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

% ***Date of Decision: 17th November, 2026***

\# **CNR No. DLHC010546442026**

\+ CRL.REV.P.(NI) 375/2026, CRL.M.A. 35467/2026 & CRL.M.A. 35468/2026

RAJESH EBRAHIMKUTTY MAJIDHA BEEVI AND ANR.

.....Petitioners

Through: Mr. Rahul Sharma, Mr. Himanshu Sharma, Mr. Chandra Shekhar, Mr. Kartik Malhotra, Ms. Shreya Mansi James, Ms. Anika Pande, Mr. Utkarsh Jaiswal and Mr. Lakshaya Chopra, Advs.

versus

AKSHAY GUPTA .....Respondent

Through: Mr. Abhishek Varma and Mr. Saurabh Agarwal, Advs. for R-1 with R-1 in person

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

This matter is taken up today as 16th November, 2026, was declared as a Holiday on account of "Chhath Puja".

1. The present criminal revision petition has been filed under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023

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("BNSS"), assailing the common order dated 09th October, 2026, passed by the Additional Sessions Judge-06 (South), Saket Courts, New Delhi, ("Appellate Court") in *CA No. 369/2025* and the other connect matter, only insofar as the same dismisses the application of the petitioners for adducing additional evidence in *CA No. 369/2025*.

2. It is to be noted that respondent no. 1 instituted a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act"), alleging dishonour of *Cheque No. 251012* dated 25th April, 2017, for Rs. 20,00,000/- (Twenty Lakhs Only).

3. The aforenoted complaint was allowed and the petitioners were convicted under Section 138 of the NI Act by the Judicial Magistrate First Class ("JMFC") (NI Act)-04, South, Saket, New Delhi, by way of order dated 18th July, 2025, passed in *CT Cases 8416/2017*.

4. Learned counsel appearing for the petitioners submits that the said complaint was premised upon a Return Memo dated 11th July, 2017. He draws the attention of this Court to *Annexure P-7*, appended to the captioned petition, which shows that the cheque in question was returned *vide* Return Memo dated 11th July, 2017, recording the reason "*insufficient funds*". The said document is reproduced as under:

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Ex. CW1/1
MM(04) SAKET
5/8/17

CHEQUE'S RETURNING MEMO

AXIS BANK

Bank code	015
Instrument no.	251012
Amount	200000/-

Branch: Green Park
Date: 4/7/17

Cheque(s)/refund order(s)/pay order (s) is/are returned for reason(s)
No. (s)_____

1 _____ Payee's endorsement required.
2 _____ Payee's endorsement irregular.
3 Crossed to two banks.
4 Specially crossed to _____ bank.
5 Not arranged for.
6 Refer to drawer.
7 Full cover not received.
8 Exceeds arrangement.
9 Effects not cleared: please present again on_____
10 Drawer's signature differs from the specimen on record.
11 Drawer's signature required.
12 Drawer's signature incomplete.
13 Withdrawals from account stopped by drawer's death/insolvency/ Lunacy.
14 Payment stopped by the drawer.
15 Payment stopped under Court Order.
16 Alteration in date/figures/words require drawer's signature
17 Cheque is post dated / out of date.
18 Cheque/pay order is mutilated and require bank's guarantee.
19 Amount in protective crossing incorrect / required / illegible
20 Account Closed
21 No advice.
22 Payee's Name Required
23 Not drawn on us
24 Cheque is collectable at par may be presented on counter.
25 Cheque contains extraneous matter.
26 Drawer's Signature/authority to operate on the account not received at this office
27 Payee's thumb impression requires attestation by a Magistrate under his court seal or by collecting bankers.
28 Clearing House Stamp required
29 Funds insufficient.
30 Endorsements require collecting bankers confirmation
31 Opening Balance insufficient
32 Not Encoded Correctly
33 Acts in words and figures differs
34 Present Through Proper Bank
35 Exceeds the limit for outstation
36 Payable At_____
37 Re validated instrument re present at issuing branch.
38 A/c. Frozen
39 No advice. Please present again

Insufficient fund

For AXIS Bank Ltd

Authorised Signatory.

