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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010140482026**

\+ CRL.REV.P.(NI) 108/2026, CRL.M.(BAIL) 713/2026

RAMESH PRASAD .....Petitioner

Through: *Appearance not given.*

versus

TAPAN SAMANTA .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 22.09.2026

CRL.M.A. 10665/2026 (*delay in filing revision petition*)

1. For the reasons stated in the application, the same is allowed and the delay of 21 days in filing the revision petition is condoned.

2. The application stands disposed of.

CRL.REV.P.(NI) 108/2026

3. The Petitioner challenges the judgment dated 20th November, 2025, passed by the Additional Sessions Judge in Criminal Appeal No. 45/2025, which affirmed his conviction under Section 138 of the Negotiable Instruments Act, 1881 ["NI Act"]. The Trial Court had convicted him by judgment dated 7th January, 2025. By a separate order dated 30th January, 2025, it directed him to pay the Respondent a compensation of INR 1,50,000/-, being the cheque amount, together with simple interest at 9% per annum from the date of filing of the complaint until the date of judgment, in

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terms of Section 395(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"]. In default of payment of compensation, he was to directed to undergo simple imprisonment for three months.

4. The Respondent's case is that, in August 2019, he advanced INR 1,50,000/- to the Petitioner as a friendly loan. When the amount remained unpaid, the Petitioner issued cheque No. 333195 dated 22nd October, 2019 towards discharge of the said liability. The cheque was returned unpaid on 24th October, 2019 for insufficiency of funds. The amount remained unpaid despite the statutory notice, following which the Respondent instituted a complaint under Section 138 of the NI Act.

5. The Petitioner denies the loan. His explanation is that the cheque had been handed over much earlier, in April 2019, for purchase of gold from the Respondent. According to him, the Respondent subsequently did not supply the gold due to an increase in its price, but did not return the cheque despite his requests and eventually presented it in October 2019.

6. Both Courts below have rejected that explanation. The Petitioner now relies principally upon the sequence in which cheques from the same cheque book were used, the banking record for the relevant period, the absence of any document evidencing the friendly loan, and the Respondent's financial capacity. He submits that these circumstances were sufficient to rebut the presumptions under Sections 118 and 139 of the NI Act.

7. There are concurrent findings against the Petitioner. Revisional jurisdiction, however, cannot be equated with appellate jurisdiction or treated as a second appellate jurisdiction. Ordinarily, this Court would not reappreciate the evidence and arrive at its own conclusion where the evidence has already been appreciated by the Trial Court and the Appellate

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Court, unless a glaring feature is brought to its notice which would otherwise amount to gross miscarriage of justice. This principle was reiterated in ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***[1]. In ***P. Rasiya v. Abdul Nazer & Anr.***[2], the Supreme Court applied the same principle in a prosecution under Section 138 of the NI Act. Noting that the High Court was exercising revisional jurisdiction on concurrent findings of fact, the Court, emphasising the statutory presumption under Section 139, restored the conviction which had been set aside by the High Court in revision.

8. The evidence must be assessed against a foundational fact which is not in dispute. The Petitioner acknowledges that the cheque belongs to him, bears his signature, and was handed over by him to the Respondent. His defence, disclosed at the stage of notice under Section 251 of the Code of Criminal Procedure, 1973 ["CrPC"], is confined to the purpose for which it was issued: according to him, the cheque was given towards the purchase of gold and not in repayment of a loan. The cheque and the return memo were also admitted during admission and denial of documents.

9. The Petitioner's testimony as DW-1 further clarifies the nature of this admission. He accepted that, although the cheque was undated when delivered, he had signed it and filled in the amount both in words and figures. The Petitioner therefore does not dispute having issued and handed over the cheque to the Respondent. The dispute is confined to the transaction for which it was issued.

10. These admitted facts attract the presumptions under Sections 118(a)

[1] (1999) 2 SCC 452.
[2] 2022 SCC OnLine SC 1131.

