CIS CNR No. HPSO110058972022
CIS Case Type : Comp. Us 138 Nia
CIS Case Reg. No. : 332/2022
CIS Case Year : 2022

IN THE COURT OF AJAY KUMAR, ADDITIONAL CHIEF JUDICIAL MAGISTRATE, NALAGARH, DISTRICT SOLAN, H.P.

Complaint No. : 344/3 of 2022
Date of Institution : 09.09.2022
Date of Decision : 13.01.2026

In the matter of :-

Om Wire Fencing, Khasra No. 177/1, Vill. Chakkan, P.O. Karuana, Tehsil Baddi, District Solan, H.P. through its proprietor Sh. Satish Kumar Jangra.

..Complainant.

Versus.

1. M/s Cloud 7, Rampur Bushar, Tehsil Rampur, District Shimla, H.P. through its partner/authorized signatory Sh. Suresh Kumar Guleria.

2. Suresh Kumar Guleria, son of Sh. Jyoti Ram, R/o Vill. Padampur, Rampur Bushar, District Shimla, H.P.

…...Accused persons.

Complaint under Section 138 Negotiable Instruments Act, 1881.

For the complainant : Sh. Harpal Singh, ld. Advocate.
For the accused : Sh. Maan Singh, ld. Advocate.

JUDGMENT.

It is a private complaint under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as 'the Act' for convenience sake) filed by the complainant against the accused with the allegations that complainant is a proprietorship firm and is engaged in the business of manufacturing and supplying of chain link fencing, Crate Wire Box, GI Wire, Nails, Barbed Wire Fencing, Razor Wire, Binding Wire and Hole Pass etc. and has its unit at Khasra

No. 177/1, village Chakkan, P.O. Karuana, Tehsil Baddi, District Solan, H.P. and the complainant run its business under the name and style of Om Wire Fencing and Sh. Satish Kumar Jangra is sole proprietor of Om Wire Fencing. Accused No.2 being a partner/authorized signatory of M/s cloud 7, Rampur Bushahar, Tehsil Rampur, District Shimla is liable and responsible for all day to day affairs of M/s cloud 7. Accused No. 2 represented to complainant that he is a government contractor of forest department of H.P. and used to supply the barbed wire etc. to the forest department. Accused used to purchase the barbed wire fencing i.e. barbed wire 12 gauge time to time from complainant on credit basis. Complainant used to supply the abovesaid product as per their various purchase orders which were placed to complainant telephonically by the accused. The complainant supplied barbed wire 12 gauge to accused as per their various purchase orders vide tax invoice No. OWF/2022-23/124, dated 20-06-2022 amounting to Rs. 2,48,320/-, Tax invoice No. OWF/2022-23/132, dated 23.06.2022, amounting to Rs.2,45,228/- and tax invoice No. OWF/2022-23/131, dated 23.06.2022, amounting to Rs.2,29,264/- at different places i.e. at Dharampur, District Solan, H.P., Bilaspur, Chopal on credit basis as and when required by the accused and the same were received by accused. As per ledger account/statement of account as maintained by the complainant of aforesaid firm of accused i.e. cloud 7, a sum of Rs.7,22,812/- is outstanding against accused and is to be paid by the accused alongwith interest @18% per annum from the date of invoice to complainant. Accused No.2 has been assuring the complainant that outstanding payment shall be made at the earliest but despite his assurance, he had not paid the outstanding amount. After many requests and oral reminder to accused by the complainant and in order to pay the part payment of outstanding amount accused have issued a cheque bearing No. 679440, dated 20.06.2022, amounting to Rs. 2,20,000/-, drawn on Punjab National Bank, Rampur Bushar, Shimla, H.P. in favour of the complainant and assured him that the siad cheque will be honoured when the same was presented for collection. Complainant being holder of aforesaid cheque presented the same with his banker i.e. AU Small Finance Bank Ltd. Baddi for encashment, but the same was returned unpaid vide memo dated 27.06.2022 with remarks 'funds insufficient'. On this, the complainant issued legal notice dated 22.07.2022 to the accused through registered AD demanding payment of the aforesaid cheque amount and the accused has received the notice on 25.07.2022 but the accused has neither replied to the said notice nor paid the amount of aforesaid cheque to the complainant. Thus, the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act. Hence, the present complaint.

2. On presentation of complaint which has been duly supported by an affidavit, this Court has taken cognizance under Section 138 of the Act and procured the presence of accused. Thereafter, notice of accusation was put to the accused under the aforesaid Section, to which he pleaded not guilty and claimed trial. The accused filed an application under Section 145(2) of the Act in order to cross-examine the

complainant which application was accordingly allowed vide order, dated 14.06.2024.

