed.

<u>FINAL ORDER</u>:

19. In view of the above-mentioned findings, the complaint is not maintainable being premature hence, **dismissed** and resultantly, the accused stands acquitted. Personal bonds of accused cancelled and surety bonds is discharged. File after its due completion be consigned to the

record room.

Announced and signed in the open Court on this 16th day of July, 2026.

(Akanksha Dogra)
Additional Chief Judicial Magistrate,
Shimla, District Shimla, H.P.

LIST OF WITNESSES **FORM-A.**

Sr. No.	Name of witnesses:	Whether witness of Complainant or of accused.
CW-1	Sh. Avinash Guleria	Complainant's witness.
DW-1	Sh. Sunil Kumar	Defense Witness

LIST OF EXHIBITS **FORM-B**

Exhibit No./Mark	Date of exhibit.	Description of exhibit.
Ext.C-1/CW1	17.12.2024	Authority letter
Ext.C-2/CW1	do	Statement of Accounts
Ext.C-3/CW1	do	Cheque
Ext.C-4/CW1	-do-	Return memo
Ext.C-5/CW1	-do-	Legal Notice
Ext.C-6/CW1	-do-	Postal Receipt
Ext.DW-1/1	25.04.2026	Affidavit

(Akanksha Dogra)
Additional Chief Judicial Magistrate
Court No. 2, District Shimla, H.P.