HRKH03-002272-2023

IN THE COURT OF JASMEEN KAUR, JUDICIAL MAGISTRATE FIRST CLASS, KAITHAL. (UID No. HR0700).

Date of the Judgment : **28.07.2026**

Case No. **:** NI Act 388 of 2023.

(Details of FIR/Crime and Police Station)

COMPLAINANT	Mahavir Parshad aged 56 years, son of Sh. Bharat Bhushan, resident of House no. 372, Model Town, Jind Road, Kaithal.
REPRESENTED BY	**Sh. M.K. Nirwani, Advocate**
ACCUSED	Sunil son of Ramphal son of Thandu, resident of Chand Wali Gali, in front of the house of Jyuna Sarpanch, Village Pai, Tehsil Pundri, District Kaithal.
REPRESENTED BY	**Sh. Charan Singh Gill, Advocate**

Date of Notice of accusation	26.10.2023
Date of commencement of evidence	26.02.2024
Date on which judgment is reserved	NIL

(Jasmeen Kaur)
Judicial Magistrate Ist Class,
Kaithal. 28.07.2026
UID No. HR0700.

Date of Judgment	28.07.2026
Date of Sentencing Order, if any	30.07.2026

Accused Details

Rank of the accused	Name of the Accused	Date of Arrest	Offences Charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.P.C.
1.	Sunil	Surrender before the court on 11.09.2023 (released on bail on 11.09.2023)	Section 138 of Negotiable Instruments Act	Convicted	Hearing on quantum on sentence 30.07.2026	Nil

Mahavir Parshad aged 56 years S/O Sh. Bharat Bhushan r/o House No. 372, Model Town, Jind Road, Kaithal.

....Complainant

Versus

Sunil son of Ramphal son of Thandu, resident of Chand Wali Gali, in front of the house of Jyuna Sarpanch, Village Pai, Tehsil Pundri, District Kaithal.

....Accused.

(Jasmeen Kaur)
Judicial Magistrate Ist Class,
Kaithal. 28.07.2026
UID No. HR0700.

Complaint under Section 138/142 of the Negotiable Instruments Act,1881

Present: Shri M.K. Nirwani, Advocate for complainant.
Accused on bail represented by Sh. Charan Singh Gill, Advocate.

JUDGMENT:

The present complaint has been filed by the complainant against the accused for the commission of offence punishable under section 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act").

FACTS OF THE CASE:

2. Briefly stated, the case of the complainant is that both parties belong to the same village and were known to each other, sharing a fiduciary relationship. On 09.05.2022, the accused approached the complainant for a friendly loan of ₹3,00,000/-, which the complainant advanced in cash for a period of six months. In discharge of the aforesaid legally enforceable debt, the accused issued Cheque No. 000006 dated 19.01.2023 for ₹3,00,000/- drawn on his bank account in favour of the complainant, assuring that the cheque would be honoured upon presentation. However, when the cheque was presented for encashment, it was returned unpaid vide return memo dated 20.01.2023 with the remarks, **"Account Closed/Dormant".** Thereafter, the complainant issued a statutory legal notice dated 04.02.2023 calling upon the accused to make payment of the cheque amount within the prescribed period under the Act. Despite service of the said notice, the accused allegedly failed to make payment of the cheque amount within the statutory period of fifteen

days. On the basis of the aforesaid allegations, it is contended that all the essential ingredients constituting an offence punishable under Section 138 of the Act stand satisfied. Accordingly, the present complaint has been filed seeking prosecution of the accused in accordance with law.

