$~50

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

% ***Date of Decision : 19.11.2026***

\# **CNR No.DLHC010215182026**

\+ **CRL.M.C. 3784/2026, CRL.M.A.15354/2026**

RAJIV CHOWDHRY .....Petitioner

Through: Mr. Tahir Ashraf Siddiqui, Mr. Kartikey Sahai and Mr. Chanakya Kene, Advs.

versus

SUDHIR KHOSLA .....Respondent

Through: Mr. Naresh Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. By way of the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), the petitioner seeks quashing of the summoning order dated 18.02.2026 passed in Complaint Case NI Act No.6353/2026 titled as "*Sudhir Khosla v. Rajiv Chowdhary & Anr.*" and of the proceedings emanating therefrom, pending before the learned JMFC-08 (NI Act), South District, Saket Courts, New Delhi.

2. On 24.09.2026, the Supreme Court, while dismissing SLP (Crl.) No.17606/2026 preferred by the petitioner against the order dated 03.09.2026 passed in the present proceedings (whereby this Court declined to stay the proceedings before the learned trial Court or to prepone the date of hearing), requested this Court to consider the petitioner's request for early disposal of the present petition sympathetically.

3. In the circumstances, the matter has been taken up for hearing and final

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

disposal.

4. Learned counsel for the petitioner and learned counsel for the respondent have been elaborately heard.

5. The factual conspectus is that by way of an Agreement to Sell dated 07.12.2022 (*"ATS"*), the petitioner's son Mr. Rakesh Chowdhry agreed to sell the ground floor, along with 25% undivided share in the land of the property bearing Plot No.489, Block-C, Sushant Lok Phase-I, Gurugram, Haryana to the respondent for a total sale consideration of Rs.2.45 crores. The ATS records the receipt of an advance of Rs.1.05 crores, the balance of Rs.1.40 crores being payable at the time of execution of the sale deed. The petitioner signed as a witness to the said agreement. On 16.04.2025, the said property was sold to third parties by way of a registered sale deed.

6. The respondent's case, as set out in the legal notice dated 06.01.2026 is that, in the first week of May, 2025, when the respondent was about to lodge an FIR upon learning of the said sale, the petitioner and his son agreed to indemnify him and make good his losses by paying a sum of Rs.3 crores (stated to be the market price of the property) and requested him not to lodge an FIR.

7. As per the legal notice, the petitioner's son paid Rs.25 lakhs on 09.05.2025 and another Rs.25 lakhs on 30.05.2025, and the petitioner undertook to pay the balance of Rs.2.5 crores.

8. It is the case of the respondent that, in the first week of September, 2025, five post-dated cheques of Rs.50,00,000/- each (all dated 30.12.2025) were delivered by the petitioner to the respondent. The cheques were drawn on the account of the petitioner maintained with HDFC Bank, Green Park Extension, New Delhi. The said cheques, upon presentation on 30.12.2025,

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

were dishonoured with the endorsement *"account closed"*.

9. The legal notice dated 06.01.2026 demanded an amount of Rs.2.5 crores (the total of five cheques). The petitioner, despite being in receipt of the said notice, did not reply. The complaint was filed on 14.02.2026. Only the petitioner, being the drawer of the cheques, was summoned by way of the impugned order; the petitioner's son was not summoned as he is not the drawer of the subject cheques.

