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

Reserved on: July 09, 2026
% ***Pronounced on: July 22, 2026***

\+ **CRL.REV.P. 271/2024, CRL.M.A. 6083/2024, CRL.M.(BAIL) 349/2024**

PARDEEP KUMAR **...Petitioner**
Through: Mr. Zeeshan Diwan (DHCLSC) and Ms. Harsha, Advocates

Versus

STATE (NCT OF DELHI) & ANR. **...Respondents**
Through: Ms. Meenakshi Dahiya, APP with SI Himanshu, PS: Najafgarh
Mr. Sudeep Dey, Mr. Ajit Singh, Mr. Gaurav Kajla, Mr. Anmol Singhal and Mr. Joyjeet, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present petition under *Section 397* of the Code of Criminal Procedure, 1973[1], the petitioner/ accused seeks setting aside of the order dated 22.12.2023[2] passed by the learned ASJ-03, South-West District, Dwarka Courts, New Delhi[3] in CA No.436/2023, whereby the judgement on conviction dated 07.07.2023 as well as the order on sentence dated 22.07.2023 passed by the learned MM, South-West District, Dwarka

[1] Hereinafter referred to as '***CrPC***'
[2] Hereinafter referred to as '***impugned order***'
[3] Hereinafter referred to as '***Appellate Court***'

Courts, New Delhi[4] in CC No.25171/2019 convicting the petitioner under *Section 138* of the Negotiable Instruments Act, 1881[5] and sentencing him to undergo simple imprisonment for a period of *three months* and to pay fine of *Rs.3,50,000/-* to the respondent no.2/ complainant, in default whereof to undergo simple imprisonment for a further period of *two months*, was upheld.

BRIEF FACTS:

2. *Succinctly put*, the respondent no.2 filed the aforesaid complaint stating that a cheque bearing no.717458 dated 04.05.2019 for *Rs.2,50,000/-* drawn on SBI, Jhajjar Chungi, Rohtak[6] issued to him by the petitioner for repayment of a loan of *Rs.2,00,000/-* in cash and *Rs.50,000/-* in December 2017 was returned unpaid by the banker on 07.05.2019 with the remark '*Account Closed*'. This led to the respondent no.2 issuing a Legal Notice dated 04.06.2019 to the petitioner to which neither was there any reply, nor was the requisite amount paid by the petitioner within the statutory period of *15 days*. Thus, the respondent no.2 initiated proceedings under *Section 138* of the NI Act against the petitioner before learned Trial Court.

3. Upon service therein, the petitioner denied having received any amount in cash from the respondent no.2 and submitted that the actual loan amount was only *Rs.50,000/-* by cheque, which, according to him, had already been duly returned by him to the respondent no.2 with interest on a daily basis amounting to about *Rs.1,00,000/-*. Though he agreed that the cheque was signed by him, and that he had received the Legal Notice dated 04.06.2019 issued by respondent no.2 pursuant thereto, however it was his

[4] Hereinafter referred to as '***Trial Court***'
[5] Hereinafter referred to as '***NI Act***'
[6] Hereinafter referred to as '***cheque***'

case that the said cheque had actually been given to the respondent no.2 as a blank cheque only for the purpose of security and was later misused by the respondent no.2.

4. After taking due note of the aforesaid and other defenses, the complete evidence on record and the final arguments, the learned Trial Court held that all the necessary requisites of *Section 138*[7] NI Act were made out against the petitioner, especially in view of the admitted issuance of the cheque by the petitioner including his signatures as well as the timelines involved of presentation of the cheque to the bank, dishonoring due to closure of account, Legal Notice and filing of the complaint. The learned Trial Court further found that the petitioner had been unable to dislodge the statutory presumptions against him under *Section(s) 118*[8] and

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[7] ***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 provision 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 of other liability" means a legally enforceable debt or other liability.'

[8] ***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;*
[xxx xxx xxx]

139[9] NI Act, particularly, since he failed to produce any evidence *qua* his allegedly returning the loan amount with interest to the respondent no.2 through any transaction records or even cash receipts, as also *qua* any steps taken by him to retrieve the allegedly blank cheque given by him to the respondent no.2 as a security. Accordingly, the petitioner was convicted and sentenced in terms thereof. In a challenge thereto, both his conviction as well as the sentence imposed upon the petitioner were upheld by the learned Appellate Court by way of the impugned order.