PRELIMINARY EVIDENCE OF THE COMPLAINANT

3. In the preliminary evidence recorded under Section 200 of Code of Criminal Procedure, 1973 (hereinafter referral as Cr.P.C.), the complainant **Mahavir Parshad** has examined himself as CW1 and tendered his affidavit Ex.CW1/A reiterating the averments of the complaint. He has also tendered the following documents:-

Ex. C1	Original cheque bearing No. 000006 dated 19.01.2023
Ex.C2	Return memo of Cheque no.000006
Ex.C3	Legal notice dated 04.02.2023
Ex.C4	Postal receipt dated 06.02.2023
Ex.C5	Track consignment report
Ex. C6	Copy of bank passbook of complainant

Thereafter, CW1 Mahavir Parshad closed the preliminary evidence vide his separately recorded statement dated 20.03.2023.

SUMMONING OF THE ACCUSED

4. After the preliminary evidence was closed, the accused was ordered to be summoned to face trial vide order dated 05.06.2023. After appearance of the accused, the accused was served with notice of accusation under Section 138 of the Act on 26.10.2023, to which he pleaded not guilty and claimed trial.

PLEA OF DEFENCE AND APPLICATION U/S 145(2) OF THE ACT

5. Thereafter, the plea of defence of the accused under Section 263(g) Cr.P.C. was recorded. The accused pleaded not guilty and claimed trial. In his plea of defence, he stated that he had worked as a driver on the truck owned by one Raghbir, son of Mangat Ram, who had obtained a signed cheque from him as security during the course of his employment. According to the accused, after he left the job, Raghbir handed over the said cheque to one Suresh, a salesman at the petrol pump of the complainant, who in turn delivered it to the complainant. The accused alleged that the complainant has misused the cheque and asserted that he had no legally enforceable debt or liability towards the complainant in respect of the cheque amount.

The accused then sought permission to cross-examine the complainant and other relevant witnesses in order to establish his defence. An application under Section 145(2) of the Act was filed on behalf of the accused seeking to call the complainant for his cross-examination, which was allowed vide order dated 11.12.2023.

EVIDENCE OF COMPLAINANT

6. In order to prove his case, the complainant relied upon the statements of the following witnesses and the documents produced at the time of preliminary evidence:-

<u>COMPLAINANT WITNESSES</u>

RANK	NAME	NATURE OF EVIDENCE
CW1	Mahavir	Complainant

To substantiate his case, the complainant has examined the following testimonies:-

CW1- Mahavir Parshad, complainant himself who deposed through his affidavit Ex. CW1/A reiterating the contents of the complaint. Thereafter, cross-examination of the witnesses was conducted by the learned counsel for accused.

After completion of cross-examination of witnesses, complainant has closed the evidence of the complainant.

STATEMENT OF ACCUSED UNDER SECTION 313 CRPC

7. After the closure of the evidence of the complainant, all the incriminating circumstances appearing against the accused in the prosecution evidence were put to him during the recording of his statement under Section 313 Cr.P.C. The accused denied all the allegations levelled against him and stated that he is innocent and has not committed any offence. Reiterating the facts stated in his plea of defence, the accused denied having any legally enforceable debt or liability towards the complainant. He further asserted that the impugned cheque was never issued in favour of the complainant, had been misused, and that a false complaint has been filed against him Accordingly, he prayed for dismissal of the present complaint.

EVIDENCE OF THE ACCUSED

8. No evidence was led by the defence and the same was closed by learned counsel for accused on 20.07.2026.

(Jasmeen Kaur)
Judicial Magistrate Ist Class,
Kaithal. 28.07.2026
UID No. HR0700.

ARGUMENTS:

9. Initiating the arguments, learned counsel for the complainant, Mr. M.K. Nirwani, submitted that the father of the accused was a customer of the complainant and, owing to their cordial relations, the accused approached the complainant on 09.05.2022 seeking a friendly loan of ₹3,00,000/-, which was advanced in cash for a period of six months. In discharge of the aforesaid legally enforceable liability, the accused allegedly issued cheque Ex. C1 for an amount of ₹3,00,000/- in favour of the complainant, assuring that the same would be honoured upon presentation. However, on presentation, the cheque was dishonoured vide return memo Ex. C2 with the remarks **"Account Closed/Dormant".** Thereafter, the complainant served a statutory legal notice Ex. C3 upon the accused demanding payment of the cheque amount within the prescribed period under the Negotiable Instruments Act. Despite service of the notice, the accused failed to make payment within the statutory period of fifteen days. It was further argued that the accused has admitted his signatures on the cheque in question. Therefore, the statutory presumptions under Sections 118(a) and 139 of the Act arise in favour of the complainant to the effect that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability.

