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# No Proprietorship, No Payee: High Court Clarifies Locus Standi for Section 138 NI Act Complaints

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**PUBLISHED** 17 July 2025

## Introduction

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The Himachal Pradesh High Court's decision in *Shirgul Filling Station v. Kamal Sharma* (Case No. Cr. Appeal No. 262 of 2010), is a crucial reminder of the stringent procedural mandates in cheque dishonour cases under Section 138 of the [NI Act, 1881](#). This judgment ultimately upheld the dismissal of a complaint filed by a sole proprietorship, primarily due to the complainant's failure to adequately prove its proprietorship and the legal standing of the person initiating the proceedings. The High Court's affirmation of the trial court's dismissal of the complaint underscores the principle that merely being involved in the business is insufficient; proper legal standing is indispensable.

## Background & Facts

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- The dispute originated from a complaint filed by Shirgul Filling Station, a fuel station located at Sanora in Tehsil Rajgarh. The complainant, represented by Ankur Aggarwal, who claimed to be the manager of the fuel station, alleged that Kamal Sharma, a registered government contractor with the Himachal Pradesh Public Works Department (HPPWD), owed a sum of ₹5,00,000 for petroleum products supplied on credit. To discharge this liability, Kamal Sharma issued a cheque for ₹5,00,000 drawn on UCo Bank Branch Rajgarh.
- Upon presentation, the cheque was dishonoured with the endorsement "insufficient funds." Subsequently, Shirgul Filling Station sent a legal notice to Kamal Sharma, demanding payment within 15 days. The notice was returned with the endorsement "refused," leading to the presumption of service. Following this, a complaint under Section 138 of the NI Act was filed before the Judicial Magistrate, First Class, Rajgarh.
- During the trial, Ankur Aggarwal testified, along with other witnesses. The accused, Kamal Sharma, in his statement under Section 313 of the Cr. P.C., denied the allegations, claimed innocence, and stated that he had not received any notice. He chose not to adduce any defence evidence.
- The core issue that emerged during the trial was the locus standi of Ankur Aggarwal to file the complaint. While Ankur Aggarwal claimed to be the manager, the cheque was issued in the name of "Shirgul Filling Station," which was stated to be owned by Shivani Gupta. Ankur Aggarwal relied on an authority letter to establish his right to file the complaint. However, this authority letter was issued after the issuance of the notice and the filing of the complaint.

## Legal Issue

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- **Core Question:** Can a complaint under Section 138 be maintained by someone other than the proprietor when only a post-hoc letter of authority is presented, and no proof of actual proprietorship exists?
- **Legal Threshold:** Section 138 permits only the "payee or holder in due course" to sue. For proprietorship cases, the proprietor must personally lodge the complaint, or an agent with authority granted before the notice/complaint may do so.

## Legal Findings:

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### Trial Court Findings:

The learned Trial Court carefully examined the evidence and found that:

- 1. Lack of Proof of Proprietorship:** There was no conclusive proof presented by the complainant to establish that Shivani Gupta was indeed the proprietor of Shirgul Filling Station. This was a critical gap, as a sole proprietorship is not a separate legal entity from its proprietor.
- 2. Insufficient Authority to File Complaint:** The authority letter provided by Ankur Aggarwal was found to be issued post-facto, i.e., after the legal notice was sent and the complaint was already filed. The Trial Court held that such a retrospective authorization could not validate a complaint filed by an individual who did not possess the requisite authority at the time of filing. The court also observed that the authority letter could not be construed as a general or special power of attorney, which would typically be required for such legal actions.
- 3. Complainant Not the Payee:** Since the cheque was issued in the name of Shirgul Filling Station and not directly to Ankur Aggarwal, and without proper proof of proprietorship, Ankur Aggarwal could not be considered the "payee" in terms of Section 138 of the NI Act. The Act specifically states that a complaint can be made by the "payee or, as the case may be, the holder in

due course.”

Based on these findings, the Trial Court dismissed the complaint. Aggrieved by the dismissal, Shirgul Filling Station (through Ankur Aggarwal) filed a criminal appeal before the Himachal Pradesh High Court.

### High Court Findings:

The High Court later, upheld the findings of the Trial Court, concurring with its reasoning. The court emphasized that:

- For a complaint under Section 138 of the NI Act to be maintainable by a sole proprietorship firm, the complainant must either be the proprietor themselves or an individual duly authorized by a valid power of attorney or resolution.
- The mere assertion of being a “manager” or possessing a post-facto authority letter does not suffice to establish the legal standing required to initiate criminal proceedings for cheque dishonour.
- The identity of the payee and the proper authorization to act on their behalf are fundamental jurisdictional prerequisites for a Section 138 complaint.

### Outcome:

The Himachal Pradesh High Court dismissed the criminal appeal, thereby upholding the acquittal of Kamal Sharma. The judgment affirmed the decision of the Judicial Magistrate, First Class, Rajgarh. This outcome means that the criminal proceedings against Kamal Sharma for cheque dishonour were definitively terminated due to the procedural deficiencies in the complaint filed by Shirgul Filling Station.

### Conclusion

The case of Shirgul Filling Station v. Kamal Sharma is a significant precedent concerning the legal requirements for filing complaints under Section 138 of the Negotiable Instruments Act, particularly when dealing with sole proprietorship entities. The Himachal Pradesh High Court’s decision underscores the following critical points:

- 1. Strict Adherence to Procedural Law:** The case highlights the importance of scrupulous adherence to procedural requirements in legal proceedings, especially in criminal matters. Even if the factual matrix of a debt might exist, a failure to meet the statutory prerequisites for initiating the complaint can lead to its dismissal.
- 2. Proof of Locus Standi:** It is imperative for the complainant to clearly establish their locus standi. In the context of a sole proprietorship, this means demonstrating either personal proprietorship or a valid, legally recognized authorization (such as a power of attorney) to act on behalf of the proprietor. A mere oral claim or a belated authorization will not be accepted.
- 3. Timeliness of Authorization:** Any authorization to file a complaint must exist prior to or at the time of filing the complaint and sending the legal notice. A post-facto authorization cannot cure a defect that existed at the inception of the legal process.
- 4. Protecting Accused Rights:** The judgment also indirectly protects the rights of the accused by ensuring that they are not subjected to legal proceedings initiated by individuals who lack proper legal standing. This prevents frivolous or unauthorized complaints.

The ruling in Shirgul Filling Station v. Kamal Sharma is a valuable reminder to all litigants, particularly those representing sole proprietorships, to ensure that their legal representatives are duly authorized and that all procedural formalities are carefully observed before beginning an action under Section 138 of the NI Act. Failure to do so, as seen in this case, can prove fatal to the complaint, irrespective of the merits of the underlying financial dispute.

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