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

\+ CRL.REV.P.(NI) 172/2025, CRL.M.A. 23604-23606/2025 & CRL.M.(BAIL) 1712/2025

DHEERAJ BHAGOTRA .....Petitioner

Through: Mr. Rajiv Bajaj, Advocate (DHCLSC)

versus

STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Ajay Vikram Singh, APP for the State with SI Ankur, PS Jafrabad

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **12.08.2025**

1. The present revision petition under Section 442 read with Section 440 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (corresponding to Section 401 read with Section 399 of the Code of Criminal Procedure, 1973[2]) is directed against judgment dated 12th March, 2025, passed by ASJ-03, Shahdara District, Karkardooma Courts, Delhi in Criminal Appeal No. 12/2024 titled as ***Dheeraj Bhagotra v. State & Anr***. By the impugned judgment, while affirming the conviction of the Petitioner under Section 138 of the Negotiable Instruments Act, 1881[3], the Appellate Court partly modified the sentence imposed.

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

Factual Matrix

2. The relevant facts, as narrated in the petition, are summarised as follows:

2.1. Respondent No. 2 (the Complainant) filed a complaint under Section 138(b) of the NI Act, alleging that Cheque No. 000023 dated 20th October, 2020, amounting to INR 2,84,000/- issued by the Petitioner towards discharge of his liability, had been dishonoured, and that despite service of a demand notice, the Petitioner failed to make payment within the prescribed period.

2.2. The underlying transaction, according to Respondent No. 2, was a friendly loan extended to the Petitioner in January 2020. It was alleged that the cheque in question had been issued by the Petitioner in repayment of the said liability, with the assurance that it would be duly honoured.

2.3. Upon considering of the pre-summoning evidence, the Trial Court summoned the Petitioner for an offence under Section 138 NI Act. Notice under Section 251 CrPC was served, to which he pleaded not guilty. Respondent No. 2 deposed as CW-1, relied on his affidavit of pre-summoning evidence, and was cross-examined at length.

2.4. On 5th June, 2023, the Petitioner's statement under Section 313 CrPC was recorded, wherein he denied the allegations but admitted receipt of the legal notice. He contended that he had repaid the loan between 2016 and 2020 in instalments through online transfers and cash.

2.5. The Petitioner, deposing as DW-1, acknowledged having taken a loan from Respondent No. 2 in November-December 2016, and claimed that he had repaid the entire amount by January 2020 in instalments of INR 5,000-7,000/- , partly in cash and partly through online transfers.

2.6. The Trial Court, relying on oral testimony and documentary material on record, convicted the Petitioner. In appeal, the conviction was upheld, with a slight modification in the sentence.

3. Aggrieved thereby, the instant petition has been filed contending that the concurrent findings of the Courts below are incorrect.

<u>Contentions of the Petitioner</u>

4. Counsel for the Petitioner contends that the loan in question stood fully repaid between 2016 and 2020. Reliance is placed on certain receipts, said to reflect "Paytm" transfers, annexed to the present petition though admittedly not part of the Trial Court record. It is urged that these receipts demonstrate repayment of the liability and warrant interference with the impugned judgment. Reliance is placed on the order dated 26th November, 2015, passed by the High Court of Kerala at Ernakulum in ***Shiju K. vs. Nalini & Ors.***[4]

5. It is further contended that the Trial Court and the Appellate Court failed to properly appreciate the evidence on record. Emphasise is placed on the following responses of the Complainant's in cross-examination:

5.1. "*I have some transaction with the accused before 20.1.2020 of Rs. 1.5 lacs and Rs. 1.34 lacs have paid to the accused in installments. I cannot tell what the exact date was. No I have not mentioned the details of giving money in installments in my legal notice and complaint*".

5.2. "*I have given the aforesaid transaction to the accused in cash. No I have not mentioned in my legal notice*".

5.3. "*The accused has paid me Rs. 5000-6000 approximately every month*

[4] CRL.R.P. 1251/2005

during the period from November 2016 to October 2020".

6. As regards the cheque forming the basis of the complaint, it is urged that although issuance and signatures are admitted, the instrument was never issued in discharge of an enforceable liability. It was handed over as a signed security cheque at the time of availing a loan of INR 2,00,000/-.

Analysis

7. The submissions advanced on behalf of the Petitioner have been duly considered, but the Court remains unpersuaded. At the outset, it must be emphasised that this Court is called upon to exercise its revisional jurisdiction against an appellate order. The contours of such jurisdiction are well-settled. In ***New India Assurance Co. Ltd. v. Krishna Kumar Pandey***[5], Supreme Court held that the scope of the revisional jurisdiction of the High Court is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior court. The Revisional Court is entitled to look into the regularity of any proceedings before an inferior court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law. The High Court, in revisional jurisdiction, does not sit as a court of appeal to re-evaluate the findings of the lower courts. The same principles were reiterated in ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***[6], wherein the Supreme Court underscored the scope of revisional jurisdiction of the High Court:

> *"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*

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[5] 2019 SCC OnLine SC 1786.

