

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. : 54 of 2022

Decided on : 16.05.2025

Dinesh Negi

...Petitioner

Versus

Sahil Sood

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner : Petitioner in person with Mr. Anirudh Sharma, Advocate.

For the respondent : Mr. Sudhir Thakur, Senior Advocate, with Mr. Somesh Sharma, Advocate.

Virender Singh, Judge. *(Oral)*

Petitioner-Dinesh Negi has preferred the present Criminal Revision Petition, against the judgment, dated 29th December, 2021, passed by the Court of learned Sessions Judge, Solan, District Solan, H.P. (hereinafter referred to as 'the Appellate Court'), passed in Criminal Appeal No. 29-S/10 of 2020, titled as Dinesh Negi versus Sahil Sood.

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. Vide judgment, dated 29th December, 2021, the learned Appellate Court has dismissed the appeal, filed by the petitioner against the judgment of conviction and order of sentence, dated 29th February, 2020, passed by the Court of learned Judicial Magistrate First Class, Court No. 1, Solan, District Solan, H.P. (hereinafter referred to as 'the trial Court') in Criminal Case No. 538-3 of 2012, titled as Sahil Sood versus Dinesh Negi.

3. By virtue of the said judgment of conviction and order of sentence, the learned trial Court has convicted the petitioner, for the offence, punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') and sentenced him to undergo simple imprisonment for two months and to pay a compensation of ₹ 5,50,000/-.

4. For the sake of convenience, the parties, to the *lis*, are, hereinafter, referred to, in the same manner, in which, they were referred to, by the learned trial Court.

5. Brief facts, leading to the filing of the present revision petition, before this Court, as borne out from the record, may be summed up, as under:

5.1. Complainant-Sahil Sood filed a complaint under Section 138 of the NI Act, against the accused, on the ground that the accused had issued cheque No. 897915, dated 18th September, 2012 (hereinafter referred to as 'cheque in question'), amounting to ₹ 5,20,000/-, in favour of the complainant, as part payment of his liability, towards the complainant. The cheque, thereafter, was presented for encashment by the complainant to his banker, i.e. Syndicate Bank, Solan Branch. The banker of the complainant forwarded the cheque in question to the drawee bank, i.e. Punjab National Bank, Balag, through its Branch at The Mall, Solan Branch, but, the same was dishonoured and was returned alongwith the memo, dated 20th September, 2012, on account of insufficient funds. Intimation of the same was received by the complainant, through his banker, alongwith the memo of the banker of the accused.

5.2. Thereafter, the requisite legal notice was issued, calling upon the accused, to make the payment of the amount of the cheque in question, with fifteen days, after the receipt of the said notice, but, despite the receipt of

notice, neither the same was replied, nor the payment was made. Subsequently, the complaint was filed before the learned trial Court.

5.3. The learned trial Court found a *prima facie* case for commission of the offence, under Section 138 of the NI Act, as such, the notices were issued to the accused, vide order dated 21st November, 2012.

5.4. After securing the presence of the accused, the learned trial Court found a sufficient ground for proceeding against the accused, for the commission of the offence, punishable under Section 138 of the NI Act, Notice of Accusation, was put to him, vide order, dated 12th February, 2014. When the Notice of Accusation was put to the accused, he pleaded not guilty.

5.5. Thereafter, the complainant was directed to adduce evidence in order to substantiate the Notice of Accusation, put to the accused. Consequently, the complainant appeared in the witness box on 21st May, 2014, and closed his evidence. Thereafter, the statement of the accused was recorded, under Section 313 CrPC, on 29th May, 2014. The accused has not led any defence

evidence. As such, his evidence was ordered to be closed, vide order, dated 9th July, 2014.

5.6. Subsequently, due to the non-appearance of the accused, he was declared Proclaimed Offender, vide order, dated 21st June, 2017.

5.7. Thereafter, the complainant had moved an application, under Section 311 CrPC, which was allowed by the learned trial Court, vide order, dated 2nd August, 2018. By virtue of the said order, the complainant was permitted to produce the agreement, dated 5th June, 2012, executed between the complainant and the accused, whereby the accused had allegedly acknowledged the liability of ₹ 5,20,000/-, towards the complainant and another written document, by virtue of which, the accused allegedly had admitted his liability to the tune of ₹ 3,98,970/-.

