



2026:DHC:3427



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

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*Reserved on: March 23, 2026*

*Pronounced on: April 24, 2026*

+ **CRL.REV.P. 181/2024 & CRL.M.(BAIL) 246/2024**

**RAJINDER SINGH TOKAS**

**.....Petitioner**

Through: Mr. Faiyaz Hasan, Advocate

Versus

**AKSHAY KUMAR RATHI**

**.....Respondent**

Through: Mr. Sukhbir Singh Sejwal, Ms.  
Shikha Sejwal, Advocates with  
Respondent in person (through VC)

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

### **J U D G M E N T**

1. By virtue of the present revision petition filed under *Section(s) 401/397* of the Criminal Procedure Code, 1973, the petitioner seeks setting aside of the impugned judgment dated 08.11.2023 passed by the learned Additional Sessions Judge-05, Patiala House Court, New Delhi District, New Delhi (*learned Appellate Court*) in the Criminal Appeal No.28/2023 entitled '*Rajinder Singh Tokas v. Akshay Kumar Rathi*', whereby the appeal preferred by the petitioner was dismissed and the judgment dated 15.12.2022 and order on sentence dated 07.01.2023 passed by learned Metropolitan Magistrate (NI Act), Digital Court-03, Patiala House Court, New Delhi District, New Delhi (*learned Trial Court*) on a complaint made by the complainant/respondent under *Section 138* of the Negotiable Instruments Act, 1881 (*NI Act*) was upheld.



2. *Briefly put*, the respondent/ complainant filed a complaint case for an offence punishable under *Section 138* of the NI Act against the petitioner before the learned Trial Court wherein it was alleged that the complainant's father and the petitioner were childhood friends and in February 2020, the petitioner approached the complainant's father seeking a loan of Rs.15 lakhs. The complainant at his father's request agreed to advance the said loan and withdrew Rs.15 lakhs from his Bank Account to give the same to the petitioner in cash as an interest free loan for a period of one year. Thereafter, upon expiry of the said period, when the complainant demanded repayment, the petitioner, in discharge of his liability, issued a cheque bearing no.134263 dated 30.03.2021 for Rs.15,00,000/-, which upon presentation returned unpaid with remark "*funds insufficient*". Thereafter, the complainant issued a Legal Notice. Despite service thereof, the petitioner failed to make payment within the stipulated period, leading to institution of the complaint under *Section 138* of the NI Act.

3. Thereafter, upon conclusion of trial, the learned Trial Court convicted the petitioner for the offence under *Section 138* NI Act vide judgment dated 15.12.2022 and sentenced him vide order dated 07.01.2023 whereby the petitioner was sentenced to pay fine of Rs.15,00,000/- alongwith simple interest @ 9% per annum from the date of cheque i.e. 03.03.2021 till date of judgment i.e. 15.12.2022 within thirty days from 07.01.2023, failing which the petitioner shall undergo simple imprisonment for a period of three months in default. An appeal thereagainst before the learned District & Sessions Judge, Patiala House Courts, New Delhi by the petitioner has also been dismissed vide judgment dated 08.11.2023. Aggrieved thereby, the appellant has approached this Court by way of the



present revision petition.

4. Learned counsel for the petitioner submitted that the learned Courts below have passed the judgment(s) based on surmises and conjectures and without proper appreciation of the evidence. The learned counsel submitted that the cheque in question was not issued in discharge of any legally enforceable debt, rather it was handed over to the complainant's father as a security in connection with a chit fund committee transaction inasmuch as the father of the complainant used to deposit money in a chit fund committee run by the petitioner and a sum of Rs.5,00,000/- was due to father of the complainant, out of which the petitioner had given Rs.3,70,000/- to him in cash and the remaining Rs.1,30,000/- was to be paid subsequently, in security whereof a blank cheque i.e. the cheque in question was issued. Later on, though the petitioner paid the balance amount to the complainant's father in cash, however, despite thereof, the complainant's father failed to return the said cheque stating it to be misplaced, which, as per learned counsel for the petitioner, has been later misused by the complainant. The learned counsel submitted that the complainant himself has admitted that the name and amount in the cheque in question was filled by him.

