



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CrMMO No. 493 of 2025**  
**Date of Decision: 12.5.2026**

**OM-CHEEVA BUSINESS (INDIA) LLP and Anr.**

**.....Petitioners**

**Versus**

**M/s Goel Motors**

**.....Respondent**

**Coram**

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

**Whether approved for reporting? Yes.**

**For the Petitioners:** Mr. Vijay Kumar Arora, Senior Advocate with Mr. Tarun Sharma, Mr. Guarv Kumar and Mr. Hitansh Raj, Advocates.

**For the Respondent:** Mr. T.S. Chauhan, Senior Advocate with Mr. Surya Chauhan, Advocate.

**Sandeep Sharma, J.** (Oral)

Through instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, prayer has been made by the petitioners for quashing of complaint No. 237/2024, titled as **Goel Motors v. Om Cheeva Business**, having been filed by the respondent under Section 138 of the Negotiable Instruments Act (in short the "Act"), along with consequential proceedings pending before the learned Judicial Magistrate First Class, Bilaspur.

**2.** Precisely, the grouse of the petitioners as has been highlighted in the petition and further canvassed by Mr. Vijay K. Arora, Senior

Advocate, is that complaint sought to be quashed is not maintainable and as such, deserves to be quashed and set aside. Mr. Arora, while making this Court peruse pleadings as well as documents adduced on record, vehemently argued that since agreement (Annexure P-3) executed inter-se parties for providing ten transport vehicles stood terminated, petitioners vide written communication dated 14.12.2023 (Annexure P-4), requested the respondent to return the cheque kept as security, but respondent misused the same and instituted complaint under Section 138 of the Act in the competent court of law against the petitioners. Mr. Arora further invited attention of this Court to communication dated 28.12.2023 (Annexure P-6), addressed to Branch Head, State Bank of India, SME Business Bazar Branch Biharsharif, Nalanda, Bihar, to state that cheque bearing registration No.539036 was issued to respondent-Goel Motors as security, but since agreement inter-se parties stood terminated, petitioner made a request to afore bank that payment, if any, claimed through afore cheque, may be stopped. While inviting attention of this Court to copy of cheque (available at page 35 of the paper book), learned Senior Advocate, further argued that blank cheque was accepted by the bank as is evident from the endorsement given on the same, which fact itself suggests that same was kept as security. He submitted that since contract inter-se

parties stands terminated and as of today, no liability exists in terms thereof, no fruitful purpose would be served in case complaint lodged at the behest of the complainant under Section 138 of the Act is permitted to sustain, rather that would put the petitioners to ordeal of protracted trial, which is bound to fail.

**3.** To the contrary, Mr. T.S. Chauhan, learned Senior Advocate, appearing for the respondent vehemently argued that present petition is wholly misconceived and not maintainable. Mr. Chauhan, further argued that once factum with regard to issuance of cheque as well as signature thereupon is admitted by the petitioners coupled with the fact that cheque in question was issued in terms of agreement executed inter-se parties for supply of transport vehicles, Sections 118 and 139 of the Act come into play, which speak about presumption in favour of the holder of the cheque that same was issued in discharge of the lawful liability. No doubt, aforesaid presumption is rebuttable, but for that purpose, accused is under obligation to raise probable defence. Probable defence can be raised by the accused by referring to the documents as well as evidence adduced on record by the complainant or by leading some cogent and convincing evidence. He states that "*whether cheque in question was issued as security or same was issued towards discharge of lawful liability, is a*

*question to be decided by the learned trial court in totality of pleadings as well as evidence led on record by the respective parties, but for the reasons and arguments raised at the behest of the petitioners, complaint cannot be quashed.*

**4.** Having heard learned counsel for the parties and perused material available on record, this court finds no merit in the present petition for the reason that it is admitted case of the petitioners that cheque in question, which is subject matter of the complaint filed under Section 138 of the Act, which is otherwise sought to be quashed in the instant proceedings, has been issued by the petitioners and there is no dispute qua their signature upon the same. In nutshell, case of the petitioners, as has been put forth, is that since agreement inter-se parties whereby transport vehicles were to be made available by the respondent to the petitioner stands terminated, cheque, if any, allegedly issued at the time of execution of agreement needs to be returned and same otherwise could not have been used or presented before competent court of law on account of the fact that same was issued as a “security cheque”.

**5.** Though communication dated 14.12.2023 (Annexure P-4), was sent by the petitioners to the respondent that on account of financial loss suffered by the petitioners, services otherwise agreed to be provided

through agreement (Annexure P-3) could not be provided. As per afore communication, amount of Rs. 24,35,756/- stood paid by the petitioners to respondent, but question which needs to be decided in the case at hand, is *whether in terms of agreement (Annexure P-3), only sum of Rs.24,35,756/- was payable or more?*, which definitely cannot be decided in the instant proceedings. Similarly, *whether cheque which has been admittedly issued by the petitioners was a security cheque* is a question to be decided in the totality of pleadings as well as evidence collected on record by the respective parties.