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and 139 of the NI Act. The cheque is presumed to have been issued for consideration and in discharge of a debt or other liability. As explained in ***Basalingappa v. Mudibasappa***[3], the presumptions are rebuttable and the onus is on the accused to raise a probable defence. The standard for rebutting the presumptions is that of preponderance of probabilities. The accused may rely upon the evidence led by him or the material brought on record by the complainant. The inference may also be drawn from the circumstances emerging from the record. It is not necessary for the accused to enter the witness box in support of his defence.

11. The Petitioner's account of a proposed gold purchase must be examined on that footing. He was not required to establish it beyond reasonable doubt; it was enough to make that account reasonably probable. Yet the explanation finds little support in the record. According to him, he handed over a cheque for INR 1,50,000/- in April 2019 before any gold was supplied; the transaction later fell through when the Respondent sought a higher price; and the Respondent nevertheless retained the cheque despite repeated demands for its return. There is no communication, correspondence or other contemporaneous material on record supporting such a transaction. The Petitioner also accepted that there was neither an invoice nor a receipt, and no independent witness supported his version.

12. His conduct after the transaction allegedly collapsed is still more difficult to reconcile with that version. On his own showing, by the end of April 2019 the Respondent held his signed cheque for INR 1,50,000/- although no liability remained. Even so, the Petitioner made no communication or complaint seeking its return. When presented nearly six

[3] (2019) 5 SCC 418.

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months later, the cheque was dishonoured for insufficiency of funds. None of these circumstances is decisive in isolation. Taken together, however, they materially diminish the probability of the defence.

13. The Petitioner seeks to explain the circumstances by relying upon the sequence of the cheque book. He points out that cheques from the same series were used between February and May 2019, whereas another cheque book was operated thereafter. From this, he asks the Court to infer that cheque No. 333195 must likewise have been issued in April 2019.

14. That inference does not follow from the evidence. In his cross-examination, the Petitioner himself acknowledged that cheques need not be presented in the order in which they are issued and may be presented by their payees at a later date. The cheque-book transaction sheet [Ex. DW-1/B] carries the matter no further. The surrounding entries may show that cheques from the same series were being used during the relevant period, but they do not establish when cheque No. 333195 was delivered to the Respondent or the purpose for which it was delivered. The banking record [Ex. DW-1/A] also does not bridge this evidentiary gap. At most, it records when other cheques from the series were presented or encashed. It cannot establish when cheque No. 333195 was delivered to its payee, much less the transaction for which it was issued. The sequence of the cheque book therefore yields neither the asserted date of delivery nor the asserted purpose. The Petitioner's argument places upon that evidence a weight it cannot reasonably bear.

15. The challenge to the Respondent's financial capacity must nevertheless be addressed. The Courts below treated the challenge to the Respondent's financial capacity as having not been specifically raised. In

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cross-examination, however, the Respondent was indeed questioned about both his earnings and the source of the loan. He stated that he earned approximately INR 1,000/- to INR 1,200/- per day from jewellery-related work, had withdrawn INR 1,00,000/- from two bank accounts, and had arranged the balance INR 50,000/- from his savings. He also acknowledged that the transaction was not recorded in any receipt, promissory note or loan agreement, and was not disclosed in his income-tax return.

16. These circumstances must, however, be considered in light of the governing principles. ***Tedhi Singh v. Narayan Dass Mahant***[4] clarifies the approach. A complainant need not, in the first instance, establish his financial capacity. The accused may, however, put that capacity in issue through independent material, the complainant's own evidence, or questions advanced in cross-examination. Ultimately, the Court must consider the totality of the evidence and determine whether the accused has established a probable defence.

17. *Basalingappa* must also be understood in its own evidentiary setting. The complainant there, a retired employee with disclosed retirement benefits of about INR 8,00,000/-, claimed to have entered into transactions aggregating nearly INR 18,00,000/-, including the disputed loan therein of INR 6,00,000/-. He was inconsistent as to when the loan was advanced and offered no satisfactory explanation of his capacity to fund transactions of that scale. Those circumstances, taken together, were sufficient to raise a probable defence. Those circumstances, taken together, were sufficient to raise a probable defence.