Learned counsel contended that the accused has failed to rebut the aforesaid statutory presumptions by leading any cogent or convincing evidence. It was further argued that the defence set up by the accused is neither probable nor supported by any material on record. On the contrary, the complainant has successfully proved his case through reliable oral as well as documentary evidence. On the strength of these submissions, learned counsel prayed that the accused be held guilty and convicted for the offence punishable under Section 138 of the Act. Reliance has been placed on the judgments of the Hon'ble Supreme Court in the case of ***Sanjabij Tari vs Kishore S. Borcar 2025 INSC 1158*** and ***NEPC Micon Ltd. Vs Magma Leasing Ltd. 1999 (2) SCR 932.***

10. Per contra, learned defence counsel, Sh. Charan Singh Gill, vehemently opposed the present complaint and argued that the same is not maintainable. It was argued that although the accused has admitted his signatures on the cheque in question, the said cheque was issued as a blank signed security cheque to one Raghbir, son of Mangat Ram, who was his employer. After the accused left the employment, Raghbir allegedly handed over the cheque to one Suresh, salesman at the petrol pump of the complainant, who further delivered it to the complainant, resulting in its misuse of the impugned cheque.

11. It was further argued that the complainant failed to prove the alleged loan transaction through any cogent oral or documentary evidence. It was argued that the relationship between the complainant and the accused, as well as the date/place of the alleged transaction, has not been established. It was further argued that no independent witness to the alleged loan transaction was examined and no security or written document was obtained before advancing the alleged loan amount. It was further argued that the alleged loan amount was not reflected in the Income Tax Returns of the complainant and no duly proved bank

statement was produced on record. It was also argued that although the cheque was allegedly handed over in the presence of the *Munim* of the complainant, the said witness was not examined. The difference in ink between the signatures and the body of the cheque also remained unexplained.The counsel further averred that in the absence of any material evidence, which can prove the version of the complainant, no legal liability arises upon the accused qua the cheque in question. With these submissions prayed that the accused be acquitted and the complaint be dismissed.

APPRECIATION OF EVIDENCE

12. I have given thoughtful consideration to the contentions raised by the learned counsel for the complainant and learned defence counsel and have perused the documentary evidence carefully.

13. At the outset, it bears mention that the intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation.

14. The Hon'ble Supreme Court in the case ***M/s Kusum Ingots & Alloys Ltd. v. M/s Pennar Peterson Securities Ltd. 2000 INSC 97***

held that a bare reading of the provisions of Section 138 of the Act reveals that the ingredients which are to be satisfied for making out a case under the provision are :

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that 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;

(iii) that 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;

(iv) 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) 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;

15. In view of the same, it is pertinent to mention at the outset that the point for determination involved in the present case is that whether above-stated ingredients of the Section 138 of the Act are made or not.

16. It is the case of the complainant that on 09.05.2022, the accused approached the complainant for a friendly loan of ₹3,00,000/-, which the complainant advanced in cash for a period of six months. In discharge of the aforesaid legally enforceable debt, the accused issued Cheque Ex. C1 dated 19.01.2023 in favour of the complainant, assuring that the cheque would be honoured upon presentation. However, when the cheque was presented for encashment, it was returned unpaid vide return memo Ex. C2 dated 20.01.2023 with the remarks, **“Account Closed/Dormant”.** Thereafter, the complainant issued a statutory legal notice Ex. C3 dated 04.02.2023, which was sent through registered post vide postal receipt Ex. C4, calling upon the accused to make payment of the cheque amount within the prescribed period under the Act. Despite service of the said notice, the accused allegedly failed to make payment of the cheque amount within the statutory period of fifteen days. In order to prove his case, the complainant himself appeared into the witness-box as CW1 and reiterated the averments contained in the complaint. The complainant was cross-examined at length, however, no material has emerged that undermines or discredits the credibility of the witness. Reliance has been placed on the case of ***NEPC (supra)*** wherein it was