3. At trial, the complainant examined himself as CW1. In his examination-in-chief through affidavit Ex.C1/CW1, he has simply sync. the contents of the complaint. He also tendered GST Certificate Ex.C2/CW1, Certificate of MSME Ex.C3/CW1, cheque in question Ex.C4/CW1, banker's returning memo Ex.C5/CW1, legal notice Ex.C6/CW1, postal receipts Ex.C7/CW1 & Ex.C8/CW1, track consignment reports Ex.C9/CW1 & Ex.C10/CW1, ledger statement Ex.C11/CW1, certificate under Section 65-B of Evidence Act Ex.C12/CW1, invoice Mark A to Mark C, copy of e-way Bill Mark D to Mark F, certificate under Section 65-B of Evidence Act Ex.C13/CW1 in evidence. In his cross-examination, he deposed that after filing of the present complaint, accused has transferred Rs.4,40,000/- in his account. He denied that accused has no liability towards the cheque amount and volunteered to state that accused had liability of Rs.7,20,000/- towares him. He also denied that accused has no subsisting liability towards him. He also denied that accused has returned the entire outstanding amount to him. He denied that he has filed a false complaint against the accused.

4. Thereafter, accused persons rendered their statement under Section 313 Cr.P.C. wherein they have reiterated their innocence but admitted that they have issued cheque in question in order to discharge their liability and opted not to lead evidence in defence.

5. To arrive at the proper conclusion of the case, following points arise for determination:-

1. Whether the complainant has been successful in proving beyond all reasonable doubt that the accused had issued cheque in question Ex.C4/CW1 in his favour in order to discharge his legal debt or liability which on presentation was dishonoured for the reason 'insufficient funds', so as to be punishable under Section 138 of the Act?

Final order?

6. Heard and perused the record. For the reasons to be recorded hereinafter in writing, my points wise findings are as follows:-

Point No. 1:	Yes.
Final Order:	The accused are **convicted** under Section 138 of The Negotiable Instruments Act as per operative part of the judgment.

<u>REASONS IN SUPPORT OF FINDINGS.</u>

<u>Point No. 1</u>.

7. During arguments, Ld. Counsel for the complainant has strenuously contended that the complainant has proved all necessary ingredients to prove the offence punishable under section 138 of Negotiable Instruments Act against the accused. Thus, it would be legally wise for the court to convict the accused. On the other hand, the Ld. Defence Counsel has contended that the accused has no liability towards the complainant.

8. It is not in dispute that the cheque in question Ex.C4/CW1 is one pertaining to the account maintained by the accused with Punjab National Bank, branch Rampur Bushahr. It is also not in dispute that the signature found therein is that of the accused. The complainant has also proved by adducing oral and documentary evidence that the cheque when presented for collection, was returned unpaid with an endorsement "funds insufficient". The memo dated 27.06.2022 issued by the bank returning the cheque unpaid, citing 'insufficient funds' as the reason for such dishonor has been marked as Ex.C5/CW1 Within a period of one month from the date of receipt of the intimation regarding the dishonor of the cheque, the complainant seems to have issued statutory notice contemplated under Section 138 of the Negotiable Instruments Act, 1881 and a copy of the same has been marked as Ex.C6/CW1 and receipts thereof Ext.C7/CW1 & Ex.C8/CW1. Admittedly, registered A.D. was not received back but according to the provisions of Section 27 of the General Clauses Act, 1897 once notice is sent to the addressee at his correct address by a registered post it shall be deemed that the service has been properly effected upon the addressee unless contrary is proved. In present case, there is no case of accused that notice was not issued on correct address. Even otherwise, in the case of C.C. Alavi Haji v. Palapetty Muhammed & Anr., the Apex Court held as follows: "A person who does not pay within 15 days of receipt of summons from the Court alongwith 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 General Clauses Act and Section 114 of the Evidence Act.”. No payment was admittedly, made by the accused within 15 days or thereafter. Within a month therefrom, the complaint happened to be filed on 17.08.2022. Therefore, there cannot be any dispute that the complaint was filed within time stipulated in Section 138 of the Negotiable Instruments Act, 1881. Since the cheque in question is admitted to be signed by the accused and the same was drawn on Punjab National Bank, branch Rampur Bushahr, in respect of an account maintained by the accused, the presumption contemplated under Section 139 of the Negotiable Instruments Act, 1881 that the cheque was received by the complainant in discharge of a debt or other liability in part or whole stands attracted. Similarly, the presumption contemplated under Section 118 of the Negotiable Instruments Act 1881 that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration also stands attracted.

