



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MMO No.1109 of 2025
Reserved on:18.11.2025
Decided on : 11.12.2025**

M/s New JCO & another

....Petitioner

Versus

Utkarsh Sharma

....Respondent

Coram:-

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No

**For the petitioner : Mr. Ravinder Singh
Chandel, Advocate.**

For the respondent : Nemo.

Rakesh Kainthla, Judge:

The present petition has been filed for quashing of Criminal Complaint No. 327 of 2025 titled Utkarsh Sharma vs M/s New JCO and another, pending before the learned Additional Chief Judicial Magistrate, Theog (learned Trial Court) and also the order dated 05.08.2025 passed by the learned Trial Court for taking cognisance. (*The parties shall hereinafter be referred to in the same manner as they are arrayed before the learned Trial Court for convenience.*)

2. Briefly stated, the facts giving rise to the present complaint are that the complainant filed the complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused purchased an apple crop from the complainant worth ₹4,46,472/-. The accused issued a cheque bearing No.508284 dated 21.04.2025 for ₹4,46,472/-. The complainant presented the cheque to his bank, but it was dishonoured on 16.05.2025 with the remarks "insufficient funds". The complainant served a legal notice upon the accused on 13.06.2025. The accused failed to repay the amount; hence, the complaint was filed before the learned Trial Court to take action as per the law.

3. The learned Trial Court found sufficient reason to summon the accused vide order dated 05.08.2025.

4. Being aggrieved, the accused has filed the present petition for quashing the complaint and the consequential proceedings arising out of the complaint. It is asserted that the complainant had filed a complaint before the Agricultural Produce Market Committee (Shimla & Kinnaur), Dhalli Shimla-12, claiming therein an amount of ₹ 11,63,492/-. A meeting of the Committee was convened, and the matter was

compromised on 11.07.2025. The complainant withdrew the complaint, and the proceedings were closed. The complainant filed a complaint against the accused after misusing a blank security cheque. The accused has paid the entire amount, which was due to the complainant. The compromise was effected on 11.07.2025, and the complaint was presented on 26.07.2025, when there was no legally enforceable debt or liability. Hence, it was prayed that the present petition be allowed and the complaint and consequential proceedings be quashed.

5. Mr. R.S Chandel, learned counsel for the petitioner/accused, submitted that the accused had paid the money to the complainant before the institution of the complaint. The continuation of the proceedings amounts to an abuse of the process of the Court. He relied upon the judgments of the Hon'ble Supreme Court in ***Rekha Shard Ushir vs Saptashrungi Mahila Nagari Sahkari Patsansta Ltd 2025:INSC:399*** in support of his submission.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The law relating to quashing of FIR was explained by the Hon'ble Supreme Court in ***B.N. John v. State of U.P., 2025 SCC OnLine SC 7*** as under: -

"7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in ***State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335***, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not*

prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable based on which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings, and/or where there is a specific provision in the Code or the concerned Act, providing efficacious*

redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge." (*emphasis added*)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1), it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed."

8. This position was reiterated in ***Ajay Malik v. State of Uttarakhand, 2025 SCC OnLine SC 185***, wherein it was

observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : **(i)** the criminal complaint has been filed with *mala fides*; **(ii)** the FIR represents an abuse of the legal process; **(iii)** no *prima facie* offence is made out; **(iv)** the dispute is civil in nature; **(v.)** the complaint contains vague and omnibus allegations; and **(vi)** the parties are willing to settle and compound the dispute amicably (***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***)

9. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

10. It was submitted that the cheque was issued as security, and the accused is not liable. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in

Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458

that issuing a cheque toward security will also attract the liability for the commission of an offence punishable under Section 138 of N.I. Act. It was observed: -

“10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression “for the discharge of any debt or other liability” occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for “discharge of debt or liability” depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*

11. Reference to the facts of the present case clearly shows that though the word “security” is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in ***Indus Airways (supra)*** is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for the discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of ***Indus Airways (supra)***, where the purchase order had been cancelled, and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for the discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature where the cheque was for repayment of a loan instalment which had fallen due, though such a deposit of cheques towards repayment of instalments was also described as “security” in the loan agreement. In applying the judgment in *Indus Airways (supra)*, one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of an existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is

the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court.” (Emphasis supplied)

11. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under Section 138 of the NI Act can be filed on its dishonour. It was observed:

“17. A cheque issued as security pursuant to a financial transaction cannot be considered 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 the 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 a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”

12. Therefore, the fact that the cheque was issued as security is not sufficient to quash the complaint.

13. It was submitted that the accused has paid the amount to the complainant on 11.07.2025, and he is not liable for the commission of any offence. This submission is not acceptable. Para 4 of the complaint mentions that notice of demand was sent on 10.06.2025 and was served on 13.06.2025. Thus, the accused could have paid the money till 28.06.2025. Any amount paid after 28.06.2025 will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631***, that any payment made after the cause of action had arisen would not wipe out the offence. It was observed:-

7. So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fides, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of the deposit of money in the court or that an order of quashing of a criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In

this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence.

14. No advantage can be derived from the payment made on 11.07.2025.

15. It was laid down by the Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi), 2022 SCC OnLine SC 513*** that the Courts should not extinguish the complaint before the commencement of the trial. It was observed:

"16. 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 defence without having to adduce any evidence needs to be of an unimpeachable quality, to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial 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 favour of the complainant/prosecution, as

the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. 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, the scuttling of the criminal process is not merited.”

16. The judgment in ***Rekha Sharad Ushir*** (supra) does not deal with the payment after the cause of action had arisen and will not help the petitioner/accused.

17. No other point urged.

18. Hence, the present petition fails, and it is dismissed.

19. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the case's merits.

(Rakesh Kainthla)
Judge

11_December, 2025.
(meera)