



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 323 of 2012

Reserved on: 21.5.2026

Date of Decision: 19.6.2026.

Rakesh Kumar

...Appellant

Versus

Sunil Khachi

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Arsh Chauhan, Advocate.

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

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.5.2012, passed by learned Judicial Magistrate, First Class, Court No.3, Shimla, H.P. (learned Trial Court), vide which the respondent (accused before learned Trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience.*)

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the complainant had lent ₹60,000/- to the accused for some business transaction. The accused issued a cheque of ₹60,000/- to repay the amount. The complainant presented the cheque to his bank, but it was dishonoured with an endorsement 'insufficient funds'. The complainant issued a notice to the accused asking him to repay the amount. The notice was not returned unserved and is deemed to be served. The complainant failed to pay the amount despite the receipt of the notice of demand. Hence, a complaint was filed before the learned Trial Court to take action against the accused as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, 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 himself (CW1) to prove his complaint.

5. The accused in his statement recorded under Section 313 of Cr.PC asserted that he had issued a blank cheque to Khajan Chand, who had handed over the cheque to the complainant. He did not produce any evidence in his defence.

6. The learned Trial Court held that the complainant is a resident of Hamirpur and a friend of Khajan Chand. He met the accused for the first time during July/August 2007 in the shop of Khajan Chand at Theog. The accused asked for the amount from the complainant after a week. It was highly improbable that the complainant would have advanced the loan to a person who had barely known him. The statement of Khajan Chand was not recorded, and the plea taken by the accused that the cheque was issued to Khajan Chand was highly probable. The accused had successfully rebutted the presumption contained in Sections 118 (a) and 139 of the NI Act. Hence, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in acquitting the accused. The accused had failed to rebut the presumption contained in Sections 118 (a) and 139 of the NI Act. The defence

taken by him that the cheque was issued to Khajan Chand was not established by examining Khajan Chand. Learned Trial Court erred in shifting the burden to examine Khajan Chand to the complainant. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Arsh Chauhan, learned counsel for the appellant/complainant and Mr Pawan K. Sharma, learned counsel for the respondent/accused.

9. Mr Arsh Chauhan, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused. The accused admitted his signature on the cheque and the issuance of the cheque. Therefore, the presumption under Section 118 (a) and 139 of the NI Act would be triggered, and the burden would shift upon the accused to rebut the presumption. The accused failed to lead any evidence, and the learned Trial Court erred in holding that the presumption was rebutted. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Pawan K. Sharma, learned counsel for the respondent, submitted that the learned Trial Court had rightly appreciated the evidence on record. It is highly unlikely that a person would advance a sum of ₹60,000/- to another who had recently met him and was not properly known. The defence version was highly probable. Learned Trial Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Hence, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, (2025) 5 SCC 433: 2025 SCC OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on

the evidence led before the learned Trial Court. It was observed on page 438:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

13. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

14. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

15. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. Complainant Rakesh Kumar stated that his friend Khajan Chand was running a shop of spare parts at Theog. He met the accused in the shop. The accused demanded ₹60,000/- and promised to repay the amount. He stated in his cross-examination that he is a resident of Hamirpur and had gone to Theog 8-10 times. He met the accused in July/August, 2007, and the matter regarding the payment was discussed at that time. He paid the money to the accused one week after meeting the accused. He admitted that he was not a money lender and did not keep ₹50,000/- to ₹60,000/- with him at all times.

17. The learned Trial Court had rightly pointed out that it was highly unlikely that the accused would demand money from the complainant, who was not known to him and met him for the first time in the shop of Khajan Chand. Further, it is highly improbable that the complainant would have advanced money to a person whom he had met a week before in the shop of Khajan Chand. Learned Trial Court was justified in doubting this version.

18. It was submitted that the learned Trial Court erred in shifting the burden of examining Khajan Chand to the complainant. The accused had taken a plea that he had handed over the cheque to Khajan Chand, and it was for the accused to examine Khajan Chand to prove his defence. This submission cannot be accepted. The complainant asserted that he had met the accused in the shop of Khajan Chand, and the matter regarding the payment was discussed in the shop of Khajan Chand. The learned Trial Court found the complainant's testimony to be inherently improbable, being contrary to the normal human conduct. Therefore, the burden was upon the complainant to examine Khajan Chand to corroborate his testimony, and the learned Trial Court had rightly held that an adverse inference has to be drawn against the complainant for non-examination of Khajan Chand.

19. It was submitted that the accused had not stepped into the witness box and learned Trial Court erred in holding that the presumption under the NI Act was discharged/rebutted. This submission will not help the complainant. The presumption under the NI Act can be discharged by leading the evidence or cross-examining the complainant to bring the material on

record. In the present case, the cross-examination of the complainant had exposed the inherent improbability of the complainant's case and the learned Trial Court was justified in discarding his version.

20. Therefore, the learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court even if another view is possible.

21. No other point was urged.

22. In view of the above, the present appeal fails, and it is dismissed. The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

23. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on

receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

24. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

19th June, 2026
(Chander)

High Court of HP