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

\+ CRL.REV.P.(NI) 99/2025, CRL.M.A 10470/2025 & CRL.M.A. 10471/2025

KRISHAN SINGH .....Petitioner

Through: Mr. Gaurav Goel and Mr. Abhishek Sharma, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR. .....Respondents

Through: Mr. Digam Singh Dagar, APP.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **07.04.2025**

1. The present revision petition under Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] is directed against the impugned judgement dated 21st February, 2025 passed by the Additional Sessions Judge-05, Central District, Tis Hazari Courts, Delhi in C.A. 111/2024 titled ***"Krishan Singh v. State and Ors."***, whereby the conviction of the Petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881[2] has been upheld with modification of the sentence awarded.

Factual Background

2. The facts leading to the filing of the present petition are as follows:

2.1 Respondent No. 2 filed a criminal complaint case under Section 138 of the NI Act alleging that the Petitioner had obtained a loan of ₹4,00,000 for the purchase of a vehicle. The terms of repayment, including interest and

[1] "CrPC"
[2] "NI Act"

overdue charges, were reduced to writing in a Vehicle Lease Agreement, under which the Petitioner was to repay the loan in 30 monthly instalments of ₹17,600 each.

2.2 The Petitioner allegedly defaulted in making timely payments, leading to the accrual of overdue charges. As per the statement of account placed on record by Respondent No. 2, an amount of ₹3,16,100/- was outstanding against the Petitioner, who, despite repeated demands, failed to repay.

2.3 In purported discharge of the aforementioned liability, the Petitioner issued a cheque dated 13th July, 2014, for ₹3,16,500/- in favour of Respondent No. 2. However, on 21st July, 2014, the cheque was dishonoured and returned unpaid on presentation.

2.4 A legal notice dated 24th July 2014 was issued by Respondent No. 2 demanding payment, which the Petitioner failed to honour, resulting in the initiation of the complaint proceedings.

2.5 The Petitioner was summoned and notice under Section 251 CrPC was framed. The Petitioner pleaded not guilty and sought to contest the matter.

2.6 Upon consideration of the material and evidence on record, the Trial Court, by order dated 7th February, 2024, found the Petitioner guilty of the offence under Section 138 NI Act. Subsequently, by order dated 22nd February, 2024, the Petitioner was sentenced to a term of simple imprisonment for three months and directed to pay a fine of ₹4.15 lakhs, which included the interest component and litigation costs. In default of payment, the Petitioner was directed to undergo an additional term of simple imprisonment for a period of three months.

2.7 Aggrieved by the judgment of conviction and the sentencing order, the Petitioner filed an appeal before the Court of Additional Sessions Judge[3]. By impugned judgment dated 21st February 2025, the Appellate Court upheld the conviction recorded by the Trial Court, but modified the sentence to the following extent:

> *"26. As a result, the judgment of conviction dated 07.02.2024 is upheld and the appeal against the judgment of conviction dated 07.02.2024 is hereby dismissed. However, the appeal on the aspect of the orders on sentence dated 22.02.2024 is partly allowed to the extent that the appellant/ convict shall pay the fine of Rs. 4.15 lacs as directed by the ld. Trial court vide orders on sentence dated 22.02.2024 and in default of the payment of fine, the appellant shall also undergo the sentence of three months SI as directed by the ld. Trial court. The sentence of three months SI together with the fine of Rs. 4.15 lacs is hereby dispensed with.*
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> *27. In the light of the above said discussion, the appeal stands partly allowed on the aspect of sentence only. The appellant shall comply with the judgment dated 07.02.2024 and the orders on sentence dated 22.02.2024 subject to the modification by virtue of the orders passed by this court as on date."*

2.8 Dissatisfied, the Petitioner has filed the present revision petition seeking setting aside of the impugned order.

Petitioner's Case

3. Counsel for the Petitioner challenges the impugned order of conviction on the following grounds:

3.1 Respondent No. 2, during cross-examination, admitted that the outstanding amount owed by the Petitioner was ₹2,80,100/-. However, the impugned cheque was issued for a sum of ₹3,16,500/-. Since the cheque amount exceeded the admitted debt, the prosecution under Section 138 of the NI Act, falls outside the scope of the statute, which requires a legally enforceable debt or liability.

