

**In the Court of Pankaj Sharma, Sessions Judge, Hamirpur,
Himachal Pradesh.**

Case Type	Criminal Appeal.
CIS Filing No.	2594/2025.
CIS Regd. No.	3/2026.
CNR No. HPHA	010046452025.
Date of Institution	31.12.2025.
Date of Decision	02.07.2026.

Sanjay Kumar son of Shri Sohan Singh, resident of Village Bann, Post Office Rangas, Tehsil Nadaun, District Hamirpur, HP.

....Appellant.

-Versus-

1. M/s Pathania Jewellers Rangas, Tehsil Nadaun, District Hamirpur HP through its Proprietor Shri Rameshwar Chand son of Shri Joginder Singh, resident of Village Bardhiar, Post Office Putrial Jaisi Ram, Tehsil Nadaun, District Hamirpur, HP.

.... Respondent/Complainant.

2. State of HP, through Public Prosecutor, Hamirpur, HP.

.... Pro forma Respondent.

Criminal Appeal under Section 415 BNSS.

For the Appellant: Sh.Anoop Sharma, learned Advocate.
For the Respondent: Sh.Sunil Kumar Chauhan, Id. Advocate.
For the State: Sh.Sandeep Agnihotri, learned PP.

J U D G M E N T

Present appeal has been preferred by the appellant/accused, Sanjay Kumar, against the judgment of conviction and order of sentence dated 04.12.2025 passed by the learned Additional Chief Judicial Magistrate, Nadaun, District Hamirpur, in Complaint No.189-I/2018, whereby, the appellant was convicted under Section 138 of the Negotiable

Instruments Act and sentenced to undergo simple imprisonment for six months along with payment of Rs.2,20,000/- as compensation to the complainant.

2. For the sake of convenience and to avoid any ambiguity, the parties shall hereinafter be referred to by the same nomenclature and status as assigned to them before the Learned Trial Court.

3. Brief facts of the case in hand are that the complainant, proprietor of M/s Pathania Jewellers, alleged that the appellant purchased gold ornaments worth Rs.1,80,000/- on 22.10.2018 and issued Cheque No.820873 for the said amount. Upon presentation, the cheque was dishonoured for the reason "Funds Insufficient." Statutory demand notice dated 17.11.2018 was issued, but despite service, the appellant failed to make payment within the prescribed period, leading to the filing of the complaint under Section 138 of the Act.

4. The appellant pleaded not guilty. After trial, the learned Magistrate convicted and sentenced him as aforesaid.

5. Aggrieved by the impugned judgment and order of sentence, the appellant has challenged the conviction primarily on the grounds that the findings of learned Trial Court are contrary to law and evidence and are based on improper appreciation of the material on record. It is contended that the statutory notice does not disclose the alleged transaction of sale of gold ornaments or the issuance of Bill No.222 dated 22.10.2018, thereby creating a material inconsistency in the complainant's case. The complainant claimed to be the proprietor of M/s Pathania Jewellers, Rangas, but did not produce any registration, GST, or ownership documents. Because of this, the complaint was allegedly not maintainable, and the trial court's conviction and sentence dated 04.12.2025 were said to be legally unsustainable. The complainant had led two different sets of allegations before learned Trial Court. The

documents were not exhibited by the complainant in his evidence after summoning of the accused.

6. It is further contended that the complainant admitted in cross-examination that the appellant had transferred Rs.3,80,000/- through online transactions and had also made a payment of Rs.90,000/- on 13.12.2024. The complainant further admitted the existence of a separate financial transaction involving Rs.5,22,000/- and an agreement dated 28.12.2018, but subsequently withdrew his application seeking production of the said agreement. According to the appellant, these admissions and the withheld document materially affect the complainant's case and negate the existence of a legally enforceable liability corresponding to the dishonoured cheque.

