



2025:DHC:11238



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: December 11, 2025*

+ **CRL.REV.P.(NI) 110/2025**

SH SURESH KUMARPetitioner

Through: Mr. Pradeep Kumar, Adv.
(through VC)

versus

SH KULDEEP SINGHRespondent

Through: Ms. Gurpreet Kaur, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed against the judgment dated 27.03.2025 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('**ASJ**'), West District, Tis Hazari Courts, Delhi in Cr. Appeal No. 260/2023.

2. By the judgment of conviction dated 04.07.2023 passed by the learned Metropolitan Magistrate, the petitioner was convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**'). Further, by the order on sentence dated 10.07.2023 passed by the learned MM, the petitioner was directed to undergo imprisonment for a period of one month and was directed to pay a fine of ₹5,00,000/- and in default of payment of fine to further undergo imprisonment for a period of one month.

3. By the impugned judgment, the learned ASJ upheld the judgment of conviction dated 04.07.2023, and partly modified the



order on sentence dated 10.07.2023 thereby setting aside the one-month imprisonment of the petitioner. The payment of fine of ₹5,00,000/- was retained by the impugned judgment.

4. Succinctly stated, it is the case of the respondent/complainant that the petitioner had taken a friendly loan for a sum of ₹3,00,000/- on the pretext of the marriage of his two daughters which were to be solemnised on 22.11.2015. It is alleged that thereafter, despite repeated demands, the petitioner failed to refund the loan amount, and subsequently, in discharge of the liability, the petitioner issued a cheque bearing no. 095951 dated 03.01.2018 for a sum of 3,00,000/- which on presentation returned unpaid *vide* return memo dated 05.01.2018 with remarks “*Drawers signature differs*”. It is alleged that thereafter the respondent issued a legal demand notice dated 15.01.2018 to the petitioner which was duly served, however, despite the service of notice, the petitioner failed to pay the dishonoured cheque amount. Subsequently, the respondent filed a complaint under Section 138 of the NI Act.

5. In the notice framed under Section 251 of the Code of Criminal Procedure, 1973 (‘CrPC’), the petitioner did not dispute that the impugned cheque bears his signature, he only stated that the other details in the cheque were not filled by him. He further stated that he had obtained a loan of ₹99,000/- from the respondent for which he had issued three blank signed cheques for the purpose of payment. He further stated that he had already paid a sum of ₹76,000/- to the respondent. The petitioner, in his statement under Section 313 of the CrPC reiterated his stance and stated that for the



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purpose of the marriage of his daughters, the respondent had advanced a sum of ₹99,000/- in his bank account for which he had issued two security cheques to the respondent. The petitioner further stated that he had already paid an amount of ₹76,000/- to the respondent and further stated that the respondent had misused the security cheques.

6. As noted above, by the impugned judgment, the learned ASJ upheld the judgment of conviction dated 04.07.2023 whereby the petitioner was convicted for the offence under Section 138 of the NI Act, and partly modified the order on sentence dated 10.07.2023 thereby setting aside the one-month imprisonment of the petitioner. The payment of fine of ₹5,00,000/- was retained by the impugned judgment.

7. The learned counsel for the petitioner submits that the learned ASJ erred in upholding the judgment of conviction and upholding the payment of fine of ₹5,00,000/- in terms of the order on sentence dated 10.07.2023. He submits that the respondent failed to prove that the impugned cheque was issued in discharge of any legally enforceable debt. He submits that the petitioner had only taken a loan for a sum of ₹99,000/- from the respondent out of which a sum of ₹76,000/- was already repaid by the petitioner. He submits that while the impugned cheque bears the signatures of the petitioner, the contents of the same were not filled by the petitioner. He submits that the said cheque was issued to the respondent as security and that the respondent had misused the said cheque. He submits that while the respondent claimed that he had advanced a sum of ₹3,00,000/- to



the petitioner, no documentary evidence was presented by him to substantiate his stance.

8. *Per contra*, the learned counsel for the respondent submits that the learned ASJ rightly upheld the conviction of the petitioner under Section 138 of the NI Act. She submits that the petitioner failed to rebut the statutory presumptions raised against him under Section 139 read with Section 118 of the NI Act.

Analysis

9. Since the present revision petition has been filed by the petitioner challenging the concurrent findings of the learned ASJ and the learned MM, this Court's role is limited to assessing the correctness, legality, and propriety of the impugned judgment.

10. It is trite law that the High Court is required to exercise restraint and should not interfere with the findings in the impugned orders or reappreciate evidence merely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law (Ref. *Sanjaysinh Ramrao Chavan v. Dattaray Gulabrao Phalke* : (2015) 3 SCC 123). It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Supreme Court in the case of *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* : (1999) 2 SCC 452 discussed the scope of revisional jurisdiction and held as under:

“5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or



*propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. **But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice....***”

11. At the outset, it is relevant to note that the signature of the petitioner on the subject cheque has not been denied. It is trite law that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque/ respondent received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan : (2010) 11 SCC 441***]

12. The Hon’ble Apex Court in ***Rajesh Jain v. Ajay Singh : (2023) 10 SCC 148***, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following :

“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.

55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the “particular circumstances of the case”?

