

IN THE COURT OF MONIKA SOMBAL, ADDL. CHIEF JUDICIAL MAGISTRATE, GHUMARWIN, DISTRICT BILASPUR (H.P.)

**Case No.200-3 of 2025/18.
 Registration No.: 237/2018.
 Case Type: NI Act.
 Date of registration: 07-12-2018.
 Date of decision: 02-07-2026.**

Ashish Dhiman, S/o Sh. Sher Singh, R/o village & Post Office Dadhol, Tehsil Ghumarwin, District Bilaspur, H.P.

...Complainant.

-Versus-

Gopal Dass, S/o Sh. Heera Lal, R/o House No.2, Raura Sector Bilaspur, Distt. Bilaspur, H.P.

...Accused.

Complaint under Section 190 of the Criminal Procedure Code, 1973, for taking cognizance of an offence, committed under Sections 138 of the Negotiable Instruments Act.

For the Complainant : Sh. J.K. Rana, Advocate
 For the Accused : Sh. R.L. Bhardwaj, Advocate.

JUDGMENT:

Present complaint has been filed by the complainant against the accused for the commission of offence punishable under Section 138 of Negotiable Instruments Act.

2. Succinctly, the facts of the complaint of complainant are that the father of the complainant and the accused were having the familiar relations with each other and they were very close friend to each other. The accused used to come to the house of the complainant also in view of the friendly relations of the accused with the father of the complainant. Thereafter, in the

due course of the said relation, the accused stated to the father of the complainant, that the accused have an approach with the plot owner at Bilaspur ,H.P. and the accused assured to the father of the complainant that the accused will arrange to sell the said plot in favour of the father of the complainant, from the said plot owner at Bilaspur, H.P. Being believed upon the accused, the father of the complainant in the month of February 2018 on the demand of the accused after getting withdrawal the amount from his account, given the sum of Rs.1,08,000/- (Rs.One Lakh eight thousand only) to the accused in the house of the complainant in village and P.O. Dadhol, Tehsil Ghumarwin, Distt. Bilaspur H.P. in presence of the witnesses. In the meantime, father of the complainant has expired on 10.03.2018 in the accident and after his death, the complainant asked the accused in presence of the witnesses qua the purchase of the plot, then the accused shown his inability to settle the sale purchase of the plot with the plot owner and the accused then agreed to return the said money taken by the accused from the father of the complainant and is discharge of the said liabilities the accused have issued the cheque No. 000047 dated 15.8.2018 of Rs.1,08,000/- payable in the HDFC Bank branch Main Market, Bilaspur Distt. Bilaspur H.P. in his account No.50200013212481 which cheque in question was duly signed by the accused. After receipt of the said cheque in question, the complainant presented the said cheque in question in his own account in the H.P. State Co. op. Bank Ltd. Branch office at Ghumarwin SB account No.10710105730 for encashment, however the same returned dishonoured vide letter of the banker of the complainant dated 15.09.2018 as well as memorandum dated 14.9.2018 of the bank mentioned therein the reason "Funds Insufficient". Thereafter, the complainant approached to the accused and told the accused qua dishonour of the cheque. On this the accused re-

requested to the complainant to not file any case and to put the same cheque in question for encashment within 20-25 days and also the accused assured the payment of the same. Thereafter, the complainant believed upon the accused and again put the said cheque in question for encashment in his own aforesaid account in the H.P. State co-operative. Bank Ltd. branch at Ghumarwin, Distt. Bilaspur H.P. but again the said cheque in question returned by the said banker of the complainant without cash vide letter dated 10.10.2018 with the memorandum of the HDFC bank branch at Ghumarwin, Distt. Bilaspur H.P. mentioned therein the reason "Account Dormant" vide memorandum dated 09.10.2018. Thereafter, the complainant through his counsel send the registered legal notice u/s 138 of the Negotiable Instrument Act, 1881 dated 15.10.2018 through registered post dated 22.10.2018 upon the accused, but the said registered legal notice has not been knowingly received by the accused and same returned unclaimed to the counsel of the complainant. From the above facts it clear that the accused has issued the above mentioned cheque in question mischievously and intentionally to harass the complainant as such the accused is liable to be prosecuted under section 138 of the Negotiable Instrument Act, 1881. The cause of action arose to the complainant to file the complaint on dated 15.08.2018 when the cheque was issued by the accused to the complainant and thereafter on dated 15.9.2018 and 10.10.2018 when the cheque in question returned dishonoured to the complainant by the bank and finally on 28.11.2018 when the accused after stipulated period neither replied the same nor made the payment. Stating this prayed that the complaint of the complainant be entertained and accused be summoned and further be punished under Section 138 of Negotiable

Instruments Act. Complaint is duly annexed with the affidavit of complainant.

