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DISHONOUR OF CHEQUE JUDGEMENTS

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CHEQUE DISHONOUR

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TERRITORIAL JURISDICTION UNDER NI ACT

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DISHONOUR OF CHEQUE JUDGEMENTS

2026(1)DCJ1

IN THE SUPREME COURT OF INDIA

(Hon'ble Judge: J B Pardiwala; R Mahadevan)

Transfer Petition (Criminal) No. 1099 of 2025, 1100 of 2025, 1101 of 2025, 1102 of 2025 dated 28/11/2025

Jai Balaji Industries Ltd and Ors

Versus

HEG Ltd

TERRITORIAL JURISDICTION UNDER NI ACT

Code of Criminal Procedure, 1973 Sec. 177 - Negotiable Instruments Act, 1881 Sec. 142, Sec. 64, Sec. 46, Sec. 142A, Sec. 138 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 446 - Territorial Jurisdiction under NI Act - Transfer petitions filed seeking transfer of cheque dishonour complaint from Bhopal to Kolkata - Cheque drawn on Kolkata bank and deposited in Bhopal branch of complainant's bank - Complaint first filed at Kolkata and later returned after amendment to NI Act conferring jurisdiction on court where payee maintains account - Petitioners argued that trial should remain at Kolkata as evidence already commenced - It was observed that after amendment, jurisdiction lies with court where payee's bank situated and continuation at old venue not permissible - Held that statutory change under Sec. 142(2) and Sec. 142A overrides earlier practice and complaints shall be tried where payee's account maintained - Transfer Petitions Dismissed

Law Point: After amendment by Negotiable Instruments (Amendment) Act, 2015, jurisdiction for trial of offences under Sec. 138 lies with court within whose local jurisdiction payee's bank is situated - Ongoing proceedings at other venues must conform to statutory mandate

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 177

Negotiable Instruments Act, 1881 Sec. 142, Sec. 64, Sec. 46, Sec. 142A, Sec. 138

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 446

Counsel:

Kaustubh Shukla, Pushpanjali Singh, Gursimrat Kaur

JUDGEMENT

J.B. Pardiwala, J.- [1] For the convenience of exposition, this judgment is divided into the following parts:

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D. CONCLUSION

1. Since the issues raised in all the captioned transfer petitions are the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

[2] For the sake of convenience, the Transfer Petition (Criminal) Diary No. 24362 of 2024 is treated as the lead matter.

[3] This transfer petition filed under Section 446 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "BNSS") read with Order XXXIX of the Supreme Court Rules, 2013 is at the instance of a private limited company through its directors, praying for transfer of the Complaint Case No. RCT 2501046/2017 titled as "M/s HEG Limited vs Jai Balaji Industries Ltd. & Ors" pending in the court of Judicial Magistrate

First Class, Bhopal to the Court of Metropolitan Magistrate, Kolkata. The transfer is prayed for on the ground that this Court, in **Dashrath Rupsingh Rathod v. State of Maharashtra**, 2014 9 SCC 129 had held that cases where the trial had reached the stage of summoning, appearance of accused, and the recording of evidence had commenced as per Section 145(2) Negotiable Instruments Act, 1881 (for short, the "**Act, 1881**"), those should continue in the same court where the trial was ongoing.

A. FACTUAL MATRIX

[4] The petitioner no. 1 herein (Jai Balaji Industries Ltd.) is the original accused no. 1 (hereinafter referred to as the "**accused company**"), while the other petitioners are the directors of the accused company. The respondent (M/s HEG Limited), is the original complainant (hereinafter referred to as the "**complainant company**" or "**complainant**").

[5] A cheque for the amount of Rs. 19,94,996/- was drawn by the accused company through its directors, against an invoice generated by the complainant company, dated 23.03.2014. The cheque was drawn by the accused on the State Bank of Bikaner and Jaipur, Kolkata and the same was deposited by the complainant on 19.06.2014 in its account maintained with the State Bank of India, Bhopal branch.

[6] The cheque referred to above came to be dishonoured due to insufficiency of funds on 20.06.2014 pursuant to which, the complainant issued the statutory notice dated 11.07.2014 to all the accused persons through registered speed post A/D, demanding that the sum of Rs. 19,94,996/- be paid within a period of 15 days as prescribed under Section 138 of the Act, 1881 in lieu of the dishonoured cheque. The said notice was delivered on 14.07.2014.

[7] The accused company replied vide the letter dated 26.07.2014 which was received by the complainant on 30.07.2014, wherein all the accused persons took the defence that the said cheque had been issued as a 'Security Deposit' and not in discharge of any enforceable debt. As a result, the complainant company filed the Complaint Case No. 406978 of 2014 in the court of the Metropolitan Magistrate, Kolkata (the "**MM, Kolkata**") on 16.08.2014. The same was registered on 29.01.2015 and summons were issued to the accused company and other accused persons on 29.01.2015. Consequently, the MM, Kolkata proceeded to frame charge to which the accused persons pleaded not guilty and claimed to be tried. On 27.04.2015, the affidavit of evidence-in-chief of the complainant company's officer was taken on record by the MM, Kolkata.

[8] While the case was pending before the MM, Kolkata, the Government enacted the Negotiable Instruments (Amendment) Act, 2015 (the "**Amendment Act, 2015**") on 26.12.2015. In accordance with the terms of the amendment to the Act, 1881, more particularly, Section 142 thereof, the territorial jurisdiction for prosecution and trial of cases registered under Section 138 was stipulated to be at the place where the payee or

holder maintains his bank account. In this case, the payee, i.e., the complainant company maintained its bank account with the State Bank of India, Bhopal branch.

[9] Upon request made by the complainant company, the MM, Kolkata returned the complaint to the respondent vide order dated 28.07.2016 observing that it lacked the jurisdiction to conduct trial for the case in hand and allowed the complainant to present the matter before the court of competent jurisdiction.

[10] In such circumstances referred to above, the complainant company got the complaint for dishonour of cheque registered in the court of the Judicial Magistrate First Class, Bhopal (the "**JMFC, Bhopal**") bearing Complaint Case No. RCT 1501046 of 2017. The accused company raised an objection as regards the territorial jurisdiction of the JMFC, Bhopal to try the offence relying on the provisions of the Code of Criminal Procedure, 1973 (the "**Act, 1973**"). Besides according to the accused persons, the MM, Kolkata could not have returned the complaint once the recording of evidence as per Section 145(2) had already commenced. However, the said objections were rejected by the JMFC, Bhopal. The same was then challenged by the accused persons vide Criminal Revision before the Sessions Court, Bhopal which is still pending adjudication.

[11] Be that as it may, the question before us is not one relating to the merits of the claims of the parties herein. What is discernible is the fact that the cheque so issued was dishonoured, and the sum for which such cheque was drawn was not made good by the accused despite a statutory notice. This conspectus of facts has enabled the complainant to prosecute the accused and the sole controversy before us is as to which court has the territorial jurisdiction to try the accused persons for the offence punishable under Section 138 of the Act, 1881.

B. ISSUES FOR DETERMINATION

[12] Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following two questions fall for our consideration:

i. Whether after the enactment of the Amendment Act, 2015, the court within whose local jurisdiction the drawee bank is situated, has the jurisdiction to try a complaint under Section 138?

ii. Whether after the enactment of the Amendment Act, 2015, a complaint under Section 138 of the Act, 1881 can be transferred to the court within whose local jurisdiction the drawee bank is situated, if the recording of evidence under Section 145 has already commenced in the said court?

C. ANALYSIS

[13] Before advertng to the conspectus of facts before us, we must discuss or rather clarify the position of law as regards jurisdiction of courts to entertain complaints under Section 138 of the Act, 1881 especially after the introduction of Sections 142(2) and 142A respectively by the Amendment Act, 2015. For that, we

must look into few judgments of this Court to better understand the legal backdrop in which the present dispute has arisen.

(i) Position of law as regards jurisdiction of courts prior to the Amendment Act, 2015

[14] Prior to the enactment of the Amendment Act, 2015, the issue relating to territorial jurisdiction was quite complex. With a view to dispel any doubt and lend clarity, this Court, in several of its judgments, had addressed the issue of jurisdiction.

a. Analysis of the observations of this Court in Bhaskaran

[15] In **K. Bhaskaran v. Sankaran Vaidhyan Balan**, 1999 7 SCC 510, this Court addressed itself on the issue of territorial jurisdiction in detail.

[16] In the said case, the cheque was issued by the accused at Adoor, Kerala and the same was presented by the complainant at the bank in Kayamkulam, Kerala, for encashment. The drawee bank dishonoured the cheque due to funds being insufficient in the account of the accused. Consequently, the complainant therein issued the statutory notice as required under Section 138 of the Act, 1881 but the same remained unclaimed and not delivered to the accused as the addressee (the accused) was not found at the address mentioned in the notice. The complainant proceeded to file the complaint before the Court of the Judicial Magistrate, First Class, Adoor ("JMFC, Adoor").

[17] The accused questioned the jurisdiction of the JMFC, Adoor on the ground that the cheque was dishonoured at the bank situated in Kayamkulam where the complainant had presented the cheque for encashment and therefore, there was no occasion for the complainant to file a case at Adoor. The JMFC, Adoor accepted the said submission canvassed by the accused and held that he had no territorial jurisdiction to try the case as the cheque was dishonoured in a different district of Kerala. On the other hand, the High Court set aside the trial court's judgment and held that since the cheque was issued at Adoor, i.e., within the territorial jurisdiction of the JMFC, Adoor, he was competent to conduct the trial in respect of the complaint.

[18] This Court took the view that the JMFC, Adoor had erroneously held that the trial of the complaint was outside its jurisdiction. It was observed that although Section 177 of the Code of Criminal Procedure, 1973 (the "CrPC") lays down the rule that every offence must be tried by a court within whose jurisdiction it was committed, yet this rule was not invariable. Situations that may present uncertainty as regards the question of jurisdiction are accounted for by the CrPC, more particularly Section 178 thereof. Section 178 reads thus:

"178. Place of inquiry or trial.

(a) When it is uncertain in which of several local areas an offence was committed,
or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

[19] The plain reading of Section 178(d) referred to above clarifies that when it is not possible to answer the question of jurisdiction with certainty due to several acts having been done in different local areas, the offence could be tried in a court having jurisdiction over any of such local areas.

[20] This Court highlighted that the offence under Section 138 is a consequence of the dishonour of cheque but such dishonour by itself does not result in the offence unless and until the following acts are established:

- (i) Drawing of the cheque,
- (ii) Presentation of the cheque to the bank,
- (iii) Returning the cheque unpaid by the drawee bank,
- (iv) Issuing notice in writing to the drawer of the cheque demanding payment of the cheque amount,
- (v) Failure of the drawer to make payment within 15 days of the receipt of the notice.

[21] This Court held that the complainant may choose to lodge his complaint in any court exercising jurisdiction over the localities where the aforesaid acts may have been done. The relevant portion of the judgment is reproduced below:

"11. We fail to comprehend as to how the trial court could have found so regarding the jurisdiction question. Under Section 177 of the Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence, the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act.

12. Even otherwise the rule that every offence shall be tried by a court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word "ordinarily" to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among

different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon. It reads thus:

"179. Offence triable where act is done or consequence ensues.-When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be enquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."

13. The above provisions in the Code should have been borne in mind when the question regarding territorial jurisdiction of the courts to try the offence was sought to be determined.

14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"178. (a)-(c)***

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

(Emphasis supplied)

[22] The decision in **Bhaskaran** (supra) took into account or rather highlighted that Section 138 would get attracted upon commission of multifarious acts. Such acts may not always share local areas and might have been done in different jurisdictions. It was recognized that the special nature of the offence contained in the said section gave rise to jurisdictional ambiguity which was hindering the complainants' litigations to

recover their money. To remedy the mischief that was being perpetuated by the absence of a specific jurisdiction, this Court held that the amplitude of the offence under Section 138 was so wide as to confer jurisdiction on all the courts in whose territorial jurisdiction any of the five acts as mentioned above, might have been committed.

b. Analysis of the observations of this Court in Harman Electronics

[23] In **Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.**, 2009 1 SCC 720, the cheque was issued by the drawer in Chandigarh and was presented by the complainant in Chandigarh itself. The complainant sent the statutory notice under Section 138 from Delhi which was admittedly served on the drawer in Chandigarh. Upon non-clearance of dues, the complainant filed a complaint under Section 138 before the Additional Sessions Judge, New Delhi (the "**ASJ, Delhi**").

[24] It was the grievance of the accused therein that although most of the acts required to constitute an offence under Section 138 were committed in Chandigarh, yet the complainant had filed the complaint in the court at New Delhi only on the strength of the fact that the statutory notice was issued in Delhi. The accused therein had contended that this by itself would amount to absurdity if the complaint was entertained in Delhi.

[25] The ASJ, Delhi held that the court in Delhi had the territorial jurisdiction to conduct trial in respect of the complaint as the statutory notice was sent by the complainant from Delhi. The High Court of Delhi affirmed the decision of the ASJ, Delhi saying that this Court's judgment in Bhaskaran (supra) had clarified that if five different acts constituting the offence under Section 138 were found to have been done in five different localities, any one of the courts exercising jurisdiction in one of such five areas could become the place of trial. The High Court held that the issuance of statutory notice being one of the acts mandatory for the completion of an offence under Section 138, the court in Delhi exercising territorial jurisdiction over the place from which the statutory notice was issued, would have the jurisdiction to try the complaint.

[26] The question that fell for the consideration of this Court was whether the sending of notice from Delhi, by itself would give rise to a cause of action for taking cognizance under Section 138.

[27] This Court held that the cause of action for proceeding against an accused person under Section 138 would arise not from the mere sending of the statutory notice but rather from its receipt by the accused person. The object behind sending of notice was considered by this Court and it was observed that it is only upon receipt of the notice that an accused person may elect to either pay the amount due and payable within a period of 15 days or not to pay the same. Therefore, issuance of notice by itself would not give rise to a cause of action. The service of notice is imperative as it is only when the communication thereof is complete that the cause of action arises.

[28] This Court also noted that allowing multitudinous courts the jurisdiction to try a single complaint would enable or rather place a complainant in the position to misuse the law and cause harassment to the accused.

[29] In light of such considerations, this Court held that though the statutory notice was sent from Delhi, yet its receipt was recorded in Chandigarh. As the cause of action accrued in Chandigarh, it was held that the court in Delhi had no jurisdiction to try the matter. The relevant portions of the judgment are reproduced below:

"12. The complaint petition does not show that the cheque was presented at Delhi. It is absolutely silent in that regard. The facility for collection of the cheque admittedly was available at Chandigarh and the said facility was availed of. The certificate dated 24-6-2003, which was not produced before the learned court taking cognizance, even if taken into consideration does not show that the cheque was presented at the Delhi branch of Citibank. We, therefore, have no other option but to presume that the cheque was presented at Chandigarh. Indisputably, the dishonour of the cheque also took place at Chandigarh. The only question, therefore, which arises for consideration is that as to whether sending of notice from Delhi itself would give rise to a cause of action for taking cognizance under the Negotiable Instruments Act.

13. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act are intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice that the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

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17. Section 177 of the Code of Criminal Procedure determines the jurisdiction of a court trying the matter. The court ordinarily will have the jurisdiction only where the offence has been committed. The provisions of Sections 178 and 179 of the Code of Criminal Procedure are exceptions to Section 177. These provisions presuppose that all offences are local. Therefore, the place where an offence has been committed plays an important role. It is one thing to say that a presumption is raised that notice is served but it is another thing to say that service of notice may not be held to be of any significance or may be held to be wholly unnecessary. (...)

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19. Presumption raised in support of service of notice would depend upon the facts and circumstances of each case. Its application is on the question of law or the fact obtaining. Presumption has to be raised not on the hypothesis or surmises but if the foundational facts are laid down therefor. Only because presumption of service of notice is possible to be raised at the trial, the same by itself may not be a ground to hold that the distinction between giving of notice and service of notice ceases to exist.

20. Indisputably all statutes deserve their strict application, but while doing so the cardinal principles therefor cannot be lost sight of. A court derives a jurisdiction only when the cause of action arose within its jurisdiction. The same cannot be conferred by any act of omission or commission on the part of the accused. A distinction must also be borne in mind between the ingredient of an offence and commission of a part of the offence. While issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, the commission of an offence completes. Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter that in **Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd**, 2001 6 SCC 463: 2001 SCC (Cri) 1163: AIR 2001 SC 676] emphasis has been laid on service of notice.

21. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower can not only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure."

(Emphasis supplied)

[30] This Court, while applying the principles relating to jurisdiction as laid down in **Bhaskaran** (supra), explained the legal effect of the act of sending the statutory notice under Section 138 for the purpose of determining the jurisdiction to try a complaint thereunder. It was recognized that conferring jurisdiction on the locality from where the notice was sent would give unfettered powers to a complainant to set jurisdiction at a particular location that may be inconvenient or cause undue hardship to the accused person. Thus, the dictum in **Harman Electronics** (supra) curtailed the wide jurisdictional empowerment expounded in **Bhaskaran** (supra) to some extent.

c. Analysis of the observations of this Court in **Dashrath Rupsingh Rathod**

[31] This Court, in its landmark decision in **Dashrath Rupsingh** (supra), was faced with the conundrum of jurisdictional ambiguity for trial of offence under Section 138 of the Act, 1881 posed by the differing interpretations thereof expounded

in **Bhaskaran** (supra), **Harman Electronics** (supra) and **Shri Ishar Alloy Steels Ltd. v. Jayaswals** respectively and several other judgments.

[32] A three-Judge Bench recognized the position of law in this regard as settled by **Bhaskaran** (supra), as well as the limits placed on wide jurisdiction by **Harman Electronics** (supra). While analysing these decisions, this Court observed that **Bhaskaran** (supra) adopted a liberal approach influenced by a curial compassion towards the unpaid payee. It was also noted that such approach was prone to abuse and had resulted in miscarriage of justice over the years.

[33] This Court was of the view that for the purpose of determining jurisdiction, the commission of crime ought to be distinguished from its prosecution. It was held that though the five concomitants of Section 138 enabled prosecution of the offence thereunder, yet the offence itself came to be committed as soon as the cheque was dishonoured by the drawee bank. As a natural consequence, only the court exercising jurisdiction over the territory where the offence, i.e., the dishonour of cheque, was committed, was clothed with the power to try a complaint in respect of such offence. The relevant portions of the judgment in Dashrath Rupsingh (supra) are reproduced below:

"10. It is axiomatic that when a court interprets any statutory provision, its opinion must apply to and be determinate in all factual and legal permutations and situations. We think that the dictum in Ishar Alloy [**Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.**, 2001 3 SCC 609: 2001 SCC (Cri) 582] is very relevant and conclusive to the discussion in hand. It also justifies emphasis that Ishar Alloy [**Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.**, 2001 3 SCC 609: 2001 SCC (Cri) 582] is the only case before us which was decided by a three-Judge Bench and, therefore, was binding on all smaller Benches. We ingeminate that it is the drawee Bank and not the complainant's bank which is postulated in the so-called second constituent of Section 138 of the NI Act, and it is this postulate that spurs us towards the conclusion that we have arrived at in the present appeals. There is also a discussion of Harman [**Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.**, 2009 1 SCC 720: (2009) 1 SCC (Civ) 332: (2009) 1 SCC (Cri) 610] to reiterate that the offence under Section 138 is complete only when the five factors are present. It is our considered view, which we shall expound upon, that the offence in the contemplation of Section 138 of the NI Act is the dishonour of the cheque alone, and it is the concatenation of the five concomitants of that section that enable the prosecution of the offence in contradistinction to the completion/commission of the offence.

11. We have also painstakingly perused Escorts Ltd. [**Escorts Ltd. v. Rama Mukherjee**, 2014 2 SCC 255: (2014) 1 SCC (Civ) 789: (2014) 1 SCC (Cri) 808] which was also decided by the Nishant [**Nishant Aggarwal v. Kailash Kumar Sharma**, 2013 10 SCC 72: (2013) 4 SCC (Civ) 627: (2013) 3 SCC (Cri) 189] two-Judge Bench. Previous decisions were considered, eventually leading to the conclusion that since the cheque concerned had been presented for encashment at New Delhi, its

Metropolitan Magistrate possessed territorial jurisdiction to entertain and decide the subject complaint under Section 138 of the NI Act. Importantly, in a subsequent order, in **FIL Industries Ltd. v. Imtiyaz Ahmed Bhat**, 2014 2 SCC 266 [(2014) 1 SCC (Civ) 800: (2014) 4 SCC (Cri) 58] passed on 12-8-2013, it was decided that the place from where the statutory notice had emanated would not of its own have the consequence of vesting jurisdiction upon that place. Accordingly, it bears repetition that the ratio in Bhaskaran [**K. Bhaskaran v. Sankaran Vaidhyan Balan**, 1999 7 SCC 510: 1999 SCC (Cri) 1284] has been drastically diluted in that the situs of the notice, one of the so-called five ingredients of Section 138, has now been held not to clothe that court with territorial competency. The conflicting or incongruent opinions need to be resolved."

(Emphasis supplied)

[34] The aforesaid exposition stands fortified by the plain language of Section 138 of the Act, 1881. The primary part of the Section delineates the return of a cheque unpaid by the person who issued such cheque as an offence. However, the conditions stipulated in the proviso to the Section indicate that though the offence may come into existence upon dishonour of cheque, the consequences arising therefrom would be kept in abeyance till the time the concomitants contained in the provisory portion of the Section are also completed. In other words, the ingredients contained in the provisory portion of Section 138 are necessarily to be fulfilled to successfully initiate prosecution in respect of the offence of dishonour of cheque which is committed when the cheque is returned unpaid by the drawee bank. The relevant paragraphs of the judgment read thus:

"18. Section 138 of the NI Act is structured in two parts-the primary and the provisory. It must be kept in mind that the legislature does not ordain with one hand and immediately negate it with the other. The proviso often carves out a minor detraction or diminution of the main provision of which it is an appendix or addendum or auxiliary. Black's Law Dictionary states in the context of a proviso that it is

"[a] limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent".

It should also be kept in perspective that a proviso or a condition are synonymous. In our perception in the case in hand the contents of the proviso place conditions on the operation of the main provision, while it does (sic not) form a constituent of the crime itself, it modulates or regulates the crime in circumstances where, unless its provisions are complied with, the already committed crime remains impervious to prosecution. The proviso to Section 138 of the NI Act features three factors which are

additionally required for prosecution to be successful. In this aspect Section 142 correctly employs the term "cause of action" as compliance with the three factors contained in the proviso are essential for the cognizance of the offence, even though they are not part of the action constituting the crime. To this extent we respectfully concur with Bhaskaran [**K. Bhaskaran v. Sankaran Vaidhyan Balan**, 1999 7 SCC 510: 1999 SCC (Cri) 1284] in that the concatenation of all these concomitants, constituents or ingredients of Section 138 of the NI Act, is essential for the successful initiation or launch of the prosecution. We, however, are of the view that so far as the offence itself the proviso has no role to play. Accordingly a reading of Section 138 of the NI Act in conjunction with Section 177 CrPC leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed.

19. In this analysis we hold that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located. The law should not be warped for commercial exigencies. As it is Section 138 of the NI Act has introduced a deeming fiction of culpability, even though, Section 420 is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be imparted to Section 138 which will render it as a device of harassment i.e. by sending notices from a place which has no causal connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account. In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience. Today's reality is that every Magistracy is inundated with prosecutions under Section 138 of the NI Act, so much so that the burden is becoming unbearable and detrimental to the disposal of other equally pressing litigation. We think that courts are not required to twist the law to give relief to incautious or impetuous persons; beyond Section 138 of the NI Act."

(Emphasis supplied)

[35] It was further observed in **Dashrath Rupsingh** (supra) that the infusion of the concept of 'cause of action' in criminal proceedings as done by **Bhaskaran** (supra) perpetuated ambiguity relating to jurisdiction by allowing filing of a complaint under Section 138 at multiple venues. This Court held that the interpretation of Sections 177 and 178 of the CrPC respectively, set forth in the said judgment ran counter to the approach of simplifying law. It was observed that Section 178 despite being an exception to Section 177 which informs about criminal jurisdiction ordinarily, did not envisage the concept of 'cause of action' as being a consideration germane for determining territorial jurisdiction in criminal trials. Therefore, the plain meaning obtained from Sections 177 and 178 respectively ought not to be warped for

commercial exigencies and the logical conclusion flowing therefrom can only be that territorial jurisdiction was anchored at the place where the offence was committed. The relevant portions of the judgment are reproduced below:

"16.1. Unlike civil actions, where the plaintiff has the burden of filing and proving its case, the responsibility of investigating a crime, marshalling evidence and witnesses, rests with the State. Therefore, while the convenience of the defendant in a civil action may be relevant, the convenience of the so-called complainant/victim has little or no role to play in criminal prosecution. Keeping in perspective the presence of the word "ordinarily" in Section 177 CrPC, we hasten to adumbrate that the exceptions to it are contained in CrPC itself, that is, in the contents of the succeeding Section 178. CrPC also contains an explication of "complaint" as any allegation to a Magistrate with a view to his taking action in respect of the commission of an offence; not being a police report. Prosecution ensues from a complaint or police report for the purpose of determining the culpability of a person accused of the commission of a crime; and unlike a civil action or suit is carried out (or "prosecuted") by the State or its nominated agency. The principal definition of "prosecution" imparted by Black's Law Dictionary, 5th Edn. is "[a] criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime".

These reflections are necessary because Section 142(b) of the NI Act contains the words, "the cause of action arises under clause (c) of the proviso to Section 138", resulting arguably, but in our opinion irrelevantly, to the blind borrowing of essentially civil law attributes onto criminal proceedings.

16.2. We reiterate that Section 178 admits of no debate that in criminal prosecution, the concept of "cause of action", being the bundle of facts required to be proved in a suit and accordingly also being relevant for the place of suing, is not pertinent or germane for determining territorial jurisdiction of criminal trials. Section 178 CrPC explicitly states that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 179 is of similar tenor. We are also unable to locate any provision of the NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the prosecution has to be conducted. In fact, since cognizance of the offence is subject to the five Bhaskaran [**K. Bhaskaran v. Sankaran Vaidhyan Balan**, 1999 7 SCC 510: 1999 SCC (Cri) 1284] components or concomitants the concatenation of which ripens the already committed offence under Section 138 of the NI Act into a prosecutable offence, the employment of the phrase "cause of action" in Section 142 of the NI Act is apposite for taking cognizance, but inappropriate and irrelevant for determining commission of the subject offence. There are myriad examples of the commission of a crime the prosecution of which is dependent on extraneous contingencies such as obtainment of sanction for prosecution under Section 19 of the Prevention of

Corruption Act, 1988. Similar situation is statutorily created by Section 19 of the Environment (Protection) Act, 1986; Section 11 of the Central Sales Tax Act, 1956; Section 279 of the Income Tax Act; Sections 132 and 308 CrPC; Section 137 of the Customs Act, etc. It would be idle to contend that the offence comes into existence only on the grant of permission for prosecution, or that this permission constitutes an integral part of the offence itself. It would also be futile to argue that the place where the permission is granted would provide the venue for the trial. If sanction is not granted the offence does not vanish. Equally, if sanction is granted from a place other than where the crime is committed, it is the latter which will remain the place for its prosecution."

(Emphasis supplied)

[36] It is abundantly clear from the aforesaid that in **Dashrath Rupsingh** (supra), this Court viewed the question of jurisdiction strictly from the lens of 'territoriality of offences'. In other words, the payee cannot select the jurisdiction for trial of an offence under Section 138 by presentation of the cheque at a location of his choosing. Though the presentation of cheque at any branch of the payee's bank is permitted by the Act, 1881 for the purposes of commercial convenience, yet it cannot be said that such act of presentation confers jurisdiction on the court within whose territorial jurisdiction the said bank branch may be situated.

[37] Since an offence under Section 138 could be said to be committed upon dishonour of cheque by the drawee bank, it was held that such offence would be localised at the place where the drawee bank is situated. Therefore, only the court within whose territorial jurisdiction the drawee bank is situated, is empowered to proceed against an accused person under Section 138.

(ii) Position of law as regards jurisdiction of courts after the enactment of the Amendment Act, 2015

[38] The exposition of law in **Dashrath Rupsingh** (supra) resulted in several representations from the commercial sector to the government, registering protests against the accused-centric interpretation of the jurisdictional issue adopted by this Court. Such representations were considered by the Parliament and the Negotiable Instruments (Amendment) Act, 2015 was enacted by the Parliament to inter alia, clarify the issue of jurisdiction to try the offence under Section 138.

[39] The Amendment Act, 2015 introduced sub-section (2) to Section 142 of the Act, 1881. The amended Section 142 reads thus:

"142. Cognizance of offences.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,--

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.-- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

(Emphasis supplied)

[40] A bare textual reading of the amended Section 142 indicates that the jurisdiction to try the offence under Section 138 has been specified in two circumstances: first, when the cheque is delivered for collection through an account, and secondly, when the cheque is presented for payment otherwise through an account. It is also worth noting that the Explanation to Section 142(2)(a) further clarifies the question of jurisdiction by taking into account the realities of negotiating by way of cheques and the technological advancement in the field. However, this Court as well as the High Courts have been divided over the conjoint reading of Section 142(2)(a) and the Explanation thereto.

[41] We find it necessary to resolve this controversy and eliminate divergent positions in this regard, and for that we must understand the true import of the amendments made to Section 142. In such view of the matter, it is apposite to consider the following definitions:

- "Drawer" refers to the maker of a bill of exchange or cheque [See: Section 7 of the Act, 1881].

- "Drawee" refers to the person who is directed to pay the amount specified in the bill of exchange or cheque made by the drawer [See: Section 7 of the Act, 1881].

- "Payee" refers to the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid [See: Section 7 of the Act, 1881].

The relevant provision reads thus:

"7. "Drawer".-- The maker of a bill of exchange or cheque is called the drawer; the person thereby directed to pay is called the drawee.

"Drawee in case of need". -- When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".

"Acceptor". -- After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour". -- When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Payee". -- The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee"."

(Emphasis supplied)

a. Meaning of the expressions "delivered for collection through an account" and "presentation for payment otherwise through an account"

[42] The expression "delivered for collection through an account" is an integral part of Section 142(2)(a) and distinguishes it from the provision in Section 142(2)(b) which comes into operation when a cheque is "presented for payment otherwise through an account". We find it apposite to clarify that the expressions "delivered for collection" and "presented for payment" respectively, are distinct. They operate in separate stages of discharging a liability by way of a cheque.

[43] The word "delivery" is defined in Section 46 of the Act, 1881 and reads thus:

"46. Delivery.

The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof."

(Emphasis supplied)

[44] What is discernible from the aforesaid is that the "making" of a cheque is complete only upon delivery of the same by the drawer. The act of "delivery" thus, creates a relationship between the drawer and the payee. Such relationship is what describes the entitlement of the payee to the amount of money for which the cheque is drawn and enables the payee to encash the same.

[45] Upon perusal of Section 142(2)(a), we are of the considered opinion that the terms "delivered" and "for collection through an account" are to be read in such a manner that the latter describes the nature of delivery. The plain reading of Section 46 supports this line of argument as the definition contained therein indicates that the making of the cheque is complete upon the act of delivery. Therefore, the nature of the cheque becomes crystallized as an account payee cheque once the drawer delivers it to the payee who further delivers it to the bank in which he maintains his account. Once the cheque is delivered by the payee to his bank, the "making" of the cheque is said to be complete. The inclusion of the expression "for collection through an account" in Section 142(2)(a) is only to indicate the intention of the drawer to "make" the cheque in such a manner that it can only result in a transaction between the bank accounts of the drawer and the payee.

[46] Presentment, on the other hand, is the stage that immediately succeeds "delivery". The expression "presentment for payment" is defined under Section 64 of the Act, 1881. It stipulates that a cheque must be presented for payment to the maker of such cheque (the drawer) or the person to whom directions are given to pay the amount specified in the cheque (the drawee). Such presentment must be by or on behalf of the payee. The relevant provision reads thus:

"64. Presentment for payment.

(1) Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.--Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery,

tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly."

(Emphasis supplied)

[47] Therefore, presentment creates a relationship between the drawee bank and the payee (in case of an account bearer cheque) or the payee's bank (in case of an account payee cheque).

[48] We may with a view to obviate any confusion, clarify at the threshold that presentment under Section 64 of the Act, 1881 and presenting of cheque by the payee to his bank are two distinct acts. The presentation of cheque by a payee to the payee's bank is included in the concept of "delivery" defined under Section 46 of the Act, 1881. It is nothing but an extension of delivery in the case of non-transferable account payee cheques. The jurisdiction in such cases has been anchored by Section 142(2)(a) at the place where branch of the bank in which the payee maintains an account is situated. The sketch below explains the concepts of "delivery" and "presentment":

b. Meaning of the expression "maintains an account" under Section 142(2)

[49] Having discussed the bifurcation created by the legislature for the purposes of determining jurisdiction as regards any dispute pertaining to account payee cheques and account bearer cheques respectively, we may now explain the meaning of the expression "the branch of the bank where the payee or holder in due course, as the case maybe, maintains the account".