5. Learned counsel for the petitioner then submitted that the Courts below failed to appreciate that the complainant did not furnish any evidence to prove the factum of making payment to the petitioner. Neither the complainant has produced any document to prove his income/ financial capacity so as to advance such huge amount as loan, particularly when he was a student at that time.

6. Learned counsel for the petitioner then submitted the alleged loan



was an unaccounted cash amount which was not disclosed in the Income Tax Return and thus there is no ground for the Courts below to hold that the presumption under *Section 139* of the NI Act is not rebutted. Similarly, it is submitted that such a large cash transaction, being contrary to statutory and regulatory norms, cannot constitute a legally enforceable debt.

7. *Per contra*, learned counsel for the complainant praying for dismissal of the present petition submitted that there is no illegality or infirmity in the impugned judgment(s). The learned counsel submitted that factum of issuance of the cheque in question by the petitioner, its presentation in the bank for encashment and subsequent dishonour due to the reason '*funds insufficient*' are not in dispute and are matter of record.

8. The learned counsel submitted that the complainant had arranged the loan amount from his cousin brother namely Ritik Dabas, who had transferred the said amount in his Bank Account, and for which he produced his bank passbook [*Ex. CW-1/2*] reflecting withdrawal of Rs.5 lakhs and Rs.10 lakhs in February, 2020 before the learned Trial Court and which has not been disputed by the petitioner in the cross-examination of the complainant.

9. The learned counsel further submitted that the learned Courts below have rightly held that non-filing of ITR or not showing the loan amount in ITR only attracts penalty under the Income Tax Laws, and the same cannot be adjudicated in proceedings under *Section 138* of the NI Act.

10. This Court has heard the learned counsel for the petitioner as also the learned counsel for the complainant and perused the documents on record.

11. At the outset, the petitioner by way of the present revision petition seeks to assail the concurrent findings returned by the Courts below, when



the role of this Court is exercising limited revisional jurisdiction, and not appellate jurisdiction. This Court is thus called to interfere only if there is any illegality, incorrectness and impropriety in the impugned judgment(s). Also, as per trite law, while exercising revisional jurisdiction, this Court ought not to interfere with the findings in the impugned judgment(s) or reappraise evidence merely because another view is possible, unless such findings are shown to be wholly unreasonable, perverse or untenable in law. [see *Malkeet Singh Gill v. State of Chhattisgarh: (2022) 8 SCC 204* and *State of Gujarat v. Dilipsinh Kishorsinh Rao: (2023) 17 SCC 688*]

12. While dealing with the present proceedings involving *Section 138* of the NI Act, the essential ingredients therein have to be borne in mind which are as under:

- i. The cheque in issue must be drawn by a person from an account maintained by him/ her with a banker;
- ii. The cheque in issue must be towards the payment of any amount, be it in whole or in part, in discharge of any legally enforceable debt or liability;
- iii. Presentation of the cheque to the bank;
- iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account;
- v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and



vi. The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

13. The facts herein reveal that the complainant had duly discharged his initial burden of showing that there existed a *prima facie* case by satisfying the basic ingredients of *Section 138* of the NI Act. Further, since it is not in dispute that the petitioner had issued the cheque in question and had also admitted that the signature thereon was his, the presumption under *Section 118(a)* and *Section 139* of the NI Act stood attracted. As such, 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 complainant's case, squarely lay upon the petitioner.

14. In this connection, reliance may be placed on the decision of the Apex Court in *Rajesh Jain v. Ajay Singh : (2023) 10 SCC 148* wherein it has been held 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 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. Records reveal that both the Courts below have categorically held that the petitioner failed to raise any ground by bringing any cogent evidence to rebut the said presumptions.

