**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

130 **CRM-M-36150-2025 (O&M)**
Date of decision: 08.08.2025

Gagandeep Singh Swani **...Petitioner**

Versus

Karan Kwatra **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manish Jain, Advocate
for the petitioner.

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<u>MANISHA BATRA, J.</u> *<u>(Oral)</u>*

1. The instant petition has been filed under Section 528 of of Bharatiya Nagarik Suraksha Sanhita, 2023 *(for short 'BNSS')* seeking quashing of Criminal Complaint bearing No. COMA/7138/2020, titled as ***Karan Kwatra vs. M/s Swani Motor Services Pvt. Ltd. and others***, filed under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act'),* order dated 10.02.2021 passed in the aforesaid complaint, thereby summoning the present petitioner as an accused to face trial for commission of aforementioned offence and also for quashing of order dated 29.05.2025, whereby an application filed by the petitioner for calling upon the jurisdictional Income Tax Department to verify the cash transaction, on the basis of which, cheque in question was alleged to be issued, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of

the present petition are that the aforementioned complaint has been filed by the respondent/complainant on the allegations that in order to discharge his legally enforceable liability, the petitioner, who is Director of M/s Swani Motor Services Pvt. Ltd. *(for short 'company')*, and the company had issued a cheque for a sum of Rs.25 Lakhs in favour of the respondent/complainant and the same had been dishonoured, and that the petitioner and the company failed to pay the amount of the cheque in question, despite issuance of notice. Vide order dated 10.02.2021, the petitioner was ordered to be summoned as accused.

3. The petitioner has sought quashing of complaint as well as summoning order mainly on the ground that it was premature. It is submitted by learned counsel for the petitioner that since vide judgment dated 10.01.2022 passed by Hon'ble Supreme Court in Suo Moto Writ (C) No. 3 of 2020, the period prescribed under proviso (b) and (c) of Section 138 of the N. I. Act was excluded during the period from 15.03.2020 till 28.02.2022, therefore, the period of limitation to make payment of the cheque in question was supposed to expire on 28.05.2022 and complaint could be filed thereafter only but since it was filed much before that, hence, the complaint as well as summoning order were not sustainable.

4. The aforesaid contention raised by learned counsel for the petitioner, however, does not appear to be tenable at all. The cheque in question had been dishonoured on 10.07.2020 and notice had been issued by the respondent/complainant on 17.07.2020. A perusal of the record reveals that the petitioner had sent reply thereto on 28.07.2020 and since he failed to

make payment of the amount of in cheque in question even after filing reply, therefore, the complaint was filed by the respondent on 17.08.2020. The aforesaid judgment dated 10.01.2022, passed by the Hon'ble Supreme Court, has prospective operation and is obviously not applicable to the facts of the present case. As such, the plea that the complaint is premature does not deserve to be accepted.

5. The petitioner has then challenged the order dated 29.05.2025, passed by the learned trial Court, whereby an application moved by him for reporting the factum of transaction of the amount more than Rs. 2 Lakhs to the jurisdictional Income Tax Department, had been dismissed. The plea as set up by the petitioner is that respondent No. 2/complainant has alleged that he had given a sum of Rs. 25 Lakhs in cash to the petitioner and the latter had issued a cheque in lieu thereof to dishcarge his legally enforceable debt and the said cheque had been dishonoured. It is argued by learned counsel for the petitioner that since the transaction of Rs. 25 Lakhs was alleged to have been done in cash, as such, it was incumbent upon the learned trial Court to give intimation of this fact to the jurisdictional Income Tax Department. To fortify his argument, learned counsel has relied upon authority cited as ***RBANMS Educational Institution vs. B Gunashekar, 2025 SCC Online SC 793.***

6. Before delving on the contention as raised by learned counsel for the petitioner, it will be appropriate to refer to the relevant provisions of the Income Tax Act, 1961 *(for short 'I. T. Act').* Chapter XXB of the I. T. Act provides the mode of acceptance, payment or repayment in certain cases to

counteract evasion of tax. Section 269 SS mandates that no person, after the cut off date shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or an account payee bank draft if the amount is more than Rs.20,000/-. Breach of Section 269 SS of the I. T. Act provides penalty to which a person would be subjected to under Section 271D.