[50] This Court in *Bijoy Kumar Moni v. Paresh Manna*, 2024 SCCOnLineSC 3833, had the occasion to provide an exhaustive explanation for the expression "maintains an account" as it appears in Section 138 of the Act, 1881. The issue therein was whether it was permissible for a third party to draw a cheque on the bank account of the company of which he was a director, to discharge his individual liability. This Court observed that the expression "on an account maintained by him with a banker" describes an intrinsic relationship between an account holder and the bank in which he holds such account. Such relationship could not be altered by a delegation of authority. Therefore, even though a person may draw a cheque on the bank account of another person, it is not possible to hold such a person who draws the cheque, liable for the offence under Section 138 as he is not the one who maintains the account with the bank. The relevant portion of the judgment in *Bijoy Kumar Moni* (supra) is reproduced below:

"45. It is of vital importance to understand the import of the expression "on an account maintained by him with a banker" used in Section 138 of the NI Act. The expression, in our considered opinion, describes the relationship between the account holder and the banker. This relationship is fundamental to the application of Section 138. The act of maintaining an account is exclusively tied to the account holder and

does not extend to any third party whom the account holder may authorize to manage the account on its behalf. Therefore, any delegation of authority to manage the account does not alter the intrinsic relationship existing between the account holder and the banker as envisaged under the NI Act. Corporate persons like companies, which are mere legal entities and have no soul, mind or limb to work physically, discharge their functions through some human agency recognised under the law to work. Therefore, if some function is discharged by such human agency for and on behalf of the company it would be an act of the company and not attributable to such human agent. One such instance of discharge of functions could be the authority to manage the bank accounts of the company, issue and sign cheques on its behalf, etc. which may be delegated to an authorised signatory. However, such authorisation would not render the authorised signatory as the maker of those cheques. It is the company alone which would continue to be the maker of these cheques, and thus also the drawer within the meaning of Section 7 of the NI Act.

(Emphasis supplied)

[51] It is abundantly clear from the aforesaid exposition that when a person maintains an account with a bank, he establishes a relationship with such bank for the management of his money. The scheme of the Act, 1881 leaves no manner of doubt in our minds that such relationship forms the substructure of all transactions in respect of the account so maintained.

[52] Having clarified the meaning of the expression "maintains an account", we may proceed to determine the precise details of the relationship between a person and the bank in which he maintains an account. A bare perusal of Section 138 indicates that for an offence to be made out thereunder, a person must draw a cheque on an account maintained by him with a bank. There is no further stipulation as regards the nature of such account or requirement of any other details of the bank that may be relevant for the purpose of adjudication. Therefore, what Section 138 describes by use of the expression "on an account maintained by him with a banker" is a simpliciter relationship between a person and his banker.

[53] Sub-Section (2) of Section 142 adopts a similar language, to indicate the same relationship as described in Section 138. However, it does so with a slight modification. The expressions "the branch of the bank where the payee or holder in due course, as the case maybe, maintains the account" or alternatively "the branch of the drawee bank where the drawer maintains the account" include the word "branch". This indicates that the payee or drawer, by maintaining the account in a particular branch of the bank, share a relationship not with the bank as a whole but with the specific branch thereof (we may refer to this specific branch as the "home branch" for ease of exposition). Therefore, the inclusion of "branch" in Sections 142(2)(a) and (b) places an additional condition for determining the place where the payee or drawer maintains the account. This additional condition is placed on the relationship between a person and his banker, in order to decide the question of jurisdiction and streamline

the process of adjudication. In other words, for deciding jurisdiction, it is not sufficient to establish whether a person maintains an account in a particular bank. It is necessary to also ascertain the specific branch of the bank in which he maintains the account to completely and unambiguously decide the said question.

c. Conjoint reading of Section 142(2)(a) and the Explanation thereto

[54] It is limpid from the aforesaid discussion that the necessary corollary of including 'branch' as a factor that shapes the relationship between the payee/drawer and their bank, is that a complaint under Section 138 would be triable only by the court in whose local jurisdiction the branch of the bank where the payee/drawer maintain their account, is situated.

[55] Before we explain the Section 142(2)(a), we deem it fit to briefly discuss Section 142(2)(b). In the case of account bearer cheques governed by Section 142(2)(b), the provision of jurisdiction by way of the Amendment Act, 2015 is partially reinforced by the position of law expounded in Dashrath Rupsingh (supra). Section 142(2)(b) confers jurisdiction on the court within whose local area the drawee bank is situated and upon presentation, the cheque comes to be dishonoured. It is, however, worth noting that since the introduction of 'payable at par' cheques, the encashment of cheques can happen at any branch of the drawee bank. It is not necessary that the branch which is honouring or dishonouring the cheque may be that particular branch in which the drawer maintains the account. Therefore, the technological advancements in the banking sector have made it so that the offence of dishonour of cheque can be committed at any branch of the drawee bank. In such a case, if the law as explained in **Dashrath Rupsingh** (supra) is applied strictly then the jurisdiction would be fixed at the branch of the drawee bank where the cheque was actually dishonoured. Such branch may not necessarily be the branch in which the drawer maintains an account. Having taken into account this possibility, we recognize that the Amendment Act, 2015 has worded Section 142(2)(b) in such a manner that even if a cheque is dishonoured elsewhere, the jurisdiction for trial of the complaint under Section 138 would lie with the court within whose local jurisdiction the branch of the drawee bank in which the drawer maintains the account, is situated.

[56] The legislature has adopted a similar route under Section 142(2)(a) to determine jurisdiction in cases pertaining to the dishonour of account payee cheques. The distinction between Section 142(2)(a) and (b) respectively is not only limited to the nature of the cheque sought to be encashed but also the stage at which jurisdictional ambiguity may arise, i.e., at the stage of delivery or presentment in the case of account payee cheque and account bearer cheque respectively. In the case of an account payee cheque, the jurisdictional uncertainty may arise in the first stage of delivery itself. As discussed in the aforesaid, "delivery" is continued by the payee to also include delivery of the cheque to the payee's bank. In such a case, the act of making of the cheque is influenced by the payee allowing him to deliver the cheque for collection at any branch of the bank in which he maintains an account.

[57] If the aforesaid be so and the jurisdiction is to be decided on the basis of the place where the cheque was delivered to the bank of the payee, the same would lead to conferring unbridled power to the payee in deciding jurisdiction which may be misused for the purposes of forum shopping. We are cognizant of the fact that the dictum in **Dashrath Rupsingh** (supra) sought to minimize such abuse of law that arose from the wide ambit of jurisdiction specified in **Bhaskaran** (supra). While a bare perusal of the amended Section 142 and the Statement of Objects and Reasons of the Amendment Act, 2015 shows that the Parliament has made a departure from the offence-centric understanding of jurisdiction in **Dashrath Rupsingh** (supra), yet we find it difficult to accept that the legislature would relegate the position of law back to a situation that would facilitate its manipulation.

[58] At this juncture, it is relevant to refer to the Explanation to Section 142(2)(a). A bare textual reading of the provision indicates that the Explanation creates a legal fiction that a cheque, when delivered for collection through an account, at 'any branch' of the bank in which the payee maintains the account, would be deemed to have been delivered to the particular branch of the bank in which the payee maintains his account, i.e., the home branch of the payee. Therefore, by way of Explanation, the legislature ensures convenience of transaction by recognizing that a payee may deliver a cheque at 'any branch' of his bank. However, in a situation where such cheque comes to be dishonoured, it would be deemed that the cheque was delivered at the home branch so as to empower the court, within whose local territorial jurisdiction the said branch falls, to try the complaint in this regard.

[59] We may advert to the following illustrative table to lend further clarity to the aforesaid exposition:

Payee's Home Branch: DELHI	Drawer's Home Branch: MUMBAI
Drawer issues the cheque in Ahmedabad .	
SECTION 142(2)(a)	SECTION 142(2)(b)
In case of an account payee cheque (governed by Section 142(2)(a)), Payee delivers the cheque for collection in branch of the payee's bank situated in CHENNAI .	In case of an account bearer cheque (governed by Section 142(2)(b)), Payee presents the cheque in branch of the drawee bank situated at BANGALORE .
Jurisdiction in case of account payee cheque, under Section 142(2)(a) is vested with the courts at DELHI .	Jurisdiction in case of account bearer cheque, under Section 142(2)(b) is vested with the courts at MUMBAI .
Reason: The legal fiction created in the Explanation to Section 142(2)(a) stipulates that jurisdiction would lie at the Home Branch of the Payee	Reason: The plain language of Section 142(2)(b) indicates that jurisdiction in cases of account bearer cheques would lie at the Home Branch of the Drawer (MUMBAI)

(DELHI) irrespective of where the cheque has been delivered by the Payee (in this case at Chennai).	irrespective of where the cheque has been presented by the Payee (in this case, at Bangalore).
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[60] This Court had the occasion to apply the principles of jurisdiction laid down in Section 142(2)(a) for the first time in **Bridgestone India (P) Ltd. v. Inderpal Singh**, 2016 2 SCC 75 wherein it was observed that the legal position declared in **Dashrath Rupsingh** (supra) has been overturned by the Negotiable Instruments (Amendment) Second Ordinance, 2015 whereby Section 142 was amended such that the jurisdiction would be fixed at the place where the cheque is delivered for collection, i.e., the branch of the bank in which the payee maintains an account. The relevant portions of the judgment in **Bridgestone** (supra) are reproduced below:

"11. In order to overcome the legal position declared by this Court in **Dashrath Rupsingh Rathod** case [**Dashrath Rupsingh Rathod v. State of Maharashtra**, 2014 9 SCC 129; (2014) 4 SCC (Civ) 676; (2014) 3 SCC (Cri) 673] , the learned counsel for the appellant has drawn our attention to the Negotiable Instruments (Amendment) Second Ordinance, 2015 (hereinafter referred to as "the Ordinance"). A perusal of Section 1(2) thereof reveals that the Ordinance would be deemed to have come into force with effect from 15-6-2015. It is, therefore, pointed out to us that the Negotiable Instruments (Amendment) Second Ordinance, 2015 is in force. Our attention was then invited to Section 3 thereof, whereby, the original Section 142 of the Negotiable Instruments Act, 1881, came to be amended, and also, Section 4 thereof, whereby, Section 142-A was inserted into the Negotiable Instruments Act.

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13. A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, specially in view of the Explanation thereunder, that with reference to an offence under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction."

(Emphasis supplied)

[61] We are of the considered view that the paraphrasing of Section 142(2)(a) as done in **Bridgestone** (supra) bears some relevance and requires explanation. This Court applied the provision as intended by the language of Section 142(2)(a), however, in the process of exposition, rephrased the same and the Explanation thereto in a manner that gives primacy to the expression "for collection" without indicating the complete context in which it occurs in the provision. A perusal of Section 142(2)(a) reflects that the expression "for collection through an account" is employed by the legislature to identify the nature of the cheque as an account payee cheque. Therefore,

the use of the phrase "delivered for collection" with incomplete context in **Bridgestone** (supra) gave rise to a cleavage of opinion. This is evident from this Court's decision in **Yogesh Upadhyay v. Atlanta Ltd.**, 2023 19 SCC 404.

[62] In **Yogesh Upadhyay** (supra), the petitioner therein had prayed for transfer of the two complaints filed in Nagpur to Delhi, as the complaint in respect of other four cheques, between the same parties, were registered before the competent court in Delhi. This Court, on a conjoint reading of the Statement of Objects and Reasons of the Amendment Act, 2015 and Para 13 of **Bridgestone** (supra) respectively, held that the jurisdiction to try an offence under Section 138 will lie with a court within whose local jurisdiction the cheque has been delivered for collection i.e., through an account in the branch of the bank where the payee maintains an account. The relevant paragraphs of the judgment are reproduced below:

"12. Perusal of the Statement of Objects and Reasons in Amendment Act 26 of 2015 makes it amply clear that insertion of Sections 142(2) and 142-A in the 1881 Act was a direct consequence of the judgment of this Court in **Dashrath Rupsingh Rathod** [**Dashrath Rupsingh Rathod v. State of Maharashtra**, 2014 9 SCC 129: (2014) 4 SCC (Civ) 676: (2014) 3 SCC (Cri) 673] . Therefore, the use of the phrase:"shall be inquired into and tried only by a court within whose local jurisdiction ..." in Section 142(2) of the 1881 Act is contextual to the ratio laid down in **Dashrath Rupsingh Rathod** [**Dashrath Rupsingh Rathod v. State of Maharashtra**, 2014 9 SCC 129: (2014) 4 SCC (Civ) 676: (2014) 3 SCC (Cri) 673] to the contrary, whereby territorial jurisdiction to try an offence under Section 138 of the 1881 Act vested in the court having jurisdiction over the drawee bank and not the complainant's bank where he had presented the cheque. Section 142(2) now makes it clear that the jurisdiction to try such an offence would vest only in the court within whose jurisdiction the branch of the Bank where the cheque was delivered for collection, through the account of the payee or holder in due course, is situated. The newly inserted Section 142-A further clarifies this position by validating the transfer of pending cases to the courts conferred with such jurisdiction after the amendment.

13. The later decision of this Court in **Bridgestone India (P) Ltd. v. Inderpal Singh** [**Bridgestone India (P) Ltd. v. Inderpal Singh**, 2016 2 SCC 75: (2016) 1 SCC (Civ) 588: (2016) 1 SCC (Cri) 472] affirmed the legal position obtaining after the amendment of the 1881 Act and endorsed that Section 142(2)(a) of the 1881 Act vests jurisdiction for initiating proceedings for an offence under Section 138 in the court where the cheque is delivered for collection i.e. through an account in the branch of the bank where the payee or holder in due course maintains an account. This Court also affirmed that **Dashrath Rupsingh Rathod** [**Dashrath Rupsingh Rathod v. State of Maharashtra**, 2014 9 SCC 129: (2014) 4 SCC (Civ) 676: (2014) 3 SCC (Cri)

673] would not non-suit the company insofar as territorial jurisdiction for initiating proceedings under Section 138 of the 1881 Act was concerned."

(Emphasis supplied)

[63] We also find it apposite to refer to the Statement of Objects and Reasons of the Amendment Act, 2015. The same reads thus:

"Negotiable Instruments (Amendment) Act, 2015 Prefatory Note-Statement of Objects and Reasons.-

(...) 3. The Supreme Court, in its judgment dated 1st August, 2014, in the case of **Dashrath Rupsingh Rathod v. State of Maharashtra**, 2014 9 SCC 129, held that the territorial jurisdiction for dishonour of cheques is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. The Supreme Court has directed that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. All other complaints (including those where the accused/respondent has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with exposition of the law, as determined by the Supreme Court.

4. Pursuant to the judgment of the Supreme Court, representations have been made to the Government by various stakeholders, including industry associations and financial institutions, expressing concerns about the wide impact this judgment would have on the business interests as it will offer undue protection to defaulters at the expense of the aggrieved complainant; will give a complete go-by to the practice/concept of 'Payable at Par cheques' and would ignore the current realities of cheque clearing with the introduction of CTS (Cheque Truncation System) where cheque clearance happens only through scanned image in electronic form and cheques are not physically required to be presented to the issuing branch (drawee bank branch) but are settled between the service branches of the drawee and payee banks; will give rise to multiplicity of cases covering several cheques drawn on bank(s) at different places; and adhering to it is impracticable for a single window agency with customers spread all over India.

5. To address the difficulties faced by the payee or the lender of the money in filing the case under Section 138 of the said Act, because of which, large number of cases are stuck, the jurisdiction for offence under Section 138 has been clearly defined. The Negotiable Instruments (Amendment) Bill, 2015 provides for the following, namely-

- (i) filing of cases only by a court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated;
- (ii) stipulating that where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of Section 138 of the said Act against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court;
- (iii) stipulating that if more than one prosecution is filed against the same drawer of cheques before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case to the court having jurisdiction as per the new scheme of jurisdiction; and
- (iv) amending Explanation I under Section 6 of the said Act relating to the meaning of expression "a cheque in the electronic form", as the said meaning is found to be deficient because it presumes drawing of a physical cheque, which is not the objective in preparing "a cheque in the electronic form" and inserting a new Explanation III in the said section giving reference of the expressions contained in the Information Technology Act, 2000. (...)"

(Emphasis supplied)

[64] What has been conveyed by this Court in **Yogesh Upadhyay** (supra) is that the account which the payee maintains in a particular branch of the bank, serves only as a conduit for the payee to deliver the cheque at any branch of the bank, for subsequent presentment to the drawee bank. In other words, the payee is only required to maintain an account in a branch of the bank, for the said bank to present the cheque to the drawee bank from any of its branches. Therefore, the act of "maintaining an account in a branch" is to enable the primary action of "delivery for collection". Accordingly, the jurisdiction must lie at the place where the primary action was performed, i.e., the branch of the payee's bank where the cheque was actually delivered for collection, is situated.

[65] The reasoning adopted in **Yogesh Upadhyay** (supra) may find some support in the literal reading of Para 5(i) of the aforesaid Statement of Objects and Reasons which states that cases would be filed in the court having jurisdiction over the branch of the bank in which the payee presents the cheque for payment. It is apposite to note that, on the face of it, the language used in the Statement of Objects and Reasons is not synonymous with the language of Section 142(2)(a) and the Explanation thereto. Therefore, in our considered view, **Yogesh Upadhyay** (supra) could not have derived support from the Statement of Objects and Reasons.

[66] We say so because no value could have been attached to the language adopted in the Statement of Objects and Reasons for the purpose of discerning the true

meaning and effect of a substantive provision occurring in the statute book. This principle of interpretation has been settled by this Court in **Devadoss v. Veera Makali Amman Koil Athalur**, 1998 9 SCC 286 wherein it was observed thus:

"21. The question arises naturally whether the court can refer to the Statement of Objects and Reasons mentioned in a bill when it is placed before the legislature and even if it is permissible, to what extent the court can make use of the same. On this aspect, the law is well settled. In **Narain Khamman v. Parduman Kumar Jain**, 1985 1 SCC 1 it was stated that though the Statement of Objects and Reasons accompanying a legislative bill could not be used to determine the true meaning and effect of the substantive provisions of a statute, it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy."

(Emphasis supplied)

[67] Further, we must also closely scrutinize the reliance placed by **Yogesh Upadhyay** (supra) on the phrasing of Section 142(2)(a) in **Bridgestone** (supra). We say so because the application of Section 142(2)(a) in **Bridgestone** (supra), in no manner, supports how the provision was applied in **Yogesh Upadhyay** (supra). Though the judgment in **Yogesh Upadhyay** (supra) does not mention where the branch of the bank was situated in which the payee maintained an account, was situated, yet it is discernible from the decision that this Court gave primacy to the place where the cheque was "delivered for collection" when it upheld the correctness of institution of complaints in Nagpur.

[68] In our considered view, the interpretation of jurisdiction under Section 142(2)(a) in **Yogesh Upadhyay** (supra) is not borne out of the statutory scheme of the Act, 1881. A perusal of the judgment shows that it did not take into account the deeming fiction put forth in the Explanation to Section 142(2)(a) that delivery of a cheque at any branch of the payee's bank will be deemed to have been delivered at the branch of the bank in which the payee maintains the account, i.e., the home branch of the payee. Even though, this Court in **Yogesh Upadhyay** (supra) does not go so far as to discuss the meaning and import of the Explanation, yet we may attempt to harmoniously read the language of the Explanation with the reasons provided in the said judgment in the interests of gauging the correct position of law.

[69] Therefore, in arguendo, we may look at the Explanation from one another angle. The language used in the Explanation may also create a legal fiction that would enable 'any branch' of the payee's bank to be deemed as 'the branch in which the payee maintains an account' (the "home branch"). This construction of the Explanation would mean that by virtue of Section 142(2)(a), the court within whose local jurisdiction the home branch is situated, has an inherent power to try a complaint under Section 138

filed by the payee. However, the payee delivered the cheque for collection at another branch instead of the home branch. According to the dictum as laid in **Yogesh Upadhyay** (supra), primacy has to be accorded to the action of the payee in "delivery of the cheque for collection" for the purpose of determining jurisdiction. The only understanding that we can obtain from the aforesaid is that the court exercising territorial jurisdiction over the home branch will have to share the inherent powers that it possesses under Section 142(2)(a), with the court in whose jurisdiction such other branch is situated, in which the payee delivered the cheque for collection.

[70] Having undertaken the academic exercise of understanding the ways in which the Explanation may be read, we do not have any qualms in saying that the aforesaid construction of Section 142(2)(a) and the Explanation thereto does not appeal to us. We say so for the following two reasons:

(i) **First**, the understanding of the Explanation in such a manner leads to distorting of the plain language of Section 142(2)(a). This Court, in **Dashrath Rupsingh** (supra) observed that "the legislature does not ordain with one hand and immediately negate it with the other". We find the said principle to be of much significance especially while reading explanations attached to the provisions that seek to clarify the operation of such provision. In our considered view, an explanation cannot be raised to such a high pedestal that the provision which it intends to clarify becomes a mere supporting device.

(ii) **Secondly**, a perusal of the Statement of Objects and Reasons to the Amendment Act, 2015 indicates that the legislature intended to change the process of determination of jurisdiction for trial of complaints under Section 138. The inclusion of Section 142(2) in the Act, 1881, which is a special legislation, meant that the jurisdictional vacuum was filled. The natural consequence of such amendment was that there remained no requirement of approaching the issue of jurisdiction from an ordinary criminal perspective as provided in the CrPC, as was done in **Dashrath Rupsingh** (supra). However, the Statement of Objects and Reasons gives no indication that the said judgment made erroneous observations about the misuse of the wide ambit of jurisdiction by complainants to the inconvenience of the accused persons. In our considered view, it could not have been the intention of the Parliament to let abuse of law go unchecked. It is for this reason that the judgment in **Yogesh Upadhyay** (supra) does not impress us. If we accept the construction placed on Section 142(2)(a) by the decision in **Yogesh Upadhyay** (supra), we will be allowing a payee to manipulate the question of jurisdiction in his favour by letting him decide where he wants to deliver the cheque for collection. We are of the firm opinion that the legislature could not have intended to let misuse perpetuate in such a manner.

[71] We find it apposite to also look into the decision rendered in *Shri Sendhur Agro & Oil Industries v. Kotak Mahindra Bank Ltd.*, 2025 SCCOnLineSC 508 wherein this Court placed reliance on both **Bridgestone** (supra) as well as **Yogesh Upadhyay** (supra) respectively. The phraseology employed in **Sendhur Agro** (supra)

suggests that this Court was in agreement with the law expounded in **Yogesh Upadhyay** (supra) in respect of "delivery for collection". However, upon a closer examination, it is clear that this Court understood the term "delivered" and "for collection through an account" in a disjunct manner which is not in consonance with how **Yogesh Upadhyay** (supra) perceived Section 142(2)(a). It was observed that presentation of a cheque to the drawee bank will be "through the account" of the payee and that such place would be determinative for the purpose of identifying jurisdiction. The relevant portion of the judgment in **Sendhur Agro** (supra) is reproduced below:

"61. It is clear on a reading of Section 142(2)(a) and the Explanation thereto that, for the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

62. A conjoint reading of Section 142(2)(a) along with the explanation thereof, makes the position emphatically clear that, when a cheque is delivered or issued to a person with liberty to present the cheque for collection at any branch of the bank where the payee or holder in due course, as the case may be, maintains the account then, the cheque shall be deemed to have been delivered or issued to the branch of the bank, in which, the payee or holder in due course, as the case may be, maintains the account, and the court of the place where such cheque was presented for collection, will have the jurisdiction to entertain the complaint alleging the commission of offence punishable under Section 138 of the N.I. Act. In that view of the position of law, the word 'delivered' used in Section 142(2)(a) of the N.I. Act has no significance. What is of significance is the expression 'for collection through an account'. That is to say, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the payee or holder in due course, and the said place is decisive to determine the question of jurisdiction."

(Emphasis supplied)

[72] What is discernible from the aforesaid exposition is that this Court considered the requirement of "maintaining of the account" implicit in "for collection through an account". In other words, once it is identified that the cheque in question is an account payee cheque, the delivery must be to such branch in which the payee maintains the account as it is this branch of the bank that will receive the funds in the account maintained by the payee, from the drawee bank which will debit the drawer's account to send such amount. However, the necessity of delivery of an account payee cheque to the home branch is only legal and not commercial. It is to address commercial exigencies that the legislature enacted the Explanation to Section 142(2)(a). The

deeming fiction in the Explanation ensures that even if a cheque is delivered to a branch other than the home branch for commercial convenience, it shall be considered to have been delivered to the home branch for the legal purpose of determining jurisdiction. This understanding is also apparent from this Court's recent judgment in *Prakash Chimanlal Sheth v. Jagruti Keyur Rajpopat*, 2025 SCCOnLineSC 1511.

[73] The aforesaid comparison may be better illustrated through the following diagram depicted hereunder:

[74] The above diagrammatic representation shows that each judgment has considered specific phrases together or disjunct from each other due to which there have been variations in understanding of the provision in Section 142(2)(a) and the Explanation thereto.

[75] In such view of the matter, we are constrained to observe that the position of law expounded in *Yogesh Upadhyay* (supra) is per incuriam.

(iii) Determination of the issues framed

a. Whether the MM, Kolkata has the jurisdiction to try the complaint?

[76] In view of the aforesaid discussion, it is as clear as a noon day that the jurisdiction to try a complaint filed under Section 138 in respect of a cheque delivered for collection through an account, i.e., an account payee cheque, is vested in the court within whose local jurisdiction the branch of the bank in which the payee maintains the account, i.e., the payee's home branch, is situated. Therefore, we find no force in the petitioner's argument that as per the relevant provisions of the CrPC, the jurisdiction to try the complaint under Section 138 is vested in the court within whose local bounds the drawee bank is situated where the cheque was dishonoured. We say so because the enactment of the Amendment Act, 2015 and the introduction of Section 142(2) thereby, being a special legislation, occupies the field over a general procedural legislation viz. CrPC. Thus, the MM, Kolkata does not have jurisdiction to try the case.

b. Whether a case of transfer of the complaint from the court of JMFC, Bhopal to MM, Kolkata is made out?

[77] The petitioner, who is the accused company in the complaint instituted by the respondent-complainant, has prayed for transfer of the complaint on the ground that the MM, Kolkata, before returning the complaint, had already reached the stage of recording of evidence under Section 145(2) of the Act, 1881.

[78] It is apposite to note that Section 142A of the Act, 1881 provides for transfer of pending cases under Section 138, to the court having jurisdiction in terms of Section 142(2). We are aware that the jurisdiction to try the complaint in the instant case lied exclusively with the JMFC, Bhopal. If the matter had remained pending at the stage prior to the recording of evidence, there would have been no difficulty in accepting the deemed transfer of the complaint under Section 142A(1) to the court of JMFC, Bhopal from the court of MM, Kolkata. However, much water has floated under the bridge. We were informed that the court of MM, Kolkata returned the complaint when it had

already reached the stage of recording of evidence under Section 145(2) of the Act, 1881. In such view of the matter, we are of the considered opinion that allowing the parties to contest the complaint afresh before the JMFC, Bhopal would amount to a procedural impropriety that may prove to be detrimental to the case of the accused.

[79] In **Dashrath Rupsingh** (supra), this Court, with a view to obviate and eradicate legal complications, had allowed the category of complaint cases in which proceedings had reached the stage of recording evidence under Section 145(2), to remain in the court where they were pending, despite such courts not being vested with jurisdiction in terms of the judgment. The relevant portion of the judgment is reproduced below:

"22. (...) To obviate and eradicate any legal complications, the category of complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is presently pending."

[80] In light of the observations in **Dashrath Rupsingh** (supra) and to meet the ends of justice, we are of the view that the instant case be transferred to the jurisdiction of MM, Kolkata and the proceedings be resumed from the stage before the order of return of complaint dated 28.07.2016.

D. CONCLUSION

[81] Having regard to the pleadings in the memorandum of the transfer petition, we have reached the conclusion that a case has been made out for transfer of the proceedings in question.

[82] In the result, the petition succeeds and is hereby allowed. All other connected transfer petitions are also disposed of in the aforesaid terms.

[83] The Registry shall forward one copy each of this judgment to all the High Courts.

[84] Pending application(s), if any, are disposed of

2026(1)DCJ31

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: N J Jamadar)

Writ Petition No 5735 of 2025, 5646 of 2025, 5644 of 2025 **dated 16/12/2025**

Kartik Harshad Jhaveri

Versus

Charanjit Arora, Proprietor of Esource Global; State of Maharashtra

BAR OF LIMITATION IN CHEQUE CASES

Limitation Act, 1963 Sec. 14 - Negotiable Instruments Act, 1881 Sec. 142, Sec. 138 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528 - Bar of Limitation in Cheque Cases - Petitioner accused in cheque dishonour complaints challenged concurrent rejection of plea of limitation - Complaints initially filed before court lacking jurisdiction and later refiled before competent court - Magistrate and Sessions Judge held delay protected by Section 14 of Limitation Act excluding time spent in bona fide prosecution - Accused contended that cognizance could not be taken without condonation of delay - Court held complaints originally filed within time and refiled after return was continuation of same proceeding - Exclusion of time under Section 14 justified as complainant prosecuted with due diligence - Cognizance and process issuance valid - Objection of limitation can be considered at trial if necessary - No jurisdictional error in orders impugned. - Petitions Dismissed as Without Merit

Law Point: When a complaint under Section 138 of Negotiable Instruments Act is initially filed within limitation and later refiled after return for jurisdictional reasons, time spent in prior bona fide prosecution is excludable under Section 14 of Limitation Act and cognizance remains valid.

Acts Referred:

Limitation Act, 1963 Sec. 14

Negotiable Instruments Act, 1881 Sec. 142, Sec. 138

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528

Counsel:

Ashok Shetty, Karishma Jhaveri, Navdeep Vora, Bhagwan Mishra, R S Tendulkar

JUDGEMENT

N. J. Jamadar, J.- [1] Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

[2] These Petitions under Article 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assail the legality, propriety and correctness of the judgment and order dated 12th August 2025 passed by the learned Additional Sessions Judge in Criminal Revision Application Nos. 102, 103 and 104 of 2024, whereby the Revision Applications preferred by the Petitioner-Accused in the complaints for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ("the N.I. Act, 1881), against an order dated 8th February 2024 passed by the learned Magistrate thereby dismissing the Applications for dismissal of the complaints on the ground of bar of limitation, came to be dismissed.

[3] The background facts leading to these Petitions can be stated, in brief, as under:

2.1 The Respondent No.1-complainant lodged three complaints for the offence punishable under Section 138 of the N.I. Act, 1881 on 10th July 2007, initially, in the Court of Judicial Magistrate, First Class, at Ulhasnagar.

2.2 By an order dated 5th July 2010, the learned JMFC, Ulhasnagar was persuaded to dismiss the complainants for want of jurisdiction.

2.3 Being aggrieved, the complainant preferred Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010 before this Court. By an order dated 18th October 2011, this Court while affirming the view of the learned Magistrate, Ulhasnagar, that the said Court had no jurisdiction to entertain, try and decide the complaints, modified the said order to the effect that the complaints be restored to the file of the learned JMFC, Ulhasnagar, and thereupon the learned JMFC shall pass a formal order returning the complaints to the complainant for presentation to the proper Court with an endorsement made thereon to that effect.

2.3 It appears that since the complainant did not turn up to take back the complainants for presentation to the proper Court, by a notice dated 2nd December 2011, the learned Magistrate called upon the complainants to take back those complaints.

2.4 The complainant took back the complainants and lodged the complaints in the Court of Metropolitan Magistrate, Andheri on 9th February 2012 along with the Applications for condonation of delay in filing those complaints. The said Applications for condonation of delay were resisted by the accused. The complainant led evidence therein. It seems the evidence was closed on 21st February 2014.

2.5 On 7th February 2019, the complainant sought leave to withdraw the Applications for condonation of delay asserting that there was no delay in filing the complaints. Thereupon, the learned Magistrate allowed the complainant to withdraw the Applications for condonation of delay.

2.6 The accused preferred Application for dismissal of the complaints contending that the complaints were barred by limitation. The complainant contested the said Applications. By an order dated 8th February 2024, the learned Magistrate rejected the Applications opining inter alia that in view of the provisions contained in Section 14 (2) of the Limitation Act, 1963, the time during which the complainant had been prosecuting with due diligence other proceedings was required to be excluded.

2.7 The learned Magistrate was also of the view that in the intervening period, the learned Magistrate had taken cognizance and issued process against the accused for an offence punishable under Section 138 of the N.I. Act, 1881. Thus, at that stage, the complaints cannot be dismissed on the ground of bar of limitation.

2.8 Being aggrieved, the accused preferred Criminal Revisions before the learned Sessions Judge.

2.9 By the impugned judgment and order, the learned Additional Sessions Judge rejected the Revision Applications opining that the accused had not challenged the

order of issue of process and, therefore, the said order attained finality, and whether or not the complaints were barred by limitation was to be decided at the trial after giving an opportunity to the parties to adduce evidence.

2.10 Being further aggrieved the accused has preferred these Petitions.

[4] I have heard Mr. Ashok Shetty, the learned Counsel for the Petitioner, Mr. Bhagwan Mishra, the learned Counsel for the Respondent No.1 and Smt. R. S. Tendulkar, the learned APP for the Respondent State, in all the Petitions.