10. Learned counsel for the petitioner submits as follows:

i. It is submitted that there was no crystallised debt. It is submitted that the ATS was time-bound and stood expired by March, 2025 on account of the respondent's failure to pay the balance consideration, and that the petitioner's son, though entitled to forfeit the entire advance, voluntarily refunded Rs.75 lakhs and forfeited only Rs.30 lakhs. Nothing was reduced to writing after the Agreement to Sell could not be acted upon. It is submitted that the claim, at best, is one for unliquidated damages;

ii. It is submitted that the respondent has filed the Civil Suit being CS(OS) 595/2026 before this Court for recovery of Rs. 2.80 crores on the basis of the same five cheques, which confirms that the respondent is using the criminal trial under section 138 NI Act as a coercive shortcut to force evidence disclosure and extract admissions to leverage in his civil suit;

iii. It is submitted that the legal notice dated 06.01.2026, as also the police complaint dated 16.01.2026, put the total amount agreed at Rs.3 crores and the amount received at Rs.50 lakhs, leaving a balance of Rs.2.5 crores, which corresponds to the amount of the five cheques. It is

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

submitted that the respondent in the legal notice, concealed the third payment of Rs.25 lakhs received by him on 08.07.2025, which came to light in the police inquiry report dated 07.02.2026. Therefore, the balance on the respondent's own figures would have stood reduced to Rs.2.25 crores, i.e., less than the amount of the cheques. It is submitted that, to get over this, the respondent, in the section 138 NI Act complaint, admitted the receipt of Rs.75 lakhs but, for the first time and without any explanation, increased the total amount agreed to Rs.3.25 crores, so that the balance continued to be Rs.2.5 crores. It is submitted that the respondent has not come with clean hands and the dispute is civil in nature;

iv. It is submitted that the petitioner was a mere witness to the Agreement to Sell and has no personal liability towards the respondent; once the petitioner's son, who was the party to the said agreement, has not been summoned, the petitioner could not have been independently proceeded against.

11. During the course of rejoinder arguments, it has been further submitted that if the respondent was honest, the payment of Rs.25 lakhs would have been endorsed on the cheques and they would have been presented for Rs.2.25 crores. It is submitted that on the figures in the legal notice itself, only Rs.2.25 crores could be due.

12. It is submitted that, as such, the part payments made pursuant to the alleged settlement of May, 2025 have neither been accounted for in the legal notice nor endorsed on the cheques, which were presented for the full amount.

13. Relying on ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul,*** 2025 SCC OnLine SC 2019 and ***Dashrathbhai Trikambhai Patel v. Hitesh***

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

Mahendrabhai Patel, (2023) 1 SCC 578, it is urged that the requirement of a statutory notice under proviso (b) to Section 138 of the NI Act is mandatory and must be strictly complied with; that the notice must correctly reflect the amount legally due under the cheques, after accounting for the part payments made; and that any variance between the case set up in the notice and that set up in the complaint is fatal to the prosecution. It is further emphasized that the petitioner is only a witness to the agreement.

14. Further, it is submitted that even on the respondent's own case, there is no lawful consideration for the cheques. It is submitted that it is the respondent's case itself that these cheques were given to prevent the respondent from lodging a complaint / registering an FIR against the petitioner and his son, and that the petitioner agreed to pay because of that threat. It is submitted that forbearance from filing an FIR is not a valid consideration.

15. Learned counsel for the respondent submits that the notice lists each cheque and demands of the cheque amount and that every ingredient of Section 138 NI Act is disclosed. The receipt of Rs.75 lakhs is disclosed in the complaint and in the pre-summoning evidence.

16. It is submitted that the earlier counsel, while preparing the notice, noted by mistake, only two of the three payments of Rs.25 lakhs each and that is the explanation given as to why the notice mentions Rs.50 lakhs is paid and a total of Rs. 3 crores whereas the complaint mentions Rs.75 lakhs and Rs.3.25 crores.

Reasoning and Conclusion

17. The legal position is well settled that, at this stage, the Court only has to consider whether the allegations in the complaint, taken at face value and

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

accepted in their entirety, disclose an offence. The legal position in this regard, as also fairly acknowledged by the learned counsel for the petitioner himself, has been set out by the Supreme Court in the case of ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335.