18. The present record is materially different. The amount involved is

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INR 1,50,000/-, and the Respondent gave a specific account of its source: INR 1,00,000/- withdrawn from two bank accounts and the balance drawn from his savings. Unlike in *Basalingappa*, cross-examination yielded nothing that rendered this explanation improbable. The absence of a written instrument and the non-disclosure of the loan in the ITR remain relevant, but, viewed in the context of the entire evidence, they do not suffice to displace the statutory presumptions.

19. The Petitioner's own account is also not entirely consistent. At the stage of notice under Section 251 CrPC, he stated that he had not filled in the body of the cheque. He repeated this position in his statement under Section 313 CrPC. Yet, when examined as DW-1, he accepted that he had filled in the amount in words and figures. This inconsistency further weakens the explanation offered to displace the statutory presumptions.

20. The Appellate Court did not deal expressly with the cheque-series argument. Nonetheless, this Court has examined the material relied upon by the Petitioner and, for the reasons already discussed, finds that the omission to expressly deal with the same does not render the concurrent findings perverse or legally unsustainable. Nor does the challenge to the Respondent's financial capacity, viewed with the other circumstances, raise a probable defence. Within the limited compass of revisional jurisdiction, there is therefore no ground to disturb the concurrent finding that the presumptions under Sections 118(a) and 139 remained unrebutted. The conviction under Section 138 of the NI Act is affirmed.

21. The order on sentence, however, requires correction. The Trial Court expressly declined to impose imprisonment or fine, yet directed the

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[4] (2022) 6 SCC 735.

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Petitioner to pay INR 1,50,000/-, together with interest at 9% per annum, as compensation in terms of Section 395(3) of the BNSS. In ***Dineshchand Surana v. UCO Bank***[5]**,** the Supreme Court has clarified that a Court exercising jurisdiction under Section 138 of the NI Act has no power to award compensation under Section 357(3) of the CrPC or the corresponding Section 395(3) of the BNSS. The power to impose a fine flows from Section 138 of the NI Act, while compensation may be directed under Section 395(1) of the BNSS out of the fine so imposed. The two operate in distinct stages: the Court must first determine and impose the fine and may thereafter direct that the whole or part of the amount realised from the fine be paid to the complainant as compensation.

22. The defect can be corrected in revision. Section 442(1) of the BNSS enables this Court to exercise the powers of an appellate court under Section 427. Section 427(b)(iii) permits alteration of the nature or extent, or the nature and extent, of the sentence, but not so as to enhance the same. The correction must, therefore, not place the Petitioner in a worse position than the sentence imposed by the Trial Court. This principle is also consistent with ***Sachin v. State of Maharashtra***[6], wherein the Supreme Court held that, in an appeal filed by the accused against his conviction and sentence, the accused cannot be placed in a worse position by enhancing the sentence. The High Court cannot, in the absence of an appeal or revision by the State, complainant or victim seeking enhancement, exercise revisional jurisdiction to enhance the sentence while maintaining the conviction.

23. The illegality can, thus, be cured without increasing either the

[5] 2026 SCC OnLine SC 987.
[6] (2025) 9 SCC 507.

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monetary or custodial burden already imposed. The Trial Court's decision not to award substantive imprisonment calls for no interference, particularly having regard to the Petitioner's age. The direction in terms of Section 395(3) BNSS is accordingly set aside and, in its place, the Petitioner is sentenced under Section 138 of the NI Act to pay a fine of INR 1,50,000/-, together with simple interest at 9% per annum thereon from the date of filing of the complaint until the date of the judgment passed by the Trial Court. Upon realisation, the entire fine shall be paid to the Respondent as compensation. In default of payment, the Petitioner shall undergo simple imprisonment for three months.

24. The revision petition is, accordingly, disposed of, subject only to the modification of sentence set out above. The judgment of conviction dated 7th January, 2025 and the appellate judgment dated 20th November, 2025 are otherwise affirmed.

25. The pending application(s) also stand disposed of.

SANJEEV NARULA, J

SEPTEMBER 22, 2026
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