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

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Judgment Reserved on: 10.02.2026
Judgment pronounced on: 18.02.2026

+ CRL.A. 645/2003

SURINDER KUMAR MAHAJAN

.....Appellant

Through: Mr. Uttam Datt, Sr. Advocate with
Ms. Sonakshi Singh, Mr. Kumar
Bhaskar and Mr. Naman Kumar,
Advocates

Versus

SARDAR BALJIT SINGH & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374 read with 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the accused in Complaint Case No.317/2002 on the file of the Additional Sessions Judge, Delhi, assailing the judgment dated 18.07.2003 as per which he has been convicted and sentenced for the offence punishable under Section 138 of the Negotiable



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“MOST IMMEDIATE AT ONCE

CONFIDENTIAL

No. _ 336 /Gaz./VI.E.Z(a)/Misc.

From:

The Registrar (Vigilance)

High Court of Delhi

New Delhi.

To

The District & Sessions Judge

Delhi.

New Delhi, dated, the 15 March, 2002

Sub:

Regarding expeditious Section disposal of cases under 138

Negotiable Instruments Act



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Sir,

I am directed to refer to your letter No.141/Stt./Crl. dated 8.1.2002 on the above subject, and to say that Hon'ble the Chief Justice and Hon'ble Judges of this Court have been pleased to decide that all the cases triable under Section 138 of the Negotiable Instruments Act, pending as on 31.12.2001 in the Courts of various Metropolitan Magistrates in Tis Hazari Court, Patiala House Court and Karkardooma Court, be withdrawn Court and transferred to the Courts of Additional District and Sessions Judges as follows: -

TIS HAZARI:

Mr. Rakesh Kapoor

Mr. R.S. Arya

Mr. S.N. Gupta

Mr. Satnam Singh

Mr. T.D. Keshav



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Mr. S.L. Bhayana

Mr. P.C. Ranga

Mr. R.K. Sharma

Mr. Gurdeep Kumr

Ms. Deepa Sharma

Mr. Mahavir Singhal

MR. I.S. Mehta

Mr. M. S. Sabharwal

Mr. M.L. Mehta

PATIALA HOUSE:

Mr. Ina Malhotra

Mr. Yogesh Khanna

Mr. Rakesh Kumar

Mr. N.K. Kaushik

Mr. S.N. Dhingra

Mr. P.K. Bhasin

Mr. Babu Lal



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Ms. Mamta Sehgal

Mr. H.S. Sharma

Mr. J.R. Aryan

Mr. C.K.Chaturvedi

KARKARDOOMA:

Mr. J.P. Singh

Mr. S.C. Mittal

Mr. S.C. Mittal

Mr. D.C. Anand

Mr. O.P. Gupta

Mr. G.D. Dhanuka

Mr. J.M. Malik

Their Lordships have further been pleased to order that you may distribute such cases amongst the Additional District and Sessions Judges in equal number as practicable. However, Mr.C.K.Chaturvedi will be given lesser number of cases.”



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I am, therefore, to request you to kindly take necessary action in the matter under intimation to this Court.”

(Emphasis Supplied)

4. In compliance with the aforesaid order, the case was transferred to the court of the Additional Sessions Judge, who conducted the trial of the case and passed the impugned judgment. The parties in this appeal will be referred to as described in the complaint.

5. In the complaint filed alleging the commission of the offence under Section 138 of the NI Act, it is alleged thus:- The complainant and the accused entered into an agreement dated 14.01.2000 for the purchase of the property of the latter. On 12.01.2000, an amount of ₹51,000/- was paid as earnest money, for which the accused issued a receipt. When the agreement was executed, the complainant paid an amount of ₹4,50,000/- to the accused towards sale consideration. **Thus**, the accused received a



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total amount of ₹5,01,000/- from the complainant. However, the accused failed to transfer possession or execute the sale deed in favour of the complainant. When the amount that was paid by the complainant was demanded, the accused issued a cheque bearing no. 19142 dated 27.07.2000 drawn on the Bharat Overseas Bank Limited, Rajouri Garden, New Delhi. However, the cheque on presentation was dishonored as the account of the accused was closed. The complainant was informed of the dishonor by way of memo dated 14.08.2000. The complainant thereafter came to know that the accused had sold the property to somebody else. Hence, the complainant issued a demand notice dated 22.08.2000 through his counsel by registered post, which was sent on 26.08.2000. Though the notice was served on the accused, he refused to accept the same and hence the notice was returned to the complainant. The accused has so far not repaid the cheque amount and hence the complaint.

6. On appearance of the accused before the trial court, the



substance of the accusation as contemplated under Section 251 Cr.PC was read over and explained to the accused, to which he pleaded not guilty.

7. On behalf of the complainant, PWs. 1 to 3 were examined and Exts. CW1/A-L, PW1/A-H, PW2/A-B, PW3/A and Mark A – E were marked in support of the case of the complainant.

8. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused admitted taking a sum of ₹5,01,000/- from the complainant and entering into an agreement for purchase of the property. Although he admitted the issuance of the cheque to the complainant, he also stated that the same was obtained under pressure and coercion. The accused denied receiving any demand notice from the complainant and prayed for mercy.

9. The accused did not adduce any oral or documentary evidence.



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10. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment and order on sentence, found the accused guilty of the offence punishable under Section 138 of the N.I Act and hence, sentenced him to undergo rigorous imprisonment for a period of 2 years along with fine of ₹10,00,000/-(ten Lakhs) and in default of payment of fine, to undergo simple imprisonment for one year. Out of the fine amount, an amount of ₹7,00,000/- was directed to be paid to the complainant as compensation.

11. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/accused by the trial court are sustainable or not.

12. At this stage it is important to note that there was no representation on behalf of the Complainant, the respondent herein. The case is of the year 2003. Hence this Court was not inclined to adjourn the case. As held by the Hon'ble Supreme Court in **Bani Singh & Ors. v. State of U.P., (1996) 4 SCC 720,**



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this Court is not precluded from deciding the appeal on merits despite such non-appearance, as an appeal cannot be kept pending indefinitely. Accordingly, this Court proceeds to consider the appeal on merits after going through the entire records in the case.

13. It was submitted by the learned senior counsel/amicus curiae for the accused/appellant that the impugned judgment and order on sentence is liable to be set aside as the conviction entered into, by the trial court is not sustainable in the eyes of law. Firstly, the trial court has erred in not appreciating the fact that for mounting liability under the provisions of N.I Act, one of the essential requirements that is to be met is that it should be of a “legally enforceable debt”. However, in the instant case the cheque amount was an amount which is stipulated as a penalty in terms of the agreement entered between the parties and since the amount as mentioned in the cheque is in the nature of a penalty, it cannot fall under the category of a debt, which is required as per the rigors of the N.I Act. It was further contended that since penalty is not



enforceable under law, it can be a case of liquidated damages and not debt as provided under the explanation to Section 138. Learned senior counsel in support of this contention relied on the judgment of the Hon'ble Supreme Court in **Maya Devi v. Lalta Prasad (2015) 5 SCC 588**. It was also submitted that the order on sentence is not sustainable as the punishment awarded to the accused is for a period of two years, however, at the relevant point in time when the offence had taken place, Section 138 as it stood unamended provided for a punishment for a maximum period of 1 year. The said amendment whereby the punishment has been enhanced to a maximum period of 2 years as it stands today, came into effect from 06.02.2003, whereas the date of offence is 14.08.2000. It was also pointed out that in the present case the notice sent to the accused was deemed to be served in terms of Section 27 of the General Clauses Act, but, the address on which the same was served was not the correct address of the accused and hence, the service could not be deemed to have been effected. Lastly it was



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submitted that the account on which the cheque was drawn was closed prior to the issuance of the cheque and given the facts and circumstances of the case at best it could have been a case of cheating and not a case under Section 138 of the NI Act.

14. Heard both sides.

15. The only point that arises for consideration is whether the impugned judgement suffers from any infirmity calling for an interference by this court.

16. The complainant when examined as PW1, deposed that he was in need of a property. He met the accused through a property dealer. The accused told him that the former was the owner of property No. VB 103, Virender Nagar, Jail Road, New Delhi. The accused showed him a copy of the sale deed in his name, which is Ext. Mark A. He paid a sum of ₹51,000/- as earnest money in respect of the property to the accused on 12.01.2000, for which the accused executed a receipt i.e. Ex PW1/A which bears his signature and that of the accused. On 14.01.2000 the agreement to



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sell was executed, where upon he gave a sum of ₹4,50,000/- to the accused vide receipt Ex PW1/B. A copy of the agreement to sell has been marked as Ex PW1/C. On 11.02.2000, the accused executed PW1/D deferring the payment of the money. Later, on 23.03.2000, he was informed by the accused that the latter would not be able to handover the possession of the property. Time was sought to hand over possession of the property relating to which Ex PW1/E agreement was entered into and the period was extended by another 04 months. Thereafter, he came to know that the accused had already sold the said property to somebody else even before the agreement was entered into. The accused agreed to return the money and issued Ext. CW1/F cheque in discharge of the amount paid by the complainant. The cheque on being presented was dishonored as the account of the accused was closed. Thereafter, he sent Ext. PW1/4 notice by registered post. The notice was refused to be accepted by the accused. The accused has not repaid the cheque amount till date.



17. On the day, when PW1 was examined in chief, the cross examination was adjourned as the defence counsel was not available. However, on 11.03.2003 also the accused did not avail his right to cross-examine PW1. Therefore, the testimony of PW1 stands unchallenged.

18. PW2, Clerk cum Cashier, Bharat Overseas Bank, Rajouri Garden New Delhi, produced the records pertaining to dishonor of cheque bearing no. 191420 dated 27.07.2000, that is, Ext. PW1/F. The certified copy of the account of the accused has been marked as Ext. PW2/A. PW2 deposed that the records reveal that the account of the accused was closed on 25.07.2000.