16. Before this Court also, the petitioner without showing any grounds for this Court to exercise its revisional jurisdiction, has merely, once again, sought to reagitate the very same grounds that the complainant lacked financial capacity to advance loan and that the cheque in question was allegedly given to the father of the complainant. Since this Court finds that the Courts below have already dealt with the same at considerable length and thereafter discarded them by speaking judgment(s), there is hardly any scope of interference left herein.

17. *Be that as it may*, with regard to the financial capacity of the complainant, the complainant has duly explained the source of funds during his cross-examination of having arranged the loan amount from his cousin brother Ritik Dabas, who deposited Rs.15 lakhs in his bank account and for which, he produced his bank passbook [*Ex. CW-1/2*] reflecting withdrawal of Rs.5 lakhs and Rs.10 lakhs in February, 2020. Significantly, the petitioner had neither challenged these entries during cross-examination nor questioned the authenticity of the passbook at any stage, rather had only questioned the credibility of the complainant on the ground that he is not able to recall the exact address of the said cousin brother. The same has been rightly discarded by both the Courts below since “... ..*this objection does not hold much water because in the normal course, a person is not expected to know the exact address, house number etc. of a relative, more so when the complainant has deposed that he knows the village of his cousin brother...*”. Moreover, barring bare assertions, the petitioner has



also failed to adduce any evidence to demonstrate the financial incapacity of the complainant to extend such loan or to bring any material contradictions. In these circumstances, the learned Courts below have rightly held that the complainant has sufficiently discharged his obligation to prove his financial capacity.

18. The contention regarding non-filing of ITRs by the complainant, this Court finds merit with the findings qua the same. It has been rightly held by the learned Courts below that though such omission may entail consequences under the Income Tax laws, however, the same falls outside the purview of the proceedings under *Section 138* of the NI Act.

19. Further, since assertion regarding the cheque in question allegedly given to the father of the complainant was in connection with a chit fund transaction is concerned, the same is without any supporting/ cogent material or evidence and was not and indeed cannot be considered. It is also relevant to note that the petitioner had neither maintained any entry in the cheque book after issuance of cheque nor examined any person in whose presence the said cheque was given.

20. Even the story propounded by the petitioner that the father of the complainant used to deposit money in a chit fund committee run by him and a sum of Rs.5,00,000/- was due to father of the complainant, out of which the petitioner had given Rs.3,70,000/- to him in cash and the remaining Rs.1,30,000/- was to be paid subsequently, in security whereof a blank cheque i.e. the cheque in question was issued, however, though the petitioner paid the balance amount to the complainant's father in cash, despite that the complainant's father failed to return the said cheque stating it to be misplaced, does not inspire confidence of this Court *firstly*, since



the petitioner had admitted in his cross-examination that he did not file any proof *qua* payment of Rs.3,70,000/- and Rs.1,30,000/- in cash; *secondly*, since the witnesses [DW5 & DW6] did not even give a slight indication that the petitioner owed money to complainant's father for which cheque in dispute was given to him by way of security; and *thirdly*, though it is the case of the petitioner that the cheque in dispute was misplaced, however, it is pertinent to note that he has admittedly neither filed any complaint in this regard nor issued stop payment instructions to his bank. Alas! even the aforesaid ground raised by the petitioner fails to come to his aid.

21. *Ergo*, in view of the aforesaid discussions, and since the petitioner has not been able to make out any case for this Court to exercise its revisional jurisdiction, finding no illegality and/ or perversity, the impugned judgment dated 08.11.2023 passed by the learned Additional Sessions Judge-05, Patiala House Court, New Delhi District, New Delhi in Criminal Appeal No.28/2023 entitled '*Rajinder Singh Tokas v. Akshay Kumar Rathi*' is upheld.

22. Accordingly, the present petition along with the pending application is hereby dismissed with no order as to costs.

**SAURABH BANERJEE, J.**

**APRIL 24, 2026/Ab/GA**