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

% ***Reserved on: 3rd March, 2025***
Pronounced on: 10th March, 2025

\+ **<u>CRL.M.C. 1140/2021</u>**

NITESH YADAV .....Petitioner
Through: Mr. Shafiq Khan, Advocate

Versus

STATE NCT OF DELHI & ANR. .....Respondents
Through: Mr. Ajay Vikram Singh, Additional Public Prosecutor for Respondent-State
Mr. Rajpal Singh & Mr. Rohit Kumar, Advocates for Respondent No.2

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>J U D G M E N T</u>

<u>NEENA BANSAL KRISHNA, J.</u>

1. The Criminal Misc. (Main) Petition under Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' *hereinafter*) read with Article 227 of the Constitution of India has been filed seeking setting aside of Order dated 17.02.2021 of the learned Additional Sessions Judge in Crl. Revision Petition No. 260/2018, set aside the Order dated 24.09.2019 of learned Metropolitan Magistrate directing summoning of Respondent No.2 – Sonu Rana, and discharged him in theComplaint under Section 138 of the *Negotiable Instruments Act, 1881 (henceforth referred to as the 'NI Act')*

2. Briefly stated, the Complainant, *Nitesh Yadav* filed a Complaint under Section 138 of the NI Act was filed against Respondent No.2 Sonu, on the averments that a cheque of Rs. 4,65,000/- issued in discharge of a loan liability of Rs.5,00,000/- granted to Respondent No.2- *Sonu Rana* through his Cousin Brother – *Abhishek Malik,* on presentation got dishonoured with the remarks *"payment stopped by the Drawer"*.

3. Respondent No.2- Sonu Rana was summoned on 24.09.2019. He sought discharge under Section 138 NI Act on the ground that the cheque in question had an over written date which is a material alteration rendering the cheque as void in terms of Section 87 of NI Act.

4. Furthermore, the cheque amount in figures was written as Rs.4,65,000/- but in words it was written as *"Rupees Four Lac Sixty Five only"*. Section 18 NI Act postulates that when there is discrepancy in the figure of the cheque amount as written in figures and words, then the amount written in words shall be taken as the correct amount. Therefore the cheque has to be deemed for Rs.4,00,065/-, but in the Demand Notice dated 27.01.2018 the cheque amount has been stated as Rs.4,65,000/-. The law mandates that the Statutory Notice must be for the exact amount of the cheque. Therefore, the Legal Notice dated 27.01.2018 for a demand of Rs.4,65,000/- did not meet the requirement of law under Section 138/142 of NI Act and consequentially, Respondent No.2- Sonu Rana was entitled to be discharged.

5. The learned MM *vide* Order dated 24.09.2018 observed that a discrepancy in the words and figures on the cheque was a matter of trial since the legal Demand Notice specifically gave the cheque amount as

Rs.4,65,000/-; what amount was intended at the time of issuance of cheque could be determined only by way of trial and Notice was framed against Respondent No.2.

6. However, the learned ASJ *vide* Order dated 17.02.2021 observed that the amount of the cheque in terms of Section 18 of NI Act has to be considered as Rs.4,00,065/-, while the cheque was for amount of Rs.4,65,000/-. There was a patent ambiguity and the Complainant was unable to establish as to what amount had to be paid by the accused under the cheque. Consequently, the Order of the MM dated 24.09.22018 was set aside and the Respondent No.2/ accused was discharged.

7. Aggrieved by the said Order of the learned ASJ the present Petition under Section 482 Cr.P.C. has been filed against the Order of Discharge of Respondent No.2 *vide* Order dated 17.02.2021.

8. ***Learned Counsel for the Petitioner*** has referred to Sections 18,20,118,138(b) and 139 of NI Act to submit that a person, who signs a cheque and makes it over to the payee, remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability.

9. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a

debt. Reliance is placed on *Uttam Ram Vs. Devinder Singh Hudan & ANR* [Criminal Appeal No. 1545 of 2019 arising out of SLP (CRL) No. 3452 of 2019.