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[3] "ASJ"

3.2 The signature on the disputed cheque is entirely different from the signature on the acknowledgment deed, which constitutes an act of forgery by Respondent No. 2.

3.3 The Petitioner had deposited 30 cheques with Respondent No. 2 at the time of securing the loan against the vehicle. However, Respondent No. 2 misused these cheques by forging the Petitioner's signature on the cheques, for amounts exceeding the legally recoverable amount.

3.4 The vehicle against which the loan was secured, was also repossessed by Respondent No. 2 in a clandestine manner. Consequently, the outstanding loan amount should be duly adjusted to account for the repossession.

3.5 No written notice was served on the Petitioner within the 30-day period following the dishonour of the cheque, as required under Section 138 NI Act.

3.6 The bank return memo filed by Respondent No. 2 does not have the signature of the bank official and appears to be a handwritten or typed forged slip, allegedly fabricated to cheat the Petitioner.

Analysis

4. The Court has considered the submissions advanced by the Petitioner. The Petitioner seeks to invoke the revisional jurisdiction of this Court under Section 397 CrPC for challenging the concurrent findings of the Trial Court as well as the Appellate Court, holding him guilty for the offence under Section 138 NI Act. At the outset, it is pertinent to highlight the circumscribed scope of revisional jurisdiction, which can only be exercised in cases where there is perversity or unreasonableness, miscarriage of justice, or a complete misreading of records in the findings of the lower courts. The High Court, in revisional jurisdiction, does not sit as a court of

appeal to re-evaluate the findings of the lower courts. The Supreme Court in ***State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri***,[4] underscored the scope of revisional jurisdiction of the High Court, to the following effect:

> *"5. ……… In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction.* ***Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice****…………."*

5. This view was reiterated in ***Amit Kapoor v. Ramesh Chander***,[5] wherein the Supreme Court emphasized that unlike Section 482 CrPC, the jurisdiction under Section 397 can only be exercised where there is palpable error, non-compliance with the provisions of law, or where judicial discretion is exercised arbitrarily. Similarly, in ***New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey***,[6] the Supreme Court highlighted that the purpose of the revisional power is to correct a patent defect or an error of jurisdiction of law.

6. With the legal framework clearly delineated, the Court turns to the merits of the conviction and the Petitioner's challenge thereto. In this regard, it is pertinent to refer to the detailed findings recorded by the Trial Court:

> *"15. Coming to the facts of the present case, the accused in his plea of defence at the time of notice has admitted the signatures on the cheques in question. Therefore, the Act raises two presumptions in favour of the holder*

[4] (1999) 2 SCC 452.
[5] (2012) 9 SCC 460.
[6] 2019 SCC OnLine SC 1786.

of the cheque i.e., firstly, regarding the passing of consideration as contained in Section 118 (a) therein and, secondly, a presumption under Section 139, that the holder of cheque, received the same for discharge, in whole or in part, of any debt or other liability. Hence, onus is upon the accused to rebut the said presumptions. Accordingly, the court proceeds to consider the contentions raised by the accused to rebut the presumptions.

16. The accused in his plea of defence has raised following defences:

(a) The cheque in question was issued as a security cheque;

(c) No legal notice was served upon him.

(b) The vehicle has been re-possessed by the complainant and thus no liability remains.

