104-1

2026:PHHC:122085

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2532-2008 (O&M)
DECIDED ON: 01.09.2026

BHUSHAN MANCHANDA

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Ms. Sushma Suman, Legal Aid Counsel with
Mr. Amit Gupta, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana
for respondent No.1-State.

Mr. Dheeraj Chawla, Advocate with
Mr. Digvijay Singh, Advocate
for respondent No.2.

*****

MANDEEP PANNU, J (ORAL)

1. The present revision petition has been filed by the petitioner against the judgment of conviction dated 22.02.2007 and order of sentence dated 24.02.2007 passed by the learned JMIC, Panipat, in a complaint under Section 138 of the Negotiable Instruments Act, 1881, whereby the petitioner was convicted and sentenced as under:-

Under Section	Imprisonment awarded	Fine	Imprisonment in default of payment of fine
Section 138 of NI Act	R.I. for 06 months	Rs.5,000/-	S.I. for 01 month

2. Briefly stated, the complainant's case is that the accused, being the sole proprietor of M/s. B.S. Handloom Industries, had availed financial assistance from the complainant-Corporation for running his business. Towards discharge of the outstanding loan liability, the accused issued cheque No. 478856 dated 25.09.1998 for a sum of ₹50,000/-. On presentation, the cheque was dishonoured with the remarks "Exceeds Arrangement". Despite service of the legal notice, the accused failed to make the payment within the stipulated period, compelling the complainant to institute the present complaint under Section 138 of the Negotiable Instruments Act, 1881.

3. The petitioner has also challenged the judgment dated 20.11.2008 passed by the learned Appellate Court, whereby the judgment of conviction dated 22.02.2007 and order of sentence dated 24.02.2007 passed by the learned JMIC, Panipat, were affirmed and the appeal preferred by the present petitioner against the said judgment was dismissed.

4. In order to substantiate his allegations against the accused, the complainant examined Shiv Naraian, Principal Officer and Assistant Manager of the Corporation, as CW1. The complainant also tendered into evidence the original cheque bearing No. 478856 dated 25.09.1998 as Ex. C1, cheque returning memo issued by the banker as Ex. C2, counterfoil as Ex. C3, legal notice as Ex. C4 and postal acknowledgment as Ex. C5.

5. The statement of the accused under Section 313 Cr.P.C. was recorded, wherein he denied all the allegations levelled against him. In his defence, the accused tendered into evidence Ex. DA, which is a certified copy of the statement of CW1 recorded in another complaint No. 11/2 of 2002, titled '***Haryana Financial Corporation versus B.S. Handloom Industries through its proprietor Bhushan Lal Manchanda'***. After hearing both the parties, the learned Judicial Magistrate First Class, Panipat, convicted and sentenced the accused as mentioned above.

6. Aggrieved by the aforesaid judgment of conviction and order of sentence, the accused/present petitioner preferred an appeal before the learned lower appellate Court. The said appeal was heard by the learned Additional Sessions Judge, Panipat and was dismissed vide impugned judgment dated 20.11.2008. The learned Appellate Court observed that the trial Court had already taken a lenient view by awarding rigorous imprisonment for a period of six months along with a fine of ₹5,000/- and, accordingly, upheld the judgment of conviction and order of sentence passed by the learned trial Court.

7. Feeling aggrieved by the above-said judgment, the present revision petition has been filed by the petitioner/accused.

8. Learned counsel for the petitioner has contended that the impugned judgments passed by the Courts below are contrary to the evidence available on record. It is submitted that the cheque in question was given to the Haryana Financial Corporation as security towards the alleged loan and was not issued in discharge of any existing debt or legally enforceable liability. The Courts below failed to appreciate the admission

made by CW-1 in his cross-examination that the cheque in question was given as security and not towards discharge of any debt or legal liability. It is further contended that the petitioner, in his statement under Section 313 Cr.P.C., specifically denied the allegations and pleaded false implication. He stated that five cheques had been deposited with the respondent-Corporation as security towards the alleged loan and that the Corporation, without referring to him, presented all the five cheques. The petitioner also placed on record the certified copy of the statement of CW-1 recorded in Criminal Complaint No. 11/2 of 2002, titled '***Haryana Financial Corporation versus B.S. Handloom Industries through its proprietor Bhushan Lal Manchanda'***, in support of his defence.

9. Learned counsel further contended that the Courts below failed to take into consideration the fact that, on the basis of the cross-examination of the complainant's witness regarding the cheques having been issued as security and not in discharge of any debt or legal liability, the petitioner had been acquitted by the learned trial Court in other complaints filed by the Haryana Financial Corporation, including Complaint Nos. 40 of 2005 and 44/2 of 2005. The judgment of conviction and order of sentence dated 23.04.2008 passed in the said complaints was also placed on record as Ex. D-3. It is, therefore, contended that the essential ingredients of an offence under Section 138 of the Negotiable Instruments Act, 1881, were not established against the petitioner and that the Courts below failed to properly appreciate the defence evidence and the material admissions made by the complainant's witness. Accordingly, the impugned judgments of conviction

and order of sentence deserve to be set aside and the petitioner deserves to be acquitted.

10. Learned counsel for the respondent-Corporation contends that the Courts below have rightly appreciated the evidence on record and convicted the petitioner under Section 138 of the Negotiable Instruments Act. It is submitted that the petitioner failed to rebut the statutory presumption in favour of the complainant and that his plea that the cheque was issued as security was rightly rejected. The findings recorded by the Courts below are neither perverse nor illegal and warrant no interference in revisional jurisdiction. Accordingly, dismissal of the revision petition has been prayed for.

