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

\+ CRL.REV.P. 1232/2024, CRL.M.(BAIL) 1756/2024

SANJAY AGGARWAL .....Petitioner

Through: Mr. Sandeep Garg, Mr. Brij Mohan, Mr. Ramesh Chaudhary and Mr. D.B. Ranga, Advs.

versus

ARADHNA ENTERPRISES .....Respondent

Through: Mr. Tribindh Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

O R D E R

% 12.05.2026

1. By virtue of the present revision petition, the petitioner seeks setting aside of the judgment dated 23.09.2024 passed by the learned Additional Sessions Judge (FTC)(RC) South-West District, Dwarka Courts, New Delhi ***(learned Appellate Court)*** in Criminal Appeal No.296/2023, whereby his appeal challenging the judgment on conviction dated 08.05.2023 and order on sentence dated 02.06.2023 passed by the learned Metropolitan Magistrate (NI Act), South-West District, Dwarka Courts, New Delhi ***(learned Trial Court)*** in Complaint Case bearing no.32354/2018 convicting him for the offence punishable under *Section 138* of the Negotiable Instruments Act, 1881 ***(NI Act)*** as also sentencing him to undergo simple imprisonment for a period of *six months* and to pay double the cheque amount, of which *ten percent* being payable to Delhi Legal Aid Services Authority and remaining to the respondent, was dismissed.

2. This Court *vide* order dated 23.10.2024, suspended the sentence of the petitioner subject to him depositing a sum of Rs.5,20,000/- with the Registrar General of this Court. As recorded in order dated 20.08.2025, the said amount of Rs.5,20,000/- has already been deposited.

3. *Broadly speaking*, the facts leading to the present case is that respondent/ complainant was/ is engaged in a business providing washing services. As per respondent, the petitioner had availed their services and regularly cleared the dues till June 2017, however, thereafter, the petitioner stopped making payment. Subsequently, after repeated request, the petitioner issued *four cheques* for an amount totalling Rs.2,60,000/- all drawn on State Bank of India, Rohini, New Delhi towards discharge of part liability of outstanding dues of Rs.3,90,000/-, which, upon presentation, were returned unpaid with the endorsement *"funds insufficient"*. Thereafter, the respondent served a Legal Notice dated 07.09.2018 to the petitioner demanding payment of the cheque amount, however, the petitioner failed to make the payment. *Resultantly*, the respondent filed a complaint under *Section 138* of the NI Act before the learned Trial Court.

4. Though the petitioner has raised various grounds herein, however, the thrust of the submissions of the learned counsel for petitioner is that the cheques in question were issued in respect of transaction which were illegal and unenforceable in law since the activity carried out by the respondent was in contravention of Delhi Pollution Control Regulations and consequently, there was no '*legally enforceable debt*' as required for conviction under *Section 138* of the NI Act, as also that the respondent had never raised GST invoices in respect of the said transaction.

5. *Per contra*, learned counsel appearing for the respondent submits that the aforesaid contentions were never raised before the learned Trial Court or thereafter before learned Appellate Court. He, while drawing attention of this Court to *paragraph no.24* of the impugned judgment, submits that the main defence of the petitioner before the said two Courts was that the services provided to him by the respondent were not up to the mark. *Paragraph no.24* of the impugned judgment is reproduced as under:

> "24. *The main defence of the appellant is that the washing services provided by the respondent were not up to the mark and had resulted in a loss to the appellant. The appellant submitted that he had asked the respondent to take the material as it was of no use to him and settle the account."*

6. Upon query, learned counsel for petitioner fairly admits that neither of the said issues were raised before any of the Courts below.

7. Heard learned counsel for the parties and perused the records.

8. *Admittedly*, the issues sought to be raised by the learned counsel for the petitioner regarding absence of a legally enforceable debt on the ground that the activity carried out by the respondent was in contravention of Delhi Pollution Control Regulations and/ or that no GST invoices had been raised, were never raised/ urged either before the learned Trial Court or before the learned Appellate Court, and thus they cannot be raised for the first time here in revisional jurisdiction, where the scope itself is confined to examining any illegality, incorrectness and impropriety in the impugned judgment(s). It is trite that revisional jurisdiction cannot be converted into a forum for agitating fresh factual issues which were never raised before the Courts below. In any event, no such permission has been

sought from this Court as well.

9. Even otherwise, this Court finds that the respondent had duly discharged the initial burden of showing that there existed a *prima facie* case by satisfying the basic ingredients of *Section 138* of the NI Act inasmuch as there is *no qualm* regarding the fact that the petitioner had issued the cheques in question and his signatures thereon. In view thereof, the presumption under *Section 118(a)* and *Section 139* of the NI Act stood attracted and the burden of proof to rebut the same by raising a probable defence either by leading direct evidence or by pointing out serious contradictions or improbabilities in the respondent's case, was squarely upon the petitioner. However, as concurrently held by both the Courts below, the petitioner failed to raise any ground by bringing any cogent evidence so as to rebut the said statutory presumptions.

10. Moreover, since this Court finds that both the Courts below have already dealt with all the issues raised before them at considerable length and thereafter discarded them by speaking judgment(s), with which this Court is in complete agreement, there is hardly any ground for interfering with the judgment(s) on merit.

11. *Resultantly*, the conviction of the petitioner under *Section 138* of the NI Act is upheld.

12. However, insofar as the sentence imposed upon the petitioner is concerned, considering the mitigating circumstances pleaded by the petitioner in the present petition, including the fact that he is the sole breadwinner of his family, coupled with the settled position of law that an offence under *Section 138* of the NI Act ought not to be given criminal overtones as also bearing in mind that the scheme of NI Act itself does not

mandate necessary sentence of imprisonment, this Court is of the considered opinion that ends of justice would be subserved by modifying the sentence to the extent that the petitioner is liable to pay fine of Rs.5,20,000/- only i.e., double the cheque amount, of which *ten percent* is payable to Delhi Legal Aid Services Authority, South West District and remaining *ninety percent* to the respondent. The sentence of simple imprisonment for a period of *six months* awarded to the petitioner is hereby set aside.

24. Accordingly, the Registry is directed to release *ten percent* of Rs.5,20,000/- along with interest accrued thereon, if any, to the Delhi Legal Aid Services Authority, South West District, as also release the balance *ninety percent* amount along with interest accrued thereon, if any, deposited with the Registrar General of this Court, in favour of the respondent within a period of *four weeks*, in accordance with law.

25. As such, the present petition is partly allowed to the extent indicated above and is accordingly disposed of.

SAURABH BANERJEE, J

MAY 12, 2026/Ab