IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 122 of 2012
Reserved on: 26.10.2026
Date of Decision: 05.11.2026.

Kuldeep Chand ...Petitioner

Versus

Piar Singh Kanwar ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] *Yes*

For the Petitioner : Mr R.K. Bawa, Senior Advocate, with Mr Ajay Kumar, Advocate.

For the Respondent : Mr Vishwas Kaushal, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 22.12.2011 passed by learned Chief Judicial Magistrate, Bilaspur (learned Trial Court) vide which the complaint filed by the appellant (complainant before the learned Trial Court) for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short "NI Act") was dismissed. *(The parties shall hereinafter be referred to in the same*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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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 against the accused for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the accused had taken a contract for the construction of a road from Chaura Maidan, Shimla to Jalog-Chanawag from HPPWD. He executed an agreement with the complainant on 01.12.2005 for the cutting work from RD 8/245 to 12/0 at the rate of ₹28 per cubic meter. The accused agreed to pay the money after the completion of the work. The accused handed over a cheque of ₹3,00,000/- to the complainant drawn on Punjab National Bank, Ghanahati towards the payment of the work. The complainant presented the cheque before his bank, but it was dishonoured with the endorsement "insufficient funds". The complainant served a notice upon the accused asking him to repay the money within 15 days of the receipt of the notice. The notice was duly served upon the accused, but the accused failed to repay the money. Hence, the complaint was filed before the

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learned Trial Court for taking action against the accused as per the law.

3. The 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 trained.

4. The complainant examined himself (CW1), K.L. Sharma (CW2) and Jaswant Sharma (CW3) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that the accused had executed an agreement with the complainant on 01.12.2005 for carrying out the cutting work at the rate of ₹28 per cubic meter. He stated that he had issued the cheque as a security in favour of Kuldeep Chand and Company. He produced the documents in evidence.

6. Learned Trial Court held that the cheque was issued in the name of Kuldeep Chand and Company. The complainant has not placed any document on record to show that he is a sole

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proprietor of the company. The complainant admitted in his cross-examination that work was allotted to Ashok Kumar and not to the accused, which made the complainant's version highly doubtful. The work was to be carried out at Shimla. The cheque was dishonoured at Mandi, and the Court at Bilaspur had no jurisdiction to hear and entertain the complaint. The notice was also not served at the correct address. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were not satisfied. Hence, the learned Trial Court dismissed the complaint.

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 complainant had specifically stated that he was the sole proprietor of Kuldeep Chand and Company, and the learned Trial Court erred in holding that there was no evidence to show that the complainant is the payee or that the Court at Bilaspur had no jurisdiction to hear and entertain the complaint. The accused had not disputed in his statement recorded under Section 313 of the CrPC that he had executed an agreement with the complainant for the cutting work. Thus, the learned Trial

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Court erred in holding that the work was not allotted to the accused. The issuance of the cheque was not disputed, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. Therefore, it was prayed that the present appeal be allowed and the judgment passed by learned Trial Court be set aside.

8. I have heard Mr R.K. Bawa, learned Senior Advocate, assisted by Mr Ajay Kumar, learned counsel for the appellant and Mr Vishwas Kaushal, learned counsel for the respondent/accused.

9. Mr R.K. Bawa, learned Senior Advocate for the appellant/complainant, submitted that the complainant had specifically asserted in his proof affidavit that he is a proprietor of Kuldeep Chand and Company, which was not challenged in the cross-examination. Learned Trial Court erred in holding that the complainant is not a payee. The accused admitted in his statement recorded under Section 313 of the CrPC that he had executed an agreement with the complainant regarding the cutting work, and the accused had entrusted the cutting work to the complainant, which was not in dispute. The learned Trial