18. Considering the totality of facts and circumstances, I find no reason to accede to quash the proceedings. The said reasons are listed hereunder:

i. The ingredients of the offence under section 138 NI Act are disclosed. The petitioner drew the cheques on his own account. The cheques were presented within their validity and were returned with the endorsement "account closed". Notice was given in time and received. The complaint was filed within time. Notably, at the stage of framing of notice under Section 274 BNSS on 08.08.2026, the petitioner has admitted that the cheques are drawn on his account and are signed by him, that he delivered the same to the respondent, and that he received the legal notice.

ii. The legal notice cannot be said to be invalid under law. Proviso (b) to Section 138 requires a demand for the said amount of money i.e., the cheque amount. The notice demands Rs.2.5 crores, the total of the five cheques. It does not demand more or less than the cheques. On both versions [i.e. Rs.3 crores less Rs.50 lakhs and Rs.3.25 crores less Rs.75 lakhs], the balance claimed is the same *viz.* Rs. 2.5 crores. The decisions relied upon by the petitioner do not assist him. In ***Kaveri Plastics***, the notice demanded Rs.2 crores on a cheque of Rs.1 crore. The relevant paragraphs in ***Kaveri Plastics*** are as under:-

> ***"8.*** *From the aforestated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the*

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

dishonoured cheque is one of the main ingredients of the offence under section 138 of the Negotiable Instruments Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under section 138 of the Negotiable Instruments Act would fall flat as bad in law. The notice to be issued under proviso (b) to section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

9. *When the provision is penal and the offence is technical, there is no escape from holding that the "said amount" in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement. It has to be held that in order to make a valid notice under the proviso (b) to section 138 of the Negotiable Instruments Act, it is mandatory that "said amount" to be mentioned therein is the very amount of cheque, and none other.*

10. *Reverting to recollect the facts of this case, the cheque which was drawn by the respondent was for Rs. 1,00,000,00 whereas in the notice issued under proviso (b) to section 138 of the Negotiable Instruments Act against the respondent, the appellant mentions the amount of Rs. 2,00,000,00. The rigours of law on this score being strict, the defence would not hold good that the different amount mentioned in the notice was out of inadvertence. Even if the cheque number was mentioned in the notice, since the amount was different, it created an ambiguity and differentiation about the "said amount". The notice stood invalid and bad in law. The order of quashment of notice was eminently proper and legal."*

iii. Moreover, ***Kaveri Plastics*** (supra) itself holds that the "said amount" in proviso (b) means the "cheque amount". Once the cheque amount is demanded, the notice may also claim costs and other charges. In the present case, there is no variance whatsoever between the amount of the cheques and the amount demanded in the notice.

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

iv. The present notice lists each cheque and demands Rs.2.5 crores along costs. The figure of Rs. 3 crores occurs only in the narration of the alleged settlement; the demand made in the notice is confined to Rs.2.5 crores, being the amount of the cheques. In ***Dashrathbhai Trikambhai Patel*** (supra), part payments were made after the cheque was drawn and before it was encashed, without any endorsement under Section 56 of the NI Act, and the cheque was presented for the full amount; further, the said decision was rendered in an appeal against acquittal, upon appreciation of the evidence led at trial. However, in the present case, the third payment of Rs.25 lakhs (made in July, 2025) was, on the respondent's own case, not made after the cheques were delivered. On the respondent's case, there was no payment after the cheques were drawn and hence, there was nothing to endorse. The petitioner's argument, that on the figures in the notice only Rs.2.25 crores could be due, assumes that Rs.3 crores was the agreed total, whereas the respondent's case is that it was Rs.3.25 crores. Hence, the figure which was agreed, if any, is a matter for trial.

v. In the present case, what is relevant at this stage, is that the notice demands exactly the cheque amount and, on the respondent's case, all payments preceded the cheques. Whether the total figures are true; why the notice omits one payment; and whether the explanation of an error by earlier counsel is correct, go to the respondent's credibility and can be tested only in cross-examination. Notably, the respondent, in his cross-examination recorded on 08.10.2026, has admitted the receipt of Rs.75 lakhs as also the omission of the payment of Rs.25 lakhs in the legal notice and in the police complaint. The said omission has been