held that cheque dishonoured with bank endorsement 'account closed' would constitute an offence under Section 138 of the Act.

17. After appreciating the ocular, documentary evidence and the case file, this court is of the opinion that the complainant has duly proved the above-discussed five concomitants of Section 138 of the Act. Thereby, the complainant has discharged the burden to prove that the instrument was executed by the accused in his favour.

STATUTORY PRESUMPTIONS

18. It is pertinent to mention that the signature over the cheques in question has not been denied by the accused. Keeping in view the said fact, at this stage, Section 118 and section 139 of the Act bear mention:-

> *Section 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, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
>
> *Section 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.

19. It is well-settled law that as soon as the complainant discharges the burden to prove that the instrument was executed by the accused, the rules presumptions under Section 118 and 139 of the Act helps him shift the burden on the accused. The position on this aspect was clarified by Hon'ble Supreme Court in ***Rangappa vs. Sri Mohan, (2010)11 SCC 441*** wherein it was held that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It was further mentioned that because both Sections 138 and 139 of the Act required that the Court "shall presume" the liability of the drawer of cheque for amounts for which the cheques are drawn, it is obligatory on the Court to raise this presumption in every case, where the factual basis for the raising of the presumption had been established. Reliance has also been placed on the judgement of the Hon'ble Supreme Court in the case of ***Hiten P. Dalal vs. Bratinderanath Benerjee, 2001(3) RCR (Criminal) 460 (SC).***

20. The effect of these presumptions, is to place the evidential burden upon the accused of proving that the cheque was not received by the bank towards discharge of any liability. In view of the aforesaid legal

position and the finding of this Court that the complainant has duly discharged the burden of proving execution of the instrument by the accused, the presumptions under Sections 118 and 139 of the Act stand raised against the accused.

21. The presumption under Section 139 of the Act is a reverse onus provision enacted to enhance the credibility of negotiable instruments in commercial transactions. However, as held by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***, the presumptions under Sections 118 and 139 of the Act are rebuttable. The accused is entitled to establish that the cheque was not issued for consideration or in discharge of any legally enforceable debt or liability. It is equally well settled that the accused is required to rebut the statutory presumptions only on the touchstone of preponderance of probabilities and not beyond reasonable doubt. To do so, the accused must bring on record credible material indicating the absence of consideration or legally enforceable liability; a mere denial is insufficient. As held in ***Rohitbhai Jivanlal Patel v. State of Gujarat*, *2019 INSC 393*,** the accused may rely upon direct or circumstantial evidence, provided it is sufficient to shift the burden back upon the complainant.

REBUTTAL OF PRESUMPTIONS BY THE ACCUSED

Non-existence of legally enforceable debt/liability

22. The primary defence raised by the accused is that no legally enforceable debt or liability existed in favour of the complainant. According to the accused, the cheque Ex. C1 was issued as a blank signed

security cheque to one Raghbir, son of Mangat Ram, who was his employer. It is alleged that after the accused left the employment, Raghbir handed over the cheque to one Suresh, a salesman at the petrol pump of the complainant, who in turn delivered it to the complainant, resulting in its misuse of the impugned cheque.

23. In the present case, the accused has contended that the relationship between the parties has not been established. However, during his cross-examination, the complainant categorically stated that the father of the accused was his customer and that the accused used to accompany him. This testimony has remained unrebutted. Accordingly, the said contention does not merit acceptance.

