THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.82 of 2026

Date of Decision: 16.06.2026

Ram Prasad …….Petitioner

Versus

Yash Pal & another … Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Petitioner	**:**	Mr. Ashok Kumar Verma, Advocate.
For the Respondent	:	Mr. Abhimanyu Rathor, Advocate, for respondent No.1. Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State.

Sandeep Sharma, Judge(oral):

Instant Criminal Revision petition filed under Section 438 of Bharatiya Nagarik Suraksha Sanhita, lays challenge to judgment dated 07.01.2026, passed by learned Additional Sessions Judge, Sarkaghat, District Mandi, Himachal Pradesh, in Criminal Appeal No.06 of 2025, affirming judgment of conviction and order of sentence dated 13.03.2025, passed by learned Judicial Magistrate, First Class, Court No.1, Sarkaghat, District Mandi, Himachal Pradesh (Camp at Dharampur), in Criminal Complaint No.01 of 2018, titled as **Yash Pal**

---

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

vs. Ram Prasad, whereby learned trial Court, while holding petitioner-accused **(hereinafter referred to as the 'accused')** guilty of his having committed an offence punishable under Section 138 of the Negotiable Instruments Act (***for short 'Act'),*** convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs. 1,50,000/- to the respondent-complainant (hereinafter referred to as the complainant).

2. Precisely, the facts of the case, as emerge from the pleadings as well as other documents adduced on record by the respective parties, are that the respondent-complainant instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that in order to discharge the legal liability towards the complainant, accused issued cheque bearing No.247262, dated 03.09.2017, amounting to Rs. 1,10,000/- of Syndicate Bank Branch at Kullu, District Kullu, Himachal Pradesh. However, fact remains that aforesaid cheque on its presentation to the bank concerned i.e., UCO Bank Sandhole Branch at Sandhole, District Mandi, Himachal Pradesh was dishonoured vide memo dated 21.11.2017 for the reason "payment stopped by drawer". Immediately, after receipt of aforesaid return memo, respondent-complainant served accused with legal notice dated 22.11.2017, thereby calling upon him to make payment good within stipulated time, but since he failed to make the

payment good within stipulated time, complainant had no option, but to initiate proceedings under Section 138 of the Act in the competent Court of law, which subsequently, on the basis of evidence adduced on record by the respective parties, held accused guilty of his having committed offence punishable under S. 138 of the Act and accordingly, convicted and sentenced him as per description given herein above.

3. Being aggrieved and dissatisfied with aforesaid judgment of conviction and order of sentence recorded by learned trial Court, present petitioner-accused preferred an appeal in the Court of learned Additional Sessions Judge, Sarkaghat, District Mandi, Himachal Pradesh, but same also came to be dismissed vide judgment dated 07.01.2026. In the aforesaid background, petitioner-accused has approached this Court in the instant proceedings, praying therein for his acquittal after quashing and setting aside the impugned judgment of conviction and order of sentence recorded by Courts below.

4. Vide order dated 03.02.2026, this Court suspended the substantive sentence imposed by Court below, subject to petitioner-accused furnishing personal bond and depositing 30% of the compensation amount within a period of four weeks. Though, afore order stands complied with, but thereafter matter was repeatedly

adjourned, enabling petitioner to either settle the matter with the complainant or pay the balance amount, but in vain.

5. On 22.04.2026, learned counsel representing the petitioner, on instructions, apprised this Court that petitioner is ready and willing to settle the matter by praying remaining amount, provided he is given some time. This Court having taken note of aforesaid statement adjourned the matter for today's date with a direction to the petitioner to pay the balance amount, but neither petitioner has come present nor has deposited the balance amount and as such, this Court has no option, but to decide the petition on its own merit.

6. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the impugned judgment passed by learned Additional Sessions Judge, Sarkaghat District Mandi, Himachal Pradesh, affirming judgment of conviction and order of sentence recorded by learned trial Court, this Court is not persuaded to agree with learned counsel for the petitioner that both the Courts below have failed to appreciate the evidence in its right perspective, rather this Court is convinced and satisfied that both the Courts below have meticulously dealt with each and every aspect of the matter and there is no scope left for interference.

7. Interestingly, in the case at hand, factum with regard to issuance of cheque as well as signatures thereupon never came to be disputed, rather he attempted to set up a case that he is in habit of keeping blank cheque singed in routine and same has been stolen or misused. However, aforesaid defence never came to be probablized by leading cogent and convincing evidence. Despite sufficient opportunities, accused failed to lead evidence to probablize aforesaid defence.

8. Though, accused examined one Kusum Lata as DW-1, but version put by her nowhere suggests that accused was able to probablize the defence attempted to be set up by her while cross-examining the complainant.

