



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

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*Reserved on: 7<sup>th</sup> April, 2025*  
*Pronounced on: 28<sup>th</sup> June 2025*

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**CRL.REV.P.(NI) 100/2025 & CRL.M.B. 759/2025**

**SMT BHARTI SAHNI**

W/o Late Sh. Parveen Kumar Sahni

R/o VP-173-B, Pitampura, Delhi-110034

.....Petitioner

Through: Mr. Sunil Choudhary, Advocate.

versus

**SH VIKAS SEHRAWAT**

S/o Sh. Chanderhas

R/o Village Ramjanpur, Near Main

Chowk, Alipur, Delhi-110036

.....Respondent

Through: None

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

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

**NEENA BANSAL KRISHNA, J.**

1. Criminal Revision under Section 438/442 read with Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of the Petitioner, Smt. Bharti Sahni, to challenge the *Judgment dated 06.02.2025 vide which the Ld. ASJ, Delhi*, whereby the conviction dated 01.11.2023 and the Order on Sentence dated 03.11.2023 **under Section 138 Negotiable Instruments Act, 1881** (*hereinafter referred to as "N.I. Act"*) by Ld. M.M., has been upheld.

2. *The facts in brief* are that the Respondent, Sh. Vikas Sehrawat was approached by the Petitioner, Smt. Bharti Sahni, through their common



friend, Mr. Vaibhav Vasudeva in July, 2017, for a loan of Rs.6,00,000/- on account of her urgent need and she offered to pay the interest @5% per month. Eventually, the Respondent/Complainant, Mr. Vikas Sehrawat, gave a loan of Rs.6,00,000/- in the month of August, 2019 on an interest @2% per month. He was assured that the Petitioner, Ms. Bharti Sahni shall pay a sum of Rs.12,000/- per month towards interest and that the entire amount shall be paid by August, 2020. She then gave a blank signed cheque No.005148 drawn on HDFC Bank, Community Centre, Rohini Branch, Delhi for Rs.6,00,000/-.

3. The Complainant, Sh. Vikas Sehrawat, further asserted that despite his repeated requests, the Petitioner, Smt. Bharti Sahni kept seeking more time and eventually told him to present the cheque in the bank for encashment. On her assurance, the Complainant, Sh. Vikas Sehrawat presented the cheque on 29.09.2020, after filling the details of his name in the said cheque in his Bank i.e. ICICI, Shalimar Bagh Branch, Delhi, but the cheque was dishonoured for '*Funds Insufficient*'.

4. He contacted the Petitioner, Smt. Bharti Sahni but she told him to present the cheque again in second week of October, 2020 but on representation, it was again dishonoured for the "*Funds Insufficient*" vide return Memo dated 13.10.2020. The Complainant, Sh. Vikas Sehrawat, gave a Legal Notice dated 12.11.2020 to the Petitioner, Smt. Bharti Sahni but she avoided making payment of the loan amount. Left with no option, he filed a *Complaint Case bearing CC NI Act No. 121/2021* under Section 138 of N.I. Act, on 06.01.2021.



5. The **Respondent No. 1/Complainant, Sh. Vikas Sehrawat** appeared as **CW-1** and tendered his evidence and also exhibited the documents.

6. He also examined **CW-2, Mr. Vaibhav Vasudeva**, through whom the loan had been given to the Petitioner, Smt. Bharti Sahni. He corroborated the testimony of CW-1/the Complainant. He also produced a transcript dated 16.01.2020 as Ex.CW-2/2 of a telephonic conversation, containing conversation between him and the Accused, Ms. Bharti Sahni. The Certificate under Section 65-B dated 12.08.2021 is exhibited as Ex.CW-2/3.

7. The *Statement of the Petitioner, Smt. Bharti Sahni* was recorded under **Section 313 of the Code of Criminal Procedure, 1973** (hereinafter referred to as 'Cr.P.C.') wherein she asserted that she does not know the Complainant, Sh. Vikas Sehrawat and had not issued the cheque in his favour. In fact, her dealings were with Mr. Vaibhav Vasudeva, to whom she has already paid all the dues, but he has misused the cheque in question. The Petitioner, Smt. Bharti Sahni, however, did not step into the witness box to corroborate her defence or adduce any other defence evidence.

