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

Date of decision: 24th April 2026

\+ **CRL.A. 891/2024**

ARUN KUMAR GUPTA (D) THR LRS .....Appellants

Through: Mr. Shekhar Prit Jha & Ms. Preeti Kumari, Advs.

versus

TAMA JAWAHAR .....Respondent

Through: Mr. P. Sureshan, Adv. with respondent through VC.

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versus

TAMA JAWAHAR .....Respondent

Through: Mr. P. Sureshan, Adv. with respondent through VC.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (Oral)

1. The present matter arises out of conviction of respondent/accused for the offence punishable under *Section 138* of the Negotiable Instruments Act 1881 ["***NI Act***"], whereby this Court, *vide* judgement dated 19th September

2024, set aside two judgements dated 29th January 2021 passed in ***CC.No.5475/2016*** (in CRL. L.P.56/2021) and in ***CC.No.6241/2016*** (in CRL. L.P.57/2021) by the Metropolitan Magistrate- 05 (North West) Rohini, Delhi [“***MM***”], whereby respondent/accused was acquitted.

2. This Court *vide* judgement date 19th September 2024 particularly from *paragraph 16-28*, analysed the facts of the case and stated that the issuance of the cheques by the respondent stood admitted and the defence that the cheques were issued merely as security towards a trade advance of *Rs. 2,00,00,000/-* remained unsubstantiated in the absence of any defence evidence. It was further observed that the issuance of ten cheques aggregating to *Rs. 2,60,00,000/-* was inconsistent with respondent’s version of transaction, denial of execution of the Memorandum of Understanding dated 05th December 2007 [‘***MoU***’] was vague, ambiguous and not credible, particularly when signatures thereon *prima facie* appeared to be of the respondent and no convincing explanation was offered in the statement under *Section 313* of the Code of Criminal Procedure 1973 [***Cr.P.C.***].

3. It was accordingly held that the MoU subsisted and formed the basis of the liability and that once the cheques for *Rs. 85,00,000/-* were issued in discharge of the settled outstanding amount, the statutory presumption under *Section 139* of NI Act operated against respondent and remained unrebutted. The Court further observed that the contention that such a substantial amount had been advanced without any written agreement was implausible in a commercial transaction of this magnitude, and therefore the findings of the Trial Court were unsustainable, resulting in setting aside of the acquittal.

Proceedings before this Court and the Supreme Court

4. The record reflects that the present matter travelled before the Delhi High Court by way of Criminal Leave Petition being ***CRL.L.P. 56/2021*** and ***CRL.L.P. 57/2021*** filed by appellants/claimants challenging the judgments dated 29th January 2021 passed by MM-05 (North-West), Rohini Courts, Delhi, whereby the respondent was acquitted of the offence punishable under *Section 138* of NI Act. Upon grant of leave to appeal and consideration of the material on record, this Court *vide* judgment dated 19th September 2024, set aside the impugned judgments of acquittal and held that the issuance of the cheques stood admitted, the statutory presumption under *Section 139* of NI Act remained unrebutted, and the defence taken by respondent that the cheques were issued merely as security was untenable, resulting in conviction of the respondent for the said offence.

5. Subsequently, the matter was carried before the Supreme Court by way of a Special Leave Petition being ***SLP (Crl.) No. 13799–13800/2024***, by the respondent challenging the judgement dated 19th September 2024 passed by this Court wherein, by order dated 21st November 2025, the Supreme Court observed that it was open to the High Court to proceed with the question of sentence, while requesting that the sentence, if imposed, be kept in abeyance in view of the pendency of the petition.

6. In compliance with the said order, this Court has proceeded to determine the quantum of sentence in the present matter, keeping the aforesaid directions in view.

Submission made on behalf of parties

7. Counsel for appellants made the following submissions in relation to sentencing :

a) despite the matter having been referred to mediation before the Supreme Court of India, the respondent neither made any settlement proposal nor expressed willingness to discharge the cheque liability and instead persisted in denying liability altogether; such conduct, even post-conviction, reflects lack of *bona fides* and justifies imposition of a deterrent sentence under Section 138 of NI Act;

b) respondent adopted inconsistent and false defences during the proceedings initially asserting partial discharge of liability and thereafter contending that the entire amount stood repaid and the cheques were issued merely as security despite the statutory presumptions under *Sections 118(a) and 139* of the NI Act operating against him and despite not leading any defence evidence, thereby prolonging the litigation and abusing the process of law;

c) the transaction being commercial in nature and involving dishonour of cheques aggregating to *Rs. 85,00,000/-*, appellants have been deprived of the said amount since 2007 and are therefore entitled to compensation along with reasonable interest; reliance is placed upon ***R. Vijayan v. Baby***, (2012) 1 SCC 260, wherein it was observed that in cheque dishonour cases compensation may appropriately include interest [*commonly computed at about 9% per annum*] so as to restitute complainant, and prayed that maximum permissible sentence along with enhanced compensatory relief be awarded.