7. Learned counsel for the appellant has submitted that learned Trial Court failed to properly appreciate these material inconsistencies and admissions, resulting in an erroneous conviction. Learned counsel for the accused has also relied upon the decisions of **Ashwani Kumar V/s Raj Kumar Cr. Appeal No.87 of 2013 dated 12.12.2025**, **Shirgul Filling Station V/s Kamal Sharma Cr.Appeal No.262 of 2010 dated 8th July, 2025**, **Milind Shripad Chandurkar V/s Kalim M. Khan & Anr AIR 2011 SUPREME COURT 1588**, **Kaveri Plastics V/s Mahdoom Bawa Bahrudeen Noorul 2025 INSC 1133**, **John K. Abraham V/s Simon C. Abraham & Anr (2014) 2 SCC 236**, **Basalingappa V/s Mudibasappa (2019) 5 Scc 418**. Accordingly, it is prayed that the impugned judgment of conviction and order of sentence dated 04.12.2025 be set aside, the appeal be allowed and the appellant be acquitted of the charge under Section 138 of the Negotiable Instruments Act.

8. Per contra, learned counsel for the complainant and the State have stood by the impugned Judgment and order of sentence and have argued that no interference is required with the same and prayed for dismissal of this appeal.

9. I have heard learned counsels for the parties and record has been carefully perused.

10. The following points arise for determination in this appeal: -

Point No.1	Whether the judgment and order of sentence dated 4.12.2025 passed by learned Trial Court are sustainable in the eyes of law?
Point No.2	Final Order.

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

Point no.1.	Yes.
Final order	The appeal is dismissed as per the operative part of this Judgment.

REASONS IN SUPPORT OF FINDINGS

POINTS NO.1

12. For a proper and comprehensive appreciation of the controversy involved in the present appeal, it is necessary to examine the evidence adduced by the complainant before the learned Trial Court.

13. Before the learned Trial Court, Sh.Rameshwar Chand CW-1 appeared in the witness box and tendered in evidence his duly sworn affidavit Ext.CW-1/A, original cheque Ext.C-1, Memo Ext.C-2 & Ext.C-3, Postal receipt Ext.C-4, Legal notice Ext.C-5, RLAD Ext.C-6, Bill No.222 Ext.C-7. His cross-examination reveals that he candidly admitted having received various amounts from the accused through banking channels, namely, Rs.1,00,000/- on 03.07.2019, Rs.25,000/- in December 2023, Rs.90,000/- on 13.12.2024, Rs.50,000/- on 28.01.2025, Rs.45,000/- on 21.02.2025 and Rs.70,000/- on 08.05.2025. However, the complainant consistently explained that the aforesaid payments were not received towards discharge of the

liability arising out of the cheque in question but were appropriated towards repayment of a distinct loan transaction of Rs.5,22,000/-, advanced to the accused in December, 2018 under an agreement dated 28.12.2018.

14. Significantly, the execution of the aforesaid agreement was not challenged by accused during cross-examination of complainant. No suggestion was put to CW-1 that the agreement was forged, fabricated or non-existent. Equally, no suggestion was given that the amounts transferred by the accused were intended to be adjusted against the cheque amount in question. In the absence of any such challenge, the complainant's explanation regarding the nature and appropriation of the payments remains unshaken and inspires confidence. In the statement of accused under section 313 of Cr.PC, he only stated that he had made full payment of cheque in question.

15. Likewise, no suggestion was put to the complainant during the course of his cross-examination that he was not the proprietor of M/s Pathania Jewellers. The said fact, therefore, remained unchallenged before the learned Trial Court. It is a settled principle of law that a party cannot be permitted to raise, for the first time in appeal, a plea which was never put to the witness in cross-examination so as to afford him an opportunity to explain or rebut the same. Consequently, the appellant is estopped from agitating the aforesaid contention at the appellate stage.

16. It is well settled that the object of cross-examination is to impeach the credibility of a witness and to challenge the truthfulness of his version. A fact which is not disputed in cross-examination is ordinarily deemed to have been accepted. It is worth mentioning here that where a party intends to dispute the testimony of a witness on a material point, the witness must be confronted with that case during cross-examination. Failure to do so ordinarily amounts to

acceptance of that part of the testimony. The said principle has been repeatedly approved by the Hon'ble Supreme Court, including in **Muddasani Venkata Narsaiah (D) through LRs V/s Muddasani Sarojana**¹, wherein, it was held that evidence which remains unchallenged in cross-examination ordinarily deserves acceptance.

17. The contention of the appellant that the admitted payments ipso facto extinguish the liability under the cheque is also devoid of merit. Mere proof of transfer of money into the account of the complainant does not establish that such payments were made towards discharge of the liability represented by the dishonoured cheque. The complainant has furnished a specific and plausible explanation regarding the appropriation of those payments. Once such an explanation has been offered, the burden shifted upon the accused to establish, by raising a probable defence, that the payments were in fact made towards the cheque amount. No documentary evidence, receipt, acknowledgment, account statement or any contemporaneous material has been produced by the accused to substantiate such plea.

