IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMMO No. 1129 of 2025
Date of Decision: 24.3.2026

Arvind Verma
.........Petitioner

Versus

Dhian Singh
.......Respondents

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Ravinder Singh Chandel, Advocate.

For the Respondents: Mr. Pawan Sharma, Advocate.

Sandeep Sharma, J. *(Oral)*

By way of present petition, prayer has been made by the petitioner to quash and set-aside complaint filed by the respondent/ complainant under Section 138 of Negotiable Instruments Act, pending in the court of learned Additional Chief Judicial Magistrate Theog, in case No. 335 of 2022.

2. Precisely, the grouse of the petitioner as has been highlighted in the petition and further canvassed by Mr. Ravinder Singh Chandel, Advocate, is that no case much less under Section 138 of the Negotiable Instruments Act (in short "*Act*") is made out against the petitioner for the reason that cheque issued by the petitioner-accused towards discharge of lawful liability was never dishonoured on account of "insufficient funds" in

High Court of H.P.

::: Downloaded on - 30/03/2026 22:33:49 :::CIS

2026:HHC:8781

his bank account, rather same came to be returned vide return memo dated 6.7.2022 with remarks "account freezed". While referring to return memo placed on record (Annexure P-2), learned counsel for the petitioner, submitted that since cheque amounting to Rs.10.00 lakh issued by the petitioner towards discharge of his lawful liability was never presented for clearance, no case under Section 138 of the Act, could have been lodged against the petitioner. While making this Court peruse provisions contained in Section 138 of the Act, Mr. Chandel, submitted that had cheque issued by the petitioner dishonoured on account of unavailability of funds in the bank account of the petitioner, respondent/complainant was well within his right to institute proceedings under Section 138 of the Act, but once cheque was never presented by his bank for clearance for the reason that account of the bank stood freezed, this Court while exercising power under Section 528 of BNSS is required to quash the complaint, which otherwise is bound to fail.

3. To the contrary, Mr. Pawan Sharma, learned counsel representing the respondent/complainant vehemently argued that present petition filed under Section 528, is not maintainable for the reason that whether cheque issued by the accused towards discharge of lawful liability was returned on account of insufficient funds or on account of freezing of

High Court of H.P.

::: Downloaded on - 30/03/2026 22:33:49 :::CIS

the bank account of the complainant is a question to be decided by the learned trial Court on the basis of evidence led on record by the respective parties. He stated that mere placing on record of copy of return memo, may not be sufficient rather such document is required to be proved in accordance with law. He further submitted that even if account of the complainant was freezed, there was no power, if any, for the bank concerned to receive the payment and as such, issue otherwise sought to be decided in the instant proceedings, requires trial to be decided on the basis of evidence collected on record by the respective parties

4. Having heard learned counsel for the parties and perused material available on record, though this court is in full agreement with the learned counsel for the petitioner that this Court is well within its right to exercise power under Section 528 of BNSS to prevent abuse of process of law, but correctness and genuineness of the return memo placed on record of instant file, cannot be gone into in instant proceedings, rather same is required to be proved in accordance with law. Needless to say, while exercising power under Section 528 of BNSS for quashing of FIR as well as complaint, though court concerned may sift the evidence for the purpose of inferring prima-facie case, but certainly, it cannot appreciate the evidence

::: Downloaded on - 30/03/2026 22:33:49 :::CIS
High Court of H.P.

adduced on record, rather that can only be appreciated by the learned trial Court in totality of evidence collected on record by the respective parties.

5. In nutshell, case of the petitioner is that cheque amounting to Rs.10.00 lakh issued towards discharge of lawful liability of the accused was never dishonoured on account of “insufficient funds”, rather same was returned for the reason that bank account of the complainant in HDFC Bank stood freezed. Though having carefully perused provisions contained in Section 138 of the Act, this Court is persuaded to agree with learned counsel for the petitioner that it is necessary for the complainant to prove that cheque issued towards discharge of lawful liability was returned for want of sufficient funds and in case, such material is not brought on record, prima-facie complaint cannot be said to be maintainable, however in the case at hand, complainant, under Section 138 of the Act has specifically alleged that cheque issued towards discharge of lawful liability, was dishonoured and as such, court took cognizance and framed notice of accusation against the petitioner accused, who at the relevant time, otherwise failed to raise aforesaid plea with regard to freezing of the account of the complainant

6. Whether cheque issued by the petitioner accused towards discharge of lawful liability was sent back on account of “insufficient funds”

High Court of H.P.

::: Downloaded on - 30/03/2026 22:33:49 :::CIS

2026:HHC:8781

or on account of freezing of account of the petitioner is a matter of trial, which shall be decided on the basis of pleadings as well as material adduced on record by the respective parties, but certainly that cannot be decided merely on the basis of one return memo placed on record by the petitioner-accused, authenticity of which, is yet to be established on record by leading cogent and convincing evidence by the parties.

7. Consequently, in view of the above this court sees no reason to accept the prayer made by the petitioner in the instant petition and accordingly, same is dismissed being devoid of any merit along with pending applications, if any.

March 24, 2026
(manjit)

(Sandeep Sharma),
Judge

High Court of H.P.

::: Downloaded on - 30/03/2026 22:33:49 :::CIS