

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Criminal Revision No.838 of 2024****Date of Decision: 6.5.2026**

Sukhwinder Singh**.....Petitioner****Versus****Mohan Singh and Anr.****.....Respondents**

Coram**Hon'ble Mr. Justice Sandeep Sharma, Judge.****Whether approved for reporting?****For the Petitioner:** Mr. Shivani, Advocate, vice Mr. Kishore Pundeer, Advocate, for the petitioner.**For the Respondents:** Mr. Amrick Singh Thakur, Advocate, for respondent No.1.
Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan, Deputy Advocate General, for respondent No.2.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition, lays challenge to judgment dated 4.10.2024, passed by the learned Sessions Judge Mandi, District Mandi, Himachal Pradesh, in Criminal Appeal No.54 of 2024, affirming the judgment of conviction and order of sentence dated 4.4.2024, passed by the learned Judicial Magistrate First Class-III, Mandi, District Mandi, Himachal Pradesh in Complaint 138 NI Act Case No.178/18, whereby the learned trial Court while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (in short the "Act"), convicted and sentenced him to undergo simple



imprisonment for a period of twelve months and pay compensation to the tune of Rs.32,00,000/- to the complainant.

2. Precisely, the facts of the case, as emerge from the record are that respondent/complainant lodged complaint under Section 138 of the Act before the competent court of law, stating therein that accused with a view to discharge his liability issued two cheques bearing No.011573 and 011575, dated 13.9.2017 amounting to Rs. 10,00,000/- each, in favour of the complainant, however same on their presentation to the bank concerned were dishonoured with remarks “funds insufficient” vide memo dated 13.12.2017. Immediately, after receipt of aforesaid information, complainant served legal notice dated 12.1.2018 upon the accused, thereby calling upon him to make the payment good within stipulated time, but since accused failed to do the needful, complainant initiated proceedings under Section 138 of the Act in the competent court of law.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 4.4.2024 , held the petitioner-accused guilty of having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per the description given herein above.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the court below, petitioner-accused preferred an



appeal before the learned first appellate Court, but the same was dismissed vide judgment dated 4.10.2024. In the aforesaid background, accused has approached this Court in the instant proceedings, praying therein to set-aside the judgment of conviction and order of sentence recorded by the court below.

5. Vide order dated 21.12.2024, this Court suspended the substantive sentence imposed by the court below, subject to petitioner's 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 the trial Court within eight weeks, however fact remains that afore order was never complied with. Perusal of case file reveals that repeatedly, matter was adjourned, enabling the petitioner to comply with afore order, but in vain and on 9.5.2025 interim order dated 21.12.2024 was vacated by this Court with liberty reserved to the respondent to execute the judgment of learned trial Court in accordance with law. In the afore backdrop, this Court has no option but to decide the petition on merit.

6. Having carefully perused grounds taken in the appeal vis-à-vis reasoning assigned by the learned Sessions Judge, thereby upholding the judgment of conviction and order of sentence passed by the learned trial Court, this Court is not persuaded to agree with learned counsel appearing



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 dealt with each and every aspect of the matter very meticulously and there is no scope of interference. Admittedly in the case at hand, factum with regard to issuance of cheque as well as signature thereupon, never came to be disputed by the petitioner, rather he attempted to carve out a case that cheque in question was issued as security and same was misused by the complainant, however, such defence never came to be probablised by leading cogent and convincing evidence. Once factum with regard to issuance of cheque as well as signature thereupon never came to be disputed, no illegality can be said to have been committed by the courts below while invoking Sections 118 and 139 of the Negotiable Instruments Act, which clearly provide that there shall be presumption available in favour of the holder of the cheque that same was issued in discharge of the lawful liability. No doubt, aforesaid presumption is rebuttable, but for that purpose, accused is/was under obligation to raise probable defence. Probable defence could be raised by the accused by referring to the documents as well as evidence adduced on record by the complainant or by leading some cogent and convincing evidence. However, in the case at hand, accused, despite sufficient opportunity, failed to raise probable defence.



7. 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 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.”

