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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: December 17, 2025***+ **CRL.REV.P. 858/2023 & CRL.M.(BAIL) 1152/2023**

DEEPAK PANCHOLI

.....Petitioner

Through: Mr. Surender Gupta, Mr.
Deepak Rana, Mr. Binod
Kumar & Ms. Poonam
Tiwari, Advs.

versus

STATE & ANR. & ORS.

.....Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State.
Mr. Anirudh Kumar
Pandey, Adv. for
complainant through V.C.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present revision petition is filed by the petitioner under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the judgment dated 29.05.2023 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('ASJ'), South District, Saket Courts, New Delhi, in Criminal Appeal 173/2019.

2. The learned ASJ by the impugned judgment dismissed the appeal filed by the Petitioner challenging the order of conviction dated 29.03.2019 and order of sentence dated 01.04.2019 passed by the learned Metropolitan Magistrate ('MM'), South District, Saket Courts, New Delhi in Ct Case No. 465823/2016, filed by



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Respondent No. 2/M/s Clearship Forwarders Pvt. Ltd. through Authorized Representative/Ashish Mahajan, under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'), against M/s Sobhag Exports, it's sister concern M/s Dexport Port India, Mr. Atul Jain (Partner) and Petitioner/Deepak Pancholi (Partner).

3. By order of conviction dated 29.03.2019, the Petitioner and M/s Dexport Port India, were held guilty for the offence under Section 138 of the NI Act while M/s Sobhag Exports and Mr. Atul Jain were acquitted.

4. By order of sentence dated 01.04.2019, the Petitioner was sentenced to undergo simple imprisonment for a period of 6 months and pay fine of ₹5,75,382/- and in default of payment of fine to undergo simple imprisonment for a period of 60 days.

5. Succintly stated, it is the case of the Respondent No. 2/Complainant Company that it was rendering services of getting shipments of its clients cleared at Customs Offices, at various airports and ports in India and then dispatching the same through cargo airlines and ships, at the destinations specified by its clients. Allegedly, the Respondent No. 2/Complainant Company had provided professional services to M/s Sobhag Exports. Accordingly, one shipment of M/s Sobhag Exports, was cleared and dispatched by Respondent No. 2 *vide* Airway Bill No. 23321 dated 24.04.2007. The same was booked through M/s Dixon Cargo Consolidated Pvt. Ltd. and the payment of the shipment towards airline charges and customs clearing was made by Respondent No. 2 to the concerned Airline as per the request of the accused persons.

Signature Not Verified

Signed By: SANJAY
KUMAR
Signing Date: 25.12.2025
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6. It is alleged that on 24.04.2007, the Petitioner/Deepak Pancholi, had issued a post-dated cheque bearing No. 392087 dated 07.05.2007 for a sum of ₹2,87,691/- drawn on Bank of Baroda, Overseas Bank, New Delhi in favour of Respondent No. 2, from the account of M/s Dexport Port India. It was represented by the accused persons that since the accused companies are sister concerns and sharing the same partners, therefore, the said cheque is issued against the liability of M/s Sobhag Exports.

7. It is alleged that on 07.05.2007, Respondent No. 2 presented the aforementioned cheque for encashment, however, the same was dishonoured and returned *vide* return memo dated 09.05.2007 with remarks “*Stop Payment*”.

8. Subsequently, Respondent No. 2 issued a statutory legal demand notice dated 23.05.2007, demanding payment of the aforesaid amount, at the available addresses of the accused persons, through courier and the same was duly received at the said address *vide* Proof of Dispatch receipt dated 24.05.2007. However, upon their failure to make the payment, the Respondent No. 2 filed the subject complaint before the learned MM.

9. The learned MM *vide* order dated 04.08.2007 summoned the Petitioner and the other accused persons in the present case.

10. After hearing the arguments and appreciating the evidence on record, the learned MM, *vide* order dated 29.03.2019 convicted the Petitioner for the offence under Section 138 of the NI Act and appeal against the said order, as noted above was dismissed by the learned ASJ by the impugned judgment.