RIVAL CONTENTIONS:

5. In this backdrop, learned counsel for the petitioner submitted that the impugned order is erroneous since both the Courts below failed to consider that the respondent no.2 did not show any record of the cash amount of *Rs.2,00,000/-* allegedly given by him to the petitioner through any receipts, loan documents, books of accounts, income tax returns, etc., as also did not show his financial capacity and/ or source of funds to lend the said amount to the petitioner in the first place, hence, it was not established that the cheque was issued by the petitioner to discharge any debt/ liability and he could not have been convicted under *Section 138* NI Act. The learned counsel placed reliance upon the decision of the Hon'ble Supreme Court in ***John K Abraham vs. Simon C Abraham***[10] as well as of this Court in ***Irshad Ahmed vs. Sukhe Singh***[11] and ***Kulvinder Singh vs. Kafeel Ahmed***[12] in support thereof.

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[9] ***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.'*

[10] 2014 (2) SCC 236

[11] 2023 SCC OnLine Del 7811

[12] 2013 SCC OnLine Del 34

6. Learned counsel for the petitioner further submitted that the petitioner led evidence and showed before the Courts below that the respondent no.2 had advanced a further sum of *Rs.18,000/-* to the petitioner by way of cheque bearing no.040147 dated 14.12.2019, and the same raised sufficient doubt over the case of the respondent no.2 since he would not have given any further amount to the petitioner, if he already had an outstanding debt/ liability towards him. The learned counsel also submitted that the respondent no.2 did not lead any evidence to prove the friendship between him and the petitioner to prove why he would give him a friendly loan without interest, or give him further sums of money.

7. Learned counsel for the petitioner lastly submitted that in view of the aforesaid lacunae, as also seeing the clear stance taken by the petitioner that he had only taken a loan of *Rs.50,000/-* from the respondent no.2 and duly returned the same in daily instalments with interest, the petitioner was able to rebut the presumption against him under *Sections 118* and *139* NI Act, and since the case of the respondent no.2 was not supported by any evidence, his complaint ought to have been dismissed. Hence, the learned counsel for the petitioner submitted that the impugned order has been wrongly passed and is liable to be set aside by this Court.

8. *Per contra*, learned counsel for the respondent no.2 advanced his submissions in support of the impugned order which, as per him, is detailed and well-reasoned and has rightly upheld the conviction of the petitioner under *Section 138* NI Act, since all the necessary ingredients thereof were duly established by the respondent no.2 with all the proofs thereof, being the cheque [***Ex.CW1/A***], the returning memo dated 07.05.2019 [***Ex.CW1/B***] as well as the legal notice dated 04.06.2019 [***Ex.CW1/C***]

along with the registered-post receipt [***Ex.CW1/D***] and the tracking report thereof [***Ex.CW1/E (Colly)***]. The learned counsel submitted that in view of the above, coupled with non-denial of the cheque with his signature as well as receipt of the legal notice dated 04.05.2019 by the petitioner, the presumptions under *Sections 118* and *139* NI Act were rightly applied in favour of the respondent no.2 by the learned Trial Court and the learned Appellate Court, which the petitioner was wholly unable to rebut in any manner whatsoever.

9. Learned counsel for the respondent no.2 in this regard further submitted that the defence urged by the petitioner was merely cursory without any documentary evidence, since he neither showed any proof of repayment of the loan amount, nor did he ever file any complaint with the police to gain back the allegedly blank cheque being misused by the respondent no.2. The learned counsel relied upon the decision of the Hon'ble Supreme Court in ***Rohitbhai Jivanlal Patel vs. State of Gujarat***[13] to submit that in the absence of any cogent evidence led by the petitioner to rebut the legal presumption in favour of the respondent no.2, questions as to the source of income of the respondent no.2 or the recording of the cash transaction through receipts, notes, etc. are wholly irrelevant. Similarly, the contentions of the petitioner *qua* non-filing of income tax returns, etc. also do not dislodge the said legal presumption as held in ***Barun Kumar vs. State of NCT of Delhi & Anr.***[14].

10. Learned counsel for the respondent no.2 further submitted that the petitioner cannot draw any support from ***John K Abraham (supra)*** since

[13] (2019) 18 SCC 106
[14] 2021 SCC OnLine Del 3498

there were material alterations made in the cheque therein as also there were contradictions in the handwriting of the accused, whereas in the present case, there is no discrepancy as to the issuance of the cheque and the signatures of the petitioner, which have been duly admitted by the petitioner himself. The learned counsel lastly relied upon the decision of the Hon'ble Supreme Court in ***Johar & ors. vs. Mangal Prasad & Anr.***[15] and the decision of this Court in ***Medha Patkar vs. V. K. Saxena***[16] to submit that the ambit of interference by this Court in exercise of revisional powers is extremely limited and cannot be invoked simply to substitute the well-reasoned view taken by the learned Trial Court and the learned Appellate Court without any perversity. The learned counsel hence prayed that the present petition be dismissed.

