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

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Judgment reserved on: 08.01.2026

Judgment pronounced on: 29.01.2026

Judgment uploaded on: 30.01.2026

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CRL.REV.P. 529/2024, CRL.M.A. 11912/2024 &
CRL.M.A. 16515/2024

MS. MANILA KUNDARAPetitioner

Through: Ms. Nandita Rao, Senior Advocate, Mr. Ankur Raghav, Mr. Saurabh Goel, Advocates.

versus

SH. AJAY GOYALRespondent

Through: Mr. Satyanarayan Padhi, Advocate with Mr. Jitender Kumar, Mr. Ajay Kumar Jain, Mr. Arun Kumar Renu and Ms. Babita, Advocates.

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CRL.REV.P. 538/2024, CRL.M.A. 12062/2024 &
CRL.M.A. 16526/2024

MS. DEEPALI KUNDARAPetitioner

Through: Ms. Nandita Rao, Senior Advocate, Mr. Ankur Raghav, Mr. Saurabh Goel, Advocates.

versus

SH. AJAY GOYALRespondent

Through: Mr. Satyanarayan Padhi, Advocate with Mr. Jitender Kumar, Mr. Ajay Kumar Jain, Mr. Arun Kumar Renu and Ms. Babita, Advocates.

**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this judgment, this Court shall dispose of both the captioned petitions, arising out of the same set of facts and circumstances.
2. The petitioners herein have assailed their convictions for offence under Section 138 of the Negotiable Instruments Act, 1881 [hereafter 'NI Act'], in CT Case Nos. 1523/2016 (*Ajay Goyal vs. Deepali Kundra & Ors.*) and 1626/2016 (*Ajay Goyal vs. Manila Kundra & Ors.*).

FACTUAL BACKGROUND

3. Briefly stated, the facts of the case are that the complainant/respondent and the accused persons/petitioners shared prior business relations, pursuant to which the petitioners herein had purchased jewellery articles from the complainant in June 2014, for a total value exceeding ₹39 lakhs. It is alleged by the complainant that towards discharge of the said liability, the petitioner Manila Kundra had issued cheque no. 918605 for ₹23,03,143/- whereas the petitioner Deepali Kundra had issued cheque no. 918642 for ₹16,36,291/-, both dated 27.06.2014, drawn on ICICI Bank, Rohini Branch, in favour of the complainant, which upon presentation were dishonoured with the remarks "Payment Stopped by the Drawer." It



is stated that despite service of a statutory legal notice upon the accused persons, calling upon them to discharge the outstanding liability within the prescribed period, no payment was made by them. Consequently, upon expiry of the stipulated period, the complainant was constrained to institute the present complaints under Section 138 of the NI Act.

4. The learned Metropolitan Magistrate-04, North District, Rohini Courts, Delhi [hereafter '*Trial Court*'] convicted the petitioner Deepali Kundara, in CT Case No. 1523/2016, *vide* judgment dated 18.04.2023, and the petitioner Manila Kundara, in CT Case No. 1626/2016, *vide* judgment dated 27.04.2023, for offence punishable under Section 138 of the NI Act. By way of separate orders passed in both these cases, the learned Trial Court on 20.07.2023, sentenced both the petitioners, individually, to undergo simple imprisonment for a period of six months. Further, the petitioner Deepali Kundara was sentenced to payment of fine of ₹30,10,000/-, out of which ₹10,000/- was to be paid as fine and ₹30,00,000/- as compensation to the complainant. Similarly, the petitioner Manila Kundara was sentenced to payment of fine of ₹37,10,000/-, out of which ₹10,000/- was to be paid as fine and ₹37,00,000/- as compensation to the complainant.

5. Aggrieved by their conviction, the petitioners had filed appeals, and *vide* impugned *similar* judgments passed in CA No. 186/2023 (Deepali Kundara vs. The State & Anr.) and 187/2023 (Manali Kundara vs. The State & Anr.), the learned Additional



Sessions Judge-04, North District, Rohini Courts, Delhi [hereafter 'Appellate Court'] was pleased to uphold the judgments and orders passed by the learned Trial Court.