8. **Ld. Metropolitan Magistrate** in the impugned Judgment dated 01.11.2023, referred to the admittedly signed cheque of the Petitioner, Smt. Bharti Sahni along with the Bank Account Statement, ITR and Computation, Ex.CW-1/7 to Ex.CW-1/9 respectively of the Complainant, Sh. Vikas Sehrawat, to conclude that the loan indeed was given and the same has not been repaid by the Petitioner, Smt. Bharti Sahni despite due service of Legal Notice dated 12.11.2020. Her defence that she did not know the Complainant, Sh. Vikas Sehrawat was disbelieved and *she was convicted under Section 138 of N.I. Act, by the Order dated 03.11.2023. She was*



*sentenced to Simple Imprisonment for one month and a fine of Rs.10,65,000/-. In default, a further sentence of 20 days Simple Imprisonment, was imposed, in addition to the fine being recoverable under Section 421 Cr.P.C.*

9. The Petitioner, Smt. Bharti Sahni preferred an ***Appeal bearing CA No. 265/2023 before the Ld. ASJ, who vide Judgment dated 06.02.2025, found no merit in the Appeal and dismissed the same.***

10. Aggrieved by the said Order of the Ld. Metropolitan Magistrate upheld by the Ld. ASJ dated 06.02.2025, the present Revision Petition has been filed. ***Essentially, the grounds of challenge are firstly***, that she has no liability towards the Complainant, Sh. Vikas Sehrawat. ***Secondly***, CW-2, Mr. Vaibhav Vasudeva has admitted in his cross-examination that he is not in the business of Money Lending and therefore, the money advanced on interest, without license is not covered under Section 138 of the N.I. Act as held by the Bombay High Court in *Mrs. Monica Sunit Ujjain vs. Sanchu M Menon*, Crl. Rev.Appl. 494/2015. There is no finding of the Courts in the impugned Orders in this respect. It is further asserted that any loan transaction without license and secured by a post-dated cheque, is a cognizable offence about which nothing has been stated by the either the Ld. MM or Ld. ASJ.

11. The ***third ground*** is that the burden to prove that the cheque was given to the Complainant in discharge of legal liability, was upon him which he has failed to discharge. He failed to give the date when the alleged loan was advanced to the Petitioner. In the Complaint under NI Act, it is vaguely alleged to have been given in August, 2019. Moreover, the Complainant in



his cross-examination, also admitted that he was unable to remember the exact date on which the loan was advanced to the Petitioner Smt. Bharti Sahni but it was somewhere between 22.08.2019 to 31.08.2019. He nowhere stated that at the time of putting the date as 29.09.2020 on the cheque, what was the subsisting liability of the Petitioner, Smt. Bharti Sahni as the loan was advanced on a monthly interest of Rs.12,000/-. The Complainant failed to discharge his onus to prove the existing liability towards the Complainant.

12. The onus was put by the Trial Court on the Petitioner, Smt. Bharti Sahni by observing that she had admitted her signatures on the cheque but the she had sufficiently discharged this onus on balance of probabilities. *Therefore, the Petitioner, is liable to be acquitted.*

13. The **fourth ground** is that her defence has not been appreciated correctly. Petitioner, Smt. Bharti Sahni had taken a consistent stand since beginning that she did not know the Complainant, Sh. Vikas Sehrawat and the cheque was given to CW-2, Mr. Vaibhav Vasudeva. Moreover, CW-2, Mr. Vaibhav Vasudeva admitted in his cross-examination that the Petitioner had no transactions with the Complainant, which corroborates her defence. *Ld. Courts have failed to take note of this admission made by CW-2, in his cross-examination.* It is contended by the Petitioner that she has established that the cheque given to CW-2, Mr. Vaibhav Vasudeva, has been misused by him.

14. The Petitioner asserted that she had therefore, been able to prove that she had taken no loan from the Complainant, on preponderance of probability.