[6] (1999) 2 SCC 452.

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…."

8. Thus, this Court does not sit in appeal over the judgment of the Appellate Court so as to undertake re-appreciation of evidence or re-hearing on merits, and interference would be warranted only if the impugned judgment discloses perversity, arbitrariness, or a manifest misreading of the evidence.

9. Bearing in mind the aforesaid limitations on the revisional jurisdiction, it is apposite to examine the reasoning of the Appellate Court. The relevant portions of the impugned judgment are extracted below:

"5) In the appeal, the appellant has challenged the order of the ld. trial court mainly on the grounds that the judgment and the order on sentence are bad in the eyes of law and against the facts of the case. Further, the ld. trial court did not consider the fact that the cheque in question was not issued by the appellant to the respondent no.2. Further, the ld. trial court did not consider the fact that the cheque in question was handed over by the appellant to the respondent no.2 at the time of taking the loan of Rs. 2 lacs and the said cheque was a blank signed security cheque and the said amount was duly paid back by the appellant to the respondent no.2. Further, the ld. trial court did not consider the fact that on the date when the cheque in question was presented, there was no liability of the appellant and the cheque has been misused by the respondent no.2. Further, the respondent no.2 in his cross-examination has admitted that he had some transactions with the appellant before 20.01.2020 of Rs.1.5 0 lacs and Rs. 1.34 lacs and the said amount has been paid to the appellant in installments. Further, the respondent no.2 has also admitted in his cross-examination that the appellant has paid him Rs. 5,000-6,000/- approx. every month during the period from November, 2016 to October, 2020. Further, the respondent no.2 was supposed to prove his case beyond reasonable doubt but he failed to prove the same but despite that the ld. trial court wrongly convicted him. Further, the ld. trial court failed to appreciate the fact that the appellant was supposed to

prove his defence only on the standard of preponderance of probabilities and even a slightest doubt shown in the case of the respondent no.2 should have been construed in favour of the appellant but despite ample doubts the ld. trial court wrongly convicted the appellant: Further, the ld. trial court failed to appreciate and completely over looked the contents of the complaint, examination and cross-examination of the parties and statements of the appellant u/s 313, 315 and 251 Cr.P. C.

6) The court has gone through the record and heard arguments.

7) To constitute an offence under section 138 of Negotiable Instruments Act the following ingredients need to be fulfilled:-

a.) Cheque should have been issued for the discharge, in whole or part, of any debt or other liability.

b.) The cheque should have been presented within the period of six months or within the period of its validity, whichever is earlier. (The cheque may be presented any number of times for collection within its validity).

c.) The payee or the holder in due course should have issued a notice in writing to the drawer within thirty (fifteen prior to 2002 amendments) days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

d.) After the receipt of the said notice by the payee or the holder in due course, the drawer should have failed to pay the cheque amount within 15 days of the receipt of the said notice. [Notice of dishonour is unnecessary when the pa1iy entitled to notice cannot after due search be found (See section 98, Negotiable Instruments Act)].

e.) On non-payment of the amount due. on the dishonoured cheque within fifteen days of the receipt of the notice by the drawer, the complaint should have been filed within one month from the date of expiry of the grace time of fifteen days.

8) To attract the penal provisions under Section 138 Negotiable Instruments Act, a cheque must have been drawn by the accused on an account maintained by him with a banker for payment of any amount of· money to another person, for the discharge in whole or in part, of any debt or other liability due. That means, the cheque must have been issued in discharge of a debt or other liability wholly or in part. The cheque given for any other reason not for the satisfaction of any debt or other liability, even if it is returned unpaid, will not meet with penal consequences.

9) In the context of prosecution for offence under Section 138 Negotiable Instruments Act, the provisions contained in Section 118 (to the extent relevant here) and Section 139 Negotiable Instruments

Act are also relevant and may be taken note of as under:-

> *"118. Presumptions as to negotiable instruments. - Until the contrary is proved, the following presumptions shall be made:*
>
> *(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument; when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;*
>
> *(b) as to date – that every negotiable instrument bearing a date was made or drawn on such date;*
>
> *xx ... xx ... xx*
>
> *(g) that holder is a holder in due course*
>
> *that the holder of a negotiable instrument is a holder in due course:*
>
> *xx ... xx ... xx*
>
> *"139. Presumption in favour of holder:-It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred in Section 138 for the discharge, in whole or in part; of any debt or other liability".*