RIVAL CONTENTIONS

6. The learned senior counsel appearing for the petitioners submits that the impugned judgments passed by the learned Appellate Court are unsustainable in law and on facts, as the very foundation of the complaint under Section 138 of the NI Act is defective. It is argued that the respondent lacked *locus-standi* to maintain the complaint, since the cheques in question were admittedly issued in the name of *Yashman Diamonds*, whereas the complaint was filed by the respondent in his individual capacity without establishing that he was the sole proprietor or otherwise entitled to receive the cheque amount in his own name. It is further argued that neither the complaint nor the evidence led by the respondent proves proprietorship, authority, or entitlement, and the respondent himself admitted in cross-examination that no such document was placed on record. It is argued that despite this fundamental defect, the learned Trial Court and the learned Appellate Court erroneously proceeded on presumptions, recording findings contrary to the documentary record. Learned counsel further submits that the Courts below failed to appreciate serious infirmities in the complainant's case, including the absence of proof regarding TIN number, audit records, stock registers, or any reliable business documents to substantiate the alleged jewellery transactions of such high value, and the reliance on



vague and allegedly fabricated bills containing overwriting and lacking details or acknowledgment. It is also urged that the cheques were signed in blank and subsequently filled without the knowledge of the petitioners, amounting to material alteration, and that inconsistencies in the respondent's signatures further cast doubt on the genuineness of the documents. On these grounds, it is argued that the conviction suffers from grave illegality and perversity, and deserves to be set aside.

7. The learned counsel appearing for the respondent argues that the present petition is devoid of merit and is a re-agitation of issues already considered and rightly rejected by both the learned Trial Court and the learned Appellate Court. It is contended that the petitioner had purchased jewellery from the respondent on 06.06.2014 against a cash memo issued by Yashman Diamonds, and in view of the long-standing business relationship and familiarity with the petitioner's family members, the jewellery was sold on credit. Towards discharge of the said liability, the petitioner issued cheque bearing No. 918642 dated 27.06.2014 for a sum of ₹16,36,291/-, which was dishonoured upon presentation with the remarks "*Payment Stopped by Drawer*". Despite issuance of a statutory legal notice dated 09.07.2014 and receipt of a reply thereto, the liability remained unpaid, compelling the respondent to initiate proceedings under Section 138 of the NI Act, culminating in conviction by judgment dated 18.04.2023, which has since attained finality up to the learned Appellate Court. It is further submitted that



the principal objection raised by the petitioner regarding *locus-standi* is misconceived. The respondent had consistently disclosed, including in the legal notice, that he is the proprietor of Yashman Diamonds, and the cash memo relied upon in evidence stands duly issued in the said trade name. Both the courts below have concurrently recorded findings that the respondent proved his case beyond reasonable doubt and that the defence raised by the petitioner was contradictory and unsubstantiated. The learned counsel emphasizes that the statutory presumption under Section 139 of the NI Act operates in favour of the holder of the cheque and the petitioner has failed to rebut the same by any cogent evidence. In these circumstances, it is prayed that the present petition be dismissed and the well-reasoned judgments of the learned Trial Court and the learned Appellate Court be upheld.

8. This Court has **heard** arguments addressed on behalf of the petitioners as well as the respondent, and has perused material on record.

ANALYSIS & FINDINGS

9. Insofar as the scope of present petition is concerned, it is well-settled that the High Court in criminal revision against conviction is not supposed to exercise the jurisdiction akin to the appellate court and the scope of interference is limited. Section 397 of the Cr.P.C. vests jurisdiction for the purpose of satisfying the Court as to the correctness, legality or propriety of any finding, sentence or order,



recorded or passed, and as to the regularity of any proceedings of such inferior court. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case [Ref: *Malkeet Singh Gill v. State of Chhattisgarh*: (2022) 8 SCC 204; *State of Gujarat v. Dilipsinh Kishorsinh Rao*: 2023 SCC OnLine SC 1294].

10. The principal contention raised by the petitioners before this Court relates to the *locus standi* of the complainant. It is urged that since the cheque in question was issued in the name of M/s Yashman Diamonds and not in the individual name of the respondent, the respondent lacked the authority to institute the complaint under Section 138 of the NI Act.

11. Upon a careful consideration of the record, this Court finds the said contention to be untenable and unmerited. From the pleadings, the statutory legal notice, as well as the testimony of the complainant, it has emerged that M/s Yashman Diamonds is a sole proprietorship concern and that the respondent-complainant is its proprietor. It is a settled principle of law that a sole proprietorship concern does not have a legal identity separate from that of its proprietor. Any transaction undertaken in the trade name of such concern is, in law, a transaction of the proprietor himself.

12. The complainant had clearly disclosed, even at the stage of issuance of the statutory legal notice, that he was the proprietor of M/s Yashman Diamonds. This assertion was *never disputed* by the



accused-petitioners in the reply to the legal notice sent by them. During trial as well, the complainant categorically deposed that he was the proprietor of the said concern and that the cheque had been issued in its trade name. These assertions remained unrebutted.