[5] Mr. Shetty, the learned Counsel for the Petitioner, submitted that, the learned Additional Sessions Judge as well as the learned Magistrate approached the issue of bar of limitation raised by the Petitioner from an erroneous perspective. Once it was demonstrated that the complaints were lodged before the jurisdictional Court, clearly beyond the period of limitation, the learned Magistrate could not have taken cognizance of the offence. Therefore, the view of the Courts below that since cognizance of the offence had already been taken, the issue of bar of limitation could be decided at the trial only, was incorrect.

[6] Mr. Shetty would urge that what accentuates the situation in the case at hand is the fact that the complainant had filed Applications for condonation of delay in filing the complaints and after the evidence was led, chose to withdraw those Applications.

[7] In the absence of an order condoning the delay in filing the complaints, the Magistrate has no jurisdiction to proceed further and take cognizance of the offence. A very strong reliance was placed by Mr. Shetty on an order passed by the Supreme Court in the Case of H.S. Oberoi Buildtech Pvt Ltd and Ors Vs MSN Woodtech, Manu/SCOR/68073/2025 wherein the Supreme Court enunciated that though the Court is empowered to condone the delay under Section 142 of the N.I. Act, 1881, the first requirement is that the Court has to take note of the fact that there is a delay and, thereafter, it had to go on the point whether the reasons which have been furnished by the complainant are sufficient to condone such delay and only then move on to take cognizance and proceed for issuance of summons.

[8] Mr. Shetty further urged that the fact that there was delay in lodging the complaints with the jurisdictional Court is self-evident. This Court had ordered the learned Magistrate to pass a formal order of return of the complaint for presentation to the proper Court on 18th October 2011. The complainant did not appear before the learned Magistrate, Ulhasnagar and, therefore, the learned Magistrate had issued notice on 2nd December 2011. Yet, the complaints were lodged in the Court of Metropolitan Magistrate at Andheri on 9th February 2012.

[9] In the backdrop of these facts, the Courts below could not have brushed aside the bar of limitation in filing the complaints on the spacious ground that, in the intervening period, the learned Magistrate had taken cognizance of the offence and issued process against the accused.

[10] Mr. Shetty submitted that the provisions contained in Section 142 of the N.I. Act, 1881, prescribing the time limit for filing the complaints are substantive provision. In the event of default on the part of the payee to lodge the complaint within the stipulated period, substantive right accrues in favour of the drawer and unless the delay is condoned under sub-Section (2) of Section 142 of the N.I. Act, 1881, the Magistrate has no jurisdiction to proceed with the complaint.

[11] To this end, Mr. Shetty placed a very strong reliance on the judgment of the Supreme Court in the case of **Subodh S Salaskar Vs Jayprakash M Shah & Ors**, 2008 13 SCC 689 wherein, the Supreme Court enunciated that the provisions contained in Section 142 are substantive provisions and not procedural one.

[12] Per contra, Mr. Bhagwan Mishra, the learned Counsel for the Respondent No.1 supported the impugned order. It was submitted that the initial lodging of the complaints in the Court of JMFC at Ulhasnagar was within the period of limitation. Therefore, the alleged delay in taking back the complaints from the Ulhasnagar Court and filing the same before the jurisdictional Court is of no consequence. In that view of the matter, the complainant had justifiably withdrawn the Applications for condonation of delay as there was no delay, as such, in filing the complaints.

[13] At any rate, Mr. Mishra would urge, since the cognizance of the offence has already been taken and process issued, the accused can very well agitate the defence of bar of limitation at the trial. The learned Magistrate and the learned Additional Sessions Judge, therefore, took a correct view of the matter in repelling the challenge to the tenability of the complaints on the count of bar of limitation. Since the said issue can be determined at the trial, in exercise of extraordinary jurisdiction, this Court may not entertain the Petitions, at this stage, submitted Mr. Mishra.

[14] To start with incontrovertible facts. Firstly, the demand notice was served on the accused on 31st May 2007. The cause of action under Clause (c) of the proviso to Section 138 arose on 16th June 2007. Under the provisions of Section 142(1)(b) of the N.I. Act, 1881, the complaint was to be lodged within one month of the date on which the cause of action arose. Secondly, the complaint was lodged in the Court of Magistrate at Ulhanager on 10th July 2007. Thirdly, by an order dated 5th July 2010, the learned Magistrate dismissed the complaint for want of jurisdiction. Fourthly, on 18th October 2011, in the Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010, this Court modified the said order of dismissal of the complaints, restored the complaints to the file of the learned Magistrate, Ulhasnagar with a direction to pass a formal order returning the complaints to the complainant for presentation to the proper Court. Lastly, the complainant did not take back the complaints at least till 2nd December 2011 and, therefore, notice was issued by the learned Magistrate to the complainant to appear and take back the complaints. Though the exact date on which the complainant collected the complaints from the Court of Magistrate at Ulhasnagar is not clearly evident, yet, it is incontrovertible that on 9th February 2012, the complainant lodged complainants alongwith the Applications for condonation of delay

in the Court of Metropolitan Magistrate at Andheri. There is not much controversy over the fact that evidence was led in the said Applications and, while the said Applications were at an advanced stage of hearing, on 7th February 2019, the complainant withdrew the said Applications for condonation of delay.

[15] In the backdrop of the aforesaid uncontroverted facts, legality and correctness of the impugned orders is required to be tested. The learned Magistrate was of the view that in view of the provisions contained in Section 14(2) of the Limitation Act, 1963, the time during which the complainant had been prosecuting with due diligence the other proceedings was required to be excluded. To what extent the provisions contained in Section 14(2) of the Limitation Act come to the aid of the complainant, in a case of the present nature, is the moot question.

[16] First and foremost, it is necessary to note that, hardly five days of period of limitation had remained unexhausted when the initial complaints were lodged by the complainant in the Court of the Magistrate at Ulhasnagar. Secondly, the time that elapsed between the date of the order passed by this Court in Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010, i.e., 18th October 2011 and the date of presentation of the complaints before the jurisdictional Magistrate thus assumed significance.

[17] Whether the entire period from the date of the order passed by this Court on 18th October 2011 to the filing of the complaints before the learned Magistrate at Andheri gets completely excluded was the question which the learned Magistrate was required to pose unto himself.

[18] The position in law, in this regard, seems to be well settled. What gets excluded from the computation of the period of limitation is the date of presentation of the proceeding before the Court, which had no jurisdiction, and the date on which such Court passes an order and makes an endorsement on the Plaint returning it for presentation to the proper Court. If the Plaintiff allows time to elapse from the date of such order and endorsement on the Plaint to the actual presentation of such returned Plaint to the jurisdictional Court, the said intervening period is not covered by sub-Section (2) of Section 14 of the Limitation Act, 1963.

[19] In the case of **Firm Jivan Ram Ramchandra Vs Jagemath Sahu**, 1937 AIR(Pat) 495 the Plaintiff had instituted the Suit in the Court which had no jurisdiction on the last day of limitation. The said Court ordered the Plaint to be returned to the Plaintiff on 26th September 1991 for being presented to the proper Court on or before 9th October 1931. A submission was canvassed that since the Court which had no jurisdiction had granted time to the Plaintiff to present the Plaint before the jurisdictional Court on or before 9th October 1931 and the Plaint was accordingly presented on 9th October 1931, the bar of limitation would not apply.

[20] The Patna High Court upheld the view of the Courts below that in computing the period of limitation the Plaintiff was entitled to exclude only the period during which the Plaint was pending in the Court which had no jurisdiction and the Plaintiff

was not entitled to exclude the period between 26th September 1931 and 9th October 1931. It was held that where the Court has no jurisdiction to try the case, it has also no jurisdiction to pass an order to the prejudice of one of the parties.

[21] In the case of **Subbu Naidu Vs Varadarajulu Naidu**, 1948 AIR(Mad) 26 a Division Bench of the Madras High Court held that an order of return of the Plaint and endorsement on the Plaint that the plaint was returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 ("the Code") is an essential formality and the Plaint cannot be returned before it is made. The proceedings in former Suit cannot reasonably be said to have ended before such endorsement is made. But the Plaintiff is not entitled to any deduction thereafter except perhaps where the Plaintiff can show that the Court delayed the return of the Plaint in spite of his endeavour to take it back.

[22] In the case of **Amar Chand Inani Vs Union of India**, 1973 AIR(SC) 313 the facts were that a Suit for damages was filed in the Court of Karnal on the next working day as on the last day of expiry of period of limitation, the Court was closed. By an order dated 28th October 1959, the Plaint was returned for presentation to the proper Court. The Plaint was thereafter presented in the Court at Ambala on 29th October 1959. When the question of limitation arose, it was contended on behalf of the Plaintiff that the Plaintiff would be entitled to the benefit of the provisions contained in Section 14 of the Limitation Act, 1963.

[23] Repelling the contention, a Three Judge Bench of the Supreme Court enunciated that:

"8.....Section 14 of the Limitation Act only provided for the exclusion of the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Courts, the suit would not be within time as the filing of the suit in the Karnal Court was beyond the period of limitation. It was, however, argued by counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial Court. We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in **Hirachand Succaram Gandhi and Ors Vs G.I.P. Rly. Co.**, 1928 AIR(Bom) 421, **Bimla Prasad Mukherji Vs Lal Moni Devi and Ors**, 1926 AIR(Cal) 355, and **Ram Kishun Vs Ashirbad**, ILR 29 Patna 699. Therefore, the

presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the trial Court.

[24] In the case of **Hanamanthappa and Anr. V/s. Chandrashekharappa and Ors**, 1997 9 SCC 688, the Supreme Court rejected the contention that once the plaint is returned by the Court having no jurisdiction and is presented before the Court of competent jurisdiction, it must be treated to be continuation of the earlier suit. The Supreme Court held:

"3.....In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the court fee.... At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law."

[25] In the light of the aforesaid exposition of law, if the facts of the case at hand are appraised, a factor which is of critical salience is the inaction on the part of the complainant to take back the complaints after the order dated 18th October 2011 was passed by this Court in Criminal Writ Petition Nos. 3097, 3098 of 3099 of 2010. As noted above, since the complainant did not appear before the Court of Magistrate at Ulhasnagar on 2nd December 2011, the learned Magistrate issued a notice to the complainant to appear before the Court to take back the complaints. Moreover, considerable time elapsed even after the said notice dated 2nd December 2011, as the complaints were eventually lodged before the Court of Metropolitan Magistrate at Andheri on 9th February 2012. The balance period of limitation, which had remained unexhausted was of only five days.

[26] Therefore, the fact that the learned Magistrate took cognizance of the offence does not infuse life into the complaints which were prima facie barred by limitation. On that count, in the considered view of this Court, the challenge raised by the accused could not have been thrown overboard by the learned Magistrate and the learned Additional Sessions Judge.

[27] Having taken the aforesaid view, the issue that bothers this court is the relief to be granted in these petitions. Should the complaints be dismissed straightway ? Such a course would bring to naught the orders passed by this Court directing the return of the complaints for presentation to the proper court and the entire process in the applications for condonation of delay in filing the complaints.

[28] It is true, those applications were withdrawn on behalf of the complainant. Thus, it could be urged that the complaints as of now are not accompanied by the applications for condonation of delay. However, the court cannot lose sight of the circumstances in which the said applications appeared to have been withdrawn.

[29] It appears that on 7 February 2019, learned Advocate for the complainant made an endorsement on the application for condonation of delay that the former Advocate for the complainants had filed the application for condonation of delay as a precautionary measure and as there was no delay, the Advocate for the complainant

requested the Court to permit the complainant to withdraw the said application. Thereupon, the learned Magistrate made the following endorsement thereon:

"Adv. For complainant withdraw this application. Hence, filed."

[30] Evidently, the learned Magistrate did not apply his mind to the prayer for withdrawal of the applications made on behalf of the complainants, and made an endorsement as a matter of course. The fact that in the said application, evidence was adduced and it had reached an advanced stage, and, more importantly, there was a time lag between the order passed by this Court directing return of the complaints and the actual presentation of the complaints before the jurisdictional Magistrate, did not engage the attention of the learned Magistrate.

[31] In the aforesaid view of the matter, the dictates of the command of justice persuades this Court to adopt a just measure. Having regard to the circumstances of the case and the time and efforts spent by the parties in prosecuting the proceedings, it would be appropriate to quash and set aside the order of withdrawal of the applications for condonation of delay also and restore the said applications to the file of the learned Magistrate, for a decision on merits. Resultantly, the Writ Petitions deserve to be partly allowed.

[32] Hence, the following order:

: O R D E R:

- (i) The Petitions stand partly allowed.
- (ii) The impugned order dated 12th August 2025 as well as the order passed by the learned Magistrate on 8th February 2025 stand quashed and set aside.
- (iii) The orders passed by the learned Magistrate taking cognizance of the offence and issue of process also stand quashed and set aside.
- (iv) The orders of withdrawal of the applications for condonation of delay also stand quashed and set aside.
- (v) The Applications for condonation of delay stand restored to file of the learned Magistrate.
- (vi) The learned Magistrate shall decide those Applications from the stage at which those Applications were withdrawn, after providing an opportunity of hearing to the parties and in accordance with law, as expeditiously as possible and, preferably, within a period of three months from the date of communication of this order.
- (vii) Rule made absolute to the aforesaid extent.

No costs

2026(1)DCJ40

DELHI HIGH COURT

(Hon'ble Judge: Chandrasekharan Sudha)

F A O (First Appeal From Order) No 498 of 2017 **dated 05/12/2025***Naresh Sukhdev Sindhe***Versus***Seema Baweja & Anr***RESTORATION OF SUIT**

Code of Civil Procedure, 1908 Sec. 104, Or. 9R. 9, Or. 42R. 1 - Negotiable Instruments Act, 1881 Sec. 138 - Restoration of Suit - Plaintiff appealed against dismissal of suit for declaration and injunction for default and rejection of restoration application - Explanation offered that absence due to simultaneous listing of criminal proceedings under Negotiable Instruments Act - Records showed plaintiff present before Magistrate on relevant date and had moved exemption application in advance before civil court - Trial court held absence negligent and rejected application - High Court observed that explanation reasonable and conduct bona fide as no deliberate negligence shown - Restoration application within reasonable period with sufficient cause established - Orders of dismissal set aside - Suit restored for hearing on merits - Appeal Allowed

Law Point: Where plaintiff provides satisfactory explanation for non-appearance supported by record showing bona fide conduct, restoration under Order IX Rule 9 CPC cannot be denied merely on technical grounds

Acts Referred:

Code of Civil Procedure, 1908 Sec. 104, Or. 9R. 9, Or. 42R. 1
Negotiable Instruments Act, 1881 Sec. 138

Counsel:

Karan Luthra, Yogesh Malik, S A Khan

JUDGEMENT

Chandrasekharan Sudha, J.- [1] The present Appeal under Order XLII Rule 1 read with Section 104 of the Civil Procedure Code, 1908, (the CPC) assails the correctness of the orders dated 19.10.2016 and 28.08.2017 in Civil Suit No. 609215/2016 on the file of the learned ADJ, West Delhi, Tis Hazari Courts.. The trial court, vide order dated 19.10.2016, dismissed the plaintiff/appellant's suit for declaration and injunction for default. Thereafter, the application for restoration under Order IX Rule 9 CPC, along with application for condonation of delay was also dismissed by the trial court vide order dated 28.08.2017.

[2] In this appeal, the parties herein shall be referred to in the same rank as they are arrayed in the original suit.

[3] Brief facts necessary for the adjudication of this appeal are as follows:- The suit was posted for arguments on the issue of maintainability on 19.10.2016. On the said date, neither the plaintiff nor his counsel was present in the court, even though the case was called multiple times. Hence, the trial court proceeded to dismiss the suit for non-prosecution. Subsequently, the plaintiff filed an application for restoration under Order IX Rule 9 CPC, along with an application for condonation of delay, explaining that on the said day he was required to appear in a proceedings under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act), which was filed by defendant no. 1 against him, which prevented his presence before the trial court. The trial court vide the impugned order dated 28.08.2017, dismissed both the applications holding that the plaintiff was negligent and that the delay has not been satisfactorily explained.

[4] Aggrieved, the plaintiff has approached this court, challenging the impugned orders dated 19.10.2016 and 28.08.2017.

[5] The learned counsel for the plaintiff/appellant contends that defendant no.1 has instituted the criminal proceedings under section 138 of the NI Act, registered as CC. No. 2732/1, P.S. Hari Nagar, pending before the learned Metropolitan Magistrate, and that both the said NI Act proceedings and the present Civil Suit were coincidentally listed on the same date, i.e., on 19.10.2016. The learned counsel urged that the owing to the penal consequences associated with the non-appearance in the NI Act proceedings, the plaintiff and the counsel for the plaintiff was constrained to remain present before the Magistrate Court.

5.1. The learned counsel would also contend that the plaintiff, apprehending the difficulty in attending the civil court on the said date, had moved an application on 06.09.2016 before the trial court seeking an exemption from personal appearance. The learned counsel submits that this act of the plaintiff shows the bona fide conduct of the plaintiff and negates any suggestion of negligence.

5.2. The learned counsel for the plaintiff/appellant would further submit that the non-appearance of the plaintiff was neither wilful nor deliberate, but the result of two simultaneously listed proceedings coupled with the earlier counsel's lapse, and that the plaintiff had otherwise been regularly attending the suit proceedings, having appeared on the earlier dates, i.e., 16.07.2016, 06.08.2016, and 26.08.2016. The learned counsel submits that in these circumstances, the dismissal of the suit for default and the subsequent rejection of the restoration application warrant interference, particularly as no prejudice would be caused to the respondents if the matter is restored.

[6] Per contra, the learned counsel for the defendant/respondent supports the impugned orders and would submit that the plaintiff cannot take shelter behind the alleged lapse of his counsel, as both the party and the counsel are expected to remain vigilant. The learned counsel would further argue that the plaintiff/appellant has not

demonstrated any sufficient cause for his non-appearance on 19.10.2016. It was submitted that even if the plaintiff/appellant had to be present before the Metropolitan Magistrate Court in the NI Act proceedings, there was ample time thereafter to appear before the civil court, particularly when both courts are situated within the same complex. The plaintiff's complete absence throughout the day, according to the respondents, reflects negligence rather than bona fide difficulty.

[7] Heard both sides and perused the records.

[8] The principal issue that falls for determination is whether the plaintiff has shown "sufficient cause" for his non-appearance on 19.10.2016 so as to warrant restoration of the suit under Order IX Rule 9 CPC, and whether the delay in filing the restoration application deserves to be condoned.

[9] It appears undisputed that on 19.10.2016, the plaintiff was present in the complex of Tis Hazari Courts in connection with the NI Act proceedings instituted by defendant no. 1. It is also evident from the record that the NI Act proceedings and the present civil suit were in fact listed on the same date. Perusal of the order dated 19.10.2016 passed in CC No. 2732/1, placed on record, shows that the plaintiff/appellant was present before the Metropolitan Magistrate Court in the forenoon, and the matter was adjourned to 04.01.2017 as the record corroborates the plaintiff's assertion that he was engaged before the Magistrate Court on the said relevant date.

[10] The trial court, while dismissing the suit, noted that neither the plaintiff, nor his counsel appeared despite repeated calls. However, the materials on record clearly indicate that the plaintiff/appellant had, well in advance, moved an exemption application dated 06.09.2016, appraising the court of the difficulty arising from the simultaneous listing of two matters, which demonstrates the bona fide conduct of the plaintiff.

[11] Turning to the aspect of delay, according to the plaintiff/appellant, he was unable to reach and connect with his earlier counsel to know about the status of the proceedings and the suit having been dismissed on 19.10.2016. Upon learning from the counsel for the defendant about the dismissal of the suit, he applied for certified copies on 25.10.2016 and received the same on 05.11.2016. Thereafter he approached the Legal Aid Cell for representation. The restoration application was filed through the legal aid counsel.

[12] The suit was dismissed on 19.11.2016. The application for restoration is seen to be filed on 19.12.2016, i.e., beyond the prescribed limitation period of 30 days. In these circumstances, the delay cannot be termed inordinate or unexplained.

[13] In the aforesaid circumstances, this Court is of the view that the plaintiff has demonstrated sufficient cause for non-appearance on 19.10.2016 and has satisfactorily explained the delay in filing the restoration application.

[14] Accordingly, the appeal is allowed and the impugned orders dated 19.10.2016 and 28.08.2017 are set aside and CS No. 609215/2016 is restored to its original number to be proceeded in accordance with law.

[15] It is clarified that nothing contained in this order shall affect the merits of the case.

[16] Application(S), if any, pending, shall stand closed

2026(1)DCJ43

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge: Vibhu Bakhru; C M Poonacha)

Com Ap (Commercial Appeals) No 217 of 2025 **dated 03/12/2025**

M/s Saikripa Insulations Private Limited; Manohar Shivaram Shetty S/o Shivaram Shetty; Pramila Manohar Shetty W/o Manohar Shivaram Shetty

Versus

M/s Shree Balaji Enterprise

RUNNING ACCOUNT LIMITATION

Limitation Act, 1963 Sec. 19 - Negotiable Instruments Act, 1881 Sec. 138 - Insolvency and Bankruptcy Code, 2016 Sec. 4 - Central Goods and Services Tax Rules, 2017 Rule 46 - Commercial Courts Act, 2015 Sec. 13 - Running Account Limitation - Proprietorship concern filed suit for recovery against defendants based on long-standing business transactions - Defendants admitted supply but contended suit barred by limitation and misuse of cheques - Trial court held payments recorded in running ledger account extended limitation under Sec.19 Limitation Act - Defendants acknowledged last payment through online transfer - Suit filed within three years from last payment - Claim found proved through invoices and GST records - Interest awarded as per terms - Appellate court found limitation correctly applied and decree justified - Appeal Dismissed

Law Point: Continuous business transactions maintained through running account extend limitation under Section 19 of Limitation Act from date of last payment acknowledgment; suit filed within three years remains in time.

Acts Referred:

Limitation Act, 1963 Sec. 19

Negotiable Instruments Act, 1881 Sec. 138

Insolvency and Bankruptcy Code, 2016 Sec. 4

Central Goods and Services Tax Rules, 2017 Rule 46

Commercial Courts Act, 2015 Sec. 13

Counsel:

Rajesh Shetty, Anish P Bhojani

JUDGEMENT

C.M. Poonacha, J.- [1] The present appeal is filed under Section 13(1-A) of the Commercial Courts Act, 2015 ('**2015 Act**') by the defendants, assailing the judgment and decree dated 30.1.2025 passed in Com.O.S.No.762/2023 by the LXXXII Additional City Civil and Sessions Judge, Bengaluru (CCH-83) ('**Trial Court**'), whereunder the suit for recovery of money filed by the respondent/plaintiff against the appellants/defendants has been decreed directing the defendants to pay a total sum of Rs.42,54,223/- together with a sum of Rs.21,69,653/- being the interest from 1.9.2020 till filing of the suit and further interest at 18% per annum from the date of the suit till realization.

[2] The parties will be referred to as per their rank before the Trial Court for the sake of convenience.

[3] It is the case of the plaintiff [a proprietorship concern] that it was engaged in the business of manufacture and supply of packaging materials and trading in Kraft papers. That defendant No.1 was engaged in the manufacture, import and supply of packaging material. Defendant No.2 and defendant No.3 were its directors. The plaintiff and the defendants had a business relationship with each other for the past thirty years. The plaintiff had supplied goods on credit as and when requested by the defendants and the parties were having continuous and running transactions.

3.1. It is the further case of the plaintiff that it used to raise invoices in respect of the goods supplied to the defendants and the defendants acknowledged receipt of the goods on the said invoices. That the plaintiff raised invoices amounting to Rs.98,32,927/- for the period from April 2017 to March 2020 towards the material supplied to the defendants. That defendant No.2 had sought a hand loan of a sum of Rs.3.00 lakhs, which was paid by the plaintiff. Hence, the total amount payable under the invoices and the hand loan is a sum of Rs.1,01,32,927/-. That the defendants had supplied certain materials to the plaintiff and raised invoices for Rs.19,298/- on 27.11.2018 and 13.02.2019. That the defendants had made a total payment of Rs.58,59,407/- towards the dues payable to the plaintiff. Hence, after adjusting the amounts received from the defendants, they were due and payable to the plaintiff in a total sum of Rs.42,54,223.28. It was further averred by the plaintiff that it had paid statutory GST returns (GSRT-1) on the invoices raised and that the defendants were eligible to claim input credit on the same. That the claim of input credit is reflected in the GST portal (GSTR-2A & 2B), which can be accessed only by the defendants. Hence, the plaintiff filed the suit claiming the following amounts:

[4] The defendants entered appearance and filed their written statement, whereunder the defendants have admitted that they were doing business along with the plaintiff for many years. However, the defendants have specifically contended that the

suit is barred by limitation, inasmuch as, the suit claim was with respect of invoices for the period from 18.9.2017 to 21.3.2020, while the suit was filed on 30.6.2023.

4.1. The defendants have further denied that they are liable to pay the plaintiff the suit claim amount. It was further contended that the plaintiff supplied Kraft papers and insisted on issue of post dated cheques bill-wise. Defendant No.2 used to have the system of keeping signed cheques with the office staff of defendant No.1 - company for emergency use and that the plaintiff managed to get the said cheques from the staff of defendant No.1 - company for the supplies made, without the dates being written on the cheques. When the plaintiff was confronted regarding the same, it was stated that the said cheques were for security purposes only and would not be misused. That between December 2017 and March 2018, the plaintiff has taken ten cheques and misused the same in 2020.

4.2. It is further specifically averred by the defendants that in March 2018 defendant No.2 requested the plaintiff to arrange for working capital finance of Rs.10.00 lakhs and the plaintiff took two undated cheques for Rs.5.00 lakhs each bearing Nos.825223 and 825224. However, the plaintiff neither arranged for the loan nor returned the two cheques. It was further contended that defendant No.1 - company had transacted with the two other entities owned by the plaintiff and that the plaintiff is liable to pay defendant No.1 in a sum of Rs.5,58,547/- in respect of two transactions. That the plaintiff agreed to settle/adjust the said amount of Rs.5,58,547/- from the amount due and payable by the defendants to the plaintiff and also promised to return the undated cheques. That despite receiving payments online, the plaintiff did not return the undated cheques and misused the same.

4.3. It is further averred that the plaintiff did not comply with GST Rule 46, wherein the supplies were required to be accompanied by two copies of tax invoices and the defendants received only one copy, which issue the plaintiff failed to resolve. That in the absence of the plaintiff complying with GST Rule 46, the input tax credit of the defendants would be reversed and the defendants would be penalized with interest. That the input tax credit that was liable to be reversed was a sum of Rs.12.00 lakhs and that the defendants would also be liable to pay interest/penalty of Rs.10.00 to Rs.12.00 lakhs.

4.4. That the defendants had paid a sum of Rs.15,31,280/- against bill Nos.13, 24, 26 and 34 and Rs.14,27,869/- towards payment of bill Nos.20, 22 and 23, despite which the plaintiff did not return the undated cheques. The plaintiff has presented the said cheques and since they were not honoured on presentation, the plaintiff filed four complaints under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'), which are pending before the jurisdictional Court. The defendants had offered to amicably settle the matter with the plaintiff, which was not positively responded to by the plaintiff. The defendants had also specifically denied the case of the plaintiff that it had advanced a hand loan of Rs.3.00 lakhs. Hence, the defendants sought for dismissal of the suit.

[5] Consequent to the pleadings of the parties, the Trial Court framed the following issues:

1. Whether the plaintiff proves that, the defendant placed the purchase order and the plaintiff have supplied the materials to the defendants on credit and issued invoice as per the rule 46 of GST?

2. Whether the Plaintiff proves that defendant is liable to pay the interest of Rs.21,69,653/- at the rate of 18% pa. from 01.09.2020 to till filing of suit and further whether defendant is liable to pay future interest @18% p.a. from the date suit till the date of realization?

3. Whether suit is barred by limitation?

4. Whether the defendant proves that, they have issued two cheques as a security for loan promised by Sri.Kamlesh Shah ?

5. Whether the plaintiff proves that defendant is liable to pay for a sum of Rs.42,54,223/-?

6. Whether the plaintiff is entitled for relief as prayed for?

7. What Decree or Order?

[6] The plaintiff examined himself as PW.1 and marked Exs.P1 to P77. Defendant No.2 was examined as DW.1. Exs.D1 to D13 were marked. The Trial Court vide judgment and decree dated 30.1.2025 decreed the suit as noticed above. Being aggrieved, the present appeal is filed.

[7] Learned counsel for the appellants/defendants assailing the judgment and decree passed by the Trial Court contended:

(i) That the suit is barred by limitation as the same is filed three years after the dates of invoices, which was the basis of the suit claim amount. It is further contended that Section 19 of the Limitation Act is not applicable to the present case;

(ii) That the plaintiff has not averred/disclosed regarding the proceedings initiated against the defendants before the National Company Law Tribunal (NCLT);

(iii) That due to the plaintiff not maintaining its records in compliance with the GST norms, the input tax credit of Rs.12.00 lakhs could not be availed by the defendants;

(iv) No documents have been produced by the plaintiff regarding the hand loan of Rs.3.00 lakhs allegedly advanced to the defendants;

(v) The defendants were entitled to set off of various amounts due to them from various other entities to which the plaintiff was a part of and that various payments made by the defendants as averred in para 15 of the written statement were not accounted for;

(vi) That there is no agreement for payment of interest and the interest awarded at 18% by the Trial Court is erroneous;

(vii) That the defendants have been acquitted in the proceedings initiated by the plaintiff under Section 138 of the NI Act.

7.1. Hence, the learned counsel for the appellant seeks for allowing of the appeal and setting aside the judgment and decree passed by the Trial Court.

[8] Per contra, learned counsel for the respondent/plaintiff justifies the judgment and decree passed by the Trial Court and contends:

(i) The Trial Court has rightly recorded a finding that the suit is within limitation since the business transaction between the plaintiff and the defendants was an ongoing one, in respect of which, the plaintiff was maintaining a running account;

(ii) The last transaction in the running account was payment of Rs.1,89,060/- by the defendants to the plaintiff on 1.9.2020 and the suit was filed on 30.6.2023. Hence, the suit was within time;

(iii) DW.1 in his cross-examination had specifically admitted that he has received input tax credit from the GST authorities in respect of the invoices, on the basis of which goods were supplied by the plaintiff (Ex.P3 to P67);

(iv) In the course of business transactions as per the request made by the defendants, the plaintiff had advanced a hand loan of Rs.3.00 lakhs and that was mentioned in the running account maintained by the plaintiff;

(v) In the invoices (Exs.P3 to P67) there is a specific stipulation that interest payable on overdue amounts, was 18%;

(vi) Regarding the loan of Rs.10.00 lakhs, DW.1 in his cross-examination had specifically admitted that there was no agreement between the parties regarding the plaintiff lending a loan of Rs.10.00 lakhs;

(vii) The plaintiff was the proprietor of the other entity i.e., G.K.Enterprises, from whom various amounts were allegedly due and payable to the defendants;

(viii) That the defendants had admitted the debt at para 23 of the written statement;

8.1. Hence, it is contended that the Trial Court having adequately appreciated the oral and documentary evidence available on record, the judgment and decree passed decreeing the suit ought not to be interfered with by this Court in the present appeal.

[9] The submissions of both the learned counsels have been considered and the material on record has been perused. The points that arise for consideration are:

(i) Whether the trial Court was justified in recording a finding that the suit is within time?

(ii) Whether the trial Court was justified in holding that the defendants are liable to pay the plaintiff the amount due under the various invoices raised by the plaintiff?

(iii) Whether the trial Court was justified in recording a finding that the defendants are liable to pay a sum of Rs.3 lakhs allegedly advance as hand loan by the plaintiff?

- (iv) Whether the defendants are liable for set-off of various amounts as claimed?
- (v) Whether the trial Court was justified in awarding interest @ 18% per annum?
- (vi) Whether the judgment and decree passed by the trial Court warrants interference in the present appeal?

Re: question No.(i):

[10] The trial Court had framed issue No.3 as to whether the suit was barred by limitation. The trial Court noticed that the invoices [Exs.P3 to P67] were raised between 18.09.2017 to 21.03.2020. That it was an admitted fact that the parties had business relationship for 30 years and that plaintiff had supplied goods to the defendants on credit. The ledger account [Ex.P68] has been noticed wherein it reflects that from 06.12.2017 to 01.03.2018, the defendants had paid a sum of Rs.23,97,466/-; from 01.04.2018 to 13.02.2019, the defendants had paid a sum of Rs.15,79,720; from 01.04.2019 to 21.03.2020 an amount of Rs.6,47,792/- was paid; and Rs.14,27,869/- was paid from 1.4.2020 to 1.9.2020. The last payment made by the defendants was on 01.09.2020 of Rs.1,89,060 and the closing balance was Rs.45,54,223/-. The Trial Court has also noticed Section 19 of the Limitation Act, 1963 (hereafter **Limitation Act**) as also the admission of DW.1 in the cross examination that he has made online payment of Rs.1,89,073/- on 01.09.2020 and 02.09.2020 to the plaintiff towards the amounts due from the purchase of the goods. The suit was filed on 30.06.2023 within three years from the last date of payment. Hence, the trial Court held that the suit is within time.