10) The Hon'ble Delhi High Court in Crl. A . 98/2017, ***Sanjay Arora v. Monika Singh*** *relying upon the judgments of the Hon'ble Supreme Court in* ***Bharat Barrel & Drum MFG. Co. v. Amin Chand Payrelal (1999) 3 SCC 35, M.M.T.C. Ltd. v. Medchl Chemicals &·Pharma (P) Ltd. (2002) 1 SCC 234, Hiten P. Dalal v. Bratindranath Banerjee (2001) 6 SSC 16, Malllavarappu Kasivisweswara Rao v. Thadikonda Ramulu Firm (2008) 7 SCC 655*** *and* ***Rangappa v. Sri. Mohan (2010) 11 SCC 441****, it has been held that :-*

> *"It is clear from the above overview that once the execution of the cheque is admitted, the complainant having been proved to be the payee of the cheque, or its holder in due course, statutory presumptions under Sections 118 and 139 of Negotiable Instruments Act arise to the effect that such cheque was drawn or indorsed, for consideration the holder being its holder in due course the cheque having been received by such holder for discharge, in whole or in part, of any debt or other liability.* ***The legal presumption, undoubtedly, is rebuttable, the initial burden to rebut being on the defendant who must show. by positive evidence or preponderance of probabilities, non-existence of the***

<u>consideration by proving the necessary facts and circumstances, either by direct evidence or by bringing on record requisite material. possibly even through the evidence of the complainant, leading the court to believe that the existence of the consideration was doubtful or illegal.</u> *A bare denial of liability obviously cannot suffice. It is the onus of the accused to show the Jinprobab1jjty by some evidence on record."*

11) In light of the law discussed above, in the present case the appellant never denied the fact that he obtained loan of Rs. 2,00,000/ - from the respondent or that he issued the said cheque in pursuance thereof. Relevant portion of question put to the appellant at the time of consideration of notice on 06.10.2021 is being reproduced as under:

> *Q. Do you have any defence to make, if yes, what is your plea of defence? Ans. I had taken Joan of Rs. 2 lakhs from the complainant in the year 2016. In lieu of the said Joan, I had handed over the blank cheque healing my signature to the complainant as security. I have already paid the entire loan amount of Rs. 2 lakhs to the complainant. The complainant has falsely implicated me in the present case by misusing the aforesaid cheque despite having received the entire loan amount.*

12) As such the only line of defence as raised by the appellant is that he had already paid the loan amount of Rs. 2,00,000/ - to the respondent no.2. Further, during the course of his evidence, it is stated by the appellant that he paid the said loan amount in installments of Rs. 5,000-7,000/- p.m. through various modes including cash and online. The relevant portion of the examination of the accused is being reproduced herein for the sake of convenience:

> *"I had taken Rs. 2 lacs from the complainant in November-December 2016. Thereafter, I have been paying the complainant Rs. 5, 000 to Rs. 7,000 per month through various modes including cash and online. I have totally repaid the complainant till 2020."*

13) By virtue of Section 139 NI Act presumption accrues in favour of holder in due course that cheque was issued against legally recoverable liability. Needless to say that said presumption is rebuttable in nature and onus lies upon the appellant to prove otherwise.

14) As discussed above, it is admitted case of the appellant that (a) He obtained loan of Rs. 2,00,000/- from respondent no.2 and (b) that he *issued the cheque in question in pursuance thereof. Further, it is not in dispute that the cheque in question when presented for encashment returned back dishonoured. As such, onus shifts upon the appellant to rebut the presumption in favour of the respondent no.2 by proving that he has already repaid the loan amount. In this regard, it is pertinent to note that although the appellant stated on oath (during his testimony) that loan amount was repaid by him in installment of Rs.5,000-7,000/- p.m. however, the respondent no.2 has not provided or mentioned any date, time or place when said EMIs were paid by him. Simply, vague assertion has been made by the respondent no.2 without any specifications or details.*

15) It is further pertinent to note that during the course of his testimony as DW- 1 although it was alleged by the appellant that he repaid some of EMIs through online mode, however, for the reasons best known to the appellant himself, he never produced any such bank transaction or summoned any bank witness in order to prove the same, despite the fact that same would have been readily available.

16) Further, in his cross-examination the respondent admitted that the appellant had paid him Rs.5000-6000/- approx. every month from November, 2016 to October, 2020 but voluntarily stated that the abovesaid amount was not connected with the transaction of the present matter and then denied the suggestion that the said amount has not been paid to him by the appellant in connection with the current transaction. As such when the respondent has not categorically admitted the receiving of the amount of Rs. 5000-6000/- towards the transaction in question and clarified that the receiving of the said amount was regarding some other transaction, the court cannot consider the same as admission of the respondent for repayment of the loan.