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Court erred in doubting it. The Court at the place where the complainant is residing has the territorial jurisdiction to hear and entertain the complaint, and the learned Trial Court erred in holding that it had no territorial jurisdiction to hear and entertain the complaint. Hence, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside. He relied upon the following judgments in support of his submissions:

i). Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr. (2014) 9 SCC 129;

ii). Rajiv Banga Vs. L and T Finance Company Ltd. And another, 2010 SCC Online Bom 1852;

iii). Harman Electronics Private Limited and another Vs. National Panasonic India Private Ltd. (2009) 1 SCC 720;

iv). D. Vinod Shivappa vs. Nanda Belliappa (2006) 6 SCC 456;

v). K. Bhaskaran vs. Sankaran Vaidhyan Balan and another (1999) 7 SCC 510;

vi). Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd. (2001) 3 SCC 609;

vii). Jai Balaji Industries Ltd. And Others vs. Heg Ltd. 2025 SCC Online SC 2581;

viii). Milind Shripad Chandurkar Vs. Kalim M. Khan and another (2011) 4 SCC 275; and

ix). Shankar Lal Aggarwal Vs. Balram Luthra 2007 SCC Online Del 1894.

10. Mr Vishwas Kaushal, learned counsel for the respondent/accused, submitted that the complaint was filed by

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Kuldeep Chand in his own name and not in the name of Kuldeep Chand and Company. Only the Payee can file the complaint, and the complaint filed by Kuldeep Chand was not competent. The cheque was presented at Salapar, which is located within the territorial jurisdiction of District Mandi. Learned Trial Court had rightly held that the Court at Bilaspur had no territorial jurisdiction to hear and entertain the present complaint. There is no infirmity in the judgment passed by the learned Trial Court. Therefore, 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 ***Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373,*** that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

> **Scope of interference with an acquittal:**
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> **26.** At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the

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accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.

27. In ***Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808: 1973 SCC (Cri) 1048***, this Court explained the golden thread running through criminal jurisprudence in the following words:

> *"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of* State of Punjab *v.* Jagir Singh, *a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In*

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arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

28. The decision in ***Kali Ram*** (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not technical; it is a substantive safeguard flowing from the presumption of innocence.

29. In ***Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60***, this Court reiterated the limited scope of interference with acquittals. This Court observed:

"75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable."

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

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> **31.** In ***Chandrappa v. State of Karnataka (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325***, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.
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> **32.** The same principle was restated in ***Mrinal Das v. State of Tripura (2011) 9 SCC 479***, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.
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> **33.** Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

13. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act, the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with the same rigour cannot be applied to the cases under the Negotiable Instruments Act because there is a presumption that the holder had received the cheque for consideration to discharge the debt/liability. The Appellate Court

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is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed: -

> "**12.**... The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse, i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that the preponderance of probabilities is in favour of his defence, but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.
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> **13.** For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients

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> of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?"

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

15. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah,*** *2026 SCC OnLine SC 1485* as under:

> **5.3.** At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745; 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755.***
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> "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
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> (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person out of that account for the discharge of any debt or other liability;
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> (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour

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the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or because it exceeds the amount arranged to be paid from that account.

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v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

16. Learned Trial Court held that the cheque was presented at Salapar, which is located in the District Mandi. The Court at Bilaspur does not have jurisdiction in the matter, and the complaint can be filed before the Court situated at Sundernagar. This finding cannot be sustained. It was laid down by the Hon'ble Supreme Court in ***Nishant Aggarwal v. Kailash Kumar Sharma*, *(2013) 10 SCC 72: 2013 SCC OnLine SC 517***, that the Courts at the place where the payee is residing would have the jurisdiction to hear and entertain the complaint under Section 138 of the NI Act. It was observed at page 77:

> **24.** As observed earlier, we must note that in ***K. Bhaskaran (1999) 7 SCC 510: 1999 SCC (Cri) 1284,*** this Court has held that Section 178 of the Code has widened the scope of jurisdiction of a criminal court and Section 179 of the Code has stretched it to still a wider horizon. Further, for the sake of repetition, we reiterate that the judgment in ***Ishar***

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> ***Alloy (2001) 3 SCC 609: 2001 SCC (Cri) 582*** does not affect the ratio in ***K. Bhaskaran (1999) 7 SCC 510: 1999 SCC (Cri) 1284,*** which provides jurisdiction at the place of residence of the payer and the payee. We are satisfied that in the facts and circumstances and even on merits, the High Court rightly refused to exercise its extraordinary jurisdiction under Section 482 of the Code and dismissed the petition filed by the appellant-accused.