3. After considering the preliminary evidence and going through the contents of the complaint and documents annexed with it, the Court has taken cognizance against accused and accused was summoned. On finding a prima-facie case, notice of accusation under section 251 Cr.P.C. was put to the accused for commission of offence punishable under Section 138 of the Act, on 08-02-2024 to which he pleaded not guilty and claimed trial. In order to prove its case complainant has examined two witnesses, thereafter the learned counsel for complainant bank vide separate statement placed on record has closed complainant's evidence. Thereafter, statement of accused was recorded under Section 313 Cr.P.C. in which he denied all the incriminatory evidence led against him and has categorically stated that no legal notice was received by him. He pleaded his innocence and stated that a false case has been filed against him and did not opt to lead evidence in defence.

4. I have heard arguments advanced by the Id. Counsel for the parties and have gone through the case file carefully.

5. Following points arise for determination in the present case :-

1) Whether the complainant has proved that accused issued cheque bearing No.000047, dated 15-08-2018 amounting to ₹ 1,08,000/- in favour of complainant which was dishonored on the grounds of "Funds Insufficient" and "account dormant" in discharge of his liability and thereafter also the cheque amount was not paid by the accused to

the complainant within stipulated period

?

2) Final Order.

6. For the reasons to be recorded hereinafter my findings on the points under determination are as under :-

POINT NO.1 : Yes.

FINAL ORDER : Accused is convicted as per operative part of judgment.

APPRAISAL OF EVIDENCE.

7. In order to prove its case the complainant has examined as many as two witnesses. Thereafter, the counsel for complainant vide separate statement has closed the complainant's evidence. CW-1 Ashish Dhiman, has tendered his affidavit Ext. CW-1/A in his examination-in-chief in which he has reiterated the averments made in the complaint. He also tendered on record cheque Ext.CW-1/B, memorandum dated 09.10.2018 Ext.CW-1/C, memorandum dated 10.10.2018 Ext.CW-1/D, memorandum dated 14.09.2018 Ext.CW-1/E, legal notice Ext.CW-1/F and postal receipt Ext.CW-1/G. In his cross-examination, he has stated that his father was Executive Engineer with IPH department. He feigned his ignorance from when his father and accused person were known to each other. He feigned his ignorance about the fact that for how much amount the deal of plot has been settled. He stated that Rs.1,08,000/- has not been given in his presence. Self stated that it was given in presence of his uncle at Naina Hotel. He feigned his ignorance whether his father has withdrew Rs.1,08,000/- from his bank account or not. He feigned his ignorance that a payment for more than Rs.20,000/- has to be made by way of RTGS or through cheque. He admitted that he has no written record with him that his father

has paid Rs.1,08,000/- to the accused. Self-stated that accused has issued the cheque for the aforesaid amount. He admitted that accused has no liability towards him. He stated that cheque Ext.CW-1/B has been produced by him three times in the bank for encashment. He denied that accused has not received legal notice Ext. CW-1/F. Self stated that notice was served upon the accused. He stated that accused has assured him that why they have filed complaint in the court and he will return the amount to him out of court. He admitted that aforesaid fact has not been mentioned by him in the present complaint. He admitted that he has not annexed any legal heir certificate with the present complaint. Self-stated that cheque has been issued by him in his name.

8. CW-2 Suresh Kumar stated that he has been retired as Deputy Director from the Agricultural department. In the year 2018 father of the complainant has expired. In his presence father of the complainant has paid Rs.1,08,000/- to the accused and in his presence accused has issued the cheque to the complainant in the year 2018. He identified cheque Ext. CW-1/B. He stated that in the year 2025 accused met him in the court and has asked him that he will repay the amount otherwise out of court and why they have filed the complaint in the court. In his cross-examination, he stated that father of accused expired in March 2018. He feigned his ignorance about the occupation of accused Gopal Mahajan. He admitted that accused has not borrowed the amount from the complainant. With this the counsel for complainant vide separate statement has closed the evidence of the complainant.

9. This is the entire relevant evidence led on record on behalf of complainant.

10. After closure of complainant evidence, statement of accused under Section 313 Cr.P.C. was recorded in which he

has denied all set of incriminatory evidence led against him and has stated that no legal notice was received by him. He pleaded his innocence and stated that a false case has been filed against him and did not opt to lead evidence in defence.

