

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr. Appeal No. 87 of 2013****Reserved on: 20.11.2025****Date of Decision: 12.12.2025.**

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**Ashwani Kumar****...Appellant****Versus****Raj Kumar****...Respondent**

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**Coram*****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?<sup>1</sup> No.*****For the Appellant : Mr Pankaj Sharma, Advocate.****For the respondent : Mr Neel Kamal Sharma, Advocate.**

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**Rakesh Kainthla, Judge**

The present appeal is directed against the judgment dated 16.10.2012, passed by learned Judicial Magistrate First Class, Court No. 2, Ghumarwin, District Bilaspur, H.P., vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act 1881 (NI Act).

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

*(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 complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the complainant was a proprietor of M/s Baba Enterprises at Ghumarwin. The accused had friendly relations with the complainant. The accused came to the complainant four years before filing the complaint, demanding a family loan of ₹80,000/-. He promised to repay the amount within one month. The complainant asked the accused to return the amount. The accused issued a cheque of ₹80,000/- drawn on H.P. State Cooperative Bank at Ghumarwin to discharge his liability. The complainant presented the cheque for encashment, but it was dishonoured with an endorsement that 'the firm has changed the title of the account and the account had been changed'. Hence, it was prayed that an action be taken against the accused.

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 himself (CW1), Sukh Dev Rana (CW2) and Prakash Chand (CW3) to prove his complaint.

5. The accused, in his statement, recorded under Section 313 of Cr.P.C., admitted that he knew the complainant. He denied that he had borrowed money from the complainant. He claimed that he was innocent. He stated that he wanted to lead defence evidence, but did not lead any evidence.

6. Learned Trial Court held that the cheque was issued in the name of Baba Enterprises, and there was no evidence to connect the complainant to Baba Enterprises. The complainant had no locus standi to file the complaint. Hence, the complaint was dismissed.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal, asserting that the learned Trial Court erred in dismissing the complaint. The evidence was not properly appreciated. The complainant is the proprietor of Baba Enterprises, Ghumarwin.

He was not cross-examined regarding this aspect. The accused failed to rebut the presumption attached to the cheque, and the learned Trial Court erred in acquitting the accused. Hence, 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 Pankaj Sharma, learned counsel for the appellant/complainant and Mr Neel Kamal Sharma, learned counsel for the respondent/accused.

9. Mr Pankaj Sharma, learned counsel for the appellant/complainant, submitted that the complainant had specifically claimed the ownership of Baba Enterprises in his proof affidavit, which was not challenged in the cross-examination. Learned Trial Court ignored the presumption attached to the cheque and erred in acquitting the accused. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Neel Kamal Sharma, learned counsel for the respondent/accused, submitted that the complainant failed to prove his connection to Baba Enterprises. Learned Trial Court rightly held that the complainant had no locus standi to file the

complaint. This was a reasonable view that could have been taken based on the evidence led before the learned Trial Court. 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 considerable thought to the submissions made at the bar and have gone 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 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

“12. 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 *P. Somaraju v. State of A.P.*, 2025 SCC OnLine SC 2291, wherein it was observed:

“12. To summarise, an Appellate Court undoubtedly has full power to review and reappraise evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or ‘double’ presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgments of this Court has more firmly entrenched this position, including, *inter alia*, *Mallappa v. State of Karnataka 2024 INSC 104*, *Ballu @ Balram @ Balmukund v. The State of Madhya Pradesh 2024 INSC 258*, *Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 INSC 320*, and *Constable 907 Surendra Singh v. State of Uttarakhand 2025 INSC 114*.”

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

15. It was specifically asserted in para-3 of the proof affidavit that the accused obtained a loan of ₹80,000/- four years before filing the complaint and promised to repay the amount within one month. The period of limitation for the recovery of the loan is three years. Thus, the suit for the recovery of the amount would have been barred by the limitation on the date of filing of the complaint. It was laid down by this Court in

*Social Leasing (India) Ltd. v. Rajan Kumar Kanthwal*, 2025 SCC OnLine HP 3131, that a cheque issued towards a time-barred debt does not constitute a legally enforceable debt. Therefore, the complaint was not maintainable as there was no legally enforceable debt subsisting on the date of the presentation of the cheque.