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11. The learned ASJ noted that the learned MM had rightly observed that the Petitioner failed to rebut the presumptions by raising any probable defence. The learned ASJ, however, modified the order of sentence dated 01.04.2019 to simple imprisonment for a period of 3 months and fine amount as held by the learned MM.

12. The learned counsel for the Petitioner submits that the statutory legal demand notice issued by Respondent No. 2 was never served upon the Petitioner.

13. He submits that the learned MM as well as the learned ASJ failed to appreciate the fact that the Petitioner was not the proprietor of M/s Dexport Port India, as the same was the proprietorship concern of his father.

14. He submits that the learned MM as well as the learned ASJ failed to appreciate the fact that the cheque in question was not issued for any legally enforceable debt and the same was given as a security cheque for shipment which was never shipped by Respondent No. 2.

15. *Per contra*, the learned counsel for Respondent No. 2 vehemently opposes the arguments as raised by the learned counsel for the Petitioner and consequently prays that the present petition be dismissed.

16. I have heard the learned counsel for the parties and perused the record.

Analysis

17. Since the present revision petition has been filed under Section 397 of the CrPC, challenging the concurrent findings of



both lower courts, this Court's role is limited to assessing the correctness, legality and propriety of the impugned judgment.

18. It is trite law that this Court is required to exercise restraint and should not interfere with the findings in the impugned orders or reappreciate evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law [Ref. ***Sanjaysinh Ramrao Chavan v. Dattaray Gulabrao Phalke*: (2015) 3 SCC 123**]. It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Supreme Court in the case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri* : (1999) 2 SCC 452** discussed the scope of revisional jurisdiction and held as under:

"5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. 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...."

(emphasis supplied)

19. Pertinently, the Petitioner has sought to argue that the Respondent No. 2 had admittedly provided services to M/s Sobhag Exports and even the invoices were raised against M/s



Sobhag Exports, and thus, neither M/s Dexport Port India, nor the Petitioner had any relation to the shipment in question.

20. However, it is relevant to note that the issuance of the cheque and the signatures of the Petitioner on the cheque in question has not been denied. It has also been admitted that the cheque was issued by him from the account of M/s Dexport India and the details were also filled by him.

21. It is trite law that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque/respondent received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan* : (2010) 11 SCC 441**].

22. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh* : (2023) 10 SCC 148**, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following:

54. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.



55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the “particular circumstances of the case”?

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57. Einstein had famously said:

“If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions.”

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

58. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.

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61. The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque.

(emphasis supplied)

23. Hence, in view of the above, it was rightly noted by the learned ASJ as well as the learned MM that once the issuance of cheque stands admitted, the liability for the offence under section 138 of the NI Act, would squarely fall on the Petitioner being the drawer of the cheque. It cannot be disputed that a subject cheque



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can be issued even for discharge of legally enforceable debt of a third party. The party issuing a cheque then assumes the liability of third party and cannot shirk away by contending that no services were availed by him.

24. Even otherwise, it has been rightly observed by the learned MM that the burden to prove that M/s. Shobhag Export and M/s Dexport India were not sister concerns was upon the Petitioner and that admittedly this defense, that the firms are not sister concerns, was not even raised by the Petitioner on the first date itself or even at the time of framing of charges. Thus, the Petitioner cannot escape liability merely on this unsubstantiated averment.

25. The other limb of contention of the Petitioner was that though the cheque has been issued by him from the account of M/s Dexport Inida, he was not the proprietor of M/s Dexport Port India and the same was the proprietorship concern of his father namely Sh. D.P. Pancholi.

26. However, the above self-destructive contention holds no water as it has been rightly noted by the learned ASJ that the Petitioner has not placed on record any evidence to demonstrate that any other person was running M/s Dexport Port India at the time of issuance of the cheque. Rather, the evidence placed on record suggests that it was the Petitioner who actually continued the business of his father after his demise and issued the cheque in question from the account of M/s Dexport Port India, otherwise, the Petitioner could not have issued the subject



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cheque from someone else's proprietorship concern, as the same would have amounted to cheating and forgery.