8. Counsel for respondent made the following submissions in relation to sentencing:

a) the cheque in question pertained only to the alleged balance amount of *Rs. 85,00,000/-* towards interest/profit and not towards repayment of the principal liability, inasmuch as a sum of *Rs. 2,01,60,511/-* already stood repaid by the respondent against the admitted advance of *Rs. 2,00,00,000/-*; therefore, the cheque amount represents only a disputed component of alleged profit based on an oral understanding and constitutes a relevant mitigating circumstance for the purposes of sentencing;

b) there existed no written agreement authorising payment of any enhanced liability towards interest/profit and the claim of *Rs. 85,00,000/-* rests solely on an unsubstantiated oral understanding; it is further submitted that the transaction was purely commercial in nature, the respondent has no criminal antecedents, and the learned Trial Court had originally acquitted the respondent, which circumstances merit a lenient approach while determining sentence;

c) under *Section 138* of NI Act, the Court retains discretion to impose sentence ranging from nominal punishment to the statutory maximum, and considering that the principal amount substantially stood repaid and the dispute relates only to the alleged profit component, the present case falls within mitigating parameters warranting imposition of the minimum sentence permissible in law.

Analysis

9. Heard the counsel for parties on the question of sentence.

10. Having considered the submissions advanced by counsel for parties and perused the record, this Court notes that the conviction of the respondent arises from dishonour of cheques aggregating to *Rs. 85,00,000/-,* which were issued in discharge of a legally enforceable liability pursuant to the MoU. As already analysed in the judgment passed by this Court, the defence taken by respondent that cheques were issued merely as security was found to be untenable and unsupported by any evidence, and the statutory presumption under *Section 139* of the NI Act remained unrebutted. Liability of respondent, therefore, stood established in the course of a commercial transaction of substantial magnitude.

11. This Court also takes note of the conduct of respondent during the course of proceedings, including adoption of inconsistent stands with respect to the nature of liability and the absence of any meaningful effort towards settlement. Continued denial of liability despite issuance of cheques and failure to discharge the outstanding amount for a considerable period of time since 2007 has resulted in prolonged deprivation to the appellants of monies admittedly due to them. In such circumstances, the submission of the respondent that the cheque amount pertained only to an interest component does not constitute a mitigating factor warranting a nominal sentence, particularly when the offence itself stands crystallised upon adjudication by this Court.

12. It is well settled that the object of *Section 138* of NI Act is not merely punitive but primarily compensatory in nature, intended to ensure credibility of commercial transactions and to restitute the complainant for the loss

occasioned by dishonour of cheques. The Supreme Court in ***Meters and Instruments (P) Ltd. v. Kanchan Mehta***, (2018) 1 SCC 560, has observed that proceedings under *Section 138* of NI Act are largely compensatory in character, with the punitive element being mainly to ensure compliance with the compensatory remedy. Further, in ***R. Vijayan v. Baby*** (*supra*), the Supreme Court observed that compensation awarded in such cases should be realistic and adequate so as to make good the loss suffered by the complainant on account of non-payment of the cheque amount over a prolonged period of time.

13. In the facts of the present case, where appellants have been deprived of the cheque amount since 2007 and no *bona fide* effort towards repayment has been made by the respondent despite opportunities including mediation proceedings, this Court is of the view that imposition of fine equivalent to twice the cheque amount, payable to the appellants as compensation in terms of *Section 357(1)(b)* Cr.P.C., would appropriately subserve the object of the statute. At the same time, this Court does not consider it necessary to compute separate interest in addition thereto, since the direction for payment of twice the cheque amount sufficiently balances the equities between the parties and meets the ends of justice.

Sentence

14. Accordingly, having regard to the facts and circumstances of the case, the nature of the transaction, and the compensatory object underlying *Section 138* of NI Act, respondent/accused is sentenced to pay a fine equivalent to twice the cheque amount, i.e., ***Rs. 1,70,00,000/-.*** Said fine shall be paid to the complainant as compensation in terms of *Section 357(1)(b)* of Cr.P.C.

15. Respondent is directed to deposit the aforesaid fine amount before the Trial Court within a period of six months from the date of this order. In default of payment of the said amount within the stipulated period, respondent shall undergo a simple imprisonment for a period of ***three*** months.

16. It is clarified that the amount shall be recoverable in accordance with law as a fine under the provisions of the Cr.P.C.

17. The order on sentence has been passed by this Court, keeping in view of the direction passed by the Supreme Court *vide* order dated 21st November 2025 in ***SLP (Crl.) No.13799-13800/2024***, wherein the Court categorically stated that "*it is well open to the High Court to impose sentence. However, we request the High Court to keep it in abeyance in view of the pendency of this petition.*"

18. Accordingly, the appeals are disposed of. However, in view of the aforesaid directions of the Supreme Court, the sentence imposed herein shall remain in abeyance till further orders in the pending proceedings before the Supreme Court.

19. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 24, 2026/ak/tk