16.1 It was contended that the legal notice was not served after the dishonour of impugned cheque. It was stated that the accused has denied the receipt of legal notice at the stage of notice under Section 251 Cr. PC. It was stated that no evidence was led by the complainant to prove the service of legal notice. The Apex Court in C.C. ***Alvi Haji v. Palpetty Muhammad & Anr. (2007) 6 SCC 555,*** *held that in case, drawer, of cheque raises an objection that he never received, legal notice, he can within 15 days of the receipt of the summons make payment of cheque amount and in case, he does not do so, he cannot complain that there was ho proper service of legal notice under Section 138 NI Act. Therefore, this defence is of no assistance to the accused.*

16.2 1t is no longer res integra that a security cheque falls within the purview of section 138 NI Act. In ***Credential Leasing and Credits Ltd Vs. Shruti Investments and Anr.*** *233 (2015) DLT 343, it has been held that the scope of section 138 NI Act would cover such cases where ascertained and crystallized debt or other liability exists on the day when the cheque is presented and not only to the cases where ascertained and crystallized debt or other liability exists on the day when it was delivered to the holder as and post dated cheque or as a current cheque with a credit period. Hence, it would have to be examined on a case to case basis, whether ascertained or crystallized debt of other liability exists, or not. It is argued that the AR of the complainant herein had admitted that outstanding liability of the accused was Rs 2,80,100/ and as such the cheque presented was Rs 3,16,500/ and thus, as the cheque was presented for more than the crystallized debt, the complaint has to fail.*

Ld. Counsel for the accused relied on (i) Sampelly Satya Narayana Rao v Indian Renewable Energy Development Agency Ltd. (2016) 10 SCC 458, (ii) Collage Culture v Apparel export promotion council 2007, (4) JCC (NI) 388 (iii) Luminous Power Technology v Vinay Aggarwal Crl LP. 268/2014 (iv) Lyca Finance v State Crl LP 251/2013 (v) Sachin J. Nadig v Dentsply India Pvt Ltd Crl MC 2371/2021 (vi) Dashrathbhai Trikambhai Patel v Hitesh Mahendrabhai Patel & Anr Crl Appeal No. 1497/2022

16.3 It is settled that case of cheque dishonour for a cheque more than the liability amount can not sustain. However, in the instant case, the *complainant has placed on record the statement of account ie, Ex CW1/7 duly supported by certificate u/s 65B of Indian Evidence Act i.e. Ex CW1/7A. The said statement of account was not challenged during the examination of the complainant. The said argument that AR of the complainant has admitted that the outstanding liability was less than the cheque amount attempts to ignore the document i.e. statement of account itself which shows that out of the loan granted, Rs 2,80,100/ was the outstanding balance, Rs 29,000/ was overdue charges and Rs 7000/ were bounced cheque charges and further the said argument is also a clever attempt to wriggle out of the liability. The suggestion as put forth is reproduced for clarity:*

> *"It is correct that outstanding amount reflected in the statement of account was Rs 2,80,100/ when the cheque for remaining amount was presented by us for payment".*

Now, when the AR of the complainant stated that statement of account reflected outstanding amount as Rs 2,80,100/ it can not be read to mean that the outstanding liability was also Rs 2,80,100/ as the other components of the liability were neither disputed nor denied. The statement of account was not challenged in the cross-examination and which clearly reflected that Rs 2,80,100/ was the outstanding amount, Rs 29,000/ was overdue charges and Rs 7000/ were bounced cheque charges adding up to the cheque amount. Further, the complainant has also placed on record the loan agreement i.e. Ex CW X/4 as well as acknowledgment deed Ex CW X/1 whereby the accused acknowledged his liability of Rs 3,16,500/ and to have issued the present cheque in discharge of the same. It is argued that the said document was forged and fabricated and signatures of the accused were taken on blank paper which was later misused. A suggestion in this regard was also put. The signature of the accused are thus admitted on Ex CW X/1 in view of such suggestion and it was thus for the accused to prove that the document was a fabricated document. The accused however led no evidence whatsoever and did not even appear himself as witness to state that his signatures were taken on blank papers.

16.4 In the opinion of the court, the version of the accused appears to be moonshine and taken solely for the purpose of wriggling out of liability qua the impugned cheques. Hon'ble Supreme Court in ***Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513****, held that bare denial of passing of consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden shifted to the Complainant.*

16.5 As regards the defence that the vehicle of the accused has been re-possessed by the complainant, it needs to be considered that the said fact was required to be proved by the accused. The suggestion so put to the AR in his cross-examination was denied by the AR. The accused had not examined any witness in his defence to establish the said fact. No police complaint or complaint to any other authority was made in this regard.