[11] The plaintiff has specifically averred regarding supply of goods to the defendants periodically as per the request made by the defendants. The invoices under which the goods supplied were marked as Exs.P3 to P67. The defendants had acknowledged the receipt of the goods under the respective invoices, wherein the date and time as well as the vehicle number is mentioned. The ledger account extract (Ex.P68) clearly discloses that lumpsum amounts were paid periodically and the balance amount due [after deducting the amounts paid from the cumulative value of the goods supplied] were carried forward to the next financial year. The payments were not made as per specific invoices. The defendants in the written statement had also specifically detailed as to various payments made by them. Hence, it is clear that the plaintiff had maintained a running account in respect of its transactions with the defendants. As noticed in the said running account (Ex.P68) the last transaction was a payment of Rs.1,89,060/- on 01.09.2020, admittedly made by the defendants to the plaintiff. Hence, the suit was filed on 30.06.2023, within 3 years of the last transaction.

[12] A learned Single Judge of the Delhi High Court in Ashok Parshad v. M/s. Mahalaxmi Sugar Mills Co.Ltd.,2013 SCCOnLineDel 3629 while considering a similar fact situation regarding the period of limitation with respect to a running account, after noticing Article 14 as well as Section 19 of the Limitation Act, 1963, held as under:

20. Now, reverting back to the facts, it is seen that except two specific payments of small amounts all other on account payments were made by the defendant from time to time. All these payments were made by the defendant not with the delivery of the goods vide specific bills, but, as per its own convenience. Though, the payments were required to be made by the defendant within seven days of delivery as per the terms stipulated in the bills, but, the same having not been adhered to by the defendant and there being no other agreement of fixed period of credit, the part payments were made by the defendants towards the unpaid amounts. These by any means, cannot make the account mutual or reciprocal. The dealings between the parties continued and did not terminate with one supply and thus, the deliveries got united with one another and formed one continuous demand which kept on being carried forward from year to year till the last supply was made. Thus, it all formed one cause of action and could not be divided. The nature of transactions as well as the payments made and the conduct of the defendant would evidence that the payments were made on account of outstanding amounts of deliveries and if that was so, the last payment was to be taken as the date for calculation of limitation as per Article 14 read with Section 19 of the Limitation Act. In this view of the matter the conclusion comes out to be that the period of limitation commenced from 11th July, 1996 when the last payment of Rs. 50,000/- was made, and it expired on 10.07.1999. The suit having been filed in December, 1997, was well within time of limitation. The issue is decided accordingly.

(emphasis supplied)

[13] Having regard to the aforementioned, we concur with the finding of the trial Court regarding the limitation. Accordingly, question No.(i) framed for consideration is answered in the affirmative.

Reg: Question Nos.(ii) to (vi):

[14] As already noticed at para 11 hereinabove, the plaintiff was maintaining a running account (Ex.P68) in respect of its transactions with the defendants.

[15] It is forthcoming from the ledger extract (Ex.P68) that, after deducting the amounts paid by the defendants from the value of the goods supplied by the plaintiff, the defendants were due to the plaintiffs in a sum of Rs.42,54,223.28 as on 1.9.2020. The said amount is the principal amount claimed by the plaintiff in the suit.

[16] With regard to the case of the plaintiff that it had advanced a hand loan of Rs.3.00 lakhs, neither in the plaint nor in the examination-in-chief of PW.1 has the plaintiff specified the date of advancing the said hand loan of Rs.3.00 lakhs. The defendants had specifically denied at para 26 of the written statement that the plaintiff had given a hand loan of Rs.3.00 lakhs. In the cross-examination of PW.1 at para 18, he specifically states that he has paid the said loan of Rs.3.00 lakhs by way of cheque. However, the bank account statement of the plaintiff has not been produced. No other documents have been produced by the plaintiff with regard to the said hand loan of Rs.3.00 lakhs. The Trial Court without specifically noticing the said aspect of the

matter has decreed the suit by including the said amount of Rs.3.00 lakhs. The said finding of the Trial Court, decreeing the suit in respect of the hand loan of Rs.3.00 lakhs, is erroneous and liable to be interfered with.

[17] The defendants had claimed that they have issued various cheques to the plaintiff. However, the plaintiff has not received any monies by virtue of the cheques issued. Apart from the amounts paid by the defendants as reflected in Ex.P68, the defendants have not produced any material to demonstrate that they have made other payments to the plaintiff.

[18] Although the defendants have raised a specific plea with regard to not having availed input tax credit with respect to GST returns, it is pertinent to note that the contention regarding the said input tax credit has been made in the written statement on the premise that the GST Authorities had indicated to the defendants that they will have to reverse the input tax credit for all the invoices and that the defendants will be called upon to pay the said GST amount together with interest/penalty. However, DW1 in his cross-examination at para 29 has specifically admitted that he has received the input tax credit in respect of the invoices - Exs.P3 to P67. Further, the defendants have not produced any material to demonstrate that the input tax credit has been reversed by the GST authorities. Hence, the said contention put forth on behalf of the defendants is without merit.

[19] In respect of the contention of the defendants regarding the loan of Rs.10.00 lakhs, DW.1 at para 26 of his cross-examination has admitted that there is no agreement between him and the plaintiff with regard to the said loan of Rs.10.00 lakhs.

[20] As regards the claim of the defendants of set off, the defendants have not sought for any relief in the written statement with regard to the alleged claim of set off. No other material is produced by the defendants to demonstrate its claim of set off as is contended in the written statement.

[21] Regarding the contention of the appellants-defendants that the respondents-plaintiffs had instituted proceedings before the NCLT, it is pertinent to note that the trial Court had recorded a finding that since no order under Section 14 of the Insolvency and Bankruptcy, 2016 (hereafter **IBC**) declaring a moratorium had been passed, the question of staying the further proceedings in the suit did not arise. Further, the respondents-plaintiffs had stated that proceedings before the NCLT had been initiated and the same were at a preliminary stage. The said proceedings were not listed before the NCLT and no orders were passed in the same. The appellants have also not produced any material as to the stage of the proceedings before the NCLT as also as to whether any orders have been passed in the said proceedings. Hence, no ground is made out by the appellants to interfere with the impugned judgment and decree on the said ground.

[22] As regards the contention of the defendants that there was no agreement to pay interest at 18% and that the Trial Court ought not to have awarded interest at 18%,

it is pertinent to note that in the invoices (Exs.P3 to P67) it is specifically mentioned that interest will be charged at 18% if the amount under the invoices is not paid within 30 days. Further, the transaction between the parties being a commercial one, the decision of the Trial Court awarding interest at 18% per annum cannot be faulted.

[23] The Trial Court while decreeing the suit has awarded the principal sum of Rs.42,54,223/- as claimed by the plaintiff. However, in view of the finding recorded hereinabove with regard to the plaintiff not having adequately proved the hand loan of Rs.3.00 lakhs, the plaintiff is not entitled to the said amount. To the said extent, the judgment and decree passed by the Trial Court is required to be interfered with/modified. The judgment and decree passed by the Trial Court in all other respects is required to be affirmed. Question Nos.(ii) to (vi) framed for consideration are answered accordingly.

[24] In view of the aforementioned discussion, the following:

ORDER

(i) The above appeal is partly allowed with proportionate costs;

(ii) The judgment and decree dated 30.1.2025 passed in Com.O.S.No.762/2023 by the LXXXII Additional city civil and Sessions Judge, Bengaluru (CCH-83), is modified by directing that the appellants/defendants pay the respondent/plaintiff the principal amount of Rs.39,54,223/- together with interest at 18% per annum from 1.9.2020 up to date of payment with costs;

(iii) Modified decree to be drawn accordingly

2026(1)DCJ51

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Hon'ble Judge: Sanjay Dhar)

Cr M (M) (Miscellaneous Criminal Case (M)) No 264 of 2022 **dated 21/11/2025**

Abdul Hamid Wani

Versus

Abdul Hamid Lone

CHEQUE ALTERATION

Negotiable Instruments Act, 1881 Sec. 87, Sec. 138, Sec. 142 - Cheque Alteration - Petition challenged complaint under Section 138 of Negotiable Instruments Act on ground of material alteration in cheque amount - Petitioner alleged complainant altered figures from thousands to lakhs - Court examined whether dishonour due to alteration amounts to offence - Held that alteration constitutes material alteration under Sec. 87 but liability depends on who made alteration - Determination requires trial evidence - Since petitioner failed to reply to demand notice and issue involved factual dispute,

proceedings could not be quashed - Complaint and process sustained - Leaving petitioner liberty to contest during trial. - Petition Dismissed

Law Point: Material alteration in cheque amount falls within Section 87 NI Act, but criminal liability under Section 138 depends on factual proof of who altered instrument, which must be determined during trial.

Acts Referred:

Negotiable Instruments Act, 1881 Sec. 87, Sec. 138, Sec. 142

Counsel:

Mudasir Bin Hassan

JUDGEMENT

Sanjay Dhar, J.- [1] The petitioner, through the medium of present petition, has challenged the complaint filed by the respondent against him for offence under Section 138 of the Negotiable Instruments Act, which is stated to be pending before the court of learned Additional Mobile Magistrate, Shopian (hereinafter referred to as "the trial Magistrate"). Challenge has also been thrown to order dated 10.06.2022, passed by the learned trial Magistrate, whereby cognizance of the offence has been taken and process has been issued against the petitioner.

[2] It appears that the respondent has filed a complaint alleging commission of offence under Section 138 and 142 of Negotiable Instruments Act against the petitioner before the Court of learned trial Magistrate. In the complaint, it is alleged that the petitioner owes an amount of Rs.14.00 lacs to the respondent and in connection with liquidation of the said amount, he had issued cheque bearing No.29633156 dated 11.05.2022, for an amount of Rs.14.00 lacs payable at J&K Bank Branch Unit Harmain, Shopian. When the said cheque was presented for its encashment, the same was returned unpaid with the remarks "alterations require drawer's authentication."

[3] It is further alleged that after receiving the aforesaid information from the Bank, the respondent served a legal notice of demand dated 23.05.2022 upon the petitioner calling upon him to make the payment within fifteen days. However, the petitioner failed to make the payment within the aforesaid period, which prompted the respondent to file the complaint before the learned trial Magistrate.

[4] Vide the impugned order dated 10.06.2022, the learned trial Magistrate, after framing a prima facie opinion that the petitioner has committed offence under Section 138 of the Negotiable Instruments Act, issued a process against him.

[5] The petitioner has challenged the impugned complaint and the impugned order on the grounds that the cheque in question is forged and that the act of forgery has been committed by the respondent. It has been submitted that the alterations in the amount mentioned in the cheque have been made by the respondent/complainant.

[6] According to the petitioner, he had sufficient balance in his account on the date when the cheque was returned unpaid, but because the said cheque was forged by the respondent, the same was returned unpaid. It has been further submitted that the petitioner owed only a sum of Rs.14,000/ to the respondent, for which he had issued the cheque, but the respondent has converted the figures and words "14,000" into "14.00" lacs.

[7] Notice of this petition son was sent to the respondent, but despite service, nobody has appeared on his behalf.

[8] I have heard learned counsel for the petitioner and I have also perused record of the trial Magistrate.

[9] The issue that falls for determination in this case is as to whether dishonour of a cheque on account of alteration made in the cheque amount would constitute an offence under Section 138 of the Negotiable Instruments Act.

[10] The issue as to in what contingencies the offence under Section 138 of the Negotiable Instruments Act would be constituted upon dishonour of a cheque has been deliberated upon by the Supreme Court in the case of **M/s Lakshmi Dyechem v. State of Gujarat & Ors.**, 2012 13 SCC 375. It has been held as under:

"16. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in **Magma case**, 1999 4 SCC 253: 1999 SCC (Cri) 524] that the expression "amount of money is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act:

16.1. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance, this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the

substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied.

16.2. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration."

[11] From the foregoing analysis of the legal position, it is clear that so long as an act or omission on the part of the drawer of the cheque is intended to prevent the cheque being honoured, the dishonour would become an offence under Section 138 of the Negotiable Instruments Act. Therefore, in a situation where the drawer of a cheque intentionally appends a different signature on the cheque, which does not match with his specimen signature available in the bank, the offence under Section 138 of the Negotiable Instruments Act would be constituted against the drawer. Similarly, in a case where a drawer intentionally, with a view to prevent the honour of the cheque, makes overwriting/alterations in the cheque, either in the amount mentioned in the cheque or in the date mentioned therein, without authenticating these overwritings or alterations, the offence under Section 138 of the Negotiable Instruments Act would get attracted.

[12] Section 87 of the Negotiable Instruments Act provides that any material alteration of a negotiable instrument renders the same void as against one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. An

alteration in the amount mentioned in the cheque qualifies to be a material alteration within the meaning of Section 87 of the Negotiable Instruments Act.

[13] In the present case, the alteration which has been made in the cheque pertains to the amount mentioned therein and, as such, it is a material alteration. However, the question remains as to who was responsible for making this alteration. If the said alteration has been made by the accused-drawer of the cheque with a view to defeat the proposed proceedings under Section 138 of the Negotiable Instruments Act against him, he cannot be absolved of his liability for prosecution but if such alteration has been made by payee of the cheque with a view to take undue benefit, the situation may be different. The issue as to which of the parties has made alteration in the cheque, is a question of fact which can be determined only during trial of the case.

[14] In my aforesaid view I am supported by the decision of the Supreme Court in the case of **Veera Exports vs. T. Kalavathy**, 2002 1 SCC 97. In the said case, the Supreme Court has, after taking note of the provisions contained in Section 87 of the Negotiable Instruments Act, observed as under:

" The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed.

10. It is held by the High Court that a change of date is a material alteration which affected the interests of the respondent. It is held that the respondent not being a willing party to the said alteration, the cheques were void as contemplated by Section 87 of the Negotiable Instruments Act. At this stage there is no basis for arriving at such a conclusion. In the earlier part of the impugned judgment, it has been correctly held that this is a question of fact. This is a fact which will have to be established on evidence during trial. At this stage the High Court could not have quashed the complaint merely on the basis of an assertion in the reply."

[15] From the foregoing analysis of the law on the subject, it is clear that the issue as to whether the alterations made in the cheque, which is subject matter of the impugned complaint, have been made at the instance of the petitioner or at the instance of the respondent, can be determined only after trial as the same is a question of fact which cannot be gone into in the present proceedings.

[16] It is also pertinent to note here that in the present case, as per the allegations made in the complaint, the petitioner, despite having received the demand notice

informing him that the cheque had been dishonoured on account of the reason that the alterations have not been authenticated did not choose to respond to the said notice. Had the petitioner responded to the demand notice and given his version, the situation may have been different but once the petitioner has failed to respond to the demand notice, the determination of the issue as to at whose instance the alterations were made becomes a matter of trial.

[17] For the foregoing reasons, the petition is dismissed leaving it open to the petitioner to project the contentions raised by him in the present petition before the learned trial Magistrate at the appropriate stage during trial of the case.

[18] A copy of this order be sent to the learned trial Magistrate for information

2026(1)DCJ56

DELHI HIGH COURT

(Hon'ble Judge: Chandrasekharan Sudha)

F A O (First Appeal From Order); C M Appl (Civil Miscellaneous Application) No
453 of 2019; 49970 of 2019 **dated 21/11/2025**

Sunrise Sports (India) Private Limited

Versus

White Owl Sports Private Limited

TERRITORIAL JURISDICTION

Code of Civil Procedure, 1908 Or. 8R. 5, Sec. 104, Sec. 20, Or. 8R. 2, Or. 8R. 4, Or. 8R. 3, Or. 7R. 11, Or. 43R. 1, Or. 7R. 10 - Negotiable Instruments Act, 1881 Sec. 138 - Territorial Jurisdiction - Appellant filed appeal against order of trial court returning plaint for want of territorial jurisdiction - Appellant claimed that orders placed by defendant through visits, emails and telephone from Delhi and payments also received there - Defendant contended that business and deliveries occurred in Bangalore and no cause of action arose within Delhi - Court examined pleadings and observed that mere presence of office or issuance of notice from Delhi not sufficient to confer jurisdiction - No conclusive proof that transactions or part of cause of action arose in Delhi - Held that trial court rightly returned plaint for presentation before competent court - Appeal Dismissed

Law Point: Territorial jurisdiction in civil suits depends on actual place where cause of action arises and not on mere location of office or issuance of correspondence from a particular place.

Acts Referred:

Code of Civil Procedure, 1908 Or. 8R. 5, Sec. 104, Sec. 20, Or. 8R. 2, Or. 8R. 4, Or. 8R. 3, Or. 7R. 11, Or. 43R. 1, Or. 7R. 10

Negotiable Instruments Act, 1881 Sec. 138

Counsel:

Avadh Bihari Kaushik, Rishabh Kumar, Saloni Mahajan, Rishabh Bansal, Sakshi Pareek

JUDGEMENT

Chandrasekharan Sudha, J.- [1] The present appeal under Section 104 read with order XLIII Rule 1(a) of the Code of Civil Procedure, 1908 (hereinafter referred as the CPC) has been preferred by the appellant/plaintiff impugning the judgement of the trial court dated 23.09.2019, whereby the court held that it lacked territorial jurisdiction to entertain the suit and directed that the plaint be returned to be presented before the court of competent jurisdiction.

[2] The facts necessary for the disposal of the present appeal are:- the appellant is an importer and distributor of badminton sports items, namely "Yonex" operating from its registered office at 6th Floor, Salcon Aurum Building, Plot No. 4, District Centre, Jasola Vihar, New Delhi-110025. The defendant is a Company with its registered office at A-1, First Floor, Epilson, Yemlur Main Road, opposite Hal Airport Road, Bangalore, Karnataka- 560037 engaged in the business of sports goods. The parties were involved in regular course of commercial dealings, wherein the defendant would routinely visit the appellant's office in New Delhi to place orders for sports goods, which the plaintiff supplied and sold from time to time in their ordinary course of business.

[3] While so, a dispute arose when it was found that the last payment received from the defendant was on 23.12.2016 and a substantial sum of Rs.11,93,468/- remained due and payable. The defendant issued a cheque dated 22.12.2016 for Rs.5,00,000/-which, upon presentation, was dishonoured with the endorsement 'Account closed'. Consequently, the plaintiff instituted proceedings under Section 138 of the Negotiable Instruments Act against the defendant and its Directors, which is pending adjudication before the learned MM, PHC, New Delhi. The plaintiff further issued a legal notice dated 07.02.2017, calling upon the defendant to clear the outstanding dues. However, the defendant has failed to discharge the outstanding liability.

[4] Thereafter, the appellant instituted the suit seeking recovery of money. In the plaint, it was averred that the trial court had territorial jurisdiction to entertain the suit on the ground that the appellant carries on its business and works for gain from its registered office situated in New Delhi, which falls within the territorial limits of the Court. The defendant moved an application under Order VII Rule 10 CPC seeking return of the plaint for want of territorial jurisdiction, which was allowed. Aggrieved, the plaintiff has come up in appeal.

[5] The core issue arising in the present appeal is whether the trial court has the territorial jurisdiction to entertain the suit.

[6] The learned Counsel for the appellant/plaintiff submitted that since the appellant's registered office is situated in New Delhi and as all the purchase orders were placed by the defendant's representatives either during their visits to Delhi or through telephone and e-mail communications addressed to the appellant at Delhi, the court did have jurisdiction over the matter.

6.1 It was further submitted that the entire consignments were dispatched from New Delhi and that all invoices were also generated and issued from New Delhi. In support of submissions, the learned counsel for the appellant has relied on the dictum in *Shradha Wassan v. Anil Goel*, 2009 SCCOnLineDel 1285, wherein it has been held that, in the absence of a contractual stipulation to the contrary, the debtor is required to seek the creditor, and the place of payment is deemed to be the place where the creditor resides. It has also been held that a demand notice issued in Delhi calling upon the debtor to make payment at Delhi does confer territorial jurisdiction on the courts at Delhi.

[7] On the other hand, the learned Counsel for the defendant submitted that the trial court lacks territorial jurisdiction to try and entertain the present suit, as no part of the cause of action has arisen within its local limits. The defendant does not carry on its business within the territorial jurisdiction of the Court. It was also submitted that the goods were delivered to the defendant at Bangalore, and the mere existence of the appellant's office in New Delhi does not, by itself, confer jurisdiction under Section 20 CPC. The defendant neither resides nor carries on business within New Delhi and its Head Office is situated at Bangalore. The defendant himself had never visited the appellant's registered office in New Delhi for placing orders. In support of the arguments, reference was made to the dictum in *M/S Carmel Overseas Ltd. V. Sturdy Industries Ltd.*, 2010 SCCOnlineDel 3535, wherein it was held that a vague and unsubstantiated reference to meetings between the parties cannot, confer territorial jurisdiction on the court. It is additionally submitted that the issuance of a legal notice from New Delhi would not also vest the court with territorial jurisdiction.

[8] Heard both the parties.

[9] It would be apposite to refer to the relevant pleadings in the plaint which reads thus;

"4. That the above named defendant was having regular business dealings with the plaintiff company inasmuch the defendant through its directors and employees used to visit Plaintiff's registered office at Delhi from time to time and used to place purchase orders for requisite sports goods and thereafter, plaintiff used to supply/sell the sports items to defendant as per the demands placed by it. It is submitted that the first sale transaction by the plaintiff to the defendant was held on 15.07.2014 and since thereafter, plaintiff had been supplying requisite material/goods/ sports items to the defendant from time to

time and the defendant had been making payments against the same to the plaintiff from time to time.

XXXXXX

13. That the cause of action to file the present suit first arose when defendant approached to the plaintiff in Delhi to place the order of purchase and also on each date when defendant requested plaintiff to supply the sports goods to it and further on various dates when plaintiff supplied the requisite goods to defendant, in terms of its requirements being placed from time to time and defendant made payments against the said goods to the plaintiff regularly during the normal course of business. Cause of action also arose on 23.12.2016 when the cheque issued by the defendant to the plaintiff was dishonoured. It again arose on 07.02.2017 when the 'Legal Notice of Demand' was issued to the defendant by the counsel for the plaintiff and the same is still continuing as the defendant has not made any payment to the plaintiff despite its own assurance vide its e-mail dated 25.01.2017."

(emphasis supplied)

[10] I also refer to the relevant paragraphs in the written statement of the respondent/defendant which reads thus;

"1. That present suit is not maintainable as no cause of action or any part thereof, as alleged in the Plaint, has arisen within the local limits of this Hon'ble Court. The Defendant has its registered office in Bengaluru and carries out business in Bengaluru, which is outside the jurisdiction of this Hon'ble Court. It is trite that an alleged meeting or negotiation at a certain place does not give rise to a cause of action sufficient to vest jurisdiction to the Courts of that particular place. Further, the fact that the Plaintiff has its registered office in Delhi does not vest territorial jurisdiction on this Hon'ble Court. It is thus submitted that the present plaint is liable to be dismissed for want of territorial jurisdiction. The Defendant is also filing an application under Order VII, Rule 11 read with Section 20 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on this ground. The Defendant is filing the present Written Statement without prejudice to the contentions and submissions made in the said application.

XXXXXX

6. That the present plaint is liable to be dismissed has failed to disclose a cause of action. It is submitted that no cause of action has ever arose in favour of the Plaintiff or against the Defendant giving jurisdiction to this Hon'ble Court to try and decide the same therefore the present suit is liable to be rejected under Order VII, Rule 11 of the Code of Civil Procedure, 1908."

[11] It would also be apposite to refer Order VIII Rule 2 to 5 CPC, which reads:-

"2. **New facts must be specially pleaded.** The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not

raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. Denial to be specific. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive-denial.-Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial-(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:"

[12] In the written statement, though the allegation in the plaint that the respondent/defendant was having regular business dealings with the plaintiff's Company and that the respondent/defendant through its Directors and employees used to visit the registered office of the appellant/plaintiff at Delhi from time to time and place purchase order for requisites sports goods, is denied, there is no specific pleadings as to where exactly the business transactions had taken place. It is only contended that an "alleged meeting or negotiation at a certain place" is not sufficient to vest jurisdiction.

[13] Section 20 CPC reads thus;

"20. **Other suits to be instituted where defendants reside or cause of action arises.** Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

Explanation. A corporation shall be deemed to carry on business at its sole or principal office in 3 [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

(emphasis supplied)

[14] In this context, I refer to the dictum of the Apex Court in **Arcadia Shipping Ltd. v/s. Tata Steel Limited and Ors.**, 2024 9 SCC 374, wherein it has been held, inter alia, that when the supply order was placed in Delhi and when payment was to be released in Delhi, the cause of action arose in part in Delhi in terms of Section 20 (C) CPC.

[15] In the case on hand also, going by the pleadings in the plaint, the transactions between the parties started in Delhi and the supply orders seem to have been placed in Delhi and therefore the finding that the trial court does not have jurisdiction is incorrect, as part of the cause of action as contemplated under Section 20 (C) arose in Delhi.

[16] In the result, the appeal is allowed and the impugned order is set aside. The trial court is directed to proceed with the suit in accordance with law.

[17] Application(S), if any, pending shall stand closed.

[18] A copy of this order be forwarded to the trial court for information and compliance

2026(1)DCJ61

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[From MADURAI BENCH]

(Hon'ble Judge: Shamim Ahmed)

CrI R C (Criminal Revision Case) No 1045 of 2025 **dated 21/11/2025**

K Thangavel S/o Kamatchi Pillai

Versus

R Senthil S/o D Rathinavel

CHEQUE DISHONOUR

Negotiable Instruments Act, 1881 Sec. 139, Sec. 138 - Cheque Dishonour - Accused issued two cheques towards debt which returned unpaid for insufficient funds - Complainant filed case under Sec. 138 NI Act - Accused admitted signature but claimed complainant lacked financial capacity - Trial and Appellate Courts convicted accused - Revision filed challenging findings - Court held presumption under Sec. 139 operates once issuance and signature admitted - No rebuttal evidence produced - Found conviction justified and confirmed sentence of one year imprisonment with

compensation - Observed failure to comply with prior payment direction - Dismissed revision confirming lower courts' findings - Criminal Revision Dismissed

Law Point: Presumption under Sec. 139 NI Act arises upon admission of signature and issuance; failure to rebut by evidence sustains conviction for cheque dishonour

Acts Referred:

Negotiable Instruments Act, 1881 Sec. 139, Sec. 138

Counsel:

G B Kaverimani, C M Arumugam, A Zubaitha Banu

JUDGEMENT

Shamim Ahmed, J.- [1] This Criminal Revision Case is filed against the judgement of conviction and sentence, dated 28.08.2024, passed in CrI.A.No.9 of 2024, by the learned I Additional District and Sessions Judge, (PCR), Thanjavur, confirming the judgement of conviction and sentence, dated 28.11.2023, passed in STC.No.126 of 2021, by the Judicial Magistrate, Fast Track Court, Thanjavur.

[2] The facts of the case in a nutshell, led to filing of this Criminal Revision Case and necessary for disposal of the same, are as follows:-

a) The Revision Petitioner is the accused and the Respondent is the Complainant. It is alleged that the Revision Petitioner/ Accused had borrowed a sum of Rs.10,00,000/- from the Respondent/Complainant on 19.08.2018 and to discharge the said debt, the Revision Petitioner/Accused had issued two cheques, bearing Nos.845689 and 845690, dated 23.03.2021 and 14.04.2021 respectively for a sum Rs. 5,00,000/- each drawn on Indian Overseas Bank, Thuraiyur Madhurapuri Branch in favour of the Respondent/Complainant. When the said cheques were presented for encashment on 21.06.2021, the same was returned with the endorsement "Funds Insufficient". Thereafter, the Respondent/Complainant had issued a notice, dated 16.07.2021, to the Revision Petitioner/Accused and on receipt of such notice, the Revision Petitioner/accused sent a reply, which was received by the Respondent/Complainant on 05.08.2021. Thereafter, the Respondent/Complainant had filed a complaint in STC.No.126 of 2021 before the Trial Court, against the Revision Petitioner/Accused, for the offence under Section 138 of the Negotiable Instruments Act, for recovery of the cheque amount.

b) The signature of the Revision Petitioner/Accused on the cheques, bearing Nos.845689 and 845690, dated 23.03.2021 and 14.04.2021 respectively for a sum Rs.5,00,000/- each drawn on Indian Overseas Bank, Thuraiyur Madhurapuri Branch, issued by the Revision Petitioner/Accused, in favour of the Respondent/Complainant towards the discharge of liability to the tune of Rs.10,00,000/- was not denied.

c) After completion of trial, by the impugned judgement of conviction and sentence, the Trial Court, found that the Revision Petitioner/Accused had not denied

the issuance of the cheque in question, the signature found in the cheque in question and also dishonour of the same and that as the Revision Petitioner/Accused has not rebutted the presumption under Section 139 of the Negotiable Instruments Act, by letting in valid evidence, had convicted and sentenced the Revision Petitioner/Accused for the offence under Section 138 of the Negotiable Instruments Act, to undergo one year simple imprisonment and to pay a compensation of Rs.10,00,000/-, in default, to undergo two months simple imprisonment. The lower appellate court, by its impugned judgement, dated 28.08.2024, by confirming the conviction and sentence, had dismissed the appeal. Hence, this Criminal Revision Case has been filed by the Revision Petitioner/Accused.

[3] On 18.11.2025, when the matter came up for consideration, this Court had passed the following order:-

"Heard Mr.G.B.Kaverimani, learned counsel representing Mr.C.M.Arumugam, learned Counsel appearing for the Revision Petitioner and Mrs.Rekha, learned Counsel representing Mrs.A.Zubaitha Banu, learned Counsel for M/s.Taplaw Office, appearing for the Respondent.

2.This Criminal Revision Petition has been filed to call for the records and set aside the judgment in CrI.A.No.9 of 2024, dated 28.08.2024 on the file of the 1st Additional District and Sessions Court (PCR), Thanjavur, confirming the judgment passed in S.T.C.No.126 of 2021, dated 28.11.2023 on the file of the learned Judicial Magistrate Fast Track Court at Magisterial Level, Thanjavur, wherein the Revision Petitioner, was convicted for offence under Section 138 of Negotiable Instruments Act, to undergo simple imprisonment for one year and to pay a compensation of Rs.10,00,000/- within one month, in default, to undergo simple imprisonment for two months.

3.Today, when the matter is being taken up, Mrs.Rekha, learned Counsel representing Ms.A.Zubaitha Banu, learned Counsel for the respondent submits that the Revision Petitioner has not paid any single penny to the Respondent as per the judgment passed by the Trial Court in S.T.C.No.126 of 2021, dated 28.11.2023, which was also confirmed by the Appellate Court, dated 28.08.2024 in C.A.No.9 of 2024.

4.At this juncture, Mr.G.B.Kaverimani learned Counsel for the Revision Petitioner submits that the Revision Petitioner is now ready to pay 50% of the compensation amount ie., a sum of Rs.5,00,000/-, out of the total compensation amount of Rs.10,00,000/-, by way of demand draft in favour of the respondent and request this Court to grant two days time to bring a demand draft in favour of the Respondent before this Court.

5.Mrs.Rekha, learned Counsel for the Respondent, submits that she has no objection to the request made by the learned Counsel for the Revision Petitioner, if the Revision Petitioner brings the demand draft of Rs.5,00,000/- in favour of the Respondent on the next date fixed.

6. Accordingly, as prayed for by the learned Counsel for the Revision Petitioner, two days and no more time is granted to the Revision Petitioner to pay 50% of the compensation amount, ie., a sum of Rs.5,00,000/-, (Rupees Five Lakh only) out of the total compensation amount of Rs.10,00,000/-, by way of demand draft in favour of the respondent. In this regard, he is directed to produce the demand draft receipt in favour of the respondent for the aforesaid amount on the next date fixed, by way of supplementary affidavit, to show his bonafide.

7. Put up this case "for orders" on 21.11.2025 before the appropriate Bench."

[4] This Court heard Mr.G.B.Kaverimani, learned counsel representing Mr.C.M.Arumugam, learned counsel for the Revision Petitioner/Accused and Ms.Zubaitha Banu for M/S.Taplaw Office appearing for the Complainant/Respondent and considered their submissions and also perused the entire materials placed on record.

[5] According to the Revision Petitioner/Accused, the Respondent/Complainant had no capacity to lend such a huge amount. There is no proof that there was legally enforceable debt between the parties. Both the courts below have committed errors in not appreciating the evidence in a proper manner and hence, the findings of the courts below are unreasonable and perverse and consequently, the Revision Petitioner/Accused is entitled for acquittal, by allowing this Criminal Revision Case.

[6] On the other hand, Ms.Zubaitha Banu for M/S.Taplaw Office appearing for the Complainant/Respondent submits that the cheque amount was not repaid by the Revision Petitioner/Accused. Since the Revision Petitioner/Accused has not denied the issuance of the cheque in question, the signature found on the cheque in question and also dishonour of the same, the impugned judgements of conviction and sentence of the courts below, imposing impugned punishment, are justified and hence, no interference by this Court is required.