11. While arguments counsel for complainant has vehemently argued that complainant has proved its case to the hilt by leading sufficient evidence on record. Per contra Counsel for accused has vehemently argued and denied entire case of complainant and it is vehemently denied that accused issued aforesaid cheque in discharge of legal liabilities and there was no legal liability towards complainant. Further that false case has been filed by the complainant against accused. It is submitted that the presumption under Section 139 of Negotiable Instruments Act arise in favour of the complainant has been rebutted by the accused by leading sufficient evidence.

REASONS FOR FINDINGS.

Point No. 1.

12. In the case in hand, in order to prove the sine-qua-non of Section 138 of Negotiable Instruments Act the complainant has examined two witnesses including himself. It has been alleged by the complainant that his father has dealing with accused for the purchase of plot and accused was having family relations with his father and thereafter, accused admitted Rs.1,08,000/- from his father who has paid the aforesaid amount in presence of his uncle and thereafter, accused has not repaid the aforesaid amount and thereafter, his father died in the accident and when he demanded amount from the accused, then accused has issued cheque Ext.CW-1/B. The aforesaid cheque has been presented by the complainant for encashment and the cheque was dishonored on 14.09.2018 due to the reason "Funds Insufficient" and thereafter, accused assured the complainant

that he will repay the amount and asked him to present the cheque again and cheque was again presented for encashment and same was again returned unpaid on 09.10.2018 with the reason mentioned upon memorandum Ext. CW-1/E "Account Dormant". Thereafter, legal notice Ext. CW-1/F was served upon the accused, but despite service of legal notice on the last known address of the accused he has not repaid the cheque amount. Thus, accused has committed offence under Section 138 of Negotiable Instrument Act.

13. In order to prove the offence punishable under Section 138 of Act *ibid*, it is incumbent upon the complainant to prove following **sine-qua-non of Section 138 of Negotiable Instruments Act, 1881**, which are reproduced hereunder for ready reference:

1. *Cheque is drawn by accused on an account maintained by him with a banker;*
2. *Cheque amount is in discharge of debt or liability;*
3. *The cheque is returned unpaid for insufficiency of funds or that the amount exceeds the arrangement made with bank, the offence standing committed the movement cheque returned unpaid.*

14. Apart from the aforementioned ingredients there are three distinct conditions precedent, which must be satisfied before the dishonour of a cheque constitute an offence and become punishable which are reproduced hereunder:-

- i) the cheque ought to have been presented with the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier*
- ii) Further, the payee or holder in due course of the cheque as the case may be ought to make demand for the payment of said amount of money by giving a notice in*

writing to drawer of the cheque within 30 days.

iii) The drawer of said cheque should have failed to make payment of said amount of money to the payee as the case may be to the holder in due course within 15 days or receipt of said notice.

15. It is only upon the satisfaction all the three conditions mentioned above and enumerated in section 138 and its proviso the offence punishable under Section 138 can be said to have been committed. It was held in **MSR Leathers versus S. Palaniappan (2013) Vol I SCC 177.**

16. Further, Section 118 of Negotiable Instruments Act says: 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, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration; and Section 139 of Negotiable Instruments Act, also carves out the presumption that holder of the cheque has received it, for discharge of any liability.

17. Further Hon'ble Supreme Court of India in **Rangappa vs. Shrimohan,(2010)11 SCC 441, Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513, and Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197** has held that *once the signatures on the cheque are admitted then the court has to raise presumption u/s. 118 r/w. 139 NI Act, that there exists legally enforceable debt or liability in favour of the complainant for which the cheque in question has been issued. The accused in order to rebut these presumption has to raise a probable defence and prove his defence on the basis of preponderance of probabilities.*

18. To reach to a gentle conclusion in the case, it is necessary to apply the aforesaid basic ingredients required for constitution of aforesaid offence in the facts of the present case.