9. No doubt, the above two presumptions firstly, in regard to passing of consideration as contained in section 118(a) therein and secondly, as to the existence of any debt or liability stand attracted in favour of complainant but the aforesaid presumptions are rebuttable. Hence, the accused can rebut either of these presumptions by raising a probable defence and if the accused has discharged the initial onus of proof showing that the existence of consideration or issuance of cheque for legally enforceable debt or liability was improbable or doubtful, the onus would shift on the

complainant who will be obliged to prove it as a matter of fact and upon his failure to prove would dis-entitle him for any relief on the basis of negotiable instrument.

10. No doubt, the bare denial of the passing of consideration or existence of legally enforceable debt or liability apparently does not appear to be any defence and something which is probable has to be brought on record for getting the benefit of shifting the onus of proving on the complainant and for that purpose i.e. in order to prove the defence, the accused need not examined himself and he may discharge his burden on the basis of material already brought on record by the complainant.

11. A glance at cross-examination of complainant shows that though the defence has disputed the liability of the accused towards the complainant but accused, while rendering his statement under Section 313 Cr.P.C admitted that he had issued cheque in question in favour of complainant in discharge of his legal liability. It is settled law that admission is good piece of evidence against the maker. As such, the said admission made by the accused corroborate the case of the complainant that the accused had issued the cheque in favour of complainant in discharge of his legal liability. This being so, accused has failed to rebut the presumption contemplated under Section 118(a) and 139 of N.I. Act.

12. Consequent upon above discussion, it is clear that the accused had failed to rebut the presumption under Section 118 (a) and 139 of N.I. Act, therefore, the presumption under Sections 118 (a) and 139 of N.I. Act

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become absolute. Accordingly, point No. 1 is answered in affirmative and decided in favour of the complainant.

FINAL ORDER.

13. In view of my discussion held supra, the accused are, hereby, convicted from the allegations of offence under Section 138 of Negotiable Instruments Act, 1881. Let they be heard on quantum of sentence **after lunch.** Judgment shall continue.

Announced in the open Court today on this 13th day of January, 2026.

(Ajay Kumar)
Addl. Chief Judicial Magistrate,
Nalagarh, District Solan, H.P.

Sapna/-

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Form-A

List of Witnesses.

Sr. No.	Name of Witness.	Whether the witness of complainant or accused.
CW1	Sh. Satish Kumar	Complainant.

From-B

List of Exhibits.

Exhibits.	**Description of Exhibits.**
Ex.C1/CW1	Affidavit of complainant.
Ex.C2/CW1	Copy of GST Certificate.
Ex.C3/CW1	Copy of MSME.
Ex.C4/CW1	Cheque.
Ex.C5/CW1	Return Memo.
Ex.C6/CW1	Legal notice.
Ex.C7 & C8/CW1	Postal receipts.
Ex.C9 & C10/CW1	Track Consignment reports.
Ex.C11/CW1	Ledger statement.
Ex.C12 &C13/CW1	Certificates U/S 65-B of Evidence Act.

(Ajay Thakur)
Addl. Chief Judicial Magistrate,
Nalagarh, District Solan, H.P.

In the Court of Ajay Kumar, Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P.

Om Wire Fencing vs. M/s Cloud 7 & Anr.

13.01.2026.
Present: Sh. Harpal Singh, Adv for the complainant.
Convicts with Sh. Maan Singh, Advocate.

14. Heard on quantum of sentence. At this stage, Ld. counsel for the complainant vide his separate statement has stated that complainant has received the cheque amount and compromised the matter.

15. It is settled law that even after recording conviction under Section 138 of the Act, the court has power to compound the offence under Section 147 of the Act (reliance placed on case titled as '***Damodar S. Prabhu Vs. Sayed Babalal (2010)5 SCC 663'***). In the aforesaid judgment, Hon'ble Apex Court while lying certain guidelines as to imposing compounding fee has held that in case accused intends to compromise the matter under Section 147 of the Act, which is otherwise a special Act after recording the conviction, prayer made in this regard can be accepted with the leave of the Court.

16. Considering the statement of Ld. counsel for the parties, financial status of the convicts and the fact that the convicts have paid the cheque amount, permission to compound the present complaint is hereby allowed without compounding fee. As necessary consequence, the convicts are acquitted from the accusation of commission of the offence under Section 138 N.I. Act. Copy of judgment be supplied to the convicts free of cost. The file, after due completion, be consigned to record room.

Announced.
13.01.2026.

(Ajay Kumar)
Additional Chief Judicial Magistrate,
Nalagarh, District Solan, H.P.