



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: January 07, 2026
Pronounced on: February 09, 2026

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CRL.REV.P. 633/2024

OMPAL YADAVPetitioner

Through: Mr. Piyush Pahuja and Mr. Upender Kumar, Advocates.

Versus

FARHAN EMPEXO EXPORT AND IMPORT CO. .Respondent

Through: Mr. Raj Kumar and Mr. H. Rehman, Advocates.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

1. By virtue of the present petition filed under *Section(s) 401/ 397* of the Code of Criminal Procedure, 1973¹ read with *Section 482* of the Cr.P.C., the petitioner/ convict/ revisionist² seeks setting aside of the impugned order dated 10.04.2024³ passed by the learned Additional Sessions Judge (05), South East District, Saket Courts, New Delhi⁴ in the Criminal Appeal No.79/2022 entitled '*Ompal Yadav vs. Farhan Empexo Export and Import Co.*', whereby the appeal preferred by the petitioner was dismissed and the judgment and order on sentence dated 26.04.2022 and 07.05.2022 respectively passed in a complaint made by the

¹ Hereinafter as "*Cr.P.C.*"

² Hereinafter as "*petitioner*"

³ Hereinafter as "*impugned judgment*"

⁴ Hereinafter as "*learned ASJ*"



complainant/ respondent⁵ under *Section 138* of the Negotiable Instruments Act, 1881⁶ passed by the learned Metropolitan Magistrate, South East District, Saket Courts, New Delhi⁷ was upheld.

2. *Succinctly put*, on request of the petitioner, the respondent entered into a Memorandum of Understanding dated 22.05.2009⁸ [**Ex.CW-1/A**] with the petitioner's brother, one Mr. Gajender Singh, to jointly construct the property bearing kharsa no.287 situated at Batla House, Jamia Nagar, Okhla, New Delhi-110025, by investing funds with profits from its sale to be shared proportionately after deduction of expenses, interest, and remuneration. After construction, the petitioner and his brother sold the property without the consent of the respondent and failed to pay the respondent's share of profits as per the MoU.

3. In order to discharge his liability, the petitioner issued Cheque No.563207 dated 14.03.2017⁹ for Rs.8,00,000/- drawn on Standard Chartered Bank Branch, New Friends Colony, New Delhi, which was dishonoured on 18.05.2017 with the remark "*Account Closed.*". Pursuant thereto, despite receipt of the statutory Legal Notice dated 07.06.2017 by the petitioner, as the same remained unanswered, the respondent filed a Complaint under *Section 138* of the N.I. Act.

4. Subsequently, the respondent led pre-summoning evidence and after the petitioner entered appearance, he pleaded not guilty and, thereafter the respondent examined one Mr. Nafees Ahmed [**CW-2**] and one Mr. Bilal

⁵ Hereinafter as "**respondent**"

⁶ Hereinafter as "**N.I. Act**"

⁷ Hereinafter as "**learned Trial Court**"

⁸ Hereinafter as "**MoU**"

⁹ Hereinafter as "**Cheque Ex. CWI/B**"



Saif [**CW-3**] in post-summoning evidence and they were cross-examined as well. More so, although the petitioner did not lead any evidence, however, in his Statement under *Section 313 Cr.P.C.* he averred before the learned Trial Court, *inter alia*, that the Cheque being [**Ex. CWI/B**] was stolen by the respondent from his house and there was no '*legally enforceable debt*', since the respondent was not privy to the MoU being [**Ex.CW-1/A**], as also the same was executed in the year 2009, whereas, the said Complaint was filed in the year 2016, which, as per the petitioner, was barred by limitation.

5. Upon completion of trial, the learned Trial Court convicted the petitioner *vide* judgment dated 26.04.2022 and sentenced him *vide* order on sentence dated 07.05.2022 whereby it was directed that the petitioner shall pay a fine of Rs.12,50,000/-, payable to the respondent within *one month* from the date of the said order, failing which he shall undergo simple imprisonment for *six months*.

6. In an appeal bearing no.79/2022 preferred by the petitioner under Section 374(3) of the Cr.P.C., the learned ASJ, upheld the aforesaid order of the learned Trial Court *vide* the impugned judgment dated 10.04.2024.

7. Being aggrieved thereby, the petitioner preferred the present revision petition impugning the judgment dated 10.04.2024 of the learned ASJ.

8. Mr. Piyush Pahuja, learned counsel for the petitioner primarily submitted that since the MoU being [**Ex.CW-1/A**] was executed *inter se* his brother, Mr. Gajender Singh, and the respondent, there is/ was no '*legally enforceable debt*' with respect to the petitioner, and that there was no privity of contract between the respondent and the petitioner. As such, based thereon, the learned counsel submitted that it is well settled that



liability under *Section 138* of the N.I. Act arises only from a ‘*legally enforceable debt*’ of the drawer and cannot extend to a third party’s liability in the absence of an express undertaking. Mere presentation of a cheque or its dishonour does not automatically mean that there is an enforceable debt.