19. In the case in hand in order to prove the *sine qua non* of Section 138 of Negotiable Instruments Act, complainant has relied upon the testimonies of two witnesses including himself and documentary evidence i.e. cheque Ex.C1/B, bank returning memo dated 9.10.2018 Ext.Cw1/C, memo dated 10.10.2018 Ex.Cw1/D, memo dated 14.9.2018 Ex.Cw1/E legal notice Ex.Cw1/F and its postal receipts Ex.Cw1/F. Thus, the complainant while leading sufficient evidence on record has proved that accused has issued cheque no. 000047 dated 15-08-2018 of Rs.1,08,000/- which was presented by the complainant in his Bank, for encashment which was sent to the bank of the accused and the same has been dishonoured and returned along with memos mentioned above for the reason mentioned "funds insufficient" and "account dormant" and when legal notice Ext.Cw1/F was given to him the accused neither has replied to the legal notice nor made the payment within the stipulated period. Thus the complainant while leading sufficient, cogent and convincing evidence has proved his case beyond all shadow of reasonable doubt against accused. Now, it is accused who has to rebut the presumption under Section 118(a) and 139 of NI Act which has been arises in favour of holder in due course i.e. complainant of the present case. Though, accused has to rebut these presumption by leading evidence and standard of proof for accused is beyond preponderance of probabilities and accused in order to rebut aforesaid presumptions can lead evidence in his defence or he can also use the material extracted from the complainant's witnesses during their cross-examination. The sole defence taken by the accused is that there was no legal enforceable liability of accused towards the complainant Ashish

Dhiman because the dealing of accused was with the father of the complainant and no amount was ever borrowed. It is apposite to mention that it is admitted fact that the complainant is son of Sh. Sher Singh who was having familiar relations with the accused person and CW-2 has been examined by the complainant who has stated that father of the complainant has provided Rs.1,08,000/- to the accused and in lieu of that amount accused has issued cheque Ext.CW-1/B after death of the father of the complainant in favour of the complainant. It is apt to mention that When the accused issued a cheque Ext.CW-1/B to the complainant to repay the debt his father, he creates a new legal liability directly with complainant and it cannot be said that there was no legal enforceable liability of the accused towards the complainant and the accused cannot claim that there was no debt or it is invalid when he has already acknowledged it by issuing a cheque. Thus this argument of counsel of accused that accused has no legally enforceable liability towards complainant is having no force and not tenable in the eyes of law. Further, it is clear that the complainant has proved his case beyond all shadow of reasonable doubt against the accused, whereas, the accused has failed to rebut the presumptions arises in favour of the complainant. Therefore, the accused is liable to be convicted for the commission of offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, point no.1 is answered in affirmative and decided in favour of the complainant.

FINAL ORDER:

20. In view of reasons and findings on point No.1 above, the accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. Matter now be

listed for hearing the convict on quantum of sentence on **21-07-2026**. Judgment will continue.

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

(Monika Sombal)
Addl. Chief Judicial Magistrate
Ghumarwin, District Bilaspur (HP).

UKs/-

FORM-A

LIST OF WITNESSES

Sr. No.	Name of the witness	Whether witness of complainant or of accused.
CW-1	Sh. Ashish Dhiman	Complainant's Witness
CW-2	Sh. Suresh Kumar	-do-

FORM-B

LIST OF EXHIBITS

Ex. No.	Date of Exhibit	Description of Exhibit
Ex.CW1/A	05-05-2025.	Affidavit of complainant.
Ex.CW1/B	-do-	Cheque
Ex.CW1/C	-do-	Return memo.
Ex.CW1/D	-do-	Intimation memo.
Ex.CW1/E	-do-	Return memo.
Ex.CW1/F	-do-	Legal notice.
Ex.CW1/G	-do-	Postal receipt.

(Monika Sombal)
Addl. Chief Judicial Magistrate
Ghumarwin, District Bilaspur (HP).

QUANTUM OF SENTENCE.**21-07-2026:**

Present: Sh. J.K. Rana, Advocate for complainant.
 Convict with Sh. R.L. Bhardwaj, Advocate.

At the stage, it has been submitted by both the counsel appearing on behalf of parties that the parties have entered into a compromise. The complainant vide his separate statement has stated that the matter has been compromised with the accused, so he does not want to pursue the present case and sought permission to compound the present case.

In view of the facts and circumstances of the case, there is nothing left to be recovered by the complainant from the convict, a leniency can be shown towards the convict. Accordingly, the convict is released after reprimand, on taking recourse to the provisions of Probation of Offenders Act, for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Statement of the complainant shall form part of this order. Let a copy of this judgment be supplied to the convict free of costs forthwith. The file after due completion be consigned to the record room.

Announced and signed in the open Court today this 21st day of July, 2026.

(Monika Sombal)
 Addl. Chief Judicial Magistrate
 Ghumarwin, District Bilaspur (H.P).