11. I have heard the respective contentions of learned counsel for the petitioner/accused and respondent No.2/complainant and have gone through the record carefully.

12. The principal contention raised on behalf of the petitioner is that the cheque in question was not issued in discharge of any subsisting debt or legally enforceable liability, but was one of the five cheques handed over to the Haryana Financial Corporation as security in respect of the financial assistance availed by the petitioner for his business. The petitioner had admittedly obtained financial assistance from the Corporation and, towards securing the repayment thereof, had deposited five cheques with the Corporation. The cheque in question, bearing No. 478856 dated 25.09.1998 for an amount of ₹50,000/-, was also one such security cheque.

13. The aforesaid defence assumes significance in view of the evidence of CW-1, who is admittedly the witness produced by the

complainant-Corporation itself. In his cross-examination, CW-1 admitted that the cheques had been given by the petitioner to the Corporation as security. Thus, the very witness of the complainant lends support to the specific defence taken by the petitioner that the cheque in question was not issued towards discharge of a debt or other legally enforceable liability.

14. It is well settled that merely describing a cheque as a "security cheque" does not, by itself, take the cheque outside the ambit of Section 138 of the Negotiable Instruments Act. A security cheque may attract Section 138 if, on the date of its presentation, the liability for which the cheque was given as security had matured and remained legally enforceable. Conversely, where the cheque was merely held as security and the complainant fails to establish that the cheque had become enforceable for presentation towards a crystallised liability, the essential requirement of Section 138 is not satisfied.

15. The Hon'ble Supreme Court in ***"M/s Narayan Menon @ Mani versus State of Kerala and another", 2006 (3) Recent Criminal Reports, 504,*** has reiterated that a security cheque can be presented after the underlying liability has matured, but its dishonour cannot attract Section 138 of NI Act where the underlying liability had already been discharged or the cheque had not matured for presentation.

16. In the present case, the petitioner has not rested his defence merely upon a bald assertion that the cheque was a security cheque. He specifically stated in his statement under Section 313 Cr.P.C. that five cheques had been deposited with the respondent-Corporation as security towards the alleged loan and that the Corporation had presented all the five cheques without referring to him. More importantly, this defence finds direct

corroboration from the testimony of CW-1, the complainant's own witness. Once CW-1 admitted in cross-examination that the cheques were given as security, the petitioner had discharged the burden of raising a probable defence. The statutory presumption in favour of the holder is rebuttable and the accused is not required to establish his defence beyond reasonable doubt; a probable defence emerging from the complainant's own evidence is sufficient to rebut the presumption.

17. The defence of the petitioner is further strengthened by the fact that the Haryana Financial Corporation had instituted other complaints in respect of the remaining cheques. In Complaint Nos. 40 of 2005 and 44/2 of 2005, relating to three other cheques issued by the petitioner, the learned trial Court, after considering the very same aspect emerging from the cross-examination of CW-1, acquitted the petitioner vide judgment and order dated 23.04.2008. The said judgment was produced during the present proceedings as Ex. D-3. Thus, the defence of the petitioner is not an isolated or subsequently devised plea, rather, the same is consistent with the evidence led by the complainant-Corporation itself and with the findings recorded in the proceedings relating to the other cheques.

18. The learned Courts below, however, failed to appreciate this material aspect of the matter. Instead of examining whether the cheque in question, admittedly taken as security, had matured for presentation towards a subsisting and legally enforceable liability, the Courts below proceeded on the assumption that the cheque had been issued towards discharge of a legal obligation merely because the petitioner had availed financial assistance from the Corporation. The existence of a loan transaction by itself could not

establish that the particular cheque in question was issued in discharge of the liability, particularly when the complainant's own witness admitted that the cheque was taken as security.

19. Once the complainant's own witness admitted the nature of the cheque as being one issued by way of security, and the petitioner placed on record the judgment of acquittal rendered in respect of the other cheques forming part of the same transaction, the burden lay upon the complainant to establish that the particular cheque in question had become due and payable towards a legally enforceable liability on the date of its presentation. No convincing evidence has been brought on record to establish this aspect. The Courts below, therefore, erred in treating the cheque as one issued in discharge of an existing legal liability merely on the basis of the underlying loan transaction.

20. The cumulative effect of the aforesaid circumstances is that the petitioner has successfully rebutted the statutory presumption by raising a probable defence, supported by the admission of CW-1 and the judgment of acquittal in respect of the other cheques. The complainant thereafter failed to establish, beyond reasonable doubt, that the cheque in question was issued towards discharge of a subsisting and legally enforceable debt or liability. The essential ingredient of Section 138 of the Negotiable Instruments Act was, therefore, not established.

21. Consequently, the findings recorded by both the Courts below that the cheque in question was not issued as security but towards discharge of a legal obligation are contrary to the evidence on record. The said findings suffer from misappreciation of the evidence and cannot be

sustained.

22. Accordingly, the present revision petition is allowed. The impugned judgment of conviction dated 22.02.2007 and order of sentence dated 24.02.2007 passed by the learned Judicial Magistrate First Class, Panipat, as well as the judgment dated 20.11.2008 passed by the learned Appellate Court, are set aside. The petitioner/accused is acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881. His bail bonds, if any, stand discharged.

23. All pending miscellaneous application(s), if any, stands disposed of.

(MANDEEP PANNU)
JUDGE

01.09.2026
Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*