27. It is also relevant to note that in the present case, the Petitioner during the course of trial had admitted the fact that he had instructed the bank to stop payment for the cheque in question, which further shows that the Petitioner was managing the affairs of M/s Dexport Port India.

28. Hence, mere denial that the Petitioner was not the proprietor of M/s Dexport Port India, does not lend credence to the defense of the Petitioner and is liable to be rejected.

29. Much has been emphasized upon by the learned counsel for the Petitioner that the statutory legal demand notice is defective and was never served upon the Petitioner.

30. It emerges from the Demand Notice dated 23.05.2007 that it is a joint Notice addressed to M/s Sobhag Export, M/s Dexport Port India and the Petitioner-Deepak Pancholi. Further, the addresses of both M/s Sobhag Exports and M/s Dexport Port India is mentioned as "*Office at:- E-35/36, Sanjay Colony, Main Road, Sector 23-24, Faridabad, Haryana*" in the memo of parties and the Notice has been delivered to above address. Even the receipt of the courier dispatch as well as the electronic generated tracking report demonstrates that the notice was duly served.

31. Though the onus was squarely upon the Petitioner to show how the same was not served or was sent to a wrong address, however, DW-1/Petitioner has not deposed about not receiving the statutory legal notice or that the same was not served upon



him. Further, no evidence was placed on record by the Petitioner to show that the address of both the aforesaid firms was different.

32. Even before this Court, the Petitioner has not placed on record any material in order to prove his contention. Therefore, in the opinion of this Court, the contention of the Petitioner that the statutory legal demand notice was not served upon him is bereft of any merit.

33. The learned counsel for the Petitioner had also contended that the subject cheque was given as a security cheque and there is no legally enforceable debt on the Petitioner. It was also argued that the subject cheque was given for a shipment that was never shipped by Respondent No. 2.

34. While addressing the above contention, the learned ASJ has rightly noted that merely alleging the subject cheque was issued as a security cheque does not tantamount to mean that the cheque in question was given as a security. The Petitioner has not furnished any evidence in support of this contention and if the Respondent No. 2 had misused the subject cheque, the Petitioner ought to have filed a police complaint against the same, which has also not been done in the present case.

35. It also emerges from the cross-examination of the Authorized Representative of Respondent No. 2, that no suggestion regarding the subject cheque being given as a security has been put to him.

36. Further, the relevant portion of the cross-examination of the Petitioner is reproduced as under: -

“The cheque in question was issued as a security cheque which accused no. 4 was supposed to do,



which was not done later. I have not filed any document to show about the shipment. No shipment was given to the complainant, therefore, no such document was filed. It is correct that document is not placed on record because no such shipment took place.

Court Question:- Was any document executed or prepared for the shipment? Ans. No.

It is correct that no such document is filed no document was prepared.”

37. Evidently, apart from a vague mention of the cheque being issued as a security cheque, nothing regarding the background of the transaction or any other details which could have demonstrated that the same was issued as a security cheque or the shipment has not been delivered by the Respondent No. 2, has been provided by the Petitioner.

38. Therefore, in the instant case, upon a consideration of the totality of circumstances, the Petitioner has evidently failed to rebut the presumptions under Sections 118 and 139 of the NI Act.

39. It has been rightly noted by the learned ASJ that the evidence available on record shows that the Respondent No. 2 had shipped goods for M/s Sobhag Exports, for which invoices were also raised and in discharge of liability of M/s Sobhag Exports, the Petitioner had issued cheque from the account of his proprietorship concern M/s Dexport Port India. The cheque got dishonored on presentation as the payment against the same was stopped by the Petitioner and despite, receiving the legal notice of demand, the Petitioner failed to make any payment against the cheque and thus, all the ingredients of Section 138 NI Act are made out.



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40. In view of the aforesaid discussion, this Court finds no infirmity with the impugned judgment passed by the learned ASJ, and the same does not warrant interference.

41. The present petition is dismissed in the aforesaid terms. Pending Application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 17, 2025

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