9. With a view to prove his case, complainant while examining himself as CW-1 also examined two persons, namely Sh. Lalit Sharma and Sh. Naveen Kumar Mandhotra as CW-2 and CW-3. Complainant, while examining himself as CW-1, tendered his evidence by way of affidavit Ex. CW1/A, wherein he specifically reiterated the averments contained in the complaint. Besides above, he also tendered cheque Ex. CW1/B, legal notice Ex. CW1/C, postal receipt Ex. CW1/D, memorandum Ex. CW1/E and Ex. CW1/F. Cross-examined conducted upon afore witness nowhere suggests that accused was able to extract something contrary to what this witness

stated in his examination-in-chief. He specifically denied the suggestion put to him that no legal notice was sent to the accused. While stating that he is metric pass and a contractor by profession, this witness stated that Ram Prasad accused belongs to Kullu and he used to meet him in the market sometimes. He stated that he knows accused Ram Prasad from 10 years, but he is not returning his money back. While feigning ignorance about qualification of the accused, this witness stated that he does not give money to the people on loan. While stating that he has sufficient money in his bank account, he categorically stated that he had advanced sum of Rs.1, 10,000/- to the accused on his request, who subsequently with a view to discharge his lawful liability, issued cheque Ex.CW1/B in the sum of Rs. 1, 10,000/-, but same was retuned vide memo Ex.CW1/E and Ex. CW1/F. While admitting that he knew Anil, who is Ex-Pradhan, he also admitted that shop of Anil is near bus stand. He admitted that he occasionally goes to the shop of Anil Kumar, but self stated that he went there to buy things for him and there is a common path adjacent to shop. He specifically denied the suggestion put to him that cheque amount was not filled by accused. He feigned ignorance that on 07.08.2017 cheque book pertaining to cheque mark-E was lost near Kullu Bus Stand by accused. He also feigned ignorance that accused had submitted an application before Syndicate Bank with regard to loss of the cheque book. He denied that he found that cheque book and presented the cheque Ex. CW1/B from that cheque book in order to grab money from accused. He also denied that no cheque was given by the accused. While denying that there is no transaction between him and accused, he reiterated that cheque in question was issued towards discharge of lawful liability. Pattern of cross-examination conducted upon afore witness clearly established factum with regard to issuance of cheque as well as signatures thereupon. If it is so, Court below rightly invoked Sections 118 and 139 of the Act, which speak about presumption in favour of the holder of the cheque that cheque, was issued towards discharge of lawful liability. No doubt, aforesaid presumption is rebuttable, but to rebut such presumption, accused either can refer to the documents and evidence led on record by the complainant or presumption can be rebutted by leading positive evidence, if any.

10. The Hon'ble Apex Cour***t in M/s Laxmi Dyechem V. State of Gujarat***, 2013(1) RCR(Criminal), has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely on the materials submitted by the complainant. Needless to say, if the accused/drawer of the cheque in question neither raises a probable

defence nor is able to contest existence of a legally enforceable debt or liability, statutory presumption under Section 139 of the Negotiable Instruments Act, regarding commission of the offence comes into play. It would be profitable to reproduce relevant paras No.23 to 25 of the judgment herein:-

> ***"23. Further, a three judge Bench of this Court in the matter of Rangappa vs. Sri Mohan [3] held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. The Court however, further observed that it must be remembered that the offence made punishable by Section 138can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose money is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant accused cannot be expected to discharge an unduly high standard of proof". The Court further observed that it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is all preponderance of probabilities.***
>
> ***24. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.***
>
> ***25. It is no doubt true that the dishonour of cheques in order to qualify for prosecution under Section 138 of***

> ***the NI Act precedes a statutory notice where the drawer is called upon by allowing him to avail the opportunity to arrange the payment of the amount covered by the cheque and it is only when the drawer despite the receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount, that the said default would be considered a dishonour constituting an offence, hence punishable. But even in such cases, the question whether or not there was lawfully recoverable debt or liability for discharge whereof the cheque was issued, would be a matter that the trial court will have to examine having regard to the evidence adduced before it keeping in view the statutory presumption that unless rebutted, the cheque is presumed to have been issued for a valid consideration. In view of this the responsibility of the trial judge while issuing summons to conduct the trial in matters where there has been instruction to stop payment despite sufficiency of funds and whether the same would be a sufficient ground to proceed in the matter, would be extremely heavy.***

11. CW-2, Lalit Sharma deposed that since July 2020 he was posted as Manager UCO Bank Sandhole. He stated that Cheque No. 247262 amounting to 1, 10,000/- dated 03.09.2017 was presented by complainant to the bank which was dishonored on 31.10.2017 due to the reason “Payment Stopped by Drawer”. In his cross examination, he admitted that he has no knowledge about the present case, but self stated that only cheque was presented to them. He stated that mark-C dated 21.11.2017 was issued by UCO Bank Sandhole receipt is 02/2017-2018. He stated that whenever any cheque book of an account holder is lost and then cheque was presented from that cheque book for encashment then on the basis of application given by account holder to stop the payment of the cheque they issue memo Payment Stopped by Drawer.