16. The cheque was issued in the name of Baba Enterprises. The complainant stated in paragraph 1 of the complaint that he is a proprietor of Baba Enterprises; however, he did not place any document on record to prove this fact. It was laid down by the Hon'ble Supreme Court in *Milind Shripad Chandurkar v. Kalim M. Khan*, (2011) 4 SCC 275, that where no evidence was led to prove that the complainant was the owner of a proprietorship concern, he cannot be called to be a payee or holder in due Course. The Hon'ble Supreme Court noticed the affidavit of the complainant in para-14 as under: -

“14. The relevant part of the affidavit filed by the appellant-complainant before the trial court reads as under:

“I, Shri Milind Shripad Chandurkar, aged about 37 years, Indian inhabitant, occupation: business, proprietor of M/s Vijay Automobiles, having an address at Sector 29, Dronagiri Node, Uran, District

Raigad, take oath and state on solemn affirmation as under....

I state that in due discharge of legal liability of the accused as mentioned in the foregoing paragraphs, the accused issued one cheque dated 28-4-2005 in my name, i.e. in the name M/s Vijaya Automobiles, which was drawn on Development Credit Bank, Kurla Branch, Mumbai 70 bearing Cheque No. 490592, for ₹ 7,00,000 (Rupees seven lakhs only).”

The relevant part of his cross-examination reads as under:

“It is true that till today I have not produced any documentary evidence to show that I am the owner of Vijaya Automobiles.... Till today, I have not produced any documentary evidence to support.”

17. It was found that no documentary evidence was produced to show that the complainant was the proprietor of the firm. It was observed-

“16. Thus, from the above, it is evident that the appellant-complainant could not produce any document to show that he was the proprietor of Vijaya Automobiles in spite of the fact that the issue had been agitated by the accused-Respondent 1 at every stage. It is also evident from the documents on record that in the list of witnesses, the complainant had mentioned the name of his banker as a witness; however, the said banker was not examined.

17. It may also be pertinent to mention here that the appellant did not make any attempt to adduce additional evidence at the appellate stage. No document has ever been filed to substantiate his averment in this regard.”



18. It was held that a complaint under section 138 of the NI Act can be filed by a payee or holder in due course, and when there was no evidence that the complainant was the payee, he was not entitled to file the complaint. It was observed: -

“26. In the instant case, it is evident that the firm, namely, Vijaya Automobiles, has been the payee and that the appellant cannot claim to be the payee of the cheque, nor can he be the holder in due course, unless he establishes that the cheques had been issued to him or in his favour or that he is the sole proprietor of the concern and being so, he could also be the payee himself and thus, entitled to make the complaint. The appellant miserably failed to prove any nexus or connection by adducing any evidence whatsoever, worth the name with the said firm, namely, Vijaya Automobiles. A mere statement in the affidavit in this regard is not sufficient to meet the requirements of law. The appellant failed to produce any documentary evidence to connect himself with the said firm.

27. It is evident that the Firm had a substantial amount of business, as in one month it sold the diesel to Respondent 1, a single party, for a sum of ₹ 7 lakhs. The appellant would, in addition, have also been carrying out business with other persons. Thus, a person with such a big business must have had transactions with the bank and must have been a payee of income tax, sales tax, etc. Thus, in such a factual situation, there would be no dearth of material that could have been produced by the appellant to show that he was the sole proprietor of the said firm. The appellant failed to adduce any evidence in this regard, nor made any attempt to adduce any additional evidence at the appellate stage, in spite of the fact that the respondent had been raising this issue from the initiation of the proceedings.”

19. This judgment was followed by this Court in *S.P. Saklani v. Ravinder Singh Thakur*, 2012 SCC OnLine HP 771, wherein it was observed: -

“11. Admittedly, a cheque Ext.CW-3/A is in the name of Thakur Devi Ram & Sons. Cheque returning memo Ex.CW-2/C is also addressed to M/s Thakur Devi Ram & Sons.

