



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 2506 of 2025.

Reserved on: 21.11.2025.

Date of Decision: 26.11.2025.

The Thore Co-operative Agriculture Service Society Ltd.

...Applicant/ appellant

Versus

Milap Chand

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the applicant/ : Mr. Surender K Sharma, Advocate.
appellant

Rakesh Kainthla, Judge

The applicant/appellant has filed the present application for seeking leave to appeal against the judgment dated 14.07.2025 passed by learned Additional Chief Judicial Magistrate, Dehra, District Kangra, HP (learned Trial Court).
(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)



2. Briefly stated, the facts giving rise to the present appeal are that the applicant/complainant filed a complaint against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as NI Act). It was asserted that the accused borrowed money from the complainant and issued a cheque of ₹2,50,000/- drawn on Punjab National Bank, Dada Siba, District Kangra, to return the amount. The complainant presented the cheque to the bank, but it was dishonoured with the remark 'funds insufficient'. The complainant served a notice upon the accused, but he failed to repay the amount. Hence, the complaint was filed before the learned Trial Court for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.



4. The complainant examined Rajeev Kumar (CW-1), Neelam (CW-2) and Parveen Pathania (CW-3) to prove its complaint.

5. The accused, in his statement recorded under Section 313 of CrPC, admitted that he had taken the loan from the complainant society and agreed to repay it in monthly equal installments. He admitted his signature on the cheque, but denied that he had filled in the contents of the cheque. He did not produce any evidence in his defence.

6. Learned Trial Court held that Praveen Pathania (CW-3) stated in his cross-examination that he had not issued any notice to the accused regarding the dishonour of the cheque. Therefore, the essential ingredient of Section 138 of the NI Act, that a notice was issued demanding the payment of the money, was missing, and the complaint was not maintainable. Hence, the complaint was dismissed.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present application seeking leave to appeal. It has been asserted that the learned Trial Court erred in dismissing the complaint. The



accused had obtained a loan from the complainant society and had issued a cheque of ₹2,50,000/- to discharge his liability. Praveen Pathania (CW-3) had issued the notice in his official capacity. He stated in his cross-examination that he had not issued any notice to the accused under the wrong impression that the notice was not issued by him in his personal capacity. The notice was exhibited without any objection from the accused, and the learned Trial Court was not justified in holding that the notice was not proved. The accused admitted the issuance of the cheque, and there was a presumption that the cheque was issued for consideration to discharge the debt/liability. The learned Trial Court ignored the presumption; therefore, it was prayed that the present application be allowed and the leave to appeal be granted.

8. Mr. Surender K Sharma, learned counsel for the applicant/ appellant, submitted that Praveen Pathania (CW-3) mistakenly said in his cross-examination that the notice was not issued by him because he had not issued the notice in his personal capacity. The notice was proved on record, and the learned Trial Court was not justified in holding that the necessary ingredient of Section 138 of the NI Act was not proved.



The accused admitted the issuance of the cheque and his signature. A presumption would arise under Section 118 (a) and 139 of the NI Act that the cheque was issued in discharge of the debt/liability for consideration. The burden was upon the accused to rebut the presumption, but he failed to do so by leading any evidence. Hence, he prayed that the application be allowed and the leave to appeal be granted.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in *Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul*, 2025 SCC OnLine SC 2019 as under: -

“5.1.1. In *K.R. Indira v. Dr. G. Adinarayana*(2003) 8 SCC 300, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque



within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.”

11. Thus, it is apparent that issuance of notice to the accused demanding the payment of the money is an essential ingredient of Section 138 of the NI Act. It was laid down by the Hon’ble Supreme Court in *Shakti Travel & Tours v. State of Bihar*, (2002) 9 SCC 415: 2000 SCC OnLine SC 836 that where the complaint did not mention that the notice was issued, it is not maintainable. It was observed at page 416:

“2. The accused, who is the appellant, assails the order of the High Court refusing to quash the complaint filed under Section 138 of the Negotiable Instruments Act. The only ground on which the learned counsel for the appellant prays for quashing of the complaint is that, on the assertions made in para 8 of the complaint, it must be held that notice has not been served and, therefore, an application under Section 138 could not have been maintained. Undoubtedly, the accused has a right to pay the money within 15 days from the date of the service of notice, and only when it fails to pay, is it open for the complainant to file a case under Section 138 of the Negotiable Instruments Act. That being the position and in the complaint itself, having not been mentioned that the notice has been served, on the assertions made in para 8, the complaint itself is not maintainable. We accordingly quash the complaint.”



12. In the present case, Parveen Pathania (CW-3) stated in his cross-examination that he had not issued any notice to the accused regarding the dishonour of the cheque. Therefore, the learned Trial Court was justified in holding that an essential ingredient of the commission of an offence punishable under Section 138 of the NI Act was missing, and the complaint was not maintainable.

13. It was submitted that Parveen Pathania (CW-3) remained under the impression that he had not issued the notice in his individual capacity. This submission is only stated to be rejected. Parveen Pathania did not say any such fact in his statement. He was deposing in his official capacity and could not have been mistaken about the capacity in which he was deposing before the Court. It is nobody's case that the accused had borrowed the money from Praveen Pathania in his individual capacity, which would have led Praveen Pathania to think that he was making a statement in his individual capacity. Hence, the plea that Parveen Pathania was mistaken cannot be accepted.

14. It was submitted that the cheque was exhibited on the record, and it was duly proved that the notice was issued.



This submission is only stated to be rejected. The notice has to be issued under the authority of the complainant, and when the complainant denies the issuance of the notice, exhibition of the notice was not sufficient because it was not proved that the notice was issued under the complainant's authority.

15. It was submitted that the accused admitted the issuance of the cheque, and the learned Trial Court was not justified in dismissing the complaint. This submission will not help the complainant. The learned Trial Court had dismissed the complaint because the issuance of notice was not proved, and not because the cheque was not issued. The issuance of a cheque is one of the ingredients, and it is necessary to satisfy the other ingredients to secure the conviction of the accused. In the present case, the other ingredients were not satisfied, and the satisfaction of one of the ingredients was not sufficient.

16. No other point was urged.

17. Therefore, the learned Trial Court had taken a reasonable view while acquitting the accused, and no interference is required with the view taken by the learned Trial Court.



18. In view of the above, the present application fails, and the same is dismissed.

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19. Since the application to grant leave to appeal has been dismissed, the instant appeal is dismissed as infructuous.

(Rakesh Kainthla)
Judge

26th November 2025
(Nikita)