13. The learned Sessions Court, while dealing with this objection, has also noted that although the complainant stated in his cross-examination that no document had been placed on record to show proprietorship, he also clarified that the cheque was issued in the name of his proprietorship concern and that the TIN number of the firm reflected his proprietorship. The learned Sessions Court further observed that the defence taken by the accused was internally inconsistent – on the one hand alleging misuse of the cheque, and on the other asserting that the cheque had been issued to M/s Yashman Diamonds and not to the complainant.

14. The learned Trial Court has rightly noted that no steps were taken by the accused to summon or call for documents to disprove the complainant's proprietorship, despite the burden resting upon them once the statutory presumptions were attracted, as explained by the Hon'ble Supreme Court in *Rohitbhai Jivanlal Patel v. State of Gujarat*: (2019) 18 SCC 106.

15. It is also a settled position, as explained by the Coordinate Bench of this Court in *M. M. Lal v. State (NCT of Delhi)*: 2012 (4) JCC 284, that a sole proprietorship concern has no separate legal identity distinct from its proprietor, and a complaint filed by the



proprietor in respect of a cheque issued in the trade name of the proprietorship is legally maintainable. The Court held that a cheque issued in the name of a sole proprietorship concern is, in law, a cheque issued in favour of the proprietor himself, and such a complaint does not suffer from any defect of *locus standi*. The relevant observations in the said decision are as under:

"4. It is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus any reference to sole proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of partnership firm or association of individual. Vicarious liability cannot be fastened on the employees of a sole partnership firm, by taking aid of Section 141 of the Act, inasmuch as, no evidence has been led to show that the business was run by the respondent no. 2..."

16. In view of the above discussion, this Court finds that the objection regarding the complainant's *locus standi* was rightly rejected by the learned Trial Court. No perversity or legal infirmity is discernible in the findings returned on this aspect. The contention raised by the petitioners is accordingly rejected.

17. This Court further observes that the essential ingredients of



Section 138 of the NI Act stand duly satisfied in the present case. The issuance of the cheque by the petitioners, drawn on their account, has not been disputed, though they had taken defence that they had never issued any cheque in favour of the complainant and cheques in question were stolen/lost which might have come in the hands of the complainant who had misused the same. The dishonour of the cheque on account of "*payment stopped by drawer*" is duly proved through bank records, and the statutory demand notice was issued within the prescribed period and admittedly replied to by the accused. These facts, once established, triggered the statutory presumptions under Sections 118(a) and 139 of the NI Act in favour of the complainant. The burden thereafter shifted upon the petitioners to rebut the presumption by raising a probable defence, not by mere assertions, but by material on record.

18. This Court further finds that the defence raised by the petitioners, namely that no transaction of sale of jewellery ever took place and that the cheque was misused, is not supported by any credible evidence. The stand taken by the petitioners has been inconsistent, at times alleging misuse of a blank signed cheque and at other times denying any liability altogether. No plausible explanation has been offered as to how the cheque, admittedly bearing the signatures of the accused, came into the possession of the complainant. The learned Trial Court has rightly observed that the defence of a blank signed cheque having been taken away by the complainant was nothing more than a bald suggestion put during



cross-examination, without any supporting material. The accused merely suggested that the cheque had been kept for payment of certain fees and was misused by the complainant, but failed to explain the basic particulars of such a claim. No attempt was made to clarify what fees were allegedly payable, to whom such fees were due, or on what occasion the cheque was retained for that purpose. The accused also did not explain where the cheque was kept, under what circumstances the complainant allegedly gained access to it, or when the cheque was purportedly taken away. These crucial aspects remained completely unexplained. The learned Appellate Court has also correctly noted that the petitioners never lodged any complaint with the police or any other authority alleging misuse of the cheque, nor was any such complaint proved during trial. In view of the above, this Court finds no infirmity in the concurrent findings of the learned Trial Court and the learned Appellate Court rejecting the defence of misuse of cheque.

19. In the totality of the circumstances, this Court finds no perversity or illegality in the concurrent findings recorded by the learned Trial Court and the learned Appellate Court.

20. Accordingly, this Court holds that the conviction of the petitioners under Section 138 of the NI Act calls for no interference in revisional jurisdiction.

21. The petitions alongwith pending applications are accordingly dismissed.



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22. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JANUARY 30, 2026/vc

T.S./T.D.