5.8. After the decision of the said application, the complainant had examined two witnesses. Thereafter, the statement of the accused was again recorded, under Section 313 CrPC. In defence, the accused had examined one witness.

5.9. After hearing the learned counsel for the parties and perusing the record, the learned trial Court, vide judgment of conviction and order of sentence, dated 29th February, 2020, as referred to above, has convicted the accused and sentenced him, as aforesaid.

6. Against the said judgment of conviction and order of sentence, passed by the learned trial Court, the accused had preferred appeal before the learned Appellate Court, which has been dismissed, by the learned Appellate Court, vide judgment, dated 21st December, 2021.

7. Feeling aggrieved from the said judgment, the present Criminal Revision has been filed, by the accused, before this Court, calling in question the judgment passed by the learned Appellate Court, as well as, the judgment of conviction and order of sentence, passed by the learned trial Court, on the ground, that the evidence has been misread and mis-appreciated by the learned trial Court, as, the learned trial Court has wrongly taken into consideration the documents, i.e. agreements, dated 5th June, 2012 and 16th May, 2012, as, both the documents have not been mentioned in the notice, Ex. CW-1/D.

8. A plea has also been taken that despite the knowledge of these documents, both were not mentioned in the notice, complaint or the affidavit tendered in examination-in-chief, by the complainant.

9. Highlighting the fact that the complainant, when again appeared in the witness box as CW-2, had admitted that the accused had no dealing with him and also admitted that the liability, if any, was towards the father of the complainant. All these facts have been mentioned in the grounds of petition to show that the complainant is not the holder, in due course of law.

10. According to the accused, the evidence, so led by the parties, before the learned trial Court, has not properly been considered by both the Courts below.

11. It is the further case of the accused that the above two documents, relied upon by the complainant, do not pertain to the transaction between the accused and the complainant.

12. On the basis of the grounds, as mentioned in the Criminal Revision, Mr. Anirudh Sharma, learned counsel, appearing on behalf of the accused, has prayed

that the instant Criminal Revision may kindly be allowed, by setting aside the judgment of conviction and order of sentence, passed by the learned trial Court, as upheld by the learned Appellate Court.

13. It has also been submitted by the learned counsel appearing for the accused that the entire amount of compensation has been deposited. Elaborating this fact, it has been submitted by the learned counsel appearing for the accused that 20% of the compensation has been deposited before the learned trial Court and 80% of the same has been deposited before this Court, by way Demand Draft No. 003188, dated 24th February, 2022 and Demand Draft No. 841694, re-validated on 8th November, 2024.

14. The prayer, so made by the learned counsel for the accused, has been opposed by Mr. Sudhir Thakur, learned Senior Counsel, appearing for the complainant, on the ground that the learned trial Court, as well as, the learned Appellate Court has rightly appreciated the evidence and now, in revisional jurisdiction, the evidence, so discussed by the learned trial Court, cannot be re-

appreciated. Hence, a prayer has been made to dismiss the petition.

15. In this case, the Notice of Accusation was put to the accused, to which, he pleaded not guilty. Thereafter, the complainant appeared in the witness box and filed his affidavit, asserting that the cheque in question was issued by the accused, in discharge of his existing liability, as part payment. In addition to this, he has also deposed with regard to the statutory compliance of the provisions of Section 138 of the NI Act, as to how he had issued the notice, calling upon the accused, to make the payment within the stipulated period, however, the said notice was neither replied, nor, the payment was made, pursuant to which, the complaint had been filed, before the learned trial Court, upon which, the summoning order was passed by the learned trial Court.

16. This witness, in his cross-examination, has admitted that he is in the business of resin, however he has feigned his ignorance to the fact that for doing the business of resin, one is required to obtain licence. According to him, the amount was paid to the accused by

the father of the complainant and in lieu of that, he had to supply raw material. The amount of ₹ 8,39,000/- is stated to have been paid in cash.