24. It has further been contended that the complainant failed to examine any independent witness to the alleged loan transaction. The complainant, however, specifically deposed that the loan was advanced and the cheque was handed over in the presence of his Accountant (Munim). Since the burden to rebut the statutory presumption rested upon the accused, he had ample opportunity to summon and examine the said witness in defence but failed to do so. In these circumstances, mere non-examination of the Accountant by the complainant is not sufficient to discredit an otherwise unrebutted case.

25. It has also been urged that the complainant, being an Arhtiya, would not have advanced the alleged loan without stipulating terms and conditions or making an entry in his account books. In this regard, the complainant has stated in his cross-examination that the accused was not

his customer and, therefore, the transaction was not reflected in his business records. In the absence of any evidence to the contrary, this circumstance alone does not probabilise the defence or rebut the statutory presumptions.

26. The accused has further contended that the cheque was issued as a blank signed security cheque to Raghbir and was subsequently passed on to the complainant through Suresh. However, the accused has neither disclosed the purpose or liability for which such security cheque was allegedly issued to some third person nor examined either Raghbir or Suresh, who were the most material witnesses to substantiate this plea. The defence, therefore, remains a bare assertion unsupported by any cogent evidence.

27. In view of the foregoing discussion, this Court finds that the accused has failed to raise a probable defence or rebut the statutory presumptions under Sections 118 and 139 of the Act. The evidence led by the complainant sufficiently establishes the existence of a legally enforceable debt or liability. Accordingly, the plea that the cheque in question was issued merely as a security cheque to a third person and not in discharge of any legally enforceable liability towards the complainant is rejected.

<u>Defence regarding non-production of Income Tax Return</u>

28. Learned defence counsel has further contended that the complainant has failed to place on record his Income Tax Returns.

However, this Court is of the considered view that mere non-reflection of the alleged transaction in the Income Tax Returns or other financial records is not, by itself, sufficient to discard the case of the complainant. Mere non-disclosure of the amount advanced does not ipso facto render the transaction doubtful. In this regard, reliance may be placed upon ***Smt. Ragini Gupta v. Piyush Dutt Sharma (Criminal Appeal No. 5263 of 2018, decided on 07.03.2019)***, wherein the Hon'ble Delhi High Court held that non-filing of Income Tax Returns or non-disclosure of the transaction therein does not, by itself, discredit the case of the complainant under Section 138 of the Negotiable Instruments Act or establish absence of financial capacity. Thus, the said contention is also liable to be rejected.

Advancement of alleged loan without any security

29. The contention of learned defence counsel that the complainant had not obtained any security while advancing the alleged loan, as elicited during cross-examination, does not assist the accused. The absence of any separate security cannot, by itself, render the transaction doubtful, particularly when the complainant has explained that the father of the accused was his customer and the parties were not strangers to each other. In such circumstances, the failure to obtain additional security is a matter of prudence between the parties and does not negate the existence of the alleged loan transaction or rebut the statutory presumptions operating in favour of the complainant.

Exact date and place of advancement of loan not disclosed

30. Further, the contention that the complainant failed to specify the date and place of demand for repayment also does not merit acceptance. The date of advancement of loan has been specifically mentioned in the complaint, and no material contradiction regarding the same has emerged in the cross-examination of the complainant. The complainant has also categorically deposed that the loan transaction took place in the presence of his Accountant (Munim), and the said fact has remained unchallenged. Moreover, it is a matter of ordinary human conduct that exact dates and minute details may not always be recalled with precision, particularly after lapse of time. Therefore, mere absence of such particulars does not render the testimony of the complainant unreliable or discredit the case set up by him.