12. True it is that it was averred by the complainant in the complaint that he was running the aforesaid business in the name and style of M/s Thakur Devi Ram and Sons. Though, while appearing as CW-3 in the chief examination, the complainant has reiterated the assertion that he is the sole proprietor of M/s Devi Ram and Sons, yet in cross-examination, he has admitted that on the day he was making a statement in the court, he was not having any proof that he was the sole proprietor of M/s Devi Ram and Sons. It is further stated that he did not remember when the cement was purchased by the convict. He had also not brought a copy of the bill book to the court. In further cross-examination, he denied that he has any concern with M/s Devi Ram and Sons and has volunteered that Devi Ram is his father.

13. In his statement under Section 313 Cr.P.C., the convict denied that the complainant used to deal in the business of steel and cement known as M/s Devi Ram and Sons. He has also denied that the cheque Ex.CW-3/A was issued by him in favour of the complainant.

14. Thus, it is manifest that except the bald assertion made by the complainant in the complaint and reiterated on oath in his deposition as CW-3 that he is the sole proprietor of M/s Devi Ram and Sons, which aspect is vehemently disputed by the convict, there is no other cogent, reliable and trustworthy documentary evidence to prove nexus or connection of the complainant with the

firm M/s Thakur Devi Ram and Sons. The evidence led by the complainant is wholly deficient in content to prove his nexus or connection with the said firm as its sole proprietor and the mere averments in the complaint to this effect as reiterated on oath in his deposition as CW-3, which is vehemently contested on behalf of the convict is not sufficient to establish such nexus or connection, as has been held by the Hon'ble Supreme Court in *Milind Shripad Chandurkar*, supra.”

20. Similar is the judgment in *Ram Chand v. Rafee Mohammad*, 2018 SCC OnLine HP 3334, wherein it was observed:

“19. Now, advertent to the facts of the case, if the cheque, Ext. C-1 is perused, it would be noticed that the same has been issued by a partner of the Indian Education Centre and not by the respondent in his name. Moreover, the cheque is in the name of Ramchand and not in the name of Ankit Hire Purchase Pvt. Ltd. The appellant has failed to show that he is the sole proprietor of the firm and has not even pleaded that he is the payee or the holder in due course of the cheque.

20. It is more than settled that it is only the holder in due course of a negotiable instrument who is entitled to file the complaint under Section 138 of the Act. (Refer: *Milind Shripad Chandurkar v. Kalim Khan*, (2011) 4 SCC 275, *National Small Industries Corporation Ltd. v. State*, (2009) 1 SCC 407 and *Punjab & Sindh Bank v. VinkarSahkari Bank Ltd.*, (2001) 7 SCC 721)

21. As observed above, the cheque in question, Ext.C-1, has been issued by a partner of Indian Education Centre and not by the respondent in his name and the appellant has failed to mention in the complaint or prove in evidence that Indian Education Centre had any connection with him or his establishment or, for that matter, even with the respondent. This assumes significance and importance when the specific case of the appellant is that

the entire exercise of lending money was done for and on behalf of Ankit Hire Purchase Pvt. Ltd., which allegedly was a company, yet no records of the same were produced.

22. As a matter of fact, the appellant has filed the complaint as Managing Director of the company, but there is no proof of the same. Even otherwise, having failed to establish the connection between the company of which he claims himself to be the Managing Director with that of Indian Education Centre, whose partner has issued cheque, Ext.C1 and further having failed to establish the connection of the respondent with Indian Education Centre, the learned trial court had no other option, but to have dismissed the complaint and acquitted the respondent.”

21. In the present case, no documentary evidence was produced to show that the complainant is the owner of Baba Enterprises, and the learned Trial Court had rightly held that the complaint was not maintainable.

22. Thus, the learned Trial Court had taken a reasonable view and no interference is required with it. Consequently, the present appeal fails, and it is dismissed.

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 ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall

be effective for six months with a stipulation that in the event of a 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. Record of the learned Trial Court be sent back forthwith, along with a copy of this judgment.

**(Rakesh Kainthla)**  
**Judge**

12<sup>th</sup> December, 2025  
(Chander)

High Court of H.P.