12. CW-3, Naveen Kumar Mandhotra, stated that legal notice dated 22.11.2017 was issued by him as per instruction of complainant to the accused, which is Ex.CW1/C dated 21.09.2023, wherein he made his signature in red circle-A. He also produced on record postal receipt is Ex. PW1/D dated 22.11.2017. In his cross examination, he admitted that he issued legal notice at the instance of complainant to accused, but no extract has been annexed in the present case regarding receipt of that cheque. While stating that legal notice Ex. CW1/C was sent at instance of complainant, he also stated that it is not mentioned in the legal notice as to when complainant gave money to the accused. However, he qualified his aforesaid statement by stating that he issued the legal notice when the cheque amount to Rs.1, 10,000/- was returned by the bank concerned. While admitting that complainant did not give any document pertaining to transaction of money, if any, interse complainant and the accused, he stated that only bounced cheque was given to him for which he issued legal notice. He stated that he did not know that cheque book containing cheque Ex. CW1/B was lost upon which accused made a complaint to the bank. While admitting that no transaction took place in his presence, he stated that accused came to him and sought more time for repayment of cheque.

13. Accused in his statement recorded under Section 313 Cr.P.C though denied factum with regard to his having issued cheque Ex.CW1/B, but admitted that factum with regard to his having received legal notice. He stated that false case has been registered against him as he has lost his cheque book in Kullu bus stand and in that regard he had submitted one application to In-Charge of Kullu bus stand. However, fact remains that neither In-charge of Kullu bus stand has been examined nor application alleged to be given to the In-charge Kullu bus stand ever came to be adduced on record.

14. Accused, with a view to probablize his defence, examined Kusum Lata as DW-1, who stated that Account No. 89022200011227 belongs to accused and maintained with their Branch. Afore witness stated that earlier afore account is in Syndicate Bank Kullu, which was subsequently merged in their bank in the year, 2020. He stated that application mark-X was given by the accused on 08.08.2017 regarding loss of his cheque book to Syndicate Bank pertaining to account No. 89023070000558 & 89022200011227. In her cross examination, this witness stated that she was posted as Manager in Canara Bank, Kullu since 2022 and prior to the same she was posted in Shimla from 2017- 2018 in Canara Bank. She admitted that she never worked with Syndicate Bank. She also stated that application mark-X was not given to her by

the accused. While stating that she had no knowledge about the cheque book of Syndicate Bank, this witness stated that bank did not ask for police report regarding lost cheque. While stating that she cannot say how much cheques were in the cheque book when the cheque book is issued by bank, she stated that Ram Prashad told them that complete cheque book containing cheque from serial No. 247261 to 247275 was lost.

15. Bare perusal of aforesaid evidence led on record by the accused, nowhere suggests that he was able to probablize the defence that cheque book containing cheque Ex.CW1/B was lost and same was subsequently misused by the complainant. No evidence ever came to be led on record qua loding of police complaint, if any, with regard to loss of cheque book.

16. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197**, wherein it was observed as under:

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
>
> 38. answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant- complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

17. By now it is well settled that dishonour of cheque issued as "security" can also attract offence under Section 138 of the Negotiable Instruments Act. Hon'ble Apex Court in case titl**ed Sripati**

Singh v. State of Jharkhand, Criminal Appeal No. 1269-1270 of 2021, decided on 28.10.2021, has held as under:

> **"16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount,**
> **the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.**

18. Needless to say, expression "security cheque" is not a statutorily defined expression in the Negotiable Instruments Act, rather same is to be inferred from the pleadings as well as evidence, if any, led on record with regard to issuance of security cheque. The Negotiable Instruments Act does not *per se* carve out an exception in respect of a "security cheque" to say that a complaint in respect of such a cheque would not be maintainable as there is a debt existing in respect whereof the cheque in question is issued, same would attract provision of Section 138 of the Act in case of its dishonour.

19. Having scanned the entire evidence adduced on record by the respective parties, this Court finds that all the basic ingredients of Section 138 of the Act are met in the case at hand. Similarly,

factum with regard to signatures and issuance of cheque by the accused towards discharge of lawful liability stands duly established on record.

20. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.P.C, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case ***"State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri" (***1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

> ***"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."***

21. Since after having carefully examined the evidence in the present case, this Court is unable to find any error of law as well as fact, if any, committed by the courts below, while passing impugned judgments, there is no occasion, whatsoever, to exercise the revisional power.

22. True it is that the Hon'ble Apex Court in ***Krishnan and another*** *Versus* ***Krishnaveni and another,*** **(1997) 4 Supreme Court Case 241**; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order, but learned counsel representing the accused has failed to point out any material irregularity committed by the courts below while appreciating the evidence and as such, this Court sees no reason to interfere with the well reasoned judgments passed by the courts below.

23. Consequently, in view of the discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well reasoned judgments recorded by the Courts below, which otherwise, appear to be based upon proper appreciation of evidence available on record and as such, same are upheld.

24. Accordingly, the present criminal revision petition is dismissed being devoid of any merit. The petitioner is directed to surrender himself before the learned trial Court within a period of 30 days to serve the sentence as awarded by the learned trial Court, if

not already served. Bail bonds of the petitioner are cancelled. Interim direction, if any, stands vacated. Pending applications, if any, also stand disposed of.

25. The amount lying deposited with the learned trial Court is ordered to be released in favour of the respondent/complainant, by remitting the same in his saving bank account, details whereof, shall be furnished by learned counsel for the petitioner within a period of one week.

(Sandeep Sharma),
Judge

June 16,2026
(shankar)