[7] On perusal of the records, it is seen that before the Trial Court, the Respondent/Complainant was examined as PW.1 and Ex.P1 to P7 were marked, on the side of the Respondent/Complainant. On the side of the Revision Petitioner/Accused, the Revision Petitioner/Accused was examined as DW.1 and no document was marked.

[8] It is seen from the records that the matter is one under Section 138 of the Negotiable Instruments Act and the cheque amount involved in this case is Rs.10,00,000/-. By the detailed impugned judgement of conviction and sentence, the Trial Court had allowed the complaint of the Respondent/Complainant, imposing punishment, as stated above. Thereafter, the Revision Petitioner/Accused had filed the appeal before the lower appellate court and the lower appellate court, by confirming the judgment of the trial Court, dated 28.11.2023, vide judgement, dated 28.08.2024, had dismissed the appeal.

[9] The main grounds raised by the learned counsel for the Revision Petitioner/Accused in the present Criminal Revision Case are relating to only dismissal of the appeal summarily by the lower appellate court. Other than that, this Court finds no other grounds, relating to the merits of the case, put forth by the learned counsel for the Revision Petitioner/Accused.

[10] The Trial Court had held that the Revision Petitioner/Accused failed to adduce satisfactory evidence to substantiate his defense that the cheques were lost and misused by the Respondent/Complainant.

[11] The Trial Court had also further found that once the Revision Petitioner/Accused has not denied the issuance of the cheque in question, the signature found in the cheque in question and also dishonour of the same and since the Respondent/complainant had also proved the execution of the cheque in question, by valid evidence, the presumption under Section 139 of the Negotiable Instruments Act would arise in favour of the Respondent/Complainant, as the Revision Petitioner/accused has failed to rebut the presumption under Section 139 of the Negotiable Instruments Act, by letting in valid and convincing evidence.

[12] Consequently, the Trial Court had rightly held that the cheque in question was drawn to discharge the legally enforceable debt, as per Section 139 of the Negotiable Instruments Act and hence, the Revision Petitioner/Accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly, the Trial Court, by the impugned judgement of conviction and sentence, had rightly convicted and sentenced the Revision Petitioner/Accused for the offence under Section 138 of the Negotiable Instruments Act to undergo one year Simple Imprisonment and to pay a compensation of Rs.10,00,000/-, in default, to undergo two months simple imprisonment.

[13] Admittedly, the Revision Petitioner/Accused did not choose to let in any valid and concrete evidence, whatsoever before the Trial Court. Even before this Court, apart from not complying with the earlier orders of this Court, as stated above, the learned counsel for the Revision Petitioner/Accused is not able to point out any single piece of evidence, both oral and documentary. But, on the side of the Respondent/Complainant, this Court finds that there are ample evidence in support of the case of the Respondent/Complainant, as discussed by the courts below. The Revision Petitioner/Accused has not denied the issuance of the cheque in question, the signature found on the cheque in question and also dishonour of the same. The Revision Petitioner/ Accused failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. Thus, this court does not find any error or illegality or perversity in the findings in the impugned judgements of conviction and sentence of the Trial Court, which warrants interference by this Court and accordingly, this Criminal Revision Case, is liable to be dismissed.

[14] Further, though it is stated by the learned counsel for the Revision Petitioner/Accused that the appeal was dismissed summarily by the lower appellate

court, without going into the merits of the case, this Court finds merits in this case in favour of the Respondent/Complainant that the Revision Petitioner/Accused has not denied his signature on the cheques, bearing Nos. bearing Nos.845689 and 845690, dated 23.03.2021 and 14.04.2021 respectively for a sum Rs.5,00,000/- each drawn on Indian Overseas Bank, Thuraiyur Madhurapuri Branch, issued by the Revision Petitioner/Accused, in favour of the Respondent/Complainant towards the discharge of liability to the tune of Rs.10,00,000/-. Further, issuance of the cheque in question and dishonour of the same are also not denied by the Revision Petitioner/Accused.

[15] In the case of **Rangappa vs. Sri Mohan**, 2010 11 SCC 441, the Hon'ble Supreme Court held that once the accused admits his signature in the cheque, then the presumption comes into play in favour of the complainant. The relevant portion of the said judgement is extracted as under:-

"15. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

[16] In the judgement rendered by the Bombay High Court in the case of **Purushottam Maniklal Gandhi Versus Manohar K. Deshmukh and another**, 2007 4 BCR 404: 2007 STPL(DC) 988(BOM), it has been held that if a person hands over a duly signed blank cheque, thereby he gives an authority to the holder to put a date of his choice and to present the same for encashment. The cheque does not lose its sanctity merely due to the fact that the same has been filled in by some other person.

[17] It is relevant to refer the judgement of Hon'ble Supreme Court (**Bir Singh Vs Mukesh Kumar**, 2019 AIR(SC) 2446), wherein the Hon'ble Supreme Court has held that the presumption as to legally enforceable debt, the rebuttal of signed blank cheque, if voluntarily presented to payee towards the payment, payee may fill up the amount and other particulars, that itself would not invalidate the cheque. The onus would still be on the accused to prove the cheque was not issued for discharge of debtor liability by adducing evidence.

[18] In view of the above said decisions, this Court is of the view that in this case, when the Revision Petitioner/Accused has not denied the issuance of the cheque in question, the signature found in the cheque in question and also dishonour of the same, the presumption under Section 139 of the Negotiable Instruments Act, comes into play in favour of the Respondent/Complainant. Accordingly, this Criminal Revision Case is liable to be dismissed.

[19] Further, the Revision Petitioner/Accused has failed to comply with the conditions imposed by this Court, vide order, dated 18.11.2025, for paying 50% of the compensation amount ie., a sum of Rs.5,00,000/- to the Complainant/Respondent. This shows that the Revision Petitioner/Accused has no respect to the court orders and he is simply buying time and lingering the matter.

[20] In the result, in view of the above said discussions and reasons and in the light of the decisions, referred to above, this Criminal Revision Case is **dismissed**. The impugned judgement of conviction and sentence, dated 28.08.2024, passed in CrI.A.No.9 of 2024, by the learned I Additional District and Sessions Judge, (PCR), Thanjavur, confirming the judgement of conviction and sentence, dated 28.11.2023, passed in STC.No.126 of 2021, by the Judicial Magistrate, Fast Track Court, Thanjavur, is **confirmed**. There is no order as to costs. The File is consigned to record.

[21] Let a copy of this order be sent by the Registry to the concerned Trial Court, within two weeks from today, for necessary compliance and information, to be kept in the file of the Trial Court record. The trial Court is directed to proceed in accordance with law

2026(1)DCJ67

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[From MADURAI BENCH]

(Hon'ble Judge: Shamim Ahmed)

CrI R C (Criminal Revision Case); CrI M P (Criminal Miscellaneous Petition) No 1465
of 2025; 17937 of 2025 **dated 21/11/2025**

Neelananarayanan

Versus

Parameshwaran; State of Tamiladu

CHEQUE DISHONOUR SETTLEMENT

Negotiable Instruments Act, 1881 Sec. 147, Sec. 138 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 359 - Cheque Dishonour Settlement - Accused convicted under Section 138 of Negotiable Instruments Act for cheque dishonour and sentenced to imprisonment and fine - On appeal conviction confirmed - During revision proceedings parties entered compromise and complainant acknowledged receipt of full cheque amount - Joint memorandum of compromise filed before court - Complainant expressed no objection to acquittal - Court observed offence under Section 138 primarily compensatory and compoundable under Section 147 NI Act overriding procedural provisions - Compromise accepted and conviction set aside - Immediate release of petitioner directed - Revision Allowed

Law Point: Offence under Section 138 NI Act being compoundable under Section 147, court can accept settlement at any stage including revision and acquit accused upon full payment, overriding procedural bar under Section 359 BNSS.

Acts Referred:

Negotiable Instruments Act, 1881 Sec. 147, Sec. 138
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 359

Counsel:

K Vamanan, A S Abul Kalam Azad

JUDGEMENT

Shamim Ahmed, J.- [1] Heard Mr.K.Vamanan, learned Counsel appearing for the Revision Petitioner and Mr.A.S.Abul Kalam Azad, learned Government Advocate appearing for the second Respondent.

[2] This Criminal Revision Petition has been filed by the petitioner to set aside the judgment passed in C.A.No.72 of 2019 dated 20.09.2025 on the file of the Sessions Fast Track Mahila Court, Kanniyakumari at Nagercoil, confirming the Judgment passed in S.T.C.No.247 of 2018 dated 26.12.2018 on the file of the learned Fast Track Court (Magisterial Level) Nagercoil.

[3] The facts of the case in a nutshell, led to filing of this Criminal Revision Petition and necessary for disposal of the same, are as follows:-

a) The Petitioner was convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act in S.T.C.No.247 of 2018 dated 26.12.2018 on the file of the learned Fast Track Court (Magisterial Level) Nagercoil, to undergo six months simple imprisonment for the offence alleged under Section 138 of Negotiable Instrument Act and to pay the compensation amount to the tune of Rs. 1,00,000/- to the Respondent, within two months, in default of payment, he has to undergo further period of one month simple imprisonment. Aggrieved by the order of the Trial Court, the Petitioner filed a Criminal Appeal in C.A.No.72 of 2019 before the Sessions Fast Track Mahila Court, Kanniyakumari at Nagercoil.

b) The learned Sessions Fast Track Mahila Judge, Kanniyakumari at Nagercoil, confirming the judgment passed in S.T.C.No.247 of 2018 dated 26.12.2018 on the file of the learned Fast Track Court (Magisterial Level) Nagercoil, dismissed the said Appeal vide judgment dated 20.09.2025. Aggrieved by the same, the present Criminal Revision Petition has been filed.

[4] Today, when the matter is being taken up, the learned Counsel for the Petitioner submits that the parties have entered into a Memorandum of Compromise and produced the joint compromise memo dated 21.11.2025, and the same is taken on record. As per the terms of the Compromise, the following conditions were laid down between the parties which are quoted as under:

"whereas, in the meantime the petitioner herein has settled the entire Cheque amount of Rs.1,00,000/- (one lakh only) due to the first respondent on 14.11.2025 as full and final settlement as against the cheque amount and the first respondent has no other claim as against the petitioner herein. Further the parties hereto were pacified and whereas both parties hereto have resolved the issues.

Whereas the first respondent resolved not to proceed with the criminal case and has no objection to allow the above Criminal Revision and acquit the petitioner/accused herein from all the charges.

Whereas in the light of the above compromise, the parties hereto shall not interfere with their personal life of each other with any issue or claim with regard to in this criminal case also. The first respondent is not interested to proceed with the above criminal case against the petitioner.

Whereas, the first respondent undertakes that he is not interested to proceed further with the criminal case further at any point of time against the petitioner herein. Therefore the first respondent agreed to allow the Criminal revision case in CH.R.C. (MD) No. 1465/2025 and set aside the conviction and sentence passed against the petitioner herein.

The parties here to have agreed to the above terms, adhere to the same in strict sense and put their signature on the day, month and year as written above."

[5] Learned Counsel for the Revision Petitioner submits that the entire amount to the tune of Rs.1,00,000/- as per the order of the Trial Court, was paid to the Respondent and he prays this Court that, as the Revision Petitioner is confined at Cenral Prison, Palayamkottai, since 07.11.2025 and he prays that as the parties have entered into compromise and in view of the Joint Memorandum of Compromise dated 21.11.2025, the Revision Petitioner may be released from jail without imposing any condition.

[6] On perusal of the records, it is seen that an affidavit of the first respondent, dated 17.11.2025, has been filed before this Court, which is already on record and it that affidavit, the first respondent has also acknowledged the receipt of the

compensation amount of Rs.1,00,000/- from the petitioner. Relevant portion of the same reads as under:-

"6.I state that in the meantime on behalf of the petitioner his family members approached me and settled the entire Cheque amount due to me by the petitioner on 11.11.2025. I have received full and final settlement as against the cheque amount and I have no other claim as against the petitioner herein. Therefore, I have no objection to allow the above Criminal Revision and acquit the petitioner/accused herein from all the charges.

It is therefore pray that this Hon'ble Court may be pleased to accept the affidavit and allow the criminal revision case and thus render justice."

[7] Learned counsel for the Revision Petitioner further submits that the present Revision has been filed on 20.11.2025 before this Court and on the basis of change in circumstances, as the parties have entered into Memorandum of Compromise, it was prayed to this Court to compound the offence. It was further argued by the learned counsel for the Revision Petitioner that this Court has inherent powers to compound the offence, so that, ends of justice could be secured as the object of Negotiable Instruments Act is primarily compensatory and not punitive and moreover Section 147 of NI Act would have an overriding effect on Section 359 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Irrespective of which stage, the parties are compromising with the kind leave of this Hon'ble Court.

[8] In support of his arguments, learned counsel for the Revision Petitioner has submitted that in the case of **Damodar S. Prabhu vs. Sayed Babalal**, 2010 2 SCC(Cri) 1328, the Hon'ble Apex Court had formulated the guidelines for compounding the offence under section 138 N.I. Act wherein in para 21, it was pleased to observe as under:

"With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:- THE GUIDELINES (i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused. (b) If the accused does not make an application for compounding as

aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

[9] Learned counsel for the Revision petitioner also submitted that in the case of M/s Meters and Instruments Private Limited and another vs. Kanchan Mehta, 2017 7 SCC 558, the Hon'ble the Apex Court in para 18, was pleased to observe as under:

"i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

(iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused. (iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

(v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to

record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances'.

[10] Learned counsel for the Revision Petitioner further has relied upon the judgment of Gujarat High Court in the case of **Kripal Singh Pratap Singh Ori vs. Salvinder Kaur Hardip Singh**, 2004 CrLJ 3786 wherein, the Gujarat High Court was pleased to observe as under:-

"31. In the circumstances, it is hereby declared that the compromise arrived between the parties to this litigation out of court is accepted as genuine and the order of conviction and sentence passed by the learned JMFC, Vadodara and confirmed in appeal by the learned Sessions Judge, Fast Track Court, Vadodara, therefore, on the given set of facts are hereby quashed and set aside as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. Obviously the order disposing Revision Application would not have any enforceable effect."

[11] Learned counsel for the Revision Petitioner has also relied upon the judgment of Hon'ble the Apex Court in the case of **Vinay Devanna Nayak vs. Ryot Seva Sahkari Bank Limited**, 2008 AIR(SC) 716, wherein the Hon'ble Apex Court was pleased to observe as under:

"18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent. 19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him."

[12] Learned counsel for the Revision Petitioner has argued that the law regarding compounding of offences under the N.I. Act is very clear and is no more res integra and the offences under the N.I. Act can be compounded even at any stage of the proceedings. He submits that in terms of the aforesaid law laid down by the Hon'ble Supreme Court, the parties may be permitted to compound the offence and the conviction of the petitioner be set aside.

[13] Per contra, Mr.A.S.Abul Kalam Azad, the learned Government Advocate for the second respondent has vehemently opposed the submissions made by the learned counsel for the Revision Petitioner and submits that the Revision Petitioner has already been convicted by the learned trial court and the conviction order had already been upheld by the Appellate Court in the appeal.

[14] The learned Government Advocate further submitted that the appeal has been rejected on merit and the Revision Petitioner was convicted, then where the parties or any one of them can be permitted to place compromise and to get the order of acquittal from the Court is the question. He further submitted that the present case is nothing, but a gross misuse of the process of law and thus sentence cannot be compounded on the basis of compromise as filed by the parties.

[15] Learned Counsel for the Revision Petitioner submits that this Court has already decided a similar issue vide judgment and order dated **19.09.2025 in CrI.R.C.(MD)No.875 of 2025 [K.Balachenniappan Vs Jeyakrishnan]**. The counsel argues that the present revision petitioner's case is fully covered by the aforesaid judgment and prays that the present Revision Petition may be disposed of in the same terms. A copy of the judgment has been placed before the Court for perusal.

[16] I have heard the learned counsel for the Revision Petitioner and the learned Government Advocate for the second respondent and perused the materials placed on record.

[17] Considering the facts as narrated above, the following question arose for consideration.

'Whether the order passed by the Appellate Court confirming the conviction of the trial court under section 138 of Negotiable Instruments Act can be nullified by the High Court on the basis of compromise entered between the parties'.

[18] Before answering the aforesaid question as framed, I shall examine the relevant provision of the B.N.S.S, as well as the Negotiable Instrument Act. I may extract Section 359 of B.N.S.S., and Section 147 of Negotiable Instruments Act.

Section 359 B.N.S.S. - Compounding of Offences -

1) The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table: -

2)The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:--

3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under subsection (5) of section 3 or section 190 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), may be compounded in like manner.

(4)(a) When the person who would otherwise be competent to compound an offence under this section is a child or of unsound mind, any person competent to contract on his behalf may, with the permission of the Court, compound such offence;

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 442 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

Section 147 of the Negotiable Instrument Act:-

Offences to be compoundable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

[19] It is well settled that inherent power of the Court can be exercised only when no other remedy is available to the litigants and nor a specific remedy as provided by the statute. It is also well settled that if an effective, alternative remedy is available, the High Court will not exercise its inherent power, especially when the Revision Petitioner may not have availed of that remedy. The power can be exercised by the High Court to secure the ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Sanhita or Act, depending upon the facts of the given case. This Court can always take note of any miscarriage of justice and prevent the same by exercising its power. These powers are neither limited, nor curtailed by any other provision of the Sanhita or Act. However, such inherent powers are to be exercised sparingly and with caution.

[20] In the instant case, it is true that the appeal was dismissed and the conviction and sentence was upheld by the appellate court, but it cannot be lost sight of the fact that this Court has power to intervene in exercise of its power only with a view to do the substantial justice or to avoid a miscarriage and the spirit of compromise arrived at between the parties. This is perfectly justified and legal too.

[21] I have considered the judgments cited by the learned counsel for the Revision Petitioner as well as by the learned Counsel for the State and other decisions of the Hon'ble Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings.

[22] In the instant case, the Revision Petitioner is invoking the inherent power of this court after dismissal of the appeal confirming his conviction and sentence. In these circumstances, I have to examine as to whether for entertaining the aforesaid case, any special circumstances are made out or not, so it can be legitimately argued and inferred and held that in all cases where the Revision Petitioner is able to satisfy this Court that there are special circumstances which can be clearly spelt out subsequent proceeding invoking inherent power of this court can be modified and cannot be thrown away on that technical argument as to its sustainability once the contesting parties entered into subsequent compromise.

[23] In view of the decisions rendered in the judgment dated **19.09.2025 in CrI.R.C.(MD)No.875 of 2025 [K.Balachenniappan Vs Jeyakrishnan]** and taking into account the fact that the parties have settled the dispute amicably by way of compromise, this Court is of the view that the compounding of the offence as required to be permitted.

[24] Accordingly, the present Criminal Revision Case is **disposed of** in terms of Memorandum of Compromise arrived at between the parties to this litigation out of Court. The impugned judgment passed in C.A.No.72 of 2019 dated 20.09.2025 on the file of the Sessions Fast Track Mahila Court, Kanniyakumari at Nagercoil, confirming the Judgment passed in S.T.C.No.247 of 2018 dated 26.12.2018 on the file of the learned Fast Track Court (Magisterial Level) Nagercoil, are hereby **modified**. The conviction and sentence under Section 138 of the Negotiable Instruments Act in S.T.C No.247 of 2018, dated 26.12.2018 **stands annulled** as this Court intends, otherwise to secure the ends of justice. The Revision Petitioner shall be treated as **acquitted** on account of compounding of the offence with the complainant/person affected.

[25] In the result,

- The Criminal Revision Case is **disposed of** in terms of Joint Memorandum of Compromise dated 21.11.2025.

- The judgment passed in C.A.No.72 of 2019 dated 20.09.2025 on the file of the Sessions Fast Track Mahila Court, Kanniyakumari at Nagercoil, confirming the Judgment passed in S.T.C.No.247 of 2018 dated 26.12.2018 on the file of the learned Fast Track Court (Magisterial Level) Nagercoil, are hereby **modified**.

- The conviction and sentence imposed on the Revision Petitioner by both the courts below **stands annulled**.

- The Revision Petitioner shall be treated as **acquitted** on account of compounding of the offence with the complainant/respondent.

• The authority of Central Prison, Palayamkottai is directed to release the Revision Petitioner from jail forthwith without imposing any condition.

There is no order as to costs. Consequently, connected miscellaneous petition is closed

2026(1)DCJ76

IN THE HIGH COURT OF ALLAHABAD

[From LUCKNOW BENCH]

(Hon'ble Judge: Brij Raj Singh)

Application U/S 482 No 8942 of 2025, 8902 of 2025 **dated 19/11/2025**

Sonali Verma and Another

Versus

State of U P

CHEQUE DISHONOUR LIABILITY

Code of Criminal Procedure, 1973 Sec. 482 - Negotiable Instruments Act, 1881 Sec. 141, Sec. 138 - Partnership Act, 1932 Sec. 25 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528 - Cheque Dishonour Liability - Applications filed under Section 482 CrPC for quashing of complaint proceedings under Section 138 of Negotiable Instruments Act - Applicants being sleeping partners sought relief stating no role in firm's daily affairs and not signatories to dishonoured cheques - Power of attorney executed in favour of managing partner for financial transactions - Complaint lacked specific averment showing their responsibility for business conduct - No material showing knowledge or consent in issuance of cheques - Legal principle requires specific averment in complaint to fasten vicarious liability - Observed mere status as partner insufficient to attract liability without proof of role in management - Summoning orders found mechanical and unsustainable - Proceedings quashed against applicants - Applications Allowed

Law Point: Under Section 141 of Negotiable Instruments Act vicarious liability arises only when complaint specifically states that accused was in charge of and responsible for business conduct at time of offence; mere partnership without such averment cannot attract criminal liability

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 482

Negotiable Instruments Act, 1881 Sec. 141, Sec. 138

Partnership Act, 1932 Sec. 25

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528

Counsel:

Abhineet Jaiswal, G A, Abhinav Kumar Mathur, Avdhesh Kumar Pandey, Ram Kumar Verma

JUDGEMENT

Brij Raj Singh, J.- [1] Both applications have been filed seeking quashing of the entire proceedings of Criminal Complaint Case Nos.925 of 2022 and 926 of 2022, M/s Kalpana Industries Vs. M/s K.D. Overseas and others, under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act, 1881') as well as the summoning orders dated 01.06.2022 passed by the Additional Chief Judicial Magistrate-I, Unnao.

[2] Since the common question of facts and law are involved in both the applications, therefore, they are being heard and decided by a common judgement.

[3] Brief facts of the case, in nut shell, are that applicants had entered into a partnership deed dated 01.05.2016 for carrying on business under the name and style of "M/s K.D. Overseas" situated at Neelu Kheri, District Karnal, Haryana. The object of the partnership was to engage in the business of growing, cultivating, producing, manufacturing, trading, processing, purifying, renting, purchasing, selling, blending, importing, exporting, rendering marketable and transportable (whether in bulk, packed or concentrated form) various agricultural and allied products, including rice, wheat, gram, maize, other grains and cereals, pulses, spices, oils, oil seeds, flour, besan, daliya, maida, suji and related commodities. The applicants are sleeping partners of the partnership firm M/s K.D. Overseas having no role whatsoever in its management of day-to-day affairs. Both the applicants being ladies, engaged primarily in domestic and personal responsibilities, mutually resolved to appoint Mr. Sahil Verma, who is the husband of applicant no.1 and son of applicant no.2 to manage and take charge of daily business and operational affairs of the firm including execution of sale deeds, transfer deeds, lease deeds and other related documents, as well as to conduct all banking and financial transactions on behalf of the firm. Accordingly, the applicants executed a registered power of attorney bearing Certificate No.M0292017111, G.R.N. No.30696682 dated 29.09.2017 in favour of Mr. Sahil Verma, thereby authorising him to take charge and exercise all necessary powers for the smooth conduct and management of the firm's day-to-day affairs.

[4] It is stated that Criminal Complaint Case No.926 of 2022 has been filed by opposite parties no.2 and 3 under Section 138 read with Section 141 of the Act, 1881 and the applicants have been arrayed as accused nos.4 and 5, while Mr. Sahil Verma who is in-charge and managing affairs of the aforesaid partnership firm M/s K.D. overseas and had issued cheques in question in favour of opposite party no.2, had been arrayed as accused no.3. The aforesaid partnership firm M/s K.D. Overseas and the manager/competent officer of the same had been arrayed as accused nos.1 and 2 respectively. Similarly, other Complaint Case No.925 of 2022, M/s Kalpana Industries

and another Vs. M/s K.D. Oversea and others, was also filed by opposite parties no.2 and 3 pertaining to different cheques number amounting to Rs.45,00,000/-.

[5] Sri Abhineet Jaiswal, learned counsel for the applicants has submitted that applicants had long back executed a registered Power of Attorney dated 29.09.2017 in favour of Sahil Verma authorising him as in-charge and to exclusively manage, operate and conduct all business, financial and administrative activities of the aforesaid firm, including the operation of its bank accounts and issuance of cheques. At the relevant point of time when cheques in question were issued to opposite party no.2, Mr. Sahil Verma was solely in-charge of the affairs of the firm and had issued the cheques in question, which subsequently came to be dis-honoured. The applicants are not even signatories to the cheques and had no knowledge or participation in the underlying transactions. However, the complainant has mechanically arraying the applicants as accused persons without containing any specific averment demonstrating how they were in charge of and responsible for the conduct of the business of the firm, which is a mandatory requirement under Section 141 of the Act, 1881 for fastening vicarious liability. In absence of such specific allegations, the continuation of the proceedings against the applicants is wholly unwarranted and constitutes an abuse of process of law.

[6] Learned counsel for the applicants has further submitted that applicants are innocent and have not committed any offence as alleged in the complaint cases. It is further submitted that the applicants have not even issued the cheques in question and they were neither in-charge of the partnership firm nor were the responsible for the conduct of business of the aforesaid firm and the cheques in question were issued in favour of opposite party no.2. The applicants are not even signatories to the cheques in question and they are sleeping partners. It has also been submitted that there is no specific averment in the aforesaid memo of complaint registered by opposite parties no.2 and 3 alleging that applicants retained control or the alleged offence was committed by their consent, connivance or by reason of their negligence.

[7] Learned counsel for the applicants has also submitted that there is bald assertion in paragraph-6 of the aforesaid memo of the complaint alleging that the aforesaid cheques in question have been issued and signed by accused nos.2 to 5 on behalf of accused no.1 and they are fully responsible for day-to-day affairs and accused no.1 and accused nos.2 to 5 are individually, jointly and severally responsible and liable to pay the outstanding amount to the complainant. It has been submitted that opposite party no.3 in the cross-examination conducted in Complaint Case No.925 of 2022 on 21.08.2025 has admitted that the cheques in question were issued to him by Mr. Sahil Verma and further admitted that he does not know the owners/partners of the partnership firm M/s K.D. Overseas.

[8] It has also been submitted that Section 138 of the Act, 1881 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is

dishonoured by the bank on presentation. While Section 141 of the Act, 1881 extends such criminal liability in case of a company to every person who at the time of the offence, was in-charge of, and was responsible for the conduct of the business of the company. By a deeming provision contained in Section 141 of the Act, 1881, such a person is vicariously liable to be held guilty for the offence under Section 138 of the Act, 1881 and punished accordingly.

[9] Learned counsel for the applicants has further submitted that mere designation as a partner, does not automatically attract criminal liability under Sections 138 and 141 of the Act, 1881. In support of his contention, learned counsel for the applicants are relying upon the following decisions of the Hon'ble Supreme Court:-

1. **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another**, 2005 8 SCC 89;
2. **Sunita Palita and others Vs. Panchami Stone Quarry**, 2022 10 SCC 152;
3. **National Small Industries Corporation Limited Vs. Harmeet Singh Paintal**, 2010 3 SCC 330;
4. **Ashok Shewakramani and others Vs. State of Andhra Pradesh and another**, 2023 8 SCC 473;
5. **S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan**, 2022 SCCOnLineSC 1238;
6. **Brij Lal Mittal Vs. State of U.P.**, 1998 2 SCC 343;
7. **Pepsi Foods Limited Vs. Special Judicial Magistrate**, 1998 5 SCC 749; and
8. **State of Haryana Vs. Bhajan Lal**, 1992 Supp1 SCC 335; and
9. **Smt. Vimla Devi and another Vs. State of U.P. and another**, 2017 SCCOnLineAll 4354.

[10] On the other hand, Sri Abhinav Mathur, learned counsel appearing for opposite parties no.2 and 3 has submitted that in the case of a partnership firm, there is no concept of vicarious liability of the partners as such. The liability is joint and severe because a partnership firm is the business of partners and one cannot proceed against only the firm without the partners being made liable. He has further submitted that a director in a company, which is a body corporate *stricto sensu* and such a company is a separate juristic entity *vis-a-vis* the directors. The partnership firm has no legal recognition in the absence of its partners. It has further submitted that the cases cited by the counsel for the applicants are distinguishable as the counsel for the applicants tries to make a submission explaining that the partners of the partnership firm have separate entity and they are not akin to the directors or managing directors as envisaged under Section 141 of the Act, 1881.

[11] To buttress his argument, counsel for opposite parties no.2 and 3 has placed reliance upon the decision of the Supreme Court in the case of **Dhanasingh Prabhu Vs. Chandrasekar and another**, 2025 SCC OnLineSC 1419.

[12] Sri Rajdeep Singh, Learned AGA-I appearing for the State-opposite party no1 has supported the arguments advanced by the counsel for opposite parties no.2 and 3 and has submitted that since the applicants have been summoned after perusing the statements of the complainant, witnesses and the evidence on record, therefore, no interference is required by this Court while exercising its extraordinary jurisdiction under Section 482 Cr.p.C..

[13] I have heard learned counsel for the applicants as well as learned AGA appearing for State-opposite party no.1 and learned counsel appearing for opposite parties no.2 and 3 and perused the record.

[14] For the sake arguments, this Court would like to deal with the case laws cited by the counsel for the applicants.

[15] Hon'ble Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. (supra) in paragraphs 18 and 19 held as under:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section

141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

[16] In the aforesaid case, the Supreme Court held that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141 of the Act, 1881. Even a non-director can be liable under Section 141 of the Act, 1881. The criminal liability has been fastened on those who at the time of the commission of the offence, were in-charge of and were responsible to the firm for the conduct of the business of the firm.

[17] Hon'Ble Supreme Court in the case of Ashok Shewakramani and others, (supra) in paragraphs 8 and 9 held as under:-

"8. Now we come to the averments made in Paragraph 7. Firstly, it is stated that all the Directors were liable for the transactions of the accused No.1 company. Secondly, it is stated that all the accused were fully aware of the issuance of the cheques subject matter of the complaint, and they were also aware that the cheques will be dishonoured. Further, it is alleged that all the accused knew that there were no funds in the account of accused No.1-company.

9. Sub-section 1 of Section 141 of the NI Act required the complainant to aver that the present appellants at the time of the commission of the offence were in charge of, and were responsible to the company for the conduct of the business of the company. In the present case, all that the second respondent has alleged is that the appellants were liable for transactions of the company and that they were fully aware of the issuance of the cheques and dishonour of the cheques."

[18] The aforesaid judgement also postulates regarding the scope of Section 141 of the Act, 1881, in which all the directors are liable for transactions of accused no.1 company and appellants were not signatories to the cheques.

[19] Hon'Ble Supreme Court in the case of Sunita Palita and others (supra), in paragraphs-28, 42 and 45 held as under:-

"28. In Pooja Ravinder Devidasani v. State of Maharashtra and another this Court held as under:-

"17. ... Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day- to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act.

In **National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal**, 2010 3 SCC 330, this Court observed:

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

18. In **Giridhari Lal Gupta v. D.H. Mehta**, 1971 3 SCC 189, this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see **State of Karnataka v. Pratap Chand** [**State of Karnataka v. Pratap Chand**, 1981 2 SCC 335: 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company."

42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra). The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) a non-Executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

45. As held by this Court in National Small Industries Corporation Ltd. v. Harmeet Singh Paintal⁴ quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) the impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act."

[20] In the aforesaid case, Hon'ble Supreme Court has held that the High Court over looked the contention of the appellants that they were not exclusively independent directors of the accused company based on unimpeachable materials on record. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint that such Director was in charge of and responsible for conduct of the business of the Company.

[21] Hon'ble Supreme Court rendered in the case of Pepsi Foods Ltd. (supra), which has been relied upon by the counsel for the applicants, has held that summoning order in a criminal case is a serious matter which should be resorted to after due care and application of mind. Paragraph 28 of the aforesaid judgment reads as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable

thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

[22] In the present, case, the Court has to see that the case is pertaining to a partnership firm and applicants are the partners, who have executed a Power of Attorney in favour of Sahil Verma to look into the affairs of the firm i.e. financial and other liabilities. Sahil Verma has acted on the basis of Power of Attorney executed by the applicants and he has issued the cheque on behalf of the firm, therefore, the applicants are also liable can be prosecuted, hence the aforesaid judgments of the Supreme Court are not applicable in view of the law laid down by the Supreme Court in paragraph 9.8 of the case of Dhanasingh Prabhu (supra).

