

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No. 27 of 2021**

**Decided on: 30.12.2022**

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Sarita Rana

... Petitioner

Versus

New Nanda Jewellers

... Respondent

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**Coram**

**The Hon'ble Mr. Justice Ajay Mohan Goel, Judge**

***Whether approved for reporting?<sup>1</sup>***

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For the petitioner : Mr. Sunil Kumar, Advocate.

For the respondent : M/s Aditya Sood and Praveen  
Sharma, Advocates.

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***Ajay Mohan Goel, Judge (Oral)***

By way of this petition filed under Section 397 of the Code of Criminal Procedure, the petitioner has challenged the judgment passed against him by the Court of learned Additional Chief Judicial Magistrate, Palampur, District Kangra, H.P., in Criminal Case No. 104-III of 2016, titled as New India Jewellers

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vs. Smt. Sarita Rana, dated 21.07.2018, in terms whereof, the petitioner was convicted for commission of an offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of six months and also to pay compensation to the tune of Rs.3,50,000/- (Rs. Three Lac Fifty Thousand only) to the complainant, as also the judgment passed by the Court of learned Additional Sessions-III, Kangra at Dharamshala, District Kangra, H.P. in Criminal Appeal No. 30-P/X/2018, titled as Smt. Sarita Rana vs. New Nanda Jewellers, dated 28.02.2020, in terms whereof, the appeal preferred by the present petitioner against the judgment passed by the learned Trial Court was dismissed.

2. Brief facts necessary for the adjudication of the present petition are that the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner/accused *inter alia* on the grounds that the complainant was running the business of gold, silver and diamond jewellery, under the name and style of New Nanda Jewellers at Grand Plaza Palampur and the accused. on 11.02.2016, had purchased gold ornaments from the shop of the complainant worth Rs.2,76,287/-. To liquidate her legal and

enforceable liability, she issued a cheque bearing No. 762705, dated 16.02.2016, in the sum of Rs. 2,76,287/-, drawn at State Bank of India (ADB), Palampur, in favour of the complainant. When the cheque was presented for its encashment, the same was dishonoured by the banker of the accused vide memo dated 05.03.2016, assigning the reason “not arranged for”. Thereafter, a legal notice was issued by the complainant to the accused, calling upon the accused to make good the payment of the cheque amount, but as the complainant failed to do so, hence the complaint.

3. As already mentioned hereinabove, in terms of the judgment passed by the learned Trial Court, the petitioner has been convicted for commission of offence punishable under Section 138 of the Negotiable Instruments Act and she has been sentenced to undergo simple imprisonment for a period of six months and has been further directed to pay compensation of Rs. 3,50,000/- to the complainant. This judgment passed by the learned Trial Court has been affirmed by the learned Appellate Court.

4. I have heard learned Counsel for the parties and also carefully gone through the judgment passed by the learned Courts below.

5. A perusal of the judgment passed by the learned Trial Court demonstrates that it took note of the fact that the complainant duly proved before it the factum of the cheque, having been issued by the accused to discharge her legal liability and said cheque, having been dishonoured upon its presentation by the bank concerned. Learned Trial Court has also taken note of the fact that thereafter despite a legal notice having been issued by the complainant to the accused, the amount was not made good by the accused. Learned Court took note of the fact that the accused had not disputed her signatures on the cheque in question and that her liability also stood proved from the statement of the complainant and bill Ext. CW2/F. Learned Court also held that in these circumstances, the accused had failed to rebut the presumption attached in terms of the provisions of the Negotiable Instruments Act and the contention of the accused that the cheque was given as a security was of no help to her as it stood borne out from the record of the case that the accused was owing a liability to the complainant, in lieu whereof the cheque was issued.

6. In appeal, these findings have been affirmed by the learned Appellate Court after assessing the judgment passed by

learned Trial Court as also the evidence on record. Learned Appellate Court took into consideration the statement of the complainant as also the documents exhibited by the complainant to substantiate its case. Learned Appellate Court also took note of the fact that a perusal of the cross examination of CW2, who happened to be the proprietor of the complainant-firm, demonstrated that the accused had not cross examined the complainant with regard to the assertion of the complainant that on 11.02.2016 the accused had purchased gold ornaments for an amount of Rs. 2,76,287/- from the complainant-firm and in discharge of said liability, the cheque was issued.

7. During the course of his arguments, learned Counsel for the petitioner could not demonstrate that the findings which were returned by learned Trial Court, as affirmed by learned Appellate Court, were perverse findings and were not borne out from the record of the case. In fact, it stands proved from the record of the case that in order to prove its case, the proprietor of the complainant-firm entered into the witness box and it also examined one Shri Arjun Singh Dogra, Manager of State Bank of India, who stated before the Court that the cheque in issue was presented to the Bank for clearance but was dishonoured as the account of the accused was not having sufficient balance.

The complainant also proved on record the cheque issued by the accused as also the memo of its dishonour. The complainant also duly proved the issuance of statutory legal notice as well as the postal receipt thereof and acknowledgment. Photocopy of the bill in terms whereof the ornaments were sold to the accused was also duly proved on record. On the other hand, no evidence was led by the accused to substantiate her contention that the cheque was issued as security. Further, as it is borne out from the record that the factum of the cheque bearing her signatures has not been denied by the accused, therefore, but natural, the presumption attached under Section 139 of the Negotiable Instruments Act comes into play and therefore also, the findings of conviction returned by learned Trial Court as affirmed by learned Appellate Court call for no interference.

Accordingly, in view of above discussion, as this Court does not find any merit in the present petition, the same is accordingly dismissed. Pending miscellaneous, application, if any also stands disposed of.

December 30, 2022  
(*narender*)

**(Ajay Mohan Goel)**  
**Judge**