17. The Hon'ble Supreme Court subsequently held in ***Dashrath Rupsingh Rathod*** (supra) that the Court where the cheque was dishonoured would have the jurisdiction to hear and entertain the complaint. However, this judgment was made prospective, and it was held that it would apply only to the cases where the accused had not been summoned. It was observed:

> "**22.** We are quite alive to the magnitude of the impact that the present decision shall have on possibly lakhs of cases pending in various courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e. applicability to complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged respondent-accused who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a court devoid of jurisdiction, this recourse in its entirety does not commend itself to us. Consequent on considerable consideration, we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceed at that place. To clarify, regardless of whether evidence has been

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> led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is presently pending. All other complaints (obviously including those where the respondent-accused has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred."

18. Thus, the judgment in ***Dashrath Rupsingh Rathod*** (supra) will not apply to the present case, and the judgment in ***Nishant Aggarwal*** (supra) was applicable in the present case. Hence, the conclusion drawn by the learned Trial Court that the Court at Sundernagar and not the Court at Bilaspur will have the jurisdiction is not acceptable.

19. The cheque (Ext.C1/A) has been issued in the name of Kuldeep Chand and Company. The complaint was filed in the name of Kuldeep Chand without specifying how Kuldeep Chand was connected to Kuldeep Chand and Company. It was submitted that there is no distinction between the proprietorship and its

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owner. Therefore, the complaint in the name of Kuldeep Chand was valid. Reliance was placed upon the judgment of ***Shankar Lal Agarwal*** (supra). This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536: 2008 SCC OnLine SC 997***, that it is permissible to file a criminal complaint in the name of the proprietorship concern when it was a payee. It was observed at page 540: -

> **10.** As contrasted with a company incorporated under the Companies Act, 1956, which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law, where an individual carries on business in a name or style other than his name, he cannot sue in the trading name but must sue in his name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietorship concern. But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. *Section 142 requires that the complainant should be the payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself*.
>
> **11.**....Therefore, where the payee is a proprietary concern, the complaint can be filed: (*i*) by the proprietor of the proprietary concern, describing himself as the sole

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> proprietor of the "payee"; (*ii*) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (*iii*) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case, the complaint could have been validly filed by describing the complainant in any one of the following four methods:
>
> "Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"
>
> *or*
>
> "M/s Shankar Finance & Investments, a sole proprietorship concern represented by its proprietor, Atmakuri Shankara Rao"
>
> *or*
>
> "Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"
>
> *or*
>
> "M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney, holder Thamada Satyanarayana.
>
> What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

20. Hon'ble Supreme Court also held in ***Milind Shripad Chandurkar v. Kalim M. Khan*, *(2011) 4 SCC 275: 2011 SCC OnLine SC 429*** that where the payee is the company or sole proprietorship concern, the complaint can be filed by the payee or holder in due course. It was observed at page 279:

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"**21.** This Court in ***Shankar Finance and Investments v. State of A.P. [(2008) 8 SCC 536: (2008) 3 SCC (Cri) 558]*** dealt with the issue involved herein elaborately and held that (SCC p. 540, para 11) where the "payee" is a proprietary concern, the complaint can be filed:

> "(*i*) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the 'payee'; (*ii*) the proprietary concern, describing itself as the sole proprietary concern, represented by its sole proprietor; and (*iii*) the proprietor or the proprietary concern represented by the attorney-holder under the power of attorney executed by the sole proprietor."

However, it shall not be permissible for an attorney-holder to file the complaint in his own name as if he were the complainant. He can initiate criminal proceedings on behalf of the principal.