<u>Discrepancy in the writing and ink used on the cheque</u>

31. It is further pertinent to note that, as per the defence of the accused, the body of the cheque and the signatures appear to be in different ink and handwriting. However, a conjoint reading of Sections 20, 87 and 139 of the Act makes it clear that once a person signs and delivers a cheque, he remains liable unless he successfully rebuts the statutory presumption that the cheque was issued towards discharge of a legally enforceable debt or liability. The Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar (supra)*** has held that the mere fact that the cheque has been filled by a person other than the drawer does not affect its validity, provided the cheque bears the admitted signature of the drawer. Similarly, in ***Lillykutty v. Lawrance, 2004 (1) CCC 38 (Kerala)***

and ***D. Atcyuthna Reddy v. State of A.P., 2010 (3) CCC 013 (A.P.)***, it has been held that filling up of the cheque particulars by another person, including the payee, does not by itself render the cheque invalid or establish that it was not duly issued.

32. In view of the settled legal position, the contention of learned defence counsel that the complainant failed to disclose the person who filled the cheque particulars or explain the difference in ink does not carry much weight, particularly when the accused has admitted his signatures on the cheque. The mere fact that the accused signed the cheque without filling its particulars is, by itself, insufficient to create doubt in the case of the complainant. Further, if the accused disputed the handwriting or filling of particulars, he could have led appropriate evidence, including examination of a handwriting expert; however, no such evidence has been brought on record. Thus, in the absence of any cogent evidence to rebut the statutory presumptions, the plea regarding difference in ink and handwriting remains a mere assertion and does not create any doubt regarding the validity of the cheque or the case set up by the complainant.

<u>Reliance upon photocopy of passbook unwarranted</u>

33. It has been contended on behalf of the accused that the photocopy of the bank passbook of the complainant Ex. C6, cannot be relied upon as the same has not been proved in accordance with law. It is argued that the said document neither bears any official stamp or signature of the bank nor has any bank official been examined to prove its contents. Therefore, in the absence of any oral or documentary evidence

establishing its authenticity, the said document cannot be read in evidence.

34. The aforesaid contention merits acceptance to the limited extent that Ex. C6 cannot be relied upon for want of proper proof. However, the said defect does not materially affect the case of the complainant. The accused has neither specifically challenged the financial capacity of the complainant nor disputed his ability to advance the alleged loan. In such circumstances, mere non-proof of the bank passbook reflecting withdrawal of the amount does not, by itself, rebut the statutory presumptions under Sections 118(a) and 139 of the Act. The inadmissibility of Ex. C6, therefore, does not discredit the testimony of the complainant or displace the statutory presumptions operating in favour of the complainant.

<u>Effect of non-reply to legal notice</u>

35. It is further pertinent to note that the service of the legal notice remains undisputed. It is a settled proposition of law that failure on the part of the accused to reply to a statutory notice is a relevant circumstance while appreciating the defence raised by him. If the cheque in question had been misused or fabricated by the complainant, the accused would have ordinarily raised an immediate objection and taken appropriate legal recourse rather than remaining silent until the conclusion of the trial. Reliance in this regard may be placed upon ***MMTC Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1***

SCC 234 and ***Gorantla Venkateswara Rao v. Kolla Veera Raghava Rao and Another, 2006 (3) Criminal Court Cases 423 (A.P.).***

36. In the present case, the accused failed to respond to the legal notice Ex. C3, which was sent through registered post vide postal receipt Ex. C4 at the correct address of the accused. Such conduct of the accused, particularly in the absence of any objection regarding misuse of the cheque at the relevant time, warrants drawing of an adverse inference against him. The said circumstance further lends support to the case of the complainant and weakens the defence subsequently raised during the course of trial.

37. In addition, even if the defence of the accused is accepted at its face value that no amount was received from the complainant, the accused has failed to explain why he did not lodge any complaint or initiate appropriate legal proceedings regarding the alleged misuse of the cheque. The accused has also failed to disclose the purpose for which the alleged security cheque was handed over to Raghbir or why the same was not taken back after leaving the employment. No evidence has been led to show that any effort was made by the accused to recover the said cheque from Raghbir. If a signed cheque had actually been misused, a prudent person would have immediately taken appropriate legal action, particularly considering the consequences arising under Section 138 of the Act. However, even after receipt of the legal notice regarding dishonour of the cheque, the accused neither raised any objection nor initiated any proceedings alleging misuse of the cheque. Such conduct of the accused

creates doubt regarding the credibility of his defence and indicates that the plea of misuse has been raised as an afterthought to avoid liability under Section 138 of the Act.