19. When the accused was questioned under Section 313(1)(b) Cr.P.C., he admitted the there was an agreement to sell his property to the complainant; that he had received an amount of ₹5,01,000/- from the complainant and that he had issued a cheque in discharge of the amount he owed to the complainant. However, his case was that the cheque was issued under pressure.



20. As noticed earlier, PW1 was never cross-examined by the accused, though ample opportunity was given. Therefore the case of the complainant relating to the payment of the amount and execution of the cheque by the accused stands proved. The burden then shifts to the accused to rebut the presumption contained under Section 139 of the NI Act. However, the accused has not discharged the presumption. The defence version that the cheque was issued under pressure has not been substantiated by any materials on record.

21. The argument advanced by the learned senior counsel/*amicus curiae* for the accused/appellant that the trial court erred in treating service of notice on the accused as deemed service under Section 27 of the General Clauses Act, cannot be accepted. It was submitted by the learned senior counsel that the address of the accused shown in the notice is incorrect and therefore, the presumption contained under Section 27 of the General Clauses Act could not have come into play in the case. It was submitted



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that only when a registered notice in the correct address of the accused is sent, the presumption under Section 27 of the General Clauses Act would be attracted. This argument cannot be accepted for a moment because as noticed earlier the testimony of PW1 has not been challenged or discredited. PW1 in his testimony deposed that when the notice was sent, the same was refused to be accepted by the accused. There is nothing on record to show that the address of the appellant/accused in the notice is incorrect. On the other hand, the materials on record, namely, Ext. CW1/C shows that intimation was given to the appellant/accused. Therefore, the argument that no demand notice was served on the appellant/accused is liable to be rejected.

22. It was further argued that no offence under Section 138 of the NI Act is made out as admittedly at the time when the cheque was presented, the accused was not maintaining any account in the bank. The account was closed on 25.07.2000, that is, before the issuance of the cheque on 27.07.2000. Therefore the trial court



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again went wrong in concluding that the offence under Section 138 of the NI Act is made out when there was no valid account in the name of the accused. This argument also cannot be accepted, because time and again it has been held that disorder of cheque for the reason that the account has been closed would also come within the ambit of Section 138 of the NI Act. (See **NEPC Micon Ltd and Ors. v. Magma Leasing Ltd. (1999) 4 SCC 253; Laxmi Dychem v State of Gujarat and Ors. 2012 (13) SCC 375**)

23. Another argument advanced is that the cheque was not issued for the discharge of any legally enforceable debt. The cheque amount refers to the penalty which is referred to in the agreement executed between the parties. Penalty does not come within the term debt as contemplated under Section 138 of the NI Act and therefore, the conviction is liable to be set aside on the said count also. This argument also cannot be accepted because the accused/appellant has never a case that the cheque was not issued in discharge of the amount that he owed to the complainant. He



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admits the execution of the agreement and also the receipt of the money. He has no case that the amount has been repaid to the complainant. Therefore, he is certainly liable to repay the amount received from the complainant and hence, the argument that there is no enforceable debt is also liable to be rejected.

24. Lastly, the learned senior counsel also submitted that the sentence of 2 years that has been imposed by the trial court is incorrect because the transaction is of the year 2000. The NI Act as it stood prior to the amendment in the year 2002, which came into effect from 06.02.2003, provided for a maximum period of imprisonment for a period of 1 year. In such circumstances, imprisonment for 2 years could not have been imposed on the accused. Referring to Section 65 IPC, the learned senior counsel pointed out that the default sentence imposed by the trial court also exceeds the limit provided under Section 65. As per Section 65 IPC, the default sentence cannot exceed one-fourth of the maximum term of imprisonment fixed for the offence. Therefore,



the period of 01 year that has been imposed as default sentence is an infirmity and illegality, which also needs to be set aside.

25. The learned senior counsel is certainly right in the argument relating to the sentence. The transaction in this case took place in the year 2000. The amendment to Section 138 came into effect from 06.02.2003. As per the unamended section, the imprisonment that could be awarded was for a period which could extend up to one year. Therefore, the sentence of 02 years that has been imposed by the trial court is apparently wrong and hence, an interference into the said aspect is certainly called for.

26. As the evidence on record clearly proves the case of the complainant, I find that the trial court was right in concluding that an offence under section 138 of the NI Act has been committed by the accused. Therefore, the conviction of the accused for the offence punishable under Section 138 of the NI Act is confirmed. However, the sentence that has been imposed by the trial court is modified thus - The appellant/accused is sentenced to simple



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imprisonment for a period of 6 months. The sentence regarding the fine amount and compensation shall stand confirmed. However, the default sentence of 01 year imposed shall stand modified to 01 month.

27. The appeal is allowed to the aforesaid extent.

28. Applications(s), if any, pending stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 18, 2026/RS/ER