17. When, the learned trial Court allowed the application, under Section 311 CrPC, the complainant again stepped into the witness box as CW-2 and deposed with regard to the execution of the documents between him and the accused. He has admitted that the reference of those documents had not been given in the notice issued to the accused, nor, the same had been mentioned in the complaint, as well as, the affidavit filed in support of the complaint.

18. The accused, in this case, has examined DW-1, Shyam Singh, in support of his defence.

19. Once, the cheque has been issued, the complainant is entitled to draw the presumption, in his favour, as per Section 142 of the NI Act. By examining DW-1, the accused has not rebutted the presumption, which is in favour of the complainant. The issuance of the cheque has not been disputed by the accused, as, in his statement, under Section 313 CrPC, he has admitted his

signatures over the cheque in question. Once, the signatures over the cheque in question have been admitted by the accused, then, onus is upon him to prove that the cheque in question was issued without any legal liability. The evidence of DW-1 is too short to rebut the presumption, which has been attached with the cheque in question, in discharge of the liability of the accused, towards the complainant.

20. Even otherwise, this Court, while exercising the revisional jurisdiction, cannot re-appreciate the evidence, until or unless the findings recorded by the learned trial Court, as upheld by the learned Appellate Court, have been held to be perverse.

21. While holding so, the view of this Court is being guided by the decision of the Hon'ble Supreme Court, in ***State of Maharashtra versus Jagmohan Singh Kuldip Singh Anand and others***, reported as **(2004) 7 SCC 659**.

Relevant paragraph-23, of the judgment, is reproduced, as under:-

"23. On this aspect, it is sufficient to refer to and rely on the decision of this court in Duli chand vs. Delhi Administration, [AIR 1975 SC 1960], in which it is observed thus :-

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

22. In the light of the aforesaid judgment, this Court is of the view that the findings, so recorded by the learned trial Court, as upheld by the learned Appellate Court, do not fall within the definition of ‘perverse findings’. As such, the same do not require any interference, by this Court.

23. However, in view the peculiar facts and circumstances of the present case, i.e. the deposit of the entire amount of compensation, by the accused, and the nature and scope of the offence, punishable under Section 138 of the NI Act, in the considered opinion of this Court, once, the entire amount of compensation has been deposited and that the complainant has not filed any

appeal, or proceedings, for enhancement of compensation, the order of sentence, passed by the learned trial Court, is liable to be interfered with, as, law is good, but, justice is better.

24. In the absence of any sentencing policy, although, the same is in the exclusive domain of the trial Court, but, considering the subsequent development, i.e. the deposit of the compensation amount by the accused and the nature of the proceedings under Section 138 of the NI Act, this Court is of the view that the punishment, in the present case, is on the higher side.

25. My this view is fortified by the decision of the Hon'ble Supreme Court in **P. Mohanraj and others** versus **Shah Brothers Ispat Private Limited, (2021) 6 SCC 258**. Relevant paragraph 45, of the judgment, is reproduced, as under:-

“45. Section 138 contains within it the ingredients of the offence made out. The deeming provision is important in that the legislature is cognizant of the fact that what is otherwise a civil liability is now also deemed to be an offence, since this liability is made punishable by law. It is important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The explanation to Section 138 makes it clear that

such debt or other liability means a legally enforceable debt or other liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138. This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, would show that it is really a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law. Further, though the ingredients of the offence are contained in the first part Section 138 when the cheque is returned by the bank unpaid for the reasons given in the Section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

(self emphasis supplied)

26. In the light of the aforesaid decision and considering the fact that under the NI Act, no minimum punishment has been provided, for the offence, punishable under Section 138 of the NI Act, this Court is of the view that the quantum of punishment is liable to be modified. Consequently, the ends of justice would be met, in case, the accused is sentenced to undergo punishment *'till the rising of the Court'*.

27. In view of the above, the judgment of conviction, passed by the learned trial Court, is upheld, but, the appeal is partly allowed, to the extent of quantum of sentence, by modifying the same, as mentioned above.

28. Pending miscellaneous applications, if any, are disposed of accordingly.

29. Send down the record.

(Virender Singh)
Judge

May 16, 2025
(rajni)