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57. Einstein had famously said:

“If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions.”

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

58. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.

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61. The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque.

(emphasis supplied)

13. On a perusal of the impugned judgment, it is seen that the grounds agitated by the petitioner have already been extensively dealt with by the learned MM and the learned ASJ. The learned ASJ



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noted that the respondent had discharged his burden of showing that there existed a *prima facie* case by satisfying the basic ingredients of Section 138 of the NI Act. Once the signature on the subject cheque had been admitted, the presumption under Sections 118 and 139 of the NI Act operated in favour of the respondent and against the petitioner. As rightly noted by the learned ASJ, the onus was on the petitioner to rebut the presumptions against him under Sections 118 and 139 of the NI Act.

14. As is borne out from the record, the petitioner at the time of framing of notice under Section 251 of the CrPC and during the recording of his statement under Section 313 of the CrPC had admitted his signatures upon the subject cheque. The defence of the petitioner was that he had not filled up the contents of the cheque and the same were only given as security which was subsequently misused by the respondent. The factum that the respondent had advanced a loan to the petitioner had also not been disputed. The bone of contention pertained in relation to the total amount advanced as loan to the petitioner. It is the petitioner's case that the respondent had only advanced a sum of ₹99,000/- and that no documentary proof had been presented by the respondent to show that he had advanced a sum of ₹3,00,000/- to the petitioner.

15. Insofar as the contention of the petitioner in relation to him not filling the contents of the impugned cheque is concerned, it is pertinent to note that in terms of the dictum of the Hon'ble Apex Court in *Bir Singh v. Mukesh Kumar* : (2019) 4 SCC 197, it is no longer *res integra* that mere admission of the signature of the drawer



on the cheque is sufficient to activate the presumption under Section 139 of the NI Act. It is not a pre-requisite that the drawer must also admit the execution of the entire contents of the cheque.

16. Consequently, in terms of the dictum of the Hon'ble Apex Court in *Rajesh Jain v. Ajay Singh* (*supra*), the onus was on the petitioner to raise a probable defence by either leading direct or circumstantial evidence to show that there existed no debt/liability in the manner as pleaded in the complaint/ demand notice/ affidavit-evidence. The petitioner was merely required to controvert the presumptions by raising a probable defence on a preponderance of probabilities to show that there existed no debt/liability in the manner pleaded in the complaint/ demand notice/ evidence.

17. On a perusal of the impugned judgment, it is apparent that the petitioner had merely denied his liability and stated that the cheque was issued as security and that the respondent had misused the same. As rightly noted by the learned ASJ, merely alleging the cheque was issued as a security cheque does not tantamount to mean that the cheque was given as security. Even otherwise, even if the case of the petitioner is taken at the highest, merely alleging that the subject cheque was issued as security would not dilute the case of the respondent unless the petitioner shows that he had repaid the loan amount due and payable to the respondent within the stipulated period despite which the cheque allegedly issued as security was presented. Further, it is imperative to note that at the stage of framing of notice, the petitioner stated that he had issued three blank signed cheques in lieu of the loan amount for the purpose of payment,



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however, in his statement under Section 313 of the CrPC, the petitioner took a contradictory version and stated that he had issued two security cheques to the respondent.

18. Insofar as the stance of the petitioner that the respondent had misused the cheques is concerned, it is borne out from the record that no complaint was given by the petitioner in respect of the alleged misuse of the cheques by the respondent. In fact, the petitioner has failed to highlight any steps taken by him to recover the cheques from the respondent when the same were not returned to him. The emphasis of the petitioner thus that the respondent failed to show that the subject cheque was in discharge of any legally enforceable debt is without any merit. As noted above, the factum of the loan being advanced by the respondent was not disputed. At the risk of repetition, this Court deems it apposite to emphasise that since the signatures on the cheque stood admitted, the presumption under Sections 118 and 139 of the NI Act operated in favour of the respondent, and stood against the petitioner. The onus was thus on the petitioner to rebut the presumptions and the contentions of the petitioner that he did not fill the contents of the cheque or that no liability existed for a sum of ₹3,00,000/- do not bolster the case of the petitioner.

19. In regard to the contention that the respondent failed to produce any documentary evidence to manifest that he had advanced a loan for a sum of ₹3,00,000/- and that the same casts a doubt on the allegation is concerned, the said argument in the opinion of this Court is paradoxical in nature. At one place, the petitioner intends to



question the veracity of the case of the respondent on the ground that he had failed to produce any documentary evidence to substantiate that he had advanced a sum of ₹3,00,000/- to the petitioner, however, in the same breath, the petitioner himself fails to produce any evidence to showcase that the loan between the parties only pertained to a sum of ₹99,000/-. Further, as is evident from a perusal of the record, and as appreciated by the learned Trial Court, during the cross examination of the respondent, the petitioner failed to put any question to the respondent pertaining to his defence or any specific details with respect to the loan transaction between the petitioner and the respondent.

20. In view of the foregoing discussion, this Court is of the opinion that the petitioner failed to rebut the presumptions raised against him under Sections 139 and 118 of the NI Act.

21. In view of the aforesaid, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with.

22. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

DECEMBER 11, 2025

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