19 DEC 2024

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5. He submits that the bank statement of petitioner no. 2, as obtained from Axis Bank, clearly shows that *Cheque No. 251012* issued for Rs. 20,00,000/- (Twenty Lakhs Only) was returned only on 27th April, 2017. He further submits that the cheque in question was returned with the reason noted as "*Drawers signature differs*".

6. Thus, he submits that the bank statement of petitioner no. 2 clearly shows that the cheque in question was returned on 27th April, 2017, and not

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on 11th July, 2017, and that there is no mention of any Return Memo of 11th July, 2017, in the said bank statement.

7. The relevant portion of the bank statement of petitioner no. 2, reflecting the Cheque Return Details, is reproduced hereunder:

"xxx xxx xxx

Cheque Return Details

Transactin Type	Chq No	Chq Amount	Return Date	Reason for Return
INWARD CLG	250861	1100000	09-01-2017	Funds insufficient
INWARD CLG	250862	1100000	09-01-2017	Funds insufficient
INWARD CLG	250993	8000000	23-01-2017	Payment stopped by the drawer
OUTWARD CLG	113636	1000000	21-03-2017	Funds insufficient
INWARD CLG	251012	2000000	27-04-2017	Drawers signature differs

xxx xxx xxx"

8. By referring to the aforesaid, learned counsel appearing for the petitioners submits that the cheque in question was returned only on 27th April, 2017, and the Return Memo dated 27th April, 2017, has not been placed on record by respondent no. 1 before the Trial Court.

9. Accordingly, he submits that the complaint was filed by respondent no. 1 before the Trial Court on the basis of the Return Memo dated 11th July, 2017, and not based on the Return Memo dated 27th April, 2017.

10. He also submits that as per the bank account details of petitioner no. 2, the cheque in question was never presented by respondent no. 1 in July, 2017.

11. He, thus, submits that the Return Memo dated 11th July 2017, based on which the complaint was filed by respondent no. 1, is a forged document.

12. He further draws the attention of this Court to the letter dated 01st September, 2026, issued by Axis Bank, and submits that it has been categorically stated therein that the cheque in question was presented by

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respondent no. 1 only once and not twice. The said letter dated 01st September, 2026, issued by Axis Bank, is reproduced as under:

To

Date : 01/09/2026

Abc Aviation And Training Services Pvt Ltd

A26 AIRLINE LANDSIDE BUILDINGKEMPA

GOWDA INTERNATIONALAIRPORT,

BANGALORE 560300.

Sub: Transaction confirmation for the account number 915020016322850 in the name of M/s ABC AVIATION AND TRAINING SERVICES PVT LTD

This is to certify that the transaction details pertaining to the account maintained with our branch have been generated and provided to the account holder for the period from 01 January 2017 to 31 December 2017.

The enclosed statement reflects the transactions recorded in our system during the above-mentioned period and is being issued at the request of the customer for their reference and record purposes.

We here by confirm that only one time below mentioned cheque has been presented in the clearing for the captioned period.

Cheque No 251012

Amount : 2000000

Date : 27-04-2017

Reason : Drawers signature differs

This certificate has been issued at the request of the above named account holder.

The certificate is being issued without any risk & responsibility on the part of the Bank and its authorized signatories without prejudice to any of the Bank's statutory rights.

For Axis Bank Ltd.
RT Nagar Branch

Authorized Signatory

GROUND FLOOR NO 174 MLA LAYOUT R T NAGAR MAIN ROADR T NAGAR Bangalore, Karnataka . India 560032
REGISTERED OFFICE : "Trishul" - 3rd Floor Opp. Samartheswar Temple, Near Law Garden, Ellisbridge, Ahmedabad - 380006 Telephone No. 079-26409322 Fax No. - 079-26409321
CIN: L65110GJ1993PLC020769 Website - www.axisbank.com

AXIS BANK
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13. In response, learned Additional Public Prosecutor ("APP") appearing for the State submits that the State is only a pro forma party in the present case, as this is a private dispute between the petitioners and respondent no. 1/complainant.