**6.** By now it is well settled that dishonour of cheque issued as “security” can also attract offence under Section 138 of the Negotiable Instruments Act. Hon’ble Apex Court in case titled **Sripati Singh v. State of Jharkhand**, Criminal Appeal No. 1269-1270 of 2021, decided on 28.10.2021, has held as under:

“16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is

not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under [Section 138](#) and the other provisions of [N.I. Act](#) would flow.

**7.** Needless to say, expression “Security Cheque” is not a statutorily defined expression in the Negotiable Instruments Act, rather same is to be inferred from the pleadings as well as evidence, if any, led on record with regard to issuance of security cheque. The Negotiable Instruments Act does not per se carve out an exception in respect of a “security cheque” to say that a complaint in respect of such a cheque would not be maintainable as there is a debt existing in respect whereof the cheque in question is issued, same would attract provision of Section 138 of the Act in case of its dishonour.

**8.** Reliance is also placed upon judgment passed in Criminal Appeal No. 5588 of 2025, decided on 19.12.2025, titled as **M/s Sri Om Sales v. Abhay Kumar @ Abhay Patel and Anr.**, wherein Hon’ble Apex Court has held that when there is a legal presumption under Section 139 of Negotiable Instruments Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at a pre-trial stage to quash the complaint. While setting aside order passed by the High Court in exercise

of power under Section 482 CrPC, Hon'ble Apex Court held that when a complaint prima-facie discloses necessary ingredients of offence under Section 138 of the Act, it cannot be scuttled at threshold. Relevant paras of the afore judgment read as under:

“11. The law is well settled that while considering a prayer to quash the criminal complaint and the consequential proceedings at the threshold, the Court is required to examine whether the allegations made in the complaint along with materials in support thereof make out a prima facie case to proceed against the accused or not. If upon reading the complaint allegations and perusing the materials filed in support thereof, a prima facie case is made out to proceed against the accused, the complaint cannot be quashed, particularly, by appreciating the evidence/ materials on record because the stage for such appreciation is at the trial. No doubt, in exceptional circumstances, the Court may take notice of attending circumstances to conclude that continuance of the proceedings would amount to an abuse of the process of the Court, or where quashing of the proceedings is necessary to secure the ends of justice.

12. In the instant case, the complaint clearly spells out the necessary ingredients for commission of an offence punishable under Section 138 of the N.I. Act. It is also alleged in the complaint that the cheque was issued in the discharge of liability qua goods supplied by the complainant. The cheque was brought on record along with the dishonor memo of the bank concerned which indicated that it was returned unpaid for insufficient funds in the drawer's account. The complaint also indicated that complainant had served notice of demand within the specified period and despite service of notice of

demand, no payment was made. In such circumstances, the necessary ingredients of an offence punishable under Section 138 of N.I. Act were disclosed by the complaint warranting issuance of process to the accused (i.e., the first respondent).

13. However, the High Court, in its jurisdiction under Section 482, proceeded to test whether the cheque was issued for the discharge, in whole or in part, of any debt or other liability. In our view, such an exercise was unwarranted because, under Section 139 of the N.I. Act, there is a presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption can be rebutted by evidence led in trial. A fortiori, the said issue can appropriately be decided either at the trial, or later, upon conclusion of trial, by the appellate/ revisional court.

14. In **Maruti Udyog Ltd. v. Narender and others** (1999) 1 SCC 113, this Court held that a presumption must be drawn that the holder of the cheque received the cheque of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved and, therefore, the High Court was not justified in entertaining and accepting the plea of the accused at the initial stage of the proceedings and quash the complaint.

15. Likewise, in **Rangappa v. Sri Mohan** (2010) 11 SCC 441, it was held that the presumption mandated by Section 139 of the N.I. Act includes the existence of a legally enforceable debt or liability. It was observed that such a presumption is rebuttable, and the accused must raise its defense in the trial.

16. In **Rajeshbhai Muljibhai Patel v. State of Gujarat** (2020) 3 SCC 794, it was held that the High Court should not quash the criminal complaint under Section 138 of N.I. Act by going into disputed questions of fact regarding the cheque in question being issued for

the discharge of debt or liability. Moreso, when Section 139 of the N.I. Act raises a statutory presumption as regards the cheque being issued for discharge of debt or liability.

17. In **Rathish Babu Unnikrishnan v. State (NCT of Delhi)** (2022) 20 SCC 661, this Court held that when there is a legal presumption under Section 139 of N.I. Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at a pre-trial stage to quash the complaint. The relevant observations in the judgment are extracted below:

“17. The proposition of law as set out above makes it abundantly clear that the court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defense without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

18. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also, because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favor of the complainant / prosecution, as the accused will have the

opportunity to adduce defense evidence during the trial, to rebut the presumption.

19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

9. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court finds no merit in the present petition and accordingly, same is dismissed. Learned counsel for the parties undertake to cause presence of their respective clients before the court below on 26.5.2026, enabling it to proceed with the matter further. Interim order, if any, stands vacated. Record be sent back forthwith. All pending applications shall stand dismissed accordingly.

**May 12, 2026**  
(manjit)

**(Sandeep Sharma),  
Judge**