10. It is further submitted that even though the cheque is dishonoured on account of *"stop payment instructions*" that can be for manifold reasons, which cannot be overlooked. The presumption under Section 139 of NI Act would still arise, which can be rebutted only by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. Therefore, the "Stop Payment Instructions" would still attract the Complaint under Section 138 of NI Act, unless it is established by the accused that there was sufficient funds in his account in the first place on the date of signing of the cheque and on the date of presentation of the cheque. Therefore, the dishonor of cheque on the ground of "*stop payment*' cannot be a ground to dismiss the Complaint under Section 138 NI Act.

11. Reference has been to decision of Apex Court in the matter of *Rangappa vs. Sri Mohan* AIR 2010 SC 1898 wherein it was held that Section 139 NI Act is an example of *reverse onus clause* that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. The rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. Furthermore, merely because there was a difference in the amount of cheque specified in words and figures, would not make a cheque invalid in view of Section 18 of NI Act. Also, divergence of the two figures, one appearing on the cheque and the other in the Demand Notice, is not fatal to the case of the prosecution.

12. Reliance has also been placed on *N.Hasainar Vs. M.Hasnair* 2009 CRL.L.J. 1213 :2011 ACD and *Devi Tyres v. Nawab Jan* 2001 AIR-KANT. H.C.R wherein it was observed that discrepancy in the amount as mentioned in the cheque and the Demand Notice, would not be fatal to the case of the prosecution.

13. Further reference is made to Section 118 (a) of the NI Act which provides that until the contrary is proved, it will be presumed that every negotiable instrument was made or drawn for consideration and every instrument that has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. Section 139 of the Act lays down that it shall be presumed unless the contrary is proved.

14. Reliance has been placed on decision of this Court in *V.S. Yadav Vs. Reena*, 172 (2010) DLT 561 wherein it was held that there is no presumption of law that the explanation given by the accused, was truthful.

15. It is, therefore, submitted that the impugned Order passed by the learned ASJ is liable to be set aside and the Complaint under Section 138 NI Act be revived, to be tried by the learned MM in accordance with the law.

16. ***Learned Counsel appearing on behalf of Respondent No.2*** in his detailed Reply has contended that the Petitioner has intentionally filed a Complaint under Section 138 of NI Act, without any annexure and documents including the cheque in question, its alleged Bank Return Memo, and the Statutory Demand Notice dated 27.01.2018.

17. The Respondent No.2 has claimed that the Petitioner has misused the cheque in question in league with his friend Abhishek Malik. First and

foremost, the original cheque along with its Bank Memo has been tampered as the date of 28.09.2017 has been overwritten. Furthermore, there is discrepancy in the amount of cheque as mentioned in words and figures and in terms of Section 18 of NI Act, the amount mentioned in words has to be accepted as correct. Further, the cheque amount is Rs.4,00,065/- only while the Demand Notice has been sent for Rs.4,65,000/- which means that no valid legal Notice has been sent. Even if all the averments have been considered to be gospel truth and the date overwritten is taken as 28.09.2017, then too it has been dishonoured on 29.12.2017, which is beyond the validity period of three month which had expired on 27.12.2017. The alleged presentation of cheque on 29.12.2017 was therefore, barred by time.

18. It is further asserted that in view of the reasons given, Order of the learned ASJ, this Petition does not warrant any interference and the present Petition is liable to be dismissed.

19. **Submissions heard and record perused**.

20. Essentially, the main ground on which the Respondent No.2 has been discharged by the learned ASJ, is twofold, firstly over writing in the date of cheque and Secondly, discrepancy in mentioning of the amount in words and figures and the Legal Notice was given for an amount of Rs.4,65,000/- it was not a valid Notice which had to be exactly in terms of the cheque amount.

21. The main question which has been raised is in regard to the legal requirement for holding a legal Demand Notice issued under Section 138 B NI Act valid.

22. Judical Committee in *Dyke Vs. Elliot (1872) LR 4 AC 184,* wherein it was observed that while interpreting penal statutes, which are required to be construed strictly, the Courts must see that the thing charged as an offence is within the plain meaning of the words used but at the same time must also consider if the things are within the spirit of the enactment. Where the thing is brought within the spirit, there a penal enactment is to be construed like any other instrument according to fair common sense meaning of the language used and Court is not to find or make any doubt or ambiguity in the language of the penal Statute where such doubt or ambiguity would clearly not to be found or made in the same language and any other instrument.