[23] Sri Abhinav Kumar Mathur, learned counsel for opposite parties no.2 and 3 by relying upon the judgement of the Supreme Court in the case of Dhanasingh Prabhu (supra) has submitted that director is a separate persona in relation to a company, whereas in the case of a partnership firm, the partner is not really a distinct legal persona. This is because a partnership firm is not really a legal entity separate and distinct as a company is from its directors but can have a legal persona only when the partnership firm is considered along with its partners. He has further submitted that the judgement of the Supreme Court in the case of Dhanasingh Prabhu (supra) is specifically dealing with the issue of partners in the partnership firm while the judgments cited by the counsel for the applicants are not applicable because mostly all the judgements relate to a company and its directors as envisaged under Section 141 of the Act, 1881. Paragraphs 9.6, 9.7, 9.8, 9.9 and 9.10 of the judgement of Dhanasingh Prabhu (supra) are quoted below:-

"9.6 On a conjoint reading of the various clauses of Section 141, what emerges is that the expression "company" has been used in an expansive way to include not just a company incorporated under the provisions of the Companies Act stricto sensu but also any body corporate such as a statutory company as well as other artificial juristic entity such as a partnership firm or other association of individuals. Hence, the expression "director" in sub-section (2) of Section 141 is not restricted to a director of an incorporated company or a statutory body, but also includes a partner of a firm. The expression "director" in sub-section (2) of Section 141 of the Act in relation to a firm means a partner, which is also a legislative device adopted by the Parliament knowing fully well and being conscious of the fact that a partnership firm, jurisprudentially speaking, does not stand on par with a director of a body corporate. Since the Parliament has used the expression "company" encompassing all types of juristic

persons, it was necessary to give an expanded definition to the expression "director" in relation to a firm to mean a partner in the firm. Therefore, the inclusion of a firm within the meaning of the expression "company" is by a legal fiction and by way of a legislative device only for the purpose of creating a liability on the partners of the firm, which in any case, they are liable under the law of partnership in India. But the definition of the word company including a partnership firm has been incorporated in the Explanation for the sake of convenience, as otherwise a similar provision would have to be inserted for the very same purposes. Instead of replicating the same definition for different kinds of juristic entities, the Parliament has thought it convenient to add an Explanation to define a company for the purpose of Section 141 of the Act in the context of an offence committed by, inter alia, a company, as understood within the meaning of the Companies Act, and also include a firm or other association of individuals within the definition of company. Similarly, under clause (b) of the explanation, the expression "director", in relation to a firm, means a partner in the firm.

9.7 This also demonstrates the fact that while a director is a separate persona in relation to a company, in the case of a partnership firm, the partner is not really a distinct legal persona. This is because a partnership firm is not really a legal entity separate and distinct as a company is from its directors but can have a legal persona only when the partnership firm is considered along with its partners. Thus, the partnership firm has no separate recognition either jurisprudentially or in law apart from its partners. Therefore, while a director of a company can be vicariously liable for an offence committed by a company, insofar as a partnership firm is concerned, when the offence is committed by such a firm, in substance, the offence is committed by the partners of the firm and not just the firm per se. Therefore the partners of the firm are liable for the dishonour of a cheque, even though the cheque may have been issued in the name of the firm and the offence is committed by the firm. Therefore, in law and in jurisprudence, when a partnership firm is proceeded against, in substance, the partners are liable and the said liability is joint and several and is not vicarious. This is unlike a company which is liable by itself and since it is an artificial juristic entity, the persons in charge of the affairs of the company or who conduct its business only become vicariously liable for the offence committed by the company.

9.8 However, jurisprudentially speaking, the partners of a partnership firm constitute the firm and a firm is a compendious term for the partners of a firm. This is opposed to the position of a director in a company which is a body corporate *stricto sensu* and such a company is a separate juristic entity *vis-à-vis* the directors. On the other hand, a partnership firm has no legal recognition in the absence of its partners. If a partnership firm is liable for the offence under Section 138 of the Act, it would imply that the liability would automatically extend to the partners of the partnership firm jointly and severally. This underlying distinction between a partnership firm and a company which is a body corporate has to be borne in mind while dealing with an

offence committed by a company or a partnership firm, as the case may be, within the meaning of Section 138 read with Section 141 of the Act. To reiterate, in the case of a partnership firm, there is no concept of vicarious liability of the partners as such. The liability is joint and several because a partnership firm is the business of partners and one cannot proceed against only the firm without the partners being made liable.

9.9 Therefore, even in the absence of partnership firm being named as an accused, if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as inter-se the partners of the firm, the complaint is still maintainable. The accused in such a case would in substance be the partners of the partnership firm along with the firm itself. Since the liability is joint and several, even in the absence of a partnership firm being proceeded against by the complainant by issuance of legal notice as mandated under Section 138 of the Act or being made an accused specifically in a complaint filed under Section 200 of CrPC, (equivalent to Section 223 of the BNSS), such a complaint is maintainable.

9.10 Thus, when it is a case of an offence committed by a company which is a body corporate *stricto sensu*, the vicarious liability on the categories of persons mentioned in sub-section (1) and sub-section (2) of Section 141 of the Act accordingly would be proceeded against and liable for the offence under Section 138 of the Act. In the case of a partnership firm on the other hand, when the offence has been proved against a partnership firm, the firm *per se* would not be liable, but liability would inevitably extend to the partners of the firm inasmuch as they would be personally, jointly and severally liable with the firm even when the offence is committed in the name of the partnership firm."

[24] After going through the judgment of the supreme Court rendered in the case of Dhanasingh Prabhu (*supra*), it is amply clear that Hon'ble Supreme Court has enunciated the law that in absence of partnership firm being named as an accused if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as inter se partners of the firm. Therefore, the complaint is maintainable. The law pronounced by the Supreme Court in the case of Dhanasingh Prabhu (*supra*) is specifically dealing with the issue of partnership firm and it has been categorically held that there is underlying distinct between the partnership firm and the company and it is a body corporate, whereas the offence committed by the company is differently dealt with and Section 141 of the Act, 1881 is attracted and there is no concept of authorised liability of the partners as such. The liability is joint and severe.

[25] Section 25 of the Indian Partnership Act, 1932 also defines that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. In the present case, applicants are partners and a partnership deed dated 01.05.2016 was reduced in writing for carrying on business under the name and style of "M/s K.D. Overseas" situated at Neelu Kheri, District Karnal, Haryana,

therefore, the applicants cannot escape from their liability because a partnership firm is not really a legal entity separate and distinct and it can have a legal persona only when it is considered along with its partners.

[26] Considering the arguments advanced by counsel for the parties and the evidence on record, this Court is of the opinion that the trial court has rightly entertained the complaint and issued summons against the applicants. Therefore, no interference is required by this Court in exercise of its extraordinary jurisdiction under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023.

[27] Both the applications being devoid of merit, are rejected

2026(1)DCJ87

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: M M Nerlikar; Piyush Mahajan)

Criminal Appeal No 320 of 2017 **dated 18/11/2025**

Prashant S/o Himmatrao Jawarkar

Versus

Dr Ganesh S/o Pandurang Vasu

COMPENSATION ORDER

Code of Criminal Procedure, 1973 Sec. 250 - Negotiable Instruments Act, 1881 Sec. 138 - Compensation Order - Appellant challenged direction of Magistrate granting compensation to accused under Section 250 Cr.P.C. after acquittal in cheque dishonour case - Magistrate held complainant initiated proceedings without reasonable ground - Appellant contended mere failure to prove case does not attract Section 250 - Court observed Section 250 applies only when complaint found false or made without reasonable cause and requires recording of reasons - Acquittal for want of proof not equivalent to baseless accusation - Court found Trial Court erred in equating failure of evidence with frivolous prosecution - Order imposing compensation set aside - Appeal Allowed

Law Point: Compensation under Section 250 Cr.P.C. can be awarded only when complaint is found to be false or malicious and not merely because prosecution fails to prove its case under Section 138 of Negotiable Instruments Act.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 250

Negotiable Instruments Act, 1881 Sec. 138

Counsel:

N B Jawade

JUDGEMENT

[1] Heard the learned counsel for the appellant.

[2] **Admit.**

[3] The present appeal challenges the judgment and order dated 16/03/2017 passed by the learned Judicial Magistrate, First Class, Court No.5, Akola, wherein, the accused was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, however, the appellant was directed to pay compensation of Rs.25,000/- to the accused under Section 250(2) of the Code of Criminal Procedure, 1973, and in default of payment of compensation amount the appellant was directed to undergo simple imprisonment for 15 days under Section 250(3) of the Code of Criminal Procedure.

[4] This Court by an order dated 07/07/2017, rejected the application seeking leave to file appeal to the extent of acquittal of the non-applicant/accused. However, the application was allowed only to the extent of challenging the order giving a direction to the applicant/complainant to give compensation to the non-applicant/accused. Accordingly, appeal was admitted only to the extent of granting compensation to the present non-applicant/accused. It further appears that ad-interim relief was granted in favour of the appellant by the same order, i.e., order dated 07/07/2017.

[5] I have heard the learned counsel for the appellant, however, none appears for the respondent.

[6] The learned counsel for the appellant submits that the Judicial Magistrate First Class, Akola, erred in granting compensation as mere failure to prove the case by itself is not sufficient to direct payment of compensation under Section 250 of the Cr.P.C. He further submits that the signature on the cheque was not disputed by the respondent. The cheque bearing No.232800 was issued by the respondent and when it was presented it was dishonored. Thereafter, a return memo of State Bank of India was also placed on record, not only that, copy of demand notice, postal acknowledgment, postal receipt, reply of accused and receipts were placed on record in order to prove the case, however, if the complainant failed to prove the case that by itself does not give rise to grant of compensation by the complainant. He further submits that the return memo was placed on record of drawee bank, i.e., State Bank of India, however, he submits that the explanation was given by the complainant by stating that cheque at Exh.20 was forwarded by the Nishant Pat Sanstha to their authorized Bank, i.e., Peoples Co-operative Bank Ltd. The Peoples Co-operative Bank is linked with Nishant Pat Sanstha. Moreover, the date mentioned on the return memo, i.e., Exh.21 of the Drawee bank of SBI is written in Marathi as 24/03/2023, and accordingly, submits that what endorsement has been put at the back side of the cheque is not in the hands of the

complainant and submits that the complainant has duly proved that the cheque has been signed by the respondent herein. He further submits that to invoke provisions of Section 250 of Cr.P.C., the Court has to see whether there are reasonable ground for making the accusation against the accused or not. However, it cannot be equated with the acquittal on the ground of not proving the case by the complainant / informant. Accordingly, he submits that the Trial Court has wrongly invoked Section 250 of the Cr.P.C. and failed to apply Section 250 in its true perspective. He further submits that the Trial Court has erred in directing grant of compensation by the appellant to the respondent and ultimately prayed to allow the Appeal.

[7] Though on behalf of respondent, Mr. Deshpande, put in his appearance, but during the course of hearing he remained absent. The matter pertains to the year 2017. The original proceedings are of 2013, and therefore, I thought it fit to proceed with the matter in the absence of learned counsel for the respondent.

[8] After going through the record and proceedings and after hearing the learned counsel for the appellant, it could be gathered from the record that the grounds on which the compensation was awarded to the respondent, which is to be paid by the complainant under Section 250 of Cr.P.C. are that "no ground appears to conclude that the complainant's case has some truth in his case, except to collect money from the accused.", "complainant has initiated the proceeding without any reasonable ground as there was absence of return memo, the endorsement dtd. 23/03/2013 of a stranger bank on the back side of the cheque, created doubt.", and "by initiating such proceeding without having justified documents, the accused has abused the process of court. He has not only consumed the long period of the Trial Court, but also of the Hon'ble Sessions & High Court." Therefore, the Trial Court accordingly granted Rs.25,000/- as compensation to the accused.

[9] It is necessary to reproduce Section 250 of Cr.P.C. which reads thus:-

"250. Compensation for accusation without reasonable cause.

1. If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith, to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

2. The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that

compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

3. The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

4. When any person is imprisoned under subsection (3), the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

5. No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

6. A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

7. When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

8. The provisions of this section apply to summons-cases as well as to warrant-cases."

So as to interpret the aforesaid provision, it would be useful to refer to the judgment delivered by the Supreme Court in the case of **State of Rajasthan VS Jainudeen Shekh and Another**, 2016 1 SCC 514. Paragraph Nos. 8 to 14 are reproduced below:-

"8. Section 250 of the Code confers powers on the Magistrate to grant compensation on certain conditions being satisfied. A procedure has been engrafted in the said provision. There are certain cases in which the learned Sessions Judge can grant compensation. In this context we may refer with profit to the decision in *Daulat Ram v. State of Haryana*¹. The appellant therein was convicted by the learned Additional Sessions Judge under Section 25 of the Arms Act, 1959 read with Section 6(1) of the Terrorist & Disruptive Activities (Prevention) Act, 1985 (for short, 'TADA'). The defence taken by the accused was that he had been falsely implicated at the instance of one Hans Raj Lambardar of the village. He had examined four

witnesses in his defence. He was acquitted under Section 6 of the TADA but convicted under Section 25 of the Arms Act. The Court analyzing the evidence on record and taking note of the plea of the defence, dislodged the judgment of conviction and while doing so, this Court opined that:-

"...It is unfortunate that the police officers, namely, Head Constable, Randhir PW 2 and the then Head Constable Jai Dayal, PW 3 foisted a false case on the appellant for reasons best known to them, which is a very serious matter. We are informed that the appellant was in custody for a few days in connection with this case. We, therefore, direct the respondent State to pay a sum of Rs. 5000 as compensation to the appellant within two months. The respondent-State may however recover the said amount from the police officials, Randhir PW 2 and Jai Dayal, PW 3 (Rs. 2500 each), who are responsible for false implication of the appellant."

9. In *Mohd. Zahid v. Govt. of NCT of Delhi*², the appellant had preferred an appeal under Section 19 of the TADA. The designated court had found him guilty and convicted him for the offence under Section 5 of TADA and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment for two months more. The Court allowed the appeal and recorded an order of acquittal. In course of analysis, the Court has opined that certain documents had been interpolated, the evidence of certain witnesses was absolutely false and that the appellant therein made a victim of prolonged illegal incarceration due to machination of PWs 5 and 6 and other police personnel and accordingly directed payment of Rs.50,000/- as compensation.

10. In this context reference to certain other decisions would be appropriate. In *State, represented by Inspector of Police and others v. N.M.T. Joy Immaculate*³, a three-Judge Bench was dealing with the judgment and order passed by the learned Single Judge of the High Court of Madras in a Criminal Revision which was allowed and revision was disposed of with certain directions. The High Court had granted Rs.1 lakh compensation on the basis of an affidavit. G.P. Mathur, J., speaking for the learned Chief Justice and himself, after quashing the order of the High Court has opined that:-

" The High Court has also awarded Rs. 1 lakh as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation, etc. It is noteworthy that after investigation, the police has submitted charge-sheet against accused Joy Immaculate. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18-1-2002 prior to the decision of the revision. There is absolutely no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has commenced. This direction, therefore, deserves to be set aside."

Dr. A.R. Lakshmann, J. in his concurring opinion has laid down:-

"Above all, the learned Judge has committed a grave error in awarding a compensation of Rs 1 lakh on the ground that the police personnel committed acts of obscene violation, teasing the respondent herein. The learned Judge has relied upon only on the basis of the affidavit filed in the case for coming to the conclusion and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the learned Judge in the matter. There is no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has started."

11. In this context, we may usefully refer to a two Judge Bench decision in Hardeep Singh v. State of Madhya Pradesh⁴. In the said case, the appellant was engaged in running a coaching centre where students were given tuition to prepare them for entrance tests for different professional courses. The appellant was arrested and a case under Section 420 read with Section 34 IPC and other sections was instituted. He was brought to the police station in handcuffs and his photographs in handcuffs appeared in the local newspapers. The trial went on for several years and eventually, he was acquitted after 12 years. Thereafter he filed a complaint before the Magistrate which was dismissed for lack of sanction. The High Court being moved had held that complaint was not maintainable and dismissed the same in limini. Thereafter, the victim moved the Government for grant of sanction under Section 197 CrPC for prosecuting the Collector and other government servants which was refused. The said order of refusal came to be assailed in W.P. No.4777 of 2007. The writ petition was dismissed by the High Court. On an intra-court appeal preferred, the High Court dismissed the same.

12. Be it stated, after the acquittal, the appellant had filed writ petition no. 4368 of 2004 contending, inter alia, that he was taken to the police station and was kept there in custody in the night handcuffed by the police without there being any valid reason and his photographs in handcuffs in daily newspapers were published as a consequence of which his elder sister who loved him like a son, died due to shock. It was also contended that the prosecution knew from the beginning that the cases registered against him were false and it purposefully caused delay in conclusion of the trial causing great harm to his dignity and reputation and violating his fundamental right to speedy trial guaranteed under Article 21 of the Constitution. A learned Single Judge of the High Court had admitted the writ petition on the limited question of grant of compensation to the appellant for the delay in conclusion of the criminal case against him. Another Single Judge who finally heard the matter opined that there was no case for compensation. In intra-court appeal, the Division Bench reversed the same and granted compensation of Rs.70,000/- which was enhanced by this Court to Rs.2 lakhs. The analysis made by the Division Bench which has been approved by this Court is to the following effect:-

" The Division Bench further held that there was no warrant for putting the appellant under handcuffs. His handcuffing was without justification and it had not

only adversely affected his dignity as a human being but had also led to unfortunate and tragic consequences."

And while enhancing the compensation, the Court held that:-

"..... we find that in the light of the findings arrived at by the Division Bench, the compensation of Rs 70,000 was too small and did not do justice to the sufferings and humiliation undergone by the appellant."

13. Regard being had to the aforesaid enunciation of law, the factual matrix of the case at hand is required to be appreciated. On a close scrutiny of the judgment of the learned trial Judge, it is evident that he has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of Hardeep Singh (supra). Thus, the view expressed by the learned trial Judge is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable.

14. In view of the foregoing analysis, the appeal is allowed and the order of the trial Judge granting compensation and that of the High Court giving stamp of approval to the same are set aside. "

It would also be useful to refer to the judgment of the Supreme Court in the case of **Indian Oil Corpn. VS NEPC India Ltd. And Others**, 2006 6 SCC 736, Paragraph No.14 is reproduced below:-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently,

where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

From the aforesaid judgments, the following points can be culled out so as to invoke Section 250 Cr.P.C.:-

1] That there is no material against the accused to initiate the proceedings;

2] It is necessary to show that the complainant has initiated the proceedings against the accused maliciously, i.e., with malafide intention or malice meaning thereby there should be malicious prosecution;

or

3] The proceedings initiated must be frivolous or initiated with ulterior motive on the part of the complainant.

[10] Taking into consideration the exposition of law of the Supreme Court and after considering Section 250 of Cr.P.C., it is necessary to appreciate the basic facts of the present case. S.C.C. No. 2110/2013 was registered by the present appellant Prashant Himmatrao Jawarkar against the present respondent Dr. Ganesh Pandurang Vasu for the offence punishable under Section 138 of the N.I. Act. It is alleged that the respondent is a medical practitioner / Doctor. It is further alleged that the complainant and accused are well acquainted with each other. The respondent was in need of money, and therefore, a request was made to complainant to a give hand loan of Rs.3,00,000/-. Considering the relationship between them, the complainant gave a hand loan of Rs. 3,00,000/-. The accused / respondent assured to complainant / appellant that he will repay the said hand loan as early as possible, and accordingly, the respondent towards discharge of the said existing legal liability issued a cheque on 20/03/2013 bearing No. 232800 of Rs.3,00,000/- drawn on State Bank of India in favour of the complainant. When the cheque was presented for encashment through his Banker - Nishant Multi State Co-operative Credit Society Ltd., Akola Branch, Akola on 22/03/2013, the said cheque dishonoured and was returned unpaid by the SBI by its cheque return memo dated 22/03/2023 for the reason "Funds Insufficient". Accordingly, the information was received by the complainant on 22/03/2023 itself. It further appears that this fact was informed to the respondent / accused, however, the respondent has not paid any heed. Accordingly, the appellant issued legal notice through Advocate by R.P.A.D. on 20/04/2013 calling the accused to make the payment of cheque amount within 15 days from the receipt of the said notice. The said notice was received on 22/04/2013 by the respondent, but the respondent failed to comply with the said notice, and accordingly, the complaint was filed for the offence punishable under Section 138 of the N.I. Act.

[11] It appears from the record that evidence was recorded by the Trial Court. The defence of the respondent / accused was that the accused / respondent was not acquainted with the complainant. The complainant has misused the cheque by joining hands with his friend Vinod Meshram. It further appears that the respondent denied the

fact that he has taken a hand loan from the appellant and he has also denied issuance of cheque in favour of the appellant. It is his further defence that he is acquainted with one Vinod Meshram who was in need of money, and therefore, he has availed loan facility for Vinod Meshram from Akshay Vyavsaik Nagri Sahakari Pat Sanstha Ltd., Akola. For availing the loan he has mortgaged the property of Vinod Meshram and for the security purpose, the respondent has kept the blank cheque of SBI with the said Pat Sanstha. The repayment was done by the Vinod Meshram himself, however, after repayment of the loan, one of the blank cheque was taken by Vinod Meshram which was misused in collusion with the complainant, and accordingly, he has placed reliance on the documents at Exh.61 to 75. Not only that, the respondent has also examined one of the employee of the Pat Sanstha, namely, Makarand Korranne. After going through the entire evidence, it appears that the signature on the cheque was not denied by the respondent. It is further to be noted that witness, Makarand Korranne, who was the manager of Akshay Vyavsaik Nagri Sahakari Pat Sanstha admitted that as per the rules Pat Sanstha cannot take blank cheques from the borrowers. It further appears from the evidence of Makarand that seven cheques were returned to the respondent when he was manager of the Pat Sanstha.

[12] Now considering the above evidence, the only question before me is whether there are reasonable grounds to file the complaint by the complainant under Section 138 of the N.I. Act against the respondent and whether the Trial Court is justified in invoking Section 250 of the Cr.P.C. To answer this some important factors are necessary to be taken into consideration. The evidence on record goes to show that the cheque bearing No.232800 at (Exh.20) is having signature of the respondent, which is admitted in evidence by the respondent. There is cheque return memo of SBI bank at Exh.21, demand notice at Exh.22, Postal Acknowledgment at Exh.23, Postal Receipt at Exh.24, reply of accused to the notice at Exh.25 and some receipts at Exh.26 & 27. Therefore, all these documents goes to show that cheque was having signature of the respondent, which was presented to the Nishant Pat Sanstha by the complainant. Therefore, the fact remains that in order to proceed under Section 138 of the N.I. Act, there are reasonable grounds.

[13] It is also a matter of fact that the said cheque was dishonored for "Insufficient funds". Further there was cheque return memo of the SBI Bank, demand notice was served, service of notice is also placed on record, therefore, there was procedural compliance and as the cheque dishonoured, the case was filed by the complainant due to the fact that respondent has failed to repay the hand loan amount. Therefore, it cannot be said that there are no reasonable grounds for initiation of the proceedings under Section 138 of N.I. Act. It is to be kept in mind that acquittal from the case by itself would not be sufficient to invoke the provisions of Section 250 of the Cr.P.C. as was observed by the Supreme Court in the case of **State of Rajasthan VS Jainudeen Shekh (supra)**, there should be malicious prosecution. So far as malicious prosecution is concerned, absolutely there is no finding to that effect. On the contrary, the Trial

Court has said that the complainant has misused the cheque, however, there are certain findings which are on the basis of surmises and presumption, so far as invoking provision of Section 250 of Cr.P.C. is concerned. It is further to be noticed that there is no evidence in regard to issuance of blank cheque to the Pat Sanstha as security, however, the Court has observed that "in the light of these factors it is also proved by the accused that he had given the blank cheque to the pat sanstha as security." On the contrary, the witness Makarand Korranne, in his cross-examination admitted that Pat Sanstha is not allowed to take blank cheque from the borrowers. Further, Trial Court has given much importance while awarding Rs.25,000/- to the accused on the fact that the return memo of Nishant Credit Society is not placed on record. However, only return memo of drawee Banker, i.e., SBI Bank is placed on record by the complainant and on the back side of the cheque at Exh.20, the endorsement is seen as of the Peoples Co-operative Bank Ltd., Hingoli, Branch Akola, which is dated 22/03/2013. For this the explanation was called from the complainant before invoking the provision of Section 250 of Cr.P.C. Accordingly, the complainant has given his explanation and submitted that the cheque at Exh.20 was forwarded by the Nishant Pat Sanstha to their authorised Bank, i.e., Peoples Co-operative Bank. This Peoples Co-operative Bank is linked with Nishant Pat Sanstha. Moreover, the date mentioned on the return memo at Exh.21 of the drawee bank of SBI is written in Marathi as 24/03/2013, and accordingly, the learned counsel for the appellant submits that it is not in the hands of the complainant once he has presented the cheque for encashment to the Nishant Pat Sanstha what is written at the back side. However, he submits that the signature on the cheque was not denied by the respondent.

[14] There may be discrepancies in the evidence, there may be shortfalls in the case of the complainant or there may be fact that the complainant fails to prove the case. These factors would not lead to invoke Section 250 of Cr.P.C. Further the proceedings may fail due to N-number of reasons, however, for invocation of Section 250 of Cr.P.C, as was observed supra, there should be malicious prosecution and there should be finding to that effect while rendering the judgment. The entire tenor of the Judgment depicts that the Court has culled out major discrepancies which are as under:-

"50] In short the following major discrepancies are found in the complainant's case as;

- i) The date on which the consideration amount is handed over is missing.
- ii) The reasons for delivery of hand loan as described by the complainant are not believable when the accused himself is well off as evident from record.
- iii) The cheque return memo of Nishant Multi-State Co-operative Credit Society Ltd., Akola, Branch Ranpise Nagar, Akola is not placed on record consequently, it is not proved.

iv) Name of the Payee's bank is not mentioned in the return memo of drawer bank i.e. S.B.I.

v) On the back side of the cheque, the name of stranger bank is written for clearance having dtd. 23.03.2013 which is one day after, when as per the complainant, cheque returned dishonoured on 22.03.2013. how it does happened that is not focused by the complainant.

vi) Alleged cheque is of subsequent dt. 20.03.13, when the accused has already made his loan account NIL on 20.01.13."

[15] Therefore, from these major discrepancies one can come to the conclusion that the complainant has failed to prove his case, however, it cannot lead to invoke Section 250 of Cr.P.C. Not only that from the entire evidence, I do not find that the complaint was lodged with mala fide intention or there is malice on the part of the complainant to prosecute the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Therefore, considering the above facts and circumstances of the case, the findings arrived at by the Trial Court to the extent of granting compensation by the complainant / present appellant Prashant Himmtrao Jawarkar the accused Dr. Ganesh Pandurang Vasu, does not sustain in law, and therefore, the appeal deserves to be allowed to that extent only. Therefore, the finding only to the extent of invoking Section 250 of the Cr.P.C. is perverse. Hence, the following order:-

ORDER

(i) The Appeal is **partly allowed**;

(ii) The order dated 16/03/2017 passed by Judicial Magistrate First Class, Court No.5, Akola, in S.C.C. No. 2110/2013 is hereby quashed and set aside only to the extent of awarding compensation of Rs.25,000/- to the accused from the complainant;

(iii) The appeal is disposed of, accordingly

2026(1)DCJ97

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge: Ajay Kumar Gupta)

Cr R (Criminal Revision) No 4568 of 2023 **dated 14/11/2025**

Super Inducto Steels Limited & Anr

Versus

Annapurna Cast Ltd & Anr

DISHONoured CHEQUE

Code of Criminal Procedure, 1973 Sec. 482, Sec. 251 - Companies Act, 1956 Sec. 23 - Negotiable Instruments Act, 1881 Sec. 140, Sec. 143, Sec. 147, Sec. 146, Sec. 139,

Sec. 141, Sec. 145, Sec. 144, Sec. 138, Sec. 142 - Dishonoured Cheque - Petition filed under Article 227 and Section 482 CrPC challenging conviction under Section 138 of Negotiable Instruments Act - Petitioners contended that complainant company ceased to exist and proceedings invalid - Also claimed partial payments made - Court held statutory ingredients of offence fully proved - No evidence supporting payment or invalidity of complaint - Subsequent change in company name does not vitiate proceedings as rights and liabilities continue under Section 23 of Companies Act - Revisional court not to re-appreciate evidence under Section 482 or Article 227 - No perversity found in concurrent findings - Conviction and sentence affirmed - Revision Dismissed

Law Point: Change in name of complainant company during pendency does not invalidate prosecution under Section 138 of Negotiable Instruments Act as corporate continuity preserved under Section 23 of Companies Act

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 482, Sec. 251

Companies Act, 1956 Sec. 23

Negotiable Instruments Act, 1881 Sec. 140, Sec. 143, Sec. 147, Sec. 146, Sec. 139, Sec. 141, Sec. 145, Sec. 144, Sec. 138, Sec. 142

Counsel:

K P Pal, K K Pathak, S Maji, Rites Goel, Rabindra Kumar Mitra

JUDGEMENT

Ajay Kumar Gupta, J.- [1] This instant Criminal Revisional application has been filed by the Petitioners Under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (In short 'Cr.P.C.'), praying for setting aside the judgment and order dated 11.10.2023 passed by the Learned Additional District and Sessions Judge, 1st Fast Track Court, Calcutta in Criminal Appeal No. 16 of 2023 (Super Inducto Steels Ltd & Anr. vs. Annapurna Casts Ltd. & Anr).

[2] By the said Judgment and Order, the Learned Judge affirmed the judgment and order dated December 22, 2022, passed by the Learned 3rd Metropolitan Magistrate, Kolkata, in complaint case being No. C/2839/2000 filed under Section 138 of the Negotiable Instruments Act, 1881 (In short 'N.I. Act') whereby and whereunder the petitioners herein were convicted for an offence punishable under Section 138 of the NI Act and sentenced to pay a sum of Rs. 6 lacs along with simple interest @ 9% per annum upon the said amount, and in default, convicted to undergo simple imprisonment for three (03) months and the amount of fine imposed is to be paid within a period of two (02) months from the date of judgment.

FACTS OF THE CASE

[3] Brief facts of the present case, in hand, are relevant for the purpose of disposal of this case are as follows:

a. The petitioner no. 1 is a company duly incorporated under the Companies Act, 1956, and presently governed under the Companies Act, 2013. The petitioner no. 2 is one of the Directors of the said Petitioner no.1 company.

b. The Petitioner no. 1 company was engaged in the manufacture of iron ingots and iron rods. Subsequently, it became a sick industrial unit and was registered with the Board of Industrial and Financial Reconstruction in 2010, following its financial difficulties since 2003.

c. The opposite party no. 1 (hereinafter referred to as the complainant) filed a case under section 138 of the NI Act against the present petitioners. Upon receipt of notice, the Petitioner no. 2, appeared before the Trial Court and was enlarged on bail. The case was duly contested by the Petitioners.

d. It transpires from the aforesaid complaint that in March 1999, the complainant supplied iron moulds to the petitioner no. 1 company by two trucks under two separate invoices to the tune of Rs. 2,14,619/- and Rs. 1,81,105/- respectively. Against the said invoices, the petitioners issued one A/C payee cheque bearing No. 076789 dated 27.10.1999 drawn on Punjab National Bank, for a total sum of Rs. 3,95,724/-. However, when the said cheque was presented for encashment, it was dishonoured on 22.04.2000, with the endorsement "Insufficient funds".

e. Thereafter, the complainant issued a statutory notice dated 02.05.2000 under section 138 of the NI Act demanding payment of the said cheque amount. The petitioners, however, failed to comply with the demand within the stipulated time, whereupon the complainant initiated proceedings under section 138 of the NI Act.

f. Upon conclusion of the trial and after hearing both sides, the learned Trial Court, by its order dated 22.12.2022, convicted the petitioners under section 138 of the NI Act and sentenced them as aforesaid.

g. Being aggrieved by and dissatisfied with the aforesaid conviction and sentences, the petitioners herein filed an appeal before the learned Sessions Judge at Calcutta, being Criminal Appeal No. 16 of 2022. It was subsequently transferred to the Learned Additional District and Sessions Judge, 1st Fast Track Court, Calcutta, for hearing and disposal.

h. After hearing the parties, the learned Judge dismissed the said appeal on contest and affirmed the judgment and order dated 22.12.2022 passed by the learned Trial Court. Hence, this application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

[4] Learned counsel appearing on behalf of the petitioners submitted that the complaint filed under Section 138 of the N.I. Act, is not at all attracted in the instant criminal proceeding and is legally unsustainable. It was contended that the prosecution

witness, PW-1, Shri Raj Narayan Singh is not a reliable witness as he himself admitted during cross-examination that he did not know when the last transaction between the petitioner no. 1 company and the complainant took place. He further admitted that he could not state whether the complainant had supplied any goods to the petitioners after the year 1999, nor could he mention the exact date of the cheque alleged to have been issued by the petitioners.

[5] It was further submitted that PW-1, during his cross-examination, categorically admitted that at the time of filing of the complaint, the complainant company had already converted its status from a limited company to a private limited company. However, no amendment was carried out in the pleadings to reflect this change, and the case proceeded with and was ultimately decided in favour of the old company. It was argued that the failure to amend the name and status of the complainant company rendered the proceedings invalid in law, and both the Trial Court and the Appellate Court erred in not dismissing the complaint on this ground.