22. In a case of this nature, where the "payee" is a company or a sole proprietorship concern, such issue cannot be adjudicated upon taking any guidance from Section 142 of the 1881 Act, but the case shall be governed by the general law, i.e. the Companies Act, 1956 or by civil law where an individual carries on business in the name or style other than his own name. In such a situation, he can sue in his own name and not in the trading name, though others can sue him in the trading name. So far as Section 142 is concerned, a complaint shall be maintainable in the name of the "payee", proprietary concern itself or in the name of the proprietor of the said concern.

23. This Court, in the ***Shankar Finance case [(2008) 8 SCC 536: (2008) 3 SCC (Cri) 558],*** placing reliance on earlier judgments, particularly in ***Janki Vashdeo Bhojwani v. Indusind Bank Ltd. [(2005) 2 SCC 217],*** held that the general principles of company law or civil law would apply for maintaining the complaint under Section 138 of the 1881 Act.

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> **24.** In ***National Small Industries Corpn. Ltd. v. State (NCT of Delhi) [(2009) 1 SCC 407 : (2009) 1 SCC (Cri) 513]*** this Court held as under: (SCC p. 415, para 14)
>
> > "*14.* The term 'complainant' is not defined under the Code. Section 142 of the NI Act requires a complaint under Section 138 of that Act to be made by the payee (or by the holder in due course)."
>
> **25.** Thus, in view of the above, the law stands crystallised to the effect that a person can maintain a complaint provided he is either a "payee" or "holder in due course" of the cheque.

21. In the present case, the complainant has not filed the complaint in the name of the payee, namely Kuldeep Chand and the company; hence, the complaint was not maintainable. The judgment in ***Shankar Lal Aggarwal*** (supra) does not refer to the judgment of the Hon'ble Supreme Court in ***Shankar Finance*** (supra) and cannot be followed. Thus, the learned Trial Court had rightly held that the complaint was not maintainable.

22. The complainant admitted in his cross-examination that he had not produced any constitution of Kuldeep Chand and Company. He admitted that the cheque was issued in the name of Kuldeep Chand and Company, but the complaint was made by him in his own name. He admitted that the complaint nowhere mentions the name of Kuldeep Chand and Company. He

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volunteered to say that he is the owner of Kuldeep Chand and Company.

23. The complainant has not filed any document to support his statement that he is the owner of Kuldeep Chand and Company. 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

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> Vijaya Automobiles.... Till today, I have not produced any documentary evidence to support."

24. It was further 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."

25. It was held that the complaint can be filed by a payee or holder in due course, and when there was no evidence that the complainant was the proprietor, 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,

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Vijaya Automobiles. A mere statement in the affidavit in this regard is not sufficient to meet the requirement 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."

26. 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 did not have 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

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copy of the bill book to the court. In further cross-examination, he denied that he had any concern with M/s Devi Ram and Sons and 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 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."

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

> "**19.** Now, adverting 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.

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> **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. Vinkar Sahkari 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 and 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."

28. Therefore, the complaint filed by Kuldeep Chand, when the payee is Kuldeep Chand and Company, is not maintainable.

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29. The judgments in ***Rajiv Banga*** (supra), ***Harman Electronics*** (supra), ***K. Bhaskaran*** (supra), ***K Shri Ishar Alloy*** (supra) and ***Jai Balaji Industries*** (supra) deal with the jurisdiction, and it is not necessary to refer to them in view of the judgment of ***Nishant Aggarwal*** (supra). The judgment in ***D. Vinod Shivappa*** (supra) deals with the service of the notice, which is not relevant in the present case and will not help the appellant.

30. Therefore, the learned Trial Court had taken a reasonable view while holding that the complaint filed by Kuldeep Chand is not maintainable, and no interference is required with the reasonable view of the learned Trial Court, even if another view is possible.

31. No other point was urged.

32. In view of the above, the present appeal fails and is dismissed; so also the pending application(s), if any, stand disposed of.

33. 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 personal bond in the sum of ₹50,000/- with one surety of the like

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amount each 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

34. A copy of the judgment, along with the record of the learned Court below, be sent back forthwith.

(Rakesh Kainthla)
Judge

5th November, 2026
(Nikita)

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