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

\+ **CRL.REV.P.(NI) 1/2025 & CRL.M.A. 50/2025, CRL.M.(BAIL) 7/2025**

MOHD NAFIL A ..... Petitioner

Through: Mr. Surender Gupta and Mr. Deepak Rana, Advocates.

versus

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

Through: Mr. Hemant Mehla, APP.
Ms. Gurmeet Bindra, Advocate for R-2.

\+ **CRL.REV.P.(NI) 2/2025 & CRL.M.A. 62/2025, CRL.M.(BAIL) 9/2025**

MOHD NAFIL A ..... Petitioner

Through: Mr. Surender Gupta and Mr. Deepak Rana, Advocates.

versus

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

Through: Mr. Hemant Mehla, APP.
Ms. Gurmeet Bindra, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **07.01.2025**

1. The present revision petitions preferred under Section 438 read with Sections 442 and 528 of Bharatiya Nagarik Suraksha Sanhita, 2023[1], are being disposed of through a common order since they arise from

[1] "BNSS"

proceedings under Section 138 of Negotiable Instruments Act, 1881[2] which relate to a dispute between the same parties in terms of 2 separate cheques, issued in the same transaction. The details of the two cases are as follows:

CRL.REV.P.(NI) 1/2025 (arising out of Cheque no. 000119)		
Forum	Before ACMM (North)	Before ASJ
Case No.	Ct. Case No. 7503/2016 u/s 138 of NI Act	C.A. No. 03/2024
Date of Decision	Judgment: 27.09.2023 Order on Sentence: 28.11.2023	18.10.2024

CRL.REV.P.(NI) 2/2025 (arising out of Cheque no. 000120)		
Forum	Before ACMM (North)	Before ASJ
Case No.	Ct. Case No. 8293/2016 u/s 138 of NI Act	C.A. No. 04/2024
Date of Decision	Judgment: 27.09.2023 Order on Sentence: 28.11.2023	18.10.2024

2. Under the aforenoted judgments, in respect of each complaint, the ACMM convicted the Petitioner for the offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for a period of one (1) year and fine of INR 4 lakhs to be paid to the Complainant. In default of payment of the fine within one month, the Petitioner was to undergo an additional two (2) months of simple imprisonment. While the ASJ upheld the conviction, the sentence was modified in both cases, requiring the Petitioner to pay ₹2,00,000/- to the Complainant and ₹10,000/- to the State as expenses in each case. Dissatisfied, the Petitioner has approached this Court, assailing the ASJ's order upholding the conviction.

3. In order to appreciate the contentions urged by Petitioner, a brief

[2] "the Act"

factual background needs to be noticed.

4. The Complainant, Dev Bhumi Cold Chains Private Limited, is engaged in the import, sale, and distribution of fruits and dry fruits. According to the Complainant, one Mr. Purushothaman, son of Mr. T. R. Mohankrishna, was employed with the company since May 2012 and was responsible for handling its marketing operations. As part of his duties, Mr. Purushothaman was authorized to deliver goods to clients and collect payments on behalf of the company. However, it is alleged that he collected payments from dealers and customers but failed to deposit the same into the Complainant's bank account.

5. In September/October 2013, an internal inquiry by the Complainant revealed that Mr. Purushothaman had misappropriated approximately ₹25,00,000/- in cash, collected from the company's dealers and customers. Upon confrontation, Mr. Purushothaman allegedly confessed to the embezzlement and disclosed that he had lent ₹23,00,000/- of the misappropriated amount to the Petitioner/Accused. He further stated that the Petitioner had repaid ₹15,50,000/-, leaving an outstanding balance of ₹7,50,000/-.

6. To settle the remaining liability, the Petitioner purportedly issued three post-dated cheques in favour of the Complainant. However, when presented for encashment, only one cheque was honoured, while the other two were dishonoured with the remarks "insufficient funds" and "payment stopped by drawer" respectively. Following this dishonour, the Complainant issued statutory demand notices under Section 138 of the Act, seeking payment of the outstanding cheque amounts.

7. On account of the Petitioner's failure to make the requisite payments

within the statutory period, the Complainant instituted complaints under Section 138 of the Act. During the trial, the Complainant successfully established the essential elements of the offence, including the issuance and dishonour of the cheques, the service of legal notices, and the failure to remit payment within the stipulated time. Based on this evidence, the Trial Court convicted the Petitioner of the offence under Section 138 of the Act. On appeal, while the Additional Sessions Judge (ASJ) upheld the conviction, the sentence was modified. The ASJ reduced the Petitioner's sentence from two years of simple imprisonment with a fine of ₹4,00,000/- to the payment of a reduced fine of ₹2,00,000/-.

8. The Petitioner now challenges the judgments of the ASJ, alleging a fundamental error apparent on the face of the record. The primary contention is that there was no privity of contract or direct transaction between the Petitioner and the Complainant. The Petitioner argues that in the absence of any legal debt or liability owed to the Complainant, the conviction under Section 138 of the Act is unsustainable. It is further contended that the Trial Court's findings are based on conjectures and surmises. Specifically, the Petitioner highlights the presumption under Section 139 of the Act, which assumes that a cheque has been issued to discharge a debt or liability, unless proven otherwise. The Petitioner also seeks to rebut the statutory presumption under Section 139 of the Act, asserting that the Courts below wrongly relied on it without adequately scrutinizing the evidence. The Petitioner contends that his lack of direct dealings with the Complainant, coupled with discrepancies in the Complainant's testimony, sufficiently demonstrates the absence of a legally enforceable debt or liability. He further submits that the Courts below

erroneously shifted the entire burden of proof onto him without first requiring the Complainant to prove their case.

