THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.146 of 2026

Date of Decision: 04.05.2026

Sandeep Kumar ....Petitioner

Versus

M/s Balwant Singh and Company ... Respondent

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

For the Petitioner	:	Mr. Servedaman Rathore, Advocate.
For the Respondents	:	Mr. Jagmohan Singh Chandel, Advocate.

Sandeep Sharma, Judge (oral):

Instant Criminal Revision petition filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, lays challenge to judgment dated 19.08.2025, passed by learned Additional Sessions Judge-I, Solan, District Solan, Himachal Pradesh, in Criminal Appeal No.14-S/10 of 2025/24, affirming judgment of conviction and order of sentence dated 05.07.2024, passed by learned Chief Judicial Magistrate, Solan, District Solan, Himachal Pradesh, in Criminal case No.455/3 of 2021/20, titled **M/s Balwant Singh & Company vs. Sandeep Kumar,** whereby learned trial Court, while holding petitioner-accused**(hereinafter referred to as the**

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

'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.2,25,000/- to the respondent-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 ***(hereinafter referred to as the 'complainant')*** filed a complaint under Section 138 of the Act in the competent Court of law, stating therein that he, being sole proprietor, is managing, controlling, looking after and supervising the business of M/s Balwant Singh & Company, Shop No.10, Subzi Mandi, Kather, Solan, District Solan, Himachal Pradesh. Accused, who had prior acquaintance with the complainant, purchased agriculture and horticulture produce from the complainant and with a view to discharge his lawful liability, issued cheque bearing No.000024, dated 01.08.2019, amounting to Rs.2,00,000/- drawn at HDFC, Bank Limited, Rajgarh Branch in favour of the complainant. However, fact remains that aforesaid cheque on its presentation to the bank concerned was dishonoured on account of insufficient funds in the bank account of the accused vide return memo dated 24.09.2019. Immediately, after receipt of

return memo, respondent-complainant served accused with legal notice dated 23.10.2019, calling upon him to make payment good within stipulated time, but since accused failed to make the payment good within stipulated time, respondent-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 the 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-I, Solan, District Solan, Himachal Pradesh, but same also came to be dismissed vide judgment dated 19.08.2025. 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 05.03.2026, this Court suspended the substantive sentence imposed by Court below, subject to petitioner-accused depositing 50% of the compensation amount and furnishing

personal bonds in the sum of Rs. 20,000/- with one surety in the like amount to the satisfaction of learned trial Court within a period of four weeks. However, fact remains that aforesaid order never came to be complied with. The matter was repeatedly adjourned, enabling petitioner to do the needful, but in vain. Hence, this Court has no option, but to decide the petition on its own merit.

5. 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-I, Solan, District Solan, Himachal Pradesh, thereby 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 Courts below have failed to appreciate the evidence in its right perspective, rather this Court finds that both the Courts below have appreciated the evidence in its right perspective and rightly held accused guilty of his having committed offence punishable under Section 138 of the Act.

6. In the instant case, factum with regard to issuance of cheque as well as signatures thereupon never came to be refuted at the behest of the accused and as such, learned 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. However, in the instant case, despite opportunity, accused failed to probablize the defence, which subsequently came to be set up by him during cross-examination of the complainant.

7. Complainant, with a view to prove his case, examined himself as CW-1 and tendered his evidence by way of affidavit Ex. CW1/A, wherein he specifically reiterated the averments contained in the complaint. He also tendered in evidence cheque Ex. CW1/B, memo Ex. CW1/C, legal notice Ex.CW1/D sent through postal receipt Ex. CW1/E and acknowledgement Ex.CW1/F. Cross-examination conducted upon afore witness, if perused in its entirety, nowhere suggests that accused was able to extract anything contrary to what this witness stated in his examination-in-chief.

8. Accused, in his statement recorded under Section 313 Cr.P.C, denied the case of the complainant in toto and examined two witnesses in his defence including himself.

9. DW-1, Sandeep Kumar i.e. accused deposed that he used to purchase vegetables from Balwant Singh and Company. He also admitted that sometimes the vegetables were purchased on

credit basis. He also admitted that total outstanding amount was Rs.15, 00,000/-. He also admitted that payments have been made in the bank account of the complainant and cash payment has also been made. In his cross-examination, this witness admitted that the complainant had shown the entry of payment to him, which was made in the ledger account. He also admitted that he has been entered as SFC at page No.72 and page No.329 of the ledger account. He further admitted that cheque Ex. CW1/B has been issued by him. He also admitted that he issued three cheques. However, he denied that his liability towards the complainant is for Rs. 25, 42,700/-.

10. DW-2, Sumit, Deputy Manager, ICICI Bank, brought the requisitioned record from the bank. He deposed that he has brought the account statement of Sandeep Kumar, Ex. DW/A, which is true and correct. If the evidence adduced on record by the accused is read in conjunction with the cross-examination conducted upon the complainant, it can be easily concluded that cheque Ex. CW1/B was issued towards discharge of lawful liability, but same was dishonoured on account of insufficient funds in the bank account of the accused vide return memo dated 24.09.2019.

11. DW-1 i.e. accused also admitted factum with regard to his having purchased vegetables from the shop/agency of the complainant. Though, he denied his liability towards the complainant

to the tune of Rs. 25, 42, 700/-, but he specifically admitted factum with regard to his having issued cheque as well as signatures thereupon and as such, no illegality can be said to have been committed by learned courts below, while invoking Section 118 and 139 of the Act.

12. The Hon'ble Apex Court ***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.

13. 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.

14. 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."***

15. 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.

16. 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.

17. 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.

2026:HHC:14363

18. 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 15 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.

(Sandeep Sharma),
Judge

May 04, 2026
(shankar)