15. Reliance has placed on *Sanjay Verma vs. Gopal Halwai*, Crl. Rev. P. 63/2015 wherein the Co-ordinate Bench of this Court held that where the handed over cheque is misused by a common friend and the Complaint is filed as a proxy litigation through his own employee, it is a probable defence and rightly rebuts the statutory presumption.

16. Reliance has also been placed on *Pine Product Industries and Anr. vs. R.P. Gupta and Sons and Anr.*, II (2007) BC 20 wherein Co-ordinate Bench of this Court had held that the presumption under the NI Act is rebuttable and can be rebutted in the course of trial. Once this presumption is rebutted, the onus would shift on the Complainant to establish beyond reasonable doubt that the cheque was in fact issued in discharge of an existing debt or liability.

17. It is also ***contended*** that she has not been convicted in any other case and even if she was the previous conviction in other case, it cannot be a relevant factor for holding the Petitioner, Smt. Bharti Sahni guilty in the present case.

18. The ***Petitioner has also challenged the imposition of fine of Rs.10,65,000/- vide the Order on Sentence, as being beyond the jurisdiction of learned Metropolitan Magistrate***, in terms of Section 29(2) Cr.P.C., which provides that the Ld. Metropolitan Magistrate of First Class, cannot impose a fine exceeding Rs.10,000/-.

19. Further, the Ld. Metropolitan Magistrate has observed that independent of the Sentence of one month, fine shall be recoverable under Section 421 Cr.P.C. It is claimed that the benefit of Section 68 and 69 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) is available to the



Petitioner, as per law and the fine exceeding the limit of Rs.10,000/-, is liable to be set-aside.

20. *It is, therefore, submitted that the Judgment and Sentence dated 01.11.2023 and 03.11.2023 respectively, of Ld. Metropolitan Magistrate, which has been upheld by the learned ASJ vide Judgment dated 06.02.2025 be set-aside.*

**21. Submissions heard and the record perused.**

22. The case of the Complainant/Respondent No. 1, Sh. Vikas Sehrawat was that he had given a loan to the Petitioner, in August, 2019, which is fully corroborated by his Bank Statements, ITR and the Computation Sheet, Ex-CW-1/7 to Ex.CW-1/9. Perusal of the Bank Statement Ex.CW-1/7 shows that there are various entries for withdrawal of cash in the month of August, 2019 from his Account thereby corroborating his financial capacity to give the loan.

23. The *first defence* taken by the Petitioner was that she did not know the Complainant, Sh. Vikas Sehrawat but had dealings with his friend, Mr. Vaibhav Vasudeva, to whom she had given the cheque in question. Her own admissions thereby proves and corroborate the testimony of the Complainant, Sh. Vikas Sehrawat as well as CW-2, Mr. Vaibhav Vasudeva, who had deposed that Mr. Vaibhav Vasudeva had approached the Complainant, Sh. Vikas Sehrawat his friend on behalf of the Petitioner to get a loan of Rs.6,00,000/-, which was indeed given to the Petitioner through CW-2 Vaibhav Vasudeva. There is no cross-examination whatsoever of CW-2, Mr. Vaibhav Vasudeva to challenge his testimony about him having arranged a loan for her through the Complainant, Sh. Vikas Sehrawat. The



only cross-examination done of CW-2 was to discredit the transcript of the telephonic conversation between the Petitioner, Smt. Bharti Sahni and CW-2. Not a single suggestion was given that she did not take the loan or that she had paid the dues.

24. It is fully established that though Petitioner, Smt. Bharti Sahni may not have personally met the Complainant but on her request, Cw-2 who was known to her, had arranged the Loan through the Complainant.

25. Pertinently, Petitioner, Smt. Bharti Sahni *in her Response to the Notice under Section 251 Cr.P.C.*, had claimed that she had given the cheque to Mr. Vaibhav Vasudeva, CW-2, which he has misused. In her Statement under Section 313 Cr.P.C., however, she asserted that whatever were the outstanding dues to Mr. Vaibhav Vasudeva, already stood paid but no such suggestion was given to CW-2, Mr. Vaibhav Vasudeva in the cross-examination.