17. In the present case, nothing has been brought on record to rebut the presumption that the debt qua which cheques were issued as security has been repaid. In support of his version, no evidence was led by the accused despite opportunity being given. In the cross examination, nothing has been brought out by the accused to rebut the presumptions as discussed above. Further, the plea of accused that his cheque has been misused also appears to be moonshine. No stop payment instructions were issued by the accused to his bank. Rather the reason for dishonour of cheque is "rejection desc" (Perhaps meant as rejection description. Perusal of memo shows that funds were insufficient). Hence, This court finds that the accused has failed to prove that the debt qua the impugned cheques has been repaid. Therefore, this defence is of no assistance to the accused.

18. The Hon'ble Apex Court in criminal appeal no. 1233-1235 of 2022 in ***P. Rasiya Vs. Abdul and Anr.*** *in its order dated 12.08.2022 observed that the presumption under section 139 NI Act is a statutory presumption and therefore, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in the favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary.*

19. In view of the aforesaid discussion, this court finds find that the defence of the accused seems implausible. He has failed to substantiate his defence and rebut the presumptions U/s 139/118 NI Act. The accused has failed to prove by cogent evidence that there existed no debt or liability upon him qua the impugned cheque towards the complainant at the time of dishonour of cheque or that it has been repaid. For shifting the burden, accused had to prove his defence by preponderance of probabilities whereas he has failed to do so. He has failed to bring on record something which is probable for getting the burden of proof shifted to the Complainant. Without rebutting the presumptions, the onus to prove the case will not shift to the Complainant as the evidence of the Complainant cannot be considered till the accused raises his probable defence in her favour.

20. Accordingly, Complainant has been able to prove by aid of presumptions in his favour that the impugned cheque drawn on Punjab National Bank for a sum of Rs 3,16,500/ was issued in discharge of valid legally recoverable liability owed to the Complainant by accused and the said cheque was dishonoured on presentation. Despite service of legal notice, payment was not made within the prescribed period. Thus, therefore, based upon the entirety of evidence, this Court holds the accused guilty. Accused is accordingly convicted for the offence punishable U/s 138 NI Act.

21. Let the parties be heard on the quantum of sentence. Copy of judgment be given free of cost to the convict."

7. A perusal of the aforementioned order reveals that the Trial Court has

accurately captured the legal framework surrounding the provisions of the NI Act. It proceeds from a foundational legal presumption provided under Sections 118(a) and 139 of the NI Act, that where the drawer admits the signature on the cheque, the law presumes the existence of a debt or other legally enforceable liability. The burden then shifts to the accused to rebut that presumption, not by mere denial, but by raising a credible and probable defence. The Trial Court correctly observed that since the Petitioner had admitted the signatures on the impugned cheque, the statutory presumptions in favour of the Complainant, *i.e.*, Respondent No. 2 stood triggered. Consequently, the burden to rebut these presumptions was placed on the Petitioner. In light of the aforesaid legal position, the Trial Court addressed the grounds and contentions raised by the Petitioner, holding that he had been unsuccessful in rebutting the presumptions in favour of Respondent No. 2.

8. The Petitioner had alleged that the impugned cheque was issued as security for the purpose of availing a loan against the vehicle, and was not given towards the discharge of any legally enforceable debt. Additionally, he contended that the cheque was presented for an amount of ₹3,16,500/, which was greater than the liability of ₹2,80,100/-. The Trial Court meticulously addressed this argument, clarifying that security cheques fall within the purview of Section 138 of the NI Act, and are not excluded. Regarding the Petitioner's contention about the discrepancy between the outstanding amount and the amount stated on the cheque, the Trial Court, after examining the relevant evidence, such as statement of account, the loan agreement, and the acknowledgment deed, concluded that the outstanding liability also encompassed overdue charges amounting to ₹29,000/- and