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

attributed to inadvertence, and the figure of Rs.3 crores to an error on the part of his counsel. The petitioner has full opportunity to test this explanation in the course of trial. Whether the cheques were issued in discharge of a legally enforceable debt or liability is essentially a question of fact, to be determined at trial on the basis of the evidence led by the parties.

vi. The reliance placed by the petitioner on ***Rekha Sharad Ushir v Saptashrungi Mahila Nagari Sahkari Patsansta Ltd.*** 2025 SCC OnLine SC 641 is also misplaced. In that case, the accused had replied to the statutory notice and, by a further letter, sought the documents relied upon in the demand notice so as to respond to it. The complainant suppressed both in the complaint and in the statement on oath, and falsely claimed that no reply had been sent. The suppressed material thus linked directly to the statutory notice and to the issuance of process. However, in the present case, the petitioner admittedly did not reply to the legal notice. Further, the complaint itself discloses the receipt of Rs.75 lakhs, including the payment made in July, 2025, as well as the police complaint. The only lapse is that, in the complaint filed under section 138 NI Act, the police complaint was described as "pending" and the enquiry report dated 07.02.2026 was not mentioned. However, this lapse does not bear upon any of the ingredients of the offence under Section 138 of the NI Act. The said enquiry report, which pertains to allegations of cheating and recommends that the matter be treated as a civil dispute, does not, by itself, establish that the cheques in question were not issued towards a legally enforceable debt or liability.

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

vii. The respondent's case is that after the property was sold to others, the petitioner and his son agreed on the amount payable to him and the petitioner issued the cheques for the balance. If that is proved, the liability would stand settled by the agreement and would no longer be unliquidated. The petitioner does not deny signing and delivering the cheques; his defence, as disclosed at the stage of framing of notice, is that the cheques were handed over in a blank signed condition in a different context. The said defence is a matter of evidence. The presumption under Section 139 of the NI Act therefore arises; it is open for the petitioner to rebut the same during trial.

viii. The petitioner's plea that the cheques lack lawful consideration cannot be accepted at this stage. According to the respondent, the petitioner and his son agreed to make good his losses from the sale of the property to a third party. Whether the real consideration was the settlement of this civil claim, or only an agreement not to prosecute, is a question of fact that can be decided only during trial.

ix. Filing of a civil suit also does not preclude the respondent from pursuing the Section 138 complaint. The legal position in this regard is well settled. In ***D. Purushotama Reddy v. K. Sateesh***, (2008) 8 SCC 505, the Supreme Court observed as under:

> *"9. A suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint petition under terms of Section 138 of the Act would also be maintainable."*

x. The contention that the petitioner was a mere witness to the ATS does not advance the case of the petitioner. The liability under the cheques is

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03

not founded on the ATS as such, but on the subsequent settlement of May, 2025, to which, as per the respondent, the petitioner was a party, and pursuant to which the petitioner is alleged to have issued the cheques from his own account. The non-summoning of the petitioner's son is only a consequence of his not being the drawer of the cheques; it does not detract from the liability of the petitioner as the drawer.

19. In the circumstances, no merit is found in the present petition; the same is, accordingly, dismissed. The pending applications also stand disposed of.

20. It is made clear that the petitioner shall be entitled to take all his defences during trial. The learned trial Court shall duly consider the same without being influenced by the observations made herein.

21. It is made clear that nothing, stated in this order, shall be construed as an expression of opinion on the merits of the controversy.

22. The learned trial Court is requested to afford an adequate opportunity to the petitioner for the purpose of conducting further cross-examination of the respondent.

SACHIN DATTA, J

NOVEMBER 19, 2026/r

Signature Not Verified
Digitally Signed
By:ABHISHEK THAKUR
Signing Date:23.11.2026
18:49:03