

THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.08 of 2025

Date of Decision: 21.07.2026

Parkash Chauhan	Versus	Petitioner
Bhupinder Singh		... Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner : Mr. Virender Singh Rathour, Advocate.

For the Respondent : Mr. Pawan K. Sharma, Advocate.

Sandeep Sharma, Judge(oral):

Cr.MP No.2924 of 2026

Allowed & disposed of.

Cr. Revision No.08 of 2025

2. Instant Criminal Revision petition filed under Section 397 read with Section 401 Cr.P.C. lays challenge to judgment dated 30.04.2024, passed by learned Sessions Judge (Forests), Shimla, District Shimla, H.P., in Criminal Appeal No. 123 of 2023, affirming judgment of conviction and order of sentence dated 30.06.2023, passed by learned Judicial Magistrate First Class, Chopal, District Shimla, H.P., in Criminal Case No. 31-I of 2017/ 24-3 of 2017, whereby learned Court below, while holding petitioner-accused guilty of his having committed an offence punishable under Section 138 of

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

the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of ₹7,00,000/- to the respondent-complainant.

3. 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***), instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that accused, who was known to him for the past so many years, requested him to lend him some money with the assurance that he would return the same after some time. Complainant submitted that complainant had earlier filed two complaints bearing Complaint No. 83-3 of 2014 and Complaint No. 110-3 of 2014, under Section 138 of the Act against the accused in the Court of Judicial Magistrate, First Class, Chopal, with regard to two separate cheques. However, aforesaid complaints were compounded on the basis of an amicable settlement arrived *interse* parties, whereby accused made part payment and agreed to pay balance amount through post-dated cheque bearing No. 993019, dated 01.10.2016, amounting to Rs. 3, 50,000/- drawn at UCO Bank, Chopal, in favour of the complainant. However, fact remains that aforesaid cheque on its

presentation to the bank concerned was dishonoured vide return memo Ext. CW-1/D, dated 30.12.2016. Immediately, after receipt of aforesaid return memo, complainant served accused with legal notice dated 24.01.2017 (Ex.CW1/E), calling upon him to make the payment good within the stipulated time, but since needful was not done well within time, complainant had no option, but to institute proceedings under Section 138 of the Act in the competent Court of law, which subsequently, on the basis of evidence adduced on record by respective parties, held the accused guilty of his having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per the description given hereinabove.

4. 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 Sessions Judge (Forests), Shimla, District Shimla, Himachal Pradesh, but same also came to be dismissed vide judgment dated 30.04.2024. 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.

5. Vide order dated 03.01.2025, this Court suspended the substantive sentence imposed by Court below, subject to petitioner-accused depositing 30% of the compensation amount and furnishing personal bonds in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of learned trial Court within a period of eight weeks. However, fact remains that aforesaid order never came to be complied with. Repeatedly, matter was adjourned, enabling petitioner to do the needful, but in vain, as a result of which, interim protection granted by this Court vide order dated 03.01.2025 was vacated. In the aforesaid background, an application bearing No. Cr.MP No.2924 of 2026 has been filed by the applicant/respondent for early hearing of the case, which has been allowed by this Court vide order dated 21.07.2026.

6. Having heard learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned in the judgment passed by learned Sessions Judge (Forests) Shimla, Himachal Pradesh, upholding the 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-accused that both the Courts below have failed to appreciate the evidence in its right perspective, rather this Court finds 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. In his statement recorded under Section 313 Cr.P.C, petitioner-accused nowhere disputed factum with regard to issuance of cheque as well as signatures thereupon, rather he attempted to set up a case that he had returned Rs. 1,00,000/- to the complainant through Rakesh and remaining payment of Rs. 2, 50,000/- is to be given to the complainant. Moreover, pattern of cross-examination conducted upon complainant clearly establishes factum with regard to issuance of cheque as well as signature thereupon and as such, no illegality can be said to have been committed by Courts below, while invoking 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.

8. The Hon'ble Apex Court *in M/s Laxmi Dychem 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 138 can 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.

9. Complainant with a view to prove his case examined himself as CW-1 and tendered his evidence by way of affidavit Ex. CW-1/A, reiterating therein contents of the complaint. He also tendered in evidence cheque Ex. CW-1/B, Intimation letter UCO Bank dated 30.12.2016 Ex. CW-1/C, cheque return memo Ex. CW-1/D, legal notice dated 24.01.2017 Ex. CW-1/E, postal receipt Ex. CW1/F and certified copy of order dated 14.05.2016 Ex. CW1/G alongwith the statement of complainant. If cross-examination conducted upon afore witness is perused in its entirety, it nowhere suggests that the

accused was able to extract anything contrary to what this witness stated in his examination-in-chief. In his cross-examination, aforesaid witness stated that he did not remember when he had given money to the accused. While stating that no record to afore fact has been placed on record, he pleaded ignorance regarding the bill of sand and gravel supplied to the accused. He specifically denied the suggestion put to him that accused had returned Rs. 1, 00,000/- to him through Rajesh Chajta. Interestingly, no suggestion, worth the name, ever came to be put to the complainant with regard to non-existence of lawful liability or any liability.

10. Though, accused attempted to carve out a case that he had already returned sum of Rs. 1, 00,000/- through one Sh. Rajesh Chajta, but no receipt with regard to the amount paid by him was ever placed on record. In support of his defence, he examined Sh. Rakesh Chajta as DW-1, who deposed that he had known both the complainant and the accused for the last 20-25. He denied the suggestion that accused was having any partnership with him. He further denied that he was in possession of Rs. 1, 00,000/- belonging to the accused, which was to be paid to the complainant. He categorically deposed that no transaction of money had taken place in his presence.

11. Respondent-complainant, by way of placing on record certified copy of order dated 14.05.2016 Ex. CW-1/G along with statement of complainant, successfully proved on record that at the time of compounding of two complaints bearing No. 83-3 of 2014 and 110-3 of 2014, petitioner-accused had made part payment and with regard to the remaining amount, issued post-dated cheque bearing No. 993019 dated 01.10.2016 Ex. CW-1/B, however same on its presentation to the bank concerned was dishonour vide return memo Ex. CW-1/D. Complainant also successfully proved on record that before initiating proceedings under Section 138 of the Act, he served accused with legal notice dated 24.01.2017 Ex. CW-1/E, which was duly served upon the accused, but yet he neither replied to it nor made payment in terms of the same. By putting suggestion that he has already paid Rs. 1,00,000/- and now Rs. 2,50,000/- remains to be paid, accused virtually admitted his liability, as such no illegality can be said to have been committed by both the courts below, while holding petitioner-accused guilty of his having committed offence under Section 138 of the Act.

12. 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.

13. 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."

14. 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.

15. 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.

16. 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.

17. 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 eight weeks 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**

July 21, 2026
(shankar)