17) This court further cannot turn nelson eye towards the fact that admittedly the appellant/accused issued another cheque pertaining to his mother to the complainant/respondent no.2. Relevant portion of the cross-examination of the complainant is being reproduced herein:

> *"My mother name is Mrs. Santosh Bhagotra and she is alive. I have only 1ssued one cheque to the complainant till date and that is Ex.CW-1/A. Vol. I have issued another cheque of my mother as complainant told me that he has misplaced my cheque"*

As such, had appellant paid complete loan amount to the complainant, there was no eventuality for him to issue another cheque (from his mother's account) to the respondent.

17) A part from vague assertions, not even an iota of evidence is placed on record by the appellant in order to rebut the presumption in *favour of the respondent.*

18) In view of the discussion made above, it is clear that the appellant obtained loan of Rs.2,00,000/ - from the respondent no.2 and further that he issued cheque in question in pursuance thereof and further the appellant/ accused failed to rebut the presumption as accrued in favour of the respondent/ complainant.

19) In view of the abovesaid discussions and findings, the present appeal is dismissed. The impugned judgment dated 30.11.2023 is sustained. As far as the sentence is concerned, to the mind of the court, considering the amount of the cheque and the nature of transaction between the parties, the imprisonment for six months would be on a higher side and the court finds it just and appropriate to reduce the same by three months. The rest of the part of the sentence regarding the fine i.e. equal to the cheque amount alongwith, interest @ 8% p.a. from the date of dishonour of cheque from 08.01.2021 till the date of the judgment by the ld. trial court 30.11.2023 which amounts to a total of Rs.3,49,742/- and to undergo simple imprisonment for two months in default of payment of the said amount shall sustain.

20) Copy of judgment be supplied to the appellant free of cost.

21) Appeal file be consigned to Record Room.

22) Copy of judgment alongwith trial court record be sent back to the ld. trial court." [SIC]

10. Indeed, both the Trial Court and the Appellate Court proceeded on the well-settled principle that in prosecutions under Section 138 of the NI Act, the law creates a presumption in favour of the holder of the cheque that it was issued in discharge of a legally enforceable debt or liability. Section 118(a) presumes that every negotiable instrument is made or drawn for consideration, while Section 139 mandates that the Court shall presume that the cheque was issued in discharge of such liability. Once execution of the cheque is admitted or established, these statutory presumptions necessarily operate in favour of the complainant.

11. In the present case, the Petitioner neither disputed the loan of INR2,00,000/- from Respondent No. 2 nor the issuance of the cheque in

pursuance thereof. His signatures on the cheque also stand admitted. Both Courts below were, therefore, justified in invoking Sections 118 and 139 to presume that the cheque was issued against a legally recoverable liability. The Appellate Court, after analysing the record, further noted that the Petitioner had, in fact, acknowledged taking the loan, and his defence was confined to claiming that the liability stood repaid in instalments.

12. However, as both Courts concurrently observed, such a plea of repayment, without more, cannot rebut the statutory presumption. The Appellate Court found that the Petitioner merely offered vague assertions of having paid monthly instalments of INR 5,000–7,000/-, sometimes through online transfers, but failed to produce even a single bank statement, transaction record, or independent witness to substantiate the claim, despite such material being in his possession and/or within his reach. Although Respondent No. 2 did state during cross-examination that he had received sums of INR 5,000–6,000/- per month during the relevant period, he expressly clarified that these payments were related to other dealings and not connected to the loan in question. That clarification, once on record, shifted the onus back upon the Petitioner to prove otherwise. His failure to lead cogent evidence, whether by producing contemporaneous documents or summoning banking witnesses, proved fatal to his defence. The Appellate Court also highlighted that the Petitioner had issued an additional cheque from his mother's account, a circumstance wholly inconsistent with his claim that the liability had been fully discharged. In this backdrop, the belated attempt in revision to rely on 'Paytm' payment slips, never produced before the Courts below, cannot assist the Petitioner. In revisional jurisdiction against concurrent findings, such fresh evidence cannot be

entertained, especially when it was always available with Petitioner but deliberately withheld or negligently not produced.

13. In light of the above discussion, it is evident that both the Trial Court and the Appellate Court examined the defence of repayment in detail, applied the statutory presumptions correctly, and rendered findings supported by the material on record. No perversity, arbitrariness, or manifest misreading of evidence is discernible. At this stage, in the limited revisional jurisdiction under Section 442 read with Section 440 BNSS, it would be wholly impermissible to re-appreciate evidence or entertain fresh material that was consciously withheld earlier.

14. Accordingly, the present petition is disposed of along with the pending applications.

SANJEEV NARULA, J

AUGUST 12, 2025/ab