[6] It was further contended that the petitioners have paid a sum of Rs. 1,00,000/- by a cheque being No. 076782 dated 26.06.1999, and another amounting to Rs. 2,00,000/- was paid by Demand Draft being No. 961562. These payments, however, were not taken into consideration either by the learned Trial Court or by the Appellate Court.

[7] Finally, it was submitted that there was no existence of the complainant company, namely, Annapurna Cast Ltd., during pendency of the proceeding. Therefore, the complaint could not have been continued in the name of a non-existent juristic person. A nonexistent body corporate/Company tantamounts to a dead person and/or non-existent juristic person, and no complaint case can be maintainable by such dead person and/or non-existent juristic person, but the Trial Court ignored such facts and decided the case in favour of the complainant, though there was no existence of the complainant's company. Therefore, the impugned judgment and order is otherwise bad, both in facts and law, and is liable to be set aside for securing ends of justice.

[8] Learned counsel for the petitioners has placed reliance of the following judgments to support of his case:

- i. Roy Joseph Creado and Others Vs. SK. Tamisuddin s/o Late Sk. Nazir Ahmed and Others, 2008 SCC OnLine Bom 133;
- ii. V.U. Pathrose, S/o Ulahannan & Anr. Vs. V.K. Jeevalan & Anr., 2017 ACD 582 (Ker);
- iii. **A.C. Narayanan Vs. State of Maharashtra & Anr.**, 2014 11 SCC 790;
- iv. **George Joseph & Anr. Vs. Hmt (International) Limited & Anr.**, 2015 ACD 83 (Kar);
- v. **Candy Spirit Pvt. Ltd. Vs. Reeves Mia**, 2012 ACD 911 (Bom)
- vi. **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr.**, 2023 1 SCC 578

vii. A.G. Joseph @ Joseph Aloor (Died) & Ors. Vs. M. J. Joseph & Anr., 2012 ACD 446 (Ker)

viii. M/s. Jaimin Jewellery Exports Pvt. Ltd. & Ors. Vs. The State of Maharashtra & Anr, 2017 ACD 642 (Bom)

ix. M/s. Kumar Exports Vs. M/s. Sharma Carpets, 2009 2 SCC 513

x. Janki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors., 2005 2 SCC 217

xi. John K. Abraham Vs. Simon C. Abraham & Anr, 2014 ACD 560 (SC)

xii. M/s. Shankar Finance & Investments Vs. State of Andhra Pradesh & Ors., 2008 8 SCC 536

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO. 1:

[9] Per contra, learned counsel appearing on behalf of the opposite party No. 1 vehemently opposed the prayer for setting aside the impugned judgment and order and further submitted that the judgments referred to by the petitioners are not at all applicable in the instant case. It was submitted that the issuance of a cheque without sufficient balance in the account and the consequent dishonour of such clearly attracts the provisions of section 138 of the N.I. Act, 1881. A drawer of a dishonoured cheque cannot escape criminal liability under the guise of technicalities when all the statutory ingredients of the offence are fulfilled.

[10] Defence has failed to prove its concocted story during the trial regarding payment of Rs. 3,00,000/-. Therefore, the judgments relied upon by the petitioners have no manner of application, so far as the proceedings under Section 138 of the N.I. Act is concerned, and as such, the revisional application is liable to be dismissed.

[11] It was further contended that the cheque was issued in the name of the complainant company, and the complaint was validly instituted by the authorised agent of the said company. The subsequent change in the company's name is of no consequence to the criminal proceedings already initiated. The criminal offence was committed by the Petitioners when they refused to pay the cheque amount even after receipt of the demand notice. The Petitioners never disputed the issuance of cheques nor challenged the validity of the demand notice issued by the complainant after its dishonour with the endorsement "insufficient funds".

[12] Finally, it was submitted that the subsequent change in the name of company does not affect the judgment and order passed by the trial court in the name of previous company, since all rights and liabilities of the old company vest in the new company by operation of law. On the other hand, the statute which further provided that any proceeding which had been commenced or continued by the company in its old name code be continued by the Company in such name even after the change of name. No right, however, was conferred on the company to commence a new proceeding in its old name. This provision is available in the Companies Act, 1956

under Section 23 (1) of the Companies Act, 1956. Therefore, the judgment and order passed by the Trial Court should be affirmed by dismissing the revisional application.

[13] Learned counsel for the opposite party no. 1 has placed reliance of judgments in support of his submissions as under: -

i. Pioneer Protective Glass Fibre P. Ltd. Vs. Fibre Glass Pilkington Ltd, 1984 SCC OnLine Cal 171

ii. EIC Holdings Limited Vs. E.I.T.A. India Limited, G.A. No. 68 of 2020 with C.S. No. 239 of 2008

DISCUSSION AND FINDINGS OF THIS COURT:

[14] In the light of the submissions and arguments advanced by the learned counsels appearing for the parties and upon perusal of the complaint as well as judgments relied upon by both parties, this Court deems it appropriate to first refer to certain relevant provisions for convenience, ready reference and for proper assessment before entering into the merits of this case. Those Sections read as under:

Section 138 of the N.I. Act reads as under:

138. Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

[15] The N.I. Act was enacted to define and amend the law relating to promissory notes, bills of exchange and cheques. By virtue of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, Chapter XVII comprising sections 138 to 142 was inserted into the Act with effect from 01.04.1989. Section 138 of the Act provides the penalties in case of dishonour of cheques due to insufficient funds or similar reasons.

[16] However, sections 138 to 142 of the Act were subsequently found to be inadequate in effectively dealing with dishonour of cheques. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, amended sections 138, 141 and 142 and inserted new sections 143 to 147 in the Act aimed at ensuring the speedy disposal of cases relating to dishonour of cheque through summary trial and making the offences compoundable.

[17] The Hon'ble Supreme Court in **Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P) Ltd.**, 1996 2 SCC 739 observed that the object of introducing section 138 was to inculcate faith in the efficacy of banking operations and enhance the credibility of business transactions conducted through negotiable instruments. Section 138 intends to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it.

[18] The Hon'ble Supreme Court again, in the case **Goa Plast (P) Ltd. v. Chico Ursula D Souza**, 2004 2 SCC 235 while dealing with the objects and ingredients of Sections 138 and 139 of the Act, observed as under:

"The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

[19] The Hon'ble Supreme Court in the case **Indian Bank Association v. Union of India (UOI)**, Writ Petition (Civil) No. 18 of 2013 decided on 21.04.2014, also observed the following:-

"Sections 138 to 142 of the Act were found to be deficient in dealing with the dishonoured cheques. The legislature inserted new Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and earlier to this the Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 whereby a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque to encourage the culture of use of cheques and enhancing the credibility of the instrument."

[20] The Hon'ble Supreme Court, further in the case **Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.**, 2000 2 SCC 745 laid down the following ingredients for taking cognisance under section 138 of the Act:

"(i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability

(ii) That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier

(iii) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank

(iv) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid

(v) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course within 15 days of the receipt of the said notice

(vi) The complaint is to be filed within one month from the date of expiry of the 15 days from the receipt of the notice."

[21] In the light of the above discussion, it emerges before this Court that the issues that require judicial consideration in the context of the present application and argument advanced by the parties are as follows: -

(i) Whether this Court, while exercising jurisdiction under Article 227 of the Constitution of India and/or section 482 of the Cr.P.C., has power to re-assess the entire evidence adduced before the Trial Court for the purpose of setting aside the impugned judgment and order? What are the powers that the Court can exercise under Article 227?

(ii) Whether the failure to amend the cause title of the newly amended company's name during the pendency of the proceedings would affect the validity of the entire judgment and order of conviction?

[22] Upon perusal of records, it is evident that the opposite party no. 1, being the complainant, filed the complaint under section 138 of the N.I. Act against the Petitioners as detailed herein above, primarily on allegations that the complainant company had supplied iron moulds by two trucks under two separate invoices to the tune of Rs. 2,14,619/- and Rs. 1,81,105/-, respectively, to the petitioner no. 1. Against the said invoices, the petitioners issued one A/C payee cheque bearing No. 076789 drawn on Punjab National Bank, dated 27.10.1999 amounting to Rs. 3,95,724/-. When the said cheque was presented to the bank, it was dishonoured on 22.04.2000, with the endorsement "Insufficient funds".

[23] Thereafter, the complainant issued a demand notice dated 02.05.2000 under section 138 of the NI Act, demanding payment of the said sum. The petitioners herein failed to comply with the requisition of the said notice, which led to the filing of the present complaint. The complaint led to pre-summoning evidence and, thereafter, cognizance for the offence punishable under section 138 of the Act was taken against the petitioners. The Petitioners were ordered to be summoned for offence under section 138 of the Act. Notice under section 251 Cr.P.C. was given to the Petitioners, to which they pleaded 'not guilty' and claimed to be tried.

[24] It appears from the record that the evidence of P.W. 1 has fully established the case of the complainant, which was duly considered by the Trial Court, culminating in the conviction and sentence of the Petitioners.

[25] This Court finds that the Petitioner has failed to demonstrate any cogent reason to show that the impugned order suffers from any legal infirmity or perversity. The complainant successfully proved all the essential ingredients of the offence under section 138. The contention of the petitioners regarding payment of money to the complainant against the cheque amount is not supported by any admissible evidence. The Petitioners have also not disputed the fact that the cheque was not issued by the Petitioners. Even after receiving the statutory notice, the Petitioners neither paid the cheque amount nor rebutted the complainant's claim by replying in any manner.

[26] So far as the first issue herein is concerned, it is a well-settled principle of law that the power of superintendence conferred upon the High Court under Article 227 of the Constitution of India and the inherent powers vested under Section 482 of the Code of Criminal Procedure, 1973, are of an extraordinary and discretionary nature. These provisions are intended to ensure that the process of law is not abused and that justice is secured in cases where no other efficacious remedy is available.

[27] However, the scope of interference under these provisions is narrow and circumscribed. The High Court, while exercising its supervisory jurisdiction, does not act as a court of appeal to re-appreciate or reevaluate evidence adduced before the Trial Court or to substitute its own findings of fact for those recorded by the subordinate courts. Interference is justified only when there is a patent error of law, a manifest miscarriage of justice, or where the findings are perverse or based on no evidence at all.

[28] The Hon'ble Supreme Court, in several judgments including **State of Haryana v. Bhajan Lal**, 1992 AIR(SC) 604 particularly paragraphs 102, 103; **Surya Dev Rai v. Ram Chander Rai**, 2003 6 SCC 675 particularly paragraphs 38, 39, 41; and **Shalini Shyam Shetty v. Rajendra Shankar Patil**, 2010 8 SCC 329 particularly paragraphs 64-69 and 89, has consistently held that the supervisory and inherent powers are not to be invoked for routine correction of errors or for a re-appraisal of evidence. These powers are meant to keep the subordinate judiciary within the bounds of its authority and to prevent gross injustice arising from illegality, irregularity, or arbitrariness in judicial proceedings.

[29] Furthermore, in **Amit Kapoor v. Ramesh Chander**, 2012 9 SCC 460 particularly paragraphs 12, 13, 20, 27, the Supreme Court reinforced that section 482 of Cr.P.C. cannot be invoked to reassess the credibility of evidence or the correctness of findings.

[30] Accordingly, this Court, in the present case, cannot reassess or reappreciate the entire evidence as if sitting in appeal over the Trial Court's findings. Its interference would be warranted only if the petitioners succeed in demonstrating that the impugned judgment suffers from a jurisdictional error, a violation of due process of law, or a patently perverse conclusion unsupported by the record or wholly an abuse of process of law.

[31] Coming to the second issue, the contention of the Petitioners that the complaint was not maintainable due to lack of authority is equally untenable. The complainant has established its authority by producing the board resolution authorising Kuldip Yadav to represent the company in the complaint. Subsequently, upon Kuldip Yadav's departure from the company, Sri Raj Narayan Singh was authorised to represent the company in connection with the above complaint case vide resolution dated 1st December, 2001 (Ext.1/1), Therefore, the complaint is well maintainable.

[32] The judgment passed in the case of **Pioneer Protective Glass Fibre P. Ltd. v. Fibre Glass Pilkington Ltd**, 1984 SCC OnLine Cal 171 relied upon by the Opposite party no.1, squarely applies to the present case. It was held therein that a complaint, filed in the old name of the company, remains maintainable even after the subsequent change of name and/or status of the company. In the said judgement, the Hon'ble Court held in paragraph 10 as under:

"10. It was contended that the Companies Act, 1956, provided that a change of the name of an existing company was to be registered afresh and a new certificate of incorporation was to be issued by the Registrar, from the date of which, the change of name would be effective. It followed that from the date of the change of its name, a new company under a new name had come into existence. The rights and liabilities of the old company vested in the new company under the statute which further provided that any proceeding which had been commenced or continued by the company in its old name could be continued by the company in such name even after the change of

name. No right, however, was conferred on the company to commence a new proceeding in its old name."

[33] This Court, therefore, finds no reason to interfere with the impugned judgment and order passed by the learned courts below. Consequently, **C.R.R. 4568 of 2023** stands **dismissed**. Connected applications, if any, are also, thus, disposed of.

[34] Interim order, if any, stands vacated.

[35] Registry shall send a copy of this judgment to the Learned Trial Court for information and taking necessary action against the petitioners in accordance with law.

[36] All parties shall act on the basis of server copy of this judgment duly downloaded from the official website of this court.

[37] Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities

2026(1)DCJ107

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[From MADURAI BENCH]

(Hon'ble Judge: Shamim Ahmed)

CrI R C (M D) (Criminal Revision Case (M D)) No 1033 of 2025 **dated 13/11/2025**

C Balasubramanian S/o Chellappan Andipalayam Veerarangiyam

Versus

Ramesh S/o Kandasamy Andipalayam Veerarakkiam

CHEQUE SETTLEMENT

Negotiable Instruments Act, 1881 Sec. 147, Sec. 138 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 359 - Cheque Settlement - Revision against conviction under Section 138 of Negotiable Instruments Act - Petitioner convicted and sentenced to imprisonment and fine - Appellate Court modified compensation reducing amount - Parties entered into compromise after partial payment and agreed full settlement - Respondent acknowledged receipt of balance and confirmed no further claim - Petitioner complied with direction and filed compromise memo - Both parties appeared before Court and confirmed settlement - Matter compounded under Section 147 of Negotiable Instruments Act - Conviction set aside and proceedings closed - Criminal Revision Allowed

Law Point: Offence under Section 138 of Negotiable Instruments Act being compoundable under Section 147, full payment and compromise between parties justify setting aside conviction and closure of criminal proceedings.

Acts Referred:

Negotiable Instruments Act, 1881 Sec. 147, Sec. 138

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 359

Counsel:

S Mahalakshmi, V S Kumaraguru

JUDGEMENT

Shamim Ahmed, J.- [1] Heard Ms.S.Mahalakshmi, learned Counsel for the Revision Petitioner and Mr.V.S.Kumaraguru, learned Counsel for the Respondent and also this Court has taken the assistance of Mr.A.S.Abul Kalam Azad, learned Government Advocate.

[2] This Criminal Revision Petition has been filed by the Revision Petitioner to set aside the judgment passed by the District Munsif cum Judicial Magistrate, Krishnarayapuram, in STC.No.10 of 2021, vide judgment, dated 06.10.2022, as partly confirmed by the Principal District Court, Karur, in C.A.No.12 of 2023 vide judgment, dated 24.07.2024.

[3] The facts of the case in a nutshell, led to filing of this Criminal Revision Petition and necessary for disposal of the same, are as follows:-

a) The Petitioner was convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act, by the learned District Munsif cum Judicial Magistrate, Krishnarayapuram, in STC.No. 10 of 2021, by the judgment dated 06.10.2022, to undergo one year simple imprisonment for the offence alleged under Section 138 of Negotiable Instrument Act and to pay a sum of Rs.10,00,000/- as compensation to the Respondent, in default of payment, he has to undergo a further period of three months simple imprisonment and to pay a sum of Rs.5,000/- towards fine, in default of payment of fine, to undergo a further period of three months simple imprisonment. Aggrieved by the order of the Trial Court, the Petitioner had filed a Criminal Appeal in C.A.No.12 of 2023 before the Principal District Court, Karur.

b) The learned Principal District Judge, Karur, modified the judgment of the trial Court in respect of compensation alone and directed the Revision Petitioner to pay a sum of Rs.5,00,000/- as compensation to the Respondent and in all other aspects, the judgment passed by the trial Court was confirmed. Aggrieved by the same, the present Criminal Revision Petition has been filed.

[4] When the matter was taken up on 23.10.2025, this Court passed the following order:

"The Criminal Revision Petition is filed to call for the entire records of the judgment dated 06.10.2022 made in STC No.10 of 2021 on the file of the learned District Munsif Cum Judicial Magistrate, Krishnarayapuram by partly allowing the judgment dated 24.07.2024 made in C.A.No.12 of 2023 on the file of Principal District Court, Karur.

2. The Petitioner was convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act, by the District Munsif cum Judicial Magistrate,

Krishnarayapuram, vide order dated 06.10.2022 in S.T.C.No. 10 of 2021, to undergo imprisonment for 12 months and to pay a sum of Rs.10,00,000/-, being the cheque amount to the Respondent in default of payment of the said amount, to undergo further period of imprisonment for three months and also to pay the fine amount of Rs.5000/-, in default of payment of fine, to undergo period of imprisonment for three months. As the Petitioner has paid Rs.1,25,000/-, before the Trial Court and thereafter the Principal District and Sessions Judge, Karur in Criminal Appeal No.12 of 2023, dated 24.07.2024, modified the judgment of the Trial Court in respect of compensation alone and directed the Revision Petitioner to pay Rs.5,00,000/- as compensation to the Respondent and in other aspects, the judgment passed by the Trial Court is confirmed.

3. Heard Mrs.S.Mahalakshmi, learned counsel for the Petitioner and Mr.Karnan, learned Counsel for Mr.V.S.Kumaraguru, learned counsel for the Respondent.

4. This Court vide order dated 25.09.2025 passed the following order:

"3.When the matter is taken up for hearing, Mr.P.Rajagopalan, learned counsel for the Petitioner requests that some time be granted to to make compliance of the order dated 17.09.2025 passed by this Court in the present Criminal Revision Petition and prays for two weeks and no more further time to make compliance of the order dated 17.09.2025 passed by this Court in the present Criminal Revision Petition. He further submits that he will bring the demand draft in favour of the Respondent to the tune of Rs. 3,75,000/- (Rupees Three Lakh Seventy Five Thousand only) befo.re this Court on the next date fixed.

4. Mr.V.S.Kumaraguru, learned counsel for the Respondent stated that he has no objection to the prayer made by the learned counsel for the Petitioner.

5. Accordingly, this Court grants two weeks and no more further time to the learned counsel for the Petitioner to bring the demand draft in favour of the Respondent in favour of the Respondent to the tune of Rs.3,75,000/- (Rupees Three Lakh Seventy Five Thousand only) before the Court on the next date fixed.

6. Put up this case on 23.10.2025 "For Orders" before the appropriate bench."

5.Today, when the matter is being taken up in the revised call, Ms.S.Mahalakshmi, learned Counsel submits that now she is leading the case in the place of Mr.P.Rajagopalan, learned Counsel for the petitioner and on the instructions from her client, she submits that the Revision Petitioner is ready to bring the demand draft to the tune of Rs.3,75,000/- in the name of the Respondent on the next date fixed. Hence, she requests this Court to grant further time to comply the order dated 25.09.2025 passed by this Court. The learned Counsel for the petitioner also prays that, on such payment, this Court by exercising power under Section 147 of the Negotiable Instruments Act, 1881, may compound the offence.

6. Mr.Karnan, learned Counsel for Mr.V.S.Kumaraguru, learned Counsel for the respondent submits that he has no objection if the Revision Petitioner brings the

demand draft to the tune of Rs.3,75,000/- in favour of the Respondent on the next date fixed, so that the matter may be settled.

7. Accordingly, after considering the arguments as advanced by the learned Counsel for the parties and the submission made by the learned counsel for the Revision Petitioner that the Revision petitioner is ready to bring the demand draft to the tune of Rs.3,75,000/- (Rupees Three Lakh Seventy Five Thousand only) in favour of the Respondent, this Court grants ten days and no more further time to the Revision Petitioner to bring the demand draft in favour of the Respondent, without fail. The parties are directed to appear in person before this Court along with their respective learned Counsel and to file a compromise memo in this regard on the next date fixed.

8. Put up this case "for orders" on 13.11.2025 before this Court."

[5] In compliance of the order passed by this Court, dated 23.10.2025 in the present Criminal Revision Case, the parties have entered into a Memorandum of Compromise dated 13.11.2025, which is taken on record and the Petitioner viz., C.Balasubramanian, and the Respondent viz., Ramesh, appeared before this Court today. As per the terms of the Compromise, the following conditions were laid down between the parties which are quoted as under:

"2.It is respectfully submitted that this Honourable Court, by order dated 23.10.2025, was pleased to record the submissions of both parties that the matter has been settled, and directed the petitioner to pay the remaining compensation amount of Rs. 3,75,000/- (Rupees Three Lakhs Seventy Five Thousand Only) in favour of the Respondent, this Court grants ten days, and also directed both parties to file a compromise memo in this regard.

3.It is respectfully submitted that, the respondent/complainant filed before the District Munsif cum Judicial Magistrate, Krishnarayapuram, Karur, under section 138 and 142 of the Negotiable Instruments Act and it is stated that, the petitioner/accused borrowed a sum of Rs.5,00,000/- from the respondent/complainant for his urgent family and business expenses.

4.It is respectfully submitted that as per the direction issued by the District Munsif cum Judicial Magistrate, Krishnarayapuram, vide order dated 06.10.2022 in S.T.C.No. 10 of 2021, wherein the Petitioner/Accused is directed to pay compensation amount of Rs.10,00,000/- to the Respondent/Complainant, and thereafter the Principal District and Sessions Judge, Karur in Criminal Appeal No.12 of 2023, dated 24.07.2024, modified the judgment of the Trial Court and directed the Petitioner to pay Rs.5,00,000/- as compensation to the respondent.

5.The petitioner has already deposited a sum of Rs.1,25,000/-(Rupees One Lakh Twenty Five Thousand Only) before the Trial Court on 17.02.2023. The Petitioner has now paid balance amount Rs. 3,75,000/- to the respondent by way of Demand Draft No.143311 dated 12.11.2025 drawn on Canara Bank, Thanthoni Branch, Karur in full and final settlement of the entire claim of Rs.5,00,000/-.

6. The respondent hereby acknowledges receipt of the aforesaid amount Rs. 1,25,000/- and confirms that he has no further monetary claim against the petitioner in respect of the transaction forming the subject matter of S.T.C.No. 10 of 2021, and in connection with CrI.R.C.(MD).No.1033 of 2025. Based on the receipt of the Demand Draft No.143311 dated 12.11.2025 drawn on Canara Bank, Thanthoni Branch, Karur and upon withdrawal of the earlier deposited amount of Rs.1,25,000/-, respondent/complainant in CrI.R.C.(MD).No. 1033 of 2025 agrees to treat the entire claim of Rs.5,00,000/- as fully settled. In the event of failure to comply with the above undertaking, the petitioner shall be entitled to work out his remedies in accordance with law.

7. Both parties have amicably settled the dispute voluntarily and without any coercion or undue influence. They jointly agree that the matter may be compounded under section 147 of the Negotiable Instruments Act, 1881, and appropriate orders may be passed in this Criminal Revision Petition to give effect to the compromise.

It is therefore humbly prayed that this Honourable Court may be pleased to record the above compromise, Compound the offence under Section 147 of the Negotiable Instruments Act, 1881, to Set aside the conviction and sentence imposed on the petitioner, and to dispose the above Criminal Revision Petition in terms of the compromise, and pass such further or other orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

[6] The learned counsel for the Revision Petitioner submits that in compliance of the order dated 23.10.2025 passed by this Court, both the parties have entered into a Joint Memorandum of Compromise dated 13.11.2025 to the effect that the Criminal Revision case shall be settled in accordance with the terms and conditions as contained therein.

[7] Learned counsel for the Revision Petitioner further submits that out of total compensation amount to the tune of Rs.5,00,000/-, as per the judgment made in C.A.No.12 of 2023, dated 24.07.2024, on the file of the Principal District Court, Karur, the Petitioner has already deposited a sum of Rs.1,25,000/- before the trial Court on 17.02.2023 and in compliance of the order passed by this Court, dated 23.10.2025, the learned counsel for the Revision Petitioner has brought the Bank Draft bearing No.143311, dated 12.11.2025 for sum of Rs.3,75,000/- of the Canara Bank, Thanthoni Bank, Karur in favour of the respondent and handed over the original Bank Draft to the the learned Counsel for the Respondent before this Court. A copy of the Bank Draft has also been produced before this Court, which is taken on record and the learned Counsel for the Respondent hereby acknowledges receipt of the aforesaid amount. The learned counsel for the Revision Petitioner also submits that the petitioner in total has paid a sum of Rs.5,00,000/- to the respondent and no amount is due against the Revision Petitioner.

[8] The learned counsel for the Revision Petitioner further submits that both the parties have entered into a Joint Memorandum of Compromise dated 13.11.2025 to the

effect that the Criminal Revision case shall be settled in accordance with the terms and conditions as contained therein.

[9] Mr.V.S.Kumaraguru, learned counsel for the Respondent submits that the Respondent received the balance cheque amount to the tune of Rs.3,75,000/- by way of Bank Draft bearing No.143311, dated 12.11.2025 of the Canara Bank, Thanthoni Branch, Karur, and he submits that the entire amount has been paid by the Revision Petitioner and no amount is due against the Revision Petitioner.

[10] Learned counsel for the Revision Petitioner further submits that the present Revision has been filed on 07.08.2025 before this Court and on the basis of change in circumstances, as the parties have entered into Memorandum of Compromise, it was prayed to this Court to compound the offence. It was further argued by the learned counsel for the Revision Petitioner that this Court has inherent powers to compound the offence, so that, ends of justice could be secured as the object of Negotiable Instruments Act is primarily compensatory and not punitive and moreover Section 147 of NI Act would have an overriding effect on Section 359 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Irrespective of which stage, the parties are compromising with the kind leave of this Hon'ble Court.

[11] In support of his arguments, learned counsel for the Revision Petitioner has submitted that in the case of **Damodar S. Prabhu vs. Sayed Babalal H**, 2010 2 SCC(Cri) 1328, the Hon'ble Apex Court had formulated the guidelines for compounding the offence under section 138 N.I. Act wherein in para 21, it was pleased to observe as under:

"With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:- THE GUIDELINES (i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused. (b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a

condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

[12] Learned counsel for the Revision petitioner also submitted that in the case of **M/s Meters and Instruments Private Limited and another vs. Kanchan Mehta**, 2017 7 Supreme 558, the Hon'ble the Apex Court in para 18, was pleased to observe as under:

"i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

(ii)The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

(iii)Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused. (iv)Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

(v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the

person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances'.

[13] Learned counsel for the Revision Petitioner further has relied upon the judgment of Gujarat High Court in the case of **Kripal Singh Pratap Singh Ori vs. Salvinder Kaur Hardip Singh**, 2004 CrLJ 3786 wherein, the Gujarat High Court was pleased to observe as under:-

"31. In the circumstances, it is hereby declared that the compromise arrived between the parties to this litigation out of court is accepted as genuine and the order of conviction and sentence passed by the learned JMFC, Vadodara and confirmed in appeal by the learned Sessions Judge, Fast Track Court, Vadodara, therefore, on the given set of facts are hereby quashed and set aside as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. Obviously the order disposing Revision Application would not have any enforceable effect."

[14] Learned counsel for the Revision Petitioner has also relied upon the judgment of Hon'ble the Apex Court in the case of **Vinay Devanna Nayak vs. Ryot Seva Sahkari Bank Limited**, 2008 AIR(SC) 716, wherein the Hon'ble Apex Court was pleased to observe as under:

"18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him."

[15] Learned counsel for the Revision Petitioner has argued that the law regarding compounding of offences under the N.I. Act is very clear and is no more res integra and the offences under the N.I. Act can be compounded even at any stage of the proceedings. He submits that in terms of the aforesaid law laid down by the Hon'ble Supreme Court, the parties may be permitted to compound the offence and the conviction of the petitioner be set aside.

[16] Per contra, Mr.A.S.Abul Kalam Azad, learned Government Advocate who appeared for the State and assisted this Court in the matter, has vehemently opposed the submissions made by the learned counsel for the Revision Petitioner and submits

that the Revision Petitioner has already been convicted by the learned trial court and the conviction order had already been upheld by the Appellate Court in the appeal.

[17] The learned Government Advocate further submitted that the appeal has been rejected on merit and the Revision Petitioner was convicted, then where the parties or any one of them can be permitted to place compromise and to get the order of acquittal from the Court is the question. He further submitted that the present case is nothing, but a gross misuse of the process of law and thus sentence cannot be compounded on the basis of compromise as filed by the parties.

[18] Learned Counsel for the Revision Petitioner submits that this Court has already decided a similar issue vide judgment and order dated **19.09.2025 in CrI.R.C.(MD)No.875 of 2025 [K.Balachenniappan Vs Jeyakrishnan]**. The counsel argues that the present revision petitioner's case is fully covered by the aforesaid judgment and prays that the present Revision Petition may be disposed of in the same terms. A copy of the judgment has been placed before the Court for perusal.

[19] I have heard the learned counsel for the Revision Petitioner, learned counsel for the Respondent and learned Government Advocate appearing for the State and perused the materials placed on record.

[20] Considering the facts as narrated above, the following question arose for consideration.

'Whether the order passed by the Appellate Court confirming the conviction of the trial court under section 138 of Negotiable Instruments Act can be nullified by the High Court on the basis of compromise entered between the parties'.

[21] Before answering the aforesaid question as framed, I shall examine the relevant provision of the B.N.S.S, as well as the Negotiable Instrument Act. I may extract Section 359 of B.N.S.S., and Section 147 of Negotiable Instruments Act.

Section 359 B.N.S.S. - Compounding of Offences -

1) The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table: -

2)The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:--

3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under subsection (5) of section 3 or section 190 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), may be compounded in like manner.

(4)(a) When the person who would otherwise be competent to compound an offence under this section is a child or of unsound mind, any person competent to contract on his behalf may, with the permission of the Court, compound such offence;

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 442 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

Section 147 of the Negotiable Instrument Act:- Offences to be compoundable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

[22] It is well settled that inherent power of the Court can be exercised only when no other remedy is available to the litigants and nor a specific remedy as provided by the statute. It is also well settled that if an effective, alternative remedy is available, the High Court will not exercise its inherent power, especially when the Revision Petitioner may not have availed of that remedy. The power can be exercised by the High Court to secure the ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Sanhita or Act, depending upon the facts of the given case. This Court can always take note of any miscarriage of justice and prevent the same by exercising its power. These powers are neither limited, nor curtailed by any other provision of the Sanhita or Act. However, such inherent powers are to be exercised sparingly and with caution.

[23] In the instant case, it is true that the appeal was dismissed and the conviction and sentence was upheld by the appellate court, but it cannot be lost sight of the fact that this Court has power to intervene in exercise of its power only with a view to do the substantial justice or to avoid a miscarriage and the spirit of compromise arrived at between the parties. This is perfectly justified and legal too.

[24] I have considered the judgments cited by the learned counsel for the Revision Petitioner as well as by the learned Counsel for the State and other decisions of the Hon'ble Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings.

[25] In the instant case, the Revision Petitioner is invoking the inherent power of this court after dismissal of the appeal confirming his conviction and sentence. In these circumstances, I have to examine as to whether for entertaining the aforesaid case, any special circumstances are made out or not, so it can be legitimately argued and inferred and held that in all cases where the Revision Petitioner is able to satisfy this Court that there are special circumstances which can be clearly spelt out subsequent proceeding invoking inherent power of this court can be modified and cannot be thrown away on that technical argument as to its sustainability once the contesting parties entered into subsequent compromise.

[26] In view of the decisions rendered in the judgment dated **19.09.2025 in Cr.L.R.C.(MD)No.875 of 2025 [K.Balachenniappan Vs Jeyakrishnan]** and taking into account the fact that the parties have settled the dispute amicably by way of compromise, this Court is of the view that the compounding of the offence as required to be permitted.

[27] Accordingly, the present Criminal Revision Case is **disposed of** in terms of Memorandum of Compromise arrived at between the parties to this litigation out of Court. The impugned judgment passed by the learned Principal District Judge, Karur, in C.A.No.12 of 2023, dated 24.07.2024, partly confirming the judgment passed by the learned District Munsif cum Judicial Magistrate, Krishnarayapuram, in STC.No. 10 of 2021, dated 06.10.2022, are hereby **modified**. The conviction and sentence under Section 138 of the Negotiable Instruments Act in STC.No.10 of 2021, dated 06.10.2022 **stands annulled** as this Court intends, otherwise to secure the ends of justice. The Revision Petitioner shall be treated as **acquitted** on account of compounding of the offence with the complainant/person affected.