38. Considering the above discussion, this Court is of the opinion that the defence raised by the accused does not inspire confidence and fails to satisfy the standard of preponderance of probabilities. Once the transaction in question stands proved, a heavy burden was cast upon the accused to rebut the statutory presumptions by leading cogent and reliable evidence; however, the accused has failed to discharge the said burden. A mere plea of misuse of the cheque, in the absence of any supporting evidence, is insufficient to rebut the presumption that the cheque was issued towards discharge of a legally enforceable debt or liability. In the absence of any other material on record, the defence raised by the accused is rejected, and the presumptions under Sections 118 and 139 of the Act stand duly attracted against him.

39. Thus, by leading cogent oral and documentary evidence, the complainant has successfully proved the necessary ingredients of the offence under Section 138 of the Negotiable Instruments Act beyond reasonable doubt. In view of the aforesaid discussion and the settled legal position, this Court is of the considered opinion that the complainant has established his case and the statutory presumptions operating against the accused have remained unrebutted. Accordingly, the accused is held liable for the commission of the offence under Section 138 of the Act and is

hereby convicted. Let the **convict Sunil** be heard on the question of sentence on **30.07.2026.**

Pronounced in open court:

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.28.07.2026.
UID No. HR0700.

Note:-This judgment contains **(23)** pages and each page has been duly checked and signed by me.

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.28.07.2026.
UID No. HR0700.

Vidika, Stenographer Gr-II

Present: Shri M.K. Nirwani, Advocate for complainant.
Accused on bail represented by Sh. Charan Singh Gill, Advocate.

Final arguments heard. Vide separate judgment of even date, the accused is held guilty and convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act. Let, the **convict Sunil** be heard on the point of quantum of sentence on **30.07.2026.**

Pronounced in open Court:

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.28.07.2026.
UID No. HR0700.

Vidika, Stenographer Gr-II

(Jasmeen Kaur)
Judicial Magistrate Ist Class,
Kaithal. 28.07.2026
UID No. HR0700.

* * * * * *

Present: Shri M.K. Nirwani, Advocate for complainant.
Accused on bail represented by Sh. Charan Singh Gill, Advocate.

ORDER ON QUESTION OF SENTENCE

This order is in continuation of the judgment dated **28.07.2026.** Heard on the point of question of sentence. Separate statement of the convict on the point of question of sentence recorded. The convict pleaded that he is a poor person. He is a labourer and the sole earning member of his family. He is physically handicap. It is therefore prayed that a lenient view be taken against him on humanitarian ground.

2. On the other hand, learned counsel for the complainant submitted that no leniency what so-ever should be shown to convict as convict had intentionally issued the cheque which on presentation got dishonored and despite repeated notice, did not pay the cheque amount.

3. After hearing the learned counsel for the parties and keeping in view the age, conduct, antecedent, and family condition of the accused, this Court is of the opinion that ends of justice would best be served, if convict is also directed to pay compensation to the tune amount of cheque in question, to the complainant.

4. In the light of discussion above, **convict/Sunil** is sentenced to undergo **rigorous imprisonment** for a period of **six months** for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and further the convict is to pay compensation to the tune of **Rs.4,50,000/-,** in terms of Section 395 BNSS to the complainant which shall be paid within **two months** from the date of

order. In case of non-payment of compensation, convict shall undergo simple imprisonment for a period of **one month**. **Compensation not paid. The compensation amount, if not paid in time, shall be recoverable under the provisions of Section 461/471 of BNSS.**

5. **It is made clear that the amount, if any, already paid by the convict to the complainant during the trial of the present case be set off from the amount of compensation. It is further clarified that the period for which the convict remained in custody during the trial of the case shall be set off against the aforesaid period of imprisonment awarded to the convict.** Copy of this judgment be supplied to the convict free of costs. File be consigned to record room after due compliance.

