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

\+ CRL.L.P. 281/2022 & CRL.M.A. 11643/2022, CRL.M.A. 11842/2022

SHAKUN SINGH .....Petitioner

Through: Mr. Akash Nagar, Adv.

versus

CHANDESHWAR SINGH .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **15.01.2025**

CRL.L.P. 281/2022

1. This is a petition seeking leave to challenge in an appeal the impugned order dated 24.12.2021 passed by learned MM (NI Act), Digital Court-01, Southeast, Saket, Delhi in CC No. 397/2020 titled as "*Shakun Singh Vs. Chandeshwar Singh*"

2. The following are the facts alleged in the present matter:-

   a. The petitioner is the daughter-in-law of the accused and is married to his elder son, namely Mr. Ajit Singh.

   b. In August, 2020, the respondent, who is the father-in-law of the petitioner, promised to pay her monthly maintenance of Rs. 45,000/- for his grandson, namely, Mr. Oum. Singh. It is further stated that the amount of Rs. 45,000/- per month for the maintenance of the grandson was in addition to an amount of

Rs. 1 lakh, which is being paid for her maintenance.

c. The complainant states that in view of the promised amount, the respondent handed over Cheque No. 682146 dated 13.08.2020 for Rs. 45,000/- drawn on State Bank of India, Branch Siwan Bazar (01238), Babunia More, Distt. Siwan, Bihar. On presentation, the cheque was initially cleared and the amount was credited in her account but the same was subsequently debited from her account and the cheque was dishonoured on account of *"cheque irregularly drawn/amount in words and figures differs"* The amount in figures was Rs. 45,000/- while in the words, the amount showed "Forty Thousand Only." Thereafter, the complaint was filed.

d. The learned MM *vide* the impugned order dated 24.12.2021 dismissed the complaint and acquitted the accused.

3. A perusal of the impugned order shows that the learned MM observed that there was an acrimonious relationship between the petitioner and the respondent since the petitioner had registered a case under the Domestic Violence Act, 2005 against the respondent. Therefore, in view of such an acrimonious relationship, it was highly improbable that the respondent could have given a cheque of Rs. 45,000/- under an oral agreement for the maintenance of the child of the petitioner, i.e. grand child of the respondent.

4. Additional to the reasons already given by the learned MM, I am of the view that a complaint under Section 138 of Negotiable Instruments Act, 1881 ('NI Act') can only lie for a legally enforceable debt.

5. The phrase legally enforceable debt or liability has been described by the Hon'ble Supreme Court in *Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539 as under:

> *"9. The Explanation appended to Section 138 explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.*

6. The petitioner has failed to show any document or order of the court recording the arrangement between the parties whereby the respondent shall be liable to pay maintenance to the petitioner for her son. The petitioner, in the present case, has failed to inspire my confidence that such an arrangement was addressed, agreed to and formalised between the parties for the benefit of the son of the petitioner and the grandson of the respondent.

7. Section 138 of the NI Act recognises a "legally enforceable" debt or

liability. In my view, a mere oral understanding between the parties, as alleged, may not substantially fall under the corners of a 'legally enforceable debt or liability' unless the same is proven before the court. From the record placed before me, it is seen that the petitioner has failed to file any petition seeking maintenance for the son.

8. In the said circumstances, I am of the view that even assuming that the respondent had given a cheque for his minor grandson, the same does not amount to a legally enforceable debt or liability. Notwithstanding the same, the petitioner is free to avail all her legal remedies as permissible in law, including seeking maintenance for her son.

9. Additionally, even though the signature of respondent on the cheque is admitted, however the respondent has stated that the cheque was clandestinely taken away by the petitioner and the same was not given towards discharge of any liability.

10. For the said reasons, I find no infirmity in the impugned order dated 24.12.2021 passed by learned MM (NI Act) acquitting the respondent.

11. The present leave to appeal is dismissed.

12. Since, the leave to appeal is rejected, consequently, the appeal is has become infructuous.

13. The observations hereinabove are only for the purpose of deciding of the present petition and shall not have any effect on the litigation pending between the parties.

JASMEET SINGH, J

JANUARY 15, 2025/sp