9. The Petitioner relies on the testimony of the Authorised Representative[3] of the Complainant company, who allegedly admitted during cross-examination that there were no direct dealings between the Petitioner and the Complainant. The Petitioner highlights contradictions in the AR's testimony, pointing out that while the complaint states that the cheques in question were issued directly to the Complainant, the AR later deposed that the cheques were handed over to Mr. Purushothaman, who then presented them to the Complainant. This inconsistency, according to the Petitioner, casts serious doubt on the Complainant's case. The Petitioner further argues that no documentary evidence has been produced by the Complainant to establish a loan transaction between the Petitioner and the Complainant. He emphasizes that the absence of any direct contractual relationship or legally enforceable debt invalidates the foundation of the complaint. Additionally, the Petitioner contends that the Complainant's failure to lodge an FIR against Mr. Purushothaman for the alleged embezzlement undermines the credibility of their claims. Given these factors, the Petitioner submits that the impugned orders suffer from a lack of evidentiary support and that his conviction under Section 138 of the Act is unsustainable in law due to the absence of privity of contract and a legally enforceable liability.

10. The Court has carefully considered the arguments advanced by the Petitioner but finds them untenable. At the outset, it is pertinent to note that the present revision challenges concurrent findings of fact rendered by both

the ACMM and the ASJ. These findings are based on a thorough evaluation of evidence and are entitled to a degree of deference in revisional proceedings. It is well established that revisional jurisdiction is not an appellate forum and is limited to correcting jurisdictional errors, manifest illegality, or glaring procedural irregularities. In the present case, the Petitioner has failed to demonstrate any such infirmity warranting interference. The Petitioner's primary defence hinges on the contention that the cheques in question were "security cheques," issued to Mr. Purushothaman and subsequently misused. Pertinently, Petitioner admitted during his statement under Section 313 of the Code of Criminal Procedure, 1973, that he had signed the cheques, but contended that the particulars were filled in without his authorization. Petitioner categorically stated as follows:

> *"Q5: It is further in evidence against you that you in discharge of your liability towards complainant issued one cheque bearing No 000119 (Ex.CW1/C) for a sum of Rs. 2,00,000/- dated 26.07.2015 drawn on The Karur Vysya Bank Limited in partial discharge of the amount due and payable to the complainant. What you have to say?*
>
> *A: No. It was a security cheque which was misused by Mr. Purushottaman**. There were three such security cheques which I had given blank signed to Mr. Purushottam. I had only signed the said cheques including the cheque in question.** Its particulars were not filled by me."*
>
> *[Emphasis added]*

11. Therefore, the Petitioner's defence is insufficient to rebut the statutory presumption under Section 139 of the Act, which presumes that the cheque was issued in discharge of a legally enforceable debt or liability. The reverse onus under Section 139 of the Act requires the drawer of the cheque to establish, through cogent evidence, that no debt or liability existed. In the present case, while the Petitioner alleges that the cheques were handed over

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[3] "AR"

as security to Mr. Purushothaman, he has not produced any credible evidence to substantiate this claim. Most critically, the Petitioner failed to examine Mr. Purushothaman, whose testimony could have been crucial in corroborating the defence narrative. The mere assertion that Mr. Purushothaman was named as a witness by the Complainant but not examined, does not absolve the Petitioner of his burden to rebut the presumption under Section 139. The statutory framework under the Act places the responsibility on the Petitioner to lead evidence disproving the debt or liability, a burden he has not discharged. Furthermore, the Petitioner's contention that the cheques were misused as he had issued only blank cheques affixed with his signature, does not negate the presumption of liability. The legal position is well-settled that the execution of a cheque, even if blank, signifies the drawer's authorization for the payee to fill in the necessary particulars. Thus, unless the Petitioner could provide evidence to establish that the cheques were issued without any underlying debt or liability, his defence remains legally unsustainable.

12. The presumption under Section 139 of the Act, coupled with the Petitioner's admission of having signed the cheques, creates a strong case against him. Thus, in light of the foregoing, the concurrent findings of the ACMM and ASJ do not suffer from any material irregularity or illegality warranting interference under revisional jurisdiction of this Court[4].

13. At this juncture, counsel for Petitioner states that they shall make the payment as directed in the impugned order within thirty days from today. He further submits that a payment of INR 80,000/- has already been paid by the Petitioner during the pendency of the proceedings before the Trial Court.

Mr. Hemant Mehla, APP, states that he cannot verify whether such payments have been received or not. Nonetheless, it is made clear that in case such payments have been made, the amount shall be adjusted.

14. With the above, the present revision petitions are dismissed, along with pending applications.

SANJEEV NARULA, J

JANUARY 7, 2025
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[4] ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***, (1999) 2 SCC 452