14. Learned counsel appearing for respondent no. 1 submits that the Trial Court has taken note of the fact that the cheque in question was presented twice. However, proof of the previous presentation of the cheque was not placed before the Trial Court.

15. He further submits that the subsequent Return Memo dated 11th July, 2017, was duly placed by respondent no. 1 before the Trial Court.

16. This Court has heard the submissions made by learned counsels appearing for the parties and has perused the material on record.

17. This Court notes the submission made by learned counsel appearing for the petitioners that the complaint filed by respondent no. 1 was based on the Return Memo dated 11th July 2017, recording the reason for return as "*Insufficient funds*", which is contrary to the Cheque Return Details recorded in the bank statement placed on record by the petitioners (*Annexure-7*). In support of the same, the petitioners have also placed on record documents to show that no such cheque was presented to the bank on 11th July, 2017.

18. At the outset, it is noted that Section 432 of the BNSS, corresponding to Section 391 of the Code of Criminal Procedure, 1973 ("CrPC"), permits the Appellate Court to take on record additional material to ensure complete and effective adjudication of the pending appeal.

19. In this regard, it is pertinent to note the observations made by the Supreme Court in ***Zahira Habibulla H. Sheikh and Another Versus State of Gujarat and Others, (2004) 4 SCC 158***, which read as under:

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"xxx xxx xxx

36. *The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial.* ***Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.***

xxx xxx xxx

38. *A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.*

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xxx xxx xxx

47. Section 391 of the Code is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of a guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate court finds that certain evidence is necessary in order to enable it to give a correct and proper finding, it would be justified in taking action under Section 391.

49. *There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the section are only to be invoked when formal proof for the prosecution is*

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necessary. If the appellate court thinks that it is necessary in the interest of justice to take additional evidence, it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of discretion of the appellate court. As reiterated supra, the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions.

50. *In Rambhau v. State of Maharashtra [(2001) 4 SCC 759 : 2001 SCC (Cri) 812] it was held that the object of Section 391 is not to fill in lacuna, but to subserve the ends of justice. The court has to keep these salutary principles in view. Though wide discretion is conferred on the court, the same has to be exercised judicially and the legislature had put the safety valve by requiring recording of reasons.*

xxx xxx xxx

55. *The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected.* ***The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.***

xxx xxx xxx"

(Emphasis Supplied)

20. Accordingly, considering the facts and circumstances of the present case as brought forth before this Court and in order to meet the ends of justice, this Court is of the view that the petitioners ought to be allowed to lead additional evidence before the Appellate Court.

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21. However, considering that the petitioners have already been convicted for the offence punishable under Section 138 of the NI Act, and to balance the equities, this Court directs the petitioners to deposit a sum of Rs. 20,00,000/- (Twenty Lakhs Only) before the Appellate Court, within a period of two weeks, from today.

22. Subject to the petitioners depositing the sum of Rs. 20,00,000/- (Twenty Lakhs Only) before the Appellate Court, within a period of two weeks from today, the petitioners herein shall be permitted to lead additional evidence with respect to the Return Memo dated 11th July, 2017, the bank statement of petitioner no. 1 showing the return of the cheque in question only on 27th April, 2017, and the letter dated 01st September, 2026, issued by Axis Bank.

23. The aforesaid additional evidence shall be produced by the petitioners before the Appellate Court expeditiously, and the examination of the additional witness(es) shall be completed preferably within a period of two months, from today.

24. This Court further directs that no adjournment shall be taken by any party.

25. Needless to state that when fresh evidence is produced by the petitioners, learned counsel appearing for respondent no. 1/complainant shall be granted full opportunity to cross-examine.

26. Since the petitioners are being granted an opportunity to lead additional evidence, a similar opportunity to lead additional evidence in rebuttal shall, if need be, be granted to respondent no. 1/complainant by the Appellate Court.

27. With the aforesaid directions, the present petition is accordingly disposed of.

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28. The pending applications also stand disposed of.

MINI PUSHKARNA, J

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