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

\# **CNR No. DLHC010275472026**

\+ **CRL.M.C. 4560/2026 & CRL.M.A. 18917/2026**

VIJAY SETH .....Petitioner

Through: Mr. Yuvraj Seth, Adv.

versus

VINAY SETH .....Respondent

Through: Mr. Maneesh Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

O R D E R

% 01.10.2026

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), seeking setting aside of the order dated 07/04/2026 passed by the learned ASJ-05, Central District, Tis Hazari Courts, Delhi in Crl. Rev. No. 109/2024, whereby the revision petition preferred by the petitioner against the summoning order dated 20.01.2024 was dismissed. The petitioner also seeks setting aside of the summoning order dated 20.01.2024 passed by the learned Metropolitan Magistrate, District Central, Tis Hazari Courts, Delhi in CC NI Act No. 9224/2023, as well as quashing of the complaint under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act") and all consequential proceedings.

BRIEF FACTS

3. The proceedings arise out of a complaint filed by the respondent under Section 138 of the NI Act in respect of cheque No. 101822 dated 31/05/2023 for a sum of ₹52,00,000/-. The petitioner and respondent are real brothers and

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are residing in different/separate portions of the property bearing No. G-8, Naveen Shahdara, Delhi. The petitioner is stated to be occupying the second floor and the respondent the first floor.

4. The petitioner disputes the liability represented by the aforesaid cheque. His case is that the respondent had executed a registered Gift Deed dated 11.12.2020 in favour of Mrs. Deepika Seth, wife of the petitioner, in respect of the second floor of the aforesaid property. It is the petitioner's contention that the Gift Deed expressly records that the transfer was made out of love and affection and without receipt of any consideration. The Gift Deed records the value of the property at approximately ₹19,60,000/-.

5. It is the petitioner's case that, notwithstanding the aforesaid recitals, the respondent has alleged that the petitioner issued the cheque for ₹52,00,000/- towards the balance consideration of the property. The petitioner submits that this allegation is contrary to the registered Gift Deed and that the donee under the Gift Deed is his wife and not the petitioner.

6. The petitioner also disputes the validity of the cheque. According to him, the cheque was drawn on a Syndicate Bank cheque book which had ceased to remain valid after the merger of Syndicate Bank with Canara Bank and the notified cut-off date of 30.06.2021. The cheque dated 31.05.2023 was allegedly returned with the endorsement “Bank not in clearing mode”. The petitioner contends that such endorsement does not constitute a dishonour falling within the statutory ingredients of Section 138 of the NI Act.

7. The respondent instituted the complaint under Section 138 of the NI Act, being CC NI Act No. 9224/2023. The learned Metropolitan Magistrate thereafter passed the summoning order dated 20.01.2024. Aggrieved by the same, the petitioner preferred Crl. Rev. No. 109/2024 before the learned

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Sessions Court. The said revision was dismissed vide order dated 07.04.2026. The petitioner has thereafter approached this Court under Section 528 of the BNSS.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:

8. Learned counsel for the petitioner submits that the learned Magistrate ought to have examined, even at the stage of summoning, whether the fundamental ingredients of Section 138 of the NI Act were prima facie satisfied. It is argued that the cheque itself was invalid on the date of presentation, having been drawn on an erstwhile Syndicate Bank cheque book, and that the endorsement "Bank not in clearing mode" does not constitute the statutory dishonour contemplated under Section 138 of the NI Act. Reliance is placed upon, inter alia, ***Archana Singh Gautam v. State of U.P., 2024 SCC OnLine All 4599***, and ***Ganta Kavitha Devi v. State of Andhra Pradesh, 2024 SCC OnLine AP 5115***.

9. It is further submitted that the complaint proceeds on the premise that the cheque represented consideration for the property, whereas the respondent's own registered Gift Deed records the transaction as a gift made without consideration. Learned counsel submits that a legally enforceable debt cannot arise out of such a transaction and that the respondent cannot be permitted to plead a liability contrary to the terms of the registered document.

10. Learned counsel submits that the respondent had also instituted civil proceedings seeking cancellation of the Gift Deed and that the dispute concerning the property is essentially civil in nature. It is further contended that the complaint under Section 138 of the NI Act is a counterblast to FIR No. 73/2023 lodged by the petitioner's daughter against the respondent, and that the proceedings have been initiated with mala fide intent.

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SUBMISSIONS ON BEHALF OF THE RESPONDENT:

11. *Per contra*, learned counsel for the respondent raises a preliminary objection to the maintainability of the present petition. It is submitted that the petitioner had already availed the statutory remedy of revision under Sections 397/399 Cr.P.C. against the very same summoning order dated 20.01.2024 and the said revision was dismissed by the learned ASJ vide order dated 07.04.2026. The present petition, though styled under Section 528 of the BNSS, is therefore stated to be nothing but a second revision on the same cause and against the same order.