Pronounced in open Court:

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.30.07.2026.
(UID No. HR0700)

Note: This judgment dated 28.07.2026 along-with order of question of sentence dated 30.07.2026 contains **26** pages and all pages have been checked and signed by me.

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.30.07.2026.
UID No. HR0700.

Vidika, Stenographer Gr-II

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Present: Shri M.K. Nirwani, Advocate for complainant.
Accused on bail represented by Sh. Charan Singh Gill, Advocate.

Statement of convict on quantum of sentence recorded. Heard on the point of quantum of sentence. Vide separate order of even date, **convict Sunil** is sentenced to undergo **rigorous imprisonment** for a period of **six months** for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and further the convict is to pay compensation to the tune of **Rs.4,50,000/-,** in terms of Section 395 BNSS to the complainant which shall be paid within **two months** from the date of order. In case of non-payment of compensation, convict shall undergo simple imprisonment for a period of **one month**. **Compensation not paid. The compensation amount if not paid in time shall be recoverable under the provisions of Section 461/471 of BNSS.**

It is made clear that the amount, if any, already paid by the convict to the complainant during the trial of the present case be set off from the amount of compensation. It is further clarified that the period for which the convict remained in custody during the trial of the case shall be set off against the aforesaid period of imprisonment awarded to the convict. Copy of this judgment be supplied to the convict free of costs. File be consigned to record room after due compliance.

Pronounced in open Court:

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.30.07.2026.
(UID No. HR0700)

Vidika, Stenographer Gr-II

(Jasmeen Kaur)
Judicial Magistrate Ist Class,
Kaithal. 30.07.2026
UID No. HR0700.

* * * * * *

Present: Shri M.K. Nirwani, Advocate for complainant.
Accused on bail represented by Sh. Charan Singh Gill, Advocate.

An application for suspension of the sentence till the filing of an appeal under the provisions of Section 430 of BNSS has been preferred on behalf of convict and requested for restoring the previous surety. Heard. **Keeping in view the inability of the accused to provide a new surety, the bail bonds and surety already given by him stands extended.** Since the convict wants to assail the orders of the conviction and sentence passed against him, his sentences are **suspended for thirty days**, **till 29.08.2026, in order to obtain the orders of learned Appellate Court. Bonds furnished, accepted and attested. The papers regarding the suspension of the sentence be separated from the file and file be put up before the court of undersigned on 29.08.2026 for awaiting of the orders from the learned Appellate Court and/or for surrender of the convict as the case may be.**

Intimation be given to the appropriate registering authority to make endorsement on the original document of the surety regarding the fact that he stood as surety in the case in compliance of order of Hon'ble Punjab & Haryana High Court in CWP No. 4898 of 2018 titled Hari Chand Vs. U.T. Chandigarh and Ors.

Accused/convict is directed to produce regular bail order from learned Sessions Judge on 29.08.2026, failing which to surrender in this Court and to undergo imprisonment already awarded to him today i.e. 30.07.2026. In the meantime, the sentence of imprisonment shall remain suspended. File be consigned to the record room after due compliance.

(Jasmeen Kaur)
Judicial Magistrate First Class,
Kaithal.30.07.2026.
UID No. HR0700.

Vidika, Stenographer Gr-II

"I attest to the accuracy and authenticity of this document."
VIDIKA GUMBER
District and Sessions Court Kaithal
2026.07.30 16:48:45 +0530

(Jasmeen Kaur)
Judicial Magistrate Ist Class,
Kaithal. 30.07.2026
UID No. HR0700.