8. Precisely, case of the complainant as came to be put forth before the court below is that accused had purchased land in Muhal Gutkar for consideration amount of Rs. 20,00,000/- from the complainant by executing a sale deed No. 1356/2017 on 13.09.2017 and to discharge his legal liability, two cheques of same date amounting to Rs. 10,00,000/- were issued. Complainant while examining himself as CW1 tendered his evidence by way of affidavit Ext. CW1/A, reiterating therein contents of the complaint. He also tendered on record sale deed Ext. CW-1/B. Besides above, afore witness also proved on record cheques Ext. CW-1/C& D, which were though presented within their validity period, but same were dishonoured for reasons "funds insufficient" vide memo dated 13.12.2017 Ext.CW-1/E & F. Complainant also proved on record that prior to initiation of proceedings under Section 138 of the Ac, he served the accused with legal notice dated 12.01.2018 Ext.CW1/G issued vide postal receipt Ext.CW1/H dated 12.01.2018, but since accused failed to make the payment good within stipulated period, he had no option but to institute proceedings under the Act. If the cross-examination conducted upon afore



witness is perused in its entirety, it cannot be said that accused was able to extract anything contrary to what this witness stated in examination-in-chief. In his examination-in-chief, CW1 deposed that transaction with the accused took place on 13.09.2017. He denied that the accused was not shown the land before execution of the deed. He also denied that there is no land measuring 00-02-18 bighas at spot. Afore witness further testified that till date, he has not sold the land to any person, other than the accused. Besides stating that possession of the land was given to the accused, he admitted that he has not taken demarcation of the land measuring 00-02-18 bighas. He volunteered to state that he had sold the land to the accused and therefore, had no right to carry out demarcation. He denied that the accused has paid an amount of Rs. 12,00,000/- in presence of person namely Pradeep Sharma resident of Gutkar. He admitted that he had executed an agreement to sell on 4.9.2015 with Smt. Narender Kaur, wife of Sh. Ikbal Singh, however denied that land measuring 00-02-18 bighas was sold without canceling agreement to sell. While denying that he had sold the same land to two different persons, he admitted that for the same land, Smt. Narender Kaur filed a case against him which is pending in Court No. 1. No suggestion worth the name ever came to be put forth with regard to non-existence of lawful liability, which was otherwise proposed to be discharged by way of issuing cheques in



question. No suggestion with regard to signature upon the cheque ever came to be put forth. Defence of the accused as came to be put forth is that he had paid Rs. 12,00,000/- in the presence of Sh. Pradeep Sharma, resident of Gutkar, however, neither the accused nor the said person, in whose presence Rs. 12,00,000/-, were paid by the accused to the complainant, were examined as witness to defend the present case. Another defence set up by the accused that he had entered into agreement to sell with one Smt. Narender Kaur on 04.09.2015 and same property was sold to two different persons, was also not proved by examining aforesaid Narender Kaur. Though agreement, which came to be marked as Mark DA, suggests that complainant had sold certain land to Narender Kaur for a sum of Rs 30,00,000/-, which land is inclusive of the land for which the sale deed had been executed with the accused. However, it has also been specified in point No.3 of the agreement to sell that Smt. Narender Kaur shall sell a Flat No. 56-A in Mohali, Punjab, to the complainant which, as per the statement of CW-1, was not sold by Narender Kaur to him. Moreover, it is well settled that agreement to sell does not transfer ownership rights or confer any title. To the contrary, sale deed is dated 13.09.2017 which has been registered. The defence of the accused that complainant had sold the same land to two parties never came to be proved in accordance with law. Agreement to sell cannot be treated as registered sale deed. It is evident that Ext.Mark DA



does not create any right in favour of the parties. Though it has been admitted by CW1 that Civil suit has been filed against him by Smt. Narender Kaur, however mere filing of civil suit shall not dilute the effect of the sale deed dated 13.9.2017, as such, no illegality or infirmity can be said to have been committed by the courts below while invoking powers under Section 118 and 139 of the Act. Though accused could have rebutted the aforesaid presumption by leading cogent and convincing evidence, but he never chose to lead any evidence. Neither any evidence ever came to be led on record to prove that he had already paid Rs. 12,00,000/-, nor he produced receipt of payment qua afore amount or examined Pradeep Sharma, in whose presence payment of afore amount was made.

9. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC (now Section 438 of BNSS) , 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 V. 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.”

10. 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.

11. 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.

12. 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.

13. 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 fifteen days to serve the sentence as awarded by the learned trial Court, if not already served. Interim direction, if any, stands vacated. Learned court below is also directed to release the amount, if any, deposited before it by the accused, on filing appropriate application by the complainant within one week. Pending applications, if any, also stand disposed of.

May 6, 2026

(manjit)

**(Sandeep Sharma),
Judge**