23. The aforesaid case was quoted with approval in the case of *M. Naryayanan Nambiar Vs. State of Kerla* AIR 1963 SC 1116 while considering the rule of construction o a penal provision.

24. The aforesaid Judgment was referred to in the case of *Suman Sethi Vs Ajay K. Churiwal & Anr.*, I (2000) SLT 605 wherein it is observed that while reading Section 138 as a whole, common sense must be applied to ascertain whether in the Notice issued under Clause B of Section 138A, demand has been made for the cheque amount. If no such demand is made, the Notice would fall short of the legal requirement. However, when there is in addition to the said amount, there is also a claim by way of interest, cost, etc.; whether the Notice is bad would depend on the language of the Notice. If in a Notice while giving the breakup of the claim the cheque amount, interest, damages, etc are specifically specified, other such claims for interest, cost etc. would be superfluous and these additional claims

would be severable and will not invalidate the Notice. If, however, in the Notice an omnibus demand is made without specifying what was due under the dishonoured cheque, Notice might well fail to meet the legal requirement and may be regarded as bad.

25. In *Central Bank of India & Anr. v. M/s. Saxons Farms & Ors*., JT (1999) 8 SC 58 the Apex Court held that the object of the Notice is to give a chance to the drawer of the cheque to rectify his omission. Though in the Notice demand for compensation, interest, cost etc. is also made, drawer will be absolved from his liability under Section if he makes the payment of the amount covered by the cheque of which he was aware, within 15 days from the date of receipt of the Notice or before the Complaint is filed.

26. Now coming to the facts of the present case, the Legal Notice dated 28.09.2017 clearly mentioned about the dishonour of the cheque in the sum of Rs.4,65,000/-. Legal Notice specifically and clearly specified the cheque amount. The problem has arisen because though figure in numerical has been clearly written as Rs.4,65,000/-, but unfortunately while writing in words it was written as "*Rs. Four lac sixty five*". It is quite evident that though after word Sixty Five there has been inadvertence in not mentioning the word "thousand". Prima facie, the error appears to be inadvertence rather than depicting different amounts.

27. Pertinently, reference has been made to the Return Memo wherein it is clearly indicated that the cheque for the sum of Rs.4,65,000/- has been dishonoured on account of *stop payment.* Reading the Notice, the cheque and Bank Memo, it is evident that the cheque amount was of Rs.4,65,000/-, which is the amount mentioned in the Legal Notice.

28. Though it is correct that Section 18 of NI Act, states that when there is a discrepancy in the amount of cheque as mentioned in figures and words, the words shall prevail. However, as has already been mentioned above, such discrepancy did not weigh with the Bank which clearly stated in the Return Memo that the cheque amount was Rs.4,65,000/-. Likewise, overwriting of the date on the cheque, has not been considered as a material interpolation meriting dishonour of the cheque. In these circumstances, it would not be appropriate to dismiss the Complaint under Section 138 of the NI Act on technical ground, without putting the parties to trial and without affording opportunity to prove their respective cases.

29. The error in *writing the correct figure in words*, would not at this stage, make the cheque invalid especially when no Reply has been given by Respondent No.2 to the Legal Notice to refute his liability and has not questioned the Notice making a demand of Rs.4,65,000/-. The Complaint is sought to be defeated on the technical ground of inadvertent error in mentioning the correct figure of the cheque in words, which cannot be a justiciable ground for discharge, but merits a Trial.

30. It is, therefore, held that the learned ASJ fell in error in discharging Respondent No.2 at the initial stage. The impugned Order dated 17.02.2021 is hereby set aside and the Complaint under Section 138 of the Act is directed to be tried by the learned Metropolitan Magistrate in accordance with law. Nothing stated herein, tantamount to expression on the merits of the case.

31. The parties are directed to appear before learned the learned MM of District Rohini, Delhi on 20.03.2025.

32. With directions as aforesaid, the present Petition along with Application(s) if any, is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 10, 2025/r