12. Learned counsel for the respondent submits that the inherent jurisdiction of the High Court cannot be invoked as a matter of course to circumvent the statutory bar against a second revision. It is submitted that such jurisdiction can be exercised only in exceptional cases involving serious miscarriage of justice, abuse of process or some patent illegality. According to the respondent, no such exceptional circumstance is made out in the present case.

13. Learned counsel further submits that all the objections now raised by the petitioner were specifically raised before the learned Sessions Court, including the alleged invalidity of the cheque, the effect of the bank merger, the nature of the endorsement on the return memo and the alleged absence of a legally enforceable debt on account of the Gift Deed. The learned ASJ considered these objections and declined to interfere with the summoning order, holding that such contentions were matters of defence and that the complaint and supporting documents prima facie disclosed the ingredients of the offence under Section 138 of the NI Act.

14. It is further submitted that the issuance of the cheque by the petitioner

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is not in dispute and that the petitioner cannot, after himself issuing the cheque, seek to rely upon the subsequent merger of the bank as a ground for quashing the proceedings at the threshold. It is contended that the circumstances in which the cheque came to be issued, the nature of the liability and the effect of the Gift Deed are matters which can be considered by the learned Trial Court on the basis of evidence.

ANALYSIS

15. This Court has considered the rival submissions and perused the material on record.

16. The first issue which arises for consideration is the maintainability of the present petition. Section 439(3) of the BNSS provides that where an application for revision has been made by a person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by any of them. This statutory restriction is analogous to Section 397(3) of the Cr.P.C.

17. The Supreme Court, in ***Krishnan v. Krishnaveni, (1997) 4 SCC 241***, has held that although the inherent jurisdiction of the High Court survives, the same cannot ordinarily be invoked as a substitute for a second revision. Interference may nevertheless be warranted in an exceptional case involving failure of justice, abuse of the process of the Court or patent illegality.

18. In the present case, the petitioner had already challenged the summoning order dated 20.01.2024 by filing Crl. Rev. No. 109/2024 before the learned Sessions Court. The grounds urged in the said revision included the very objections which form the basis of the present petition, namely, the validity of the cheque, the effect of the Syndicate Bank-Canara Bank merger, the nature of the return endorsement, the absence of a legally enforceable

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liability and the effect of the Gift Deed. The revisional Court considered the matter and dismissed the revision on 07.4.2026.

19. The present petition, accordingly, substantially seeks a re-examination of the same challenge which has already been considered by the learned Sessions Court. Merely invoking Section 528 of the BNSS does not, by itself, convert such a challenge into an independent proceeding. The inherent jurisdiction may certainly be exercised in an appropriate case notwithstanding the statutory restriction on a second revision, but the petitioner must demonstrate circumstances of such nature as would justify exceptional interference. No such circumstance is made out in the present case.

20. Even otherwise, the challenge on merits does not warrant interference at this stage. The petitioner relies upon the alleged invalidity of the cheque and the endorsement "Bank not in clearing mode". In the present case, the petitioner seeks a fresh examination of the effect of the bank merger and the return endorsement after the same questions have already been raised before and considered by the revisional Court. The present proceedings cannot be converted into a further revision for re-appreciation of those issues.

21. The contention concerning the Gift Deed also does not furnish a ground for interference under Section 528 of the BNSS. It is not disputed that the registered Gift Deed was executed by the respondent in favour of Mrs. Deepika Seth, wife of the petitioner, and that the document records the transfer as a gift without consideration. This Court, in its order dated 27.04.2026 passed in the connected civil proceedings, has already observed that no condition relating to payment of consideration is mentioned in the Gift Deed and that a plea that the Gift Deed was conditional upon payment of consideration is legally flawed.

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22. However, the question presently before this Court is not to finally adjudicate the underlying civil dispute concerning the Gift Deed. The complaint under Section 138 of the NI Act has already been entertained and the learned Magistrate has recorded *prima facie* satisfaction before issuing summons.

23. In view of the aforesaid discussion, this Court finds no ground to interfere with the order dated 07.04.2026 passed by the learned ASJ or the summoning order dated 20.01.2024 passed by the learned Metropolitan Magistrate.

24. Accordingly, the present petition is dismissed. Pending applications, if any, also stand disposed of.

25. The order be uploaded on the website forthwith.

MADHU JAIN, J

OCTOBER 1, 2026*/prg/P*

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