26. From her admissions and omissions, not only the factum of taking of loan is established, but she has failed to adduce any evidence of repayment of loan to any person. It is thus, established that the loan amount was not returned by her. Aside from a bald assertion that all the dues were paid to CW-2, no specifics of when, where and in what manner, she had allegedly cleared her dues. Significantly, CW-2 was never given any such suggestion of clearing of the dues.

27. Though, the Petitioner has asserted that it was a proxy litigation undertaken by Mr. Vaibhav Vasudeva, but in the light of the testimony that



Mr. Vaibhav Vasudeva had in fact, taken the loan from the Complainant for and on behalf of the Petitioner.

28. It is also significant to note that *it had been a defence of the Petitioner that the cheque had her signatures and has been issued by her, but was misused by CW-2.* If so was the case, she like any prudent person, she would have taken some steps to get the payment against the cheque stopped.

29. The learned Metropolitan Magistrate has rightly concluded not only the factum of giving the loan by the Complainant to the Petitioner, but also that it was not returned, has been fully established.

30. *One other contention* taken by the Petitioner to discredit the case of the Complainant, is that though the cheque amount was Rs.6,00,000/- but according to the Complainant, it was agreed that Rs.12,000/- per month, which is the interest @2% per month, was in addition, payable. However, this interest amount has not been added to the cheque amount.

31. This argument reflects the desperate attempt of the Petitioner to somehow discredit the case of the Complainant. She has lost sight of the fact that the cheque with the amount and the signatures, had been given by her at the time of taking the loan in August, 2019. Once the amount had already been filled to secure the loan taken by her, this amount could not have been changed or varied by the Complainant, Sh. Vikas Sehrawat.

32. Other significant evidence was that though the Legal Notice dated 12.11.2020, Ex.CW-1/3, was duly served upon the Petitioner *vide* Speed Post, the Receipt dated 12.11.2020, Ex.CW-1/4, the Petitioner did not respond to the same to assert her defence as set up in the present Petition.



Any prudent person on whom alleged liability is being alleged, would not remain silent and not respond to the Notice dated 12.11.2020.

33. Further, Complainant has deposed that the cheque was first presented on 29.09.2020, when it was dishonoured for *insufficiency of funds*. On the request of the Petitioner it was presented the second time, on 13.10.2020. If the defence of the Petitioner was genuine, she would have stopped the payment against the cheque atleast after its first presentation. Her inaction and silence and the Cheque being presented twice, further establishes that the loan amount had not been refunded to the Complainant.

34. *In the end*, a Legal objection has been taken that under **Section 29 of Cr.P.C.**, the First-Class Magistrate has the power to impose the fine to the maximum of Rs.10,000/-. Therefore, the fine of Rs.10,65,000/- as imposed by the Ld. Metropolitan Magistrate, is illegal and against the mandate of law.

35. In this context, it may be observed that the trial has been held under a Special Act i.e. Negotiable Instruments Act wherein Section 138 itself provides that in case the offence is proved under Section 138, the person convicted may be punished with an imprisonment of a term, which may extend to two years and the fine which may extend to twice the amount of the cheque or with both. This being conviction in a trial under the Special Act, it would prevail over the general law as contained in Cr.P.C. The cheque amount was Rs.6,00,000/- and the jurisdiction of the Ld. Metropolitan Magistrate to impose the fine, was the double of the cheque amount. Therefore, the fine imposed in the sum of Rs. 10,65,000/- is within the jurisdiction of learned Metropolitan Magistrate.



***Conclusion:***

36. In the light of the aforesaid discussion, it is held that the Petitioner has been rightly convicted and sentenced by the Ld. Metropolitan Magistrate *vide* Order dated 01.11.2023, which has been rightly upheld by the learned ASJ *vide* Judgment dated 06.02.2025.

37. There is no merit in the present Criminal Revision Petition, which is hereby dismissed. The pending Application(s) are disposed of accordingly.

38. The Copy of the Order be sent to the Ld. MM to ensure the compliance of the Sentence.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 28, 2025/RS**