bounced cheque charges of ₹7,000/-, bringing the total to ₹3,16,100/-. Further, the Petitioner's defence was not supported by any evidence. The Petitioner did not enter the witness box, or adduce any documentary or oral evidence to dispute the crucial documents produced by the Complainant, including the account statement, which itemized the principal outstanding, overdue charges, and cheque bounce penalties. Even the acknowledgment deed, bearing the Petitioner's signature and referencing the impugned amount, went unrebutted. A mere suggestion of forgery, without anything further, cannot be considered sufficient to displace a statutory presumption. Therefore, the Trial Court correctly observed that, the Petitioner's contention that the cheque was issued for an amount different from the actual liability amount, did not advance his case.

9. As regards the Petitioner's argument of denial of receipt of statutory legal notice under Section 138 of the NI Act, the Trial Court noted that although the Petitioner denied the receipt, he had the opportunity to pay the cheque amount within 15 days of receiving the summons. Since the Petitioner did not make any such payment to Respondent No. 2, the Trial Court rightly concluded that his defence of non-receipt of notice was without merit.

10. The Petitioner also contended that the vehicle against which the loan was secured, was repossessed by Respondent No. 2, and therefore, the outstanding loan amount should be adjusted to account for the repossession. In this regard, the Trial Court correctly opined that the Petitioner failed to produce any witness to support this allegation, nor could he establish the same during cross-examination. Consequently, this contention also remained unsubstantiated by any evidence, and did not serve his case.

11. Lastly, the Trial Court observed that the Petitioner failed to produce any evidence to rebut the presumption that the debt, for which the cheques were issued as security, had been repaid. Although the Petitioner claimed that the cheques had been "misused", he took no steps to prevent their encashment, nor did he issue any "stop payment instructions" to the bank. Indeed, the Petitioner has indeed failed to prove that the debt was settled, or that the cheques were misused by Respondent No. 2.

12. Aggrieved by the findings of the Trial Court, the Petitioner challenged both the judgment of conviction and the order on sentence before the Appellate Court, which undertook a detailed examination of the record and the submissions advanced on behalf of the Petitioner. It found no error, legal or factual, in the judgment of conviction and concluded that the Petitioner had failed to establish any perversity or infirmity warranting interference. However, the Court took note of the mitigating circumstances urged in appeal: that the Petitioner was a financially constrained individual, working as a driver, and bearing the responsibility of supporting his family. In view of these considerations, the Appellate Court observed that the imposition of a custodial sentence, in addition to a substantial monetary penalty, would operate with undue severity. Accordingly, while upholding the conviction, the Appellate Court modified the sentence by setting aside the standalone term of three months' simple imprisonment. The Petitioner was directed to pay a fine of ₹4.15 lakhs, and in default thereof, to undergo simple imprisonment for three months.

Conclusion

13. The concurrent findings of the two Courts—the Trial Court and the Appellate Court—are based on careful consideration and appreciation of the

evidence on record. In revisional jurisdiction, this Court is not supposed to act as an appellate court and substitute its own conclusion with the concurrent findings of two courts merely because another view is possible.[7] Therefore, it would not be appropriate for this Court to reappreciate the evidence and reach its own conclusion when the evidence has already been duly considered by both the Magistrate and the Sessions Judge in appeal.

14. Both the Trial Court and the Appellate Court have meticulously examined the submissions advanced by the Petitioner, and conducted a detailed examination of the evidence on record. Both courts, after such comprehensive analysis, have arrived at a concurrent and well-reasoned conclusion, finding the Petitioner guilty of the offence under Section 138 of the NI Act. The Court finds no discernible error, irregularity, or glaring defect in the impugned orders. On the contrary, the conclusions arrived at are firmly founded in the record, and are consistent with settled legal principles, warranting no interference by this Court in the exercise of its revisional jurisdiction.

15. In light of the aforesaid, the present petition is dismissed along with pending application(s).

SANJEEV NARULA, J

APRIL 7, 2025
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[7] State of Haryana v. Rajmal & Anr, (2019) 13 SCC 670; State v. Manimaran, (2011) 14 SCC 326.