7. Now the question that arises for consideration before this Court is that as to whether it was mandatory for the learned trial Court to given information, as sought by the petitioner, to the jurisdictional Income Tax authorities. In ***RBANMS***'s case (supra), the Hon'ble Supreme Court had issued certain directions, which are reproduced as under :

> (A) Whenever, a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269 ST of the Income Tax Act, if any,
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> (B) Whenever, any such information is received either from the court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,
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> (C) Whenever, a sum of Rs. 2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,

> (D) Whenever, it comes to the knowledge of any Income Tax Authority that a sum of Rs. 2,00,000/- or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the Chief Secretary of the State/UT for initiating appropriate disciplinary action against such officer who failed to intimate the transactions.

8. It is clear from a bare reading of the above that it is only in case of suit filed with a claim of Rs. 2 Lakhs or above by cash towards any transaction that the Courts are required to intimate the concerned Income Tax authorities to verify the transaction. However, so far as the instant case is concerned, the well settled proposition of law is that the prosecution under Section 138 of the N. I. Act cannot be stalled due to violation of the provisions of Section 269 of the I. T. Act. Reliance in this context can be placed upon the observations made by the High Court of Karnataka in ***Dr. M. Krishna Shetty Vs. Sri. H.R.Nagabhushan***, decided on 29.08.2018, wherein it was observed so and it was further held cash transaction in violation of section 269 SS of I. T. Tax Act might give rise to an independent criminal offence, but on account of violation of the said provision, the prosecution of the petitioner for the alleged dishonour of cheque under Section 138 of N. I. Act does not become bad in law. Similar observations were made by the High Court of Delhi in as ***Dilip Chawla v. Ravinder Kumar and Ors., 2017(3) DCR 358.*** Reference can also be made to ***Uttam Ram Vs. Devinder Singh Hudan 2019(4) CCC 596 (SC)***, wherein it was

observed by Hon'ble Supreme Court that in case of dishonour of cheque, debt is not to be proved as in a civil suit. A defence was taken by the accused in that case that cheque book was lost and the cheque was not issued in discharge of any liability. Hon'ble Supreme Court held that the dishonour of a cheuqe carried a statutory presumption of consideration and the holder of the cheque in due course was only required to prove that the cheque was issued by the accused and it was dishonoured. The burden was upon the accused to rebut that presumption. In ***C. N. Dinesha Vs. Smt. C.G.Mallika, 2017 Cr.R 530***, it was held by the High Court of Karnataka that the culpability of offence under Section 138 of the N. I. Act will not freeze for the reason of violation of section 269 of I. T. Act and nothing prevents operation of statutory presumption.

9. It is also well established that the complainant of a complaint filed under Section 138 of the N. I. Act is not obliged to prove loan or financial capacity. Once a cheque is issued in favour of such person by the accused and the same is dishonoured, a presumption under Section 139 of the N. I. Act arises in favour of the complainant and then the entire burden shifts to accused to rebut that presumption. For that purpose, he can lead evidence to probablize his defence. In the instant case, though it is not clearly mentioned in the application filed by the petitioner before the learned trial Court but it can be made out that he wanted the Court to intimate the jurisdictional Income Tax Department to verify the cash transaction in question to show that the respondent did not have financial capacity. The petitioner has, however, not denied the issuance of the cheque in question by

him in the capacity of Director/authorized signatory of his company. The respondent might not have disclosed as to from where the amount of Rs. 25 Lakhs had been arranged by him for the purpose of giving the same to the petitioner/his company, however, while filing a complaint under Section 138 of the N. I. Act, the respondent is not obliged to prove the loan or his financial capacity and it is for the accused to rebut the presumption under Section 139 of the N. I. Act. More so, the directions given by Hon'ble Supreme Court in ***RBANM***'s case (supra) are confined to a suit claiming transaction of Rs. 2 Lakhs and above and not to a complaint filed under Section 138 of the N. I. Act. It is also worth mentioning that the learned trial Court, while passing the impugned order, has observed that if it comes to the conclusion that there is any violation of Section 269 ST of the I. T. Act during trial, it would nonetheless abide by the dictum of law. In view of the discussion as made above, no ground has been made for allowing the present petition. Accordingly, the same is dismissed.

[MANISHA BATRA]
JUDGE

08.08.2025
Waseem Ansari

1. Whether speaking/ reasoned : Yes/No

2. Whether reportable : Yes/No