18. The law is equally well settled that once the execution of the cheque is admitted, the presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act come into operation. In **Rangappa V/s Sri Mohan**², the Hon'ble Supreme Court held that the presumption under Section 139 includes the existence of a legally enforceable debt or liability and that the burden lies upon the accused to rebut the same on the standard of preponderance of probabilities. Similarly, in **Bir Singh V/s Mukesh Kumar**³, it was held that even a signed blank cheque voluntarily handed over attracts the statutory presumption and the burden lies upon the accused to rebut it by leading cogent evidence. Likewise, in **APS Forex Services**

¹ AIR 2016 SUPREME COURT 2250.

² AIR 2010 SUPREME COURT 1898.

³ AIR 2019 SUPREME COURT 2446.

Private Limited V/s Shakti International Fashion Linkers⁴,
Hon'ble Supreme Court reiterated that mere denial or bald assertions are insufficient to rebut the statutory presumptions unless supported by credible evidence.

19. Consequently, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act remain unrebutted. Learned trial Court has rightly appreciated the evidence and correctly concluded that the cheque in question was issued in discharge of a legally enforceable debt arising from the transaction relating to the purchase of gold and that the payments subsequently received by the complainant pertained to a separate loan transaction. The findings recorded by the learned trial Court are based on proper appreciation of the oral and documentary evidence and suffer from neither perversity nor illegality, warranting any interference in appellate jurisdiction. Accordingly, the appeal, being devoid of merit, deserves to be dismissed, and the judgment of conviction and order of sentence are liable to be affirmed.

20. Equally devoid of merit is the contention that the complainant failed to prove his proprietorship of the firm. The record reveals that no suggestion disputing the complainant's status as proprietor of the concern was put to him during his cross-examination. It is a settled principle of law of evidence that a fact not challenged in cross-examination is ordinarily deemed to have been admitted. Having failed to dispute the complainant's proprietorship at the appropriate stage, the accused cannot be permitted to raise the said objection for the first time at the appellate stage. The objection, therefore, deserves to be rejected.

21. I have also carefully considered the case laws relied upon by the learned counsel for the accused. However, upon examination, I find that the same are distinguishable on

⁴ AIR 2020 SUPREME COURT 945.

facts and do not apply to the evidence adduced in the present case.

22. In view of the foregoing discussions, neither the admitted receipt of various amounts by the complainant nor the objection regarding proof of proprietorship is sufficient to dislodge the findings recorded by the learned trial Court. The accused has failed to rebut the statutory presumptions on the touchstone of preponderance of probabilities and the evidence led by the complainant inspires confidence. Consequently, the conviction recorded under Section 138 of the Negotiable Instruments Act, 1881 calls for no interference.

23. In view of the above discussion, impugned Judgment and order of sentence are held sustainable in the eyes of law and point No.1 is answered in affirmative.

24. No other point was urged.

FINAL ORDER

25. Consequently, the present appeal is dismissed. The impugned judgment and order of sentence dated 04.12.2025 are upheld. The accused is ordered to surrender before learned trial Court to serve the sentence. The record of learned trial Court along with a copy of this Judgment be returned, while the record of this Court be consigned to the records.

Signed and announced in the Open Court on this
2nd day of July, 2026.

(Pankaj Sharma)
Sessions Judge, Hamirpur,
Himachal Pradesh.

/dr/

Description of bonds under Section 437-A Cr.PC: -

Accused: Sanjay Kumar son of Sh. Sohan Singh, resident of Village Bann, PO Rangas, Tehsil Nadaun, District Hamirpur, HP.

Personal bond in the sum of ₹2,50,000/- furnished on 23.06.2026 which will be valid for a period of six months from today.

Surety: Sohan Singh son of Sh. Pohlo, resident of Village Bann, PO Rangas, Tehsil Nadaun, District Hamirpur, HP.

Surety bond in the sum of ₹2,50,000/- furnished on 23.06.2026 which will be valid for a period of six months from today.

(Pankaj Sharma)

Sessions Judge, Hamirpur,
Himachal Pradesh.

/dr/

SESSIONS JUDGE, HAMIRPUR, HP.