9. Mr. Piyush Pahuja, learned counsel then submitted that since the MoU [*Ex.CW-1/A*] was executed in the year 2009 and the alleged construction was also completed in the year 2009-2010, the liability arising therefrom was time barred. Reliance in this regard was placed on *Ashwani Kumar vs. Raj Kumar*¹⁰ and *Social Leasing India Ltd. vs. Rajan Kumar Kanthwal*¹¹. Relying upon *Milind Shripad Chandurkar vs. Kalim M. Khan*¹² and *Ashwani Kumar (supra)*, the learned counsel further submitted that the respondent failed to prove his alleged status of being the sole proprietor of M/s. Farhan Empexo Export and Import Co. and no documentary proof was ever adduced. The same goes to the root of maintainability of the Complaint before the learned Trial Court.

10. Besides these, Mr. Piyush Pahuja, learned counsel submitted that there are major discrepancies in the cross-examination of the respondent as also that there was no documentary proof pertaining to the money invested in the construction business by the respondent and no document was placed on record by the respondent to show construction of the property and consequently, the ground of joint construction and profit sharing rests solely on self-serving oral assertions.

11. *Per contra*, Mr. Raj Kumar, learned counsel for the respondent,

¹⁰ Judgment dated 12.12.2025 in Crl. Appeal no. 87/2013.

¹¹ 2025 SCC Online HP 3131

¹² (2011) 4 SCC 275



relying upon the impugned judgment submitted that the learned ASJ had rightly affirmed the presumption under *Section 118(a)* and *Section 139* of the N.I. Act, especially considering the fact that the petitioner refused to lead any evidence to support his case with cogent material.

12. This Court has heard the learned counsels for the parties and perused the documents on record including the judgments relied upon by them.

13. As per settled law, since execution of the cheque and the receipt of the legal notice are admitted, a presumption arises in favour of the holder of the cheque i.e. the respondent and that it was issued in discharge, either in whole or in part, of a legally enforceable debt or liability. Based thereon, the Cheque involved [*Ex. CWI/B*] is a valid instrument issued for dispensing a legal debt.

14. As such, the presumption under *Section 118(a)* and *Section 139* of the N.I. Act was attracted and the burden lay upon the petitioner to rebut the above presumption by raising a probable defence either by leading direct evidence or by pointing out serious contradictions or improbabilities in the respondent's case, as held by the Apex Court in *Rajesh Jain vs. Ajay Singh*¹³ which is as under:-

“54. ... Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject

¹³ (2023)10 SCC 148



to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

[Emphasis Supplied]

15. In view thereof, since, *admittedly*, the signature affixed on the Cheque involved [**Ex. CWI/B**] was of the petitioner, as held by the Hon'ble Supreme Court in judgment **Rangappa vs. Sri Mohan**,¹⁴ it was *ipso facto* sufficient to presume the existence of a '*legally enforceable debt*', for which the onus was upon the petitioner herein to rebut it. Since, undisputedly the petitioner refused to lead any evidence before the learned Trial Court, his defence was based on his statement under *Section 313* of the Cr.P.C., which discloses that he was unable to establish his case beyond reasonable doubt.

16. While dealing with the issue of there being privity *inter se* the parties, the learned ASJ has (correctly) held as under:-

"14. In view of assertions made and evidence led by complainant/respondent, there was nothing suspicious or unbelievable about accused/appellant issuing cheque in question on behalf of his brother in favour of respondent/complainant towards payment of his share in profit. It is reiterated that appellant is an employee of Delhi Police and is well-versed with law and working of criminal justice system. His criminal liability becomes even more pronounced in view of his profession."

17. It cannot be disputed that the petitioner works for the Delhi Police or that his brother executed the agreement on his behalf. Moreover, as

¹⁴ (2010) 11 SCC 441



confirmed from the deposition(s) of both **CW2** and **CW3**, the Cheque involved [**Ex. CWI/B**] was given by the petitioner to the respondent.

18. In fact, dealing with the issue of limitation, the learned ASJ has held as under:-

"15. In reference to issue of limitation, Ld. Trial Court rightly observed that it was the date of issuance of cheque and dishonour thereof that is relevant to compute limitation in complaint case filed U/s. 138 NI Act; the date of MOU had no relevancy in computation of limitation period."

19. This Court agrees with the aforesaid finding rendered by the learned ASJ as the time period for calculating the limitation for filing a Complaint under *Section 138* of the N.I. Act is the date of presentation and dishonour of the instrument involved.

20. Since the Cheque involved [**Ex. CWI/B**] was issued under the name of M/s Farhan Empexo Export and Import Co., there was no requirement for the respondent to show his relationship with it.

21. Even otherwise, in revisional jurisdiction under *Section(s) 401/ 397* of the Cr.P.C., this Court in its limited jurisdiction, cannot assume the role of a Court of Appeal, as the revisional power is circumscribed and is intended only to test the legality, correctness, or propriety, if any.

22. The petitioner can neither be allowed to reagitate the very same issues which have been duly negated twice over nor to raise any new/ fresh grounds herein.

23. Finding no illegality and/ or perversity therein, no grounds are made out for setting aside of the impugned judgement dated 10.04.2024 passed by the learned ASJ. As such, the judgment dated 26.04.2022 as also the order on sentence dated 07.05.2022 passed by the learned Trial Court are



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upheld.

24. Accordingly, in view of the foregoing, the present petition is hereby dismissed with no orders as to costs.

SAURABH BANERJEE, J.

FEBRUARY 09, 2026/Ab/aks