[28] **In the result,**

- The Criminal Revision Case is **disposed of** in terms of Joint Memorandum of Compromise dated 13.11.2025.

- The judgment passed by the learned Principal District Judge, Karur, in C.A.No.12 of 2023 dated 24.07.2024, partly confirming the judgment passed by the learned District Munsif cum Judicial Magistrate, Krishnarayapuram, in STC.No.10 of 2021, dated 06.10.2022 are hereby **modified**.

- The conviction and sentence imposed on the Revision Petitioner by both the courts below **stands annulled**.

- The Revision Petitioner shall be treated as **acquitted** on account of compounding of the offence with the complainant/respondent.

There is no order as to costs

2026(1)DCJ118

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[From MADURAI BENCH]

(Hon'ble Judge: Shamim Ahmed)

Crl R C (M D) (Criminal Revision Case (M D)) No 1439 of 2025 **dated 12/11/2025***S Paritha Banu W/o R Syed Fairoze***Versus***M Prabhu S/o A Marimuthu***DISHONoured CHEQUE**

Negotiable Instruments Act, 1881 - Sec. 139 - Sec. 138 - Dishonoured Cheque - Accused issued cheque for repayment of loan amount which was dishonoured for insufficient funds - Complainant proved issuance and dishonour of cheque - Accused did not rebut presumption under Section 139 nor cross-examined complainant - Trial Court convicted accused and imposed fine equal to cheque amount - Appellate Court confirmed conviction - Revision filed contending lack of financial capacity of complainant and absence of proof of loan - Court held that once issuance of cheque admitted, presumption of legally enforceable debt arises and burden lies on accused to disprove - No evidence led to rebut presumption - Conviction sustained - Revision Dismissed

Law Point: When issuance of cheque is admitted, presumption under Section 139 of Negotiable Instruments Act operates in favour of complainant-failure to rebut by evidence sustains conviction under Section 138

Acts Referred:

Negotiable Instruments Act, 1881 Sec. 139, Sec. 138

Counsel:

N Pragalathan

JUDGEMENT

Shamim Ahmed, J.- [1] This Criminal Revision Case is filed against the judgement of conviction and sentence, dated 04.12.2024, passed in Crl.A.No.44 of 2023, by the Principal District Sessions Court, Karur, confirming the judgement of conviction and sentence, dated 23.02.2023, passed in CC.No.503 of 2017, by the Judicial Magistrate Court, FTC, Karur and to set aside the same.

[2] When this Criminal Revision Case at the numbering stage, along with the application in Crl.MP(MD).No.8510 of 2025, seeking to condone the delay of 27 days in filing the said Criminal Revision Case, came up for consideration on 04.07.2025,

before the Coordinate Bench of this Court, notice was ordered to the Respondent/Complainant and the matter was ordered to be listed on 31.07.2025.

[3] When the said application in CrI.MP(MD).No.8510 of 2025, seeking to condone the delay of 27 days in filing the Criminal Revision Case came before the Coordinate Bench of this Court on 31.07.2025, the Coordinate Bench of this Court, by order dated, 31.07.2025, had passed the following order:-

"The petitioner is directed to deposit 20% of the compensation amount to the credit of C.C.No.503 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Karur, on or before 29.08.2025.

2.Post the matter on 05.09.2025, under the caption 'for reporting compliance'."

[4] Thereafter, at the time when considering the matter on 18.09.2025 "For Reporting Compliance" by this Court, it was reported by the learned counsel for the Revision Petitioner that the Revision Petitioner/Accused had no means to pay the 20% of the compensation amount, as ordered by the Coordinate Bench of this Court. This Court, by order dated 18.09.2025, had passed the following order in CrI.MP(MD).No.8510 of 2025, adjourning the matter to 12.11.2025:-

"This Criminal Miscellaneous Petition has been filed to condone the delay of 27 days in filing the above Criminal Revision Case.

2.The matter is listed today under the caption 'for reporting compliance'

3.The Co-ordinate Bench of this Court, vide order dated 31.07.2025, had passed the following order:-

"The petitioner is directed to deposit 20% of the compensation amount to the credit of CC.No.503 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Karur, on or before 29.08.2025.

2.Post the matter on 05.09.2025, under the caption 'for reporting compliance'"

4.The learned counsel for the petitioner submits that the petitioner has not made compliance of the order dated 31.07.2025 passed in CC.No.503 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Karur, as he has no means to pay the 20% of the compensation amount.

5.Mr.S.Shanmuga Selvam, learned counsel for the respondent also submits that the petitioner has not paid 20% of the compensation amount to the credit of CC.No.503 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Karur, as directed by the Co-ordinate Bench of this Court in CrI.M.P.(MD) No.8510 of 2025 in CrI.R.C.(MD) SR.No.23421 of 2025, vide order dated 31.07.2025. He further submits that the respondent will move an appropriate application before the trial Court for arrest of the petitioner and prays for adjournment in this regard.

6.Accordingly, as prayed for by the learned counsel for the respondent, adjournment is allowed.

7.Put up this case 'for orders' on 12.11.2025 before the appropriate Bench."

[5] This Court, on 12.11.2025, had passed the following order, condoning the delay of 27 days in filing the above said Criminal Revision Case and directing the Registry to number the same: _

"Heard Mr.N.Pragalathan, learned counsel for the Revision Petitioner and Mr.N.Shanmuga Selvam, learned counsel for the Respondent.

2. Mr.N.Pragalathan, learned counsel for the Revision Petitioner submits that this Criminal Miscellaneous Petition has been filed under Section 5 of the Limitation Act, 1963, seeking to condone the delay of 27 days in filing the criminal revision petition against the judgement and order dated 04.12.2024 passed in C.A.No.44 of 2023, on the file of the Principal District and Sessions Court, Karur, Karur District, confirming the judgement dated 23.02.2023 passed in C.C.No. 503 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Karur, Karur District.

3. Mr.N.Shanmuga Selvam, the learned Counsel for the Respondent, has stated that he has no objection to allowing this petition.

4. Being satisfying with the reasons stated in the affidavit filed in support of this Criminal Miscellaneous Petition, the delay of 27 days in filing the above criminal revision petition is condoned.

5. Office is directed to number the Criminal Revision Petition, if it is otherwise in order, forthwith."

[6] Accordingly, this Criminal Revision Case has been numbered and taken up for final disposal, at the admission stage itself, on merits and in accordance with law and hence, notice to the Respondent is dispensed with.

[7] The facts of the case in a nutshell, led to filing of this Criminal Revision Case and necessary for disposal of the same, are as follows:-

(a) The Revision Petitioner is the accused and the Respondent is the Complainant. It is alleged that the Revision Petitioner/ Accused had, in the last week of April 2016, borrowed a sum of Rs.1,00,000/- from the Respondent/Complainant and to discharge the said debt, the Revision Petitioner/Accused had issued a post dated cheque, bearing No.000005, dated 03.05.2016, for a sum Rs.1,00,000/- in favour of the Respondent/Complainant. Further, on 01.07.2016, the Revision Petitioner/Accused had borrowed a sum of Rs.1,30,000/- from the Respondent/Complainant, for which, the Revision Petitioner/Accused had issued a post dated cheque, bearing No. 000008 for Rs.30,000/- and another cheque, bearing No.000007 for Rs.1,00,000/-. When the said cheques were presented for collection, the same were dishonoured. However, the said amounts covered under the said cheques were repaid by the Revision Petitioner/Accused to the Respondent/Complainant and the said cheques were returned to the Revision Petitioner/Accused.

(b)Thereafter, on 15.08.2016, the Revision Petitioner/Accused had borrowed a sum of Rs. 15,00,000/- from the Respondent/ Complainant, for which, the Revision Petitioner/Accused had issued a post dated cheque, bearing No.000006, dated

01.09.2016 for Rs. 15,00,000/- drawn on Lakshmi Vilas Bank, Gandhigramam in favour of the Respondent/Complainant. When the said cheque was presented for encashment on 01.09.2016, the same was returned with the endorsement "Funds Insufficient" on 22.09.2016. Thereafter, the Respondent/Complainant had issued a statutory notice to the Revision Petitioner/Accused on 01.10.2016, calling upon the Revision Petitioner/Accused to repay the cheque amount and the same was returned as unclaimed. Hence, the Respondent/Complainant had filed a complaint in CC.No.503 of 2017 before the Trial Court, against the Revision Petitioner, for the offence under Section 138 of the Negotiable Instruments Act, for recovery of the cheque amount.

(a) The signature of the Revision Petitioner/Accused on the cheque, bearing No.000006, dated 01.09.2016 for Rs.15,00,000/- drawn on Lakshmi Vilas Bank, Gandhigramam, issued by the Revision Petitioner/ accused, in favour of the Respondent/Complainant towards the discharge of liability to the tune of Rs.15,00,000/- was not denied.

[8] After completion of trial, by the impugned judgement of conviction and sentence, the Trial Court, drawing a legal presumption under Section 139 of the Negotiable Instruments Act that the cheque in question was drawn to discharge the legally enforceable debt, as the Revision Petitioner/Accused has not rebutted the presumption under Section 139 of the Negotiable Instruments Act, had convicted and sentenced the Revision Petitioner/Accused for the offence under Section 138 of the Negotiable Instruments Act, to undergo one year Simple Imprisonment and to pay a compensation of Rs.15,00,000/-, being the cheque amount, in default, to undergo one month Simple Imprisonment. The lower appellate court had also, by its impugned judgement of conviction and sentence, dismissed the appeal filed as against the judgement of conviction and sentence of the Trial Court, by the Revision Petitioner/Accused, on the same lines. Hence, this Criminal Revision Case has been filed by the Revision Petitioner/Accused.

[9] This Court heard Mr.N.Pragalathan, the learned counsel for the Revision Petitioner/Accused and considered his submissions and also perused the entire materials placed on record.

[10] According to the Revision Petitioner/Accused, the evidence of the Respondent/Complainant, PW.1 is not trustworthy and the Respondent/ Complainant had no capacity to lend such a huge amount. There is no proof that there was legally enforceable debt between the parties. Both the courts below have committed errors in not appreciating the evidence in a proper manner and hence, the findings of the courts below are unreasonable and perverse and consequently, the Revision Petitioner/Accused is entitled for acquittal, by allowing this Criminal Revision Case.

[11] On the other hand, it was the case of the Respondent/ Complainant that the cheque amount was not repaid by the Revision Petitioner/ Complainant. Since the accused has not denied the signature found on the cheque in question, the impugned judgements of conviction and sentence of the courts below, drawing presumption

under Section 139 of the Negotiable Instruments Act, in favour of the Respondent/Complainant and consequently, imposing impugned punishment, are justified and hence, no interference by this Court is required.

[12] On perusal of the records, it is seen that before the Trial Court, the Respondent/Complainant was examined as PW.1 and Ex.P1 to P4 were marked, on the side of the Respondent/Complainant. Neither any witness nor any document was marked on the side of the Revision Petitioner/Accused. PW.1 is the Respondent/Complainant. Ex.P1 is the cheque in question.

[13] It is seen from the records that the matter is one under Section 138 of the Negotiable Instruments Act and the cheque amount involved in this case is Rs.15,00,000/-. During the trial, the Trial Court had given sufficient opportunity to the Revision Petitioner/Accused for cross examination of PW.1. However, PW.1 has not been cross examined by the Revision Petitioner/Accused before the Trial Court and no evidence whatsoever was let in by the Revision Petitioner/Accused.

[14] During the trial before the Trial Court, several opportunities were given to the Revision Petitioner/Accused for cross examination of PW.1, such as, as found by the courts below, PW.1 was examined on 09.01.2017. On 17.06.2017, the Revision Petitioner appeared before the Trial Court and she was questioned on 23.06.2017. The Revision Petitioner/Accused denied the charges and claimed for cross examination of PW.1 and therefore, the case was adjourned to 11.08.2017 for cross examination of PW.1. Thereafter, the Trial Court had given time to cross examine PW.1 from 11.08.2017 to 16.10.2019. Since, the Revision Petitioner/Accused was not ready to cross examine PW.1, cross examination of P.W.1 was closed on 16.10.2019. Thereafter, the Revision Petitioner/Accused had filed a Petition in CMP.No.3490 of 2021 to recall PW.1 and the said Petition was allowed on 30.11.2021. P.W.1 was recalled and again, the Revision Petitioner/Accused had taken time for cross examination of PW.1 from 28.01.2022 to 26.07.2022. Even thereafter, the Revision Petitioner/ Accused did not come forward to cross examine PW.1. Hence, Trial Court had closed the cross examination of PW.1. Thereafter, again the Revision Petitioner/Accused had filed a Petition in CMP.No.6380 of 2022 to recall PW.1. On 22.09.2022, the said second recall application was allowed by the Trial Court. Again, the Revision Petitioner/Accused had taken time for examination of PW.1 from 10.11.2022 to 10.01.2023. However, the Revision Petitioner/Accused failed to cross examine PW.1 on the said date. Hence, for the third time, the cross examination of PW.1 was closed on 10.01.2023. Thereafter, the Trial Court, after hearing both sides, had passed the impugned judgement of conviction and sentence on 23.02.2023. Thus, it is seen that the Revision Petitioner/Accused was not interested in prosecuting the case before the Trial Court and that the evidence of PW.1, both oral and documentary, remains unchallenged by the Revision Petitioner/Accused.

[15] Both the courts below have held that inspite of sufficient and enough time for cross examination of PW.1 was given to the Revision Petitioner/Accused, PW.1 was

not at all cross examined. Further, the Revision Petitioner/Accused has not let in any evidence whatsoever to discard the testimony of PW.1 and Ex.P1 to Ex.P4. Therefore, the evidence of PW.1 remains unchallenged and has not been rebutted by the Revision Petitioner/Accused. Therefore, the statutory presumption in favour of the Respondent/Complainant has not been rebutted.

[16] Both the courts below have further found that once the Revision Petitioner/accused has not denied the signature found on the cheque in question and since the Respondent/complainant had also proved the execution of the cheque in question, by valid evidence, the presumption under Section 139 of the Negotiable Instruments Act would arise in favour of the Respondent/Complainant, as the Revision Petitioner/accused has failed to rebut the presumption under Section 139 of the Negotiable Instruments Act, by letting in valid and convincing evidence.

[17] Consequently, both the courts below have rightly held that the cheque in question was drawn to discharge the legally enforceable debt, as per Section 139 of the Negotiable Instruments Act and hence, the Revision Petitioner/Accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly, both the courts below, by the impugned judgements of conviction and sentence, had rightly convicted and sentenced the Revision Petitioner/Accused for the offence under Section 138 of the Negotiable Instruments Act to undergo one year Simple Imprisonment and to pay a compensation of Rs.15,00,000/- being the cheque amount, in default to undergo one month Simple Imprisonment.

[18] Admittedly, the Revision Petitioner/accused did not choose to let in any evidence, whatsoever before the Trial Court. Even before this Court, apart from not complying with the earlier orders of this Court, as stated above, the learned counsel for the Revision Petitioner/Accused is not able to point out any single piece of evidence, both oral and documentary, in support of his contentions. But, on the side of the Respondent/Complainant, this Court finds that there are ample evidence in support of the case of the Respondent/Complainant, as discussed by the courts below. The Revision Petitioner/accused has not denied the signature found on the cheque in question. The Revision Petitioner/Accused failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. Thus, this court, while concurring with the findings of both the courts below, does not find any error or illegality or perversity in the findings in the impugned judgements of conviction and sentence of both the courts below, which warrants interference by this Court and accordingly, this Criminal Revision Case, is liable to be dismissed.

[19] As stated above, anywhere the Revision Petitioner/Accused has not denied his signature on the cheque, bearing No.000006, dated 01.09.2016 for Rs.15,00,000/- drawn on Lakshmi Vilas Bank, Gandhigramam, issued by the Revision Petitioner/Accused, in favour of the Respondent/Complainant towards the discharge of liability to the tune of Rs.15,00,000/-.

[20] In the case of **Rangappa vs. Sri Mohan**, 2010 11 SCC 441, the Hon'ble Supreme Court held that once the accused admits his signature in the cheque, then the presumption comes into play in favour of the complainant. The relevant portion of the said judgement is extracted as under:-

"15. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

[21] In the judgement rendered by the Bombay High Court in the case of **Purushottam Maniklal Gandhi Versus Manohar K. Deshmukh and another**, 2007 STPL(DC) 988(BOM); 2007(4) BOMCR404, it has been held that if a person hands over a duly signed blank cheque, thereby he gives an authority to the holder to put a date of his choice and to present the same for encashment. The cheque does not lose its sanctity merely due to the fact that the same has been filled in by some other person.

[22] It is relevant to refer the judgement of Hon'ble Supreme Court (**Bir Singh Vs Mukesh Kumar**, 2019 AIR(SC) 2446), wherein the Hon'ble Supreme Court has held that the presumption as to legally enforceable debt, the rebuttal of signed blank cheque, if voluntarily presented to payee towards the payment, payee may fill up the amount and other particulars, that itself would not invalidate the cheque. The onus would still be on the accused to prove the cheque was not issued for discharge of debtor liability by adducing evidence.

[23] In view of the above said decisions, this Court is of the view that in this case, when the Revision Petitioner/Accused has not denied the signature on the cheque in question, the presumption comes into play in favour of the Respondent/Complainant.

[24] In the result, in view of the above said discussions and reasons and in the light of the decisions, referred to above, this Criminal Revision Case is **dismissed**. The impugned judgement of conviction and sentence, dated 04.12.2024, passed in CrI.A.No.44 of 2023, by the Principal District Sessions Court, Karur, confirming the judgement of conviction and sentence, dated 23.02.2023, passed in CC.No.503 of 2017, by the Judicial Magistrate Court, FTC, Karur, is **confirmed**. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed. There is no order as to costs. The File is consigned to record.

[25] Let a copy of this order be sent by the Registry to the concerned Trial Court, within two weeks from today, for necessary compliance and information, to be kept in the file of the Trial Court record

2026(1)DCJ125

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge: S V Pinto)

Criminal Appeal No 9 of 2012 **dated 04/11/2025**

Nitin Vrujlal Kakkad

Versus

State of Gujarat & Anr

CHEQUE DISHONOUR

Code of Criminal Procedure, 1973 Sec. 378, Sec. 313 - Negotiable Instruments Act, 1881 Sec. 118, Sec. 139, Sec. 138 - Cheque Dishonour - Appeal by complainant against acquittal order passed by appellate forum in cheque dishonour matter - Complainant relied on agreement to sell and compromise under which cheque issued - Trial court convicted accused holding cheque issued for legally enforceable debt - Sessions court reversed conviction observing cheque given as security and no enforceable liability - High Court found that cheque related to old non-micr series and evidence failed to prove subsisting liability - Defence of security cheque accepted - Presumption under Sections 118 and 139 held rebutted - Order of acquittal affirmed - Appeal Dismissed

Law Point: Cheque issued as security and not for discharge of debt does not attract Section 138 of N.I. Act - Accused can rebut statutory presumption by showing absence of enforceable liability.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 378, Sec. 313

Negotiable Instruments Act, 1881 Sec. 118, Sec. 139, Sec. 138

Counsel:

Manan K Paneri, Devansh N Kakkad, Riddhesh Trivedi, C M Shah

JUDGEMENT

S.V. Pinto, J.- [1] This appeal has been filed by the appellant - original complainant under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment and the order passed by the learned 5th Additional District Judge, Rajkot (hereinafter referred to as 'the learned Appellate Court') in Criminal Appeal No. 13 of 2011 dated 31.05.2011, whereby, the learned Appellate Court has quashed and set aside the judgment and order of conviction passed by the learned 11th Additional Chief Judicial Magistrate, Rajkot, (hereinafter referred to as 'the learned Trial Court') in Criminal Case No. 3744 of 2005 dated 17.02.2011, whereby, the learned Trial Court convicted and sentenced the respondent no.2 to undergo simple imprisonment for six months and to pay an amount of Rs.35,000/- (Rupees Thirty Five Thousand Only) as compensation to the appellant within a period of one month and in default, simple imprisonment for 45 days for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the N.I.Act').

1.1. The parties are hereinafter referred to as 'the complainant and the accused' as they stood in the original case, for the sake of convenience, clarity and brevity.

[2] The relevant facts leading to filing of the present appeal are as under:

2.1. The complainant and the accused were relatives and the accused was the owner of Flat No.4 situated on the first floor of "Gaurav Apartment" on Kalavad Road, Rajkot having a built up area of 450 square feet. The complainant wanted to purchase the flat and a registered agreement to sell was executed between the parties and the complainant had paid an amount of Rs.70,000/- as earnest money to the accused by two cheques. The remaining amount was also paid in cash, but the accused did not hand over possession of the flat to the complainant and did not get the registered sale deed executed in favour of the complainant. The accused sold the flat to some other person and had also taken a loan on the flat and as the registered sale deed could not be executed, a compromise was arrived at between the parties and the market value of the flat was fixed at Rs.3,85,000/-. Towards the compromise amount, two cheques were given by the accused to the complainant, out of which, cheque no. 0184582 for Rs.35,000/- dated 08.02.2005 from his account with Rajkot Nagarik Sarkari Bank Limited, Dr. Yagnik Road Branch, Rajkot was deposited by the complainant in his account, but the cheque returned unpaid. On contacting the accused, the complainant was asked to deposit the cheque once again and when the cheque was deposited once

again, it returned unpaid with the endorsement "Funds Insufficient". The demand statutory notice was given which was duly served to the accused and the accused gave an evasive reply, but did not repay the amount within the stipulated period, and hence, the complainant filed a complaint under Section 138 of the N.I.Act before the Court of the Chief Judicial Magistrate Rajkot on 11.04.2005, which came to be registered as Criminal Case No. 3744 of 2005.

2.2. The learned Trial Court took cognizance of the offence and the accused was duly served with the summons and appeared before the learned Trial Court. The plea of the accused was recorded at Exh.9, wherein, the accused denied all the contents of the complaint and the entire evidence of the complainant was taken on record. The complainant was examined at Exh.10 and he produced 10 documentary evidences in support of the case.

2.3. After the closing pursis was filed by the learned advocate for the complainant, the further statement of the accused under Section 313 of the Code was recorded wherein the accused denied the evidence on record. The accused refused to step into the witness box or lead evidence but examined one witness and produced six documentary evidence in support of his case.

2.4. After hearing the arguments of the learned advocates for both the parties, the learned Trial Court, by the impugned judgment and order dated 17.02.2011, was pleased to convict and sentence the accused simple imprisonment for six months and pay Rs.35,000/- (Rupees Thirty Five Thousand Only) as compensation to the complainant within a period of one month and in default, simple imprisonment for 45 days for the offence punishable under Section 138 of the N.I.Act.

[3] Being aggrieved and dissatisfied with the judgment and order of conviction passed by the learned Trial Court, the accused preferred Criminal Appeal No.13 of 2011 before the Sessions Court, Rajkot, whereby, the appeal preferred by the accused came to be allowed and the learned 5th Additional District Judge, Rajkot was pleased to quash and set aside the judgment and order of conviction dated 17.02.2011 passed in Criminal Case No. 3744 of 2005 by the learned 11th Additional Chief Judicial Magistrate, Rajkot and acquit the accused from the offence.

[4] Being aggrieved and dissatisfied with the said judgment and order of acquittal passed by the learned Sessions Court in Criminal Appeal No.13 of 2011, the appellant has filed the present appeal mainly stating that the impugned judgment and order passed by the learned Sessions Court, Rajkot is erroneous, unjust and contrary to the evidence on record and also on the factual aspect of the case and the appellant had, in fact, proved by relevant documents as well as oral evidence that the respondent no.2 had committed the offence under Section 138 of the N.I.Act. The learned Trial Court had rightly convicted the respondent no. 2 and the learned Sessions Court has not considered that the intention of the respondent no.2 was very clear from the beginning not to pay the amount of the cheque to the appellant even though the cheque was issued against the legal dues as per the compromise arrived at between the parties. The

learned Sessions Court has ignored these facts and has not considered the deposition of the appellant where it is proved that the cheque was issued even though there were no funds in the account of the respondent no.2. The respondent no.2 has not stepped into the witness box and even if the opinion of the handwriting expert is considered, it is proved that the cheque was issued by the respondent no.2. The judgment and order passed by the learned Sessions Court is erroneous, unjust and contrary to the evidence on record and is required to be quashed and set aside and the judgment and order of conviction passed by the learned Trial Court be restored and made absolute.

[5] Heard learned advocate Mr. Devansh Kakkad for learned advocate Manan Paneri for the appellant - original complainant, learned APP Ms.C.M.Shah for the respondent No.1- State and learned advocate Mr. Riddhesh Trivedi for the respondent no.2. Perused the impugned judgment and order of acquittal passed by the Appellate Court as well as judgment and order of conviction passed by the learned Trial Court and have re-appreciated the entire evidence of the prosecution on record of the case.

[6] Learned Advocate Mr.Devansh Kakkad for the appellant has submitted that the learned Trial Court had properly appreciated the entire evidence, whereas, the Sessions Court has not appreciated the evidence properly. The appellant had, in fact, produced cogent evidence to prove that the cheque was issued for the legally enforceable debt and the document produced at Exh.13 is the registered agreement to sell which proves that the appellant had entered into an agreement to purchase the property of the respondent no.2 and had given an amount of Rs.70,000/- as earnest money but the possession of the property was not handed over, and thereafter, a compromise was arrived at between the parties, towards which, the amount of Rs.3,85,000/- which was the market price of the flat was decided and towards payment of the same, the cheque of Rs.3,50,000/- was given. The appellant has proved that the cheque had returned unpaid with the endorsement funds insufficient, and thereafter, the demand statutory notice was given towards which an evasive reply was given but the amount was not paid within the stipulated period and the learned Trial Court had appreciated the entire evidence and had convicted the respondent no.2, but the learned Sessions Court, without considering the evidence on record, has passed the impugned judgment and order of acquittal. Learned advocate has urged this court to allow the appeal and quash and set aside the judgment and order of acquittal and restore the judgment and order of conviction of the learned Trial Court.

[7] Learned APP Ms.C.M.Shah for the respondent - State has submitted that the learned Sessions Court has appreciated all the evidence in true perspective and has not committed any error in acquitting the accused. Therefore, no interference of this Court is required in the impugned judgment and the order of acquittal passed by the learned Sessions Court and has urged this Court to reject the appeal.

[8] Learned Advocate Mr. Riddhesh Trivedi for the respondent no.2 has submitted that the learned Sessions Court has considered that the appellant did not prove that there was any legally enforceable debt and at the inception itself, it was the defense of

the respondent no.2 that the cheque in question was given as a security and if the document produced at Exh.13 is perused the agreement to sell was executed between the parties on 03.09.1995. The cheques were given as a security in the year 1995 and thereafter the possession of the flat was also handed over to the appellant and no compromise as stated by the appellant has been arrived at between the parties. The respondent no.2 has also proved that the cheques were old cheques and in the cross-examination of the witness of the appellant it has come on record that the cheque was a non-micr cheque and it has been misused by the appellant. Moreover, there was no legally enforceable due amount between the parties and in fact the appellant had filed Regular Civil Suit No.443 of 2007 for declaration and permanent injunction to restrain the Rajkot Nagarik Sarkari Bank Limited and the respondent no.2 from dispossessing the appellant from the property. Hence, the learned Sessions Court has properly appreciated the evidence and has concluded that there was no legally enforceable due amount outstanding from the respondent no.2 to be paid to the appellant and has rightly passed the impugned judgment and order of acquittal and learned advocate has vehemently argued to reject the appeal of the appellant.

[9] As the case is filed under Section 138 of the N.I.Act, the provision of Section 138 of the N.I.Act is reproduced as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account: -

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless:-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

[10] On perusal of the evidence on record of the learned Trial Court, the complainant has filed his affidavit of examination-in-chief at Exh.10 and in the cross-examination by the learned advocate for the accused, the complainant has admitted that in the notice at Exh.26, no demand for Rs.35,000 has been made and from the time that the agreement to sell was executed till 2005 i.e. for a period of 11 years, no steps for the flat have been taken and no notice was given to the accused. The complainant has also admitted that he had no relations with the accused since the year 2000 and after the year 2000, there were no dealings with the accused. Besides the dealing of the flat, no other dealings had taken place and the complainant has stated that there was a rent deed executed between them, but it was not produced on record. Thereafter, the complainant has produced the rent deed at Exh.28, but the deed does not mention that any amount in cash was paid to the accused. Besides the agreement to sell wherein it is mentioned that an amount of Rs.70,000/- was paid as earnest money, there was no evidence with the complainant to show that any other amount has been paid and the dealing regarding the flat had taken place in the year 1995. No amount was given as advance to the accused and he did not have any documentary evidence to prove that the accused had sold the flat to some other person. The complainant has admitted that he had filed Regular Civil Suit No.443 of 2007 for declaration and permanent injunction against Rajkot Nagarik Sahkari Bank Limited and the accused and had also sought for an interlocutory injunction to restrain them from dispossessing his possession in the flat, but the interlocutory injunction application was rejected by the Civil Court. The complainant has admitted that the cheque was not given towards any compromise about the flat and he did not have any documentary evidence to show that he had paid any amount of rent to the accused as per the rent agreement produced at Exh.28. The complainant has stated that the cheque produced at Exh.21 is dated 08.02.2005, but it was presented in the bank on 07.02.2005 and he has not mentioned that the amount is outstanding from the accused in his Income Tax Returns.

[11] On perusal of the document produced at Exh.30, which is the copy of the plaint of Regular Civil Suit No.443 of 2007 filed by the complainant against Rajkot Nagarik Sahkari Bank Limited and the accused for declaration and permanent injunction, the accused has stated that the possession of the flat is with Janakbhai Nandlalbhai Gowani from the year 1996 and the flat was given on rent to him by the complainant for a monthly rent of Rs.250/-. The suit has been filed with a prayer that the Rajkot Nagarik Sahkari Bank Limited and the accused do not dispossess the tenant from his possession in the flat and for declaration that the Rajkot Nagarik Sahkari Bank Limited and the accused do not have any right, title or interest in the flat as the agreement to sell dated 30.09.1995 is in existence.

[12] At this juncture, it would be fit to reproduce the provisions of section 118 and section 139 of the N.I.Act which read as under.

"118 - Presumptions as to Negotiable Instruments:- Until the contrary is proved, the following presumptions shall be made: -

(a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date-that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance-that every bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer-that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsement-that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp-that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

"139 - Presumption in favour of holder:- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

[13] It is pertinent to note that Section 138 of the N.I.Act stipulates that to constitute an offence under the Act, the complainant must prove that the cheque was issued by the accused in discharge of a legally enforceable debt or any other liability and the cheque was presented into the bank and it was returned unpaid on account of insufficiency of funds or because it exceeded the amount arranged to be paid by the drawer of the cheque by an agreement with the bank. The accused thereafter must have failed to pay the amount of cheque within 15 days of receipt of the statutory notice and the presumption as enumerated in section 139 of the N.I.Act is rebuttable in nature. The complainant is to prove that the cheque was issued for a legally enforceable debt and the legally enforceable debt must be in existence on the date when the cheque was issued and the drawing of the cheque in discharge of the existing or past liability is a sine qua non for bringing an offence under section 138 of the N.I.Act.

13.1. In the instant case, the complainant has stated that there was a compromise arrived at between the parties towards which an amount of Rs.3,85,000/- was fixed as the market price of the flat and the cheque in question was given by the accused towards payment of the same, but there is no evidence on record to show that any

compromise was arrived at between the parties and the market price of the flat was fixed at Rs.3,85,000/-. The complainant has not mentioned the date, month or year when the compromise was arrived at between the parties and has not produced any documentary evidence about the compromise. Moreover, the accused has rebutted the presumption and has brought on record the plaint of Regular Civil Suit No. 443 of 2007, which has been filed by the complainant for declaration and permanent injunction to restrain the Rajkot Nagarik Sarkari Bank Limited and the respondent no.2 from dispossessing the appellant from the property. Hence, it is on record that the property was in the possession of the complainant as admitted by him during the cross-examination and it cannot be said that there was any legally enforceable debt outstanding from the accused. The accused has raised a probable defence to the extent of preponderance of probability that there was no legally enforceable debt pending from the accused and in the evidence of the complainant, there is no iota of evidence that there was any legally enforceable amount due as the possession of the flat was with the complainant from the time of execution of the agreement to sell as admitted by the complainant.

[14] In view of the above, the learned Sessions Court has appreciated the entire evidence in proper perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The learned Sessions Court has appreciated all the evidence and this Court is of the considered opinion that the learned Sessions Court was completely justified in acquitting the accused of the charges leveled against him. The findings recorded by the learned Sessions Court are absolutely just and proper and no illegality or infirmity has been committed by the learned Sessions Court and this Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the learned Sessions Court. This Court finds no reason to interfere with the impugned judgment and order passed by the learned Sessions Court and the present appeal is devoid of merits and resultantly, the same is dismissed.

[15] The impugned judgment and the order dated 31.05.2011 in Criminal Appeal No.13 of 2011 passed by the learned 5th Additional District Judge, Rajkot is hereby confirmed.

[16] Bail bond stands cancelled. Record and proceedings be sent back to the learned First Appellate Court forthwith