11. Learned APP also supported the impugned order and the case canvassed by the learned counsel for the respondent no.2.

ANALYSIS AND FINDINGS:

12. Based on the pleadings and documents on record as also the judgements cited and submissions made by learned counsels for the parties, the prime issue for consideration is whether the impugned order upholding the conviction of the petitioner under *Section 138* NI Act suffers from any error/ infirmity/ illegality/ perversity or the like to bring the same within the ambit of the present revision petition under *Section 397* CrPC.

13. *Sections 138* NI Act is a self-contained code requiring ***(1)*** a cheque to be drawn by the drawer from an account maintained by him for discharge, in whole or in part, of any debt or other liability; and ***(2)***

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[15] (2008) 3 SCC 423
[16] 2025 SCC OnLine Del 5089

presentation of the said cheque to the bank by the holder within a period of *six months* from the date of drawing of such cheque; and ***(3)*** return of the said cheque unpaid due to insufficiency of funds, etc.; and ***(4)*** a demand/ notice for repayment made by the holder to the drawer within a period of *30 days* thereafter; and yet ***(5)*** failure by the drawer to make the repayment within a period of *15 days* from receipt of such notice. Encompassing all the above, the drawer is deemed to have committed an offence under *Sections 138* NI Act and is liable to be punished as such.

14. *Section 138* read together with *Sections 139* and *118* NI Act evinces that when all the *other* criteria as above were fulfilled, a *legal presumption* operated in favour of the respondent no.2 that the cheque was issued for the discharge, in whole or in part, of any debt or other liability, and it was incumbent upon the petitioner to prove otherwise for rebutting the said legal presumption. The same has been repeatedly held to be the correct position of law, including the recent decisions of the Hon'ble Supreme Court in ***Rohitbhai Jivanlal Patel (supra)*** relied on by learned counsel for the respondent no.2 as also ***Kishan Rao vs. Shankargouda***[17].

15. Aside from bald denials/ bare statements/ unsubstantiated claims regarding the actual loan amount being *Rs.50,000/-* which the petitioner claimed to have returned with interest or that he issued a blank cheque as security, this Court does not find even a shred of evidence or substantiation thereto. Thus, the petitioner was unable to dislodge the statutory presumption against him and prove that the cheque was not for a debt/ liability.

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[17] (2018) 8 SCC 165

16. On the other hand, when all the essential ingredients were duly proved by respondent no.2 in the form of the cheque, the returning memo dated 07.05.2019 and the Legal Notice dated 04.06.2019 with the registered-post receipt and the tracking report thereof, as also considering the non-response and non-compliance thereto by the petitioner, and in the absence of anything cogent shown by the petitioner, the petitioner was rightly convicted by the learned Trial Court, which was then rightly upheld by the learned Appellate Court by way of the impugned order.

17. Considering the aforesaid in mind, rest of the contentions *qua* the source of funds and financial capacity of the respondent no.2, his books of accounts, transaction records or income tax returns, or any subsequent amount of money advanced by him to the petitioner as sought to be urged by learned counsel for the petitioner, pale into insignificance, particularly taking into account the non-discharge of the onus upon the petitioner under *Section 139* NI Act, which has already dealt with in detail by the Courts below.

<u>CONCLUSION:</u>

18. In light of the afore-going, especially the well-reasoned and detailed analysis by the Courts below, finding no error/ infirmity/ illegality/ perversity or the like in the impugned order, no interference is required therewith.

19. Accordingly, the impugned order dated 22.12.2023 passed by the learned ASJ-03, South-West District, Dwarka Courts, New Delhi in CA No.436/2023 upholding the judgement on conviction dated 07.07.2023 as well as the order on sentence dated 22.07.2023 passed by the learned MM,

South-West District, Dwarka Courts, New Delhi in CC No.25171/2019 are upheld.

20. The petitioner be sent to judicial custody to serve the remainder of his sentence of simple imprisonment for a period of *three months* as also pay fine of *Rs.3,50,000/-* to the respondent no.2, in default whereof, to undergo simple imprisonment for a further period of *two months*, as awarded *vide* order on sentence dated 22.07.2023 passed by the learned Trial Court and upheld by the learned Appellate Court.

21. As such, the present petition is dismissed.

SAURABH BANERJEE, J.

JULY 22, 2026/So