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

+ CRL.M.C.3355/2025, CRL.M.A. 14782/2025 (stay)

RITA KHOSLA

.....Petitioner

Through: Mr. Yogeshwar Krishna Purohit,
Mr. Achal Singh, Mr. Vikram Nagpal
and Mr. Subham Saurabh, Advocates.

versus

KAILASH GUPTA

.....Respondent

Through: Mr. Prateek Gupta and Mr. Raghav
Tiwari, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **13.05.2025**

CRL.M.A.14783/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

CRL.M.C.3355/2025

3. Petition under Article 227 of the Constitution of India, 1950 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*earlier Section 482 of the Code of Criminal Procedure, 1973*) has been filed on behalf of the Petitioner, Rita Khosla, for setting-aside the impugned Orders dated 25.01.2025 and 20.03.2025 of the learned ASJ-03, South-West District, Saket Courts, Delhi *vide* which two Applications under Section 311 Cr.P.C. filed on behalf of the Petitioner (Accused) in Complaint Case No.

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7673/2017 under Section 138 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as 'N.I. Act'*), have been dismissed.

4. Briefly stated, the Complaint under Section 138 of N.I. Act, was filed in May, 2017 by the Respondent/Complainant in respect of the dishonour of cheque dated 05.05.2017 in the sum of Rs.2,50,000/-. The learned Trial Court convicted the Petitioner/Accused under Section 138 N.I. Act *vide* Judgment dated 13.09.2024.

5. Appeal has been preferred by the Petitioner before the learned District and Sessions Judge. During the pendency of the Appeal, the Petitioner filed an ***Application under Section 311 Cr.P.C.*** to put on record Letters dated 07.11.2024 and 27.01.2025, issued by the SBI, New Delhi and to further permit the Officials of SBI, New Delhi to be summoned for adducing additional evidence on behalf of the Petitioner.

6. The Application was dismissed by the learned ASJ-03, (South East), Saket Courts, Delhi by observing that the Appellant had been orally assailing the genuineness of the dishonoured cheque, Ex.CW-1/4 throughout the trial. She did not explain as to what prevented her from leading any evidence to impeach the dishonour of the cheque on the ground of “insufficiency of the funds” till the conclusion of the trial. The Application having been moved at a highly belated stage, was dismissed with cost of Rs.10,000/-, payable to DLSA, South East, Delhi.

7. ***Learned counsel on behalf of the Petitioner*** submits that it was an old cheque, which had been given by the Petitioner to the Respondent as security cheque but it has been misused in the year 2017 wherein the amount has been filled in by the Complainant. Furthermore, this cheque had been issued against Account No. (old) 01190030194 whereas he had changed his

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Account No. to 10617239659, as per Ex.DW-1/D. Therefore, the alleged cheque never got presented against the new Account number of the Petitioner and the Complaint under Section 138 of N.I. Act itself was not maintainable.

8. To sustain this defence, the Petitioner has relied on one document obtained through RTI.

9. **Submissions heard and record perused.**

10. ***First and foremost***, as has been rightly observed by the learned Trial Court, despite this defence being taken since beginning, there is no explanation forthcoming as to why this evidence was never presented by the Petitioner during the trial.

11. ***The second aspect***, which is pertinent to observe is that if the cheque pertains to a certain Account Number, it cannot be presented and dishonoured against another Account Number. The Response through RTI also is in respect of the second Account Number and has no reference to the prior Account Number against which the cheque was presented.

12. Pertinently, as has been submitted by learned counsel for the Respondent, the Petitioner had sought recalling of the Complainant for further cross-examination, which had been allowed and he was further cross-examined but this defence was not put up.

13. The defence taken up by the Petitioner that his Account Number was subsequently changed to another Number, does not enure to his benefit for the simple reason that the cheque was presented in the Account of the Petitioner and had been dishonoured for “insufficiency of funds”.

14. The learned ASJ has rightly dismissed the Application as without merits.

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15. By way of Second Application under **Section 311 Cr.P.C.**, the Petitioner had sought that the cheque being that of 2010-2011 be sent to FSL for determination of its age.

16. This Application also got dismissed by the learned ASJ on 25.01.2025. He made a reference to Section 146 N.I. Act, which states that *prima facie* Bank's slip is evidence of the facts stated therein unless the fact is disproved. The learned ASJ thus, noted that the dishonour Slip Memo Ex.CW-1/4 had been proved wherein the reason for dishonour had been given as "insufficiency of funds". The genuineness of dishonour Memo Ex.CW-1/4 had only been orally assailed throughout the trial but there is no reason forthcoming as to why no evidence to establish this defence was led by the Petitioner. The Application was consequently dismissed with costs of Rs.10,000/- payable to the DLSA, South-East, Delhi.

17. The core defence of the Petitioner was that the cheque was issued in the year 2010-2011. The easiest way of establishing this aspect was to produce the cheque books from which the said cheques were issued or to produce the Statement of Account from the Bank to show the manner and the age of the cheque.

18. Essentially, the Petitioner intends to establish, is that this cheque has been misused as it was admittedly a blank cheque given, which has been misused by the Complainant. However, Section 18 and 24 of the N.I. Act provides that if a person gives a blank signed cheque, then he does so at his own responsibility.

19. Learned ASJ has rightly dismissed the Application under Section 311 Cr.P.C.

20. There is no merit in the present Petition, which is hereby dismissed.

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21. The Petition is disposed of along with the pending Application.

NEENA BANSAL KRISHNA, J

MAY 13, 2025/RS

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